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# The state right to defend its sovereignty in Islam in international law

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## Abstract

Research included the concept of the State in international law, in order to know the position of Islamic Law of this concept through descriptive and analytical method by studying the articles and comparative analyzing of them. We discussed the concept of the State's right to life in Islam. We dealt with the concept of people's right to life in Islamic Shari'a, and Islamic philosophy in ensuring the human right to life. The research indicates the right of States to use armed force, to protect its people, the political and legal system, from any aggression being attacked by other states.

**Keyword:** islam, defend, territory, religious, aggression.

## El derecho estatal a defender su soberanía en el Islam en el derecho internacional

### Resumen

La investigación incluyó el concepto de Estado en el derecho internacional, con el fin de conocer la posición de la Ley Islámica de este concepto a través del método descriptivo y analítico mediante el estudio de los artículos y el análisis comparativo. Discutimos el concepto del derecho del Estado a la vida en el Islam. Nos ocupamos del concepto del derecho de las personas a la vida en la Sharia islámica y la filosofía islámica para garantizar el derecho humano a la vida. La investigación indica el derecho de los Estados a usar la fuerza armada para proteger a su gente, el sistema político y legal, de cualquier agresión realizada por otros estados.

**Palabra clave:** Islam, defensa, territorio, religión, agresión.

### 1. INTRODUCTION

Research on the concept of State in Islam is a complex subject. Muslim jurists did not know the term State (Daola) they knew the term Alkalfa, the kingdom, the Sultanate, the emirate and the tribe (Abdullah Al-Sunaidi, 2008). Some ancient jurists have dealt with the meaning of the Islamic state (Abdullah Al-Asbahani & Ibrahim<sup>2015</sup>). It was said that the Pakistani researcher Qamaruddin (1982) used the term 'Islamic State before the twentieth century. The definition of

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the term "state" was not mentioned in the Quran and Sunnah (Wahab, 2001).

Some Muslim writers were opposed to the concept of an Islamic state, because there are no texts to be codified in the Quran and Sunnah (Chehabi, 1991). The Muslim State means the State of the Muslim people, not the State of Islam. Because Islam is not a state.

Muslim jurists have defined the State in Islam as "a land in which the provisions of Islam are a phenomenon"<sup>(Al-Kasani, 1910a: 53)</sup>. The State (الدَّوْلَةُ) in the Arabic language means (rich) property. The Holy Quran states: "so that it is not something taken in turns by the rich among you" (Al-Kasani, 1910a: 69). This definition shows that the only corner of the State is the religious system of Islam.

## **2. THE TERRITORY'S RIGHT TO STAY IN THE INTERNATIONAL LAW AND ISLAM**

We will examine the **territory's** right to stay as stipulated in the International Law and Islam, within the following to subtitles:

### **2.1. The territory's right to stay in International Law**

As per the International law, the territory is the third aspect of the State and the absence of the territory means the non-existence of

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the people and the government. Accordingly, the territory is an important aspect in the State.

The territory is defined as: that aspect of the State, where people stay and where the government initiates its internal and external policies and employs its laws on the people who are residing in that territory (including nationals and foreigners). A territory is also defined as: the material framework in which the State practices all of its tasks(Reuter, 1958).Among the features of the territory are (fixed, specific, legality, dry land inside the borders of the State, which include valleys, mountains, rivers, lakes, gulf and regional waters located at a distance of 12 sea miles, not to forget air space to the limit where the State can protect as well as the lands under its authority(Rousseau, 1982).

After the two World Wars during which millions of people were lost, the UN Declaration prohibited affecting the three aspects of the State (namely: the territory, the people and the government). The rules of the International regulations stipulated in Montevideo (1933) embodies these rules and confirmed the protection of humanity from International and national wars that threaten the extinction of the humanity by damaging. These rules were mentioned in the sixth and seventh chapters of the UN Declaration.

Therefore, it is not admissible to occupy a State whether totally or partially, or the total or partial weakness of the national or regional

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unity (Declaration on Principles of International Law, 1975). The main purpose of this principle is to put an end for the colonialism and give the peoples their full independence. In addition, this intends to give individual and group countries the right to resist colonialism, discrimination and end occupation and domination.

The International Law acknowledged man's right to stay in a territory and move from it, which is considered one of the human rights; it is the government's duty to protect the land and its environment. The protection of the environment is one of the priorities that concern the International community, since it relates to man's right to live. The International community seeks to satisfy all of the human basic needs, without affecting the needs of the future generations, with the need to divide the natural resources fairly and give each individual the right to live and work in a healthy environment, respect and preserving all shapes of life (Blackman, 2008). It is clear and evident that the State's right to stay means in the first grade the inhabitants' right to live in the State, as well as the stay of the territory and government. This State's right to stay is ensured by the International law; the State may not decide to end the existence of another State.

