



UNSDRI

UNITED NATIONS
SOCIAL DEFENCE
RESEARCH INSTITUTE

Publication No. 26



SST

ARAB
SECURITY STUDIES &
TRAINING CENTER

**FIRST JOINT
INTERNATIONAL CONFERENCE
ON
H IN CRIME PREVENTION**

Riyad, 23-25 January 1984

Rome, June 1985

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FOREWORD

Laws can be seen as the product of a social contract intended to guarantee peaceful coexistence within the group concerned.

A legal system is also the outcome of principles and requirements that stem from the civilization, culture and tradition of the social group as well as from its political and economic structures. In this way it responds to the essence of the particular community which has developed the system.

This being so, there is in the world a multiplicity and diversity of systems and each of them is ethically and juridically legitimate since they are the production of a widely recognized social consensus within the concerned social group.

In an age of global interdependence, the major juridical systems of the world and the related schools of thought are coming into increasing contact with each other. There has thereby been created a need for mutual tolerance which will significantly depend upon the degree to which the communities concerned have reciprocal knowledge of each other's systems.

The United Nations Social Defence Research Institute's legislative mandate with respect to the prevention of crime and the treatment of offenders envisages, among other things, applied criminological activities aimed at a wide dissemination of the knowledge of the major penal justice systems of the world. The ultimate goal of this programme is not only an improved mutual understanding between societies, but also the provision of support for policy-makers confronted with choices when dealing with social defence problems – such as juvenile maladjustment and drug addiction which are increasingly prevalent in many societies, both in industrialized and developing countries.

It is against this background that UNSDRI has entered into a programme of effective collaboration with the Arab Security Studies and Training Center in Riyadh. Thanks to its generous hospitality, the

First Joint International Conference on Research in Crime Prevention was successfully organized in Riyadh from 23-25 January 1984.

The Conference was a most stimulating and creative event which brought together a number of distinguished Arab and non-Arab scholars in an atmosphere of free discussion and willingness to deepen mutual knowledge of the basic principles and content of the various juridical systems represented.

I wish to express on UNSDRI's behalf deep gratitude to Doctor Farouk Murad, President of the Arab Security Studies and Training Center in Riyadh, for having made this conference possible and for his invaluable personal contribution to its success. I also wish to thank all the participants in the conference for their constructive spirit and for the high level of their interventions based on experience at national, regional and international levels.

This publication aspires to be the concrete testimony to a timely and innovative initiative that has sown the seed of not only a wider discussion but also, and above all, of a strengthened future collaboration which the times we are living render indispensable.

Rome, June 1985

*Ugo Leone
Director*

INTRODUCTION

CO-OPERATION IN CRIME PREVENTION RESEARCH

(Co-operation in the field of "action-oriented" research regarding crime prevention within the United Nations and other entities concerned with the problem. Concrete principles and methods).

by Ugo Leone

1. The concept of development and hence of international co-operation and the best means of attaining or contributing to it has evolved over the last 30 years under pressure of necessity, of immediate results which have emerged, of political will, of the means available, and finally of practical and scientific experience.

2. Nevertheless a continuing accelerated economic development with the creation of industrial infrastructures, production of consumption goods, growth of imports and exports, gave rise to numerous negative reactions of a society alienated from the structures and modes of traditional life resulting in a wider recognition of the importance of the social factor.

3. Therefore, during the last years we have been confronted with a work of deep reflection which, on the basis of certain perverse effects evident in the economic development process, tries to identify the errors committed and at the same time to give a more advanced, responsible and global response. This philosophic effort encouraged the United Nations to view the developmental process in the light of a constant reference to the quality of life, both for the individual and for society; in fact, the development of a country or a society should correspond to a state of peace and social justice and should not be confused with an indiscriminate growth of consumption goods and services which, alone, are not sufficient to give man his proper dimension, a motivation to progress and finally complete dignity to

use his rights and duties within the framework of a peaceful and civilized life.

4. In this perspective peace and social justice assume an ever increasing dimension where social development conflicts and social maladjustment problems with the resulting deviance, delinquency and criminality reach a first priority level.

5. Experience has shown and continues to show that, in fact, together with the economic development process, an alarming deterioration can be noted in the capacity of a pacific communal life with the preoccupying consequences of social tensions and widening of forms of violence.

6. This phenomenon, with its different tendencies but often with comparable profiles, has assumed transnational proportions affecting, by its modalities and new dimensions, the community as a whole thereby imposing the necessity of a scientific and co-ordinated approach at the international level.

7. Parallel with an approach more clearly recognizing the importance of a social equilibrium within the framework of the harmonious development of a society, the United Nations sharpened those existing and created new instruments to respond to the real needs of the international community.

8. However budgetary, and therefore financial, problems condition the dimension and even the quality of the interventions of the United Nations in all the sectors of its activities, among which that of social defence. The financing of the work programme of the United Nations depends on two large categories of governmental contributions: the first is that of obligatory contributions to the regular budget of the Organization, while the second category covers the voluntary contributions of Member States to certain specific activities, nearly all of which are oriented towards the development of Third World countries, which are outside the regular budget and the work programme approved within the framework of this budget. It is here that the thermometer of goodwill and of the "generosity" of donor countries constantly and precisely indicates the degree of political and financial availability of the richest countries of the international community: it is in this sector also that the variations and the effects of the international economic situation can be seen.

Mandate and rôle of the United Nations in the field of social defence

9. The United Nations was created with a universal vocation, not only as regards its composition which tends to group all the members of the international community, but also as regards its competence which includes practically all the sectors of life.

10. The Charter of the United Nations specifies, certainly not in a systematic manner, the fundamental indications regarding the social field: all things considered few dispositions, although sufficiently significant in the context of a Charter which has clearly adopted as a basis the maintenance of peace, the necessity of economic and social development of the international community, of social justice and, finally, a state of balanced well-being and social health.

11. The concrete objective of the United Nations in this field is the prevention of all the phenomena of social maladjustment and, consequently, of all the conflicts which can negatively affect the quality of life of individuals, societies and nations and therefore their harmonious and not only economic development. Social deviance in its behavioural manifestation is the point of reference of all activities of preventions and treatment.

12. This can be translated into "social defence" which is inspired by a preoccupation for the protection of society as a whole, of its equilibrium and of conditions which allow all its members, including the deviant sector, to participate in a better quality of life. A text which should be recalled in this delicate sector is that adopted by the General Assembly of the United Nations on 10 December 1948 by the proclamation of the Universal Declaration of Human Rights, Article 28 of which reads: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". There is no doubt that this is a precise reference to the social order which is the ultimate aim of the United Nations in the field of social defence.

13. The origins of the rôle and actions of the United Nations in the social defence sector date back practically to the first sessions of the General Assembly: in 1946 the Commission for Social Affairs underlined that the responsibility of international action in the prevention of crime and the treatment of offenders falls within the competence of the United Nations; this conception was reconfirmed by

Resolution 155 V (VII) of the Economic and Social Council adopted in 1948 and in Resolution 415 (V) approved in 1950 by the General Assembly.

The central structures of the United Nations in the social sector

14. United Nations actions are necessarily accompanied by the creation of structures allowing for the achievement of objectives indicated by the institutional mandate. As well as the General Assembly, the Economic and Social Council can create subsidiary organs: therefore all the structures of the United Nations in the social defence sector received their mandate and their powers from the General Assembly or from the Social and Economic Council.

15. In a sort of hierarchical order mention should be made of the Third Commission of the General Assembly, which is responsible for social, humanitarian and cultural affairs; it is a very important unit because the rules of procedure of the General Assembly foresee that each Member State can be represented by a delegate at this plenary Commission.

16. However, it is within the framework of ECOSOC that we can identify one of the structures more directly responsible for the sector which is the central point of the Agenda of this Conference: the Commission for Social Development. This Commission was created in 1946 by ECOSOC with the name of Social Commission to give advice to the Council on social policy in general and in particular on all the matters regarding the social field which are not covered by the specialized intergovernmental agencies. In 1961, ECOSOC decided that the Commission should give priority to the identification of social objectives and programme priorities as well as to social research in the sectors closely related to social and economic development.

17. The Commission for Social Development, which is composed of 32 members, met every year up to 1971 and since then has met every two years.

18. The other Commissions of ECOSOC, for instance the Commission for Human Rights, the Commission of the Rights of Women,

the Commission on Narcotic Drugs, can, by their activities, sometimes have an influence on the social defence sector.

19. We will now deal with an organ which, even by its title, naturally occupies the first place in the United Nations structure in the sector of social defence: this is the Committee on Crime Prevention and Control composed of 27 members which was created in 1971.

20. The mandate of this Committee is defined by ECOSOC and covers the preparation of the UN Congresses on the Prevention of Crime and the Treatment of Offenders, the preparation of programmes of international co-operation and their submission to the competent organs of the United Nations, the coordination of the activities of the UN units in matters relating to the control of crime and the treatment of offenders, the promotion of exchanges of experience and discussions of fundamental themes of professional interest as a basis for international co-operation in this sector.

21. There is in the General Secretariat a unit which plays a central rôle in all activities relating to social defence: in fact, within the framework of the Department for International Social and Economic Affairs, more specifically in the Centre for Social Development and Humanitarian Affairs, we find the Crime Prevention and Criminal Justice Branch which has both operational and co-ordination responsibilities (particularly in the research sector through UNSDRI and the regional institutes); this unit acts as secretariat for the Committee on Crime Prevention and Control and, in particular, organizes and serves the UN Congresses for the Prevention of Crime and the Treatment of Offenders; it also bears the responsibility for the International Review of Criminal Policy of the UN which contains important ideas, proposals and results of researches and studies.

22. A crucial moment of international activity in the social defence sector is undoubtedly that of the UN Congresses on the Prevention of Crime and the Treatment of Offenders which take place every five years.

23. These quinquennial world-wide UN Congresses are organized to facilitate the exchange of experiences and observations among member countries and to strengthen internal and regional co-operation in the sector and in that of penal justice. The Con-

gresses examine problems of the prevention of crime and the fight against criminality, outline practical solutions in an administrative and professional context and face the problems of research and the evaluation of different types of approaches.

24. These Congresses, which are prepared with an intense activity of consultation by means of regional and interregional meetings, allow for discussion of a number of current themes of interest to the international community and for an indication of priorities; they also ensure that the necessary directives are given to the UN structures so that their activities respond as closely as possible to the needs of Member States, and in particular to those of the Third World, thereby allowing for the allocation of the limited resources of the Organization to those subjects who are at the base of the most serious and urgent preoccupations. UNSDRI and the regional institutes are also called upon to contribute to the work of the Congresses.

25. It is interesting to recall that the United Nations inherited from the International Penal and Penitentiary Commission (IPPC) the task of continuing the organization of international congresses every 5 years. It would however be simplistic to think that the UN Congresses are merely a continuation of those previously organized by the IPPC; they represent, in fact, not only a different conception of the problem of criminality but also a different approach, both in terms of substance and of form and, finally, because of their wide geographical dimension.

26. An important figure in this system is that of the Interregional Adviser on Crime Prevention and Criminal Justice; this is not a permanent structure as the Secretary-General of the United Nations is the only judge of the opportuneness of the appointment of one or more Interregional Advisers. The Interregional Adviser is at the disposition of the governments of Member States for advising on matters relating to the identification of crime trends, priorities of intervention, planning in the context of socio-economic development, training of personnel in the field of the prevention of crime and the treatment of offenders. He should also assist the regional institutes in the organization of interregional training courses, as well as helping to strengthen regional collaboration through exchange of information and experience. This is a very flexible instrument allowing for

a rapid response to the requests of Member States of the United Nations.

The United Nations Social Defence Research Institute - UNSDRI

27. The United Nations Social Defence Research Institute (UNSDRI), which was established in Rome in January 1968, represents an important turning-point in United Nations policy in the sector of crime prevention and treatment of offenders; it is a structure of applied research which was created on the basis of an ECOSOC Resolution of 1965 which approved "the principle that the prevention of juvenile delinquency and adult criminality should be undertaken as part of comprehensive, economic and social development plans" and requested the Secretary-General to make arrangements for the Organization to "carry on its responsibilities in the social defence field". Following this Resolution, the Secretary-General decided to create the Social Defence Research Institute which was constituted in January 1968 following an agreement between the United Nations and the Government of Italy.

28. The mandate of the United Nations Social Defence Research Institute is not to carry out basic research: this task could be better undertaken by the university research units which are usually national. UNSDRI has neither the mandate nor the resources for this type of activity which actually would not be in line with the operational philosophy presiding its creation. The research of the Institute is "policy- and action-oriented", that is to say, is always aimed at concrete results; in other words, it is oriented towards recognition of real situations and concrete problems which preoccupy the international community or a Member State with a view to establishing scientifically the terms of reference of these problems and suggesting practical measures for coping with them.

29. In view of the preceding considerations regarding the close relationship between social equilibrium and the developmental process, research in the field of the prevention of crime and the treatment of offenders naturally has its place in a global action of planning and execution of development programmes aimed at an improved quality of life both at the societal and individual levels.

30. Thus UNSDRI, with its limited resources, is called upon to contribute to the overall work of the United Nations for the progress and development of man.

31. In the general framework of the United Nations the Institute is an instrument for the development and strengthening of the Organization's action in the social defence sector. Therefore it did not replace a pre-existing structure but, on the contrary, has given a new dimension to that foreseen by the United Nations prior to its creation. The Institute may be seen as a group of experts called upon to assist, within a technical infrastructure, the activities of the United Nations and Member States, supplying all the necessary information, obtained through studies of a practical nature, which could contribute to the establishment of adequate bases for the development of more dynamic programmes and policies in the field of social defence.

32. This work is conducted through various types of activities: basic research, both of a general nature although always centred on national and regional realities, and of a more specific national character not only aimed at, as in the preceding type, specific problems but also aimed at a specific situation falling within the immediate problems and planning priorities of the concerned country,

33. Furthermore, UNSDRI maintains a documentation centre and a library, which provides technical support for the activities of the Institute and constitutes a point of reference and a valuable instrument for an exchange of information (clearing-house); it also allows for the hosting of distinguished scholars who wish to conduct their own studies in the area of competence of the Institute and at the same time can provide UNSDRI with the useful contribution of their expertise. Another activity of the Institute is that of the compilation of a world directory of criminological institutes which is published periodically. Finally, through its research activities, UNSDRI facilitates contacts between researchers of the Third World and the most advanced scientific and methodological schools as well as giving them training in the field through an involved participation in the studies carried out by the Institute.

34. In line with the general trend of the co-operation activities of the United Nations, UNSDRI is now almost entirely oriented towards the developing countries; nevertheless, scientific contribu-

tions from the industrialized countries and their specific requests are not neglected. In fact only a constant exchange of ideas and a systematic recourse to the most advanced scientific findings will ensure that the members of the international community receive the qualified assistance which they have the right to expect from the United Nations.

The regional institutes

35. The regional institutes constitute another important element in the network of the United Nations, both for research and for training in the field of social defence; the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) which was formally inaugurated in Fuchu (Japan) in March 1962, is devoted to research and the training of personnel in the field of social defence in the Asian region.

36. Other regional institutes were also created by Member States in agreement with the United Nations; in fact these institutes, although recognized by and affiliated to the United Nations, are not an integral part of the UN structure but are national initiatives generally financed solely by the host country or possibly by contributions from countries of the same region.

37. A National Centre for Social and Criminological Research was created in Cairo in 1956.

38. The Instituto Latinoamericano de las Naciones Unidas para la prevención del delito y tratamiento del delincuente (ILANUD) which essentially covers the region of Central and Latin America was created in San José, Costa Rica, in 1975. It is interesting to note that this Institute has established close links with the competent services at the Secretariat and with UNSDRI through participation in research projects of the latter.

39. The Helsinki Institute for Crime Prevention and Control affiliated with the United Nations (HEUNI) has recently been established. This Institute, which is the result of a Scandinavian initiative in the sector, is expected to cover the whole of the European region, including Eastern Europe. Work relations have been established between HEUNI and UNSDRI, for instance in the field

of juvenile deviance. An assessment of the fulfillment of the HEUNI mandate and its coverage of the foreseen geographical region will require some years.

40. Finally, after lengthy negotiations and on the recommendation of the competent committee of ECOSOC, the Secretariat in collaboration with UNSDRI, the Organization of African States and the UN Development Programme, has undertaken the creation of a similar institute for Africa South of the Sahara. This ambitious but interesting project, however, is encountering technical difficulties and its launching has been postponed on several occasions.

The Four International Societies

41. Although they are not within the actual structure of the United Nations in the social defence sector, I think that it is important to mention the existence and work of the Four International Societies to whom the UN has granted consultative status; these are: the International Association of Penal Law (IAPL), created in 1924 with headquarters in Paris, which carries out research in criminology and social defence and publishes the important *Revue Internationale de Droit Pénal*; the International Penal and Penitentiary Foundation (IPPF) created in 1951 with headquarters in Bonn, which carries out research, teaching and publication activities in the field of criminology; the International Society of Criminology (ISC) created in 1934 with headquarters in Paris which carries out criminological research and publishes the *Annales Internationales de Criminologie*; and finally, the International Society of Social Defence (ISSD) created in 1947 with headquarters in Milan, which, together with research activities publishes the *Cahiers de Defense Sociale*. The Four Societies have formed a co-ordinating body, the International Committee of Co-ordination (CIC) for the organization of their joint activities with its headquarters in Milan at the Italian National Centre for Prevention and Social Defence.

42. The rôle of the non-governmental organizations has been repeatedly stressed by the United Nations and specifically in the Secretary-General's report (General Assembly document A/36/422 of 19 August 1981) paragraph 45 of which reads:

“The non-governmental organizations in consultative status with the Economic and Social Council with special expertise in crime prevention and control are providing particularly effective services in disseminating information on United Nations activities in this field. Every effort is being made to strengthen collaboration with these organizations, particularly with the Alliance of Non-Governmental Organizations in Crime Prevention and Criminal Justice in Vienna and New York”. Further it is interesting to recall that the International Association of Penal Law, the International Society for Social Defence and the International Penal and Penitentiary Foundation, following the organization of a preparatory colloquium for the Sixth Congress, held a meeting of their administrative boards in Vienna in Autumn 1981 in order to examine, from their own point of view as well as that of the Secretariat, modalities of assistance for the application of the Caracas Declaration and the various Congress recommendations.

43. In view of the almost unlimited needs of the international community, no effort is spared for establishing contacts and fostering collaboration with national or regional organs which could contribute to a joint effort in the social defence sector. This international conference on research in the field of crime prevention is an example of such collaboration.

The problem of co-operation

44. Nevertheless the problem exists – a problem which is intrinsic to all international co-operation – of a perfect co-ordination of the different sections and the necessity of close links within the framework of the same policy and technical orientation; this is, however, purely theoretical. In fact, the various components have a certain autonomy, although limited by the mandate and supervision of organs such as the General Assembly, the Commission for Social Affairs, ECOSOC and the Committee for Crime Prevention and Control, allowing for the indispensable initiative and vitality which carry with them at the same time difficulties of communication as well as points of contact the margins of which are not always sufficiently clear. On the other hand from its creation, pragmatic and spread over time, the system has inherited a sort of hierarchical uncertainty

aggravated by a number of circumstances. It can be mentioned here that UNSDRI, for instance, although belonging to the United Nations system is not included in the regular budget while the Crime Prevention and Criminal Justice Branch is included; the regional institutes on a strictly institutional level carry only the name of the UN, indicating a recognition of their rôle, but not their inclusion in the system *stricto sensu*.

45. A better cohesion of the different instruments of the UN in the field of social defence perhaps with a clear restructuring, re-defining the mandates, the powers and the respective rôles and relationships of the various units of this sector within the wider system of the UN, seem desirable after almost 20 years. In fact, this would be a relatively simple operation as the Crime Prevention and Criminal Justice Branch, UNSDRI, the regional institutes, and the Interregional Adviser, which in reality are the focal points of the system, each have their own physiognomy, their institutional mandates, which complement each other, at least on paper, without causing conflicts or loss of initiative and which should not negatively affect a combination of activities. On the other hand, the fact should not be overlooked that, without exception, all these units suffer from a chronic lack of adequate resources necessitating the undertaking of only essential and urgent actions. Moreover, in a cost-benefit analysis, the finances necessary to maintain the structure (personnel and general expenses) – which, in fact, cannot function below a certain level – could sometimes appear disproportionate with respect to the amount of the budget devoted to the operations.

46. From a structural point of view, also the maintenance and development of UNSDRI collaboration with other instruments of the United Nations not operating in the specific sector of social defence would seem to be most desirable; this refers, in particular, to those elements of the system more specifically oriented towards co-operation and development, and consequently to the Third World countries, such as UNDP, WHO, UNESCO, UNITAR and UNFDAC.

Conclusions

47. The utility of the international approach to the problems of crime prevention and treatment of offenders, and more generally

to social deviance and maladjustment, has been fully confirmed. The present structures actually render services to the Member States and could be improved in order to increase their co-operative faculties. There is also a demand, above all from the Third World countries, to benefit from the services of these structures and in particular from UNSDRI, which has without any doubt a unique rôle in the field of applied research.

48. Deterioration of the social situation, the multiple phenomena of deviance and criminality, are not plagues against which the international community is completely unarmed; but it is undeniable that their effects weigh heavily on the development of society and on the quality of life of man.

49. Intensification of co-ordinated action to remedy this situation must be carried out through close co-operation which is perhaps beyond the strength and the resources of the industrialized countries which are presently affected by a serious economic, social and sometimes political crisis; this is due to the fact that irreparable damage has been inflicted because of a belated awareness of the importance of the social phenomenon in the context of economic development. This certainly goes beyond the resources of the United Nations which, in this specific sector of its activities, has the duty on the one hand to extract the maximum from its structures and existing international resources, and on the other hand to mobilize all national, governmental and non-governmental forces capable of contributing to the prevention and control of social deviance, delinquency and criminality.

PART I
SCIENTIFIC CONTRIBUTIONS

1. THE EFFECT OF ISLAMIC EDUCATION ON CRIME PREVENTION

by Dr. Hassan Ibrahim Abd El-Al

The study of criminality as a social problem is of primary importance at the present time, due to its impact on societal structures and the related overall security, tranquility and stability.

It would appear that societies in general, regardless of their dissimilar life-styles, political orientations and social structures, suffer from the effect of criminality in one way or another and in different degrees. It further appears that all societies pay a very high price for criminality and its consequences, material or moral, towards which the authorities should make every effort for its prevention.

If it is difficult for us to estimate the cost of criminality on the material and national social welfare or on individual property, it is more difficult, perhaps impossible, to estimate the extent of the moral damage resulting from the phenomenon.

Criminality, feared by all, threatens societies; this may be a continuous fear or state of anxiety, spiritual fear and nervousness, instability, menacing the serenity of social life and its infrastructures, its security, its order.

Our modern culture participates, directly or indirectly, in multiplication of the criminality threat through means of communication, material publicity related to crime and the criminal, the impact of everyday mass-media with its adventure stories; it is also sad to say that some forms of mass-media assist in increasing the level of crime in one way and the development of new forms of criminality in another.

If it is possible to note the crime traces which are identified by the police authorities, it is much more difficult to note the damage caused by the "dark number", which predominate the criminal environment in society; for instance, those crimes termed "white-

collar”¹ and many other unreported criminal acts as the victim preferred to remain silent for one reason or another.

Therefore in studying crime as a social problem it is absolutely indispensable to know its causes and to propose solutions to combat it.

If there is a science and knowledge in examining the crime problem, directly or indirectly, we would like to study the involvement of Islamic education and the limit to which it can prevent crime, and this will be presented in the following text.

The rôle of Islamic education in studying the crime problem

The problem of crime does not only concern the law enforcement or governmental authorities but also has an impact on the social structure and on individuals. It is not only a prohibited behaviour which must be defeated through a sanction, payment of punitive damages or other measures². It can also be considered as a collection of acts prohibited by law, as a new concept viewing crime as a complicated social behavioural phenomenon with interwoven margins, some in contact with the law, other with social values, morals, beliefs, religious concepts and, in general, with the different cultural behaviours affecting society. Therefore, from the legal point of view crime is a behaviour prohibited by law, although this means we are looking at it from one angle only.

Crime is not only a problem of concern in the legal field or for the law enforcement authorities, but it should be confronted by all the sciences which could assist in its clarification from the different view-points. The participation of medicine, anthropology, human physical structure, sociology, psychology in an endeavour to discover the physical, spiritual and social causal factors of crime needs the direct involvement of education itself as it is an interaction between the individual and his environment. In this way, educa-

¹ Adnan Addouri, *The cause of crime and the nature of criminal conduct*. El Kuwait, 1972, pp. 31-32.

² Abud Assrag, *Science of criminality and punishment*. 1st edition, University of Kuwait, 1401 H., 1981 G., p. 34.

tion presents a global composition to increase human experiences forming the personality, in addition to which it is an active means towards behavioural changes and their actual effect on attitude, will and conscience³. Therefore it is necessary for the educationalists to participate in studying criminality which, although it may appear to be a legal concern, is a first-degree psychological, social and educational problem.

It is difficult to divide crime study among the different participating sciences although the educationalists maintain that education is more in contact with this than any other discipline, especially if we look on it as a social structure aimed at «developing juveniles both mentally and physically», to enable them to assimilate with their societies⁴, to obey their law and order. This law and order is of special value, and if we consider it from another angle it is an operation with the purpose of providing the individual with an essential profession thereby allowing him to take his place in society, giving him a professional training enabling him to earn his bread, and encouraging him to acquire further knowledge. In addition, he will learn to accept the values of society and to integrate in its cultural achievements and morals, developing a new symbolic social behaviour, all of which are aimed towards assimilation with our cultural frame⁵.

From the educational point of view crime is a phenomenon resulting from a reaction among members of society and their social environment as a whole, with which each individual has an association, a relationship, a life-style; some members of society, for one reason or another, are not in accordance with this and are unable to locate elsewhere in order to verify their personality, to abandon the societal norms, life-styles and laws, and they oppose this with hatred, therefore educational participation in studying crime is very important. This does not mean that education can remain isolated and alone to reveal the causal factors of this phenomenon or offer

³ Monir El-Morsi Sarhan, *Social education*, 2nd ed., Cairo, 1978 G., p. 90.

⁴ E. Durkheim, *Education and sociology* (translated), Free Press, New York, 1956, p. 70.

⁵ D.E.G. O'Connor, *An introduction to the philosophy of education*. (Translated by Dr. Mohammed Saif-Addin Fahmi) Cairo, 1972, pp. 18-19.

suggestions for its prevention without the participation of other sciences, or to present specific methods for treating juvenile delinquents, or alone to envisage preventive and reform policies. All this should be the combined effort of the disciplines, human and natural, although the involvement of education can not be denied.

If this is the rôle of education and its place in studying the crime problem, it differs in scope, function, programme and method according to the various societies and their cultures. From this point of view, Islamic education is more active in treating the problem of criminality: its involvement increases the education value already referred to, which is the means of forming the individual physically, mentally, socially and psychologically, corresponding to the nature in which Allah created him and in accordance with the Islamic doctrines and principles accepted by Allah Himself. These are directed towards human ability, development of capabilities and organization of energy in an operational frame removed from internal conflict and anxiety, imparting a feeling of security, stability and tranquility which result from satisfaction of all human necessities in a correct lawful way.

Islamic education involvement in criminology can be seen more clearly from its essential rôle in crime prevention, which means that its efforts are actual in dealing with the factors which impede the committing of crime more than the reform measures which should be taken after the crime has been committed.

Its first function is to educate the individual and assist his development in all its aspects with doctrines and texts in accordance with Islamic values to avoid the phenomenon of delinquency, which assumes the form of hatred of society and transgressions against the law. For this reason the rôle of Islamic education will be condensed in this paper by dealing with its contact with development and growth in the socialization process to which the juvenile should be submitted in line with the direct relation of the problem of criminality. There is no doubt that one of the main causes of criminality is that of poor interrelationship between the offender and society resulting from a developmental defect preventing his complete integration in society.

Indicating the causes of crime is extremely difficult, as it is a very complicated phenomenon with many different factors which vary

according to their origin. Some of these are personal relating to physical features, capacities and irregular attributes which form part of the personality, while others relate to the environment which is connected to the natural circumstances and the incorrect social location, as well as other factors relating to the general education of society which, in turn, are connected with the tendency towards wrongful behaviour ⁶.

Before speaking about the rôle of Islamic education in coping with the problem of criminality, we should have some knowledge of the endeavours of Muslim scientists towards explaining criminal behaviour and their attempts to identify its more pronounced causal factors. Their reports have manifested their concern regarding the effective factors and behaviour of the individual and, in view of the wideness of these, we will cite just a few examples.

Primary endeavours of Islamic education in explaining criminal behaviour

A. Geographical tendencies as an explanation for crime

Basically, these tendencies should be preceded by the supposition that the geographical environment has an effect on human activities and individual behaviour, that the cosmic forces (climate mountains, valleys, plains, rivers, seas) all have their effect on human behaviour in general. Therefore, the scientist has been interested in studying the relation between the geographical environment and behaviour with a special emphasis on studying the relation between the phenomenon of climate and crime. One of these researches, by a Belgian statistician, Adolf Kitterly, focussed on the individual and financial crimes in France. He maintained that individual crime increases in warmer climates, while financial crimes also increased in the cooler climates, and his study concluded with a law called "The crime law according to the climate" ⁷. Other studies also indicate the effect of the geographical environment on criminal behaviour.

⁶ Adnan Addouri, *op. cit.*, p. 61.

⁷ Adnan Addouri, *op. cit.*, p. 93.

Despite the fact that the philosopher Montesquieu maintained that he was the first to confirm, through various researches on sociology of law, the relation between geographical environment and human behaviour and its effect on the initiation of delinquency, the many indications of Muslim scientists in this connection can not be denied; Muslim scientists had referred to the impact of the geographical factor on the health of man, his mental state, reactions, morals, and especially his behaviour. In their writings they stated that birth-place and residence define – to a great extent – many features and characteristics, energy or laziness, civility or incivility.

The first Muslim scientists who noted these effects in character formation were Ikhwan El-Safa, Wa Khillan El-Wafa, some ten centuries ago. Under the title of “The effect of the natural environment on morals”, they referred to the different behaviours and activities of mountain-dwellers from those of forest-dwellers, those on the seashore or the river banks. They connected all these differences specifically to climatic factors and, further, they referred to the impact of the geographical environment on the energy and health of the individual in general, stating⁸:

“... Remember, my brother, the earth of the countries and villages differs, and the air (climate) changes according to the cardinal points, some are near the south, the north, the east or the west, or on mountain tips or at the bottom of the valley ... on the seashore or river banks, in the forests or jungles ... pasture-land ... sandy soil or rich soil, rocky, stony, sandy areas, or on the plains where the earth is so soft among rivers and trees, orchards, flower and vegetable gardens, and the climate in all of these varies according to the direction of the wind ... All this results in diversity of individual temperament, diversity in morals, behaviour, nature, colour, language, habits, thinking, attitudes, work capabilities and policy: all these vary and every country has its own specific type of individual ...”

Therefore, Ikhwan El-Safa declared that geographical factors play a major rôle in the life of nations and society, bearing responsibility for character formation, morals, opinions, habits. Climate and topography have their effect on the individual, and are the most important causes for diversity of character, features and actions. Some of these factors may lead to loss of natural balance or may sti-

⁸ *Letters of Ikhwan El-Safa*, Cairo, 1947 H., 1928 G., Vol. 1, pp. 232-233.

multate reactional or mental tendencies which are concealed but which emerge in a manifestation of unnatural behaviour. The geographical environment – in the opinion of Ikhwan El-Safa – outlines the path of the individual and at the same time defines his daily activities, affects his thinking, opinion, politics and organization, and both the notes and the statistics of the researchers have confirmed the reality of Ikhwan El-Safa's conclusions.

In the hot climates the rise in temperature affects the soul of the human being and he becomes aggressive with an irregular behavioural pattern. Thus, aggression, violence and suicide are predominant in hot climates as it weakens the ability of the nervous system to control reactions and tendencies⁹.

The brothers of El-Safa emphasize the effect of the climate on the behaviour and character as:

“ ... The proof of what we have said about the physique of these people from the south ... as their climate is very hot because the rays of the sun fall directly on these countries twice every year; these rays heat the air and the atmosphere is hot. Thus, the colour of their skin has been darkened and their hair has curled ... On the contrary, the people of the northern countries, where the sun is far from being directly overhead ... the air is cold and their skin is white ... Therefore, the people of opposite climatic countries in many cases differ in nature, morals ... ”

According to this it is not easy to assess behaviour and character in different countries and zones because of the effect of the geographical climate on the inhabitants and variations between one environment and another, which results in a differentiation in human nature.

Perhaps the notes of Ikhwan El-Safa on the geographical factor effect were a good indication to those who have recently opposed that which is known as natural law, which can not be altered, it is one law adopted for all people in all countries whether or not nature and geography differ.

Following Ikhwan El-Safa the famous scholar Ibn Khaldoun came, and he was even more specific on the effect of the geographical factor on the individual character; he has provided ample explana-

⁹ Ramses Behnam, *Criminality and punishment*. Alexandria, 1978, Vol. 1, p. 133.

tion on behavioural relations – including delinquent behaviour – in various geographical circumstances in what he called the more pronounced climates at some distance from the moderate zone¹⁰.

In his introduction Ibn Khaldoun refers to the effect of these factors especially on morals, features, and criminal tendencies. Of particular interest to us is the idea put forward by him regarding the connection between the geographical sectors and human behaviour in interrelationships, mentality, reactions and mobility, and the connection between behaviour and climate:

... “The human inhabitants of these zones are more temperate (well-proportioned) in their bodies, color, character qualities, and (general) conditions. They are found to be extremely moderate in their dwellings, clothing, foodstuffs, and crafts. They use houses that are well constructed of stone and embellished by craftsmanship. They rival each other in production of the very best tools and implements ...

... The inhabitants of the zones that are far from temperate, such as the first, second, sixth, and seventh zones, are also farther removed from being temperate in all their conditions. Their buildings are of clay and reeds. Their foodstuffs are durra and herbs. The fruits and seasonings of their countries are strange and inclined to be intemperate ...”

