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## HUMAN RIGHTS IN ISLAM

### I. Introduction and Issues for focused consideration at the Forty-Sixth Session of AALCO

#### A. Background

1. The item “Human Rights in Islam” was included in the agenda of the AALCO at the initiative of the Kingdom of Saudi Arabia at its Forty-First Session (Abuja, Nigeria, 2002). Since then the item is being deliberated upon during AALCO’s successive sessions. The resolution adopted during the Forty-Fifth [New Delhi (Headquarters), India, 2006] Session of AALCO urged Member States “to forward to the Secretariat their views and observations on the topic, so as to facilitate the preparation of an in-depth study on this item”.

2. The Secretariat Report for the Forty-Third Session focused on the analysis of Human Rights in Islam from the civil law perspective. It enunciated the four important sources of Human Rights in Islam, viz. *the Holy Quran, the Sunnah* (including both Sunni and Shia perspectives), *consensus and juristic reasoning*; the distinctive characteristic of Human Rights in Islam; and outlined various civil and political as well as economic, social and cultural rights as guaranteed under Islam. The report of the Forty-Fourth Session analysed the criminal law jurisprudence of Islam through the prism of human rights. Human Rights from criminal law perspective is a broad area of concern and its subject matter ranges from the areas of national penal legislations, *inter alia* torture, extra-judicial executions, fair trial etc. to the international humanitarian law. The report of the Forty-Fifth Session analyzed the criminal procedural laws from human rights perspective. The Report analysed the international and national criminal procedural laws from a human rights perspective and also analysed the criminal procedural laws and principles of Islam through the prism of human rights.

3. The present report consists of two parts. First, as a continuum of the previous reports of exploring the human rights principles of Islam, an attempt has been made to highlight the concepts of peace and human rights in Islam. This is significant in the present context, as there are deliberate attempts to link religion with terrorism and violence. Second, a Report (Report of the Chairperson of the Plenaries) of the Meeting of International Experts on Human Rights in Islam (MIEHRI), organized by the Government of Malaysia in collaboration with the Kingdom of Saudi Arabia and the Asian African Legal Consultative Organization (AALCO) Secretariat, which was held in Kuala Lumpur, Malaysia from 15 to 19 May 2006.

#### B. General Comments

4. Islam is a religion of peace and the application of Islamic principles will bring justice, harmony, order, and thus peace. The full potential of Islam to address social and political conflicts is yet to be fully realized. Both Islamic religion and tradition have a multitude of resources with which conflict can be resolved peacefully and nonviolently.

Islamic scripture and religious teachings are rich sources of values, beliefs, and strategies that promote the peaceful and nonviolent resolution of conflicts. Interpreting and viewing Islamic religion, tradition, and cultural patterns through nonviolence and peace building lenses become important in accurately understanding and capturing the meaning of Islam. Though a wide variety of Islamic religious teachings and practices address conflicts and peace building, the validity of their application depends on the type of interaction involved in the conflict situation. However, the peaceful and nonviolent approach does not mean submission or passivity to aggression or injustice. The primary end of peaceful and nonviolent engagement is to abolish the structural violence on both micro and macro levels. Such changes are necessary to establish a just society.

5. The Meeting of International Experts on Human Rights in Islam (MIEHRI) which was held in Kuala Lumpur, Malaysia from 15 to 19 May 2006 organized by the Government of Malaysia in collaboration with the Kingdom of Saudi Arabia and the Asian-African Legal Consultative Organization (AALCO) Secretariat was a huge success in highlighting human rights principles envisaged in Islam, and also served as a platform for experts from various fields to examine Islamic principles on human rights with the main purpose of dissuading misunderstanding of Islam and the Muslims. AALCO Secretariat extends its genuine appreciation to the Organizers of the Meeting. It is highly commendable that the Meeting of Experts brought a series of recommendations which would give a new dimension and approach on the focus of study, namely, Human Rights in Islam.

### **C. Issues for focused consideration at the Forty-Sixth Session of AALCO**

- *Islam is a religion of peace. In Islam, peace is achieved through administering justice, both social and economic; social empowerment; managing pluralism and diversity; universality and human dignity; highlighting sacredness of human life; forgiveness; and patience; and achieving human equality.*
- *Countering the attempt by the Western world to associate Islam with violence, aggression and terror.*
- *Highlighting the Islamic principles of peaceful resolution of conflicts thereby dissociate Islam from the violence that takes place in the name of religion.*
- *The peaceful and nonviolent approach does not mean submission or passivity to aggression or injustice. The primary end of peaceful and nonviolent engagement is to abolish the structural violence on both micro and macro levels. Such changes are necessary to establish a just society.*
- *The early code of conduct of Islam in International Humanitarian Law (Dealing with Combatants, Non-Combatants, Prisoners of War, etc.) from the dawn of Islam and its Blessed Prophet*

## PART ONE

### I. Islam as a Religion of Peace

6. Islam is often stereotyped as hostile and violent in the Western discourse. Western media and policy documents often project the violent and aggressive images of Islam. Moreover, the American and European historical writing makes negative depictions of Islam. Awareness can reduce the negative characterizations of Islamic society and religion in both popular and academic literature, particularly eradicating ill-founded generalizations about Islamic ways of thinking, believing or living. This section is an endeavor to explore the concepts of peace and human rights in Islam and to highlight its significance in the contemporary world.

### II. Key Islamic principles related to peace<sup>1</sup> and Human Rights

#### A. Quest for Peace

7. The Quranic discourse suggests that peace is a central theme in Islamic precepts. According to Holy Qur'an, peace in Islam begins with God, but also encompasses peace with oneself, with fellow human beings, and with nature.

Behold, thy Lord said to the angels; "I will create a Vicegerent on earth."  
(Holy Qur'an 2:30)

We ordained for the Children of Israel that if any one slew a person-unless it be for murder or for spreading mischief in the land-it would be as if he slew the whole people: And if any one saved a life, it would be as if he saved the life of the whole people. (Holy Qur'an 5:32)

Every time they kindle the fire of war, Allah doth extinguish it; But they (ever) strive to do mischief on earth. And Allah loveth not those who do mischief (Holy Qur'an 5:64)

8. Peace (*Salam*) is therefore not merely an absence of war; it is the elimination of the grounds for strife or conflict, and resulting waste and corruption they create. Peace, not war or violence, is God's true purpose of humanity. Islam instructs to keep in mind the spirit of equality, brotherhood, love and purity of character. Limited force and struggle is permitted under certain conditions.

9. Peace in Islam is a state of physical, mental, spiritual and social harmony. Living at peace with God through submission, and living at peace with fellow beings by avoiding mischief on earth, is real Islam. Islam is a religion that preaches and obligates

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<sup>1</sup> The concept has been liberally quoted from : Mohammed Abu-Nimer, "A Frame work for Nonviolence and Peacebuilding in Islam", *Journal of Law and Religion*, vol.15, No:1/2 (2000-01)pp.217-265

its believers to seek peace in life's domains of life. The ultimate purpose of one's existence is to live in a peaceful, as well as a just social reality.

Repel evil with that which is best: We are well acquainted with the things they say.( Holy Qur'an 23:96)<sup>2</sup>

Nor can goodness and Evil be equal. Repel (Evil) with what is better: Then will he between whom and thee was hatred become as it were thy friend and intimate! (Holy Qur'an 41:34)

10. Thus peace has an internal, personal as well as social applications, and God is the source and sustainer of such peace.

