



## REVIEW ARTICLE

# THE STATE'S RIGHT TO STAY IN ISLAM LAW STUDY IN THE LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW

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### ABSTRACT

Since the protection of the state's right to stay means the existence of the state and the government that organizes people and land, are among the significant topics in the international law. From the perspective of the international law and Islamic Shari'a, the research included the state's right, its peoples and the sustainability of its political and legal systems as well as the land where people live. In addition, the paper examined the states' right to use armed force to protect its people and political and legal systems that manage this state, as well as the protection of the land from being attacked by other states.

## INTRODUCTION

The problem of the study is based on the fact that Islamic states are exposed and subjected to damage in many parts of the world since they are weak and can not protect themselves. Moreover, the struggles among the Arab states encourages the west to spread wars between the Arab states, which require urging the Islamic states to convene various agreements to protect themselves and settle their disputes. The state is based on three main aspects: the people, the government and region. Invading any of those aspects means the extermination of the state. Despite the development in the international law in the field of human rights, humanity is still suffering of the violations committed by the dominating states. In addition, although Islam did not use the term: protecting the state's right to stay, but it acknowledged the three aspects of the state, while giving the utmost importance to protect the people. As the people consists of large numbers of individuals, Islam insured the peoples' lives as stipulated in many verses of the Holly Qor'an and the speeches of the Prophet (PBUH).

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In addition, Islam prohibited attacking the authority that organizes the people as long as it performs its duties in accordance with the Islamic Shari'a, not to forget insuring the protection of the peoples' properties, prohibited attacking the others' lands and imposed punishment against those who attack the lands of the people. Various agreements and international declarations have been issued in order to protect the human rights and to expose their lives to dangers. However, the people of the world are still subjected to the most severe weapons that are produced by the advanced countries, and wars are continuous in various states of the world, which require informing the world about the rules stipulated by Islam in protecting the people, their monies and in imposing penalties upon those who fringe human rights whether in terms of live, protecting monies and to protect the authority that manages their affairs.

This is a theoretical and practical study on the status of the Muslims in the past and present. Therefore, the researcher relied on the texts of the Holly Qor'an, the speeches of the Prophet and the perspectives of the Muslim scholars as well as a comparison between the Islamic Shari'a and the international law. The study examined the concept of the state according to the international law and Islamic Shari'a and the right for the state's aspects to stay, namely: the people, government and

region. As a result, the study has been distributed on three topics. We must be the answer to a question. Is Islam applied the principle of the right of the State to Stay, as it is in International Human Rights Law?

### The concept of the State in Islam

Scholars of International law had arguments about the concept of the State. In addition, Muslim scholars had disagreements on the concept of the State and its necessity. We will examine the concept of the State and the right to stay based on the perspectives of the International law and the Islamic religion through the following two components:

#### First-The concept of the state in Islam

Discussing the concept of the State from an Islamic perspective is such a complex issue. However, Muslims did not define the term of the State, but they defined the term of Khilafa, Kingdom, Sultanate, Imara and the Tribe<sup>(1)</sup>. Some of the old scholars discussed the features of the Islamic State<sup>(2)</sup>, while some<sup>(3)</sup>, tried to propose the characteristics of the Islamic State (a book titled: Khilafa and authority of the nation) during the Ottoman's time. This term handled the concept of the State and Stated: "in fact, Khilafa is a secularly features more than a religious one. The evidence for that is: we do not find in the Holly Qor'an or Sunna a clear text indicating to any of its rules, nor about considering these rules as a must or not<sup>(4)</sup>. Authors had argued about the concept of the State in Islam, as some of them call it (the State), whereas other call it (the State of Muslims<sup>(5)</sup>), while others oppose the establishment of the Islamic State since there is no clear text in the Holly Qor'an or Sunna<sup>(6)</sup>. The term (the State of Muslims) means the State of Muslim people, but not the State of Islam, as Islam is not a State. Some scholars distinguish between the concept of the political regime and the concept of the Islamic State, while

<sup>(1)</sup> State the word in the Arabic language: the consequence in the money, or the war, and the sense of money: Review: Fahd bin Abdul Aziz bin Abdullah Snaidi(1420AH)hi, The Dialogue of civilizations (study in the light of the Quran and Sunnah), Ph.D. thesis presented to the King Saud University, Department of Islamic Studies, Faculty of Education., 270 p.

It was said that the Pakistani researcher (Kamaruddin Khan) used the term Islamic state before the twentieth century. Review: Khan, Qamaruddin (1982). Political Concepts in the Quran. Lahore: Islamic Book Foundation. p. 74.

The name of the Islamic State also reported by Abu Ali Mawdudi (1903-1979), a Pakistani Muslim cleric political foundations, the Islamic Group party. Review:

Nasr, S.V.R. (1996). Mawdudi and the Making of Islamic Revivalism, Ch. 4. New York: Oxford University Press, p.20.

<sup>(2)</sup>Decline in these jurists wrote: Aby Naeem Ahmed bin Abdullah al-Asbahaani (die 430 AH) ornament and layers Alosfia, Alsada Press, Cairo 1394. , P. 4. and see: Judge Abu Yusuf Yaqub ibn Ibrahim (die 182 AH), abscse, Fourth Edition. Salafist printing press. Cairo 1392, p. 6.

<sup>(3)</sup> Contemporary scholars, the decline Sources: Muhammad Rashid Rida, Great Caliphate or Imamate. Al-Manar Press, Cairo (1341 AH), p. 6. Aby Alala Mawdudi, Caliphate and the King. Arabization Ahmed Idris. House science. Kuwait (1398, p. 5. Mohammed Khaled (1401AH) State In Islam, Dar Thabet Cairo. P. 11.

<sup>(4)</sup> A group of Turkish scholars, writers: Book of Alkalfa and authority of the nation, the Arabization of Sunni Abdul Ghani, Press Alhal, Cairo 0.1342 e. pp. 1-3.

<sup>(5)</sup> Alafandi, Abdul Wahab(2001), The Islam and the Modern State, the House of Alhkma Press, London, p. 183.

<sup>(6)</sup>Chehabi, H. E. 1991. Religion and Politics In Iran: How Theocratic is the Islamic Republic?. Daedalus, Vol 120, No. 3, Summer 1991, pp. 69-91.

others believe that the establishment of the Islamic State is required by mind, imposed by the reality and the nature of incidents. In this regard, some say: " it should be known that taking care of the people is one of the most important duties in religion; religion can never be established without it and the people's interests can be achieved based on their need to each other. In addition, there should be someone to lead the people. Prophet Mohammed (PBUH) said: if three travel away, they should assign one of them as a leader" <sup>(7)</sup>. In this regard, Islam established a specific social system which in turn, found the system of the government<sup>(8)</sup>.