... “Now, Negroes live in the hot zone (of the earth). Heat dominates their temperament and formation. Therefore, they have in their spirits an amount of heat corresponding to that in their bodies and that of the zone in which they live. In comparison with the spirits of the inhabitants of the fourth zone, theirs are hotter and, consequently, more expanded. As a result, they are more quickly moved to joy and gladness, and they are merrier. Excitability is the direct consequence ...”

Perhaps we may not agree with Ibn Khaldoun's theory regarding morals and character and his explanation as to the causes, but it should be noted that he connected the climate with behaviour, adding that unreasonable behaviour was evident in hot zones.

Climate has its effect on the personal psychology, perhaps leading to a relationship between the individual and the crime phenomenon, and it is astonishing that an echo of the opinions of Ibn Khaldoun exist in the studies of Lambroso, which agree in one aspect: Lambroso reached the conclusion that aggressive criminality notably in-

¹⁰ Ibn Khaldoun (Abdul Rahman Ben Mohammed). (Translated). pp. 167-168.

creased during the hot weather, and Ferri stated in his book, "Science of criminal sociology", that some natural conditions, such as the type of the land, agriculture, climate, the seasons, level of temperature, all have an affect on criminal behaviour. These conclusions have been verified by Dexter's geographical studies in New York and Denver where he found that the number of arrests for various offences increased notably during the warm season, the high pressure atmosphere and the low level of humidity in both cities¹¹.

It is worth noting that Ibn Khaldoun reached the conclusion that human nature alters in transferring from one geographical environment to another, as adaptation with the new surroundings has an affect on man¹².

Similarly Ibn Khaldoun referred to "the influence of the air (climate) upon human character" noting that the fertility or barrenness of a zone affected the behaviour both correctly and incorrectly, directly and indirectly, and that even food has an effect on morals, saying:

"... In spite of this, the desert people who lack grain and seasonings are found to be healthier in body and better in character than the hill people who have plenty of everything. Their complexions are clearer, their bodies cleaner, their figures more perfect and better, their characters less intemperate, and their minds keener as far as knowledge and perception are concerned ... »

The matter of the effect of nutrition on human morals, character and behaviour is still under research; from the study of Professor Di Tullio in the Research Centre in Rome it emerged that many juvenile delinquents suffer from malnutrition; he re-educated a group of these placing them under supervision for a period where they were ensured good nutrition and this resulted in a moral and physical improvement, they became calm and respectful¹³.

An indication of the effect of nutrition on the growth of the body and the soul has been concluded by Ibn Khaldoun verifying its relation with the crime phenomenon. Through the developmental process people started using previously unknown commodities such

¹¹ Adnan Addouri, *op. cit.*, pp. 93-94.

¹² Ibn Khaldoun (Abdul Rahman Ben Mohammed), *op. cit.*, p. 177.

¹³ Ramses Behnam, *op. cit.*, p. 135.

as tobacco, coffee and alcohol, and these had a particular effect on the malfunctioning of the entire physical system. It has been quite clearly shown that vegetarians are noted for their calmness and refinement while, on the contrary, meat-consumers are noted for their harshness and violent tendencies¹⁴.

There is nothing more specific regarding the effect of the geographical environment on behaviour and morals than the saying of Ibn Khaldoun: "following the traces in the countries we found some effect of the natural factors in the characters of the people".

Despite the extent of the geographical factors in explaining the causes of crime and their effect on character and behaviour and our pride in the anticipation of Ikhwan El-Safa and Ibn Khaldoun in drawing attention to this subject, it is necessary to say that this could not provide a full scientific interpretation of the causes of criminality. In reality, the view which specifies human behaviour on the basis of factors emerging from the geographical environment, climatic factors, factors of zone, are not completely accurate for many reasons.

From the academic point of view this is defective because it considers one part of the complete environment, as if it was detached enough to be the important factor in specifying the behaviour, instead of looking at it in the manner in which it is interwoven with other factors. However, from the experimental point of view, this is inadequate as the geographical environment has its definite effect on modification of behaviour and social structure, although the people of Equatorial Africa are not similar to those of America in spite of the equality of the geographical environment¹⁵.

This does not mean that geographical location is a cause or all the causes of crime.

Muslim scholars tended to explain the causes of crime apart from the geographical element, which could be called the "anthropological tendency", though the remarks of these scholars in this respect are an introduction to anthropological studies.

¹⁴ Ramses Behnam, *op. cit.*, p. 135.

¹⁵ Mohammed Arif, *Crime and society*, 1st Ed., Cairo, 1975, pp. 184-185.

B. *Anthropological tendencies as an explanation of causes of crime*

This tendency is based on the supposition that there is a relation between the bodily characteristics, features and character of an individual and his behaviour, and that there is an irregular physical characteristic specific to juvenile delinquents. This tendency refers back to ancient history when people liked to study their fellow-men, endeavouring to uncover their secrets and that which was hidden in their hearts, noting the features and the body. It has been said that this was practiced by Socrates himself, his features indicated his cruelty and his alcoholic tendencies, but he said that these were his natural attributes and that he knew how to control and overcome them. Aristotles also drew attention to the fact that in every individual there are physical elements clearly indicating the character, tendencies and psychology, and that further knowledge relating to these could be obtained through studying the features¹⁶. These elements are easily recognized and were known to the Arabs in the olden days as "guise, custom, physiognomy". According to this opinion, the offender is different from other men in some features or characteristics, and Lambroso considered that these elements differ from one situation to another, in line with the criminal tendencies:

The offender with a tendency towards sexual crimes is presumed to have long ears, a large flattened nose, close-set eyes, a long chin, a flat brain-case; the offender with a tendency towards theft is usually very energetic, with facial, hand and eye movements, is presumed to have heavy low eyebrows, a large nose and little facial and body hair ...¹⁷.

The Muslim scholars considered it interesting to study the relation between the physical characteristics and behaviour, one of whom was even more intrigued than others – a jurist and historian, Abdul Farag Ben El-Giosi, one of the academicians of the 6th century H. He tried to understand human nature from the composition of the body, the brain, form of the eyes, the neck, stature and body weight. These physiological elements provided this scholar with definitions as to mental, psychological and moral attributes: for instance, these

¹⁶ Mohammed Arif, *op. cit.*, p. 195.

¹⁷ Jealal Tharwat, *Criminal phenomena*. Alexandria, 1979, p. 74.

could define a limited mentality or negative aspects of the character or could indicate some weakness in the individual when confronted with temptation to commit an offence.

Ibn El-Giosi was particularly interested in the shape of the head, the state of the brain, which afterwards was termed "studying the brain" or "the science of studying the head", presuming that man's mental capacity is located in the brain and that the head is its container; it is natural that this container should reveal the contents, and behaviour – in his opinion – stems from mental power. He refers to this in his book "The evils of pursuing one's desires" and quotes El-Fadl Ben Ziead: "Ahmed, Allah is pleased with him, that its place (the mental power) and the brain, and these are the chosen friends of Abu Hannifah, God be pleased with him"¹⁸.

Regarding his opinion on studying the brain he says: "When the form of the head is irregular this indicates the poor state of the brain; similarly if the head is small; if the head is too large it does not indicate that the brain is perfect as this may not relate to its state; if the neck is thick it indicates the force of the overflowing of the brain; if the neck is short and thin it is the contrary"¹⁹.

In spite of the fact that science did not reach a definition on the relation between criminality and deformation of the body, often noted in a criminal's frame, but regarding the state of the head, as indicated by Ibn El-Giosi, research showed the presence of a variety of defects in criminals: perhaps too large or too small a brain, differing from normality, or inclined towards one side or the other, unnaturally raised, circular in shape, or approximately triangular, the back higher than the front. All these irregularities relate to malformations acquired prior to birth which have left their effects²⁰.

Ibn El-Giosi was also interested in studying the face and facial expressions: the distorted face indicates – according to Ibn El-Giosi – a bad nature and character. He concentrated on the face and the form of the eyes because these are a mirror reflecting that which the individual wishes to conceal. In addition, knowledge can be obtained from the shape of the ear, mouth and lips; he also said that light

¹⁸ Ibn El-Giosi, Abdul Farag, Abdul Rahman Ali. 1962, p. 6.

¹⁹ Ibn El-Giosi, *op. cit.*, Alexandria, 1983, p. 27.

²⁰ Ramses Behnam, *op. cit.*, p. 13.

gray eyes with a limited reflection, but without yellow or red, indicate a good nature²¹. If the eye is large and mobile it indicates a lazy individual, unwilling to work, irresponsible and fond of women; blue eyes with some yellow, like saffran, indicate a very bad character; small deep eyes indicate craftiness; protruding eyes with thick eyelashes similar to those of a cow, indicate irresponsibility; rapidly moving and sharp eyes also indicate cunningness, trickery, tendency to thieving²². The individual with thick lips is irresponsible and has a heavy nature; large ears indicate ignorance; an over-abundance of hard flesh means that comprehension and sensitivity are limited. The face of the criminal is always distorted, with a narrow or small forehead, dissimilar jaws, irregularities in the eyes, nose, and particularly the ears and teeth. In the majority of cases, but not all, the eyes are hard, dry, cold, although the criminal may also be handsome, with an innocent appearance, transmitting tranquility and his dangerous personality remains concealed²³.

Those who wish to study a criminal's personality by means of an examination of his physical condition in order to identify the motive for his behaviour, should pay particular attention to body hair as there are often defects indicating an irregular health condition related, more or less, to his criminal tendency. Long long ago Ibn El-Giosi drew attention to the study of the hair, its thickness and distribution over the body, as an indication of the mental and moral condition, saying: "hair on the shoulder and neck indicates irresponsibility; baldness and hair on the chest and abdomen indicates a reduced level of intelligence"²⁴. Other body characteristics, form and features, also indicate a man's psychological condition; this may be accepted in view of the fact that personality is a combination of body and soul – it is the result of a reaction and is a mixture of corporal and psychological factors, and the effect of the body on the soul or on the spirit can not be denied. It has been scientifically proved that mental capacity depends on body structure and physical

²¹ Ibn El-Giosi, *op. cit.*, p. 13.

²² Ibn El-Giosi, *op. cit.*, pp. 28-29.

²³ Ramses Behnam, *op. cit.*, p. 70.

²⁴ Ibn El-Giosi, *op. cit.*, p. 29.

condition in general, as man's life is but a soul frozen within the body which is evaporated in the soul itself.

This theory was confirmed at the International Conference on Criminology, held in Rome in October 1938, which emphasized that in the study of criminality attention should equally be paid to the body and to the soul²⁵.

The effect of the physical condition of the individual, not only mentally but in personality, has been scientifically proved; the body is a container for the organs from which they can not be isolated (and the physical and biological construction is the base on which personality is formed as it is the base of its various developments)²⁶.

The studies of Ibn El-Giosi relating body condition, construction and features to behaviour has served as an introduction to modern natural and anthropological sciences. Examination of an individual in order to predict his criminal tendencies may be achieved through a study of his visual aspect to discover his tendencies in explanation of his behaviour. The studies of the scientists Della Porta and de la Chambre Cortes are the most renowned works in the field of visual criminal examination as they indicate the relation between construction, such as the face, head, stature, and the natural criminal behaviour²⁷. Following these, at the end of the 18th century, the scientist Joseph Gall presented his supposition that character including talents and complexes, can be revealed through a specific study of the skull formation and circumference²⁸. However, faced with modern psychological discoveries, this supposition held for a limited period only: it had been subject to criticism, because the definition of the features of a criminal with material or organic measures has been denied by science and the conclusion that the crime phenomenon, which is composed of different margins and causes, such as form, features and nature, is an incorrect incidental conclusion²⁹.

²⁵ Ramses Behnam, *op. cit.*, p. 69.

²⁶ Curtis Jack, *Social psychology*. McGraw Hill Book Co. Inc., New York, 1960, p. 157.

²⁷ Adnan Addouri, *op. cit.*, p. 117.

²⁸ Mohammed Abdul Aziz Id., *Educational psychology*, 2nd Ed., Kuwait, 1975, p. 116.

²⁹ Jealal Tharwat, *op. cit.*, p. 79.

In spite of the criticisms addressed to this tendency, and in spite of the efforts of Sheikh Abdul Farag Ben El-Giosi and others, who studied bodily characteristics, mental reactions, and morals, including criminal attributes, these did not lead to direct results but, without doubt, they played a major rôle in the history of mental experiments and served as an introduction to the measuring of mental ability.

C. *The biological tendency in explaining the causes of crime*

The biologists who follow the theory that character is transmitted through heredity: as physical characteristics may be inherited so also can morals and nature. Criminologists endeavoured to benefit from the inheritance theory in explaining criminal behaviour and trying to discover the causes for committing crime, and therefore they present the supposition of "a criminal character inheritance". They tried to prove this in many ways, the most important being that of comparing the criminal with primitive man, studying the factors and making statistical comparisons between crimes of the father and those of the son, studying twins, and applying Mendel's law of criminal behaviour ³⁰.

Many proverbs exist in Arab culture relating to the fact that inheritance is one of the most important elements of transmittal of morals and nature; some of these proverbs have been narrated by El-Jahez - "He who is similar to his father is not the oppressor", "The son is the exact image of his father", "The cub is obviously the offspring of that lion", "The cat reproduces a cat, the snake reproduces a snake" ³¹.

Heredity means all the elements existing at the beginning of life ³² constituting those distinctive or normal capabilities within the individual which, in order to become active, must respond to the internal or external factors.

³⁰ Abud Assrag, *op. cit.*, pp. 232-233.

³¹ Ibn El-Giosi (Abboud El-Sarraj), Review, Ministry of Culture and Art, Iraq. Vol. 2, No. 4, 1978, p. 195.

³² Hamed Abdussalam Zaharan, *Development of psychology*, 4th Ed., Cairo, 1977, p. 135.

Inheritance plays a major rôle in specifying character: the human scientists and those competent in the science of heredity maintain that the cell which produces life contains 24 types of chromosomes (some from the father and some from the mother) and every two of these is divided into a number of genes which distinguish one individual from another as regards stature, hair, skin and eye colour, level of intelligence and sensitivity³³. Both the psychologists and the anthropologists in studying the behaviour and the manner of its definition through heredity³⁴, the factor of inheritance and its relation with behaviour is one of the major problems existing in the actual study of human beings³⁵. Some of the ancient philosophers recognized the rôle of inheritance in specifying the nature of the individual, his mores, behaviour, and have insisted on the theory of the phenomenon of sin, and the inheritance of evil and criminal tendencies. Then Lombroso and the anthropological school followers arrived subjecting many suppositions in the field of heredity to objective studies and scientific research, for which the theory of the criminal with crime in his blood was presented. Many of the supporters of this school in Europe and in America have followed Lombroso's theory, and thus crime is regarded as a biological phenomenon going back to inheritance or to an inheritance defect, while others maintained that a natural capacity for committing crime can be inherited³⁶.

The inheritance of behaviour, whether good or bad, can be concluded from the Islamic texts, just the same as the inheritance of physical characteristics. The genes which produce some of these, such as eye colour, colour blindness, skin and hair colour, blood type, features and body shape³⁷ may also produce low mental or spiritual attributes, or may transmit a good or a bad character.

³³ Ahmed Faek and Mahmoud Abdul Khader, *Introduction to common psychology*. Cairo, Undated, p. 41.

³⁴ Mustapha Fahmi, *Psychology, its origin and educational application*. Cairo, 1975, p. 63.

³⁵ A. North., *New horizons in psychology* (Translated by Dr. Fouad Abu Hatab). Cairo, 1972, pp. 211-238.

³⁶ Adnan Addouri, *op. cit.*, p. 156.

³⁷ Hamed Zaharan, *op. cit.*, p. 37.

Some of the texts have drawn attention to the subject of behaviour inheritance, as in this quotation from the Holy Qur'an:

"God did choose
Adam and Noah, the family
Of Abraham, and the family
Of 'Imran above all people".
"Offspring, one of the other ..." ³⁸

Also the saying of the Prophet Mohammed (Peace be upon Him):

"God chose Kinana from the descendants of Ishmael,
He chose Quraish from Kinana,
From Quraish He chose B. Hashim,
And He chose me from the B. Hashim".

This has been interpreted (the capability) as being mental and spiritual and the religious and moral level, which in the Islamic religion is called "Taqua" or "belief and trustworthiness":

"According to the Prophet's (Peace be upon Him) advice, If somebody whose faith and morals give you satisfaction comes to you, It is best to accept his proposal, otherwise it will lead to temptation".

Perhaps the saying of the Prophet, as narrated by Imam Bukhari "... affection may be inherited ..." indicates the inheritance of characteristics as well as moral and mental attributes, and the saying of the Khalifah Omar Ben El-Khattab (God bless Him) is similar: "If a child remains in the womb of a stupid woman for nine months how can it avoid being stupid" ³⁹.

These and many other texts have drawn attention to the importance of the heredity factor in transmitting behaviour from a parent to children whether they have good or evil characters, while these also draw attention to the possibility of a connection between crime and inheritance. The followers of this theory (the vital theory) believe that the major cause of crime can be attributed to the presence

³⁸ *Holy Qur'an*, Chapter 3, Verses 34 and 35.

³⁹ Abbas Mahmoud El-Akkad, Ministry of Instruction and Education, 1969, p. 290.

of distinct characteristics in the individual at birth and his tendencies and aggressive attitudes are inherited from parents and ancestors.

The anthropologists have proved their theory of criminal inheritance in various examples and testimonies indicating that juvenile delinquents are produced by a family the majority of whose members were beyond the law⁴⁰. Some of these examples resulted from researches and statistics on the topic of inheritance of criminal tendencies: one of these, presented by Dugdale, relate to a family descending from one, Maxjuke, born in 1720, who was an irresponsible alcoholic, married to Ada Yalkes, born in 1740, who was a thief. On researching seven generations of this family it emerged that they had produced 76 criminals, 142 vagrants, 128 prostitutes, 91 illegitimate children, 131 insane, ... It should be noted that this family had cost the state an enormous amount of money for trials, judges, imprisonment, hospitalization, ...⁴¹. The results of many similar studies confirm the possibility of explaining crime on the definite basis of the inheritance factor, and that this plays a major rôle in specifying the antisocial behaviour of the individual and in the biologically low level and mental condition tending towards delinquent behaviour.

But it is truly necessary to mention that those who interpret crime on the basis of transmittal of bad characters from one generation to another did not explain how this leads to crime. Despite disagreement on the transmittal of a behavioural pattern or inheritance of the capability for crime, the educational and societal factors can not be overlooked. We do not wish to evaluate the rôle of inheritance regarding crime by stating that the criminal is obliged to be a criminal, that his criminality is inevitable, in spite of the fact that he had been correctly educated and had a good family environment, but attention should be drawn to a very important factor: it is not indispensable for the son of a criminal to be a criminal but it is easier for him than for many others to be so, as he may not inherit criminality but he will inherit the tendency towards it. This is especially the case if the inheritor becomes deeply involved in

⁴⁰ Mohammed Ali Hassan, Cairo, 1970, p. 36.

⁴¹ Ramses Behnam, *op. cit.*, p. 109.

criminal ways and the inherited tendency will need a correct education and environment to limit or modify it; therefore he may go through life without committing a crime as tendency towards the act is not necessarily the obligation of committing it⁴².

In this connection Islamic education stresses the importance of the environment factor in correcting behaviour and educating the individual – that is to say, the considerable effect of the environment on individual behaviour. The Holy Qur'an has referred to the effect of the social environment in speaking about the Virgin Mary (Peace be upon Her) as to why she committed an act, which was considered contrary to the morals of her environment and the good character of her family. Allah says in the Holy Qur'an:

“... They said: «O Mary!
Truly an amazing thing
Hast thou brought»...
«O sister of Aaron».
Thy father was not
A man of evil, nor thy
Mother a woman unchaste!”⁴³.

Ibn Katheer, in interpreting this verse says “as you are from a good family known for its piety, believers, content with their lot, how should this happen to you”⁴⁴.

Regarding the effect of the environment, the Prophet Mohamed (Peace be upon Him) said):

“A good and a bad companion are like one
Who carries musk and one who blows the bellows.
The one who carries musk may give you some,
Or you may buy some from him, or you may feel a fragrance from him;
But the one who blows the bellows may burn your clothing,
Or you may feel a bad smell from him”⁴⁵.

Through interrelationships and friendships, man can evaluate and measure his various acts, while at the same time these should serve as a guide for his behaviour; friendship affects individual habits and

⁴² Ramses Behnam, *op. cit.*, pp. 103–104.

⁴³ *Holy Qur'an*, Chapter 19, Verses 27 and 28.

⁴⁴ Ibn Katheer, *Interpretation of the Holy Qur'an*, Syria, 1980, Vol. 3, p. 118.

⁴⁵ *El Imam Abu Dawd*, Vol. 4, p. 358.

can alter or cancel these, or can provide the possibility of acquiring new habits. On the effect of the environment, Ikhwan El-Safa⁴⁶ says:

“... If children grow up in the company of courageous and soldierly people they (the children) will be as they (the people) are, and if they grow up with women or homosexuals at least some of them will be as they are; the morals and characters which children must adopt are those of parents, brothers, sisters, friends, teachers, professors, or those people with whom they mix...”

Therefore environmental and educational factors can not be denied; and regarding the inheritance factor alone, if this provides the individual with possibilities and capabilities, education and environment both play a definite rôle in deciding whether or not these can be activated and both specify the level of their utilization. In this connection Imam El-Ghazali says:

“... If the child is accustomed to the good he will grow up good and will be happy here and in the hereafter ... but if he is accustomed to the bad and being abandoned as an animal he will be unhappy and lost...”⁴⁷

It is clear that when Imam El-Ghazali said “to be accustomed to the good or bad” he specified that habits – which are acquired through reaction with environment and education – are both important and basic for the definition of personality.

These are some of the tendencies explained by Muslim scholars as being motives for criminal behaviour in an endeavour to understand the causes of crime: it is necessary to mention this prior to referring to the rôle of Islamic education in treating the crime problem and identifying preventive measures. As already mentioned in referring to the effective rôle of Islamic education in crime prevention, this is more specific than that of treatment after the committing of a crime, and this will be discussed in the next section.

The rôle of Islamic education in crime prevention

It would appear that there is more than one cause contributing to crime, some of which relate to elements, characteristics and at-

⁴⁶ Ikhwan El-Safa, *op. cit.*

⁴⁷ Imam El-Ghazali. Cairo. Undated, Vol. 3, p. 72.

tributes of the individual while others relate to the effects of a bad environment; this environment may be natural or social or psychological, or could result from reactions, mental problems and incorrect experience to which the individual had been exposed.

It is difficult, perhaps impossible, to maintain that only one cause exists in explanation of criminal behaviour: neither inheritance alone, as the followers of the biological inevitability theory presume to be responsible for human behaviour in general and criminal behaviour in particular, nor the environment alone, as claimed by the followers of the cultural social inevitability theory. This, in fact, is the problem of all mankind, as scientists have noted the individual differences in attributes, characteristics and physical, mental and psychological reactions, and crime has provided a fertile field for discussions on the effects of inheritance and environment and the levels of these. As regards the differences in nature of criminal behaviour, these result from inheritance/environment reaction and it is difficult to differentiate between these effects on the nature of behaviour.

Both inheritance and environment initiate formation of the criminal personality from the very beginning of life and they continue together until the end of life. The individual is provided with a natural inheritance capable of activity as from birth and the ability to practice this results from environmental stimulation.

We must not devote all our attention to the effect of the inheritance factor alone and neglect the environmental effects in modifying behaviour; neither can we ignore the effect of traditional social education in forming concordant or discordant habits, without considering the value of the cultural and social factors in rearing a child correctly, allowing for adaptability through a socialization preparation by imparting a correct education; this education should start with that of the family life which forms the base from which the child faces life, its anxiety, confusion, psychological adaptation and correct development.

Therefore, we refer to Islamic education in relation to the crime problem, or more specifically crime prevention, and the inheritance factor which forms the criminal and the transmittal of poor characteristics and low attributes; we also refer to the psychological and physical defects which prepare an individual for criminality or help him in becoming a criminal, and the environment factor which leads

to delinquency which is the result of neglecting his early education, studying and learning.

Crime, and even the actual individual who possesses criminal capabilities, is the fruit of an incorrect educational approach, a delinquent behaviour is that which, to a great extent, is learned from others. Thus, it is necessary to consider education at an early stage, preparing the best conditions in order to ensure a correct social preparation leading to a proper development. The rôle of Islamic education in crime prevention is as follows:

1. *The concern of Islamic education in the basic formation of the individual*

The physical and psychological formation of every individual is of importance in being correct or incorrect. Although man may not inherit criminality or its attributes or defects, he may be born with some characteristics which hinder his social insertion and agreement with himself. Islamic education makes a particular effort to protect man and to prevent his inherited lawlessness or his physical and psychological defects; some of the most important of these are:

i) *Healthy physical and psychological preparation for a couple*

There are some illnesses which are diffused and multiplied through inheritance – for instance, stupidity, insanity, nervous diseases, alcoholism and body defects such as blindness, deafness⁴⁸; this has prompted some countries to create laws authorizing sterilization of criminal afflicted with these types of disease⁴⁹.

Islam has insisted on the fact that parents should be free from defects which are prone to transmittal, as can be noted in the following verse of the Holy Qur'an:

“Marry those among you
Who are single, or

⁴⁸ Ramses Behnam, *op. cit.*, p. 204.

⁴⁹ In 1907 and 1909, a law was passed in the US obliging sterilization of criminals, the mentally ill and psychologically confused; this was followed in 1933 by Canada, Switzerland, Denmark, Sweden, Finland and Germany. A new law was passed in 1969 in Germany concerning these measures.

The virtuous ones among
Your slaves, male or female: ...”⁵⁰

It is very clear that care should be taken regarding safety and goodness in their general meaning incorporating the physical, mental, psychological and social aspects.

From this it can be noted that the Islamic doctrine has permitted the betrothed to look at his future wife to ensure her acceptability. The Prophet (Peace be upon Him) said to El-Moghira Ibn Shau-bah, who was betrothed:

“... Then look at her,
For it is better that there should be love between you”.

Nothing is clearer than the Hadith of the Prophet (Peace be upon Him) as narrated by Abu Murairah:

“Then look at her, for there is something in the eyes of the Ansar”.

Omar Ben El-Khattab (May God bless Him) said: “Present the girl who has not yet reached womanhood maybe a cousin will desire her”.

The Islamic doctrine does not limit the right to males only to see the betrothed, females also have the right to see their future husbands.

All these and many other texts have allowed educationalists to conclude that Islam welfare for the safety and health of the couple is to allow them to produce perfect children free from defects which could hinder their future insertion in society.

Ibn El-Jazzar El-Kairawani, one of the scientists of the first H. century, said: “What must be provided by the woman when we ask her to bear a child – the first is the physical means of her body, the second is psychological and intelligence from her soul, which is her first gift for the child and forms the base for his education”.

Despite the existence of an effective barrier – created by the strength of Allah – protecting the unborn child from viruses and germs, children are sometimes born suffering from illnesses transmit-

⁵⁰ *Holy Qur'an*, Chapter 24, Verse 32.

ted by the mother; Ibn El Jazzar El-Kairawani noted this and imposed conditions to ensure the health of the mother.

ii) *Observation of the age factor*

The age of the parents has an important effect on the abilities and disabilities of a child. It has been proved that the child is affected by the age of the parents: children of over-young parents differ from those of parents who have reached a certain age. Researches confirm that the percentage of mentally ill children increases in accordance with the advanced years of the mother, especially after 45. It is difficult for the mentally deficient to be socially assimilated and integrated in society.

The views of Abi El-Hassan El-Bassri El-Mawardi provide a good definition of the perfect age to produce healthy good-living children, free from defects which would hinder social integration. He states that the best children, both physically and morally, are those of a mother aged between 20 and 30 and a father between 30 and 50.

El-Mawardi's opinion supports modern studies, and results have concluded that mothers under 20 and above 35 may produce children mentally and physically below average⁵¹.

Abdul Farag El-Giosi stated that the children of a young couple should have better health and physique than those of an older couple: he said "If the parents are young this will have an effect on the child, he will be stronger than others"⁵². The Prophet (Peace be upon Him) encouraged the youths to marry a virgin, as the majority of these are younger than those who had previously been married. Jaber Bin Abdullah said: "I have married; the Prophet (Peace be upon Him) asked me to whom; I said I married a woman who had previously been married; the Prophet (Peace be upon Him) said:

"Why did you not marry a virgin
With whom you could sport
And who could sport with you?"⁵³

⁵¹ John Connor, Paul Moson, Jerome Keegan, *Psychology of the child*. Cairo, 1970, pp. 94-95.

⁵² Abdul Farag El-Giosi, *op. cit.*, undated, Cairo, p. 32.

⁵³ Imam El-Bukhari, *op. cit.*, 1936, Vol. 3, p. 171.

Commenting on this Hadith Imam El-Nawawi said: "It is preferable to marry a virgin".

Omar Ben El-Khattab (God bless Him) said that a virgin produces healthier children because she can transmit her health and strength. Asem Ben Abi El-Nujud narrated that Omar Ben El-Khattab (God bless Him) said: "Look for the virgin because her muscles are stronger for child-birth" ⁵⁴.

Nothing can indicate the age factor better than the saying of Omar El-Khattab (God bless Him) as narrated by Abu El-Mijashie El-Asdi: "O people, be aware of God. Every man should search for his matching woman and every woman must look for her matching man" ⁵⁵.

iii) *Warning on the danger of alcoholism and drugs on the unborn child*

Islam has prohibited alcohol-consumption and has referred to it as the greatest sin of all. In emphasizing the illicitness of alcohol, Allah says in the Holy Qur'an:

"O ye who believe!
Make not unlawful
The good things which God
Hath made lawful for you,
But commit no excess:
For God loveth not
Those given to excess." ⁵⁶

El-Baghawi in his book interpreting the Sunnah narrated:

"Ibn-Wa'ala El-Masri said that he asked Abdullah Ben Abbas what should be extracted from grapes and he replied: A man brought a jug of wine to the Prophet as a gift: The Prophet (Peace be upon Him) said - You know that Allah has prohibited wine-drinking. A man nearby whispered to him and the Prophet asked what he had whispered; he replied: I ordered him to sell the wine and the Prophet responded that Allah who had prohibited consumption also prohibited selling the wine" ⁵⁷.

⁵⁴ The treasure of the worker, Vol. 16, p. 498.

⁵⁵ *Op. cit.*, p. 499.

⁵⁶ *Holy Qur'an*, Chapter 5, Verse 90.

⁵⁷ Imam El-Baghawi, *Interpretation of the Sunnah*. Beirut, 1974, Vol. 8, p. 31.

Prohibition also applies to drugs such as cocaine, morphine, but notwithstanding the bodily damage caused by alcohol, our concern here is its effect on the unborn, physically and mentally and its hindrance to a normal development. Alcohol-consumption, which results in chemical alterations in the blood jeopardize a child's development and researches have indicated that alcohol consumption and heavy smoking on the part of the pregnant woman has perverse effects on the child⁵⁸. In a survey carried out on 800 juvenile delinquents it emerged that they had been conceived at a time when much alcohol had been consumed – Christmas, New Year, Carnival.

The Germans have recognized the bad effect of alcohol on the physical and psychological health of the unborn child: to use their diffused expression, "The son of Saturday", the child who was conceived on Saturday, which in Germany is the day of pleasure⁵⁹. This refers to the effect of alcohol and drugs on the unborn child; in addition, an environment of drugs and alcohol could have a negative effect on his morals and values.

Similar to this is obviously the factor which has an effect on the characteristics of the child "the couple, or one of them, at the time of conception, was in a physical and psychological tired condition"⁶⁰.

Delinquency is often due to the fact that conception occurred during or following a war when anxiety, confusion and fatigue reigns, with a high consumption of alcohol: all of these elements have bad effects on the unborn child⁶¹. Not only the conception conditions have an effect, but also the factors which follow this up to the time of birth; this refers to the pregnant mother's state, her attitude towards the child and the care and attention she receives.

iv) *The psychological state of the mother during pregnancy*

The psychological state of the mother affects the development of the unborn child and consequently his mental psychological and physical capabilities: "Fear, anger, nervousness, anxiety, all these stimu-

⁵⁸ Hamed Zaharan, *op. cit.*, p. 88.

⁵⁹ Ramses Behnam, *op. cit.*, p. 112.

⁶⁰ *Op. cit.*, p. 111.

⁶¹ *Op. cit.*, p. 112.

late the nervous system of the mother and will affect her psychological condition, resulting in glandular disturbances and blood changes which will have an impact on the unborn child”⁶².

Islam paid considerable attention to the stability of the Muslim family, its happiness and good relations, taking good care of the mother and constituting the family unit on the basis of love, tranquility and affection. In such an environment fear, anger and anxiety will be excluded and tranquility will be transmitted to the unborn child, ensuring his freedom from defects or deformations. Regarding the mother’s psychological state the words of Allah should be noted:

“... And women shall have rights
Similar to the rights ...»⁶³

The Hadith of the Prophet (Peace be upon Him) should also be noted:

“Act kindly toward women,
For they were created from a rib
And the most crooked part of a rib is its top.
If you attempt to straighten it you will break it,
And if you leave it alone it will remain crooked;
So act kindly towards women”⁶⁴.

Also the saying of Allah in the Holy Qur’an:

“... On the contrary live with them
On a footing of kindness and equity.
If ye take a dislike to them
It may be that ye dislike
A thing, and God brings about
Through it a great deal of good”⁶⁵.

There is nothing clearer regarding taking care of the psychological condition of the pregnant mother than the saying of Ave El-Darda’a to his wife: “If you see me angry try to calm me and if I see you angry I will calm you, otherwise we can not continue”⁶⁶.

⁶² Hamed Zaharan, *op. cit.*, p. 88.

⁶³ *Holy Qur’an*, Chapter 2, Verse 228,

⁶⁴ *Imam Muslim*, Vol. 1, p. 625.

⁶⁵ *Holy Qur’an*, Chapter 4, Verse 19.

⁶⁶ Sayed Sabek. Cairo, 1972, Vol. 2, p. 199.

Psychological disturbance of the pregnant woman is echoed in the pulse, respiration, blood stream, all of which affect the unborn child. In many cases a woman's forceful reaction causes an abortion or premature birth, and, even if the results are not as serious, at the minimum psychological body alterations can result which will harm the unborn child and may change his life in the future⁶⁷.