Do no mischief on the earth, after it hath been set in order, but call on Him with fear and longing (in your hearts): for the Mercy of Allah is (always) near to those who do good.( Holy Qur'an 7:56)

And obey Allah and His Messenger; and fall into no disputes, lest ye lose heart and your power depart; and be patient and persevering: For Allah is with those who patiently persevere:( Holy Qur'an 8:46)

And the servants of (Allah) Most Gracious are those who walk on the earth in humility, and when the ignorant address them, they say, "Peace!";( Holy Qur'an 25:63)

(This will be) their prayer therein: "Glory to Thee, O Allah!" And "Peace" will be their greeting therein! and the end of their prayer will be: "Praise be to Allah, the Cherisher and Sustainer of the worlds!"( Holy Qur'an 10:10)

Nay,-whoever submits His whole self to Allah and is a doer of good,- He will get his reward with his Lord; on such shall be no fear, nor shall they grieve.( Holy Qur'an 2:112)

Twice will they be given their reward, for that they have persevered, that they avert Evil with Good, and that they spend (in charity) out of what We have given them.( Holy Qur'an 28:54)

11. In Islam, while Muslims must always be ready for the struggle lest it be forced on them, even in the midst of the fight Muslims must always be ready for peace if there is any indication towards peace on the other side. There is no merit merely in a fight by

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<sup>2</sup> Whether people speak evil of you, in your presence or behind your back, or they do evil to you in either of those ways, all is known to Allah. It is not for you to punish. Your best course is not to do evil in your turn, but to do what will best repel the evil. Two evils do not make a good. The Holy Qur'an: English translation of the meaning and commentary, (King Fahd Complex, Al Madinah Al Munawarah, Ministry of Hajj and Endowments, KSA) p.995

itself. It should be a joyful duty not for itself, but to establish the reign of peace and righteousness and Allah's Law.<sup>3</sup>

But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah: for He is the One that heareth and knoweth (all things). (Holy Qur'an 8:61)

12. In contrast with the ephemeral and uncertain pleasures of this material life, there is a higher life to which Allah is always calling. It is called the Home of Peace, For there is no fear, nor disappointment nor sorrow there. And all are called, and those will be chosen who have sought, not material advantages, but the Good Pleasure of Allah.<sup>4</sup>

No frivolity will they hear therein, nor any mischief,- Only the saying, "Peace! Peace". (Holy Qur'an 56:25-26)

But Allah doth call to the Home of Peace: He doth guide whom He pleaseth to a way that is straight. (Holy Qur'an 10:25)

13. The centrality of peace is reflected in the daily greetings of Muslims of each others "peace be upon you". *Salam* means peace and peace loving and it is obvious that peaceful attitude is a successful way of protection from dangers and prevention of war and fighting. Generally, commentators have taken the word *salam* to mean mutual greetings and well-wishing but the context and the fact that it has been mentioned in the series of obligations do not support this interpretation. However, according to this interpretation *salam* is a means of safety from dangers because it is regarded as a way of peace and peace loving. When two Muslims meet each other, they offer *salam* one to the other, it means that they announce the wishes of each for the welfare of the other where after each feels safe with the other.<sup>5</sup>

14. Islam's basic belief in the unity of humankind, the supreme love of the creator, the obligation of mercy, and Muslim's duty of subjection of their passions and accountability for all actions.

Allah commands justice, the doing of good, and giving to kith and kin, and he forbids all indecent deeds, and evil and rebellion: He instructs you, that ye may receive admonition (Holy Qur'an 16:90)

15. Supporters of the nonviolent Islam hypothesis often rely on the Meccan period of the Holy Prophet's life (610-622 C.E.), when the Holy Prophet (Peace be Upon Him) showed no inclination toward the use of force in any form, even for self-defense. He lived a life of nonviolent resistance, which was reflected in all his instructions and

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<sup>3</sup> The Holy Qur'an: English translation of the meaning and commentary, (King Fahd Complex, Al Madinah Al Munawarah, Ministry of Hajj and Endowments, KSA) p.487

<sup>4</sup> Ibid, p.555

<sup>5</sup> *Nahjul Balagha*, vol.II Sermons, Selections from Sermons, Letters and Sayings of Amir Al-Mu'minin, Ali Ibn Abi Talib (Sayyed Mojtaba Musavi Lari, Qom), vol.II, p.658

teaching during that period. The Holy Prophet's teachings were focused on values of patience and steadfastness in facing oppression. Of the 23-year period of Prophethood, the initial 13 years were spent by the Holy Prophet in Mecca. The Holy Prophet fully adopted the way of pacifism or nonviolence during this time. There were many such issues in Mecca at the time which could have been the subject of clash and confrontation. But, by avoiding all such issues, the Holy Prophet of Islam strictly his sphere to peaceful propagation of the word of God.<sup>6</sup>

## **B. Pursuit of Justice**

16. A main call of the Islam is to establish a just social order. In Islam, acting for the cause of God is synonymous with pursuing justice. The following Quranic verses are commonly identified by scholars as carrying a strong message concerning the social justice and responsibility reflected in Islam. They describe the Muslim's duty to or for justice and reject oppression and injustice on interpersonal and structural levels.

Allah doth command you to render back your Trusts to those to whom they are due; and when ye judge between people that ye judge with justice.  
(Holy Qur'an 4:58)

O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: For Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do. (Holy Qur'an 4:135)

17. In Islam, Justice is Allah's attribute, and to stand firm for justice is to be a witness to Allah, even if it is detrimental to self-interests or the interests of those who are near and dear. Islamic justice is something higher than the formal justice of any human law. It searches out the innermost motives. Both the rich and poor are under Allah's protection as far as the legitimate interests are concerned, but they cannot expect to be favored at the expense of the others. Even with unbelievers, unless they are rampant and out to destroy the Faith, Muslims should deal kindly and equitably, as is shown by the Holy Prophet's own example.<sup>7</sup>

To those who believe and do deeds of righteousness Hath Allah promised forgiveness and a great reward. (Holy Qur'an 5:9)

O ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and

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<sup>6</sup> Wahiduddin Khan, *Nonviolence and Islam, in Forum on Islam and Peace in the 21<sup>st</sup> Century* 5 (D.C.:Am.U.1998) p.5

<sup>7</sup> The Holy Qur'an: English translation of the meaning and commentary, (King Fahd Complex, Al Madinah Al Munawarah, Ministry of Hajj and Endowments, KSA) p.1731



depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do. (Holy Qur'an 5:8)

We sent aforetime our Messengers with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice. (Holy Qur'an 57:25)

18. Peace is the product of order and justice. One must strive for peace with justice. This is the obligation of the believer as well as the ruler.

Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: For Allah loveth those who are just. (Holy Qur'an 60:8)

19. Justice is a comprehensive term, and may include all the virtues of cold philosophy. But religion asks for something warmer and more humane, the doing of good deeds even where perhaps they are not strictly demanded by justice, such as returning good for ill. Everything that is recognized as shameful, and everything that is really unjust, and any inward rebellion against Allah's Law or our own conscience in its most sensitive form, are to be avoided.<sup>8</sup>

20. Providing economic justice is also an important principle. Economic justice is a major component of Quranic teachings, which describe in detail the proper distribution of wealth. In addition to individual *Zakah* or charity, the State is obligated to provide for the poor population through *Zakah* and *Bayt-al-mal* (public treasury).

- 1) *Zakah*, one of the five pillars of Islam, requires Muslims who have the basic necessities and comforts of life to pay a share of their wealth in order to purify their wealth. *Zakah* should be exclusively used to support the poor and needy.
- 2) The giving of voluntary charity (*sadaqah*) is a responsibility beyond the obligatory payment of *zakah*.
- 3) Contributing to the *Waqf*, an institution which handles the assistance to the poor is another form of voluntary charity. Individuals may leave part of their wealth for *waqf*.
- 4) Muslims also do justice through *Wasiyah* (will), which permits Muslims to leave a third of the property passing through their will to charity.
- 5) Islamic law of inheritance promotes economic justice and equality by distributing an estate among members of family.

21. Other instruments include, *Diyah*, which obligates the family of the criminal offender to pay money to the victim's family; *Musharakah*, which obligates Muslims to share their harvest of crops with those who cannot afford to buy them; and *Diyafah*, based on the Prophetic tradition, which holds that there is a social obligation to treat the guest graciously.