Some researchers believe that the Islamic State is the third method in the world of States; it differs from the capitalist system which gives more concern for the individual, and the communist system which gives priority to the community against the individual. Accordingly, the Islamic State respects man's right to live and prosper within the framework of the society's right to stay, with more focus on protecting the poor <sup>(9)</sup>. The Islamic State is defined as: " any piece of land where the rules of Islam are imminent<sup>(10)</sup>. This definition expresses that the only aspect of the State is the religious system (Islam). Yet, other Muslim scholars believe that the Islamic unity is not a requirement for the unity of the State; the Islamic State may be divided and becomes various Islamic States and each of them possess the requirements of the State's stay. This is a good wisdom since there is no clear text showing that the Islamic State is a comprehensive unit; God know the requirements of conditions, the nature of the social principles and the potential of the emergence of various Islamic governments.

#### Second - The concept of right to stay in the Islam

According to Islam, the right to stay is guaranteed, with or without the protection of the State and regardless whether the State is recognized or not, and whether the person is a Muslim or not. The discourse came in general, as God Al-Mighty says: " And slay not the life which Allah hath forbidden save with right. Whoso is slain wrongfully, We have given power unto his heir, but let him not commit excess in slaying. Lo! he will be helped"<sup>(11)</sup>.

According to some scholars, the stay of the Islamic State requires fulfilling the following:

- The existence of a responsible person to manage the people's affairs and protect religions;
- Submission to the power of Islam in all people's lives and affairs<sup>(12)</sup>;

<sup>(7)</sup> Zoheily Whaba Ben Mustapha (HA1428), Islamic jurisprudence and it's evidence, Dar Al-Fikr, Damascus, Vol.8, p. 6146.

<sup>(8)</sup>Ahmad (1373) Mohammed Aziz, The Concept of the State in Islam, Journal (Muslims) Volume IV sixth edition, Scientific Council, Cairo, p. 59.

<sup>(9)</sup> Khir, B.M. "The Islamic Quest for Sociopolitical Justice." In Blackwell Companion to Political Theology, edited by W.T. Cavanaugh & Scott, P. 503-518.

<sup>(10)</sup> Al-Kasaani (1910), Trades Adorable in Regulation legislation, 3, Cairo, Vol7, p. 130

<sup>(11)</sup>Quran Al Isra, Verse 33.

<sup>(12)</sup> Darwaza (1981), Mohamed Ezzat, Holy Quran Constitution and the Sunnah in the affairs of life, the Islamic Office for printing and publishing, Vol. 1, p. 107. also see:

- Supporting religion and live, reforming people's affairs and taking care of their interests and affairs<sup>(13)</sup>;
- Execution of contract. God says: (O ye who believe! Fulfil your undertakings. The beast of cattle is made lawful unto you (for food) except that which is announced unto you (herein), game being unlawful when ye are on the pilgrimage. Lo! Allah ordaineth that which pleaseth Him"<sup>(14)</sup>.

From the above, it becomes clear that power/ authority in Islam is a must to keep the nation from division with the need to provide care for people's lives. In addition, there should be a religious system and to reform their affairs to achieve their interests. The Islamic jurisdiction States: the State is merely a natural production of the group<sup>(15)</sup>. If the existence of the authority in Islam is necessary, then it does not mean to allow others to kill and occupy the lands, if the authority is absent. According to Islam, the requirements of the State's right to stay are based on insuring the judicial, political, Jihad, legislative and defense systems, insuring the freedom to call for Islam, protecting Muslims and their religion, and insuring Shora (consultation), and conducting peace with those who ask for it<sup>(16)</sup>. In addition, the Islamic State is based on concluding contracts/ agreements without wars or after the war, taking the Dane guild, practicing the regulations (Hodoud), organizing family issue, insuring the provision of money for the Muslims House and the spend them for the interest of all Muslims and the needy people, to do all good and blessing things, counter oppression and oppressors and to sacrifice with soul and money to do so. Moreover, it means to comply with right, justice, fairness, honesty and cooperation for good, being patient and merciful and to public works for the interest of Muslims and to order for doing good and negate evils<sup>(17)</sup>.

However, the right of the State to stay (as per the International law) is keeping the ruler in the authority even if he is an oppressor and authoritative. In this vein, the International law did not stipulate all of such requirements in order for the State's right to stay.

## II-The right of the state's authorities to stay in Islamic perspective

### First-Islamic jurisprudence opinion about the existence of the state

In addition to the three aspects of the State: people, region and the government, some scholars view the need for the following aspects in the authority (according to Islam). In Islam, the executive authority handles the management of the State. This task is handled by the scholars, the Muslim Amirs and the unbelievers or non-Muslims has no right to lead the nation. It

was narrated by the Prophet (PBUH) saying: (let your leaders be wise and who order for good). Accordingly, the responsibilities are not even assigned to the public Muslims nor the unjust or non-believers<sup>(18)</sup>.

If the International law made power/ authority one of the State's aspects around which result in the existence of the people and inhabitants, then the elapse of the authority means the collapse one of its aspects; Islam requires the protection of the authority even it not recognized by others. However, the non-existence thereof does not mean the collapse of people and land; authority in Islam is a must, but its absence does not justify occupying lands and people, as Stated by God Al-Mighty: " that whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, " <sup>(19)</sup>. These verses require prohibiting people and occupying lands, but did not require the existence of a current government; it is active in the presence or absence of the authority. Currently, power is one of the most important aspects of the State; no State without authority. However, Islamic jurisdiction did not agree on the need for authority, while the practical applications witnessed an authority for the Muslim leaders during the Islamic history<sup>(20)</sup>.

On the other hand, Cairo Human Rights Declaration approved man's right to live regardless of his religion, individuals and groups and according to the following principles:

- Life is God's grant to every man and individuals, communities and States should prevent this right from any violation and it is not admissible to kill people without a justified reason;
- Prohibiting the use of means that result in windup of the humanity;
- Continuation of preserving mankind to no-end is a religious duty.
- The safety of man's body is guaranteed; it is not admissible to attack it or affect without a legal cause, and the State shall guarantee thereof<sup>(21)</sup>.
- Islam rejected exploitation of other peoples; it completely refuses such action. Consequently, it did not and never considered the system of colonialism or military occupation nor the imperialism protection. Perhaps this indicates that Islam is a system and religion that is based on justice, consultation and equality<sup>(22)</sup>.

Furthermore, OIC<sup>(23)</sup>, did not define the intention of authority in the Islamic State. However, there are standards that define

<sup>(18)</sup> Book review: Ibn Taymiyyah, detailed in explaining the verse is no compulsion in religion, collection, preparation of a researcher in the Qur'an and Sunnah, Ali bin Nayef Alshoad, Vol.3, Riyadh (without the publishing house and the year of printing), p 142.

<sup>(19)</sup> Surat table verse (32).

<sup>(20)</sup> Details about the existence of the state and power in Islam:

Crone, Patricia (2004). *God's Rule: Government and Islam*. New York: Columbia University Press. p. 6. ss.

<sup>(21)</sup> Article (2) of the Cairo Declaration on Human Rights in Islam. It was approved by the Foreign Organization of the Islamic Conference and the World Council of Ministers, Cairo, 05/08/1990.