In the light of this we can realize the attention paid by Islam to the fact that affection, graciousness, tranquility, stability, prevail in the life of the couple, and these are signs of Allah:

“And among His Signs
Is this, that He created
For you mates from among
Yourselves, that ye may
Dwell in tranquillity with them,
And He has put love
And mercy between your (hearts):
Verily in that are Signs
For those who reflect.”⁶⁸

There is no purpose in marriage if not as a refuge to shelter both husband and wife in tranquillity to forget the heavy burden of life and its storms.⁶⁹

v) *The attitude of the mother towards her pregnancy*

The attitude of a woman towards pregnancy relates to her psychological state which is reflected in her reactions during this period. This also affects the development of the child and it has been observed that the woman who dislikes her pregnancy may be more prone to reactional confusion and is often subject to health disturbances – all of which leads to disagreement and conflict between the couple. The symptoms of psychological and physical disturbances⁷⁰ have an effect (as we have previously mentioned) on the health of the unborn child and this is more obvious in an illegitimate pregnancy.

⁶⁷ Ramses Behnam, *op. cit.*, p. 113.

⁶⁸ *Holy Qur'an*, Chapter 30, Verse 21.

⁶⁹ Alais Mahmud El-Akkad, *The verity of Islam*. 3rd d., Cairo, 1966, pp. 171-172.

⁷⁰ Hamed Zaharan, *op. cit.*, pp. 88-89.

Islam is much concerned that the attitude of the mother towards her pregnancy is positive, full of joy, optimism and happiness and thus illegitimate pregnancies through adultery are prohibited. Allah says in the Holy Qur'an:

“Nor come nigh to adultery:
For it is a shameful (deed)
And an evil, opening the road
(To other evils)”⁷¹

This could lead to reactional confusion, disturbance and instability for the mother, inciting her to try to get rid of the child, and if not, when the child is born she lives to hate him because he is the fruit of her misbehaviour.

From another aspect Islam pays considerable attention to the positive attitude of the mother towards her pregnancy, encouraging her to view it correctly: to produce a child merits congratulations, good wishes and happiness. Allah says in the Holy Qur'an:

“O my Lord! grant me
A righteous (son)!”
“So We gave him
The good news
Of a boy ready
To suffer and forbear”⁷².
“God did choose
Adam and Noah, the family
Of Abraham, and the family
Of 'Imran above all people”.
“Offspring, one of the other: ...”⁷³.

Pregnancy creates felicity for a woman, not perplexity nor anxiety, and we have seen the concern of Islam, for love, graciousness and affection between husband and wife, which confirms the value of the positive attitude towards pregnancy. It has been confirmed that the woman with a positive attitude towards pregnancy was happy in marriage and had good relations and mutual agreement with her husband⁷⁴.

⁷¹ *Holy Qur'an*, Chapter 17, Verse 32.

⁷² *Holy Qur'an*, Chapter 37, Verses 100-101.

⁷³ *Holy Qur'an*, Chapter 3, Verses 38-39.

⁷⁴ John Connor, Paul Moson, Jerome Keegan, *op. cit.*, p. 98.

All these factors play an important rôle in the development of the unborn child, physically, mentally, reactionally and psychologically: he must face life straightly without tendencies towards corruption or criminality, which could result from psychological mental or physical disturbance, stemming from the negative attitude of the mother during an unwanted pregnancy.

Therefore Islam devotes considerable attention to the basic characteristics of the human being from the very beginning of his life. It pays particular attention to the psychological attitude of the mother towards pregnancy because of its effect on the child, because until birth he is attached to her, deriving his developmental elements from her until he leaves the womb and faces the different effects of the environment. These may be spiritual as traditions, beliefs, tastes, orders, education and morals, or material which exist in the city as technology, housing, roads, all of which stem from the new civilization where social insertion begins, resulting from education and the socialization process. This should allow the child to acquire the correct norms and values of his society in order to avoid emargination or contestation, enabling him to establish a good societal relationship with a level of mutual matching and success.

2. *The rôle of the Muslim family in protecting against criminal tendencies and criminality*

In studying the problem of criminality no researcher can deny the rôle of the family in comprehension of the causes of negative juvenile tendencies or criminality. In spite of the different fields in the study of criminality – psychology, sociology, education, law, social services, criminology – in all of these researchers drew attention to the importance of the family in forming the personality and behavioural type of the individual. “The family derives its essential rôle as it is the first social environment, perhaps the only, which received the child at birth and which will remain with him for a long period of his life; in this environment his abilities and capabilities are formed so there is no other social order which so definitely shapes the future of mankind”⁷⁵.

⁷⁵ Mohammed Ali Hassan, *Relations of parents with their children*, p. 140

It has been confirmed that psychological health depends on receiving the basic needs, and many of the aspects of integration or non-integration which may be noted from behaviour, its success or failure, may relate to satisfaction of these needs; this also relates to the treatment which the child received during the first stage of his life, because it is through the family that he obtains satisfaction of his necessities, he feels the importance of his presence in his own environment. The family also satisfies his psychological and social needs for security, protection, care, love, sympathy and acceptance, giving him a definite social position. In other words, the presence of a child in a family represents the first feeling of belonging to a group⁷⁶.

It is not an exaggeration to say that most of the studies of the phenomenon of juvenile delinquency concentrated on the rôle of the family and the relationship between parents and the child and its effect on misbehaviour, and most of these agree that the disunited family has a major impact on the creation of this phenomenon. Many people, including judges, investigating officers, sociologists, psychologists, social workers, consider that the broken family is a primary factor in producing juvenile delinquents – whether the disunity is material or social (that is, a family where one or both parents have abandoned the home, have died, divorced or emigrated, separated), or psychological disunity (when parents live in conflict, lacking mutual respect and the children live under continuous pressure)⁷⁷.

The disunited family deprives the child of the necessities of life, leaving him in need of continuous control; he is hungry for security, love and acceptance which opens the door wide for him to follow an irregular and contrary path.

Islam devoted much attention to the family and in this paper we can not refer to the family system in Islam in detail. A good social environment provides all the necessities for regular development and supplies the basic and psychological needs, giving the child various experiences and capabilities, preparing him for life in society equipped with adequate self-confidence and the ability to relate with others.

⁷⁶ Adnan Addouri, *op. cit.*, p. 289.

⁷⁷ Mohammed Ali Hassan, *op. cit.*, pp. 59–60.

The extended family in Islam comprises parents, grandparents, children, brothers and their children, uncles and their children, and all the descendants: in other words, the educational rôle of the large family surpasses that of the small family. It is the cultural centre of all individual activities and the numerous religious, social and economic situations, and plays its rôle in developing experience and forming the personality, in addition to enjoying stability and unity.

In Islam the family is one of the most important educational structures with the strongest impact on the life of the individual, which can never be lost. The basis which Islam had foreseen for the family enabled it to play its educational rôle, extending beyond the transmission of social values and legacies to the new generation; it is an insurmountable fortress against delinquency through obedience to the commandments and prohibitions of Allah.

Without going into detail we may refer to the root of the family in three basics, which are ⁷⁸:

i) Affection and indulgence between the couple, as marriage is stable while these remain. Allah says in the Holy Qur'an:

“And among His Signs
Is this, that He created
For you mates from among
Yourselves, that ye may
Dwell in tranquillity with them,
And He has put love
And mercy between your (hearts):
Verily in that are Signs
For those who reflect” ⁷⁹.

As regards relations between the couple Allah says in the Holy Qur'an:

“Permitted to you,
On the night of the fasts,
Is the approach to your wives.
They are your garments
And ye are their garments.
God knoweth what ye

⁷⁸ Mohammed Abu Zharhar, Vol. 2, 1971, pp. 45-46.

⁷⁹ *Holy Qur'an*, Chapter 30, Verse 21.

Used to do secretly among yourselves;
 But He turned to you
 And forgave you;
 So now associate with them,
 And seek what God
 Hath ordained for you,
 And eat and drink,
 Until the white thread
 Of dawn appear to you
 Distinct from its black thread;
 Then complete your fast
 Till the night appears;
 But do not associate
 With your wives
 While ye are in retreat
 In the mosques. Those are
 Limits (set by) God:
 Approach not nigh thereto.
 Thus doth God make clear
 His Signs to men: that
 They may learn self-restraint”⁸⁰.

ii) Justice is the right of the couple towards each other and, in particular, it is the right of the wife towards her husband; even prior to marriage if the man is convinced that he could not be just with his wife he has not the right to marry; this is a religious prohibition, subject to the conscience and not to the justice authorities as it is oriented towards avoidance of tyranny.

iii) The third basic relates to social solidarity within the family. The rôle of the Muslim family in protecting against criminality lies in the formation of personality from the moment of birth and which will continue through development and maturity as a member of a community; the individual must also behave in harmony with his social position avoiding transgressions against community values, beliefs, traditions and culture – which is known as the social formation process or social preparation.

⁸⁰ *Holy Qur'an*, Chapter 2, Verse 187.

The social formation process and criminal behaviour

The social formation process is the first stage of that which is known as "the criminal personality" as a child, because of an incorrect approach, may acquire an improper comprehension of honour, trustworthiness, justice, collaboration, and loyalty, and does not repent when he commits an act considered by the law as delinquent or criminal – because of a mistaken base.

Criminal behaviour is sometimes considered the result of an imperfect socialization process when importance is not attached to the surrounding social values which he opposes, as he is unaware of their significance and is unable to evaluate their purpose and aim. Others, most of whom are the supporters of the school of mentally ill studies, maintain that criminal behaviour is due to a lack of harmony in the personality which, in turn, is due to an incorrect or incomplete socialization process, and therefore criminality is an aspect of a psychological lack or the result of nervous or mental confusion⁸¹.

The socialization process may be defined as teaching, learning, education, based on societal reactions, attitudes and tendencies adapted to a specific rôle enabling social integration. This is the formation of individual social behaviour and the process of cultural development in the personality⁸². In brief, it is "the process through which an individual learns the norms of a specific society or social community, enabling him to live within this society or community"⁸³.

The new-born babe who feeds softly and satisfactorily at his mother's breast is moved by a biological instinct; later, he will consume his food according to strict and definite rules and behaviour regarding quantity, cooking, taste. There is a big step between the first and the second phase and this is an important sign from Allah who prepared man, composed his construction and deposited in his nature the ability of organization and sociability and to pass from this simple to a more complicated stage⁸⁴.

⁸¹ Adnan Addouri, *op. cit.*, p. 287.

⁸² Anwar Mohammed El-Sharkawi, *Juvenile delinquency*. Cairo, 1977, pp. 106-107.

⁸³ Frederick Alkin and Gerald Handel, *Boy and society*. Tanta, 1976, p. 2.

⁸⁴ Sayad Ahmad Othman, *Educational social psychology*. Cairo, 1970, p. 17.

This forms part of the socialization process as the individual must follow the norms of the community through which success and prosperity may be achieved. On the other hand, he may adopt criminal behaviour through contact with a community where this exists, through relations with its members and acquiring their behavioural pattern, their values and attitudes. Thus the socialization process plays a major rôle in adoption of criminal behaviour by orienting the personality of the child towards criminality.

The Muslim family, as the social fortress where the seeds of personality develop, stress the following proper social formation processes:

A. *Preparation of a good environment for social preparation*

The family is the social unit where various types of complicated reactions take place and every individual should play his rôle according to his position or social status and should participate in the socialization process of the child. These social rôles combined prepare and facilitate the child's development, and the most important and effective of these are:

i) *The rôle of the mother in the socialization process*

Islam devotes considerable attention to the rôle of the mother and has confirmed her basic position in the social preparation of the child, particularly in his early years, as she is the first to satisfy his wishes and to respond to his needs. From the point of view of Islamic education, the mother has a major rôle in satisfying his basic needs, ensuring his security, as this is an armour against delinquency and misbehaviour.

The mother is also the nutritional source of the child during the initial period of his life and referring to the value of natural feeding for the child, Allah says in the Holy Qur'an:

“The mothers shall give suck
To their offspring
For two whole years,
If the father desires
To complete the term.
But he shall bear the cost
Of their food and clothing

On equitable terms.
 No soul shall have
 A burden laid on it
 Greater than it can bear.
 No mother shall be
 Treated unfairly
 On account of her child.
 Nor father
 On account of his child ... ”⁸⁵.

In spite of the literary objectivity of this verse, it is subjective in meaning as it is a message from Allah to the mother to breast-feed her child, in awareness of the importance of this for both the baby and the mother. The Muslim educationalists have stated that natural feeding contains elements similar to those the child received when in the mother's womb. Natural feeding establishes a close relationship between the child and his mother and this will facilitate his learning the various types of behaviour, orders, education and morals.

A warm relationship is also established between the mother and her child in rocking his cradle, singing to him, caressing him. The Muslim educationalists have realized the value of satisfying the child's need of acceptance and love for his physical development. Ibn Sinah has said: "Two things are necessary and useful for strengthening the child's humour – one is rocking the cradle and the second is soft singing" ⁸⁶. In this connection Ibn El-Ghazali has specified the effect of these sounds on a child's nature: "The beautiful sound gives pleasure to the soul and the nature without being irritating, and therefore children are quieter when they hear nice music". The education books contain many different types of song for a mother to sing to her children which transmit tenderness, love and affection.

The mother should also satisfy the child's need to sleep, as it is one of the most important factors for his development. In relation to this, the Muslim educators have made many recommendations – for instance, that the mother should take care of the child's bed, use a medium mattress, place his head higher than his body,

⁸⁵ *Holy Qur'an*, Chapter 2, Verse 233.

⁸⁶ Ibn Sinah, Vol. 1, p. 151.

the bedroom should have a moderate temperature, shady and dimly lit. The factors which may affect the regularity of a child's sleeping habits have also been given attention, and if he sleeps immediately after being fed the cradle should only be rocked very lightly.

El-Giosi referred to the ignorant mother who rocks the cradle until the child's head is spinning, or who puts him to sleep on his side, and when he sleeps this fear or this sorrow or this bad treatment remains within him. Prior to sleeping the mother should amuse and caress the child in order to avoid sleeping in an unhappy state, as this may remain in his blood and affect his character⁸⁷.

As to the sleeping needs of the child, Ibn El-Quaham said that he should be protected from "everything that would frighten him, as raised voices or irritating movements; if this should occur the child should be calmed prior to sleeping".

There are many other things which could be said about the mother's rôle in satisfying the needs of the child but it is not possible to mention everything in this paper. Through satisfaction of his needs the child will feel secure and will develop correctly without complexes, nervousness or worrying tendencies. This stage of the child's life could be termed "dependence on others" and he will remain within his mother's protection until he begins to realize the presence of his father. The father will then begin to play his rôle in the socialization process, teaching him how to live with others according to correct norms and traditions, imparting knowledge, beliefs, views and opinions.

ii) *The rôle of the father in the socialization process*

Despite the importance of the mother's rôle in the socialization process, the father has a direct and significant duty to fulfill in forming the child. In placing him in the mother's care during his first years, Islam also ordained the father to assist as much as possible in the performance of her duties. Allah says in the Holy Qur'an:

"The mothers shall give suck
To their offspring
For two whole years,

⁸⁷ El-Giosi, *op. cit.*, Vol. 1, p. 287.

If the father desires
To complete the term.
But he shall bear the cost
Of their food and clothing
On equitable terms.
No soul shall have
A burden laid on it
Greater than it can bear.
No mother shall be
Treated unfairly
On account of her child.
Nor father
On account of his child ..."⁸⁸.

From the Islamic educational point of view, taking care of the mother is also taking care of the child. The father's rôle is not limited to maintenance only, but should go beyond this in order to provide a good psychological environment thereby allowing the mother to dedicate all her time to maternal duties and early education; this can be achieved by surrounding her with sympathy, collaboration, security, affection, all of which will be reflected on the child who derives his security from that of the mother herself: we have previously referred to the atmosphere which should prevail in the relations of the Islam couple. It is "the function of the family to prepare the child for life in the outside world, and from this point of view the parents can be regarded as guardians who are responsible for preparing him for adulthood"⁸⁹.

The child should be taught to love and respect others, to collaborate and integrate with them; this will help in forming his attitudes, especially those towards his parents and specifically the father, who is the symbol of authority. In this connection Flogall says that the hatred tendencies of a child will in future years lead to a similar attitude towards society in general⁹⁰.

Islamic education emphasizes the rôle of the father in the child's

⁸⁸ *Holy Qur'an*, Chapter 2, Verse 233.

⁸⁹ D. F. Swift, *Social education* (Translated by Dr. Mohammed Samir Hassanin), 2nd Ed., Tanta, 1977, p. 82.

⁹⁰ Mohammed Ali Hassan, *op. cit.*, p. 145.

education, El-Bukhari narrates that "To be good derives from Allah but education derives from parents"⁹¹. The father has a particular rôle in the socialization process in order to ensure that the child adopts a correct behaviour and to check an undesirable behaviour. The methods utilized during the socialization process are:

1) *Orders and prohibitions*

The father should continually draw the child's attention to what he should do and what should be avoided, as orders and prohibitions are the bases of the educational experience, as well as being a fundamental pillar for religious doctrine. The Prophet (Peace be upon Him) said:

"Command your children to observe prayer
When they are seven years old,
And beat them for (not observing) it
When they are ten years old,
And do not let (boys and girls) sleep together"⁹².

The orders and prohibitions are an important means of acquiring social values, culture and education. Amr Bin Ali Salamah said:

"I was a boy under the protection of God's messenger,
And as my hand used to roam at large in the dish
He said to me, "Mention God's name, eat with your right hand
And eat from what is next to you"⁹³.

b) *Good example and a perfect model for correct social behaviour*

Islam pays considerable attention to good examples as important and effective factors in educational methods. Allah says in the Holy Qur'an:

"Ye have indeed
In the Apostle of God
A beautiful pattern (of conduct)

⁹¹ El-Bukhari, *op. cit.*, p. 36.

⁹² Abu Dawd, *op. cit.*, Vol. 1, p. 193.

⁹³ Imam Muslim, *op. cit.*, Vol. 2, p. 207.

For any one whose hope is
In God and the Final Day,
And who engages much
In the praise of God”⁹⁴.

The child needs the example of his parents and teachers and those around him in order to absorb the doctrines and values of Islam, which may protect him from slipping into criminality: examples provide a mental picture of these which remain in his mind and before his eyes—obviously good example on the part of the father has the greatest impact. Allah says in the Holy Qur’an:

“ A revelation from (God)
Most Gracious, Most Merciful; –”
“ A Book, whereof the verses
Are explained in detail; –
A Qur’an in Arabic,
For people to understand ”⁹⁵.

Islam does not accept the fact that a father practices a behaviour which is forbidden for his son, as Omar Bin El-Khattab said: “ A man must not criticize others for their actions when he commits the same himself ”⁹⁶.

Children tend to imitate their parents and copy their behaviour: “ For the people psychologically need to resemble those they like and this need starts through imitation of the parents by the children ”⁹⁷.

Children “ like to be as the people they like and of whom they are proud ”; in everyday life the young boy wants to look like his father and the young girl imitates her mother’s voice when she reproves her small brother; children not only copy the external behaviour of their parents or see them as utopia but also absorb their features and their behaviour type⁹⁸.

The father may have prepared an educational programme for his children which includes good examples, but this will lose its im-

⁹⁴ *Holy Qur’an*, Chapter 33, Verse 21.

⁹⁵ *Holy Qur’an*, Chapter 61, Verses 2 and 3.

⁹⁶ El-Mobarred, 1st Ed., Egypt., 1323 H., Vol. 1, p. 33.

⁹⁷ Abdul Aziz Salamah, *op. cit.*, p. 200.

⁹⁸ Raouf Obeid.

pact if it is not transformed into reality, "and if it is not transmitted to the person who interprets by his behaviour, conduct, feelings, thinking, the principles of the programme and its meaning, only then can this programme be put into practice"⁹⁹.

Correct example will make the child good and generous but will destroy him if this is evil or corrupt; the Holy Qur'an emphasizes the importance of example in shaping the destiny of the individual, inviting him to follow the good symbols, who are the Prophets of God (Peace be upon Them). Allah says in the Holy Qur'an:

"There was indeed in them
An example for you
To follow ..." ¹⁰⁰.

Muslim educationalists have stressed that contradiction should not exist between the orders of a father to his children and his own actions.

c) *Reward and punishment*

Reward and punishment are social habits which are too much used in the family environment: they are usually associated with the father as the centre of authority, but in reality for "an individual to have an effect on others he usually relies on reward for correct deeds and punishment for incorrect deeds; thus, one of the dimensions of the social force is the ability of rewarding or punishing by those who may have an impact ¹⁰¹".

The Muslim educationalists have confirmed rewarding a child for good behaviour as this encourages and stimulates him towards the desired conduct. Ibn Meskawih says: "The boy should be lauded if something behaviour appears from him ... and should be lauded for his good character and good deeds should be rewarded".

Similarly, Ibn Ghazali, Ibn Haj Abdari and others, including El-Kobisi, have suggested rewarding a child for his good character,

⁹⁹ Mohammed Qutub, *Method of Islamic education*, 2nd Ed., Lebanon, Undated, p. 221.

¹⁰⁰ *Holy Qur'an*, Chapter 60, Verse 6.

¹⁰¹ Hamid Zaharan, *op. cit.*, p. 88.

saying: "To know the good from the bad and he will choose the good so that he learns the social rules of his society".

Muslim educationalists paid particular attention to punishment; they explained that this must be appropriate to the child's character and personality - "maybe for one child a frown is enough, for another threats and harsh words are needed, and for another a beating: each according to his state" ¹⁰².

It should be noted here that the Muslim educationalists have abandoned cruelty and strictness on the part of the father in correcting his children, as this could orient the child towards delinquency. Ibn Khaldoun expressed this view saying "he whose education is by strictness and obligation is conquered by obligation which shrinks his soul until it becomes inactive, inviting lying and slyness to avoid being reprimanded and teaching him to be crooked and disloyal; all these ill-virtues become habits and morals".

d) *Inspiration*

Islamic education did not neglect the effect of the inspiration a child receives from his home environment, which is an indirect way towards the desired conduct: Muslim educationalists stressed that the father should accompany his son to the Mosque in order to impress on him all the worship details which will remain in his conscience, as well as putting him in contact with noble people and scholars ¹⁰³; he must understand the social status of these noble people, try to imitate them and benefit from the contact.

The father should tell the child about the heroes and the great personalities so that he may take them as an example and follow their conduct.

All this indicates that Muslim educationalists were very careful that the child should learn about people by understanding their life-style and behaviour, especially those of the Prophet Himself (Peace be upon Him) and His friends ¹⁰⁴.

¹⁰² Ibn Haj Abdari.

¹⁰³ Ibn El-Giosi, *op. cit.*, p. 199.

¹⁰⁴ Ibn El-Giosi, *op. cit.*, p. 10.

e) *Correct orientation and direct advice*

In the socialization process the father may direct the child's behaviour in order to give him good habits or to lead him away from undesirable behaviour. Nothing is clearer in this connection than the advice of "Luqman" to his child as narrated in the Holy Qur'an:

"Instruction: "O my son!
Join not in worship
(Others) with God; for
False worship is indeed
The highest wrong-doing".
"O my son! establish
Regular prayer, enjoin what is
Just, and forbid what is wrong;
And bear with patient constancy
Whate'er betide thee; for this
Is firmness (of purpose)
In (the conduct of) affairs".
"And be moderate
In thy pace, and lower
Thy voice; for the harshest
Of sounds without doubt
Is the braying of the ass"¹⁰⁵.

The father who realizes the importance of the socialization process must prepare the circumstances and profit from the situation in order to direct the child in the correct manner, allowing him to develop a good social relationship with others with behaviour in harmony with everyday life. This helps him to adapt to the culture of his society, without factors of confusion, permitting him to control his conduct.

B. *Preparation of a good psychological environment for the socialization process*

Preparation of the psychological environment means fulfilling the child's needs as a protection against criminal tendencies. The child who lives in a correctly balanced atmosphere finds satisfaction for his mental and reactional needs and psychological stability which fa-

¹⁰⁵ *Holy Qur'an*, Chapter 31, Verses 13, 17 and 19.

cilitates his life, relying on the security and tranquility of his family. But the child who lives in a poor environment does not have the correct psychological stability which makes him confused; he will be dis-satisfied with his life and will try to run away to escape from his suffering and anxiety¹⁰⁶.

The juvenile delinquent is the child who is not psychologically satisfied: "Studies which have been conducted on criminals confirm that many of those who have been termed oppressors were immature, had not had a calm childhood and their eagerness to be seen as aggressors and oppressors was to hide their immense desire for the confidence and collaboration of others"¹⁰⁷.

Children need security and recognition and if this can not be satisfied through an accepted behaviour they may turn to delinquency to obtain what they consider to be the esteem they seek.

Some researchers maintain that there are three basic needs: development, individual tendencies, to be loved by others; other researchers say that the basic needs are two: security and adventure; these latter two can be noted in society which would seem to preserve or protect tradition, while at the same time providing adventure. These two forces oppose societies very clearly¹⁰⁸. Mass law has presented the psychological needs in the form of a pyramid, with the psychological needs as base, above it the need for security, then love, appreciation, value, self-verification and at the top the desire to know and to understand.

Islamic education fulfills the psychological needs of the child, ensuring his social, mental and physical development, specifying these needs as follows:

a) *Need of security*: This is one of the most acute needs of a child as he can not develop if he feels insecure; he is born helpless and weak in a strange world. Allah says in the Holy Qur'an:

"It is God who
Created you in a state

¹⁰⁶ Mohammed Ali Hassan, *op. cit.*, p. 175.

¹⁰⁷ Raouf Obaid, *op. cit.*, p. 316.

¹⁰⁸ Abdul Aziz El-Kousi, *Bases of psychological health*, 7th Ed., Egypt, 1969, pp. 82-83.

Of (helpless) weakness, then
Gave (you) strength after weakness,
Then, after strength, gave (you)
Weakness and a hoary head ... ”¹⁰⁹.

This weak helpless child can not survive nor develop if he is not surrounded by security as this is one of his greatest psychological needs in early years.

Islam has emphasized the importance of the mother's affection and love for his security and his confidence in her from which he derives confidence in himself and in society. The Prophet (Peace be upon Him) praised the women of Quraish saying:

“The best of the women who ride on camels
Are the good women of Quraish,
For they are the most affectionate to small children
And the most careful of what belongs to their husbands ”¹¹⁰.

The Muslim scholars paid particular attention to the weaning of the child, stating that this should be a gradual procedure in order to avoid complications: Ibn El-Giosi said: “If the mother wishes to wean him she must do so gradually, to accustom him and to train him, for the transition from the everyday habit in one step may harm him ”¹¹¹. This is very important as for the child weaning represents a deprivation: he is still very young and this may create aggressive tendencies towards the outside world which he considers responsible for this deprivation.

Islamic education regards separation of the child from the mother in his early years as one of the factors that may disturb his security: thus, the Prophet (Peace be upon Him) threatened he who separated a child from its mother. Abi Ayyub (God bless Him) said: “I heard the Prophet (Peace be upon Him) saying – he who separates a mother from her child will be separated from those he loves on the day of judgement ”. The Prophet (Peace be upon Him) also said: “He who separates a mother from her child will suffer from ill-fortune ”. For the child, the mother's absence leads to sadness

¹⁰⁹ *Holy Qur'an*, Chapter 30, Verse 54.

¹¹⁰ Imam El-Bukhari, *op. cit.*, Vol. 2, p. 253.

¹¹¹ Ibn El-Giosi, *op. cit.*, p. 184.

and isolation, abandonment and loss of self-confidence, resulting in inability to communicate with others.

Even when good relations do not exist between parents, Islam gives the mother the right to act as guardian for the child so that he is not deprived of her presence in the early years of his life ¹¹².

In satisfying the child's need for security, Islam does not accept that he is subjected to the illegal desires of one of the parents as, for example, using the child to harm the other parent. Allah says in the Holy Qur'an:

“The mothers shall give suck
To their offspring
For two whole years,
If the father desires
To complete the term.
But he shall bear the cost
Of their food and clothing
On equitable terms.
No soul shall have
A burden laid on it
Greater than it can bear.
No mother shall be
Treated unfairly
On account of her child.
No father
On account of his child ...” ¹¹³.

Sheikh Ismail Hakui'i, in his interpretation of this verse says: “The father should not harm the mother by forcibly taking the child against her wish”; at the same time the mother should not do harm by handing the child over to the father when he still needs her ¹¹³.

Sheikh Mohammed Rasheed Rada adds that this verse indicates “the prohibition of any act on the part of the parents to harm one another, as if the mother psychologically and physically abandoned the child in order to irritate the father, or as if the child is deprived of its mother after the age of guardianship”; the verse indicates

¹¹² Zackari El. Berri, *Laws for children in Islam*, 1964, p. 45.

¹¹³ *Holy Qur'an*, Chapter 2, Verse 233.

¹¹⁴ Sheikh Ismail Hakui'i, *Interpretation of the Holy Qur'an*, Cairo, 1264 H., Vol. 1, p. 247.

complete prohibition of harm because of the child, neither limited nor restricted, at any time or under any circumstance – how can a child be educated by two parents who are only interested in harming each other? ¹¹⁵.

b) *Need of the child to be accepted*: For a correct development a child needs the warmth of acceptance, whether of a physical or a spiritual nature, and Islamic education pays attention to the satisfaction of this need to avoid the feeling of abandonment, unwanted, outcast.

Islamic education ensures that a child is accepted and loved by his parents and others, whether male or female, as preference for one sex transmits insecurity to the other. If it is diffused that the parents had expressed their desire for a male child, this will create psychological problems for the female; Islamic education does not approve of tendencies full of love and desire towards the male child and not the female. In Islam there is equality of human values, Aisha (God bless Her) used to ask about the condition of the newly-born but not about its sex ... Parents should not prefer a male rather than a female child.

If a child is deformed or handicapped or ill he is in greater need of acceptance and love, and thus Islam prevents him from being subject to ridicule or compared to normal children. Perhaps the prohibition in the Holy Qur'an against miscalling anybody directly or indirectly may be understood from the following verse:

“ O ye who believe!
Let not some men
Among you laugh at others:
It may be that
The (latter) are better
Than the (former):
Nor let some women
Laugh at others:
It may be that
The (latter) are better
Than the (former):

¹¹⁵ Sheikh Mohammed Rasheed Rada, *Interpretation of the Holy Qur'an*, 1973, Vol. 2, pp. 327-328.

Nor defame nor be
 Sarcastic to each other,
 Nor call each other
 By (offensive) nicknames:
 Ill-seeming is a name
 Connoting wickedness,
 (To be used of one)
 After he has believed:
 And those who
 Do not desist are
 (Indeed) doing wrong”¹¹⁶.

Regarding the child’s acceptance, Islam prohibits preferential treatment within the family: the Prophet (Peace be upon Him) said: “... fear God and act equally with your children ...”¹¹⁷.

Islam emphasizes the orphan’s need to be accepted, as indicated in many verses of the Holy Qur’an and many sayings of the Prophet (Peace be upon Him); this also applies to the abandoned child who must not feel an outcast because of the sin of his parents, as this might give him a criminal tendency with a hatred of society within him.

“Did He not find thee
 An orphan and give thee
 Shelter (and care)?
 And He found thee
 Wandering, and He gave Thee guidance.
 And He found thee
 In need, and made
 Thee independent.
 Therefore, treat not
 The orphan with harshness,
 Nor repulse the petitioner
 (Unheard);
 But the Bounty
 Of thy Lord –
 Rehearse and proclaim!”¹¹⁸

c) *The need for social appreciation*: This need is “that the individual tries to follow a definite behavioural pattern which will

¹¹⁶ *Holy Qur’an*, Chapter 49, Verse 11.

¹¹⁷ Imam Muslim, *op. cit.*, Vol. 2, p. 7.

¹¹⁸ *Holy Qur’an*, Chapter 93, Verses 6 to 11.

bring him acceptance and the respect of others”¹¹⁹. As well as security and acceptance a child needs appreciation and respect from others, that he is an individual with his own values and that his presence and efforts are useful for those around him: Islamic education treats the child as an individual with his own values and his presence in the society of adults is accepted. Imam Muslim narrates that Sahl (Peace be upon Him) said:

“The Prophet was brought a cup from which he drank, and on his right was a youth who was the youngest present, while the old men were on his left. He asked the youth to permit him to give it to the old men, but he replied, «I am not one to give anyone preference in a favour from you, messenger of God». So he gave it to him”¹²⁰.

One way of esteeming and respecting the child in Islamic education is that adults should greet him on sight. Anas (God bless Him) narrates that he once passed children and hailed them – “The Prophet (Peace be upon Him) used to do so”¹²¹. When an adult salutes children it has significance and educational value as it demonstrates esteem on the same level as that for adults, and this transmits the feeling that they are brothers in Islam regardless of the age difference. This is teaching and confirming the Islamic brotherhood which overcomes age differences, and is a declaration from the adult world that they are aware of the Muslim youth and is an invitation for their integration as soon as they have the ability to enjoy its rights and privileges and assume its responsibilities¹²².

The failure of the child to receive esteem or appreciation from others leads to lack of harmony and this is evident in his behaviour and disposition towards irritation and anger and unintentional bad behaviour.

d) *The need of knowing the behavioural norms*: A child needs to learn the behavioural norms which define those accepted or rejected by society¹²³, this is a necessity to which society pays consi-

¹¹⁹ Ali Ahmad Ali, *Behaviour of man*. Cairo, 1972, p. 223.

¹²⁰ Imam Muslim, *op. cit.*, Vol. 2, p. 210.

¹²¹ Imam Malik, Cairo, 1951, Vol. 2, p. 28.

¹²² Sayed Ahmed Othman, *Social responsibility and Muslim personality*. Cairo, 1979, p. 131.

¹²³ *Op. cit.*, Vol. 1, p. 28.

derable attention during the socialization process as it is difficult for an individual to be in harmony with his environment without adhering to these.

The Islamic society has entrusted the teaching of these behavioural norms to its various establishments, one of the most important being the family as it is the first contact with the different social phenomena and habits and is the social legacy from a previous generation; it teaches the child the appropriate societal behaviour which defines the Muslim society in order to allow him to adopt the proper habits in relation to eating and drinking, greetings, requesting permission, a proper life-style ... ¹²⁴.

The child is in need of help to know his rights and his duties, what he should do and what he should not do, and learning the behavioural norms will assist him, as El-Kiobisi says: "To know the right from the wrong and to begin to choose the right" ¹²⁵.