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<sup>8</sup> The Holy Qur'an: English translation of the meaning and commentary, (King Fahd Complex, Al Madinah Al Munawarah, Ministry of Hajj and Endowments, KSA) p.760

22. These illustrate the strong Islamic emphasis on both distributive and procedural aspects of justice. The Holy Qur'an supports these notions when it describes the Muslim community as a just one.

Ye are the best of Peoples, evolved for Mankind. Enjoining what is right, forbidding what is wrong, and believing in Allah. (Holy Qur'an 3:110)

### **C. Sacredness of Human Life**

23. Human life is valuable and must be saved and protected, and that resources should be utilized to preserve life and prevent violence. A central teaching of Islam is that there is a purpose and meaning in the creation of the universe, including humans.

Not for (idle) sport did We create the heavens and the earth and all that is between! (Holy Qur'an 21:16)

We created not the heavens, the earth, and all between them, merely in (idle) sport: (Holy Qur'an 44:38)

On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. (Holy Qur'an 5:32)

Nor take life - which Allah has made sacred - except for just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand qisas or to forgive): but let him nor exceed bounds in the matter of taking life; for he is helped (by the Law). (Holy Qur'an 17:33)

24. According to a well known speech made by the first Khalifah Abu Bakr, when he dispatched his army on an expedition to the Syrian borders:

Stop, O people, that I may give you ten rules for your guidance in the battle field. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kill a child, nor a woman or an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for you food. You are likely to pass by people who have devoted their lives to monastic services, leave them alone.<sup>9</sup>

### **D. Social empowerment through doing good.**

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<sup>9</sup> Sahih Muslim, vol.3, bk.19, no.4456

25. As a religion, Islam spread in large measure because of its foundations of helping and empowering the weak, and it continues to be characterized as a religion of dynamism and activism. Struggling against oppression, assisting the poor, and pursuing equality among all humans are core religious values emphasized throughout the Holy Qur'an and Hadith.

And render to the Kindred their due rights, as (also) to those in want, and to the wayfarer: but squander not (your wealth) in the manner of a spendthrift. (Holy Qur'an 17:26)

26. In Islam, the worship of Allah is linked up with kindness to parents, kindred, those in want, those who are far from their homes though they may be total strangers to us. It is not mere verbal kindness. They have certain rights to be fulfilled.<sup>10</sup> All charity, kindness, and help are conditioned by our own resources. Islam emphasis on doing good, not on power and force.

Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity. (Holy Qur'an 3:104)

Those who believe (in the Quran), and those who follow the Jewish (scriptures), and the Christians and the Sabian, Any who believe in Allah and the Last Day, and work righteousness, shall have their reward with their Lord on them shall be no fear, nor shall they grieve. (Holy Qur'an 2:62)

27. Acts of social and economic justice are so important in Islam that they are even equated with worshipping God. *Zakah* and *Sadaqah* are central virtues for doing good in life and helping others particularly needy people. These obligatory and voluntary duties are intended for the poor, stipulating fixed shares of inheritance for women, children, and a host of regulations regarding the just treatment of debtors, widows, the orphans and slaves.

(It is:) freeing the bondman; or giving of food in a day of privation; To the orphan with claims of relationship, or to the indigent (Down) in the dust. (Holy Qur'an 90:13-16)

And be steadfast in prayer and give *Zakat*: and whatever good ye send forth for your souls. (Holy Qur'an 2:110)

Who believe in the Unseen, are steadfast in prayer, and spend out of what we have provided for them; (Holy Qur'an 2:3)

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<sup>10</sup> The Holy Qur'an: English translation of the meaning and commentary, (King Fahd Complex, Al Madinah Al Munawarah, Ministry of Hajj and Endowments, KSA) p.784

Those who spend their wealth in the cause of Allah, and follow not up their gifts with reminders of their generosity or with injury,-for them their reward is with their Lord: on them shall be no fear, nor shall they grieve(Holy Qur'an 2:262)

28. The Holy Prophet said: "There is a *sadaqah* to be given for every joint of the human body; and for every day on which the sun rises, there is a reward of *sadaqah* for the one who establishes among people."<sup>11</sup>

It is not righteousness that ye turn your faces towards East or West; But it is righteousness-To believe in Allah and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin. for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; To be steadfast in prayer, and give Zakat, to fulfil the contracts which ye have made; and to be firm and patient, In pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the God-fearing. (Holy Qur'an 2:177)

Did he not find thee an orphan and give thee shelter (and care)?  
And he found thee wandering, and he gave thee guidance. And He found thee in need, and made thee independent. Therefore, treat not the orphan with harshness, Nor repulse him who asks; (Holy Qur'an 93:6-10)

29. The Holy Prophet's compassion as reflected in his treatment of the underprivileged who suffered personal misfortune or from social and economic injustices was not the result of the Quranic teaching only, but was not born from his own experience as well. The Holy Qur'an supports the responsibility of such compassion.

30. Thus, the Muslim ought to give charity and provide assistance to those who are poor and in need of help. Caring and helping those underprivileged constitute a central mechanism for social empowerment and for maintaining a sense of community. For example, the abolition of slavery was a clear result of the ethical standpoints and principles which guided Muslims in addressing issues of oppression, poverty, and human suffering.

Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.( Holy Qur'an 16:90)

But seek, with the (wealth) which Allah has bestowed on thee, the Home of the Hereafter, nor forget thy portion in this world: but do thou good, as Allah has been good to thee, and seek not (occasions for) mischief in the land: for Allah loves not those who do mischief. (Holy Qur'an 28:77)

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<sup>11</sup> Sahih al-Bukhari, vol.3, bk.49, no.870

Your (real) friends are (no less than) Allah, His Messenger, and the (fellowship of) believers,- those who establish regular prayers and pay Zakat, and they bow down humbly (in worship).( Holy Qur'an 5:55)

31. In conclusion, Justice and doing good are values generally directly relate to social and economic development and to peace building in particular because they are focused on social empowerment and their orientation is people-centered.

### **E. Universality and Human Dignity**

32. Islam sends a firm and clear message through the Holy Qur'an and the Hadith about the universality of the human person. Universal humanity is a central value in Islam conveyed through Muslim's beliefs in the equality of origins, and their call for equal rights, treatment, and solidarity among all people. The protection of human life and respect for human dignity are sacred in Islam.

We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation.( Holy Qur'an 17:70)

33. Thus, the work, worship, and life of a person should be aimed at preserving, protecting, and achieving human pride and dignity as main principles and values in Islam.

We have indeed created man in the best of moulds (Holy Qur'an 95:4)

Behold, thy Lord said to the angels: "I will create a vicegerent on earth."  
They said: "Wilt Thou place therein one who will make mischief therein and shed blood?- whilst we do celebrate Thy praises and glorify Thy holy (name)?" He said: "I know what ye know not." (Holy Qur'an 2:30)

34. It is considered a good deed to intervene or act to protect the basic dignity and pride of the person, because the creation of the human by God makes him/her a creature who deserves respect and protection. Thus, in addressing conflicts through Islamic values, promoting and preserving the dignity of the parties involved becomes an important motivation in resolving the conflict. In fact, protecting and insuring the dignity of underprivileged groups in society is the core value that underlies many of the peace building and nonviolent strategies.

### **F. Equality**

35. Islamic teachings go beyond intervention to reach a settlement in a specific dispute; they aspire to achieve the value of one human family. The value of equality among all members of the community is prevalent in the Islamic traditions and values. It is promoted and acknowledged as a basic value because of the oneness and common human origin of all people.

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things). (Holy Qur'an 49:13)

36. The only two criteria to be deployed in recognizing good Muslims are their faith and good deeds.

### **G. Forgiveness**

37. In Islam, it is a higher virtue to forgive than to maintain hatred. Forgiveness is the way people ought to deal with each other.