<sup>(22)</sup> Hamid Sultan(1972), Islamic law and international law, Journal of Law and Political Science, the third seminar, Baghdad in January 1969 c 1 Egyptian Book Organization Cairo p. 73.

<sup>(23)</sup> Organization of Islamic Cooperation "OIC": formerly known as Islamic Conference Organization. Established in 1969 and includes 57 states. The

Abu Abila, Abdul Rahim, Faris, interpretation impurities in the fourth century AH, Thesis to get global degree (PhD) in Islamic Studies, the College of Sharia and Islamic University of Beirut, Beirut, 1426, p. 155

<sup>(13)</sup> Fahd bin Abdul Aziz bin Abdullah Snaidi, op. Cit., P. 556.

<sup>(14)</sup> The Holy Koran Sort Almada, verse 1.

<sup>(15)</sup> In the shadows of the Koran, op. Cit., C 5, p. 3164.

<sup>(16)</sup> Carle, Robert (2005). "Revealing and Concealing: Islamist Discourse on Human Rights". *Human Rights Review* 6 (3):p. 122-37.

<sup>(17)</sup> Darwaza (1983), Mohamed Ezzat, Modern Interpretation, Dar Ihae Arabic books, Cairo, Vol.8, p. 438.

the capacity of the Islamic State including: legislation which States that the State is an Islamic one<sup>(24)</sup>. Currently, recognition of the State has become a natural matter, and the Organization considers (the organizational term) is an official means referring to the nation<sup>(25)</sup>, and about the Islamic State; the common factor that gathers the members is Islam. In all cases, the State for Muslims and non-Muslims is a necessary case and imposed by the International circumstances<sup>(26)</sup>. The Islamic history witnesses a number of Islamic States; since the beginning of Islam in Makka, the concept of the State was not known, as the conditions were not appropriate to establish the Islamic State. However, after Hijra to Madina, the concept of the Islamic State emerged. The space of this paper does not allow detailed discussions about the concept of the State in Islam as it requires various volumes and books, but we need to discuss that Islam defined the concept of the State even if it did not define this term:

## Second- practical applications of the existence of the state in Islam

### The Madina state

The State of Madina is considered the first start of the Islamic State (630 H), which is among the best Islamic applications on the concept of the State under the leadership of the Prophet (Mohammed / PBUH) after Higura to Madina (after he immigrated to Madina), where all aspects of the State has been satisfied<sup>(27)</sup>. The first thing he did was to change the name of (Yathrib) to Madina and this is an act announcing the birth of a new phase with new trends. Madina was not like Makka. It has no government (Al-Mulla) as in Makka, without a political power that can impose its will on the inhabitants of Madina, nor it has an organized army to protect and defend it. The ability of Prophet Mohammed (PBUH) was embedded in achieving the national unity prior to the religious one. He issued a Charter that gathers the peoples of Madina (Muslims, Jewish and non-believers). In addition, He handled the rule of the leader of the State where his authority was not only on Muslims, but included all other people inside Madina<sup>(28)</sup>. Based on an undertaking, he gave religious and commercial freedoms for all inhabitants (Jewish, Christians and non-believers)<sup>(29)</sup>.

Organization is the total voice of the Islamic world even if it does not include all Islamic states, but it intends to protect the vital interests of Muslims (1,3-1,5 billion peoples). The Organization is a permanent member in the UN.

<sup>(24)</sup> Article (2) of the Jordanian Constitution 1952, and Article (2) of the Iraqi Constitution 2005, and Article 7 of the Constitution of the United Arab Emirates 1971, and Article (2) of the Constitution of the Arab Egypt 2015,

<sup>(25)</sup> Jalal, Azza(2000), Read the data in the Islamic Summits, the Contemporary Muslim journal and Yearbook "My Nation in the world," a periodic report means the affairs of the Muslim world, issued by civilization Center for Political Studies, Cairo, p. 9.

<sup>(26)</sup>Submitted a proposal within the Islamic Conference to form a committee of experts entrusted with the development of mind inclusive definition of the concept of "Islamic state", at a meeting in Doha in March 1998, but practical and political considerations did not reveal the content of the report.

<sup>(27)</sup> Osman, Mohammed Abdul Sattar (1988): Islamic city, a series of world knowledge publishing No. (127) p. 58.

<sup>(28)</sup> For details review: d. Beydoun Abraham(1983), Hijaz and Islamic State: A Study in the problematic relationship with the central authority in the first century AH, University Corporation for Studies and distribution, , p.124.

<sup>(29)</sup>Wilferd Madelung (1998). The Succession to Muhammad: A Study of the Early Caliphate. Cambridge University Press. p. 61.

(2) In Doha's meeting (March, 1998), A proposal was submitted to the Organization of Islamic Conference to form a committee of experts to put a complete and clear definition for the concept of the Islamic State. For political and practical considerations the contents of the report were not uncovered. The Prophet established a series of State facilities that perform significant functions, including one that respond to the urban need<sup>(30)</sup>, defensive and security ones, such as forming camps in the districts/ counties of Madina to provide training for the soldiers (e.g. Al-Jurf camp) or (Osama capm)<sup>(31)</sup>, while others respond to the social needs such as medical treatments, organization of the civic society. After returning from (Al-Khandaq Invasion), the Prophet made a tent in the mosque to treat the injured soldiers. This was a nuclear of what was known as (Bemaristan)<sup>(32)</sup>. In addition, he established guest houses to receive the delegations, namely Dar (the house of) Abdulrahman Bin Awof, and he organized the economic facilities such as markets and trade<sup>(33)</sup>. He issued the first document that organize the political, social and economic life in Madina<sup>(34)</sup>. The Prophet concluded a number of treaties with the neighboring tribes in order to conduct peaceful, economic, collaboration and alliance relationships<sup>(35)</sup>. Among these treaties (Al-Hudaybia Reconciliation, 627 A.H.<sup>(36)</sup>. In addition, the Prophet established what is currently known as the Reception Office and assigned Huthaifa Bin Al-Yaman the general secretary thereof a house for guests, called (Althefan)<sup>(37)</sup>. He sent a number of messengers to the kings and Amirs explaining the concept of the Islamic State and calling them – by peaceful means- to join Islam. Those letters were written in such a diplomatic style<sup>(38)</sup>. The Prophet's character was

<sup>(30)</sup>Akbar, Jamil Abdel Kader (1998), Earth Reconstruction in Islam: Sharia construction activities compared to the situation, the Alresala institution, 182 p.

<sup>(31)</sup>Reviewing the attention of the Prophet Muhammad about malatry camps as a statesman:

Montgomery Watt, William (2010). Muhammad: prophet and statesman. Oxford University Press, 1974. p. 105.

<sup>(32)</sup>Muslims were interested in medicine since the time of prophecy. Review: Jalalu'd-Din as-Suyutim(2009), Medicine of the Prophet, Ta-Ha publishers LTD, p. 5ss.