In fulfillment of this need the adult requires experience, patience, firmness and comprehension, and transmitting this knowledge to a child is an obligation imposed by Islam on the father and on the educationalists. The Prophet (Peace be upon Him) said that God asks those in charge how they acted and even the father will be asked how he acted towards his family ¹²⁶.

e) *The need of a guiding controlling authority*: The child needs a guiding authority as he is still immature but he may lose his feeling of security if his liberty is curtailed or his independence is tied; at the same time he may also lose his feeling of security if he is given unlimited liberty and if his parents submit to his requests; this "submissive behaviour" on the part of parents creates pride, over-confidence and rebellion, and these tendencies may lead to poor personal and social integration ¹²⁷. Therefore, from birth the child needs the authority of his elders as a frame for the regular everyday home life; he also needs eating and behavioural rules to curb his tendencies

¹²⁴ Imam Muslim, *op. cit.*, Vol. 2, p. 207.

¹²⁵ El-Kiobisi, *op. cit.*, Paper No. 58 B.

¹²⁶ El-Munziri, *op. cit.*, Vol. 4, p. 135.

¹²⁷ Othman Labib Faraj, *Lights on personality and mental health*, pp. 134-135.

and incorrect desires in order to insert in the home and in society ¹²⁸.

The educationalists realized the importance of satisfying this element for the child, that he is in need of authority to enable him to feel controlled and guided, indicating the limits and explaining what he should do. We have previously mentioned the definitions of this authority and its social control when we referred to the rôle of the father in the socialization process, considering him the main authority and head of the family. By "head of the family" Islam means the illuminated fatherhood which does not accept suppression of the child's tendencies but it means the authority and the orientation which every child needs. As has been said before, Muslim education does not accept severity or cruelty in its educational methods.

Islamic education carefully observes the teaching authority, the development level of the child, as can be clearly seen from the saying of the Prophet (Peace be upon Him):

"Command your children to observe prayer
When they are seven years old,
And beat them for (not observing) it
When they are ten years old,
And do not let (boys and girls) sleep together" ¹²⁹.

At the age ten a child can differentiate between correct and incorrect behaviour and the consequences.

The Islamic educationalists insist on the firmness of parents in their relations with a child and his education, which means that they should be in complete agreement regarding his rearing as this will help the child to respond to authority. The Prophet (Peace be upon Him) said:

"Each of you is a shepherd and each of you is responsible for his flock. The *imam* who is over the people is a shepherd and is responsible for his flock; a man is a shepherd in charge of the inhabitants of his household and he is responsible for his flock; a woman is a shepherdess in charge of her husband's house and children and she is responsible for them; and a man's slave is a shepherd in charge of his master's property and he is

¹²⁸ Fawziem Diab, *Development and growth of the child*. Egypt, 1978, pp. 102-103.

¹²⁹ Abu Dawd, *op. cit.*, Vol. 1 p. 193.

responsible for it. So each of you is a shepherd and each of you is responsible for his flock" ¹³⁰.

Islamic education therefore prepares the appropriate atmosphere for the socialization process by satisfying the psychological needs of the child as a basis for his development, the contrary will result in delinquency and confusion.

It is evident that Islam demands fulfillment of these needs as the child's right and a duty on the part of the parents and educationalists. If the child has a correct psychological family environment this will provide a guarantee against delinquency or improper behaviour, which would mean failure of adaptation in his private and community life. However, a correct psychological atmosphere is not completely adequate for his development: "danger exists when the family is not psychologically in harmony as this can result in individuals bodily adult but delinquent in mind; and when they reach the stage of assuming responsibility and facing problems they are unable to cope - as, for instance, the thief, the vagrant, ..." ¹³¹.

Islamic education pays attention to the fundamental characteristics of the individual in their various dimensions, preparing the most appropriate conditions for the socialization of the child in satisfying his psychological needs. This refers to a healthy psychological environment and the best reactional conditions, ensuring correct educational methods; all of these will create a barrier between the child and delinquency, psychological illness or confusion, preventing him from falling into crime and being exposed to the consequent punishment.

In this brief text on the rôle of Islamic education and its effect on crime prevention we refer to encircling the human being, from birth, with all types of care, giving him every possibility to develop with a correct personality, thereby rendering it difficult for him to slip into criminality.

With the help of God ...

¹³⁰ Imam Bukheri, *op. cit.*, Vol. 3, p. 183.

¹³¹ Mohammed Ali Hassan, *op. cit.*, pp. 148-149.

2. THE APPLICATION OF THE THEFT HADD AND ITS EFFECT ON CRIME PREVENTION

by Abdul Rahman Mohammed Bututah

Allah created man and has chosen him from all his creatures to be his earthly vicars. Allah says in the Holy Qur'an:

"Behold, thy Lord said to the angels: "I will create
A viceregent on earth". They said
"Wilt thou place therein one who will make
Mischief therein and shed blood? -
Whilst we do celebrate Thy praises
And glorify Thy holy (name)?"
He said: "I know what ye know not" ¹.

Man was not created to live alone nor to be left to himself; and therefore Allah's mercy came to save him from straying and to keep him on the right path, and thus He sent the Prophet and the Messengers as admonition and warning:

"Apostles who gave good news,
As well as warning,
That mankind, after (the coming),
Of the apostles should have
No plea against God ... ».

The Holy Qur'an was the last heavenly address to mankind as Allah had said:

"... This day have I
Perfected your religion
For you, completed
My favour upon you,
And have chosen for you
Islam as your religion ... " ².

¹ *Holy Qur'an*, Chapter 2, Verse 30.

² *Holy Qur'an*, Chapter 5, Verse 4.

Although we discuss in this brief paper the commandments of Allah and both the male and female thief, it must be stated at the outset that we did not give the subject adequate coverage from the research point of view because of its wideness and its many focal points; and in addition, it was prepared in haste. Perhaps our deep faith in the indications of Islamic doctrine are the initiative and the content of this topic which our ancestors had studied in depth and a new researcher has difficulty in comprehending their viewpoints, their penetrating opinions and their profound findings: they did not leave – Allah recompense them – a stone unturned. They confronted all situations and opened the door to everyday problems and life continued subject to normal development:

“(Such was) the practice
(Approved) of God among those
Who lived aforetime:
No change wilt thou find
In the practice (approved)
Of God”³.

New situations had arisen which the scholars had been reluctant to deal with so they followed a specific sect for a certain period and then they combined some of these during other periods; and in our day some begin to view the easiest of these as to the tolerance of the Muslim people, who deviate further and further from the religious teachings, Thus, application of the divine doctrine diminished after having been diffused throughout the Muslim world in general and the Arab world in particular for about 14 centuries. It was preferable for the Muslim to hold on to this doctrine instead of following that which had been prepared by Europeans for themselves, following proof of the uselessness of the man-made doctrines and their failure in verifying its aims. Would this lead to a return to the commandments of the Holy Qur’an and the Sunnah (teachings) of the Prophet?

Turning back to the heavenly perfect Islamic doctrine is the return of the Muslims to religion which is their unity and their self-protection, their welfare and their life.

³ *Holy Qur’an*, Chapter 33, Verse 62.

So in this humble paper we will show the importance of property and explain the aims of the heavenly perfect Islamic doctrine in coping with theft, which is one of the most harmful and dangerous crimes in society at all times and in every place; we have endeavoured to suppress the accusation of those who cast doubt on the application of hadd punishment and especially that of theft hadd. When confronted with the accusation we discuss it quietly:

“ ... And argue with them
In ways that are best
And most gracious ... ”⁴.

At the same time we show the simplicity of the Islamic doctrine, its esteemed position and noble intentions, noting its effect on and value to all mankind in general and the society where it is applied in particular; we can not hide the appearance of cruelty in the hadd doctrine, especially theft hadd (which is the subject of this research) but within this cruelty there is mercy as death is mercy for the human being as has been stated by one of the famous Muslim scholars: “Applying hadd is a mercy from Allah to His subjects”⁵.

When amputation of the right hand of the thief is decreed the perfect heavenly doctrine is covered by many guarantees so that neither a mistake nor an exaggeration occurs, and thus definite conditions were laid down, some in relation to the offender and others in relation to the crime, to the method of proof and its application.

So we will briefly examine the guarantees, which the legislator takes into consideration to limit the application of this sanction defined by the will of Allah, and it may be remarked that the impossibility of its infliction in practice makes the special law in theft hadd lose its preventive effect.

At the beginning of this paper, it would seem interesting to specify what is intended by theft hadd according to Islamic doctrine.

⁴ *Holy Qur'an*, Chapter 16, Verse 125.

⁵ Ibn-Taimiah, *Arabic Books*, Egypt, 1979, p. 98.

1. Definition of the theft hadd

Theft means to take property secretly with the intention of possessing it; the meaning of the word "hadd" is to prohibit, and thus part of this sanction is called "houdoud" as it may prevent the committing of a crime, and in legislation it is a definite punishment which is the right of Allah. The Islamic legislator defined houdoud by saying that it is a prohibition prior to an act and a discouragement after it⁶.

2. The importance of property and the necessity for its protection

Theft hadd is aimed towards the protection of property, and property is that which can be acquired and benefit derived therefrom in a normal manner⁷. This definition encompasses the two necessary conditions for property which may be subject to theft: possession and the possibility of benefitting from it. If one or both of these conditions is lacking, the property is not considered as such⁸.

The importance of property is representative as a significant factor in life, and therefore it should have a value and be protected, as nobody can survive without the daily necessities, and this is the commandment of Allah for his subjects:

"There can be no difficulty
To the Prophet in what
God has indicated to him
As a duty ..."⁹.

⁶ Theft in man-made laws is the robbing of movable property, belonging to another, with the intention of possessing it (M. 444 Punishment Libyan). It is necessary here to add that the man-made legislations did not specify secrecy in order to punish theft as is specified in the Islamic doctrine.

⁷ Mustapha Shalabi, *Introduction to Islamic jurisprudence*, 1962, p. 285.

⁸ The jurists differentiate between the object and property: according to the law property must have financial value, whenever this is a correct object or possession or moral or industrial property. But the object, whether material or non-material, is the place of this right. Assanhouri El-Wasit, in explaining civil law, 1967, Vol. 8, p. 9.

⁹ *Holy Qur'an*, Chapter 33, Verse 38,

From the ancient days man has worked and strived to earn his livelihood so as not to be in need nor destitute (Extract from the attachment to the special law regarding application of theft and highway robbery punishment, No. 148, 1973).

Property is something appreciated by everybody, and that which is appreciated should be protected; therefore the heavenly perfect legislations concerning transgressions against property decreed a firm punishment because of its importance and the danger it represented to society. Both the perfect doctrine and the man-made doctrine encouraged the defence of property and the Prophet Himself (Peace be upon Him) said:

“He who is killed protecting his property is a martyr”.

The protection of property is necessary and this, above all, is the responsibility of the owner, but the perfect legislation did not enforce a definite payment of punitive damages on the person who neglected to fulfill this duty, taking as sufficient the loss of his property. In spite of this Allah had prohibited wastage and called the wasters “brothers of the devil”. He says in the Holy Qur’an:

“Verily spendthrifts are brothers
Of the Evil Ones;
And the Evil One
Is to his Lord (Himself)
Ungrateful”¹⁰.

At the same time the Muslim legislation and the man-made legislation both prohibit over-spending or wasting when the capacity of the owner in supervising his affairs has been proved.

Thus Islam, in its judgement, penetrates the depths of the human soul to rein his impulses and to stop his useless spending in order to avoid wastage, which is not in accordance with legislation and intelligence.

When an owner is deprived of his property without his knowledge or consent, in order to prevent such crimes and to protect property, Allah imposed the very firm punishment of amputation of the offender’s hand.

¹⁰ *Holy Qur’an*, Chapter 17, Verse 27.

This just punishment is decreed by the heavenly perfect legislation to safeguard property which is the result of man's earnings and to protect his dignity, as well as being a stimulation towards labour. All this ensures security for people to live with their property and to fulfill their duties in safety¹¹. The responsibility for protection rests with the state authorities who should safeguard individuals and their possessions. For what reason has this punishment been imposed for the crime of theft?

3. The intention of the heavenly perfect legislation in decreeing the theft hadd

The Islamic legislator did not haphazardly decree laws but intended by doing so to achieve general aims¹². These may be indicated as the five necessities of religion, life, intellect, offspring and property. Their protection is of general concern and all transgressions against these are wrongful acts. Thus, particular note should be taken of the legislation for the protection of these important pillars, and therefore it is not surprising that the punishment imposed is so firm and so deterring¹³.

Abu Ishak El-Shatibi in his book "El-Muvvafacat" states that the imposition of legislation is both for the welfare of the human being in this life and in the hereafter and its aims are divided into three sections:

- a) that it is necessary,
- b) that it is essential (indispensable),
- c) that it leads to improvement.

The aim of necessity means that it is in the interests of religion

¹¹ Attachment to the special law regarding application of theft and highway robbery punishment.

¹² Abdul-Kader Odah, *Comparison between Islamic and man-made criminology*, 5th edition, 1968, Vol. 1, p. 203.

¹³ Abdul-Latif El-Shirazi: A report presented to a seminar on houdoud legislation, which took place in Benghazi, 26-29 April 1976. *Law Studies, Annual Volume*, issued by the Faculty of Law of the University of Kar Unos, Vol. 7, 8th Year, pp. 184-185.

and life, that without it everyday earthly affairs would not function properly, and in the hereafter salvation and happiness would be lost ¹⁴.

By application of theft hadd punishment the legislator wished to protect property which should be considered, as has been said, a necessity, and due to its importance a special protection was foreseen with the amputation of the hand, if all the conditions are covered. The heavenly perfect legislator, in decreeing this, had noted the gravity and the seriousness of the act both from the points of view of the owner of the property and of the offender. In order to fulfill his needs the man who had been deprived of his property could follow the same path as that of the thief himself and may even be obliged to resort to delinquency. How many are those people who have been humiliated due to necessity, poverty, deprivation, and how many are those who suffer from hunger because of loss of their wealth? In evaluating all these considerations, the heavenly perfect legislator surrounded property with a high-level protection which concludes with the punishment of amputation of the hand, in order to protect the interests of society.

As regards the thief, Allah imposed amputation of the limb used to deprive others of the property which Allah had given them for their maintenance. The will of Allah had wished the sanction and the crime to be at the same level to refrain the offender from committing crime and that his punishment should serve as an example for him and for others. One of the great Islamic scholars, Ibn Quiom El-Giozia, had revealed the purpose of theft hadd saying: "The theft hadd includes another condition, that the theft occurs secretly and the thief is hidden, silent, afraid of his whereabouts being known in order to avoid being captured, that he is ready to escape and save himself if he has stolen: for man the hands are like the wings of the bird enabling it to fly, and thus the thief is punished by cutting off his hand as cutting the wing of a bird; it would therefore be easier to catch him if he repeats the crime ... and cutting off his hand is more effective than whipping, and it is appropriate to cut off the limb he used to do harm to people and to steal their property" ¹⁵.

¹⁴ El-Muvvafacat, *On the origin of doctrine*, Vol. 2, pp. 6-8.

¹⁵ A-Alam El-Muwakiin.

The crime of theft indicates evil in the nature and corruption in the soul as it is a dangerous form of criminality. This is shown by the fact that the thief will take property even if this leads him to commit other crimes against persons, such as murder and harmful behaviour. How many souls have been lost because of committing the crime of theft by use of modern technological weapons and instruments, such as cars, explosives, ... ?

4. The danger of the crime of theft

Confronted with the danger of this crime and in view of its evil results the sociologists, the legislators, the criminologists endeavoured to identify a criminal policy through which they could cope with this phenomenon: so the man-made legislator enforced laws to prevent this crime and imposed various punishments on those who commit it; the criminologists concentrated their researches on the causal factors, and the law enforcement authorities established different methods for executing the decrees of the legislator and the recommendations of the criminologists. Yet, in spite of this, the state authorities could not cope with the rising trend in theft and people continued to suffer the consequences of this, and other related crimes, which had increased and developed due to modern technology (means of communication, destructive instruments, violence ...). The punitive establishments had actively participated in increasing the art of criminality and training of the criminal, by transferring him to a meeting place of criminal gangs where preparations are made for new criminal projects instead of being centres of reform and rehabilitation. Therefore we see that the most dangerous and the most professional criminals are mainly graduates from these punitive establishments ¹⁶.

In spite of the danger of this crime and its evil effects, some people had opposed the application of hounded legislation on the grounds that it was not in keeping with modern times and was contrary to

¹⁶ Attachment to the special law regarding application of theft and highway robbery punishment.

that which had been declared in the Universal Declaration of Human Rights concerning the treatment of the offender and which had been decisive in both criminology and penology.

5. Theft hadd and today's values

Regarding application of the heavenly perfect Islamic doctrine in Libyan Arab Jamahiriya and other Islamic countries, some people cast doubt on it and others oppose it, with the excuse that it is in contradiction to the values of our era and its human principles, especially those relating to natural human rights, and which had been established in criminology and punishment; one of the criticisms was that of cruelty in the punishment decreed, especially that of amputation of the hand, adding that this does not match the nature of the crime.

If we do not wish to surrender to these comments it will require, on our part, in spite of the limited time, to negate their weakness, pointing out the welfare of those societies where application of theft hadd is implemented and which is legally defined.

Firstly, the point of view of the opponents of the application of theft hadd: The opponents of the application of the Islamic legislation in the field of hadd punishment state that it is not in keeping with the nature of our times, that it had been revealed in an environment different in doctrine and faith. How is it possible to apply the hadd legislation, which is the right of Allah, on an offender without faith, as the application is to purify him from his guilt before meeting with Allah. The opponents of theft hadd add that partial application of the hadd legislation is in contradiction to the globality of the Islamic religion which had been revealed as a doctrine and a law or, in other words, as religion and state, as people used to say. How could the partial application of some of its legislations in one field function correctly without that of other legislations in different ways of life?

As a punishment they attributed cruelty and severity to the hadd legislation which, they add, contradicts the principles of the Declaration of Human Rights, and especially the Universal Declaration of Human Rights issued on 10 December 1948 which inclu-

des in its Articles 3 to 21 specifications of civil and political rights; one of these is the right of everybody to live in freedom, in safety, free from torture, ill-treatment or severe punishment contrary to human dignity ...¹⁷.

The critics also say that the theft hadd punishment opposes the principle of matching the sanction with the gravity of the crime and that the expected result could not be achieved. They add that the amputation punishment destroys the soul of the offender and impedes him from working and earning his living while society needs manpower for productive purposes¹⁸.

Secondly, invalidation of the arguments of the opponents of theft hadd: As regards the dissimilarity between houdoud legislation and the values of the 20th century, it should be noted that the Islamic religion launched the Arab nations with their dignity and civilization as a minaret which cast its light over Europe in the Middle Ages, after they had existed as dispersed tribes who were not law-abiding and with an aimless existence; now they are proud of themselves and of their heritage, and because of their Islamic religion they have united and their life-style has changed and become stabilized and all those living in its shade are sure of life, religion, intellect, offspring, property. This transformation occurred over a short period of time, not exceeding 23 years and some days. So what law or what human thinking could achieve this, uniting scattered nations and ensuring their security and stability?

On the other hand, houdoud legislation had been decreed for a limited number of crimes which are highly dangerous for the basic interests of society and the five necessities and can not be treated lightly. As a crime and punishment law is a protection law, its concept is derived from the reality of this concern. Therefore we can understand why the old legislation decreed a firm punishment for aggression on the sanctity of religion and the security of the believers, while the legislation of the 20th century tends towards the widening of the

¹⁷ See: Basic realities of the United Nations. Publications Department, New York, 1980, pp. 157-158.

¹⁸ Tharwz: Anis El-Asyuti, *A new law concept*. University of Kar Unos, Faculty of Law, p. 27.

criminal environment and increasing the punishment for those crimes which affect the economy and common safety. The difference among the criminal legislations clearly reflects the gap regarding the essential interests which are to be protected. It has been said that law is the result of its environment, a mirror of its time and any laws which do not correspond to this rule are barren, and thus man-made legislation has remained incapable of preventing crime. The heavenly perfect Islamic legislation deriving from the Holy Qur'an and the Sunnah of the Prophet (Peace be upon Him) can not be compared with the man-made legislation, as the former is firm and stable resulting from its perfection. This perfection can not be attributed to man due to its difference in origin, globality and purpose, and it is normal for the Islamic doctrine to be highly esteemed as it has existed and has been applied for 14 centuries. During that period the social, economic and political life all over the world changed due to various factors, but Islamic legislation continued because of its origin from Allah in its flexibility and totality, the equivalent of which is so difficult to find in man-made legislation.

The opponents describe hound legislation as cruel and severe and that it will not give the offender the humane and natural rights for the safety of his person both materially and morally, and thereby they show their ignorance of the Islamic doctrine principles on freedom and equality among people without distinction because of colour, wealth, status or authority – they are all equal in the eyes of the heavenly perfect Islamic doctrine, there is no difference between an Arab and a non-Arab except in piety.

It is also prohibited to shed blood illegally and treacherously and everybody is assured of his rights in the shade of security. But the man of this century lives in a state of fear and terror, he has lost confidence in the capability of the public authorities to ensure his security and protection from the illness of crime; and all the public authorities are capable of doing is to issue statistical bulletins indicating the high crime rate, warning citizens against the criminals which makes people even more fearful, forcing them to rely on their own possibilities for self-protection, carrying firearms and placing electric wires around their houses and their property in order to send the criminal shadow far away to enable them to spend a quiet and peaceful night. Thus the man of the 20th century has

lost the most important of his natural rights: that of living in security, safety and stability. So how can the opponents criticize and how can the houdoud legislation contradict man's right to freedom and safety for himself and for his property ...?

The firmness of the houdoud legislation indicates a threat, as Allah Himself decreed it and revenge on His subjects was not intended; He decreed it for their mercy in general and for the offender in particular. Only considering the offender condemned to hadd punishment without reflecting on the effect of the application of the sanction on the interests of society, is contrary to logic and intelligence, for concern is directed towards people in their totality and not that of one thief who had committed a crime and was unable to save himself by introduction of a doubt. Therefore the hadd punishment should be inflicted without hesitation, in spite of its severity and firmness, as this firmness is in itself a mercy, as had been stated by the great jurisprudent Ibn-Timiah: "It should be known that the application of hadd is a mercy from Allah on his subjects ... As the doctor when he gives unpleasant medicine to the sick, or he cuts away diseased flesh ... or blood-letting ... it is as the sick man who drinks the unpleasant medicine and his effort towards recovery, as thus the houdoud has been decreed" ¹⁹.

The opponents of the application of houdoud legislation maintain that the philosophy of the criminalization and the punishment has had a lengthy developmental process on two principles: the first decreed the legality of the penalty – there is no crime and no penalty not covered by an article of the law; second, it is to be assumed in the personal punishment of the culprit himself.

The punishment aims at the achievement of two objectives: global prevention and individual prevention. The latter decreed the imposition of pain on the offender according to the gravity of his crime; this suffering may be physical, as in the case of corporal punishment, or it may be moral, as in deprivation or limiting freedom, or materially, as in payment of punitive damages. In addition to the consequences of application of the punishment, all these will

¹⁹ Doctrine policy in reforming the head of the state and the people. Dar El-Kitab El-Arabi, Egypt, 4th edition, 1969, p. 98.

have an impact on the offender's personality resulting from the negative societal attitude²⁰.

Global prevention affects everybody through application of the lawfully decreed punishment for crimes contrary to orders and prohibitions. These decreed sanctions by houndoud legislation do not permit, from the point of view of the critics, application of the principle of individualization of punishment and the achievement of individual prevention, as the physical punishment does not allow for an alteration of the criminal personality in its application²¹. As this sanction is considered as such with one hadd, it is obligatory, the judge can not stop its execution, can not change it, reduce it nor pardon it, as this is a punishment decreed by Allah Himself, and by its nature it can not submit to increase or decrease. All this is contrary to the sanction of deprivation or limiting freedom which is mentioned in legal codes.

Thus the opponents prefer the deprivation or limited freedom punishment which, in our time, is that most applied. Let us look at the reality of this sanction and the outcome of its infliction.

6. The punishment of deprivation of liberty and its effect

The time came when the criminologists started to look upon the offender humanely although some considered him to be the result of a group of different factors: as a sick man needing treatment which, according to the punitive laws, would mean his isolation from society in a location surrounded by high walls or in underground galleries. The penologist states that the punitive establishments are not supposed to be places where the delinquents are isolated from societal norms, but that their orientation should be changed, as well as the treatment for dealing with the prisoner, so that these become a place where he can meditate on his sins and a reform centre for his rehabilitation and reinsertion in society. In spite of the humane approach and the validity of part of it, it is still unfortunately uto-

²⁰ Dr. Yusr Aniwar Ali, *Criminology and torture*. Dar El-Nahdah, publisher, 1980, p. 342.

²¹ Abdul Kader Odah, Vol. 1, p. 635.

pian and has no connection whatsoever with everyday reality; these punitive institutions did not succeed, despite all reform efforts since the beginning of this century, in verifying their aims, but we may say that the damage caused by them is not in accordance with that which is best for the interest of the offender and for society. Deprivation of liberty, no matter how long or short the period, will unavoidably harm the inmate and at the same time will result in social and economic damages to society, which could be avoided had a different punishment been applied.

a) Due to incarceration, the inmate is deprived of his most important natural right, which is his life in liberty, and he feels humiliated and degraded; his imprisonment makes him continually aware of his guilt, caged like a wild animal, and that society (the outside world) could not find an alternative to get rid of him but to put him behind walls and forget about him. This will create hate and aggression in his soul towards the outside world which will be expressed, as soon as he leaves the prison, by the committing of other crimes.

All this damage is unavoidable in spite of the variations in treatment within the punitive system, as it is created spontaneously due to loss of freedom.

b) Deprivation of liberty severs relations between the inmate and his family in particular, and the outside world in general with which, over time, he will become estranged. So how can it be correctly maintained that this punishment is aimed at the reform of the offender and his preparation for reinsertion in society? It may be noted in reality that the ex-inmate upon leaving the prison is lonely, desperate, lacking contact with the outside world, which finally obliges him, sometimes even after hours, to return to the criminal world with a new crime.

c) The inmate spends long long hours behind those high walls without any activity worth mentioning; he will become lazy and accustomed to satisfying his needs by depending on others, and often he will expend his efforts in other directions clearly identified by the authorities of these punitive institutions.

Therefore the prisoners remain unemployed and unproductive at

the expense of society, the cost of which could be used for investments in other fields.

The opponents say that the theft hadd, amputation of the hand, physically deforms the offender, diminishing his ability to work, with a resulting impact on the productive capacity of society.

To assure the doubters and also those who would hesitate in inflicting this punishment, bodily deformation does not touch all society and the conditions governing its application limit it to the point that it is applied only on very rare occasions. In addition, man is exposed to many deformations throughout his life due to accidents and illnesses. But to say that amputation of the hand, although a normal practice in the past because of war, is unacceptable today in the age of the atom bomb and the conquest of space, we may reply: "How similar this night is with the day before"; how cruel is modern technology on today's man, with car and transport accidents as proof and testimony defeating their cause and cancelling their own ends.

As regards application of theft hadd and the comment that this will prevent the offender from work and productivity, we can reply that he who committed the theft, and where no doubt exists for its prevention, may be considered as truly living off society without making any contribution towards it; the thief is an obstacle to the advancement of his fellow-men as he has stolen their efforts and their produce, and thus he should be punished by cutting off the means (his hand) given to him by Allah to work.

In the light of what has been explained above we may say that deprivation of liberty did not achieve its expected aim: it is legally and actually weak in achieving general and individual protection, and perhaps the high level of recidivism in most countries of the world is a true testimony of what we say. The criminologists confirm that the most dangerous criminals are those who have been previously condemned to incarceration, as they no longer fear prison and there is no place for them in a society from which they have been removed for long periods of time. In view of all these damages, some scholars maintain that rehabilitation will have no effect other than outside the prison walls, and thus the tendency arose towards a widening of the punitive system without deprivation of liberty – as, for example, non-application of the sanction, conditional liberty, surveillance, and

other methods. These opinions opposing deprivation of liberty (especially for short periods) have been clarified in decisions and recommendations of international organizations and conferences. The UN Conference on the Prevention of Crime and the Treatment of Offenders, held in London in 1960, recommended the reduction of these penalties and proposed their substitution with other methods with non-deprivation of liberty. The first Arab Seminar on Social Defence, which took place in Cairo in 1961, also recommended avoidance of imprisonment, specifying the sanction to be useless and inappropriate in criminal policy²².

Thus modern criminal policy has tended towards short-term sentences to prevent the incarcerated from the damage of closed imprisonment and alternatives have been proposed, such as allowing the offender free in society with a view towards his rehabilitation as, for example, payment of punitive damages, non-application of the sanction, work camps, or deprivation of some of his rights or activities, removing his driving licence for a definite or a limited period, obliging him to attend rehabilitation institutes or training centres and warning and reproof on the part of the judge²³.

The man-made legislator has considered punishment from all angles aimed at the prevention of the crime phenomenon; there are now specialists in criminology, some of whom recommend cancellation of incarceration while others propose reduced periods. These diverse opinions finally concentrate on the necessity of allowing the offender to remain in his social environment, that to isolate him within a closed institution will increase the acute problem of his reinsertion in society because of the low level of prison morale.

The alternative measures which do not reach the level of punishment are in part rejected by social reality and therefore these have not been widened, with the result that the man-made legislator still depends on imprisonment and the courts continue to apply it despite its uselessness.

The hound legislation has clearly proved that by its applica-

²² Proceedings of the Arab Seminar on Social Defence, Cairo, 1966, p. 185.

²³ Yusr Anvwar Ali, *op. cit.*, p. 364.

tion the Islamic society has lived under the umbrella safe and tranquil, that the offender himself used to come spontaneously to accept hadd punishment in order to purify his soul of its guilt. It is said that this results from the faith that had been planted within man by the Islamic religion; but in our day, with the weakening of faith and the straying of people from their religion, the application of the houdoud legislation is something strange and is seen as a cruel and severe punishment²⁴.

This can be contradicted in the following three points:

i) Non-application of part of the Islamic legislation would not impede, in any way, the application of other parts, in spite of the perfection of the Islamic religion in the totality of its status for both religion and everyday life.

ii) Application of the houdoud legislation, in itself, is an invitation to the faith and opposition to it is an invitation to loss of faith and to go astray.

iii) The failure of the man-made legislation in crime prevention and its inability to find alternatives indicate that houdoud legislation is the only method to combat the crime phenomenon.

It is recorded in history that when the Khaliphah Hisham Ben Abdul Malik suspended application of theft hadd for some years, theft increased and people were insecure for themselves and for their property; the thieves were everywhere, in the cities and in the suburbs. When it became so dangerous and life was in turmoil the Khaliphah recommenced application of the defined punishment (theft hadd) and this resulted in general crime prevention.

In recent times there is another example to illustrate the appropriateness of theft and highway robbery hadd, as the most evil crimes had been abound in the pilgrimage country even on those who were pilgrims to the House of Allah.

Now there are other Muslim Arabic countries following this method as, for example, Libyan Arab Jamahiriya, where application of the Islamic legislation in the field of houdoud is being initiated.

²⁴ Tharwat Anis El-Asyuti, *op. cit.*, p. 27.

Let us examine some of these theft hadd punishments through the Articles included in Law No. 148 of 1972²⁵.

7. Application of theft hadd in Libyan Arab Jamahiriya

On the fourth of the month of Ramadan, 1392 H., corresponding to 11 October 1972 G., the Libyan Arabic legislators issued a special law concerning theft and highway robbery hadd, including in its introduction the confirmation that the heavenly perfect Islamic legislation is the main source of legislation.

Thus the Arabic Libyan Muslim people fulfilled their promise to Allah considering the Holy Qur'an as their statute and way of life, in the belief that when we refer to the Law of the Lord who created us, humanity can banish its conflicting thoughts and the fanaticism of religious and political sects.

In this way legislation was derived from the heavenly perfect Islamic doctrine with its different sects and the opinions of the scholars, choosing the most appropriate and the more tolerable solution for the people taking their needs into consideration. Perhaps a sentence is extrated from a legislative point of view or opinion in the heavenly perfect Islamic penal law which may be more appropriate in one case than in another, in complete harmony among the different legislations and their concepts and tendencies to verify the desired concern²⁶. To verify this legislative tendency, Law No. 8 concerning modification of some hadd laws was issued on 11 Muharam 1395 H. (23 January 1975 G.): this confirmed substitution of the word "El-Mash-Houd" and the "Imam Malik sect" with the word "El-Mash-Hour" from the easier sects.

But we do not confirm this tendency in full, that the easiest

²⁵ It is necessary here to examine the laws of the Libyan Arab legislators in the field of houdoud, in addition to the special law of theft and highway robbery hadd: a) Law No. 70, 1973, concerning application of adultery hadd or other punishment. b) Law No. 52, 1974, concerning application of defamation hadd. c) Law No. 89, 1974, concerning prohibition of alcohol and application of alcohol-drinking hadd.

²⁶ See footnote above.

would not always be the most favoured. The easiest is the simpler of that which could occur and El Imam El-Shatbi (Peace of Allah be upon His soul) in his book "El-Muwafakat" clarified the negative consequences of application of the easiest doctrine of the sects, as this is far removed from religion and lessens esteem for it; in addition to irregularity in application of justice among people and the diffusion of chaos and tyranny, non-application of hadd will result in the evil becoming bolder, and thus the aim of applying the easiest solution should be the conservation of the five necessities: religion, life, intellect, offspring, property, and prevention of wrongful acts, especially that of theft.

8. The prerequisites for application of hadd punishment

In view of the firmness of the punishment prescribed for theft, the legislator has stipulated many conditions for its execution, some in relation to the offender and others in relation to the crime and the methodology for its proof: all of these are to prevent miscarriage of justice or exaggeration in application. The Islamic legislator has specified some cases where theft hadd should not be applied as doubt existed, in accordance with the saying of the Prophet (Peace be upon Him):

"Houdoud punishments are not to be executed on suspicious grounds".

We will now deal with these conditions as under:

i) *Conditions regarding the offender*: To apply the theft hadd on an offender he should be mature, of age according to the moon year, have committed the crime of his own free will, was not in need or under obligation. In line with these conditions hadd is not applied to juveniles, the insane and those who acted under obligation, in accordance with the Hadith of the Prophet (Peace be upon Him):

"There are three whose actions are not recorded:

A sleeper till he wakes,

A boy till he reaches puberty,

And an idiot till he is restored to reason".