Hold to forgiveness (O Muhammed); command what is right; But turn away from the ignorant. ( Holy Qur'an 7:199)

38. The Holy Prophet himself, when he entered Mecca with his Muslim followers set an example of a great forgiving attitude towards Meccans who fought him by declaring it as a sanctuary.<sup>12</sup>

### **H. Patience**

39. *Sabr* (Patience) is a virtue of the believer who can endure enormous difficulties and still maintain his strong belief in God. Patience is an important quality of the believers-as agents of change-in Islam, the same characteristic required for peace builders and for those who engage in nonviolent resistance campaigns. Patience, according to Islam, can be a source of solidarity among people who resist their persecution with patience. The following are some of the verses of the Holy Qur'an which appreciates the quality of patience:

Nay, seek (Allah's) help with patient perseverance and prayer: It is indeed hard, except to those who are humble,- (Holy Qur'an 2: 45)

O ye who believe! seek help with patient perseverance and prayer; for Allah is with those who patiently persevere. (Holy Qur'an 2:153)

Ye shall certainly be tried and tested in your possessions and in yourselves; and ye shall certainly hear much that will grieve you, from those who received the Book before you and from those who worship partners besides Allah. But if ye persevere patiently, and guard against evil,-then that indeed is a matter of great resolution. (Holy Qur'an 3:186)

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<sup>12</sup> Sahih al-Bukhari, vol.5, bk.59, no:603

O ye who believe! Persevere in patience and constancy; vie in such perseverance; strengthen each other; and fear Allah; that ye may prosper. (Holy Qur'an 3:200)

Therefore do thou hold Patience,- a Patience of beautiful (contentment). (Holy Qur'an 70:5)

Be sure we shall test you with something of fear and hunger, some loss in goods or lives or the fruits (of your toil), but give glad tidings to those who patiently persevere, (Holy Qur'an 2:155)

Follow thou the inspiration sent unto thee, and be patient and constant, till Allah do decide: for He is the best to decide. (Holy Qur'an 10:109)

And be steadfast in patience; for verily Allah will not suffer the reward of the righteous to perish. (Holy Qur'an 11:115)

And if ye punish, let your punishment be proportionate to the wrong that has been done to you: But if ye show patience, that is indeed the best (course) for those who are patient. And do thou be patient, for thy patience is but with the help from Allah; nor grieve over them: and distress not thyself because of their plots. (Holy Qur'an 16:126-7)<sup>13</sup>

40. The Holy Prophet said that: "Power resides not in being able to strike another, but in being able to keep the self under control when anger arises".<sup>14</sup> Even when arguing or engaging in a conflict, the Holy Prophet said: Whoever has (these) four qualities is a hypocrite, and whoever has any one of them has one quality of hypocrisy until he gives it up. These are: whenever he talks, he tells a lie; whenever he makes promise, he breaks it; whenever he makes a covenant, he proves treacherous, and whenever he quarrels, he behave impudently in an evil-insulting manner.<sup>15</sup>

## **I. Pluralism and Diversity**

41. Pluralism and diversity are core values in Islamic tradition and religion. The Holy Qur'an asserts that differences are inherent in human life. Harmony between the different social grouping and communities are praised. The Holy Qur'an recognizes diversity and tolerance of differences based on gender, skin colour, language, beliefs and ranks.

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honoured of you in the

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<sup>13</sup> Also see the verses of the Holy Quran: 20:130-132; 40:55; 40:77; 46:35; 50:39; 73:10-11; 16: 126-128

<sup>14</sup> Sahih al-Bukhari, vol.8, k.73, no.135

<sup>15</sup> Sahih al-Bukhari, vol3, bk.43,no.18

sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things). (Holy Qur'an 49:13)

And among His Signs is the creation of the heavens and the earth, and the variations in your languages and your colours: verily in that are Signs for those who know. (Holy Qur'an 30:22)

It is He Who has created you; and of you are some that are unbelievers, and some that are Believers: and Allah sees well all that ye do. (Holy Qur'an 64:2)

It is He Who hath made you inheritors of the earth: He hath raised you in ranks, some above others: that He may try you in the gifts He hath given you: for thy Lord is quick in punishment: yet He is indeed Oft-forgiving, Most Merciful. (Holy Qur'an 6:165)

42. The Holy Qur'an asserts that differences are inherent in human life. The ethnic, tribal and national differences have no real bearing on closeness to God.

Mankind was one single nation, and Allah sent Messengers with glad tidings and warnings, and with them He sent the Book in truth, to judge between people in matters wherein they differed; but the People of the Book, after the clear Signs came to them, did not differ among themselves, except through selfish contumacy. Allah by His Grace Guided the believers to the Truth, concerning that wherein they differed. For Allah guides whom He will to a path that is straight. (Holy Qur'an 2:213)

Mankind was but one nation, but differed (later). Had it not been for a word that went forth before from thy Lord, their differences would have been settled between them. (Holy Qur'an 10:19)

Thus have we sent thee amongst a People before whom (long since) have (other) Peoples (gone and) passed away; in order that thou mightest rehearse unto them what We send down unto thee by inspiration; yet do they reject (Him), the Most Gracious! Say: "He is my Lord! There is no god but He! On Him is my trust, and to Him do I turn!" (Holy Qur'an 13:30)

By Allah, We (also) sent (Our apostles) to Peoples before thee; but Satan made, (to the wicked), their own acts seem alluring: He is their patron to-day, but they shall have a most grievous penalty. (Holy Qur'an 16:63)

And if ye reject (the Message), so did generations before you: and the duty of the apostle is only to preach publicly (and clearly)." (Holy Qur'an 29:18)



They swore their strongest oaths by Allah that if a warner came to them, they would follow his guidance better than any (other) of the Peoples: But when a warner came to them, it has only increased their flight (from righteousness),- (Holy Qur'an 35:42)

No falsehood can approach it from before or behind it: It is sent down by One Full of Wisdom, Worthy of all Praise. (Holy Qur'an 41:42)

Knower of what is hidden and what is open, Exalted in Might, Full of Wisdom. (Holy Qur'an 64:18)

43. Differences among people, inevitable in humanity, are a basic assumption in Islam. These differences are integrally related to the free will that God has bestowed on humanity.

If thy Lord had so willed, He could have made mankind one people: but they will not cease to dispute. Except those on whom thy Lord hath bestowed His Mercy: and for this did He create them: and the Word of thy Lord shall be fulfilled: "I will fill Hell with jinns and men all together." (Holy Qur'an 11:118-119)

If it had been thy Lord's will, they would all have believed, All who are on earth! wilt thou then compel mankind, against their will, to believe! (Holy Qur'an 10:99)

If Allah so willed, He could make you all one people: But He leaves straying whom He pleases, and He guides whom He pleases: but ye shall certainly be called to account for all your actions. (Holy Qur'an 16:93)

44. Tolerance of other faiths is repeatedly accepted and emphasized in Islam. Muslims are asked to remember that there is no difference in the treatment of people of different religions except in their faith and deeds.

Not all of them are alike: Of the People of the Book are a portion that stand (For the right): They rehearse the Signs of Allah all night long, and they prostrate themselves in adoration. They believe in Allah and the Last Day; they enjoin what is right, and forbid what is wrong; and they hasten (in emulation) in (all) good works: They are in the ranks of the righteous. (Holy Qur'an 3:113-114)

Those who believe (in the Qur'an), and those who follow the Jewish (scriptures), and the Christians and the Sabians,- any who believe in Allah and the Last Day, and work righteousness, shall have their reward with their Lord; on them shall be no fear, nor shall they grieve. (Holy Qur'an 2:62)

Say: "O People of the Book! come to common terms as between us and you: That we worship none but Allah; that we associate no partners with him; that we erect not, from among ourselves, Lords and patrons other than Allah." If then they turn back, say ye: "Bear witness that we (at least) are Muslims (bowing to Allah's Will). (Holy Qur'an 3:64)

45. The Holy Qur'an calls on Muslims to abandon fighting and coexist peacefully with other religions. The Holy Qur'an reflects this celebration of diversity of people and belief.

Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things. (Holy Qur'an 2:256)

And I will not worship that which ye have been wont to worship, Nor will ye worship that which I worship. To you be your Way, and to me mine. (Holy Qur'an 109:4-6)

The same religion has He established for you as that which He enjoined on Noah - the which We have sent by inspiration to thee - and that which We enjoined on Abraham, Moses, and Jesus: Namely, that ye should remain steadfast in religion, and make no divisions therein: to those who worship other things than Allah, hard is the (way) to which thou callest them. Allah chooses to Himself those whom He pleases, and guides to Himself those who turn (to Him). (Holy Qur'an 42:13)

Say ye: "We believe in Allah, and the revelation given to us, and to Abraham, Isma'il, Isaac, Jacob, and the Tribes, and that given to Moses and Jesus, and that given to (all) prophets from their Lord: We make no difference between one and another of them: And we submit to Allah." (Holy Qur'an 2:136)

Now then, for that (reason), call (them to the Faith), and stand steadfast as thou art commanded, nor follow thou their vain desires; but say: "I believe in the Book which Allah has sent down; and I am commanded to judge justly between you. Allah is our Lord and your Lord: for us (is the responsibility for) our deeds, and for you for your deeds. There is no contention between us and you. Allah will bring us together, and to Him is (our) Final Goal. (Holy Qur'an 42:15)

## **PART TWO**

### **I. Summary Report of the Meeting of International Experts on Human Rights in Islam, 15-19 May 2006, Kuala Lumpur, Malaysia**

#### **A. Background**

46. In pursuance of the RES/41/15 (19 July 2002) the item entitled "Human Rights in Islam" was included on the Agenda of AALCO's work-programme at the initiative of the Kingdom of Saudi Arabia and was seriously deliberated in the subsequent Sessions. RES/43/S 16 (25 June 2004) adopted at the Bali Session requested the Secretary-General to explore the feasibility of organizing a seminar/workshop on this particular subject based on the data received from the Member States. Accordingly, at the Forty-Fourth Session of AALCO held in Nairobi, Kenya (2005), the Head of the Delegation of Malaysia, H. E. Hon. Tan Sri Abdul Gani Patail, Attorney General of Malaysia, proposed to convene an Expert Meeting comprising Member States of AALCO to achieve a concrete study in respect of the issue of human rights in Islam. The Resolution RES/44/S 16 (1 July 2005) adopted at that Session highlighted the Malaysian Delegation's preparedness to host the meeting of the experts in collaboration with the AALCO Secretariat and the Kingdom of Saudi Arabia, the initiator of the subject matter.

47. The Resolution adopted at the New Delhi (Headquarters) Session (2006) (RES/45/S 16, 8 APRIL 2006) welcomed the initiative of the Government of Malaysia to host the Meeting of International Experts on Human Rights in Islam, in collaboration with the AALCO Secretariat and the Kingdom of Saudi Arabia from 15-19 May 2006 in Kuala Lumpur; and believed that the above meeting of international experts would serve as a platform to examine the Islamic principles of human rights with a view to enhancing international cooperation based on mutual respect, tolerance and understanding. Accordingly, the Meeting of International Experts on Human Rights in Islam (MIEHRI) was held in Kuala Lumpur, Malaysia from 15 to 19 May 2006.

48. The Meeting of International Experts on Human Rights in Islam ("MIEHRI"), organized by the Attorney General's Chambers of Malaysia in collaboration with the Kingdom of Saudi Arabia and the Asian-African Legal Consultative Organization and co-sponsored by the Ministry of Women, Family and Community Development of Malaysia, was officially opened by The Honourable Dato' Seri Mohamed Nazri Abdul Aziz, Minister in the Prime Minister's Department of Malaysia.

#### **B. Opening Ceremony of The Meeting of International Experts on Human Rights in Islam**

49. The Opening Ceremony began with the recitation of the verses of the Holy Qur'an and Du'a. This was followed by the Welcome Speech delivered by The Honourable Tan Sri Abdul Gani Patail, the Attorney General of Malaysia. His Excellency Ambassador Dr. Wafik Zaher Kamil, the Secretary General of AALCO and His Excellency Dr. Abdullah Salleh S Alhudaithy, Deputy Minister of Justice, Kingdom of

Saudi Arabia delivered their speeches and The Honourable Dato' Seri Mohamed Nazri Abdul Aziz, Minister in the Prime Minister's Department of Malaysia delivered the Opening Speech.

50. In his welcome address, Hon'ble Tan Sri Abdul Gani Patail, Attorney General of Malaysia and Chairman, MIEHRI, observed that the challenge facing the Islamic community in dealing with human rights in Islam must be met with an educated and principled argument built on the principles of Islamic law. He emphasized that the Meeting should not be used as a forum for lashing out at those who deem to be "against" those from the Muslim community. He stressed that the Meeting was not being held to score or make any points, but solely for the purpose-to have a forum for open discourse on the problems and challenges of upholding the principles of human rights in Islam for all Muslim brethren-men, women and children.

51. Ambassador Dr. Wafik Zaher Kamil, Secretary General of AALCO, and Dr. Abdullah Saleh S. Alhudaithy, Deputy Minister for Judicial Affairs, Kingdom of Saudi Arabia delivered the Introductory Note. Dr. Kamil, in his address observed that the topic attained significance in the present context, as it has been a historical fact that there have been systematic efforts from certain quarters to malign Islam and its teachings. He stated that in the present context of targeting a particular religious faith in the ongoing 'war against terrorism', it was high time to emphasize that Islam advocated peace and peaceful coexistence. No verse in the Holy Qur'an preached mass destruction of any group of people, nor did it allow violence as a form of expression, and the blind killing of innocent civilians including women and children, nor did it consider as martyrs those who commit suicide by blasting themselves with the aim of killing others. He explained that there existed a misconception that it was the West which contributed much to the development of international law in general, and human rights law, in particular. To address this misconception, some of the contributions of Islam in developing the law of nations, particularly in the fields of human rights, law of war, law of international trade and law of treaties, were highlighted. He further stated that yet another significance of the Meeting stemmed from the position of many Asian, African and non-western countries that the Western countries were imposing the "western interpretation" of human rights on them. Among current international human rights interpretations, some of which were considered by Muslims as insensitive to Islamic religious and moral viewpoints and also disregarding the cultural specificities of various countries of Asia and Africa.

52. Dr. Abdullah Saleh S. Alhudaithy stated that human rights in Islam were part of the religion and they were not gifted from the ruler or from a legal authority and not a charter or an international Act issued from an international organisation or a regional or local authority, but they were part of the religion and the ideology which did not allow omission or delay. He observed that problem arose from lack of understanding from theoreticians in human rights who were ignorant of this fact. In Islam, the person was honored, respected and cared for, his rights honored and cared for by Allah.

53. Hon'ble Dato' Seri Mohammed Nazri Abdul Aziz, Minister in the Prime Minister's Department of Malaysia in his inaugural address emphasized that the comprehensiveness of philosophy of human rights in Islam governed not only the belief system, but also the social, political, economic and cultural spheres. He said that the

recent reaction of the Muslim world towards the publication of caricatures defaming the Prophet, and the subsequent defence of the right to publish the caricatures brought about a serious debate about the compatibility of UDHR and Islamic Law. Islam as a religion which commanded large numbers of adherents worldwide also faced the challenge of determining the relationship between the faith and human rights developed through the western philosophy. He also emphasized Malaysia's commitment towards ensuring compliance with accepted human rights standards. Apart from being a signatory to a number of human rights instruments, Malaysia had also established an independent Commission on Human Rights and also supported the efforts of the Organisation of Islamic Conference (OIC) towards creating universally accepted human rights standards such as the Cairo Declaration of Human Rights.