<sup>(33)</sup>Mohsen Khalil: (1982) The Islamic Arab Economic Thought. Dar Al-Rasheed Publishing · 38, p.

<sup>(34)</sup>Alani, Osama Abdul-Majid (1995): Economic Vision for the First Document Enacted by the Prophet in Islam, Journal of Islam Today (ISESCO) Issue 13, p. 20.

<sup>(35)</sup> For example: Treaty with built bany Damra and Yanbu, a treaty with the people of Ejreba and Odhirj, a treaty with the Christians of Najran, a treaty with the Quraish (Khudaibiya conciliation) and pledged to the children and the people of Ghaffar Duma and Khaza'a. Details of the review:

Fatlawi, Suhail Hussein (2014), Moral Values in the Diplomacy of the Prophet Muhammad, the Dar of Culture, Amman, pp. 287-305.

<sup>(36)</sup> Armstrong, Karen (2007). Muhammad: A Prophet for Our Time. New York: HarperCollins. pp. 175–181.

<sup>(37)</sup>Review for details: Fatlawi, Suhail Hussein, op. Cit, pp. 232-238. also see: Amar, (1971) Muhammad, Prophet Muhammad was the first Constitution of the Islamic state, Journal of Mohammed modern thought, The Arab Institution for Studies and Publishing, Beirut, p. 94.

<sup>(38)</sup>From these countries, the Greek State, and Ghassanid in the Levant (Sham), the Kingdom of Abyssinia, the Governor of Elah, the Kingdom of Al-Yamamah, optical the Principality, and the fractions King of Persia: Review the details:

Irfan Shahid, Arabic literature to the end of the Umayyad period, Journal of the American Oriental Society, Vol 106, No. 3, p.531.

Almlah, Yahya Hashim (1988), The Position of Arabism from Islam in the age of the of the Prophet, A Series of historical encyclopedia, Baghdad University Press, p. 18.

known as having Islamic diplomatic values, as this character has the most influence in the Islam of many peoples and States<sup>(39)</sup>. With that, the Prophet managed to transfer Madina into a typical State that makes the relationship of believing stronger than the relatives' relationship<sup>(40)</sup>, and the relationship of the homeland for all of Madina inhabitants with all of their religions stronger than kinships. Al – Madina State has become a center to set out in order the spread and inform Islam and a national model where opponents become brothers to create a new pioneering community for whom the eyes of Arab will take as a model. Since the time of Hijra to Madina, Islam had a State that satisfies all aspects of the States that enjoy the right to stay since such State has a legal and International character, while its inhabitants (people and citizens) enjoy the right for life.

### Islamic Khilafa

After the death of the Prophet, the adult Khalifa came after him, namely: Abu Baker (632-634), Omar Bin Al-Khattab (634-644), Othman Bin Affan (644-656) and Ali Bin Abi Taleb (656-661)<sup>(41)</sup>. Then the Khilafa was transferred to the Umayyad Khalifs in Damascus (662-750), then to the Abbasi Khalifa in Baghdad (750-1258)<sup>(42)</sup>. The Abbasi time was called by the Islamic Golden Age<sup>(43)</sup>. After that, the Ottoman State came (1413)<sup>(44)</sup>. The Islamic State was completed since the State of Madina until the end of the World War, as the ottoman State was divided among the victorious countries based Luzan Treaty (1923). Afterwards, the modern Turkish State was established (a secular State)<sup>(45)</sup>. With that, we can say that Islam witnessed the emergence of Islamic States that are based on religion, and established well-developed political, military and urban systems, where Islam was the ruling base. The ruling system was better than the States that were established on the same time. The Islamic State concluded good relations with the States that were existing at the same time.

### The Third -peoples' right to stay, in Islam

<sup>(38)</sup>Fatlawi, Suhail Hussein (2001), The Diplomacy of the Prophet Muhammad, a comparative study of contemporary International Law, the House of the Arab Thought, Beirut pp. 99-130.

<sup>(38)</sup>Abdul Basit Ahmad. Umar bin Al Khattab - The Second Caliph of Islam. Darussalam. p. 43.

<sup>(39)</sup>Fatlawi, Suhail Hussein (2001), The Diplomacy of the Prophet Muhammad, a comparative study of contemporary International Law, the House of the Arab Thought, Beirut pp. 99-130.

<sup>(40)</sup>Abdul Basit Ahmad. Umar bin Al Khattab - The Second Caliph of Islam. Darussalam. p. 43.

<sup>(41)</sup> The brotherhood between immigrants and Ansar was based on religion and the can inherit each other. The effect of Islamic brotherhood was stronger than the relationship (such as brothers, sisters, uncles... etc). Such brotherhood was a priority on the rights of relatives until the battle of Great Badr, when the verse stated: the relatives are given priority as stated in the Holly Qur'an, God knows everything) "Al- Anfal Sora, verse 75. Refer to Dr. Al-Boty (1989), Mohammed Sa'ed Ramadan, Sira Fiqh, Dar Al-Fikr, Ed. 8, P. 155.

<sup>(42)</sup>Maulana Muhammad Ali (8 August 2011). The Living Thoughts of the Prophet Muhammad. e-BookIt.com. p. 132.

<sup>(43)</sup>J. Jomier. Islam: Encyclopedia of Islam Online. access date=2007-05-02.

<sup>(44)</sup> Peter B. Golden (2002) "An Introduction to the History of the Turkic Peoples"; In: Osman Karatay, Ankara, p. 321.

<sup>(45)</sup> Lausanne (Treaty signed on July 24, 1923) Peace Treaty Signed in Lausanne in Switzerland, which was to settle the dispute with Turkey. see Mango, Andrew (2002). Atatürk: The Biography of the Founder of Modern Turkey. Overlook Press. p. 388.