He also said:

“ People should not be judged who
Commit misbehaviour through
Error or necessity ”.

No difference exists between male and female for the generality of the sentence as indicated in the Holy Qur'an:

“ As to the thief.
Male or female,
Cut off his or her hands:
A punishment by way
Of example, from God,
For their crime:
And God is Exalted in Power ”²⁷.

The age element is that at the time of committing the crime (taking secretly) not the time of its discovery nor apprehension of the offender or the judgement²⁸.

If the condition of obligation exists and the perpetrator stole in order to prevent his own death or that of another, neither the hadd nor the ta'zir punishments are applied. Allah says in the Holy Qur'an:

“ ... But if one is forced by necessity,
Without wilful disobedience,
Nor transgressing due limits, -
Then is he guiltless.
For God is Oft-forgiving
Most Merciful ... »²⁹.

Necessity ranks lower than absolute need although it is enough to cast a doubt on the application of theft hadd but not ta'zir punishment³⁰.

Need is that which is essential for individual tolerance and, if neglected, may lead to severe scarcity of means of living without resulting in death; thus, it ranks lower than absolute necessity, as

²⁷ *Holy Qur'an*, Chapter 5, Verse 41.

²⁸ The Libyan High Court, Hearing of 25 November 1961. High Court Review, Vol. 2, p. 583.

²⁹ *Holy Qur'an*, Chapter 2, Verse 173.

³⁰ First article of footnote 25.

in such a case an individual is not liable to death and beyond this the condition of absolute necessity is not considered³¹.

A competent court must evaluate the level of absolute necessity which forced a perpetrator to steal in accordance with the subjective circumstances of the act and the personal circumstances of the actor; the difficulties facing judges in evaluating the existence or not of absolute necessity are very clear, as "necessity" is relative, differing from one individual to another, the circumstances of each case vary, from one society to another and from one period to another – the financial needs of Zaid may be more or less those of Amr, but what Zaid needs in specific circumstances differs from his needs in other circumstances: therefore it is not easy to find a definite measure on which to base an evaluation of "necessity". Faced with this difficulty we may ask if necessity is considered as a doubt thereby preventing application of hadd, but in view of our limited knowledge and the relevant sentences we have examined and as such a query had never been raised before Libyan High Court, which is a subjective trial court and legal in the field of theft and highway robbery hadd, we have the judgement of our esteemed ancestors as a good example to provide the light to lead us on the right path and to overcome the problems and difficulties encountered. The Prophet (Peace be upon Him) says:

"Cutting off the hand is not to be inflicted
On one in case of famine".

The Khaliphah Omar Ben El-Khattab (God bless Him) said:

"Cutting off the hand is not to be inflicted
On one in case of torrential rain or drought».

Thus Khaliphah Omar Ben El-Khattab himself did not apply theft hadd during a famine period.

In light of the above clarifications we believe that, in normal circumstances, necessity should not be considered as a doubt to prevent theft hadd. Other opinions could result in non-application of theft hadd on an individual who presents his need before the judge³².

³¹ Mohammed Sami El-Nabrawi, *Highway robbery and theft*. University of Kar Unos, 1961, p. 35.

³² Tharwat Anis El-Asyuti, *op. cit.*, p. 27.

ii) *The conditions relating to theft*

Provision No. 2 of Article No. 1 of the law of theft and highway robbery hadd includes the stipulation that the property was taken secretly with the intention of possessing it. This stipulation has two elements: to take, the intention of possession. "Taking" means removing the property without the knowledge or the consent of the owner. All scholars agree that the theft hadd should not be applied on an offender who takes property clearly and openly, or who takes it with pride and strength, in accordance with the saying of the Prophet (Peace be upon Him):

"Cutting off the hand is not to be inflicted on ...
Who plunders ... or one who snatches ..."

The legislator placed a condition on the theft which implied a hadd punishment that the property should be taken secretly, that the thief removed it from a safe place with the intention of possessing it. As punishment of amputation of the hand is a full and complete sanction, its application should also be full and complete and must be verified in a full and complete crime. Thus, temptation to theft can not involve hadd punishment because the act of "taking" had not been fulfilled as the suspect was unable to possess the property.

Habits relating to protection of property differ from one location to another and from one society to another – for example, locked suitcases, drawers and wardrobes are presumed to be safe hiding-places for the home: keeping property in secure places is evidence that it was not left lying around carelessly and that it was not abandoned. Therefore no doubt exists regarding the owner of the property and its removal from safe keeping is taken into consideration whether the thief had left it or it had been taken by another or that he had given it to somebody else, even if he replaces the property in its original location. El-Hanafiah maintains the necessity of actually acquiring in order to apply hadd punishment, but this does not mean that the thief should keep the property with him after its removal.

Taking property may be achieved directly as, for example, the thief removes it himself, or indirectly if he uses a child or a trained animal, and the majority of Islamic jurists do not distinguish between these two methods.

As regards secrecy, this means to take the property without the knowledge or the consent of the owner, as when a thief enters a house and steals property in the absence of the inhabitants. The underlying reason for this condition, as has been specified in the theft and highway robbery law, is lack of knowledge of the perpetrator or inability to apprehend him; thus cutting off the hand is considered an adequate punishment if the offender is identified after committing the crime.

It is necessary to note here the coincidence between the hadd punishment law and the man-made penal law relating to the condition of non-consent, and their dissimilarity regarding the element of lack of knowledge, as this would not impede the criminal act according to the punishment law³³.

This comparison clearly shows the concern of Islamic legislation for human tendencies, whether of the offender or the victim. The owner of property is required to take every precaution and to keep it in a secure location as a symbol of its protection, thereby making it difficult for a thief to remove it or to fulfill his intention.

All these considerations clearly indicate the concern of the heavenly perfect Islamic legislator to curb the evil impulses in the soul of the offender, to which the man-made legislator pays only limited attention despite its importance in crime prevention. Some of the modern penal legislations noted the importance of outside influences as, for example, the display of consumer goods, tempting the suspect to steal and these effects and criminal responsibility were questioned³⁴.

From another point of view, for the theft which is punishable by amputation of the hand the condition must exist of taking the property with the intention of possessing it, as when this condition is present the intention of the offender is to acquire the property and to present himself as its owner. If his intention in taking the property was not that of possession as, for example, to destroy it or get rid of it, he is not to be considered a thief³⁵. Similarly, if he takes the property on a temporary basis or to obtain benefit from

³³ Mchammed Sami El-Nabrawi, *op. cit.*, p. 470.

³⁴ Jean Largine, Grenoble University, 1975.

³⁵ Omar El-Said Ramadan, *Punishment law*, 1968, p. 412.

it and he had been apprehended before he was in a position to return it³⁶. In all these cases the offender may be punished with ta'zir if all the required conditions exist.

iii) *Conditions of the stolen property*

Provision No. 3 of Article No. 1 of the theft and highway robbery law states that the stolen property should be movable and valuable, respectable, have an owner, maintained in security, and have a value of not less than 10 Lib. Din. at the time of the theft. Property is any possession which may be acquired, which may be normally beneficial and is movable; while immovable property is, for example, real estate, without possibility of benefitting from it nor of moving it. Article 82/1 of the Libyan Civil Law distinguishes between movable and immovable property: "everything stable, fixed and impossible to transport without damage is immovable property; all other items are considered as movable property".

This definition is in accordance with Maliki jurisprudence but its application produces results which do not coincide with logic. For example, a person who removes doors or windows with the intention of possessing them is not considered a thief as these objects are immovable property according to the traditional concept. Despite this, the special law regarding application of theft and highway robbery punishment states that if a criminal takes wood from a house or removes a door or a window, these are movable property and theft hadd will be applied as it corresponds in its conditions and the basic elements³⁷.

But continuing on this basis would surely lead to the contrary of that specified in the special law regarding application of theft and highway robbery punishment, that if wood from a house, or the doors or windows are not considered movable property until after removal (which means non-application of theft hadd), as at the time of removal it was immovable property, and when it became movable property it was not in a secure location – which also means non-application of the hadd punishment³⁸.

³⁶ Ahmed Fatmi Surur, *Punishment law*, 1968, p. 625.

³⁷ Abdul Kader Odah, *op. cit.*, Vol. 2, p. 543.

³⁸ Awad Mohammed Awad, *The law relating to hand amputation in the Libyan legislation*, University of Kar Unos, Vol. 7, 1978, p. 346.

Therefore we reach the conclusion that, in application of the theft hadd punishment, what is meant by movable property covers everything which may be transported from its location whether it remains safe or suffers damage ³⁹.

The property should also be respectable as amputation is not applied in connection with non-respectable objects as, for example, alcohol and pork ⁴⁰.

All the conditions are necessary if the stolen property passes into the hands of others: for example, if it had belonged to the thief himself and he gave it as a mortgage or lent it to somebody and then removed it secretly; or it had been rented and was secretly removed; or the property was entrusted to another and was secretly removed. In such cases the act is not considered a crime nor a theft, even though the property was taken secretly. If the offender was the owner of the object at the time of the theft but if he had possessed it prior to theft and it was not in his possession, in such a case he is responsible and hadd punishment is applied. However, if he did not possess it but it came into his possession when the theft was committed hadd punishment is not applied, for example, if he received the object as a gift, rented it, or inherited it at the time of the act. Criminal responsibility can not exist if he was the rightful owner before removing the object, but if he retained it after removal from a secure location would this exempt him from criminal responsibility?

The opinions of the jurists differ: El-Malikiah confirmed hadd punishment whether the thief possessed the object before or after being brought to the judge; El-Shafi-Iah El-Hanabilah, Abu Yussuf from El-Hanafiah confirmed the punishment if the offender possessed the object after being brought to the judge, and the contrary prior to this; but El-Hanafiah does not confirm this opinion absolutely.

The legislator has applied the El-Hanafiah sect opinion, continuing with the facilities of the sects and in accordance with the saying of the Prophet (Peace be upon Him):

³⁹ Same as footnote 37, p. 100.

⁴⁰ Special law regarding application of theft and highway robbery punishment.

“Houdoud punishments are not to be
Executed on suspicious grounds”.

We believe that the legislator's opinion is in contradiction to what has been said and applied and which has been confirmed by the Sunnah of the Prophet. The Prophet Himself (Peace be upon Him) applied hadd punishment in several cases where the stolen object was in the possession of the thief when brought to Him; although acting on this opinion would mean non-application of the theft hadd punishment which is the right of Allah Himself, and the Prophet (Peace be upon Him) did not accept any intervention in a hadd application. He said:

“... I swear by God that if Fatima daughter of Muhammed
Should steal I would have her hand cut off...”

The Libyan High Court decided: “If the guilty obtains the stolen property after theft and prior to the final verdict and when this possession took place before passing sentence from this court, the theft sentence, which is hadd, will not be final except by sentence from the High Court, this possession will prevent application of the hadd punishment”⁴¹. This decision, from the lawful point of view, actually opposes that which is legally confirmed, particularly as the Libyan High Court is considered as a state guardian in similar cases.

Cases where theft hadd punishment is not applied

Article No. 2 from the theft and highway robbery punishment law specified that the theft hadd sanction must not be applied if a doubt exists in favour of the offender, as in the following cases:

i) If the theft occurred in a public place, during working hours, or in any other location where the offender was permitted entrance, and the stolen object was not in a secure place.

ii) If the theft took place between the older and the younger generations of a family, between a couple or among relatives.

⁴¹ Session of the Court, 16 Safar 1390 H., corresponding to 23 December 1980. *High Court Review*, Year 17, Vol. 4, p. 143.

iii) If the owner of the stolen object is unknown.

iv) If the owner of the stolen property is in debt to the offender and has delayed or refused payment beyond the specified period, and the property taken was approximately of an equivalent value but not more than 10 Lib. Din. ("Nisab" - the minimum amount established for hadd punishment).

v) If the stolen property consisted of fruit on trees or uncut agricultural products, which were consumed on the site.

vi) If the offender was an indirect accomplice, inciting or helping, up to the point that this did not constitute direct complicity,

vii) The offender possessed the stolen property after theft and before the final sentence in court.

viii) If there was more than one suspect and the divided value for each would not amount to 10 Lib. Din. ("Nisab") and the article could only have been stolen with their joint efforts.

ix) If the offender has a doubt in his favour as, for instance, one of the owners, "waqf" (state endowment) and he considers himself a shareholder, stealing from the public treasury ("bait-el-mal"), funds devoted to the needy and from war booty.

It is therefore clear that the legislator did not wish to limit the doubts preventing application of hadd, and thus the offender could raise one of these or any other doubt in his favour. Also some of these doubts are not in accordance with the aims of Islamic legislation in inflicting the theft hadd sanction and confirmation could lead to damage of the common welfare, which all these orders have been created to protect. Consideration of these doubts would result in non-application of theft hadd punishment in some cases: for example, if the offender possessed the stolen property after the theft and before the final sentence (as has been mentioned above) and similarly as has been specified in Section No. 9 concerning theft from the Muslim public treasury, as mentioned in the special law regarding application of theft and highway robbery punishment.

Regarding stealing from the Muslim public treasury, theft hadd should not be applied as, according to the Three Imams (Abu Hanifa, El-Shafii, El-Imam Ahmad Ibn Hanbal) the thief also has a right

to this money and this creates a doubt; but Imam Malik did not share their view and he confirmed application of hadd punishment on the offender according to the text of the Holy Qur'an; he considered the doubt to be weak, that the property was in a safe place and the thief has no right to take it before any other member of the community. With others⁴², we agree that this opinion merits implementation, that the protection of the Muslim public treasury is necessary in conservation of the community interests, which is more important than those of the offender. At the same time, stealing common property, in comparison with stealing personal property, is more harmful and more damaging to the interests of society. It may be noted that nowadays stealing of common property is increasing and could reach a level of economical catastrophe which will impede the developmental process in a system of life where state property is augmenting⁴³.

If some of these doubts limit the application of theft hadd punishment, the system and procedure for proving the crime make its infliction more difficult, if not impossible.

iv) *Methods of proving the crime*

The methods of proving the crime have been limited by the Muslim legislator to two: confession, testimony (two reliable witnesses), and it is agreed that female witnesses can not be used as testimony in houdoud; Article No. 10 from the theft and highway robbery law specifies:

a) Testimony (two reliable witnesses): the word "testimony" is clarification or an exact account which indicates what has actually been seen⁴⁴. Legally, testimony is true information as indicated by the term "eye-witness" in a court session so false testimony can not be considered and even to call it testimony is unrealistic⁴⁵.

From the point of view of the law, the witness must state what

⁴² Abdul Aziz Amer, University of Kar Unos, *Hadd legislation*, Vol. 7, Year 8, 1978, p. 132.

⁴³ Abdul Rahman Bhututah, University of Kar Unos, Vol. 10, Year 11, 1981, p. 388.

⁴⁴ Ahmed Fathi Surur, *op. cit.*, p. 17.

⁴⁵ Fathi El-Kadir, Vol. 6, p. 20.

he perceived with one of his senses, and it aims at revealing reality and truth whether in confirmation of the accusation or denying it⁴⁶. Therefore true testimony is extremely helpful to the court in preparation of its sentence⁴⁷.

A proven testimony is subject, as any other proof, to the careful consideration of the court, which may reject it if it is suspicious or accept it if it is satisfactory. The testimony of the predominant witness can not be balanced against the other without clarification.

The court has the right to accept the testimony presented to the investigation authorities and to reject that presented in the court; it has the right to evaluate the circumstances when the testimony had been delivered referring to that which is more convincing; it also has the right to extract part of the testimony in one case and not in another, on behalf of one suspect and not for another. In such cases the motives are not necessarily disclosed and these remain at the discretion of the authorities with the condition that when extracting part of a testimony word-splitting is avoided, the actual meaning is not extended and misinterpretation does not occur.

b) Confession – Recognition of the right of an individual lacking proof⁴⁸: Confession is one of the most important means of proving a criminal case as nobody can be more truthful than a person who confesses his own act, especially when by doing so he will suffer the consequences⁴⁹; thus confession is more important than testimony, is the strongest factor for condemnation⁵⁰ and is legal proof according to Islamic texts and consensus. The accepted confession is that which takes place before the judge.

In the special law on the application of theft and highway robbery punishment it is stated that when the justice system conducts investigations specified by the Attorney-General (who forms part of the judicial authorities), confession should take place before these authorities and incorporated in that made before the Attorney-General.

⁴⁶ Ahmed Fathi Surur, *Criminal proceedings*, p. 591.

⁴⁷ Ma-Amun Mohammed Salamah, *Libyan Penal Law*, Vol. 2, p. 201.

⁴⁸ Ahmed Fathi Surur, *op. cit.*, p. 160.

⁴⁹ Mohammed Sami El-Nabrawi, *op. cit.*, p. 223.

⁵⁰ Ahmed Fathi Surur, *op. cit.*, p. 159.

ral. The suspect has the right to alter his confession before the final judgement and as the amputation sentence is not final until after presentation to the High Court together with all the relevant documents within 40 days from the date of the verdict, the High Court must study it carefully and decide subjectively and legally with the final sentence. If the suspect alters his confession and the crime had been proved only by this, hadd punishment can not be applied but ta'zir should be inflicted when the judge [accepts proof of the crime with any other evidence, in accordance with Article No. 10 of the law of theft and highway robbery hadd.

In this connection, the Libyan High Court decreed that when judgement was on the basis of confession which had been altered in front of the High Court and no other legal evidence existed of guilt, hadd punishment can not be applied and the sentence must be cancelled.

The legislator did not specify a definite terminology for altering or negating a confession, which may indicate doubt of possession, as the suspect may say: "I took my own money which had been forcibly taken from me, so I took my property from the supposed victim"; or he may completely deny his previous confession stating: "I was obliged, I was forced".

The Islamic jurists are not in complete agreement as to whether denying is an alteration of confession, which is revoking the confession because of a doubt - as, for example, if the suspect maintains that he took his own property, or that he had left it with the person from whom he had removed it, or that it had been taken from him by force or on loan. He may present other proof to support his denial, otherwise the hadd punishment will be applied. The High Court absolutely accepts alteration of confession whether this results in denial of the case, denial of confession, asserting that the evidence was false, that a doubt existed and that there was no proof⁵¹.

If the specified conditions for legal evidence are incomplete the High Court has no right to inflict hadd punishment but ta'zir should be applied (as specified in the punishment law), when the court is convinced of the crime with one evidence or another; the punishment

⁵¹ Session of 25 June 1975. *High Court Review*, No. 2, Year 11, p. 170.

law should then be considered and applied, which means that the criminal procedure should be followed⁵². This orientation is supported in Islamic jurisprudence⁵³.

In its sentence of 7 April 1981 the Libyan High Court repeated its previous verdict stating: "Alteration of confession on the part of the suspect, whether in front of the trial court or the court of cassation, should this result in non-application of hadd because the theft had been proved only by confession, means that the alteration would not cancel the confession before the investigating authority or before the court, and it still holds, producing elements of proof of theft for which the punishment is hadd according to the punishment law, when the court is certain of its correctness and reality"⁵⁴.

In the unpublished verdict of 30 March 1982 when judgement had been altered and the offender was sentenced to amputation of his right hand because of his repeated confessions in all stages of the investigation - before the magistrate, before the director of the prison and before the sentencing court, the offender confirmed that on the date of the crime at about 10 o'clock in the evening he had stolen, without being in need or under obligation and no doubt existed for the prevention of the hadd punishment; but he had altered his previous confessions before the court, which included that he practised theft and saying that he had been beaten on the sole of his foot. At the time of apprehension a sum of about 500 Lib. Din. had been found in his possession, and at the time of the crime he had been living with the victim and others. This alteration on his part is enough for non-application of hadd punishment if this is the only proof, but the law did not specify a definite terminology for alteration. The court can rely on confession of a suspect which had been repeated before the investigating authorities and accept it as proof for the verdict, that it had been similarly repeated and confirmed by the victim's testimony, the stolen property had been taken by the police from the informant who stated that it had been left in his keeping. All this verified the repeated confessions convincing the court of the reality of the crime and that it had been committed by

⁵² Same as footnote 51.

⁵³ Abdul Kader Odah, Vol. 2, p. 616.

⁵⁴ Session of 7 April 1980. *High Court Review*, Year 12, Vol. 1, p. 218.

the suspect. His presentation in front of the court, that he had been beaten on the sole, or the statement of his lawyer that the accused had been the owner of the stolen property and had deposited it with the victim, did not change anything as the defence was unclear and lacked evidence to prove it. Furthermore, it had not been previously presented to the investigating authorities, that it was unreliable and unacceptable.

In view of all the above, it had been clearly confirmed to the court that the offender had stolen movable property, which belonged to the victim, with the intention of possessing it, taking advantage of darkness and abusing a relationship, according to Articles 444/1 and 446/1, paragraphs Nos. 3 and 5, and Article 447/1 of the punishment law.

Thus, the High Court confirmed the previous verdict in its subsequent unpublished judgements ⁵⁵.

Therefore the Libyan legislator had clearly contradicted the High Court, which is unavoidable when deciding on innocence. To further clarify this contradiction we may indicate its causes: Article No. 12 of the theft and highway robbery punishment law demands presentation of the entire case to the appeal court, together with all the relevant documents, within 40 days from passing of the sentence by the trial court, and the appeal court should issue the final verdict subjectively and legally, and this sentence is final ⁵⁶.

The theft and highway robbery punishment law has excused the necessity of presenting the sentence in the appeal court stating: "When the punishment defined as hadd in this law for the crimes of theft and highway robbery, due to its gravity and the conditions on which the Muslim jurisprudence has defined that both of these legally merit the hadd punishment, these were so specific from the judicial authority who undertake the responsibility of examining and condemning similar acts to require in-depth and profound study". Since this punishment results in loss of a limb, leaving the condemned in a weak position, it was proposed that cases concerning

⁵⁵ Sessions of 1 June 1982, 8 February 1983 and 10 November 1983.

⁵⁶ It is noted that the judgement of the High Court had established consideration of the date of presenting the case and its procedures in order. Session of 30 March 1982.

these two crimes should be presented to the appeal court, by law presented to the Attorney-General, even if the defence lawyer had not considered this.

In the time-lapse for presentation of the case to the court, Article No. 10 gives the suspect a chance to alter his confession until final judgement is passed, and in such a case hadd is not applied if proved only by confession; this non-application of hadd means infliction of ta'zir when the court is convinced of the proof of the crime through factual evidence.

Thus, Law No. 48, 1972, placed the High Court as the only judicial power which, actually, can apply the theft hadd, although it can not do so unless the offender confesses once before the court that he committed the crime. The previous confessions in all the investigation procedures, before the magistrate who established the time-lapse, the accusation and the trial courts are not competent in application of theft hadd. In this way the legislator placed application of theft hadd at the discretion of the suspect: if he wishes to do so he may confess and if he wishes he may alter his previous confession which would automatically cancel the hadd punishment, despite the certainty of the court of appeal of the reality of the crime and the suspect.

From the lawful point of view, the High Court judgement is correct and unquestionable, but its reliance on the previous confessions of the suspect, presentation of the case to the High Court and the sentence to ta'zir punishment as specified in the punishment law, places this Court in contradiction with itself - which means that the repeated confessions of the suspect are either correct and the court relies on these for application of hadd punishment, or they are incorrect and no legal consequences will occur.

The suspect who repeated his confession during all stages of the investigation and before the magistrate, the Attorney-General and the trial court, is either admitting the theft which convinces the High Court and hadd punishment is inflicted, or his confession is incorrect and the court applies ta'zir. The legislator, when permitting the High Court to apply ta'zir punishment, is limited by the condition of having proof or factual evidence.

Thus, the High Court continues its reliance on confession as legal evidence in the case of confessing once before it and at other

times as evidence of the positive proofs specified in the procedural laws. This contradiction seems to us to be due to lack of harmony between man-made laws and those of divine doctrine. The divine doctrine differs from man-made laws in origin, purpose and aims, its evidence and judgements, and thus the correct application undoubtedly requires completion of other aspects as yet unclassified by the Libyan legislator, in particular the conflict procedures and the competent court. Satisfaction with the transfer of these cases under the criminal procedure law and the punishment law (for which there is no specific text) would not seem to resolve the problem but, in fact, to complicate it still further and to impede the correct application of hadd legislation.

It is enough to mention in this short paper that the judicial system in Islam does not differentiate among the stages of the case as in the temporal judgement systems where the magistrate has access to all the specializations of our times for the investigation and the court authority which, according to the Islamic system, would not allow the suspect the possibility of confessing his crime, denying or altering it, without giving causes and motives.

Thus, the punishment of cutting off the hand is, in view of the theft and highway robbery law, applicable at the discretion of the suspect: if he adheres to his confession he will be condemned to the hadd punishment, if he alters his confession he will be declared innocent or ta'zir will be applied if the court is convinced that he committed the crime according to the definite evidence as foreseen in the law.

Therefore we conclude that there is no alternative but for the High Court to accept alteration of previous and repeated confessions on which there is no doubt, and nothing further can be done but to cancel the hadd sentence which has been passed by the trial court and, instead, to apply ta'zir.

For all these reasons the Libyan High Court was unable to apply the established hadd punishment for theft despite the fact that the theft and highway robbery punishment law was passed 13 years ago; this can not be opposed because hadd punishment belongs to Allah Himself and if the suspect confesses his guilt he will be sentenced to amputation of the hand in order to purify his soul from his crime before meeting Allah. But if he wishes to remain silent and face

his guilt in the hereafter, with the permission of the judge (the state guardian) he is condemned to ta'zir punishment. We recognize the right of Allah in the theft hadd punishment, but we deny and negate the right of the judge to sentence a ta'zir instead of a hadd punishment.

In the abovementioned sentence, the High Court had confirmed that the suspect had committed the crime and expressed satisfaction that, before the court, he had admitted his guilt and relied on this in order to cancel the hadd and condemn him to a ta'zir punishment. In passing judgement in this way it appears as though the hadd punishment, which is defined as the right of Allah Himself, had been substituted with a ta'zir sanction and also contradicted that which had been legally specified in Article No. 17 of the theft and highway robbery law which prohibits the substitution of hadd with any ta'zir punishment.

Conclusion

The houdoud legislation does not contradict the correct modern concepts, whether these are humane or relate to the philosophy of criminality and punishment trying to create a balance between individual and societal interests. We believe that the conclusive reply to those who maintain that such a contradiction exists lies in implementing the houdoud legislation in accordance with a legislative procedural system in harmony with the purposes and aims of the Islamic doctrine. The opinions, regardless of their sources, can not be judged positively or negatively until they have been put into practice. The man-made laws have been proved barren and have failed to either prevent or reduce crime – on the contrary they have helped in large measure to diffuse the illness of criminality. The correctly applied houdoud legislation has achieved that which the man-made legislation has been unable to do despite all the means placed at its disposal by the modern state and the various authorities.

Only warning or threatening application of the houdoud legislation is useless for individual or collective crime prevention as awe of the legislation would overlook the souls; it could also lead to the idea of the impossibility of applying houdoud punishment which

means to stray further from our legislation and from our religion. Therefore the Libyan Arab legislator should immediately re-examine the theft and highway robbery hadd law and endeavour to resolve the problem of interference between the two different lawful systems, one deriving from western man-made legislation and the other from the Islamic doctrine and the legislative reality of the Muslim nations. The Libyan legislator should be encouraged to include, as soon as possible, Islamic doctrine sentences for other crimes, such as kisas, dea and ta'zir and not to rely on specific or the easiest doctrines; he should consider the common interest as the aim and purpose of legislation with the condition that this will not contradict that which is referred to in the Holy Qur'an and the Sunnah Sharifah.

Allah help us all.

Peace and benediction of Allah upon you all.

3. THE CONCEPT OF PENALTY IN ISLAMIC LAW

by Dr. Mustapha Abdul Majid Kara

1. Introduction

Origin of crime and penalty

Doctrine, in any society, relates to its purpose, aim and rules, its history, culture, and the developmental stages through which it passes; society defines that which is right and that which is wrong, and also decides whether or not a specific act is to be considered a crime. As societies differ (because of their history, culture and aims), in their comprehension of right and wrong, and as their values and tendencies will change over time, the types and categories of criminality must be relative, and these will therefore differ from one society to another and from one era to another.

If we consider the small or ancient societies which are isolated culturally but where only one origin of belief exists, we will see that doctrine and tradition specify the meaning of crime, its objective, and the type of its penal sanction. But in the cultural and social relationship of the large complicated societies, the specification of crime and its penalty is by means of doctrines. There are problems in making laws for one or another group of people, which may not echo the defensive reaction of the society as a whole, and its doctrines may not represent the direct and limited results which exist or which are within the capability of the human being. This is on one side, and on the other side some criminal acts may be defined as harmful, but we are encouraged towards other acts which are good and useful, but this harmfulness or this usefulness would appear to remain as

such over a short or medium period. The harm – especially in definite types of rulings – only represents opposition to political or economic theories, or perhaps only contrary to those in authority, despite the fact that the act in itself may constitute a normal or useful social behaviour.

This may be clarified in a different way if we consider what is happening in modern societies, with the widening of commercial relations, the diffusion of industry, and the enormous dependence on technology which resulted in many social changes, alterations, the development of individual relationships, and the creation of social structures of varying types and purposes and aims, which led to an indispensable, direct and indirect effect on law and crime, and especially on criminal policy and the purpose of punishment in general. Subsequently, the situation at this level of law and order (and even complication), the spreading of dissimilarity and competition among individuals, the instability in the balance of the capability of individuals and authorities, the economic and social levels, attitudes and opinions, beliefs and education, in addition to that which may result in the emergence of new professions and new specializations with different bases or orders and different ambitions and aims. As a result of this, the need to eliminate new acts increased as well as that of assuming responsibilities for other duties (family, social, health and education duties), regarding which specification was unnecessary in the past; this could also mean the specification of the criminality of a new behaviour (doing or not doing) which had not been previously criminalized, although it was clear that with the passing of time it would damage the new social order and social relations, or that which is demanded from these orders or interests and the relative procedures. Rapid social changes and technological and scientific progress, have had a direct effect on the enormous gap between the concept of law and the aim of punishment.

And as crime is as old as the human race and is expressed by wrongful acts and non-adherence to the orders of religions, sociological experts have concluded that from the very beginning of the human race, the phenomenon of criminality has been natural in society and its presence does not differ from the presence of other normal correct behaviours. Tanson said that “criminality is eternal, it is thus and it exists like the society itself ...” and he adds “...

when the society is more complicated it is more difficult for the individual and the man's failures are repeated, and as the development of the legal articles and the criminality material increases, more and more complications will arise ... " ¹.

Durkheim has said that, since the end of the last century the crime phenomenon should be considered as relative while at the same time it is normal and even functional. William Bonjer stressed that modern society defines its common order and structures in a way which will lead to frequent clashes between a certain number of individuals and the law enforcement authorities. In view of what we have already said the conclusion may be reached that crime (in its common social and law concept) originated and has developed in successive temporal steps, which led to the creation and development of the law for its specification and classification, and at the same time the imposition of a punishment or preventive action.

As regards the origin of doctrine, most of the scholars, sociologists, behavioural scientists and jurists agree that crime and the relevant laws originated and developed as the result of one or more circumstances of the following factors:

- i) Revealed doctrines;
- ii) Everyday habits, customs, traditions and values of society, or application of the natural law;
- iii) Consideration of the wrongful act as part of the misbehaviour and its causes which are covered by civil law;
- iv) Origin of crime and penalty in accordance with the wishes of communities after the emergence of the developed political society;
- v) Criminalization of acts because of perpetual clashes among the different classes of society.

Revealed doctrine

Thus we note that the origin of doctrine in all societies (Eastern and Western) which had been presented through the revealed religions and that which had been manifested in special and common rules

¹ Vernon Fox, *Introduction to criminology* (Englewood Cliffs, N.Y., Prentice Hall Inc., 1967), p. 2.

which in their entirety are that which is referred to as “revealed doctrine” should be considered as the basis of doctrine. Human society is composed of individual relationships and co-existence in families, tribes, clans, and the merit for the unification of these groups can be accorded to religion, with its support and relationship, giving more meaning and political superiority to its tribal and communal existence, surpassing the relationship deriving from family connections. Religion in society is the basis of the law, or its most important root and origin, and it is the principal axis of social order or justice.

In Europe until the beginning of the 18th century the social defence system depended on religion for specification of the meaning of crime, definition of its elements and imposition of the appropriate penalty within the framework of moral and abstract virtue.

In reality, the higher the category of crime and its criminalization are incompatible with virtues, conscience and morals for which religion demands respect and especially that which is also confirmed by “kias”.

Aggression against a human being (murder or bodily injuries), the crime of adultery, rape and defamation, the crimes of aggression against property (robbery, highway robbery), are crimes specified in both the revealed doctrines and the man-made laws, both of which are oriented towards the welfare of mankind, and the social system and implementation of right and justice. This is clear from the verses of the Holy Qur’an:

“So establish weight with justice ...”

“We send thee not but as a Mercy for all creatures”.

“A guide and a Mercy to the doers of good”².

Thus all the revealed divine messages which had been sealed by that of the Prophet Mohammed (Peace be upon Him) have been a mercy from Allah for the whole world; and all the Messengers and Prophets confirmed that Allah’s mercy would prevail, with the aim of maintaining right and justice on which all social systems, ancient or modern, depend. Abraham, Moses, Jesus and Mohammed

² *Holy Qur’an*, Chapter 55, Verse 9; Chapter 21, Verse 107; Chapter 31, Verse 3.

(Peace be upon Them all) and other Prophets and Messengers came to support right and to confirm the justice doctrine. This is confirmed by the scholar and jurist, Sheikh Mohammed Abu Zahrah when he speaks of mercy (in general) meaning kindness and gentleness, as mercy (in its entirety) incorporates all the meanings of distress, misfortune, calamity and pain – for instance the treatment of a sick person needs mercy and gentleness as, in the removal of a gland or cauterization.

One of the ancient messages, which led to the introduction of norms and laws and order for the society revealed, is that of Abraham ³ (Peace be upon Him):

“And this is in the books
Of the earliest (revelations)”,
“The books of Abraham and Moses”,

during the 20th century before Christ, and that which had been given to Moses (Peace be upon Him) in the 13th century before Christ, who brought the message to lead the Jews to follow the right path. This also appeared in the Hindu religion in the 15th century before Christ and its teachings and texts continued to appear until it embodied the Arian and Brahma teachings during the 6th century before Christ. Similarly for the Persians the revealed religion and teachings aimed at systemizing and refining life in that country since the 15th century before Christ.