## **C. Plenary 1: General Overview on Human Rights-Islamic Law and International Law**

### **REPORT OF THE CHAIRPERSON**

**Chairperson: H.E. Amb. Dr. Wafik Zaher Kamil, Secretary- General, Asian-African Legal Consultative Organization**

#### **Issues discussed at Plenary Session**

54. Justice P.N. Bhagwati traced the history and development of human rights particularly after the establishment of the United Nations. He drew examples of basic human rights which are recognized in Islam which are also found in the international human rights instruments such as right to life and right to justice.

- He also explained the history as to why the standards of human rights set by the United Nations were primarily classified under two heads namely civil and political rights and economic, social and cultural rights with greater emphasis on civil and political rights.
- Civil and political freedom and liberty cannot exist without social and economic rights as the two sets of rights are interlinked and interdependent and one cannot exist without the other.
- Human rights in Islam are given supreme importance because Islam holds that these rights have been granted by God and as such no legislative authority or government has the right or authority to make any amendment or change in the rights conferred by God and these rights cannot be withdrawn or abrogated from.

55. Amb. Dr. Ali Reza Deihim gave a brief introduction on international human rights and international humanitarian law regimes.

- He spoke on individual rights and freedom of individuals during peace time and during war time; the principles of human rights which are observed in international criminal procedure law as found in the Rules of Procedure and Evidence of the International Criminal Court.
- He gave some examples of recommendations and interpretation of the international human rights treaty bodies which are rejected by Shariat such as the recommendation for revision or repeal of laws criminalizing sexual acts such as adultery, sodomy, fornication or commercial sexual encounters between

- consenting adults in private; and the declaration by the Human Rights Committee that laws which criminalize private homosexual acts between consenting adults violates article 17 of the International Covenant on Civil and Political Rights.
- He highlighted that the international human rights instrument's main characteristics are that they are universal, indivisible; inalienable, interdependent and interrelated. Restrictions on some rights are allowed in narrowly defined circumstances if the limitations are necessary to achieve overriding goals, such as public health, morality, public order, the general welfare in a democratic society and national security. But some rights are non-derogable and cannot be restricted under any circumstances such as right to life; freedom from retroactive penal laws and the right to recognition as a person before the law.
56. Mr Sulaiman Abdullah who spoke on Malaysian Perspective on Human Rights highlighted that any state action must bear in mind two fundamental principles i.e. allegiance to our Creator, Allah S.W.T and that man is Allah's vicegerent/khalifah on the face of the earth. Any attempt that runs counter to the above principles must be resisted.
- He was of the view that based on these principles, Malaysia cannot encourage any attempt to allow unqualified enjoyment of rights such as "freedom of sexual preference" as this runs counter to the clear commandments of Allah.
  - The judiciary must break free from their common law training and rigid adherence to the jurisprudence of war time Britain based on State security.

### **Working Group 1: Human Rights as Enshrined in Islam**

57. There are points of difference between the Islamic positions on human rights and the international human rights law, but there are commonalities between them which tend to prevail and their points of agreement are much wider. We ought to focus on our commonalities and our shared commitment to human rights. Efforts should also be made to narrow down the differences between Islam and international human rights law.

58. Some of the Fiqh positions on human rights and gender justice tend to be inconsistent with the Quranic guidelines on human dignity and justice. It is therefore felt that certain aspects of Islamic law should be reformed through ijtiḥad to reflect the Quranic guidelines and also expand points of agreement and convergence with the international human rights law.

59. Ijtiḥad should be attempted by all those who are adequately knowledgeable of Islam, the Shariah and the international human rights law and instruments.

60. To facilitate fruitful engagement in reform and ijtiḥad, and ultimately to pave the way for the growth of jurisprudence of human rights from the Islamic perspective. The climate of understanding, self-criticism and tolerance for open dialogue among Muslims need to be improved. There should be group effort and new interfaith working committees as well as international faith committees to open the scope of dialogue and understanding among Muslims and of the Muslims with the Non-Muslims minorities among them.

61. Issues pertaining to the position of women are often negatively influenced by patriarchal customs and tribalist traditions that need to be addressed through effective dialogue, in reform and ijtiḥād that would realize equality of right among men and women in the family, in the work place, and the society at large.

62. Issues pertaining to freedom of religion and apostasy also calls for attention and the basic advice here is to the guidelines of the Holy Qur'an which provides no temporal punishment for apostasy and its stand on freedom of religion and belief needs to be realized and adequately reflected in the applied law of Islam

### **Working Group 2: Right to Education**

63. Working Group 2 focused on the Right to Education. The discussions were rich and interesting.

64. Experts and participants were of the opinion that education is the basis for the development of the Ummah.

65. 'Iqra' culture is to be fostered in Islamic societies.

66. Islamic societies should take all measures to ensure that every Muslim should have the fulfillment of the Right to Education as the basis of the development of the knowledge, intellectual and moral capital of the Ummah.

67. Muslim societies must uphold the principle of compassion and ensure that those who are geographically, culturally, socio-economically and physically disadvantaged should have the right to education.

68. The right to education must be accompanied by the right to employment and human dignity.

69. Muslim Arab society should also learn the cultures of Non-Muslims as Non-Arab Muslims learn about the Arabs.

70. As a right to education and with confidence in the Islamic faith, Muslims should be given opportunities to understand other philosophies and religions in the world.

71. Richer Muslim societies should help the poorer Muslim societies as a matter of responsibility of the Ummah.

72. Working Group 2 was of the opinion that the matter of the right to education in Islam is clear and all that is really required is for Muslim societies and nations to plan and implement the best practices of Islamic education as practiced in the past and as practiced in the most advanced Muslim and non-Muslim countries.

### **Working Group 3: The Universal Islamic Legal Philosophy**

73. The group first explored the meaning of the term "universal", and discovered three senses; acceptable to all, is applicable to all, agreed to and signed by the representatives. Since the Charter of Human Rights is not law in the strict sense, it is merely in the nature of ethical and moral obligation. It is therefore essential that it must be based on a universal philosophy which is familiar and acceptable to the people.

74. The group discovered that most of the salient human rights are promoted in the Universal Islamic legal philosophy. It is also clear that most of the points where Muslim countries express reservation are rooted in Islamic legal philosophy. As Islamic legal philosophy developed in the history of Islamic thought as a discursive tradition, it is a product of differences of opinion (*ikhtilaf*) and consensus (*ijma*). Consequently, the areas where reservations are expressed generally reflect local sensitivities in different areas of rights, for example with reference to "freedom in religion". In order to develop a consensus on these points, the tradition of Islamic legal philosophy suggests an open and systematic discussion with all the stakeholders. It is detrimental for Muslims to close further discussions on points where difference of opinion exists.

#### **74 a. Recommendations by this Working Group:**

- Shariah is applicable not only to Muslims but also to everybody or humanity as a whole, because it aims at the welfare of all human beings.
- Shariah should be presented in a universal positive sense rather than a restrictive sense as personal law applicable only to the Muslims.

### **Working Group 4: International Instruments on Human Rights in Islam**

#### **75. The Group discussed the following issues:**

- (i) The need for new mechanism to implement human rights in Islamic world.
- (ii) The media and the right to access to information.
- (iii) Non- governmental organizations.
- (iv) Intervention in the name of protecting Human Rights.
- (v) Preserving minimum standard of protection of Human Rights in Islamic world.

#### **76. Pertinent points and comments discussed at this Group include**

- (i) It is not practical to establish a new instrument on Human Rights in Islam.
- (ii) The actual one does not contain balanced views especially from the Muslim countries.
- (iii) When the Human Rights Commission was disembodied recently, many Muslim countries have been elected to the newly formed Human Rights Council, including Malaysia proving that Muslims are not against existing international human rights instruments.
- (iv) The debate was dominated largely by Western countries because they are more articulate in expressing the issues as compared to others; they have better access to



information; some minorities especially amongst Muslim countries are quite reluctant to express their views.

(v) The international media to be more sensitized to this fact and encouraged to be more bold on articulating very basic human rights values which the Muslim world are at variance with those opposing views.

(vi) Role of non-governmental organisations.