### The concept of people in Islam

Muslim scholars did not use the term (people), nor was it mentioned in the Holly Qur'an except once, when God Al-Mighty says: (Oh people, we created you from a male and female and made you peoples and tribes to know each other, the most fearful is the most generous, God has been Knowledgeable and expert)<sup>(46)</sup>. However, Muslim scholars differ in defining the term (peoples); some of them said that it is more general than tribes, which means that it includes the tribes<sup>(47)</sup>, while others State that the term (peoples) means Adam's sons<sup>(48)</sup>. It is said (peoples) meaning Arab tribes and their affiliates<sup>(49)</sup>. In the Islamic State, people consist of Muslims and non-Muslims who live in the Islamic State as they are called ((free non-Muslims)) who are enjoy the right of citizenship<sup>(50)</sup>. Scholars used the term (Muslims) instead of people. Here, they mean any Muslim person regardless of the place where he stays, even if he does not perform the religious rituals. In addition, they gave the term (a free non-Muslim) on any non-Muslim persons who stays on the Islamic lands. They used Dar Al-Islam when the Muslims rule it, even if Muslims were a minority. Moreover, they used the term (Dar Al-Harb) when the State is ruled by Non-Muslims, even if Muslims were a majority<sup>(51)</sup>. However, Dar Al-Harb is divided into two types: Dar Al-Ahd: which is called Dar Al-Muwada'a, Dar Al-Sulh and Dar Al-Mu'hada, which means that the Imama makes an oath with the people of Dar Al-Harb (for reconciliation) where he abandons fighting for a period in return for compensation or without compensation and thus it is called Dar Al-Ahd<sup>(52)</sup>. In this context, Islam did not link between man, life and the State's right to stay; Islam made human rights close to the rights of the State. The utmost objective for the Islamic State is to apply religion, righteous and justice to serve human<sup>(53)</sup>. This means that eliminating man means the elimination of the State. God Al-Mighty addressed all people by saying: The swore for God if they receive a prophet to warn them to be believers than some nations<sup>(54)</sup>. Accordingly, Qur'an addressed the Arabs and through their call for Islam, God guided most of the peoples (Persians). They became leaders of the nations, and the Romans' State, Persia, and the eastern kingdoms<sup>(55)</sup>. Consequently, in Islam, the relationship between man and the State has been embodied as shown in (the modern political Islam) which States: (the Islamic State is a natural production of the group and its self characteristics. The group included the State and rises with it to achieve the

<sup>(46)</sup>Koran, Sura closets, verse 13.

<sup>(47)</sup> Rifai, Mohammed Naseeb (1989), Facilitate the Almighty to shorten the Tafsir Ibn Kathir, knowledge library, Riyadh, p. 2391.

<sup>(48)</sup> Shanqeeti, Mohamed Alamine Aldgkina (deceased: 1393 AH), Clarify the statement in the Holy Quran lights, Dar Alfker for printing, publishing and distribution, Beirut, 1995 edition, p. 45.

<sup>(49)</sup>Abdullah bin Abbas(1991), Enlighten Almkabbas interpretation of Ibn Abbas, Juma: Fairuzabadil, house scientific books, edition, p. 40.

<sup>(50)</sup>Al Mawardi, Bowl Provisions(1985), Dar books scientific, Beirut, p. 183.

<sup>(51)</sup> AlMawardi former op. cit, p. 175. see also:

The Encyclopaedia of Islam. New Edition. Brill, Leiden. Vol. 2, p. 128.

<sup>(52)</sup> Shamsuddin Sarkhasi (d. 384 AH), Simplified (Mabsoot), Press Alsada, Egypt, printed in 1331 AH, p. 114.

<sup>(53)</sup> Shamsuddin Sarkhasi, op. cit, Vol. 10, p. 114.

<sup>(54)</sup> Quran Fatir, verse 42.

<sup>(55)</sup> Mohammed bin Ali Rashid Reza Husseini (deceased: 1354 AH), Interpretation of the Koran, (the interpretation of Al-Manar), the Egyptian General Book Authority in 1999, part 1, p. 6.

Islamic methodology and its domination on the individual and group lives. This is a self-style of the Islamic life and a feature for the group that has been chosen to lead the humanity<sup>(56)</sup>.

According to the International law, the establishment of the State paves the way for the recognized State. On the other hand, the communities that do not subject to the authority of a State has no right to stay, the unrecognized State has no right to enjoy life and consequently, the peoples of these States have no right to stay. The State's right to stay is guaranteed in the Islamic and non-Islamic State since killing man is prohibited in Islam (Haram) regardless of his religion. In addition, Islam does not prohibit Muslims from living in a non-Muslim State, nor does it require recognize it as the case with the International law, in order to enable man enjoy the right to stay; Islam insured man's right to live, even if it does not recognize the State in which he lives or does not live, as a basis without the existence of a State.

If the International law stipulates the State's right to stay on a pyramid shape, based on the fact that the State's right means the protection of man who lives under the authority of that State. In this context, Islam looked to protect the State's right to say based on the protection of the components of which the State consists, specifically: man. The protection of man's right to live is a protection for the State to stay. This is different in the International law compared with the Islamic Shari'a.

#### **Mans' right to stay according to the Islamic philosophy**

God Al-Mighty says: he who kills a man without a man or corruption on earth as if killed all people and he who saves it as if saved all people<sup>(57)</sup>, God said: " that whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind" <sup>(58)</sup>Therefore, Islam linked between killing one person and killing all people and the one who saves a man is deemed as if saved all peoples and insured their life <sup>(59)</sup>. This can be applied on any man regardless of his religion. We have discussed the aspect of people in the International law and Stated that the existence of a State decided the existence of the people, whereas Islam stipulates that the existence of people justifies the existence of the State. In terms of the right to stay, Ibn Khaldoun says: human existence is a must. Wise people express that by saying: man is a civilian in his nature, and such gathering is necessary (namely the city) (construction). Ibn Khaldoun justifies the need for human gathering by the mutual living, and says: God Al-Mighty created man and provided him with the ability to achieve, which only stay by food. God

also guided man to eek live based on his abilities, but the ability of one person is limited in achieving his need for food, which does not satisfy his needs. It is impossible to provide him with all or some except through the help of other people to provide him with adequate food so as to live and stay <sup>(60)</sup>. Furthermore, Ibn Khaldoun urges: the State represents a mutual human gathering that includes a group of people who have common interests (the interest to live). With this attitude, Ibn Khaldoun preceded the French philosopher Jane Jack Rosso with hundreds of years in terms of the need for social contract as a basis for the human gathering. Accordingly, having food and other needs can only be achieved through common living which require establishing appropriate developed relationships.

According to Islam, among the feature of the State's stay, is preserving the human and material rights, security for individuals and groups, and fearing or scaring those who threaten to hurt or frighten anyone, with the prohibition of blood shedding, monies and women, establishing justice with the supporters and opponents, the poor and rich and protecting the whole nation from devastation or death <sup>(61)</sup>. Other scholars linked between the stay of Islam and the Islamic State <sup>(62)</sup>, since the stay of the State means establishing justice.

#### **Fourth- the land's right to stay as stipulated by Islam**

The territory or land is the third aspect of the State's components. No State or people without a territory. In Islam, the right to stay is not limited on one people in the Islamic State, but it includes man's right for the land. Islam has been concerned about the protection of the land's environment <sup>(63)</sup>. Man's duty – in Islam- is not limited on the land's stay, but should The reconstruction of the ground and not sabotage, as God says:" And remember how He made you viceroys after A'ad and gave you station in the earth. Ye choose castles in the plains and hew the mountains into dwellings. So remember (all) the bounties of Allah and do not evil, making mischief in the earth"<sup>(64)</sup>. God considered damaging land in the rank of corruption, as He Says: eat and drink from God's donation and do not be corrupt on the land <sup>(65)</sup>. If Islam prohibited killing mans without a man that require punishment, He prohibited corruption on the lands, such as stealing the monies, oppression against God's slaves, damaging the construction, cutting the trees and drying rivers. The one who kills a man intentionally and by purpose, then God will punish him for hill, anger, curse and prepared huge torture for him, as if he killed all people. However, he who saves a life (Eat and drink

<sup>(56)</sup>Sayyid Qutb Ibrahim Hussein Sharbi (1412), In the Shadows of the Qur'an, Dar Alsorog, Beirut, Cairo, 3165, p. 3165.