Moreover, the International Law recognized that everyone has the right to choose the place of his stay and the freedom to move within the borders of his State. In addition, everyone has the right to leave and depart to any State, including his State and to return home whenever he deems appropriate.

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It is not admissible to subject any territory – by other States- for any dangers, with the need for full commitment of non-recognizing the occupation of a State for a territory of another State. In addition, it is not admissible to acknowledge any advantage gained by the occupying State when it occupies the lands of another, nor to attack the diplomatic missions or take any obligatory actions against the land of another. The military occupation of any part of a State is not allowed, nor to affect the sovereignty of a State by direct or indirect means, regardless of the motive thereof. The land's right to stay means the humans' right for living and stability; a man without land to stay on, ensures no stability nor guarantees his life.

## **2.2 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 a man's right for the land. Islam has been concerned about the protection of the land's environment (Bagader, 2006; Al-Banna, 2015). 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"(Holy Quran, Sura Al-A'raf, Verse 74: 160).

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God considered damaging land in the rankings of corruption, as He Says: eat and drink from God's donation and do not be corrupt on the land(Homd, 2009).

If Islam prohibited killing men 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 of that which Allah hath provided, and do not act corruptly, making mischief in the earth) (Holy Quran, Verse 60).

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 no migrate to a Muslim State, are not insured compared with the merchant and prisoner; their monies are monies are insured jointly" (Al-Kasani, 1910b: 13).

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. Man's

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right to live means to stay, which is the utmost rule that Islam is concerned to achieve (Carle, 2005).

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 the 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 the environment includes protecting the ground (above and underground), rivers and seas from pollution.

### **3. THE STATE'S RIGHT TO DEFEND ITS EXISTENCE IN INTERNATIONAL LAW AND ISLAM**

The defense is a legal one that is stipulated in the International and internal laws, as the Islamic Shari'a considered this right. This theme examines the right for legal defense as stipulated by the International Law and Islam. A State has the right to defend its existence by using armed force. Despite that, some States do not have the force that enables it to encounter the attacking State, and therefore, the application of this principle witnessed various violations that relate to the State's right to stay. Consequently, we will handle the concept of the State's right to defend its existence, then the practical violations of

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the State's right to stay as well as the exclusions that respond to this right, which will come in the following three components:

### **3.1 The concept of the right to defend existence in International Law**

The State's right to defend itself is one of the stable principles in the International law, which is called (the right for self- defense). This is a wide topic that cannot be covered in this paper. However, we will study the relationship of legal self- defense and the State's right to stay.

War has been the main means to settle International disputes and was justified by various reasons. At the beginning of the last century, various calls emerged to prohibit war, and was embodied through numerous International treaties, including Versay treaties (in Paris , 1919) that resulted in the UN League and the treaty to Kellogg Briand PactAgo (1983) that promised to face illegal war with the legal one by the legal self- defense.

On the other hand, the right to legal defense is among the stable rules in the International customs that expand the right for legal self-defense. This right was even given to the colonial State when there are entities that threaten its interests in the occupied State. In 1837, the settlers of Canada made a revolution against the British occupation, as the USA took a neutral position from this revolution, but the American

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supporters helped the revolutionaries with men and supply which were carried on a deck called (Caroline). As a reaction, a British force arrested (Caroline) and burnt it (Nichols, 2008).

In the 2<sup>nd</sup> World War, the court of Normburgh adopted this attitude when Germany invaded Norway and Denmark (Olaoluwa, 2006). This attitude has become a fixed International rule and the States used this right in the proactive war by attacking the troops of another State, claiming they threaten their existence (happened more than 250 times)(Nichols, 2008).

After some States were exposed to mass destruction due to the 2<sup>nd</sup> World War, which resulted in the death of millions of people, the UN Charter prohibited the State use the force in the International relations. But the UN Charter authorized the State to use their force in a situation where the State is exposed to external aggression, to defend itself and its existence.

The Security Council has the right to observe that to keep International peace and security, and to take – when necessary- the procedures stated in chapter seven of the Declaration (against the attacking country)(Bosultan, 1995). The International Law gave the State (individuals and groups) the right to resist colonialism and discrimination, the new colonialism and to end occupation and domination. This right is necessary for the State's right to stay.

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Furthermore, the Arab League conducted an agreement for mutual Arab Defense and Economic Cooperation, where the Arab countries are committed to defend the attacked Arab State.

Although the UN Declaration did not consider the urgent State for the right to stay, but the strong States use the proactive as a means to defend its existence prior to being exposed or subjected to a real attack, and thus it allowed itself to attack the troops of another State based on the rule (the urgent necessity) once it believes that there is a nearing attack against it (Larry, 2007).