(vii) In Islam, a State may have the right to intervene in the internal affairs of another State in the protection of HR based on the verse of the Holy Quraan : "*Help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression*". And the Prophet peace be upon him said : "*Support your brother transgressing or victim*", when the companions asked how we support him transgressing, he (PBUH) replied: by tacking on his hand (postpone his aggression).

(viii) The preservation of minimum standard of protection of HR as a condition for becoming a member in an organization of States as practiced by the European Council vis-a-vis Greece and Spain.

#### **77. Recommendations by this Working Group:**

- We are not in need of another instruments to protect HR in Islamic world.
- We should encourage the non-governmental organisation and deal with the defects there.
- We should establish Governmental Boards to deal with the HR protection.
- We should appreciate membership of Islamic states in the United Nations Council of HR.
- Should inform people about their HR.
- Should support their right to access to information.

### **D. Plenary 2: Islam and Human Rights - Managing Diversity**

#### **REPORT OF THE CHAIRPERSON**

**Chairperson: Prof. Dr. Ann Elizabeth Mayer, Associate Professor of Legal Studies, Department of Legal Studies and Business Ethics, The Wharton School, University of Pennsylvania, USA**

#### **Issues Discussed**

78. Tensions and contestations about the difference and diversity within and beyond Islam.
79. Cultural context, cultural rights and their cohesion with Islam.
81. The rights and responsibilities of the media including the stigmatization of Islam.
82. The need for Muslims to dialogue with and know other faiths and cultures.
83. Muslim minorities and their adjustment to the legal context of host countries.
84. The rights of minorities under international human rights.
85. The non-problematic nature of the rights of minorities - both Muslims and non-

- Muslims - recognized under international human rights.
86. Freedom of religion.

### **Suggestions**

87. To create satellite television regionally for the purpose of education and exposure to world Islamic culture.

### **We Recommend:**

88. Inasmuch as Muslim minorities require and should be accorded the protection of international human rights, likewise in Muslim majority countries non-Muslim minorities should be accorded the same protection under international human rights instruments.
89. Reconsidering conversion out of Islam, that in terms of the Holy Qur'an, practice of the Prophet (PBUH) and international human rights it is not a crime and there is no clear Quranic text which mandates punishment in the temporal world.
90. Recognition and respect for diversity is divinely mandated in the Holy Qur'an and is congruent with international human rights. Muslims are enjoined to deal with such diversity both within and beyond Islam with the mercy and compassion that define the religion.
91. Since Islam and international human rights both protect freedom of expression, there is a need for civil resolution when tensions and problems arise.
92. A helpful perspective in achieving the congruence between Islam and international human rights rests on the shared goals of the dignity and well being of humankind.
93. That Muslims learn from the experiences of those Muslim societies that have achieved best practices in advancing human rights in managing diversity.
94. A further recommendation is that AALCO in collaboration with the OIC undertakes to research and publicize such best practices in key areas of human rights.
95. That caution should be practised in the face of the dangers of allowing religion to be co-opted as a tool of political agendas that are harmful for human rights.
96. That Muslims should be proactive in reaching out to people of other faiths as interfaith dialogue is imperative and has to become a significant feature of living Islam. Widespread education about difference both within and beyond Islam should be encouraged as part of interfaith and intrafaith dialogue.
97. That cultural practices that contravene Islamic norms and international human rights be evaluated, and where necessary, discarded.
98. The recognition that there is no monolithic Islamic culture and the specific cultural identity of individual Muslim communities must be respected.
99. That no racial, ethnic, or linguistic group has a monopoly on the right to interpret Islamic sources.
100. That there should be freedom of the press.
101. The enrichment of educational programmes for journalists in terms of better understanding of human rights.
102. The need to have an Independent Press Council to ensure that a balance exists between freedom of the press and responsible use of that freedom.
103. That the media should be used to communicate information correctly and dispel

misunderstandings about Islam and other faiths.

104. That there should be plurality in the ownership of the media.

### **E. Plenary 3: Civil and Political Rights (Fundamental Liberties)**

#### **REPORT OF THE CHAIRPERSON**

**Chairperson: The Hon. Dato' Faiza Bin Haji Tamby Chik, Member of The Board of Directors, Institute of Islamic Understanding Malaysia (IKIM), Malaysia**

#### **105. Issues Discussed at Plenary Session**

- Islam and Human Rights and Fundamental Liberties: Between Ideals and Realities;
- Whether religious freedom as a basic human right is in line with the Quranic principles and whether there is a need to rethink the Muslim's conception on religious freedom;
- Current human rights concepts from the religious perspective;
- The meaning of freedom of thought, conscience and religion, especially in a multi-religious country;
- The role and responsibility of a state in promoting religion.

#### **106. Pertinent Points /Suggestions**

- Islam is a universal religion which is very complete, comprehensive and can include all kinds of issues and matters. However, the State may impose rehabilitation process for a Muslim who wants to renounce Islam.
- There are generally no contradictions between the Universal Declaration of Human Rights and the other basic human rights' instruments and the teachings of any of the 3 revered religions: Judaism, Christianity and Islam.
- Islam is a religion that centers on the promotion of good and the prevention of evil. The Holy Qur'an has a profound influence on the thought and conduct of a Muslim. The Holy Qur'an is a stable source of authority and influence whose definitive injunctions and the basic rules of structure are not changeable. Its continuity of values is a dominant feature of the Holy Qur'an. Therefore it follows the basic notion of fundamental rights and its identification in the Holy Qur'an and Sunnah is not only acceptable but also recommended. The fundamental right and liberty which is inherent in a human person originate from the Holy Qur'an and the Sunnah communicated in the form of command or prohibition to regulate the conduct of a legally responsible person (*mukallaf*). In Islam, Islamic Jurists have spoken for centuries the virtues of submission to God, obeying His law. The ultimate objective is for the interest or benefit of the people (*maslahah*).

#### **107. *Freedom of thought, conscience and religion***

- It is up to each individual to decide the meaning of freedom of thought,

conscience and religion although it is closely related to religion. However, a Government may set limits on these rights to protect the *aqidah* whenever it is necessary to do so.

108. ***State responsibility***

- There is a need to discuss and define the role of the State in matters of religion in terms of Islamic *Shari'ah* in order to be able to reach a viable conclusion about the position of human rights in Islam.
- The application of the *Shari'ah* law is different from other legal systems and its implementation varies from one country to another.

109. **Conclusions and Recommendations**

- Religious freedom is a basic human right that is in line with the Quranic conception.
- It is arguable whether the Islamic Human Rights principles actually dilutes or eliminates the human rights protection afforded by international law.
- Islam is not incompatible with the international human rights principles.

110. ***Freedom of thought, conscience and religion***

- Freedom of thought, conscience and religion do exist in Islam within a certain limit.
- No freedom is absolute and a State can limit the rights under certain conditions.
- The restrictions imposed by states can come in various forms and types and those who are in authority to dictate such policy should do so fairly and after consulting all who are affected.
- Islam promotes the respect of peoples' rights even if they are the minorities.
- Proper guidance from scholars who are experts in Islamic studies should be obtained in order to have a deeper understanding on this subject matter.
- Freedom of thought, conscience and religion should be discussed among all religions and beliefs to enable proper understanding of each other's limits without encroaching into other religions' domain.
- A proper understanding and regulation of freedom of thought, conscience and religion will ensure that everyone fully understands his limitations and responsibilities.
- Every State has the right to implement and regulate freedom of thought, conscience and religion in its own manner and in accordance with its domestic laws.

111. ***State responsibility***

- Every State has a role and responsibility in religious matters of the society and the individual. Primarily there is a responsibility to protect religion and also to protect the right and liberty of the individual and promote what is for its peoples' benefit.