Islamic states are depend on Shura Muslim has the right to express his opinion Which came in the Quran and Sunnah. Review:

Jeong Chun Hai & Nor Fadzlina Nawi. (2007). Principles of Public Administration: An Introduction. Kuala Lumpur: Karisma Publications.p.195.

<sup>(57)</sup> Maududi, Abul A'la (1976). Human Rights in Islam. Leicester: The Islamic Foundation.p. 10.

Quran, Surah 74 verse.<sup>(58)</sup>

<sup>(59)</sup>Abu Mohammed al-Hussein bin Masood Al-Shaff'i (d. 510 AH), revival The Sunna , the investigator: Abdul Razzaq al-Mahdi, Dar revival of the Arab Heritage, Beirut, print (1420AH), Vol. 2, p. 42.

<sup>(60)</sup> Abdul Rahman Ibn Khaldoun, Ibn Khaldoun introduction, Dar al-Arqam for Printing and Publishing, 2002, p. 38, See also: Suhail Zakkar (1984), Dar thought Printing and Publishing Beirut, p. 54.

<sup>(61)</sup> Muhammad al-Ghazali (2005), A Hundred Question about Islam, versions of the Dar Alnasar of Egypt, Cairo i 4, p. 277.

<sup>(62)</sup>Muhammad al-Ghazali, From Here We know, versions of the Nahth dar of Egypt, Cairo, i 8, p. 29.

<sup>(63)</sup> Review the details of the protection of the environment in Islam: Dr. A. Bagader, and other (2006), Environmental Protection in Islam, edited by IslamReligion.com. <http://www.islamreligion.com/articles/307> .

Fatima Al-Banna, Islam and Environment Protection, | April 7, 2015, <http://www.ecomena.org/islam-environment/>

<sup>(64)</sup>Koran, Sura norms, verse 74.

<sup>(65)</sup>Asaad Mahmoud Homd (2009), Acer Interpretations, , Wkaf Library, Vol. 1, , 1029.

of that which Allah hath provided, and do not act corruptly, making mischief in the earth.)<sup>(66)</sup>. If a person became a Muslim while in a non-Muslim State, but his monies and soul are not protected in the Islamic State (opposite to the non-Muslim if he enters the Islamic land, then his monies are insured), so the scholars said: "the monies of the one who becomes a Muslim in Dar Al-Harb but did not migrate to a Muslim State, are not insured compared with the merchant and prisoner; their monies are insured jointly"<sup>(67)</sup>. As for the necessity of the State's stay according to Islam, it is based on safeguarding the affairs of religion and life and seeking to achieve happiness for the people. In this context, the extinction of the State means chaos, corruption and oppression among the people<sup>(68)</sup>. Man's right to live means to stay, which is the utmost rule that Islam is concerned to achieve<sup>(69)</sup>.

On the other hand, the protection of land means protecting the environment, but this is not the duty of the State as per the present International law, which only came late. The first agreement to protect the environment was London's agreement (1954) that relate to prohibiting the pollution of seas by oil, whereas the duty to protect environment (as per Islam) is considered from the basic duties of the State and on the same time, it is the duty of all Muslims. However, the protection of environment includes protecting the ground (above and underground), rivers and seas from pollution.

### The state's right to defend its existence in Islam

Islam prohibited killing man, God Al-Mighty says: (don't you ever kill the should that God prohibited except with righteous)<sup>(70)</sup>. In this context, God States that killing a person without right is illegal without a justified cause<sup>(71)</sup>. This means that Islam handled killing by killing in order to prevent the killer from repeating the act of killing. On the other hand, Islam did not create prisons and detainment houses to punish those who commit a crime against man. Prisons need money and guards which did not exist at the beginning of the civil State, and Islam preferred the prompt punishment since it affects and warns others. Whereas Islam has been based on right and justice, then Muslims may use armed violence when they are exposed to oppression<sup>(72)</sup>. God says: (Sanction (to fight) is given unto those who fight because they have been wronged; and Allah is indeed Able to give them victory)<sup>(73)</sup>. In this regard, God allowed the Muslims who were oppresses to defend themselves. The unbelievers in Makka used to hurt them severely, where Muslims used to come to the Prophet injured and wounded pleading to Him, then He say: by patient, I was not ordered to fight, until he immigrated to Madina. This verse came (the first one that allows Muslims to fight after

negating fighting in more than seventy verses of the Holly Qor'an<sup>(74)</sup>. The legal defense for the Islamic State is called (Jihad), which is a (Fard Ayn) "imposed on all Muslims" and it is not admissible to allow non-Muslims occupy an Islamic State<sup>(75)</sup>. If Islam has insured man's right to stay, then it insured this right for the community, as God says: "" And fight them until persecution is no more, and religion is for Allah. But if they desist, then let there be no hostility except against wrong-doers"<sup>(76)</sup>. According to Islam, fighting is a pride and honor. Prophet Mohammed, once he sends an army, used to say: " attack under the name of god and fight the unbelievers in the name of God, don't you ever cheat, do not kill a woman, a child or an old man"<sup>(77)</sup>. According to Islam, the legal defense exceeds the meaning of right and becomes a duty on Muslims to defend themselves, their religions and State. Islam put rules to use the legal defense, which we will discuss in the following aspect:

According to Ibn Khaldoun, the State is exposed to extinction and replacement. He adds that, if the State is absent from some peoples then it should be returned to another people of the same State as long as they belong to that State. The reasons for that is ownership came to them after submission and being drowned in luxurious life and fertility and they deprived their brothers from such blessing, but spent the wealth on various kinds of fund, while the oppressed stayed deprived from these resources. Accordingly, if those luxurious and wealthy people become old and reached high levels of human and political civilization<sup>(78)</sup>, they will be eliminated due to such reasons<sup>(79)</sup>. Ibn Khaldoun's theory for extinction and replaces is based on the one State that dominates the world. He considers the dominating State but does not care about the small ones<sup>(80)</sup>. In addition, Ibn Khaldoun's theory is the nation's theory which is prevailing nowadays; the State which falls under the domination of the great one insures its stay, while the opposing State will decide its extinction by itself. Among the most factors for extinction (according to Ibn Khaldoun) is the military weakness due to engagement in fun and luxurious life. Accordingly, extinction factors are internal and external.

### First-rules for legal defense in Islam

The legal defense is a right for man to stay. Islam regulated legal defense for the State and individual according to the following:

- The legal defense for the individual and State: the formula of legal defense was mentioned in the Holly Qor'an with

<sup>(66)</sup> Koran, Sura, verse 60.