Buddhism derives from the ancient Hindu religion six centuries before Christ with the advent of Buddha, which was the only religion in all the Asian continent until the emergence of the Christian and Islamic religions. Christianity derived from Judaism with the birth of Jesus Christ (Peace be upon Him) and continued as such until 325 years after Christ when it completely separated from it and was termed the Christian religion ⁴.

In the 7th century after Christ by the revelation of the Prophet Mohammed (Peace be upon Him), the seal of all Prophets and Messengers, when many of the theological theories and worshipping were uprooted (at that time some of these were similar to magic or

³ *Holy Qur'an*, Chapter 87, Verses 18 and 19.

⁴ Vernon Fox, *op. cit.*, 2.

witchcraft) and afterwards it was diffused as lightening in Asia, Africa and Europe.

When a doctrine refers to a group of correct behavioural norms it specifies those on which individual behaviour should be based and not those which are currently being followed. The law must evaluate these rules according to the values deriving from the revealed books or revealed doctrines which specify the system of moral and virtues: or these laws must result from the hopes and ambitions of society and its general political and economic system, or from its various relations and social conditions and the recognized interrelationships addressing it to individuals in the form of commandments or duties which must be fulfilled. When the law incorporates a commandment or a duty a definite subjective common measure, which is an order or a prohibition, this will be in line with the revealed doctrines which tell us to do good and to avoid evil, as Allah says in the Holy Qur'an⁵.

“Ye are the best
Of Peoples, evolved
For mankind,
Enjoining what is right,
Forbidding what is wrong ...»

In Islam we find that crime is a misbehaviour and a disobedience towards the commandments and prohibitions of Allah, and at the same time it is completely oriented toward the prevention of delinquency or keeping evil at bay by inflicting two types of punishment which had been decreed by Islam either in this life or in the hereafter.

Crime is thus defined by El-Mawardi: “Divine law prohibits it, Allah has forbidden it by imposing a hadd or ta'zir punishment”. This refers to the punishment inflicted in this world. “Hadd” or the specific penal sanction of “Kisas”, retribution, are confirmed by the law enforcement authorities. But “Ta'zir” punishment, in general, is left to the discretion of the state guardian, as it is considered necessary for the good and the welfare of the community which aims at the fortification and the strengthening of the community legacy; ta'zir means “ta'adib” (to educate). When the doctrines

⁵ *Holy Qur'an*, Chapter 3, Verse 110.

invite us to be virtuous and to avoid evil deeds they do not differ from the orders and prohibitions of secular jurisprudence, as evil damages society and is contrary to good; this damage includes all types of evil deeds (material and moral), and this evil is not limited to immediate harm but that which may occur in the future and therefore keeping harm at bay is beneficial for society⁶.

Finally, when the modern man-made laws in general invite us to do good and to avoid evil they are similar to the revealed doctrines which decreed from the outset to do good, to be virtuous and to refrain from wrongful acts. In this, both legislations demonstrate a healthy attitude towards achievement of the common welfare and the good of the community. The daily duties and worshipping do not differ in purpose from everyday transactions, while at the same time each individual should be considered as complementing his fellowman⁷. Thus, it has been narrated that when an Arabian was asked about the reason for his belief in Mohammed (Peace be upon Him) he said: "I did not see Mohammed telling us to do something and the mind telling us not to do it, and I did not see Mohammed telling us not to do something and the mind telling us to do it"⁸.

2. Punishment defined

The concept of crime and punishment is ancient and goes back to unwritten history, though much of it has reached us through the revealed sacred books and the written laws over a period of 35 centuries or more.

Punishment is a natural reaction directly following a physical injury to any living creature as a natural defence or resistance to the wound and the pain.

Punishment or natural resistance has passed through many stages of historical development in communities and societies from indivi-

⁶ Mohammed Abu Zahrah, *Crime and punishment in Islamic doctrine*, Cairo, Undated, p. 26.

⁷ Mustapha Kara, Thesis, *The philosophy of punishment in Islamic doctrine*. Unpublished, pp. 43, 44.

⁸ Mohammed Abu Zahrah, *op. cit.*, p. 45.

dual revenge (to take the law into one's own hands), collective revenge by the family, the tribe, the clan (private justice), and finally, the right of application of the punishment as invested in the authorities or the politico-social structure. Punishment, from the point of view of type and amount, has also passed through many phases and developments, from collective application due to common responsibility towards the family or the tribe, its concept has developed until it has assumed the form of restricted liberty, deprivation of liberty or payment of punitive damages, all of which apply to the offender alone, and these should be equal to the offence committed (the act or the trace of the act), and in its application the punishment will be useful and meaningful. In addition, use of alternative measures, such as re-education or treatment, is one of the modern concepts for the prevention of crime and defence of society.

The term "punishment" means the infliction of pain by the state on an offender because of an offence he has committed and to prevent recidivism. The legal-political-societal structure should deliberately impose this punishment against the will of the offender. At the same time the sanction must be accompanied by a feeling of pain, and therefore pain is considered as part of the punishment itself and not an accidental accompaniment. Payment of punitive damages, as is specified by the law, differs from punishment which can also be applied by parents to their children and (this is defined as educational and not legal, and it also differs from punishment in the metaphorical sense such as that which a boxer may give or receive in combat. Punishment also differs from the unintentional pain in the extended or accidental sense such as the pain of surgery⁹.

Standard legal punishment should contain five elements:

- a) It must involve pain or other consequences normally considered unpleasant;
- b) It must be for an offence against legal rules;
- c) It must concern an actual or supposed offender for his offence;
- d) It must be intentionally administered by individuals other than the offender;

⁹ Mustapha Kara, Unpublished thesis, *op. cit.*

e) It must be imposed and administered by an authority constituted by a legal system against which the offence was committed.

On close examination of the above it may be noted that we confirm the elements of law texts which are required for legality, in addition to the legality of the sentence issued and the legality of the authorities entrusted with imposing the punishment and the accompanying obligations of respecting the law. Thus we consider the elements of the causes, the aim or the purpose of inflicting punishment or an alternative measure, which is specified in the legality of the sentence and the concept of defending modern society against crime and to limit its danger and its consequences.

When we consider that inflicting pain on an individual is undesirable and is beyond discussion, although the concept of punishment and its application is quite clearly and actually to inflict pain on the wrongdoer. Therefore when the offender breaks the rules imposed by the social code and which require punishment and the infliction of pain, this will lead to many questions:

a) What are the acts which merit punishment when committed?

b) Is it possible to inflict punishment for disobeying an order, which means because of the responsibility of offenders in committing the same act (as a deterrent, reform, prevention or special prevention) or in order to warn the members of the community and prevent them from committing the same act (aimed towards common prevention)?

c) In case of the necessity of inflicting painful punishment on offenders, how can the type and amount of the punishment be specified – in other words the gradual specification?

3. The aims of punishment

While the common concept of the necessity of specifying punishment in the legislation relating to payment of punitive damages is realistic and correct, the idea of annulling the punishment association completely is unrealistic and incorrect. Some aggressions (even on the part of the law), especially when these had been erroneously

committed, when the criminal element is missing, in the case of a first offence, when the offender is insane or when there was no compelling impulse or benefit from the wrongful act, merely passing sentence against the crime subsequently loses its impact for the man-in-the-street: as punishment was not foreseen in the text it is neither necessary nor useful. Today this is called a "preventive measure" or "alternative punishment". This is in accordance with the concepts of moral prevention, individualizing the punishment, or, as has been specified in the Islamic doctrine, to classify the sanction in the field of ta'zir punishment¹⁰.

Inflicting pain on the wrongdoer depends, in the first instance, on the elements of the criminal investigation, how liberty and equality are seen in the doctrine, to ensure responsibility of the individual, as liberty is never absolute. Although liberty is relative, some members of the legal authorities (among them the law-makers), it may lead to aggression on the security, freedom and safety of the individual and the community or it may threaten personal safety exposing it to danger and disturbance, and therefore punishment is applied with the aim of preventing offenders from committing similar acts. Penalty in such a case is necessary even if it is only to protect the freedom doctrine, to verify the justice element, or it aims at establishment of a structure to balance or to bring tranquility to the social system.

According to the modern man-made laws, the punishment which is imposed in the verdict of the legislation incriminating the offender for a transgression of the law, has a lawful and social aim which may be defined in one of two ways, other than reform measures and treatment, or payment of punitive damages, and these two divisions are:

a) Inflict punishment – physical punishment – capital punishment – on all those who commit wrongful acts, and these measures

¹⁰ When the rights of the individual and the community supersede the right of Allah as in the case of ta'zir punishment, the type and amount of which is at the discretion of the state guardian in order to protect common welfare, to verify justice and ensure social order, thus he applies the right of the individual or the right of Allah in order to verify the common interest, and the application of alternative measures.

are aimed at inflicting pain on the offender, or demanding retribution for an aggressive act or because of incapacitation.

b) The imposed punishment of limited liberty or alternative measures is related to the concept of reform, treatment, or prevention, which emerges from the philosophical theories (utilitarian school) ¹¹.

This is from the point of view of the sanction of payment of punitive damages, which differs in impact from one procedure to another, but applying any method may have at the same time more than one aim or purpose; and in spite of the fact that some may refuse to accept part or all of these procedures – which is unrealistic – this study does not aim at analysing or verifying any one of them. We want to put forward these divisions only in order to present their equal in Islamic doctrine and the similarities on one side and dissimilarities on the other.

In spite of this we would like to indicate that we do not intend comparing the concept of Islamic jurisprudence with that of man-made laws; the punishment doctrine in Islamic jurisprudence is a revelation from Allah and in the man-made doctrine is extracted from these concepts. Thus, this paper will try to explain and analyse some formal aspects of the subject, and when it goes into depth it is only to show the origin of the religious doctrine and its priority over secular jurisprudence.

4. The category of crimes and the type and amount of punishment

Although the arrival of the modern age brought its concepts relating to freedom, justice, equality, considering the individual as a rational and autonomous unit, confirming the responsibility of the individual towards himself and towards the other members of society, but it should be noted that Islamic doctrine has insisted on all of these concepts since the beginning of the 7th century after Christ, which means that it had preceded the appearance of these concepts and doctrines and also preceded the modern philosophers and scho-

¹¹ Herbert Packer, *The limits of the criminal sanction*, Stanford, California, Stanford University Press, 1968, pp. 36-37.

lars by more than 10 centuries. It is considered by the Renaissance era concept as social contract and Montesquieu and others specified the common and mutual responsibility and co-operation for the individual in modern society, which is one of the most important factors which had been declared by Islamic doctrine when it considers the individual as a member of the community, having the same rights and the same responsibilities as everybody else, and equality among all individuals. The Prophet (Peace be upon Him) said:

“ ... There is no distinction between an Arab and a non-Arab except in his piety ... ”

By substituting the relationship among individuals and family (which stems from blood relations) with that of the new concept based on doctrine which unified not only families and clans but also different races and human descendants, who believe in the same doctrine and who belong to one society with Islamic globability.

Islam did not come, which is the final divine message which had been revealed on the Prophet Mohammed (Peace be upon Him), to organize and lay down rules for human beings in general, but as a mercy for all humanity. Allah says in the Holy Qur'an¹²:

“ We sent thee not, but
As a Mercy for all creatures ”.

Islam had explained in detail the duty of worship as well as individual interrelationships, and when Islam considers the duty of worship the relationships are also considered necessary as they aim at the good and the welfare of humanity in this world and in the hereafter. Even if all these social duties are not indicated in detail, the Holy Qur'an and the Sunnah of the Great Prophet have specified them in general.

Islam came to lead the Arabs on the right path, to specify for them a purpose and an aim, and to teach them virtue and morals. Islam did not separate these teachings from those relating to spiritual doctrine which purify the soul and pave the way towards obligation to a statute and a correct type of positive behaviour. Islam made the preparations and gave to some of these concepts a full

¹² *Holy Qur'an*, Chapter 21, Verse 107.

meaning; at the same time Islam accurately specified some others in order to avoid misinterpretation, and these became some of the obligations to be followed without hesitation or misinterpretation, and which must not be either surpassed or avoided at any time or in any place.

The aims and purposes of Islam differ from those of Christianity: for example, the Arabs did not have a state or authority before the Islamic call, while the Roman Empire, with its Christian religion, constituted a complete state with a powerful political position and contacts with other states all over the world. Thus the message of Islam came with spiritual, political and moral teachings, while Christianity had emphasized the spiritual and religious teachings only. Therefore Islam exerted pressure on unification of the dispersed Arab tribes giving them meaning and purpose and this message became their political and social characteristic, stemming from collaboration and unity. To verify these purposes it was first necessary for the Arab society to be united through its faith and worship of Allah, the Creator, in His oneness, and secondly to have a unified moral code. As such a code was deemed indispensable for the new society aimed towards the creation of a unified socio-political system, it was also necessary through this transformation to create a secure, tranquil and prosperous state, to provide a legislation to cope with crime and penalty, to indicate the right way of life and the methods of defence against those who tend to commit wrongful acts.

Therefore punishment, in its application and even in its purpose, relates to the commission or the omission of prescribed acts and duties as commanded by Allah and is oriented towards an extended welfare, with which Islamic doctrine is concerned for the good of humanity and to protect and defend it from evil deeds by specification of the acts which require application of penalties against the offenders.

Islamic doctrine has distinguished three types of criminality: hadd crimes, ta'zir crimes, kisas crimes; for each of these there is a

Explanatory Note: In Arabic the word "criminality" is derived from "jarama" which means "to cut". Later it developed into that which is referred to in the Holy Qur'an regarding transgressions against the law, both immoral and unlawful, contrary to the commandments of religion and doctrine.

definite prescribed punishment or preventive procedure, and subsequently sanctions may differ in type and amount as they also differ in aim and purpose. This can be explained as follows:

a) Houdoud: this covers criminal acts according to the Islamic doctrine, and therefore the type and amount of the foreseen punishment is clearly and explicitly indicated, as can be seen in the verses of the Holy Qur'an and the texts of the Sunnah of the Prophet (Peace be upon Him). These acts include theft, robbery with violence and highway robbery, adultery, defamation, while others such as injustice, premeditated murder, apostasy, although clearly revealed in the verses of the Holy Qur'an had later been classified by some scholars additional to those specified as hadd crimes,

b) Ta'zir: this covers crimes for which the specification and the foreseen penalty are at the discretion of the state guardian, the Imam or the judge (the religious or political authority). The explanation for this discretion is because of an underlying reason which Allah alone knows in view of the requirements of Islamic doctrine, justice and society, taking into consideration future alterations or changes due to developments over time and differences in habits and social values from one society to another,

c) Kisas: this third group covers physical injuries or aggression against the soul, for which the doctrine foresees a specific punishment based on the damage caused, its extent and future effects. The Arabic word "kisas" refers more to the punishment than to the crime or the act and means the equality or matching of the type and the amount of the penalty with the type and amount of the damage resulting from the act. This constitutes the greatest difference between houdoud and ta'zir crimes on one hand and kisas crimes on the other, as neither of the former require application of the hadd punishment only but may surpass it in its moral effects.

5. The causes and effects of punishment in Islamic jurisprudence

Obviously the law foresees a definite punishment when it specifies the criminality of a definite act or the omission of performing a duty or assuming a responsibility: non-specification of a punishment (exactly as non-criminalization of the act or non-specification of the elements of the crime) could lead to haphazard issuing of

sentences because of variations in interpretation and non-application of the equality doctrine regarding the type and amount of punishment.

As there are many commandments and prohibitions which influence us towards a definite type of behaviour in relation to general ethics and morals, respect of these orders should be left to the conscience of the individual or the community, non-specification of a definite punishment may be considered as non-fulfilment of an obligation; or this specification acts as advice and guidance and individuals are free to commit or omit the prescribed acts and duties based on their personal conviction and according to the situation and circumstance.

An exact description of the act which is considered a crime and liable to penal sanction, is regarded as an innovation of the modern era in the Western world, while it has been, and still is, clearly and definitely specified in Islamic doctrine texts; this was so even prior to the separation of its elements from those of the socio-legal reformer, Cesare Beccari of the "traditional" school (during the course of the 18th century), while Islamic doctrine clearly and explicitly studied the subject of crime and punishment more than 10 centuries before the appearance of this traditional school. Wrongful acts had been categorized and their elements had been described and classified as *houdoud*, *ta'zir*, *kisas* on one hand and on the other the concern of jurisprudence regarding the Islamic rules relating to worship and human relationships, the definition of civil texts separating these from the penal texts, in order to foresee the methodology for proving guilt and the judgement measures. Each of these acts were dealt with separately, in order to issue the particular sentence regarding retribution, or *kisas*, for damage inflicted on the victim (individually or society in general) or, in the case of *houdoud* and *ta'zir* offences, the type and amount of the punishment. All these accurate and detailed definitions were not preceded in the old or modern jurisprudence.

Many other legal rules, special or general, which had been presented by the Islamic penal law since the advent of Islam and the diffusion of the equality and justice doctrine throughout the Islamic world, indicate many points in the legal common knowledge as, for example, the illegality of inflicting punishment on an individual

other than the offender directly responsible for the act. Allah says in the Holy Qur'an:

"... No bearer
Of burdens can bear
The burden of another ..."¹³

Therefore no offence and no punishment exist which is not foreseen in the holy texts, and punishment must not be applied retroactively.

All this is in addition to consideration of the personality of the offender and the individualization of the penalty due to the circumstances and situation in time and in space. Islamic doctrine indicates the age at which a suspect is fully mature in will and sentiment and subsequently distinguishes between a complete or an incomplete investigation. The conditions relating to capability, assuming responsibility and distinguishing between free will and unwillingness are also foreseen, as the Prophet (Peace be upon Him) has said.

"There are three whose actions are not recorded: a sleeper till he wakes, a boy till he reaches puberty, and an idiot till he is restored to reason".

On the contrary, the Western world was not aware of these specifications until the beginning of the traditional school, which was followed by the kindling of the fires of social and political revolution in Europe, starting with the French Revolution (1780); these events were followed by the modern legal doctrine and the application of the Napoleonic Laws in 1791, and their subsequent modifications, the most important of which took place in 1810 and 1932, in view of the modern concepts which are closer to social justice according to the new traditional school, with its leading scholars such as Rossi, the Italian criminologist, and Guezo and Ortolan in France, and others in Germany, Belgium and most of the European countries.

The most important result of these innovations of concepts and articles in criminal law, far from exaggeration in material application or lessening the severity of the punishment, attention was directed towards the personality of the offender and consideration was given to his personal situation (character and environment) which could

¹³ *Holy Qur'an*, Chapter 6, Verse 164 and Chapter 17, Verse 15.

lead to a reduction of the criminal investigation in accordance with the age, mental state, comprehension, presence of the element of freewill and the ability of distinguishing between right and wrong.

We specify here the group of crimes and their penalties as foreseen in Islamic jurisprudence law:

a) *Hadd crimes*

Hadd crimes are those wrongful acts constituting the commission or omission of any divinely ordained command (except injustice and apostasy) which will cause open and direct damage to interrelationships and the community: the first two crimes of theft and highway robbery damage personal and communal properties, in addition to harming the soul and the body so both crimes receive equal penalties but the amounts may differ. Allah says in the Holy Qur'an:

“As to the thief.
Male or female,
Cut off his or her hands:
A punishment by way
Of example, from God,
For their crime:
And God is Exalted in Power”.

“But if the thief repent
After his crime,
And amend his conduct,
God turneth to him
In forgiveness; for God
Is Oft-forgiving, Most Merciful”.

“The punishment of those
Who wage war against God
And His Apostle, and strive
With might and main
For mischief through the land
Is: execution, or crucifixion,
Or the cutting off of hands
And feet from opposite sides,
Or exile from the land:
That is their disgrace
In this world, and
A heavy punishment is theirs
In the hereafter;”

“Except for those who repent
Before they fall
Into your power:
In the case, know
That God is Oft-forgiving,
Most merciful”¹⁴.

The third and fourth crimes are those of adultery and defamation, which transgress against the reputation and morals in adultery and by word of mouth in defamation. Allah says in the Holy Qur’an:

“If any of your women
Are guilty of lewdness,
Take the evidence of four
(Reliable) witnesses from amongst you
Against them; and if they testify,
Confine them to houses until
Death do claim them
Or God ordain for them
Some (other) way”¹⁵.

The punishment for these two crimes varies from 80 lashes for¹⁴ defamation to 100 lashes when the criminal element can be proved against both the offender and the victim (as maturity, sanity, married and of good reputation). Allah says in the Holy Qur’an:

“Nor come nigh to adultery:
For it is a shameful (deed)
And an evil, opening the road
(To other evils)”
“And for those who launch
A charge against their spouses,
And have (in support)
No evidence but their own. –
Their solitary evidence
(Can be received) if they
Bear witness four times
(With an oath) by God
That they are solemnly
Telling the truth”;
“And the fifth (oath)

¹⁴ *Holy Qur’an*, Chapter 5, Verses 41’ 42, 36 and 37.

¹⁵ *Holy Qur’an*, Chapter 4, Verse 15.

(Should be, that they solemnly
 Invoke the curse of God
 On themselves if they
 Tell a lie",
 "But it would avert
 The punishment from the wife,
 If she bears witness
 Four times (with an oath)
 By God, that (her husband)
 Is telling a lie";
 "And the fifth (oath)
 Should be that she solemnly
 Invokes the wrath of God
 On herself if (her accuser)
 Is telling the truth." ¹⁶

These crimes can lead to disintegration of the family unit, which is one of the most important social structures, as it will cast doubts on the offspring (particularly in the case of adultery, or "LE-AN", oath of condemnation), and the security and the tranquility of society and its social values and morals (as in adultery and defamation).

The consumption of alcohol touches the individual himself but its damage may go beyond this and can menace the entire social structure, as it may affect productivity and the economy. Alcohol can lead to loss of mentality, sentiment and feeling and may hinder the individual from worshipping, as, for example, to recite prayers and other religious duties. While there is no definite text in the Holy Qur'an indicating the punishment for alcohol-drinking the Prophet (Peace be upon Him), the four community leaders who came after him and the followers specified this at between 40 and 80 lashes (he who drinks alcohol, whip him) ¹⁷. Abu Dawad narrated that the Prophet (Peace be upon Him) has said:

"Ye who believe!
 Intoxicants and gambling,
 (Dedication of) stones,
 And (divination by) arrows,
 Are an abomination, -

¹⁶ *Holy Qur'an*, Chapter 4, Verse 15 and Chapter 24, Verses 6, 7, 8 and 9.

¹⁷ *Holy Qur'an*, Chapter 5, Verses 93 and 94.

Of Satan's handiwork:
 Eschew such (abomination),
 That ye may prosper".
 "Satan's plan is (but)
 To excite enmity and hatred
 Between you, with intoxicants
 And gambling, and hinder you
 From the remembrance
 Of God, and from prayer:
 Will ye not then abstain?"

The aim of the punishment is prevention or treatment of the offender through controlling the harmful effects of alcohol-drinking (as has been mentioned previously) as defined by the Khaliphah Ali Ben Abi Taleb (God bless Him) and Omar Ben El-Khattab confirmed the punishment of 80 lashes because alcohol may suppress the reasoning of an individual and may result in loss of control which may lead to adultery or defamation, and thus the punishment for alcohol-drinking and defamation are equivalent.

Injustice, premeditated murder, apostasy and the causes for their criminalization and categorization within houdoud criminality without repentance or alteration on the part of the offender, so the punishment is to be inflicted and pardon is impossible in all cases (except for highway robbery and murder) ¹⁸.

"O ye who believe!
 The law of equality
 Is prescribed to you
 In cases of murder..."
 "On that account: We ordained
 For the Children of Israel
 That if any one slew
 A person-unless it be
 For murder or for spreading
 Mischief in the land-
 It would be as if
 He slew the whole people:
 And if any one saved a life,
 It would be as if he saved
 The life of the whole people.

¹⁸ *Holy Qur'an*, Chapter 2, Verse 178 and Chapter 5, Verse 35.

Then although there came
To them Our Apostles
With Clear Signs, yet,
Even after that, many
Of them continued to commit
Excesses in the land”.

The punishment for the crime of injustice aims at ensuring social security, it may serve as a deterrent and will hinder Muslim communities from wars among themselves ¹⁹.

“ If two parties among
The believers fall into
A quarrel, make ye peace
Between them: but if
One of them transgresses
Beyond bounds against the other,
Then fight ye (all) against
The one that transgresses
Until it complies with
The command of God;
But if it complies, then
Make peace between them
With justice, and be fair:
For God loves those
Who are fair (and just)”.

“ The believers are but
A single Brotherhood:
So make peace and Reconciliation between your
Two (contending) brothers;
And fear God, that ye
May receive mercy”.

Regarding the crime of murder, this is considered a hadd and a kisas crime and its penalty is capital punishment if pardon has not been granted by the next-of-kin; unlawful killing is one of the most dangerous crimes that menace individual and societal security, existence and tranquility, as well as being absolutely contrary to the will of Allah.

Renunciation of religion on the part of a Muslim convert and apostasy on the part of a Muslim are crimes against the Muslim

¹⁹ *Holy Qur'an*, Verses 9 and 10.

community. Allah says in the Holy Qur'an:

" ... And if any of you
Turn back from their faith
And die in unbelief,
Their works will bear no fruit
In this life
And in the Hereafter;
They will be
Companions of the Fire
And will abide therein " 20.

This prohibition is due to many causes, religious and social purposes and aims, which would endanger the pillar of the community and its structure, as the Islamic religion is a substitute for family, tribe and community relationships who depend on its solidarity and its protection of individuals and members of the family from the pre-Islamic era (see the Introduction above). At the same time this crime is a penetration of the texts of social contract which regularize the interrelationship and responsibilities of individuals. Renunciation of religion is an act which dishonours an individual's contract with Allah. It is also an exit from the Muslim community, which is a moral and material loss and represents a gain in the strength and support of non-Muslim communities which could provide a threat to the Muslim society during times of war and in its everyday life during peace.

As regards repentance on the part of the convert who has renounced his religion, some say that this should be requested – he must repent or he must be condemned to death. Others say that the offender should have one hour in which to make his decision, others say one month, others say he should be asked three times, and it was narrated by Omar, Othman and El-Shafi'i that capital punishment should be inflicted without any request being made 21.

b) *Ta'zir punishments*

The concept of ta'zir punishments and their basic aim are for deterrence purposes.

²⁰ *Holy Qur'an*, Chapter 2, Verse 217.

²¹ El-Kurtubi, Beirut, Vol. No. 2, pp. 45-47.

Allah says in the Holy Qur'an:

"... So it is those who believe
In him, honour him,
Help him, and follow the Light
Which is sent down with him, -
It is they who will prosper" ²².

The holy texts refer to *houdoud* crimes and their punishment ²³ and to *kisas* crimes and their punishment ²⁴, but the Muslim legislator did not refer to *ta'zir* crimes (nor their punishment), because the first and the second categories of crimes were aimed at dealing with direct acts and open damage (*mala in se*).

"... Those are the limits (set by) God
Approach not nigh thereto ..."
"... These are the limits
Ordnained by God
So do not transgress them ..."
"Ye who believe!
The law of equality
Is prescribed to you
In cases of ..."

Due to the results of the indirect damage of the third category, which vary according to the social environment and regulations of every society, therefore different from one occasion to another and from one society to another, this was criminalized only in case of need and following specification (*mala prohibita*). When the *houdoud* crimes and their sanctions, according to the doctrine of the society in which these had been committed had been indicated, the criminalization of other acts and the type and amount of the foreseen punishment is because these consist of acts contrary to traditions, morals and values of society, or these are at the discretion of the legal authority who ensures the security, prosperity and tranquility of the society at present and for the future.

Therefore *ta'zir* punishments are considered as regulating and ensuring behavioural control and achieving harmony in the overall

²² *Holy Qur'an*, Chapter 7, Verse 157.

²³ *Holy Qur'an*, Chapter 2, Verses 187 and 229.

²⁴ *Holy Qur'an*, Chapter 2, Verses 178 and 179.

social structure. As these are not foreseen in the doctrine they are left to the social, economic and administrative circumstances for specification and definition.

The aim of defining a penal sanction for offences against the law texts, which are ta'zir crimes, is that these may lead to a breaking of interrelationships and destruction of the social or political life-style of a society; it could also result in danger and damage to the economy and threaten its safety and stability. Ta'zir crimes which are harmful to the economy of society (either personal or communal), for instance non-payment of taxes or charity or alms, in addition to their effect on the communal state equilibrium and on the poor who have a right to this richness, is in reality similar to the offence of abstention from fulfilling a religious duty which is an offence against Allah and against society.

The state guardian or the ruler may decree a punishment, a preventive measure, or an alternative sanction oriented towards preventing the wrongdoer from recidivism, as revenge because of his act, to rehabilitate, reform and re-educate him for communal and individual prevention. Ta'zir punishments form part of that which is called in Islamic jurisprudence legal policy, the impacts of which are to establish order and to orient the common social life in the right direction for the safety of society and the state, thus coinciding with the concepts relating to prevention according to the utilitarian school.

But the question will be asked: Why does Islamic jurisprudence distinguish between houdoud and ta'zir crimes? We reply that in addition to the fact that the houdoud crime is dangerous and most of its punishment, if not all, is the right of Allah, the most important element in applying the sanction is that these acts are categorized as capital crimes separate from venial crimes; therefore the fundamental differences between the two punishments are as follows:

i) The specification of houdoud punishment in the Holy Qur'an and the Sunnah is clear and therefore it must be considered as a final sentence equal to other commandments decreed by Allah Himself because it is fixed and alteration can not be accepted, and as it is limited it can neither be increased nor decreased; therefore when proved its fulfillment is obligatory, while for ta'zir punishment

this differs completely as it serves a temporary concern and therefore should correspond to the situations, demands, aims and ambitions of society, all of which may differ in time, in place, in purpose and in responsibility.

ii) As may be noted under i) above we see that hadd punishment can not be reduced or increased because of the circumstances accompanying the act or the actor through the attributes relating to his personality (except maturity, sanity, married in cases relating to adultery and defamation), whereas ta'zir punishment may differ from one state to another due to the circumstances; therefore the legislator or state guardian may increase the punishment for a definite crime, for a longer or a shorter period of time, in view of the diffusion of the offence and its dangerousness, while the contrary is also applicable.

iii) The third difference relates to social concepts according to which the crime is a transgression against the community itself and therefore should be accompanied in all circumstances by negative social reaction towards the wrongdoer – that is, the offence is an act (or a lack of) and social reaction varies in relation to the type of the act and the variations in time and in place. As the texts in the Holy Qur'an and the Sunnah have specified the houdoud crimes, which are impossible to pardon, to decrease or to increase the sanction, social reaction does not represent an element for a fixed punishment but is considered an important variable in relation to the ta'zir crime. This means that the definition of the houdoud crime and its punishment and the procedures of issuing sentence against its committal should be subjective, unaffected by the accompanying acts neither in time nor in place; according to legislation ta'zir crimes and the type and amount of their foreseen punishment, as well as the procedure of passing sentence should take place in personal form, non-subjective, depending on continuation and perpetuation of the law.

a) Opinions vary on the differences between houdoud and ta'zir punishments, as has been specified by Ibn Abidin through the meaning of the verses of the Holy Qur'an;

“ ... These are the limits (set by) God
Approach not nigh thereto ... ”

“... These are the limits
Ordained by God ...”²⁵.

It is clear that this category of punishment is defined and specified legally, while that of ta'zir is left to the discretion of the Imam.

b) Houdoud must not be executed if any doubt exists but this is not the case with ta'zir punishment, because when hadd is not inflicted because of a doubt ta'zir must be applied.

c) Hadd must not be applied on minors (immature) and when it is to be inflicted on non-Muslims (residing in a Muslim country) it must be carried out in accordance with the texts, but as ta'zir punishment differs in its meaning and effect it can be applied by the state guardian at his discretion on non-Muslims. Scholars add five basic variations which are:

i) hadd punishment is to be applied from the state authority (Imam) whereas ta'zir may be inflicted by others, such as father, husband or head of household;

ii) negation of confession or admission of guilt is permissible only in houdoud punishments;

iii) the individual accused of a houdoud crime may be retained under supervision without ta'zir;

iv) the houdoud punishment text must be respected, and the state guardian or the community leader must fulfill this obligation, while the right to pardon exists in ta'zir punishment;

v) while houdoud punishment loses its impact over time this is not the case with ta'zir²⁶.

²⁵ *Holy Qur'an*, Chapter 2, Verses 187 and 229.

²⁶ Loss of the impact of punishment over time is not commonly agreed upon and many scholars do not accept this, although those who maintain that its impact is reduced do not accept that this applies to all houdoud punishments. This principle is not accepted by the scholars Imam Malik, Imam Shafi'i, Imam Ahmed - who believe that there is no loss of effect despite a time lapse, but Imam Abu Hanifah says that all effect is lost with the exception of that of defamation hadd. Other scholars insist on loss of impact for the defamation offence if the sentence relies on witnesses for the judicial enquiry and not on confession.

See Abdul Kader Oudah, *Islamic criminology as compared to man-made laws*, Beirut, Vol. 1, pp. 36 and 37.

c) *Kisas and retribution punishment*

As it is legally defined the kisas and retribution punishment is somewhat similar to houdoud in that it has one verdict only, no more and no less, and therefore differs from ta'zir punishment which is foreseen but not defined. The significance of applying kisas punishment is to ensure the right of the individual, and subsequently providing the possibility of pardon by the victim or his next-of-kin, if so desired, in which case the hadd punishment is not inflicted. Kisas punishment comprises five groups:

Premeditated murder, unpremeditated murder, accidental killing, premeditated bodily injuries, accidental bodily injuries.

Bodily injuries include all those which do not result in loss of life, such as physical injury or wounds or beating with the hand or a weapon. Allah says in the Holy Qur'an:

“ O ye who believe!
The law of equality
Is prescribed to you
In cases of murder:
The free for the free,
The slave for the slave,
The woman for the woman.
But if any remission
Is made by the brother
Of the slain, then grant
Any reasonable demand,
And compensate him
With handsome gratitude.
This is a concession
And a Mercy
From your Lord.
After this whoever
Exceeds the limits
Shall be in grave penalty ”.
“ In the Law of Equality
There is (saving of) Life
To you, O ye men of understanding;
That ye may
Restrain yourselves ”.
“ We ordained therein for them:
Life for life
Eye for eye

Ear for ear
Tooth for tooth and wounds
Equal for equal ... ”²⁷.