- To believe true Islam is static, only how it was applied in medieval times is heretical. Likewise to believe (especially by reformists) that true Islam needs re-interpretation is also heretical. True Islam is timeless and universal. Principles of Islamic justice and *Shari'ah* specific rules on the process of justice offer ample support for its evolutionary application to the needs of contemporary times especially human rights. As a popular Arab proverb states "You can give the unjust law (to apply), to the just judge but you cannot give the just law (to apply) to the unjust judge."

## **F. Plenary 4: Social, Economic and Cultural Rights (Growth and Equity) Islamic Perspective / International Law Perspective / Possible Areas of Convergence**

### **REPORT OF THE CHAIRPERSON**

**Chairperson: The Hon. Dato' Abdul Hamid Bin Hj. Mohamad, Judge of Federal Court of Malaysia**

#### **112. Issues Discussed**

- 1) The Islamic Shariah outlook on Social, Economic and Cultural rights under modern international law.
- 2) Gender inequality practiced in certain Muslim societies.
- 3) The need for streamlining the aid programs.
- 4) Responsibility of the Government in the area of distributive justice.
- 5) The *maqasid al-shariah* and *siyasah shariah* and their relationship with human rights enforcement.
- 6) Economic growth vs human rights.
- 7) The theory of clash of civilizations and its negative impact.
- 8) Abject poverty in some Muslim societies.
- 9) The slow pace of development in many Muslim societies.
- 10) Ignorance about Third Generation Rights in the Muslim societies.

#### **113. Pertinent Points / Comments / Suggestions**

- 1) Gender inequality practiced in certain Muslim societies is against the principles of Islam.
- 2) The aid-giving programs in the various parts of the world suffer from different infirmities and do not always reach the persons whom they are meant for.
- 3) There is a great potential in the Islamic principles of *maqasid al-shariah* and *siyasah shariah* for the enforcement and protection of human rights in Islamic polity which must be explored and made full use of.
- 4) Economic growth and protection of human rights are to a large extent inter-dependent.
- 5) The biggest problem in the form of violation of human rights in some Muslim societies is the prevailing abject poverty and this problem needs to be attended on

priority.

- 6) Third Generation Rights, being of a recent origin, are generally not fully known almost everywhere and particularly in the Muslim societies.

#### 114. **Conclusions / Recommendations**

- 1) The social, economic and cultural rights must be ensured to individuals and groups in all Muslim societies in keeping with the broad *Shariah* principles.
- 2) The true Islamic teachings of gender justice should be restored in practice and enforced by law.
- 3) All aid-giving programs must be streamlined to make them beneficiary-based and to ensure that they reach the grassroot levels.
- 4) The Government in all the Muslim countries must faithfully discharge their responsibilities under the human rights law in respect of distributive justice in all its aspects.
- 5) Proper economic growth for all sections of the society must be ensured in all Muslim countries since that is a must for guaranteeing the protection of human rights.
- 6) All talk about clash of civilisations must be stopped and a meaningful dialogue between various sections of humanity should be promoted.
- 7) Eradication of poverty from the Muslim societies must be taken up effectively as a human rights program.
- 8) The human right to development has no clash with any Islamic teaching and must be enforced through development programs by all possible means.
- 9) The Third Generation Rights have generally no clash with any Islamic principles and efforts should be made to create awareness about them and to enforce them in the Muslim societies.

### **G. Plenary 5: Human Rights of Women and Children**

#### **REPORT OF THE CHAIRPERSON**

**Chairperson: The Rt. Hon. Justice Tan Sri Dato' Siti Norma Binti Yaakob, Chief Judge of High Court of Malaysia**

#### 115. **Issues discussed at Plenary Session**

- Violence against women and children should be eliminated.
- Reproductive and sexual health and rights include the rights of women to decide freely and responsibly on the number, spacing and timing of the children, the right of access to health care services, the right to attain the highest standard of reproductive and sexual health and the right of all to make decisions concerning reproduction. Every woman has the right to life during the process of reproduction and the right to safe pregnancy and delivery.
- Cultural identity of children to be valued and preserved.
- Equality of women in terms of rights to suffrage, education and general consensus on rights within the instruments of human rights which are not repugnant to Islam. Such

rights need to be addressed and implemented.

#### **116. Pertinent Points/Comments/Suggestions**

- Maternal mortality remains high and prevalence of family planning remains low in Muslim countries. Education and awareness are the most important aspects of sexual and reproductive health including sex education for young persons to prevent unwanted pregnancies, HIV and AIDS and other adverse outcomes. Care and support for marginalized groups need to be addressed.
- Right to take part in cultural activity and respect for cultural diversity.
- One aspect on the issue of maintenance (Nafaqah) during the marriage relating to the joint responsibility of both spouses was discussed. It was suggested that under certain circumstances such as in the event of husband's illness or any form of incapacity, the wife could maintain him for that period of incapacity only.
- It was suggested that all principles enunciated under the Convention on Elimination of Discrimination Against women (CEDAW) be adopted and implemented but there was no general consensus on this.

#### **117. Conclusions/Recommendations**

- States should enact and strictly enforce laws to prohibit all forms of violence against women and children including honour killings.
- Policies and programmes with adequate resources need to be in place for comprehensive reproductive and sexual health care and services to be made available to all persons especially to women, children, adolescents and young persons. There should be more dialogues between the governments, NGO's and Muslim Clerics on reproductive and sexual health and rights issues.
- Establishing and strengthening measures through national legislation, policies and active plans to fulfill the well being of children and to protect their rights irrespective of their cultural identities.
- As the equality of rights of women is a major concern in Islam, the equal rights for women in all fields, existing in the human rights instruments must be implemented, as long as they are not opposed to Islam.

### **H. Plenary 6: Islam and War on Terrorism**

#### **REPORT OF THE CHAIRPERSON**

**Chairperson: Hon'ble Tan Sri Abdul Gani Patail, Attorney General of Malaysia**

#### **118. Issues discussed at Plenary Session**

- The lack of understanding of the expression "victims of war" from the Islamic perspective.
- There is no equivalent for the term "terrorism" in Islam. The generic term for "terrorism" is *hirabah*. The question is: What constitutes terrorism and what

constitutes *hirabah*?

- The difference between jihad and terrorism.
- Islamic rules of war as applied to non-combatants, prisoners of war, the deceased, property, the environment, etc.
- The growth of political forces that practice extremist interpretations of Islam in response to the current world situation and as a reaction to the foreign policy behaviour of certain non-Muslim State actors, and the urgent need for the mainstream to regain the centre stage in world politics to generate the necessary climate for wider co-operation and peaceful co-existence.
- The need to identify and address the underlying causes of terrorism.
- Different Islamic perspectives on suicide bombings.
- Exploration of possible solutions.

#### 119. **Summary and Recommendations from Working Group 17**

- Islam in general is in accord with the Universal Declaration of Human Rights.
- Legislation that limits individual rights and freedoms should have a sunset clause within a reasonable time frame.
- Right of individuals to fair trial and due process should be sanctified within national and international laws.
- The Islamic *fiqh* (Jurisprudence) for minorities should be developed to address the rights of Muslim minorities living in non-Muslim countries.
- The OIC should adopt a project to deal with the development of Islamic *fiqh* (Jurisprudence) for minorities.
- A balance should always be sought between the rights and freedoms of individuals and the security requirements of a State. Legislation must be proportionate to the protection of individual liberties.
- The Western democracies should recognize that if they breach individual rights and liberties disproportionately to the perceived threats of terrorism, they will undermine their own moral and political role in world politics.
- Muslims are concerned about respect for places of worship.
- There is a doctrine of reciprocity and mutual respect embedded in Islam that must be observed in relations between Muslims and non-Muslims wherever they are.

#### 120. **Recommendations from Working Group 18**

- It is important for Muslims to unite in projecting Islam as a religion of peace, renewal and reform as its true teachings reflect.
- Terrorism is not an act that can be attributed to any religion, Islam in particular.
- The futility of the use of force in solving international problems should be recognized. There are many issues in world politics that need be addressed within a sound political strategy.
- The X-factor is to get rid of poverty.