Just in case there is a suspicion that there are armed organizations on the lands of another, it justifies for itself a reason to attack those organizations without a permission from the State. This is really what happened when the US and other States hit various locations, during the International campaign that was called the (International campaign against terrorism)Duffy (2005), by hitting sites for Al-Qa'ida in Afghanistan, Pakistan, Yemen, Iraq and Syria.

The current InternationalLaw for (self- defense) is one of the States' rights. The State has the right to defend itself. This right is based on the requirements of the right for existence, or the right to stay. This has been considered by all laws of the States (giving the individual the right to defend himself and the right to inflict damage against the attacking party.

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On the other hand, the right for legal defense is a reasonable result for the State's right to stay. It is impossible for the State to continue its existence unless given the necessary means to preserve this existence. Among the first means for self- defense is the legal right for self- defense. This legal right is one of the legal regulations taken from the internal laws, which State that the countries have the right for self-defense and inflict damage to the attacking party.

Moreover, this right gives the State the right to use all possible means, including armed force in order to dismiss the danger that threatens it. It is also allowed to commit acts – that are considered during ordinary circumstances as illegal- such as the use of force against a specific State or an organization that attempts to inflict damage to the attacked State, as long as this act comes under the umbrella of defending the existence of the State. With that, the State has the right to stop the illegal act, with a similar one which becomes legal, since it comes within the framework of self – defense. This gives it the right to have a strong army to defend it.

### **3.2. Exclusions to the states right to stay**

The State's right to stay is not a sole one; the existence of a State may be terminated under various cases that affect the components of the State. This comes under political or legal reasons such is inclusion or division. The most aspect for which the InternationalLaw is concerned is man's right to live, by ensuring the individuals existence

alive. However, in some cases, the existence of a State may be terminated without affecting the right to stay. Among these cases:

A. Joining another State, which will change the land's map and population, if occurred with the consent of the two States. As for the government, the governments of both States may change and a new one will emerge, or a State's government may stay while the other elapses.

B. Dividing the State into different ones; here, the legal character of the original State disappears, and other States with independent characters will emerge. This is followed by the division of the people, region and the elapse of the public authority.

C. An independence of a State from another: the original government keeps existing, while a new one emerges for the independent region.

### **3.3. Violations of the State's Right to Stay**

The practical application of the principle of the State's right to stay came contrary to the content of the International treaties and the UN Declaration. The world witnesses a number of devastating wars,

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including the wars in Vietnam, Cambodia, Haiti, Nicaragua and a number of the African States.

On the other hand, the Arab world witnessed local and International devastating wars, such as the difficulties that has been facing the Palestinians since 1947 Benny (2008), the war against the Algerians, and the International and national wars on Iraq in 1991 by resolutions from the UN Council and in (2003), which came under the leadership of the USA. Furthermore, we should not forget the wars against Syria (2011), and Libya based on resolutions from the UN Council under the leadership of NATO troops (2012); the national was in Yemen and the military interference in the Gulf under a campaign titled (Firm Storm) (2015).

Consequently, these wars resulted in ending the existence of Palestine, Iraq, Libya, Yemen and Syria, not to forget the consequences of the national wars (due to terrorism) in Somalia, Egypt, Tunisia and Lebanon which caused the death, injury and displacement of millions of people.

This refers to the domination of one State, namely: the USA, which made the State's right to stay and human rights, are subject to the interests of the State that dominate the world.

Currently, the International community witnesses a mass refugees movements from the Arab and African States to the west due

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to the tension of the armed struggles which made life impossible in those countries. In this regard, it is worth stating that there millions of internal and International displaced people.

#### **4. The State's Right to Defend its Existence in Islam**

Islam prohibited killing man, God Almighty says: (And do not kill the soul which Allah has forbidden, except by right) (Holy Quran, Surah al-IsraVerse 33). In this context, God States that killing a person without right is illegal without a justified cause. 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(Afsaruddin, 2007). 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)(Holy Quran, Sura Al-Hajj Verse 39).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

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wounded pleading to Him, then He say: by a 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 HolyQuran.

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.

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"(Holy Quran, Sura Al-Baqarah Verse 193: 30).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.

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 puts 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, it the State is absent from some peoples, then it should be returned to other people of the same State as

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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, they will be eliminated due to such reasons.

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. 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 engage in fun and luxurious life. Accordingly, extinction factors are internal and external.