Kisas is one of the most ancient punishment concepts which aims at reciprocal treatment to cancel the negative psychological results for the victim or for society because of damage resulting from an act and leads to a return to stability in society and tranquility in the soul.

El kisas or retribution is payment of a debt or settling an account between the offender and the victim. Retribution is the compensation for the loss or the damage inflicted materially, spiritually, or physically by accident, but applying kisas in the case of damage inflicted with intent represents retaliation and satisfaction. In both cases (payment of punitive damages or retribution and kisas) the procedure leads to a return to normality and will cancel the feeling of victimization, while at the same time it will help in the purification of the soul of the offender and will cancel the marks of the wrongful act, as bandaging the wound from the spiritual point of view.

In its purpose or result application of kisas is not only limited to payment of the offender's debt to the victim or to society, or infliction of the pain of the merited punishment and, above all, not only to correct a wrongful act, because kisas also has a future impact. Kisas should be inflicted on the offender in order to discourage the committing of such an act in the future, and therefore the element of preventing or limiting crime will be achieved. It should be emphasized that giving up the right of pardon on the part of the victim or his next-of-kin²⁸ without reference to the state or any other authority may take place in two cases only:

First, the damage may have occurred unintentionally;

Second, in the case of the repentance of the offender for the

²⁷ *Holy Qur'an*, Chapter 2, Verses 178 and 179, and Chapter 5, Verse 48.

²⁸ Some texts say that the victim or his next-of-kin can give up their personal right but can not give up the common right. Imam Malik stated that application of the punishment is necessary by imprisonment and payment of punitive damages in intentional and even non-intentional killings.

wrongful act tranquility and serenity may return to the soul of the victim.

In both cases, the result would be that recidivism would not occur and thus prevention of crime and elements for limiting it would be achieved; further the *kisas* sanction would have subsequent effects and the protective elements would complement each other.

Conclusion

From what has been mentioned above it is clear that the aim and purpose of punishment in Islamic doctrine is directed towards the welfare of humanity, or what should be called common welfare, while other punishments have been imposed or legislated to protect the right of the community, the right of the individual or both. As *houdoud* punishments are definite sanctions (the scholars refer to them as “*houdoud*” without adding the word “crime” or “punishment”, but it may be distinguished by the relevant crime, for instance “theft *hadd*” or “highway robbery *hadd*” or “alcoholism *hadd*” or “adultery *hadd*”, indicating the punishment for these crimes)²⁹, we can not investigate these or their causes but we must be aware of the best method of applying them. As regards punishments other than these because of the absence of a definitive text or the possibility of pardon these require knowledge of the general principles of the doctrine in the essence of the legislation, in order to comprehend what has been mentioned earlier regarding the purpose of application of punishment.

To process a sanction and its causes, and considering the essence of legislation in being aware of the intention of the legislator in imposing it, one or more indications of the phrase or the sentence may exist. The texts may be contradictory, and it may be difficult to specify the meaning of a word to avoid contradiction except by being aware of the intention of the legislator and the utility of the punishment. One should not believe that punishment is intended as a revenge against the offender which would mean torture or handcuffing to impede him (imprisonment or capital punishment, for

²⁹ Abu Zahrah, pp. 36 and 37.

example) from committing other crimes or transgressions in the future, as the aim of the punishment and the intention of its application is to prevent the wrongdoer and others from committing transgressions in the future. Allah says in the Holy Qur'an:

“As to the thief,
Male or female,
Cut off his or her hands:
A punishment by way
Of example, from God,
For their crime:
And God is exalted in Power”³⁰

Thus the intention of the legislation in applying punishment is as follows:

i) To establish security and order for the welfare of humanity, which means to protect the good and subsequently to defend from evil; the basic concerns which should be defended are: religion, life, intellect, offspring, property, and everything related to these from legislative or legal texts are considered of basic indisputable necessity.

ii) The preparation of necessary elements to facilitate and support the weight of responsibility and of life. When these necessities are lacking confusion and disorder result which leads to difficulty in fulfilling duties the responsibility for which we have assumed (which are considered necessary).

iii) To ensure social reaction and relationships among members of society regarding morals, truth and goodness, and the avoidance of corruption and disorder which would render life difficult, and absence of these virtues would lead to inequality in daily inter-relationships which is undesirable and incorrect³¹.

Therefore the essence of punishment in Islamic law is defined as being transgression of Allah's right, which is also the right of the community, or transgression of an injunction of a provision wherein Allah's right prevails, or transgression of individual right. The right of Allah signifies his will or his norm for the promotion of the interests of his people and the preservation of social order. This is

³⁰ *Holy Qur'an*, Chapter 5, Verse 41.

³¹ Abdul Kader Oudam, p. 204.

regarded as being the right of Allah because it is not directed towards benefitting any one individual and does not leave the right of waiver, indulgence or annulment.

One of the special rights of Allah, which is also the right of the community, is worshipping, as prayer, fasting, giving alms, and other duties and obligations, as the religion is the basis of the life of the community. This is why the legal sanctions for adultery, theft and highway robbery are punishments relating to the absolute rights of Allah, which means the rights of the community.

One of the crimes which touch the right of the individual, although the right of the community is greater, is that of defamation hadd, as this will touch the offspring and lead to the collapse of the family structure which is the basis of society. In the punishment for defamation hadd there is particular concern for the victim: even in the case of non-reporting it is of special concern because proof would lead to the application of the adultery hadd on the defamed person.

One of the deeds or acts which touch the right of the community, although the right of the individual is prior, is illegal killing as this crime could result in disorder and insecurity in the community and it also directly touches individual life; therefore the victim or his next-of-kin have the right to pardon in kisas or retaliation punishment.

What has been stated above means that all punishments relating to hadd or kisas and retribution crimes have been imposed for the welfare of the community. If it is remarked that any one of these represents a complete right to the individual, this is not precisely correct as every legal sentence has been imposed for application and must be followed. The right of Allah on his subjects is to obey His commandments, to respect his prohibitions and to act according to His doctrine.

Punishment in Islamic doctrine is in accordance with the most important and modern penological concepts as it aims at prevention of crime by means of individualization of punishment, as is clear from the above regarding ta'zir punishment which is left to the discretion of the state guardian, who has the right to increase or decrease it and has also the right to pardon, with particular attention being paid to the individualization of punishment in line with the

personality of the offender, his psychological state, his social position and the relevant circumstances. It also verifies the elements of crime prevention, applying alternative or preventive punishment, or reform or treatment.

As regards hound punishment, the text of non-application in case of doubt, in which case ta'zir punishment is inflicted, is also oriented towards the principle of individual punishment. Islamic doctrine has imposed the necessity of the existence of particular elements at the time of the occurrence of the crime, and has stressed the elements of proof in order to give the offender the possibility of self-correction: in case of application of ta'zir punishment or a preventive measure, this should correspond to the requirements of the offender's personality and the gravity of the offence committed.

In kisas or retribution the possibility of pardoning the offender exists thereby encouraging him to repent; and even in the case of reproof (or any other substitute) because of his transgression against the common right³² this entails a ta'zir only, which the state guardian should modify according to the justice request and the welfare of the society and the individual, ensuring security and tranquility and presenting the elements of crime prevention and all those measures which are presumed to control its danger and its evil.

³² By the individualization of punishment we do not intend application of the modern social defence concept, reform or treatment, which are indicated in some cases as undetermined terms of imprisonment, because of failure of this method which does not serve the welfare of the individual and its psychological effects have shown that it is both dangerous and negative. This is in addition to supposition or erroneously specifying the period necessary for reforming an offender due to the difference in evaluation and on the personal individualization of the law enforcement authorities.

4. GUIDELINES FOR KEY ISSUES IN ISLAMIC ECONOMICS *

by Dr. Muhammad Abdul Mannan

Although the paper has not explicitly spelled out the implications of various issues in terms of prevention of Islamic economic crime, yet throughout the analysis it is implicit that there is a need for formal and informal social control to influence the human behaviour and attitudes. Therefore an adequate provisioning for legal and non-legal measures is needed for the development of an institutional framework where Islamic economic values can be implemented, thereby preventing the occurrence of Islamic economic crime. Herein lies the significance of joint research – a framework of a research where Islamic economists analyse the implications of various economic problems and issues and their effects on the different sections of the society and legal experts make the provisioning for necessary legal and non-legal measures for the protection of the legitimate interests of all concerned.

1. Introduction: Objectives and Assumptions

The main objective of this paper is to highlight the Islamic synthesis of the predominant views in respect of some key issues in Islamic economics. It is designed in such a way so that some policy

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guidelines can be derived as well as conclusions drawn. This outline is expected to facilitate either further theoretical development of Islamic economics as a science or to provide a structure of analysis from which an operational policy package may be evolved.

This paper is written on the assumption that the reader has some elementary knowledge of economics as well as some knowledge of the *Shari'ah* (Islamic jurisprudence). As such, the relevant verses of the Qur'an or Hadiths have not been reproduced, although every effort is made to record faithfully the essence of the *Shari'ah* and its spirit to elucidate the Islamic position in respect of the issues involved. At this stage it is perhaps desirable to have an overview of Islamic socio-economic philosophy, so that an integrated view of individual-society-state relationship is properly understood.

2. Islamic Socio-Economic Philosophy: An Overview

The Integrated Nature of Individual-Society-State Relationship in Islam

A critique of Islamic thought patterns will reveal that different aspects of the Islamic social framework have been united into one whole by their axiological, existential base – the principle of “*Tawheed*” (oneness of Allah) which owes its origin to the repeated Quranic teaching of Oneness of Allah. Such a unitary character is found in all dimensions of Muslim socio-structural order, system of knowledge and metaphysics. Islamic economic issues are simply a part of the integrated whole. Whatever may be the nature of investigations of the Qur'an and the Sunnah, there is practically no differences of opinion as regards an integrated overall view of life and society. The social philosophy, because of the unitary character of Islam, knows no distinction between a spiritual and a temporal realm nor between religious and secular activities in the society. The whole range of man-society and man-state relationship is to be understood against the background of this social philosophical thought of Islam.

For the Islamic society or state the individual is responsible for his actions and accountable to Allah for his conduct. It is evident

that Allah could not possibly have made the individual accountable for his conduct if everything in his life was determined by forces external to him. This notion of accountability gives him freedom to participate in the construction of the society to which he belongs as well as putting a restriction on him not to degrade the society Islamically. In an Islamic state, the individual is seen as an integral part of his own family, his community, his state and the internal community at large. Therefore, he has some economic and social responsibilities towards each of the components of his integrated life.

Now the question arises as to where individual freedom ends and social control begins. As a matter of fact this social control guarantees individual freedom as it enables the individual to perform his duties as prescribed by the Shari'ah. Therefore, freedom and control are not contradictory but complementary to each other, because it is control which protects the freedom and vice versa. It is the essence of the Islamic concept of freedom and control. What is important then is to describe the operational limits of the altruistic behaviour of individuals in a particular social and economic context. The social authority in the form of the state which is recognized by Islam for the prevention of exploitation and moral degeneration as well as for the promotion of the material and spiritual interests of man may be understood from this angle of social vision.

Thus a purposive relationship based on goodwill and co-operation is found in the individual-society-state relationship. It is the state which enforces the Islamic law and makes individuals fulfil their obligations toward society but it is the individuals who select their rulers to enforce the Shari'ah. Should they transgress the Shari'ah, the rulers cease to deserve obedience. These checks and balances are found in all dimensions of the Islamic social framework which can be expressed in terms of moral, social, economic and political dimensions.

In the moral sphere the Islamic faith is essentially a unity; it is at once worship and work, a secular conduct of life is not divorced from the religious beliefs of Muslims. In the social sphere its distinguishing feature lies in its complete human equality, just and coherent unity of existence and mutual responsibility of individuals and societies; in the Islamic scheme of things, nobody would be allowed to exploit the other, everybody should be given equal oppor-

tunity to go up the social ladder. This is operational not only through the institution of prayers in the mosques but also through acquisition of wealth and property.

The economic dimension is manifested through emphasis on the distributive justice and beneficent use of the "bounty" of Allah. According to the Qur'an, all resources of the universe belong to none but Allah; the concept of absolute ownership by Allah promotes redistribution of wealth among have-nots and also creates a non-capitalist frame of mind. Individual ownership has been recognized to provide an incentive to work but the state has even the right to deprive him of ownership of property in extreme cases if it is left unused or used contrary to the interest of the community. Lastly, the political dimension of the Islamic social framework can be expressed in terms of three fundamental conceptions: sovereignty of Allah, equality of mankind and the principle of co-existence.

The main conclusion which emerges from the preceding discussion is that the integrated model of the Islamic social framework of which Islamic economics is a part is, among others, based on the following nine criteria:

- a) fair balance between worship and work;
- b) human equality;
- c) mutual responsibilities and co-operation in a society;
- d) distributive justice;
- e) family, intra-family and collective obligations carrying individual responsibilities and accountability;
- f) balanced and beneficent use of the "bounty of Allah";
- g) limited sovereignty of people in society;
- h) principle of co-existence and
- i) freedom of action and conscience.

The criteria on which the Islamic social framework is based are co-ordinated and integrated so that they provide a positive motivation for economic activities, steered by the concept of fair balance between material and spiritual needs and between private and social needs.

3. Islamic Key Thrust in Selected Micro Issues

Let us now take up a few key micro-issues recognized in all economic systems irrespective of the ideological bias in one way or the other. The list of issues discussed in the succeeding paragraphs is no way exhaustive, nor is it intended to be. Nevertheless they would provide a direction towards understanding micro-economics of Islam.

3. a) *Private Ownership: its Principles*

Islam recognizes private ownership of property. This ownership is relative, not absolute. For the Qur'an categorically states that absolute ownership belongs to Allah alone. The state can intervene if an individual misuses his ownership of property and causes harm to the society. This is a predominant Islamic position on the concept of private property in Islam. Although there is a consensus as regards the intervention of the Islamic state, opinions differ on the question of the extent of such intervention. There is in fact no hard and fast rule in this regard, although state intervention can be reduced to a bare minimum when an individual discharges his Islamic obligations voluntarily. In its final analysis, it depends on Islamically justified social awareness of the individual as well as the nature and the state of the economies and their concerned institutions.

However, from a careful study of the Shari'ah, it should be possible to derive at least the following eight rules governing private ownership of property:

1. Continuous use of property as non-use of property is forbidden because of implications for land reform in many Muslim countries.
2. Payment of Zakah: Owner of the property must pay Zakah in proportion to the property owned subject to the rules of the Shari'ah.
3. Beneficent use of property.
4. Use of property without causing any harm to others because of implications for state intervention.
5. Lawful possession of property; acquisition of property through "halal" means.

6. Balanced use of property: non-prodigious or parsimonious use of property;

7. Use of property for the purpose of securing due benefits for himself; utilization of property for securing undue benefits in social, economic affairs to the neglect of the larger interest of the community is not permissible;

8. Rightful application of the law of inheritance, as the institutions of inheritance seek to break up the concentration of wealth and income that occurs through transfer of property in the secular economies.

The abovementioned basic rules governing the Islamic concept of private ownership have profound economic and social implications for contemporary Muslim societies, particularly in countries where the land tenure system is still linked to the colonial legacy. From the preceding discussion it is also evident that private ownership contains an element of public share. As such, there is no pure form of private ownership as found under secular economies.

3. b) *Land as a Factor of Production*

Islam has recognized land as a factor of production. In classical writings, land includes not only the surface of the earth but also all natural and mineral resources and other free gifts of nature. There is no evidence to prove that Islam does not approve of this definition of land. But the way Islam looks upon land as a factor of production has its own distinctiveness which can be expressed in terms of productivity and distributive justice and inter-generational obligation. Thus the utilization and maintenance of land as a factor of production can be seen from at least three ways within the framework of an Islamic economic society:

- i) Land in the process of cultivation;
- ii) Land as a natural resource; and
- iii) Land as an exhaustible resource.

i) *Land in the process of cultivation*

Both the Qur'an and the Sunnah have laid much emphasis on the proper cultivation of the land. The Qur'an has categorically drawn the attention of Muslims to make use of wasteland by making

it arable through irrigation and growing good crops. This emphasis on increased agricultural production is significant in the case of many Muslim countries which are not yet self-sufficient in food production. This is also significant in the case of those countries where most of the land belongs to non-cultivator owners or where the distribution of land is inequitable giving rise to the emergence of a class of landless labour. The Prophet (be peace on Him) tried to impress upon his followers to cultivate land by themselves, so it is expected to ensure proper and efficient cultivation of land. Wastage of land in any form is condemned. But cultivation of land should not be the only occupation of the people in an Islamic state. The state can make rules to ensure that land as a factor of production is used in such a way that the objective of the balanced growth is achieved for the benefit of the community.

ii) *Land as a Natural Resource*

A Muslim can acquire ownership of the natural resources after fulfilling his obligations towards his society. The use and maintenance of the natural resources can give rise to two components of earning: a) earning from natural resources on its own right (i.e. pure economic rent) and b) earning from the improvement in the use of natural resources through human labour and capital; while the pure economic rent must be shared equally by all members of the community, one is entitled to proper compensation for human effort (i.e. wage and profit). It is therefore important to separate pure economic return from other compensation resulting from the use of natural resources.

iii) *Land as an Exhaustible Resource*

It is an Islamic viewpoint that exhaustible resource belongs to the present as well as future generations. The present generation has no right to misuse the exhaustible resources now which may cause harm to the future generations.

From the above analysis, the following hypothesis or policy guidelines can be derived:

a) The agricultural development in Muslim countries can be accelerated through intensive and extensive methods of cultivation if these are supplemented by a programme of moral education.

b) The revenues generated from the use of exhaustible resources should be spent more on the development of social overhead (i.e. universities, hospitals) and physical infra-structures rather than on current consumption.

c). The pure economic rent may be spent more to meet current consumption expenditure.

3. c) *Labour as a Factor of Production*

Labour as a factor of production is recognized in all economic systems irrespective of their ideological bias. Nevertheless the distinctive nature of this factor of production in Islam is due to the fact that labour, in fact all factors of production, is not merely subject to a process of historical change as we find in the case of modern secular economics but also to a timeless moral and ethical framework within which all factors of production operate.

It is true that a modern worker has a property in his hand – labour which he is entitled to sell for as much as he can get, but in Islam he is not absolutely free to do what he wants with his own labour. Normally he is not allowed to adopt a profession not permissible in the Shari'ah. Thus we see that in Islam labour is used in a wider but restricted sense. It is wider, because it looks upon the labour services beyond pure monetary services; it is restricted because, the worker is not absolutely free to do whatever he wants with his own labour. Besides, Islam provides a comprehensive moral code of conduct which is expected to influence his work ethics. It is indeed a religious obligation that an employee works sincerely and performs the task assigned to him efficiently and honestly. This built-in psychological motivation can raise labour productivity and reduce labour alienation if labourers are imbued with the Islamic values through appropriate training programmes. This brings us to discussion on capital as a factor of production.

3. d) *Capital as a Factor of Production*

The Islam economic system must be on a free of interest base. But capital is not costless in Islam despite the fact that interest is prohibited. The cost of capital can be expressed in terms of opportunity cost in an Islamic framework. Therefore the rate of return

in a particular economic enterprise can be used as one of the allocative devices for capital. Islam does recognize the share of capital – a share which is variable. Thus, it is because of the presence of the element of profit that capital can grow even in the interest-free economy of Islam. Various injunctions of the Qur'an go to prove that Islam can reach a compromise between two opposites of capital creation, reduced current consumption and increased future consumption, thereby allowing capital to play its true rôle in the productive process as Islamic economy is essentially equity-based rather than loan-based. The ideal alternative to interest is profit and loss sharing. In Islam profit follows the condition agreed upon but the loss follows the capital invested.

3. e) *Consumption Behaviour*

The Islamic injunctions on food and the order of priority in consumption should provide us with some interesting insights to understand the nature of consumer behaviour in Islam. In the course of analysing the consumer behaviour one may take a narrow and static view by saying that in an Islamic society this should be guided strictly by the list of prohibited items (i.e. eating pork, drinking wine, wearing a silk dress and gold ring for men, etc.). While the prohibited items have definite validity in the Shari'ah Muslim consumers must not indulge in consumption of such prohibited items for social discipline, Islamic unity and spiritual significance, the author is however inclined to take a wider view of consumer behaviour. To me, the key to its understanding lies not merely in prohibited items but in the concept of "moderation" in consumption guided by the altruistic behaviour of the Muslim consumer. What is needed then is to determine whether the current consumption level in a community is below or above the moderation level. In the context of present Muslim societies, it would be naive to assume that the Islamic stress on moderation means lowering the level of the already low level of consumption.

Consumption is essentially a positive concept in Islam. The prohibitions and injunctions concerning food and drink should be seen as a part of the effort to improve the quality of consumption behaviour. By discouraging wasteful and unnecessary consumption ex-

penditure, Islam stresses the altruistic behaviour on the part of the consumer. Moderation in consumption behaviour comes then as a logical outcome of the Islamic consumption style which is relative and dynamic in nature.

3. f) *Distribution*

It is on the issue of distribution of national income that the widest controversy exists between different sections of the people of the democratic society. Since the economic welfare of the masses depends vitally upon the manner in which the total national income is distributed among the people, common sense suggests that the theory of distribution should deal with the problem of distribution of national income among different classes of people. In particular, it should be in a position to explain the phenomenon that a few are very rich, while the majority are poor. But the tradition among modern economists is to treat the distribution problem not as a problem of personal distribution but as a problem of functional distribution. "The modern economic theory of distribution is a theory or pricing of the productive service. It seeks to find out the value of the service of different factors of production. In this respect, the distribution theory is but an extension of the general theory of pricing. The problem of personal distribution can, perhaps, best be solved as soon as we investigate the problem of ownership of factors of production. The theory of factorial or functional distribution helps us to determine the prices of the services rendered by the different factors of production, such as land, labour, capital and organization". But under a market economy a person may get rent; as a labourer he may get wages; as a capitalist he may earn interest; as an entrepreneur he may also be the recipient of profit. In Islamic economics, we are concerned with both personal distribution as well as functional distribution.

Functional Distribution

As regards functional distribution, Islam recognizes rent (i.e. earning of land), wages (i.e. earning of labour), profit (i.e. earning of capital and entrepreneur). In the first instance, the payment of rent which generally refers to the conception of "surplus" earned

by a particular unit of a factor of production in excess of the minimum amount necessary to keep that factor in its present occupation, does not seem to be inconsistent with the spirit of Islam. Secondly, wage differences resulting from differences in talents and capacities have been recognized by Islam. The fundamental conditions are that employers shall not exploit their labourers and must pay their "dues" and the workers shall not exploit their employers through trade unions and must do their job faithfully, sincerely and honestly. While there is a general consensus regarding the need to pay the workers' "dues", opinion differs as to whether these "dues" are to be determined according to his "marginal product". Thirdly, the Islamic theory of capital recognizes the share of capital in national wealth only to the extent of its contribution to be determined as a variable percentage of profits rather than the fixed percentage of capital itself, which is interest. This is prohibited in an Islamic economy, because interest is responsible for the growth of capitalism with all its attendant evils in society: it creates the problem of unemployment; it retards the process of recovery of depression; it aggravates the debt-servicing problem of the underdeveloped countries; finally, it uproots the basic principles of co-operation and mutual help and creates selfishness in man. The so-called allocative function claimed to be performed by the interest rate in a market economy can be done by the expected rate of return (i.e. derived from an opportunity cost concept) in an Islamic economy. Fourthly, Islam has allowed normal profit – not monopoly profit or profit resulting from speculation, which is not generally permissible in Islam.

Personal Distribution

The Shari'ah provides a comprehensive framework for ensuring distributive justice including the impact of the prohibition of interest, not only on productive loans but also on consumption loans. The main objectives of distributive measures are:

- a) to make provision for a minimum level of living through fulfillment of basic needs, thereby reducing inequality;
- b) to foster social cohesion and a co-operative spirit;
- c) to increase efficiency and produce a positive climate for mutual help and involved participation.

It follows that in an Islamic economy, a given distribution of income and wealth will be acceptable only when the society is in a position to provide a guarantee of a minimum level of living to its members as defined in accordance with the Shari'ah and socio-economic realities. There should also be a sustained effort to diffuse the concentration of ownership of the means of production and wealth, thereby reducing both relative and absolute disparities of income and wealth.

Distributive Measures

A number of operational policy packages with far-reaching implications to reduce disparities of income and wealth may be evolved through the implementation of the Islamically justified obligatory and voluntary distributive measures which include:

1. payment of "Zakat" and "Ushr";
2. prohibition of "Riba" on both consumption and productive loans;
3. entitlement of pure economic rent (i.e. income earned without any special effort) to all members of the community or to the state;
4. implementation of laws of inheritance to ensure equitable inter-generational transfer of property;
5. encouragement to give benevolent loans free of interest (i.e. Qard-Hasan);
6. discouragement of depletion of exhaustible resources by the present generation to the disadvantage of all future generations;
7. encouragement to give "Sadaqah" (charity) to the poor by those who have "surplus" funds beyond their needs;
8. encouragement to organize co-operative insurance;
9. encouragement to set up philanthropic trusts (i.e. Awqaf) for providing social as well as private goods to deserving individuals;
10. encouragement to lend the productive asset *without* charge to those who are in need of it and the recipients are expected to return it to its original owner after accomplishing the objective for which it was taken (i.e. Maa'un);
11. legal measures against the public treasury to enforce the

guaranteed minimum level of living defined by an Islamic state in accordance with the Shari'ah as well as socio-economic realities;

12. provision of additional "taxes" beyond Zakat and "Ushr" (one tenth of the agricultural product) by an Islamic state to ensure distributive justice.

3. g) *Market Mechanism and Islamic Policy Alternatives*

The free-market mechanism is based on effective demand, making resources available to those who can buy them and not necessarily to those who need them. As such in an Islamic economy, the price offered by the market can not be accepted as a matter of rule. Competition as implicit in the market mechanism needs to be supplemented by conscious control, supervision and co-operation. This is where Islam enters. The key lies in mutual goodwill and co-operation, while the market prices emerge from the wholly unsupervised interaction of competing buyers and sellers. *Islamic equitable prices* need to emerge from the supervised competition, conscious control and co-operative interaction of the buyers and sellers.

The drive to maximize profits as seen under the market economy is not merely an economic phenomenon: it is also the psychological as well as social phenomenon. It is the social mechanism and economic institution which create the necessary conditions to work in one way or another.

Three Policy Options

It can be stated that an Islamic economy may face the following three policy options:

- a) to eliminate the market mechanism and control price;
- b) to allow the market mechanism to operate freely and make direct transfer payments to the poor so that they can enter the market; and
- c) to allow the market mechanism to operate through the necessary control and corrective measures, in providing basic needs to the community but not necessarily providing goods and services beyond the basic needs.

Option a) is clearly not permissible in Islam as it is against the

principle of the basic economic freedom of the individual which Islam seeks to preserve. The economic compulsion can be applied in an Islamic society only as a special case in order to strengthen the collective social and economic responsibility of the individual members.

Option b) is also not acceptable to the author for several reasons: firstly, it is based on the implicit assumption that the market mechanism will automatically ensure equitable re-distribution of goods and services through invisible forces of demand and supply. Here reality is far from this theoretical possibility; secondly, the market is either inefficient, ineffective or indifferent in providing all aspects of basic needs.

Lastly, there is no guarantee that transfer payments will be made available to the poor on a permanent basis.

While the rôle of direct transfer payments can not be denied for the lower 10 to 15 percent absolute poor or unemployable, the fact is that the market can not always supply wage goods, particularly public services such as education, health care, safe water, sanitation, etc. It is essential to expand and redistribute public services so that the poor have access to such services. A part of the income of the rich needs to be transferred to ensure this expanded and equitable redistribution of public services. "This is no rule for the optimum which says that any rich man is permitted to spend his productive income all for himself, or the other way round, a poor individual has only the right to spend as little as his or her low productive income permits".

In view of the above discussions the option c) provides a pragmatic alternative to achieve the goals of an Islamic economy. In this connection it must be noted that Islamic markets should be free of unsocial monopolies, hoarding, unlawful speculation and other anti-social business activities that do not fit into the Islamic code of business ethics.

It is not out of place to throw some light on the behaviour of a firm and its objectives in an Islamic economy.

The Behaviour of the Firm and its Objectives

The behaviour of the firm is to be guided by the over-riding concern for the public interest as viewed by the principles of the

Shari'ah. It is relative to social need. It is neither the profit-maximizing nor sales-maximizing behaviour of the firm that matters most. What matters is the structure of the decision-making-institutional process that affects the substance of the decisions so that different decisions will result from different kinds of organization, even if all else is unchanged. In such situations we may reasonably expect the firm's goal is not to maximize profits or sales but to attain a target level, or a rate of profit or a certain level of sales or a zero profit level (revenues equal to opportunity cost) or to achieve an assigned social profit target. This means that the firm could face a large number of situations rather than only one unique equilibrium situation. The main hypothesis is that in an Islamic economic analysis, equilibrium may not be unique, as such different theories may yield different predictions.

3. h) *Industrial Relations*

The conflict between labour and capital is the core of the capitalistic world. The growth of workers' and employers' organizations during the last few decades has been accompanied by a distinct increase in the number and extent of strikes and lockouts. A lockout, which is the employer's answer to a strike, is the act of closing a business enterprise by an employer for the purpose of enforcing a decision on the employees.

Islam does not recognize the exploitation of labour by capital, nor does it approve of the elimination of the business class and establishment of the classless society. Islam recognizes the diversity of capacities and talents resulting in the diversity of earnings and material rewards. It does not approve of a dead-level equality in the distribution of wealth as that would defeat the very purpose of diversity. Naturally, Islam recognizes the existence of labour and capital in society. The two basic principles laid down in this connection in both the Qur'an and the Hadith are that the employee shall do his work faithfully and to the best of his ability and that the employer shall pay him fully for the services rendered. In fact, Islam brings about a happy marriage between labour and capital by giving the whole problem a moral bend.

It is clear that Islam has recognized the worker's right to a fair

wage. When the employer tries to exploit the labour, they may opt for collective bargaining to secure an Islamically justified fair wage as labour, being perishable, has a very weak bargaining power. Thus a trade union can correct the bargaining weakness of labourers, eliminate capitalistic exploitation and so enable labourers to have their wages increased to the level of the full value of their marginal net product. In fact, the state can intervene to protect the legitimate interests of both employees and employers while an Islamic state can declare an anti-social strike as unlawful, it can fix the minimum wage to protect the interest of the working class. It follows that in a properly run Islamic society, there is no need to have a labour collective bargaining power because institutional arrangements will generate forces where equitable and fair conditions of work tend to be established.

But how far should the right to strike and discharge be allowed to go? What degree of limitation would the state law exercise? It is an unanswerable question as no satisfactory answer can be given in an absolute term. The whole problem depends on a number of variables such as the existing level of concentration of industrial power, level and stage of labour movement, level of social inequality and income, level of Islamic awareness towards work ethics and so on.

It may however be repeated that if both workers and employers are imbued with the values of Islam, the whole question of strikes and lockouts would be relatively unimportant. But the fundamental problem is not how to prohibit or restrict strikes and lockouts but how to inject Islamic values into the existing framework of industrial development in Muslim countries.

The crucial policy implication is that Islamic business ethics should form an integral part of either general or specific training designed for workers. There is also a need for an Islamic orientation training programme for management.

4. Islamic Key Thrust in Selected Macro Issues

4.a) *Money, Banking and Investment*

At this stage it is perhaps desirable to throw some light on the concept of money, banking and investment in Islam.

Concept of Money and its Rôle

In Islam money is viewed as a medium of exchange, not a commodity. The widespread acceptance of this rôle of money is intended to eliminate possibilities of injustice, unfairness and exploitation under the barter economy. Since injustices under the barter economy can, among others, be classified as "Riba-al-Fazal" which is prohibited in Islam, the rôle of money as a medium of exchange is justified. Therefore, in Islam money does not in itself produce anything, as interest (Riba) on money-lending and borrowing is prohibited.

Once the rôle of money as a medium of exchange is recognized, it can play its rôle as a unit of account and as a store of value in an Islamic economy. It can also serve as a measure of opportunity cost (i.e. foregone income).

At a theoretical level, abolition of interest and imposition of 2.5 percent per annum Zakat levy on idle money are most likely to discourage a speculative motive for holding cash, thereby contributing stability to the value of money. This is not to suggest that stability of money depends only on abolition of interest and imposition of Zakat. It depends on other endogenous factors such as level of business activity, level of expected profit, commercial banks' ability to respond to economic incentives as well as exogenous factors such as the control of the central bank. Nevertheless, absence of interest and presence of Zakat levy puts an Islamic economy in a better position to handle the problem of unfair speculation and hoarding of money, thereby enabling money to perform its other derivative functions in an easier way. This does not mean that an Islamic economy does not need a sound monetary policy, because there is still a controversy as to whether central banks should have the sole authority of money creation in an Islamic economy or whe-

ther the commercial banks should also be allowed to create money by credit.

Money as a Medium of Non-Exchange

In an Islamic economy money has a special social and religious rôle to play because it provides the best method for channelling purchasing power in the form of transfer payments to the poor. The transfer payments have a special religious significance in an Islamic economic society because in Islam it is not merely a voluntary obligation on the part of the Muslims but also a compulsory obligation particularly in respect of payment of Zakat by the rich to the poor. The religious significance of the rôle of money lies in the fact that it enables us to calculate 'Nisab' and to assess *exactly* the rates of Zakat. Under the money economy, it is relatively easy to assess an exact contribution in respect of intra-family and community obligations, particularly where there is no end-product available for bartering. The point is that a scale of Islamically justified ways of channelling transfer payments can be laid down more effectively under the money economy.

Islamic Banking and Investment

As noted earlier in Islam money does not in itself produce interest or profit and is not viewed as a commodity. Since Riba (i.e. interest) is prohibited, the status of the Islamic bank in relation to its clients is that of a partner, investor and trader whereas in commercial banks in the West, the relation is that of creditor or debtor.