<sup>(67)</sup> Al-Kasaani (1910), organizing Trades in the order of law, Cairo, 7 c, i any, 1910. p.131

<sup>(68)</sup> Wahba Ben Mustapha Zoheily, *ibid.* Vol. 8, p, 6152.

<sup>(69)</sup> Carle, Robert (2005). "Revealing and Concealing: Islamist Discourse on Human Rights". *Human Rights Review* 6 (3): 122-37.

<sup>(70)</sup> Quran, Surat Al-Isra, Verse 33.

<sup>(71)</sup> Ahmed bin Ali Abu Bakr al-Hanafi (dead 370 AH), the provisions of the Koran, the investigator: Mohammad Sadiq, *Dar Revival of the Arab heritage*, Beirut 1405, Vol, 5, p. 24.

<sup>(72)</sup> Afsaruddin, Asma (2007). *Views of Jihad Throughout History*. Religion Compass, p. 165-169.

<sup>(73)</sup> Quran, Sura Al-Hajj, verse 39.

<sup>(74)</sup> Abu Barakat Abdullah bin Ahmed (1989) Nasafi, interpretation Nasafi, Part III, Muhammad Ali Sabieh Library & Sons, Al-Azhar, p. 106.

<sup>(75)</sup> Encyclopedia of jurisprudence, the Ministry of Awqaf, Kuwait, i 1, 1989. p. 201.

<sup>(76)</sup> Koran, Sura, verse 193.

<sup>(77)</sup> Abu Mohammed al-Hussein Shafei, Mohi year, op. Cit Vol. 1, p 237.

Review: fighting in Islam:

Nigosian, S. A. (2004). *Islam: Its History, Teaching, and Practices*. Indiana: Indiana University Press. p. 10

<sup>(78)</sup> Ibn Khaldun, op. Cit., P. 182.

<sup>(79)</sup> *Ibid.*, p. 183.

<sup>(80)</sup> This happened to the Arabs when the Kingdom of Aad was eliminated, then their brothers, Thamoud, the giants, Hemiari, Tababe'a and Al-Adwa'. After that came Modar state, the Persian (Furs), the Sassan, the Grecks, Romans, the Barbar, Zinata and so on. Ibn Khaldoun, a previous reference, p. 148

the plural form. It is a formula stating that the right for legal defense should apply for the individual and the State. God says: "And fight them until persecution is no more, and religion is for Allah. But if they desist, then let there be no hostility except against wrong-doers".<sup>(81)</sup> This means that legal defense is a public duty upon the individual, State and the community.

- The legal defense is a duty but not a right: in the International law, legal defense is considered a right, which is called (legal defense). The right is a license given by law to be used by an individual or he may not use it, whereas the legal defense (according to Islam) is a duty on both the individual and State to defend themselves, religion and State. It is not a license that may be used or not used by an individual, but is a duty imposed by religion, since Qor'an's verses came in the form of: command (Fight in God's path those who fight you).
- Fighting those who fight the Muslims: legal defense (as shown from the previous verse) is addressed to those who carry weapons against Muslims, but not against the people of the enemy's nation. Islam has been keen to achieve the rules of man's right to live<sup>(82)</sup>. This is opposite to what we notice in the current International law; if a State attacked another (even with minor attacks), then the State, its people and land shall be ready to revenge;
- Legal defense is restricted to remove danger: the previous verse defined the legal defense as a self – defense without exaggeration. Otherwise, then this will be an attack<sup>(83)</sup>.
- The stability of the legal defense: legal defense is based or exists regardless of the holiness of the place and time (Al-Shahr Al-Haram= the month where killing is prohibited). God says: "they ask you whether they can fight during Al-Shahr Al-Haram, and you say: there are lots of fighting, prohibiting peoples from God's path, unbelieving and dismissing its people is more serious, and sedition is more serious than killing, they will continue fighting you until turning you from your religions if they can, and those from you who return from their religion and whoever returns from his religions while (unbeliever), his acts in life and the last day will fail and will in hell forever"<sup>(84)</sup>. Accordingly, legal defense allows fighting the enemies even if they hid in locations where fighting is prohibited (Haram).
- Legal defense shall continue as long as the invasion continues: from the previous verse, it is clear that legal defense is a continuous commitment. As long as the aggression and fighting continue, then Muslims have to defend themselves continuously. This defense is based on humanity without aggression<sup>(85)</sup>;
- The one who defends himself shall be in paradise: as long as self-defense is a legal duty, then the one who defends himself is in paradise and God will forgive his evil acts, God says: They question thee (O Muhammad) with regard

to warfare in the sacred month. Say: "Warfare therein is a great (transgression), but to turn (men) from the way of Allah, and to disbelieve in Him and in the Inviolable Place of Worship, and to expel His people thence, is a greater with Allah; for persecution is worse than killing. And they will not cease from fighting against you till they have made you renegades from your religion, if they can. And whoso becometh a renegade and dieth in his disbelief: such are they whose works have fallen both in the world and the Hereafter. Such are rightful owners of the Fire: they will abide therein".<sup>(86)</sup> This verse Stated a special case: the displacement and dismissing Muslims from their homes, can be applied on everyone who defends a legal right.

- Polytheism does not justify fighting: the polytheism person who has an agreement with the Muslims, or who can fight Muslims but did not, does not justify using legal defense and fighting by Muslims, as long as they prefer peace. God says: (except those who link with a group for which you have an agreement, or came to you regretting to fight you or fight their people, but if God wants, then he will cause them to fight you, while if they did not, and asked for peace, then God did not allow you to fight them)<sup>(87)</sup>.
- Self – defense begins close to the attackers: if Muslims were attacked by a nation, then fighting the attackers begins with the close ones before the far ones. God says:" So those who fled and were driven forth from their homes and suffered damage for My cause, and fought and were slain, verily I shall remit their evil deeds from them and verily I shall bring them into Gardens underneath which rivers flow - A reward from Allah. And with Allah is the fairest of rewards."<sup>(88)</sup> God say:" Except those who seek refuge with a people between whom and you there is a covenant, or (those who) come unto you because their hearts forbid them to make war on you or make war on their own folk. Had Allah willed He could have given them power over you so that assuredly they would have fought you. So, if they hold aloof from you and wage not war against you and offer you peace, Allah alloweth you no way against them"<sup>(89)</sup>. Since the close relatives of the attackers are the most enemies of the far relatives.
- The negation of the legal defense in case of reconciliation: if a fight or dispute takes place between Muslim and it was possible to make a reconciliation between the two parties, then the legal defense is negated and is not considered legal, as God says" And if two parties of believers fall to fighting, then make peace between them. And if one party of them doeth wrong to the other, fight ye that which doeth wrong till it return unto the ordinance of Allah; then, if it return, make peace between them justly, and act equitably. Lo! Allah loveth the equitable".

<sup>(86)</sup> Koran Sura verse (217).

God sai: " Lo! the number of the months with Allah is twelve months by Allah's ordinance in the day that He created the heavens and the earth. Four of them are sacred: that is the right religion. So wrong not yourselves in them. And wage war on all of the idolaters as they are waging war on all of you. And know that Allah is with those who keep their duty (unto Him)".