#### **4.1 Rules for Legal Defense in Islam**

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

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a) The legal defense for the individual and State: the formula of legal defense was mentioned in the Holy Quran with the plural form. It is a formula stating that the right for legal defense should apply to 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" (Holy Quran, Sura Al-Baqarah Verse 193: 30). This means that legal defense is a public duty upon the individual, State and the community.

b) 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 Quran's verses came in the form of: command (Fight in God's path those who fight you).

c) 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. This is opposite to what we notice in the current International law; if a State attacked another (even with

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minor attacks), then the State, its people and land shall be ready to revenge;

d) 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.

e) 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 people 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. Accordingly, legal defense allows fighting the enemies, even if they hid in locations where fighting is prohibited (Haram).

f) 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

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continuously. This defense is based on humanity without aggression;

g) 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 become a renegade and die 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"(Holy Quran, Sura Al-Baqarah verse 217: 34). This verse stated a special case: the displacement and dismissing Muslims from their homes, can be applied on everyone who defends a legal right.

h) 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

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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.

i) 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(Holy Quran, Sura Al-Baqarah verse 195: 30).

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 allow you no way against them (Holy Quran, Sura Nisa Verse 90: 92).

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Since the close relatives of the attackers are the most enemies of the far relatives.

j) 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 (Holy Quran, Sura Al-Hujurat Verse 9: 516).

#### **4.2 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 the jurisdiction and whether it results in imposing a specific punishment

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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"(Holy Quran, Surah al-Isra verse 33: 285). 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 action 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"(Holy Quran, Surah Al-Nahl Verse 126: 281).

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

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is so, then he can do it, otherwise (if he cannot) then jurisdiction shall take his right from the attacker.

In this regard, Ibn Khaldoun, believes that self- defense is a need for human gathering; man alone or by himself cannot 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 to make machines to protect him from other animals in all cases (Ibid).

A man's ability cannot resist an animal's especially the wild ones; he cannot 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 the 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

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his kind. Consequently, man cannot live without a community. Completeness among the peoples enhances life and makes it easier, while isolation negates such life.

Legal defense relates to 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(Ibid).

From the above, it becomes clear that legal defense in Islam as the case in the InternationalLaw 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.

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## **5. CONCLUSION**

Despite the development of the International community in the International field of human rights, and the issue of protecting man has become one of the most important in the International law, and that the International work is still linking the requirement of recognizing the State, so as to enjoy the right to stay. Even if not said clearly, the State is not recognized the States that dominate the world, does not enjoy the right to stay, while the UN Declaration in the International Fiqh (jurisdiction), does not require recognizing the State so as to enjoy the right to stay, except in the practical application that witnesses various violations against the State's right to stay.

The States that are unrecognized by the dominating States have worked to eliminate some States, completely with the knowledge and consent of the UN. As examples for that: terminating the existence of Palestine in 1948, damaging Iraq by the International Alliance in 2003, igniting the national war in Syria through direct intervention, damaging Libya in 2011, Yemen by the Gulf States in 2015. The elimination of those States resulted in damaging millions of their people between a dead, injured, displacement and mass immigration.

In addition to that, such acts resulted in threatening a number of other States to be eliminated, such as North Korea, Cuba and Sudan. Those States were not accepted by the USA, and to damage them applies on damaging their peoples.

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On the other hand, the race of armament among the States, and continuing to create damaging weapons means that the whole humanity is waiting for devastation, damaging and extinction.

However, Islam views the stay of the States based on man's right to live; it is not necessary for the State to stay, but to preserve man's life. The HolyQuran mentioned various verses that prohibit killing man but did not care about the State as a requirement for man's right to live; man enjoys the right to live, whether within or outside of the context of a State, but Islam did not require recognizing the State so as they enjoy the right to stay.

Therefore, it is necessary to create an International legal procedure that protects man's right to live regardless of the acts of the State, or whether it is accepted or rejected by other dominating States. For these reasons, we would recommend the following:

- 1- To amend the UN Declaration so as to prohibit UN and other States from interfering in the internal affairs of the States, especially, not to fund the national wars with money and weapons;
  - 2- Not to use the seventh chapter, except in the cases where a State attacks another actually, and here, the task of the State is to remove the danger;
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- 3- Confirm the non-use of any armed forces against another State without the consent of the UN. It is not admissible to delegate a State of an alliance to achieve thereof;
  
  - 4- Activate Geneva agreements (1949) in the cases of International and national wars, and that all States shall comply with these agreements;
  
  - 5- Conduct International agreements that prohibit or limit the use of traditional or modern weapons, with the need to put controls on weapon production except to protect the State;
  
  - 6- Make the hot zones, or those witnessing armed disputes, disarmed from all kinds of weapons, and prohibiting the States from helping any of the disputing States;
  
  - 7- Full International cooperation to protect the displaced and refugees due to International and national wars;
  
  - 8- The UN shall observe the hot zones all over the world, and shall take the necessary action to prevent any exaggeration of the regional disputes.
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