Quran, Surah Repentance, verse (36).

<sup>(87)</sup> Kelsay, J. (March 2003). "Al-Shaybani and the Islamic Law of War". *Journal of Military Ethics* (Routledge) 2 (1): p. 63–75.

<sup>(88)</sup> Quran, Surah Al-Imran, verse (195).

<sup>(89)</sup> Quran, Nisa, Verse (90).

<sup>(81)</sup> Koran, Sura, verse (190).

<sup>(82)</sup> Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press, p.45.

<sup>(83)</sup> Patricia Crone, *Encyclopedia of the Qur'an*, War article, p.456.

<sup>(84)</sup> Al- Baqar Sora, verse (217).

<sup>(85)</sup> Patricia Crone, *Encyclopedia of the Qur'an*, War article, p.456.

## Second-The difference between the legal defense and punishment in Islam

The legal defense differs from punishment. Legal defense deals with a case decided by the party who is attacked, does not require a decision from the court or jurisdiction to launch legal defense. However, if the case is decided by the attacked party, since it is an urgent case that requires defending damage and to protect his life. There is no space to review jurisdiction regarding self-protection. As for punishment, it is a State that is decided by jurisdiction and whether it results in imposing a specific punishment against the attacker. However, this requires evidence that the attack took place. Punishment is not subjected to face an act with a similar one.

However, it is a State that is decided by jurisdiction itself. If a person stole money or took something without right, then the attacked party may defend damage from himself even if caused to kill the attacker, whereas punishment in terms of killing is subject to similar act as per the rules of Islamic Shari'a, which takes place- of course- after the trial, as God says: "And slay not the life which Allah hath forbidden save with right. Whoso is slain wrongfully, We have given power unto his heir, but let him not commit excess in slaying. Lo! he will be helped" <sup>(90)</sup>. Self-defense, is a case that is legally imposed on every Muslim to defend his religion, self and monies. If the legal defense ends when an act takes place, then Islam or jurisdiction allowed the attacked party to punish the attacker with the same act, as God says: "If ye punish, then punish with the like of that wherewith ye were afflicted. But if ye endure patiently, verily it is better for the patient." <sup>(91)</sup>.

In this case, it is not a legal defense, since legal defense prohibits the occurrence of an act, and since the act – in this case took place- but punishment shall be the same as the act committed. On the other hand, legal defense is a must in Islam; this means that the attacked party – if – may commit legal defense, and if the case is so, then he can do it, otherwise (if he can not) then jurisdiction shall take his right from the attacker. In this regard, Ibn Khaldoun<sup>(92)</sup>, believes that self-defense is a need for human gathering; man alone or by himself can not face the difficulties of life. Therefore, Ibn Khaldoun says: everyone needs to defend himself through the assistance of the mankind – since God Al-Mighty- when he created features in the all animals and give them faith, made the chances of animals more than man, such as the horse's ability and the same applies on the ability of the oxen, lion and elephant which are much more than man's abilities. Since aggression is natural in animals, then each of them has a part of his body to defend himself when attacked by other creatures. Instead, man has thought and hand. The hand can make crafts to serve thought and crafts that enable him make machines to protect him from other animals in all cases <sup>(93)</sup>. A man's ability can not resist an animal's especially the wild ones; he can not encounter all of them and his ability is not sufficient by using the machines. Accordingly, he needs the assistance of other men, and without such cooperation, Man will not be able to

defend himself since he lacks weapons, and thus he will be an easy target for animals and mankind will be eliminated. However, in case of cooperation, then man will be able to have food and weapon and then God's wisdom to preserve man is accomplished for his stay and to keep his kind. Consequently, man can not live without a community. Completeness among the peoples enhances life and makes it easier, while isolation negates such live. Legal defense relates with defending aggression. According to Ibn Khaldoun, an attack is very close to the term (aggression) "in the International law". He sees that a State is necessary to defend aggression. In this context, he says: a man who is assigned by God to take care of God's slaves needs the full protection from their enemy and to defend their aggression by using the rules and regulations that preserve them from such an aggression <sup>(94)</sup>.

From the above, it becomes clear that legal defense in Islam as the case in the International law means to achieve legal defense for individuals and groups as stipulated in article (51) of the UN Charter. However, legal defense- according to Islam- is based on justice and right. This means that a Muslim faces an aggression without reasons, then no legal defense in facing right and justice. However, in the International law, once a State hits another, means an aggression even if the attacking State has a right such as to return a part of its lands or to dismiss the occupier. Accordingly, this is considered an aggression, whereas in Islam, it is not, since it is an act to defend a right, but shall not be claimed as a legal defense.

## Conclusion

It is clear that the protection of man is one of the significant issues in the international law. Moreover, the international community views the Islamic states as illiterate. However, before one thousand and four hundred years, the Islamic Shari'a has confirmed on the protection of the states' aspects (people, government and the region). The matters that raise disputes among the Islamic states are due to the interference of the great states in the Islamic affairs. In this context, Islam looks at the stay of the state through man's right to live, but no to importance of the state to stay, as the important issue is the sustain man's life. In this regard, various verses in the Holly Qor'an stipulate prohibiting killing man and were not concerned about the state as a requirement for man's right to live; man enjoys live whether within or not in a state. In addition, Islam did not require recognizing the state so as to enjoy the right to stay. For these reasons, it is necessary to create an international legal system that protects man's live regardless of the state's behaviors, or whether such behaviors are accepted or not by the dominating states. For that, we would recommend the following:

- Amending the UN Declaration in such a way that prohibits UN and other states from interfering in internal affairs of the Islamic states, especially supporting national wars with money and weapons.
- Not to use the 7<sup>th</sup> chapter except in the cases where a state attacks another in fact, and the task of this force is only to remove danger.

<sup>(90)</sup> Quran, Surah al-Isra verse (33).

<sup>(91)</sup> Quran, Al-Nahl, Verse 126.

<sup>(92)</sup> Ibn Khaldun, op. Cit., P. 57.

<sup>(93)</sup> Ibid, p. 55.

<sup>(94)</sup> Ibid, p240.

- The Islamic states shall concluded alliance agreements and prohibit the great states from raising wars among Islamic states, or between them and other states.
- Conduct treaties between the Islamic states to settle the international disputes with peaceful way without using force to settle such disputes among the Islamic states.
- Activate the Islamic Cooperation Organization and support it to protect Islam and Muslims.
- The Islamic states shall work to inform the world about the principles of human rights as mentioned in the Holly Qor'an and the Sunna.
- Confirming on non-use of any armed force against another state in violation with the UN Declaration. It is also inadmissible to delegate a state or an alliance to achieve thereof.
- Activate Geneva treaties (1949) in case of international and national wars, with full compliance by all states.
- Full international cooperation to protect the Muslims who are displaced and migrated due international and national wars.
- Cooperation among the Islamic states to counter extremity and terrorism.

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