In its actual operation Islamic banks use various techniques and methods of investment such as the Mudarabah contract under which financiers provide capital and the Mudareb (labour partner) provides his technical know-how and skill and the profit is shared between the partners according to an agreed percentage. Islamic banks are also involved in Murahaba (cost plus) contract under which banks purchase a certain commodity according to the specifications of its clients and gives delivery on the basis of sharing an agreed ratio of profit. Under Musharaka, both the banks and clients enter into partnership by contributing capital in varying degrees and agree

upon a ratio of profit in advance for a limited period of time and the bank gradually withdraws its contributions once the enterprise can stand on its own feet. Islamic banks are also involved in dealing with foreign exchange markets and other banking service operations such as letters of credit and letters of guarantee. Islamic banks may also provide various non-banking services such as trust business, real estate and consultancy services.

It is to be noted here that the Islamic financial market can provide a built-in stabilizer to investment based on different types of financial instruments derived from the Musharaka, Mudaraba and Murahaba concepts. Besides, the cost of investment being the function of the rate of return it is likely to be less prone to speculative gains than capital gains.

4.b) *Fiscal Functions and Policy: An Overview*

The way the fiscal policy is expected to perform the *allocation, distribution and stabilization* function in an Islamic state has its own distinctiveness stemming from value orientation, ethical and social dimensions in public income and expenditure. The fiscal policy in Islam ceases to be neutral and is expected to clarify the situations not merely *as they are but as they ought to be*. Thus, in an Islamic state the process of allocating resource use between private and social goods, adjustment of the distribution of earnings and redistribution of existing income and wealth and the use of budgetary policy as an instrument of price stability, high employment and growth must provide a clear manifestation of social and moral concern in addition to material advancement. This value loaded Islamic bias based on the principles of benevolence and care for the have-nots should enable the Islamic state to solve the problem of co-ordination or conflict of fiscal functions in a relatively easy way, as in the real world setting budget planning frequently does not permit evaluation of various objectives on their own merits resulting in multiple conflicts between allocation and distribution, growth and distribution, stabilization and allocation and so on.

This over-riding Islamic humane bias in public finance, as well as in other areas of economics, is derived from Zakat which contains

an enormous potential for communal advancement in favour of the poor and disadvantaged members of the community. The Qur'an indicates the items on which Zakat revenues can be spent. The Zakat which is collected only from Muslims can be used for the welfare of non-Muslims as well, but by payment of Zakat Muslims are performing their religious duties also. Thus Zakat levy has a double sanction, spiritual and temporal, and not a double nature, religious and secular, as wrongly maintained by some western scholars. This is true with regard to most of the taxes of the early Islamic state.

In spite of the simplicity of the system, there were a number of taxes prevalent in the early Islamic state. Generally speaking they are: (a) Zakat, (b) *Jizia*, (c) *Kharaj* or land tax, (d) Spoils of war, (e) Taxes on mines and treasure trove, (f) Customs duties and tolls.

It is possible to demonstrate that the tax system of the early Islamic state was flexible and dynamic in nature: for example, the categories of property to which Zakat is to be applied is not rigidly maintained even by Hadrat Umar who introduced a number of changes in the system of Zakat, because it is a means to an end and not an end in itself.

Basis of Budgeting

Again a careful study of the *Shari'ah* provides us with some interesting clues as to what should be the basis of budgeting in Islam (i.e. revenue-vs-expenditure).

In an Islamic state, the basis of budgeting is not merely the revenue which should determine the expenditure but it is the expenditure which should primarily serve as a basis for mobilization of revenue. It stems from the Islamic requirement that a state should provide a basic minimum need to all its citizens. Therefore, if the Zakat revenue and contribution of the voluntary sector, recognized by Islam, are not sufficient to meet the basic provisions for the poor, there is always a scope for additional taxation beyond Zakat provided they are spent in a judicious manner. It is therefore implicit that a case of deficit financing can be made in an Islamic economy which can be arranged through *Mudaraba*, *Musharaka* and *Murabaha* contracts. Besides, an Islamic government can also raise funds by is-

suing investment bonds and certificates to the public on the basis of profit-and-loss sharing.

From the preceding discussion it is clear that an Islamic state should be able to use various fiscal instruments or policies designed to have an Islamic "Social Welfare Function" which describes society's judgement on the question of weights to be given to the welfare of various individuals and groups (i.e. poor, aged, low-income bracket, minorities).

Let us now have an overview of the monetary policy in an Islamic state on the assumption that fiscal and monetary measures can supplement each other although they differ in their impact.

4.c) *Monetary Policy: An Overview*

It is widely felt that in an Islamic economy monetary policy should pursue the goal of maintaining "stability in the value of money, economic well-being, full employment, optimum economic growth and promotion of distributive justice». It is thus widely believed that the central banking system in an Islamic state must control the supply of money which should be adjusted to the need of the economy in terms of short-term stability, long-term growth and allocation of bank resources to help to achieve the goal of social welfare.

Thus, despite the abolition of interest rate and non-availability of open market policy a number of monetary policy instruments, such as cash reserve ratio, liquidity ratio, credit ceilings, "profit-sharing ratio" in different sector financing and moral suasion that can be legitimately used in an Islamic economy as an indispensable component of stabilization, distribution and growth policy. Besides, due to its effects on international capital movements, monetary policy will have a special advantage in securing balance of payment equilibrium.

As regards power to create credit by commercial banks, some controversies exist, although the predominant view is that a commercial bank should have the power to create credit provided its benefit does not go only to big business firms controlled by a family or a group of interlocking directorates of firms or banks to the neglect

of the wider interest of society. This has a crucial policy implication, particularly in the case of poor Muslim countries where conscious policy measures should be taken by the central bank to ensure a more equitable distribution and allocation of the bank resources (in the form of rural credit) to help in financing the agricultural sector, rural development and agro-based industries so that benefits go to rural areas, where the majority of the people live in most of the Muslim countries today.

As noted earlier, and keeping in mind that Islamic economy is essentially equity-based rather than loan-based, the ideal alternatives to interest are profit and loss sharing and *Qard-Hasan* in production and consumption areas respectively.

Policy Mix

An Islamic economy provides scope for securing a policy mix of monetary and fiscal policies which will permit the achievement of more objectives than would be possible with the use of one policy instrument alone.

4.d) *Economic Development*

The goals of the Islamic concept of economic development can not be explained in terms of Gross National Product and increase in per-capita income only, these must also be explained in terms of raising the absolute income levels of the poor to eradicate poverty, meeting material and non-material human needs, conservation of natural resources, wild-life and ecological environment. In addition, the goals of the Islamic concept of development must be designed for the preservation of moral and spiritual values as reflected in the concept of *Tazkiyah* (moral purification plus growth).

Despite the fact that the Islamic basis of development is multi-dimensional with moral, social, political and economic dimensions, the moral and spiritual development must be integrated into the very concept of economic development as from the onset: this is what is called *Tazkiyah al-nafs*.

Thus, the economic development of Islam is *not* simply a ma-

terialistic development as the spiritual and moral phases are assigned capital importance, as explained in *takaful* or *tadamun*, the mutual social security of Islam. The ideal pattern of Islamic belief contains enough motivational properties to *work* which can influence actual patterns of Muslim behaviour. It is also possible to motivate economic achievement thereby accelerating economic development through a systematic programme of moral educational training. In Islam "work" for the purpose of efficient utilization of His resources is also a worship. Besides payment of Zakah, benevolent loan, voluntary and obligatory intra-family and intra-community obligation carry the double notion of benefits; they do not merely bring material benefits to takers, but also give benefits to givers both morally and socially.

Let is now put forward some alternative strategies for development in an Islamic framework as hypotheses with clear Islamic dimensions.

1) Emphasizing people at a gross-root level and their Islamic values in a particular development context, thereby developing an appropriate model of development from within.

2) Emphasizing "basic need" rather than "effective demand" in development planning.

3) Emphasizing integrated rural development.

4) Emphasizing social appropriateness in technology.

5) Emphasizing education and schooling aiming at total human development.

6) Emphasizing mobilization of resources through defining the scope for social help, individual freedom and group behaviour.

7) Emphasizing complementarities and substitutabilities in development for fostering co-operation among the Muslim countries.

8) Emphasizing conservation of humanity through fulfillment of inter-generational obligations.

9) Emphasizing preservation of biological diversity and conservation of resources.

The alternative strategies discussed so far are by no means exhaustive. Economic development in the Islamic framework must be understood in its total *relationship* with social, political, ethical variables. Difficulties often arise due to lack of (a) appropriate human attitudes, (b) inappropriate administrative and social institutions,

(c) failure of bureaucracy to identify them with people, and (d) nepotism and corruption. Despite the fact that there are no fixed capital co-efficients between resources spent and a desired change in human attitudes and individual motivation to work, scarce resources need to be allocated to carry out necessary social and institutional reform. In any given political structure, attempts to piecemeal reform may be self defeating and the system is likely to re-establish the initial distribution of power and wealth. It follows that each of the outlined strategies must not be seen in isolation. It is only through *total relationship* that the full manifestation of the Islamic concept of development should be possible and it is only then that a deep structural reform will take root.

4.e) *Poverty*

Contrary to popular opinion, human poverty in Islam is concerned with both material as well as cultural and spiritual poverty. This dual notion of poverty has its roots in the Shari'ah. While it should be possible to identify a number of economic, social and moral value-oriented variables and indicators to assess the extent of poverty resulting from the de-Islamization process the current analysis is mainly confined to the discussion of material poverty and Islamic responses to it.

While it is difficult to quantify the level or the extent of material poverty, it is possible to integrate "minimum subsistence", "minimum adequacy" and "minimum comfort" into definitions of poverty. The Shari'ah requires that the Islamic state must provide a guarantee of a minimum level of living for everybody although this is conditional and relative as each individual must first try to earn his living through his own efforts. Again, this guarantee is relative to the socio-economic conditions of the society concerned. But when people are living at a subsistence or starvation level, it is important for us to attack absolute poverty rather than relative poverty as a matter of priority. Although the concept of human poverty involves considerable value-judgements, particularly in the construction of an index of relative deprivation or equivalence in consumption and income, it should be possible to identify the causes

and to suggest remedies consistent with the spirit of the Shari'ah. In most cases poverty in Muslim countries arises due to colonial exploitation and legacy, implementation of inappropriate development policies resulting in economic and financial dualism, neglect of human resources, low labour productivity and so on.

Lastly, Islamic solutions to the problems of poverty may include, among other things, three basic lines of action:

i) Initiating institutional and non-institutional reforms through legal and non-legal measures such as (a) re-structuring the development policies geared to the need of the rural population, (b) introducing necessary reform in land tenure, (c) progressive taxation to transfer funds for providing public goods such as education and training, health care and so on.

ii) Providing guaranteed minimum provision (GMP) to all concerned, determined by the level and stage of social and economic development to meet the basic minimum needs rather than provision for a national minimum wage (NMW). Although consideration could be given to NMW in an Islamic economy, this is only a partial solution to the problem of poverty as it concentrates its benefits upon those who remain in employment.

iii) Re-constructing and re-activating the conventional tools of re-distribution such as: a) collection and disbursement of Zakat to achieve pre-planned objectives, b) redefining the scope and limits of intra-family obligatory allowances and obligatory social provision of certain goods and services in a particular social context, c) fuller implementation of Islamic laws of inheritance and so on.

Each of the above-mentioned approaches is rooted in the Shari'ah in one way or another. However, the question of minimum provision for living deserves a special treatment in view of its importance in the Shari'ah. Therefore, a brief explanatory note is needed.

Minimum Provision for Living: An Explanatory Note

While the Shari'ah stressed that the individual should earn his livelihood, it is also recognized by the Qur'an and the Sunnah that a state of poverty and deprivation entitles one to community's support, as a guarantee of a minimum level of living is to be provided

by an Islamic state. It is suggested by some scholars that an Islamic state must provide a constitutional guarantee for providing minimum provision for living so that the court must have jurisdiction to take appropriate legal measures against the public treasury to enforce that minimum, if necessary. This is perhaps an ideal Islamic position.

However, in the context of to-day's reality, it is very difficult to give a categorical answer as to whether all Muslim countries (excepting a few oil rich countries in the Middle East) are capable of giving a guarantee of a minimum provision for food, shelter, clothing, education and health care to their people. In the case of many of the least developed Muslim countries the minimum provision for shelter alone can perhaps utilize all the budgetary resources leaving practically nothing for other items of the vital expenditure. The basic question which I am raising here is the following: When a state can not provide a guarantee of a minimum provision for its poor people as required by the Shari'ah due to its resource constraints, it is perhaps in order to identify the order of priority in terms of minimum provision, thereby providing a guarantee for at least priority needs, although this may be a guarantee for sub-minimum provision. This is not to suggest that this second best solution should be a permanent feature in any Muslim society. Attempts should be made to exploit the resources in such a way so that it becomes possible to break the vicious circle of poverty. This is perhaps the Islamically justified approach to the problem.

4.f) *Co-operative Insurance*

There is a feeling that insurance is un-Islamic because it is said that it is nothing but gambling or speculation. But there is a fundamental difference between gambling and insurance. While gambling promotes dissension and hatred and tends to deter those who indulge in it from remembrance of Allah, insurance is based on co-operation and the insured individual is enabled through mutual action to obviate poverty for himself and his dependents. There is nothing in Islam which prevents anyone from making provision for his dependents. In fact, through insurance, the society as a whole benefits from an accumulation of capital reserves.

The difference between the modern insurance industry and the Islamic insurance industry lies not only in its form but also in the nature of its business handling. The present-day trend toward formation of cartel like associations of entrepreneurs in the field of insurance is the negation of Islamic values of life. We know that the modern insurance industry invests its funds in interest-bearing undertakings, while the Islamic insurance companies provide capital loans either directly on the basis of Mudarabah or in participation with Islamic banks and other specialized credit institutions.

Under the Islamic scheme contributors to the insurance fund are donors and their contributions are donations, with the aim of sharing the losses that might befall on any of the contributors. The compensation given is relevant to the loss incurred and not a fixed sum which is agreed between the insurer and the insured when the contract is drawn up.

Insurance schemes made by the government are also permissible since they are a kind of fulfilling the state's duty to look after its citizens and alleviate the hardships that they encounter.

It is interesting to note that Islamic co-operative insurance has already been put into practice by the Faisal Islamic Bank of Sudan and Dar Al-Maal Al-Islami. Their initial success are indeed encouraging and provide scope for further expansion.

5. Summary and Conclusions

The following major conclusions emerge from the preceding discussion on various key issues in Islamic economics.

(a) Islamic economic value is an integrated part of a social framework without distinction between a spiritual and a material activity of man. Society or the state in Islam is for the individual who is accountable to Allah for his actions. It is the state which enforces the Islamic laws and can make individuals fulfil their obligations towards society. But the rulers cease to deserve obedience should they transgress the limits of Shari'ah. These checks and balances are found in all dimensions of the Islamic social framework.

(b) It is the Muslim view that the concept of private ownership of property is relative, as absolute ownership of everything

belongs to Allah alone. Therefore the state can prevent an individual from misusing his ownership to the detriment of the society. There are definitive rules of the Shari'ah governing private ownership of property.

(c) Islam provides a comprehensive ethical framework within which all factors of production must operate. While production is emphasized, distribution remains an integrated part of the production strategy from the outset. Thus, all members of the community are entitled to a pure economic rent. "Due" compensation must be given for effort (i.e. fair wage and normal profit). Islam also discourages misuse of resources to the disadvantage of future generations. Interest is prohibited because it helps growth of capitalism, creates unemployment problems, retards the process of recovery during recession and depression, introduces instability, aggravates debt-servicing problems and distributive justice, and uproots the principles of co-operation. The so-called allocative function claimed to be performed by an interest rate can be achieved by the expected rate of return in an Islamic economy. Capital is *not* costless in Islam.

(d) Consumption is a positive concept in Islam. The key to its understanding lies in the concept of "moderation in consumption" defined in a particular social and economic context.

(e) Islamic economics are co-operative, competitive and controlled at the same time. The unique mix of these principles can provide insights into the working of an Islamic market or firm which may be guided by multiplicity of objectives and the equilibrium of the firm may not be unique.

(f) Islam recognizes the diversity of talents and capacities resulting in the diversity of earning and material rewards. It is required that an employee shall perform his work faithfully and the employer shall pay him a fair wage.

(g) Islam views money as a medium of exchange *not* as a commodity and the status of the Islamic bank in relation to its clients is that of partners investors and traders. In its actual operation Islamic banks used various techniques of investments based on a profit-and-loss sharing basis on the grounds of stability, allocative efficiency, growth and distributive justice. Islamic economy is es-

entially equity based. As cost of investment is the function of the rate of return it is likely to be less prone to speculation.

(h) The value-loaded Islamic bias based on the principles of benevolence and care for the have-nots should be manifested through fiscal and monetary policy in an Islamic state. While essential expenditure may primarily serve as a basis for budgeting, a number of monetary policy instruments such as cash reserve ratio, liquidity ratio, credit ceilings can be used to perform stabilization, distribution and allocation functions.

(i) Lastly, the Islamic concept of development is multi-dimensional with a focus on the development of man in his total relationship with economic, social, moral, spiritual variables and physical natural environment – both natural and institutional. Thus, efforts must be made to eliminate human poverty, as the Islamic state should provide a minimum level of living for all its members. Evidently, co-operative insurance for making provision for dependents is permissible.

6. Selected Further Readings

(Published by the International Centre for Research in Islamic Economics (ICRIC), Jeddah, if not otherwise mentioned).

- K. Ahmed (ed.); *Studies in Islamic Economics*. 390 p.
M. N. Siddiqi, *Rationale of Islamic Banking*. 22 p.
M. M. Metwally, *A Behavioural Model of an Islamic Firm*. 13 p.
M. A. Mannan, *Institutional Settings of Islamic Order*. 12 p.
M. N. Siddiqi, *Muslim Economic Thinking*. 130 p.
M. A. Mannan, *Scarcity, Choice and Opportunity Cost: Their Dimensions in Islamic Economics*. 35 p.
M. A. Mannan, *Islamic Perspectives on Market Prices and Allocation*. 30 p.
M. A. Mannan, *Why are Islamic Economics Important?* 27 p.
M. Ariff (ed.), *Monetary and Fiscal Economics of Islam*. 432 p.
Z. Ahmed, M. Iqbal & F. Khan (eds.), *Money and Banking in Islam*. 299 p.
Z. Ahmed, M. Iqbal & F. Khan (eds.), *Fiscal Policy and Resource Allocation in Islam*. 345p.

- M.A. Mannan, *The Economics of Poverty in Islam with Special Reference to Muslim Countries*.
- M. Fahim Khan, *Implications of Islamic Consumption Patterns for Savings, Growth and Distribution in a Macroeconomic Framework*.
- M. N. Siddiqi, *Guarantee of a Minimum Level of Living in an Islamic State* – Basis in Shari'ah, Rationale and Contemporary Implications.
- M. Raihan Sharif, *The Concept of Economic Development in Islam*.
- F. R. Faridi, *Public Budgeting, Capital Accumulation and Economic Growth in the Islamic Framework*.
- Zubair Hasan, *Distributional Equity in Islam*.
- M. A. Mannan, *Islamic Economics: Theory and Practice*. Sh. Mohd. Ashraf, Lahore, Pakistan (1970, reprinted 1975, 1978, 1980). 386 p. Revised edition (forthcoming).
- M. A. Mannan, *The Making of Islamic Economic Society: Islamic Dimensions in Economic Analysis*, International Association of Islamic Banks, Cairo, (1984) 534 p.

PART II
DOCUMENTS

1. REPORT OF THE FIRST JOINT INTERNATIONAL CONFERENCE ON RESEARCH IN CRIME PREVENTION

Riyad, 23-25 January 1984

1. The Conference was opened on Monday, 23 January 1984, in Riyadh with an official ceremony preceded by a recital of verses from the Koran.

2. The introductory address was delivered by *H. R. H. Prince Ahmed Bin Abd al Aziz*, Vice-Minister of Interior, who welcomed the participants and emphasized the importance of the Conference (Appendix 1).

3. Messages from Ambassador *Yolah* (Under-Secretary-General of the United Nations for International Social and Economic Affairs) and from *Mrs. Shahani* (Assistant Secretary-General of the United Nations for Social Development^o and Humanitarian Affairs) were then presented by *Mr. Leone* and by *Mr. Shikita* respectively.

4. During the break which followed, the Conference participants were presented to H.R.H. Prince *Aziz* by *Mr. Murad* and *Mr. Leone*.

I. *Opening of the Conference by the Co-Chairmen*

5. The two Co-Chairmen, *Mr. Asuni* and *Mr. Murad*, welcomed the participants in brief speeches (Appendices 2 and 3), following which the latter assumed Chairmanship.

II. *Appointment of Rapporteurs*

6. *Mr. Caramazza* and *Mr. El Rifai* were appointed rapporteurs for the Conference.

III. *Introduction of the Participants*

7. The participants (Appendix 4) were then introduced, non-

Arab by Mr. Leone (who was appointed Secretary-General of the Conference), Arab by Mr. El Rifai, rapporteur.

IV. *Adoption of the Agenda*

8. The Agenda (Appendix 5) was adopted.

9. The Conference also approved the proposal of the Chairman to appoint co-ordinators for Agenda Items 5, 6 and 7 as follows:

Item 5: Co-operation in the field of "action-oriented" research regarding crime prevention within the United Nations and other entities concerned with the problem. Concrete principles and methods - Mr. Leone.

Item 6: Exchange of views on the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, with particular attention to item 5, "Formulation and application of United Nations standards and norms in criminal justice" - Mr. Shikita.

Item 7: The effects of Islamic legislation on criminality - Mr. El Rifai.

V. *Co-operation in the field of "action-oriented" research regarding crime prevention within the United Nations and other entities concerned with the problem. Concrete principles and methods*

10. The *Chairman* invited the co-ordinator for this item, Mr. Leone, to open the discussions.

11. Mr. *Leone* summarized the UNSDRI document on the topic which been distributed and added that a paper on the theme had also been prepared by Mr. Joutsen. Mr. Leone continued by underlining the fact that the problem of co-ordination was far from being of recent origin and expressed the hope that the Conference participants would make a useful contribution in order to further improve the situation. He added that the need for co-operation stemmed particularly from the limitations of the resources in the field of crime prevention, with the consequent desirability of avoiding waste in overlapping, lacunae or dispersal of efforts: the basic economic rule of maximum results with the available resources applies also in this case. In the achievement of this goal many difficulties are encountered, the main two being the differences

in legislative mandates of the institutions operating in the field and the respecting of their autonomy.

12. Mr. Leone then briefly outlined the existing structure in the social defence sector, commencing with the UN General Assembly and its Third Committee and the Economic and Social Council. In addition he stressed the importance of the Committee on Crime Prevention and Control and the Quinquennial Congresses on the Prevention of Crime and the Treatment of Offenders. He also described the rôle and functions of the Crime Prevention and Criminal Justice Branch and of the Interregional Adviser. The United Nations Social Defence Research Institute (UNSDRI) should be considered as a UN specialized structure of applied research, both policy- and action-oriented. The regional institutes (UNAFEI, ILANUD, HEUNI) constitute a further important element within the network - with emphasis on regional activities - even though they are only affiliated with the Organization and are generally created by one or few Member States. Finally, particular mention should be made of the Four International Societies (The International Association of Penal Law, The International Penal and Penitentiary Foundation, The International Society of Social Defence, The International Society of Criminology) to which the United Nations has accorded a consultative status.

13. In conclusion, Mr. Leone said that the participants were expected, following a thorough discussion of the topic, to submit proposals for a pragmatic and gradual progress in co-operation in the field, to identify measures for strengthening existing links, for the creation of new links and for a better regulation of both.

14. The *Chairman* expressed agreement on the necessity of collaboration and informed the participants that plans were under way in the Arab Center for Security Studies for the organization of sessions for Arab researchers and the institutionalization of co-ordination at two levels - intraregional for all research carried out in the Arab region and extra-regional between the Arab Center and the other relevant international bodies.

15. In reply to a query from Mr. Sultan, the *Chairman* reported that at the last Board meeting of the Arab Center the following resolutions had been adopted:

i) co-ordination of the centres in the Arab region through the collection in the Riyadh Center of all reports produced;

ii) concentration in the Riyadh Center of all information regarding programmes adopted, methods studied, budgetary matters;

iii) possibility of sponsorship by any centre for research undertaken by another centre;

iv) institution of a specialized unit in the Riyadh Center for the collection and transmittal of information related to ongoing research, thereby allowing for contacts among all the scientists involved.

16. Mr. *Asuni* said that co-operation could be viewed at various levels, one being the exercise represented by the current Conference which, he added, should be institutionalized. A further level of co-operation was that existing between UNSDRI and the regional institutes, to whom UNSDRI devotes considerable attention, requesting their expertise whenever their area of competence is involved. He also referred to two other types of co-operation: collaboration between the Branch and the Four International Societies which operates smoothly and from which fruitful results have been obtained; there is also co-operation between the Four Societies and the regional institutes, which should be further developed, aimed in particular at overcoming the difficulties of relationships with the developing countries.

17. Mr. *David* told the participants that in his capacity of Interregional Adviser he had conducted a number of missions in developing countries. From his experience he could say that two of the most serious problems encountered were the uncertainty of data gathered and the lack of communication at local level in two directions - on one hand urgent needs are not notified to the local or regional institutes, and on the other hand there is scarce knowledge of the procedures for obtaining access to the support of the UN structures and programmes. A technique for the identification, listing and notification of the real emerging needs was highly desirable, Mr. *David* continued, in order to foresee and implement practical solutions through the instrument of international co-operation. This co-operation should be organized in particular through training courses and study visits for civil servants responsible for this sector. A further point which should be stressed was the already

mentioned opportuneness of further integration among institutes working in the international field which could produce better results through mutual assistance – for instance, complementing specific know-hows in the various fields. To monitor the situation this integration should be encouraged and guided by the Branch. A further point emphasized was the need for a reorientation in research – as demonstrated by the present UNSDRI methodology – to cope with the new problems arising in a changing society; this could usefully take place within the framework of, and with constant reference to, the UNDP Country Programmes. In closing, Mr. David expressed the hope that the Conference discussions would contribute to overcoming the still existing communication gap among the institutes and added warmest wishes for the success of the Arab Center, for which he foresaw a great future both in the Arab region and in other parts of the world.

18. Mr. *Mueller* referred to the close relationship between economy and crime, adding that a better distribution of resources was essential for a successful prevention policy, as demonstrated in the very interesting paper “Guidelines for key issues in Islamic economics” by Dr. M. A. Mannan. From a practical point of view, he suggested that the regional institutes could usefully study the more important criminal problems in their areas – for example, ILANUD could devote attention to the drug exports from Colombia with an annual involvement of some 80 billion dollars, and to piracy in the Caribbean area. The problem of piracy could also be studied by the future African institute and UNAFEI in view of the serious situation on the African West Coast and in the South East Asian Seas.

19. Mr. *Al Shawi* proposed that a plan of research agreed among all the institutes, governmental and non-governmental, should be drawn up; this plan could include training programmes, conferences, exchanges of publications and exchanges of visits. He added that, for the functioning of this mechanism, a liaison unit should be specially created.

20. In summarizing his paper, Mr. *Hino* referred to the activities of UNAFEI, all of which are marked by a comparative approach with a practical utility orientation. He drew particular attention to the training courses of the Institute and also gave a brief

account of the main researches which had been conducted and the future work programme.

21. The *Chairman* gave a brief summary of the discussions: all the suggestions regarding co-operation and co-ordination could lead to this concrete idea – an annual meeting of the Arab Center and UNSDRI for the selection of a limited number of projects from among all those emerging on the international scene and for the drafting of rules for the preparation and discussion of reports on the items selected. The creation of a co-ordinating committee in this connection could also be envisaged.

22. Mr. *Leone* said that during the discussions two lines of possible co-operation had emerged: one according to topics, the other according to methodology, although he considered that a combination of both would be highly desirable.

23. Mr. *Ismail* proposed a practical solution: that co-operation could be achieved through formal bi- and multilateral agreements among research institutes.

24. Mr. *Røstad* spoke of his experience in collaboration in the Scandinavian countries where close ties have existed among the institutes of the region for many years. As an example he mentioned the Scandinavian Board of Criminology and its joint efforts in the criminological field and its links with the United Nations and the Council of Europe. He also referred to the changing trend in criminology, which previously had focussed on the offender but which is now moving towards the victim, with particular attention to the social conditions existing in the background of the crime. He concluded by saying that the importance of the Scandinavian experience had been demonstrated by the creation of HEUNI. He added that the Four International Societies had always encouraged co-operation, which they considered as an important instrument in the field of criminology.

25. Mr. *Al Akhras* remarked that, among others, three points had emerged from the discussions: i) the link between crime problems and economic problems, ii) the fact that an exchange of information depended to some extent on the structure involved, iii) the desirability of extending training programmes within the framework of research.

26. Mr. *Jescheck* spoke in the name of the International As-

sociation of Penal Law and addressed greetings to the Arab Center and to Mr. Murad in particular, and congratulated UNSDRI for its initiative in convening this Conference. He drew attention to the fact that his Association, especially through the meetings at the International Institute of Higher Studies in Criminal Sciences, Siracusa, was very deeply involved in the study of Islamic penal law. Moreover, in his capacity as Director of the Max-Planck Institute for International and Comparative Penal Law, he had the possibility of meeting with scholars from the Islamic area. He added that, for the first time, the IAPL planned to hold its next Congress outside Europe, and actually in Cairo.

27. In summarizing his paper, Mr. *Montero Castro* referred to the Recommendations adopted at the Sixth Congress (Caracas, 1980) stressing the importance of the rôle of the United Nations and of the regional institutes. He outlined the more important researches which had been conducted at ILANUD and drew particular attention to its Documentation Centre. In conclusion, he said that the diffusion of the results of policy-oriented research through international co-operation was the best method of reducing criminality and improving legal systems throughout the world.

28. Mr. *Ancel* expressed best wishes on behalf of the International Society of Social Defence and thanked the Arab Center and UNSDRI for the invitation to attend the Conference. He had listened with interest to the discussions on the need for co-operation, which is a particular tradition of the ISSD; the Society implements its vocation towards co-operation and action-oriented research, not only through official meetings but also through the personal contacts of its members. He also said that the ISSD considered crime from the human and social aspects as well as the criminological and penological points of view, and concluded by stating that international co-operation means human co-operation.

29. Mr. *Al Khani* underlined the importance of providing Arabic translations of the more important criminological works in order to give Arab researchers the essential scientific instruments, in particular the classical masterpieces of Beccaria, Ferri and Ancel.

30. The *Chairman* expressed agreement with the suggestions regarding Arabic translations and hoped the Conference would approve a Recommendation along these lines.

31. At this point in the discussions, Mr. *Asumi* assumed Chairmanship.

32. Mr. *Hobe*, on behalf of the International Penal and Penitentiary Foundation, transmitted best wishes to Mr. Murad, and expressed agreement with the comments on the opportuneness of strengthening co-operation among all the institutions operating in the field, adding that there were three major points which should be stressed: variations in criminal policy, economic crimes and criminal records with special attention to the rôle of the victim - a topic on which Islamic legislation and tradition could teach a lot to the European systems.

33. In presenting his paper, Mr. *Joutsen* referred to the problem of the relationship between the universality of crime prevention and the cultural relativity of crime conception. He added that a cross-national co-operation is not only possible but is desirable as had been demonstrated by the activities of the Four International Societies, by the Council of Europe, the Scandinavian Research Council for Criminology, the UN Crime Prevention and Criminal Justice Branch and UNSDRI. In conclusion, he pointed out the following principles:

a) Field research should be conducted by researchers of the country concerned;

b) In conducting research, attention should be paid to the uniqueness of every criminal justice system; therefore identified research topics should focus on comparable components of the various criminal justice systems;

c) Every effort should be made to ensure the availability of criminological data and research findings to the widest possible international audience.

34. In connection with point a) above, Mr. *Leone* remarked that the practice of utilizing local researchers was a long established procedure at UNSDRI.

VI. *Exchange of views on the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, with particular attention to item 5, "Formulation and application of United Nations standards and norms in criminal justice"*

35. The *Chairman* invited Mr. Shikita, co-ordinator of this item, to introduce the topic.

36. Mr. *Shikita* presented the background of the topic "Formulation and application of UN standards and norms in criminal justice", to be considered by the Seventh Congress, as follows:

a) The review of the existing standards and norms, b) the assessment of the impact achieved as well as the difficulties encountered, c) the need for the formulation of additional standards and norms, and d) the furtherance of study on the question of death penalties. He stated that the maintenance of peace, public safety and order, as well as the protection of human rights, were common objectives of criminal justice and the substance of the UN standards and norms should be embodied in the laws and implemented in all Member States thereby contributing, eventually, to the fullest protection of human rights. He also referred to two significant issues within the scope of the Agenda item under discussion - foreign prisoners and the death penalty. He stressed the need for further study on these two topics and their inclusion in the preparations for the Seventh Congress. In concluding, he expressed his sincere hope that a significant contribution on regional and worldwide norms would be reached through the Conference discussions.

37. The *Chairman* added that he was anxious to have the views of the Arab participants on the differences between the Islamic criminal justice system and UN standards.

38. Mr. *Murad* said that in the Arab region there was general agreement with the UN principles but the particular characteristic of Islamic criminal law was its coincidence with ethics and religion and its consequent peculiar values and preventive powers in acting in depth on the customs and feelings of the population. He added that in setting international standards and norms in criminal justice the traditions of all civilizations should be taken into account, without according a privileged position to any particular school of

thought. He expressed the view that attention should be drawn to the extremely low crime rate in the Arab region.

39. With reference to the increasing number of foreign prisoners, Mr. *Røstad* emphasized the importance of establishing procedures for their transfer to their home countries where better possibilities existed for reintegration into society. He also referred to the Caracas Resolution on the Transfer of Foreign Prisoners and said that the International Penal and Penitentiary Foundation attached great importance to this issue and very actively participated in the preparation of relevant international instruments. A select committee which had been set up on the proposal of the Foundation has worked on a Model Agreement adopted at a seminar in Vienna and has recommended some improvements. Mr. *Røstad* further said that this type of activity could be seen as a practical and effective form of co-operation between non-governmental organizations and the United Nations and suggested that a broader discussion on this action-oriented issue could usefully take place at the Seventh Congress.

40. Mr. *Al Rabi* expressed the view that the Islamic criminal justice system demonstrated its efficacy in the field of crime prevention as was evident from the crime statistics for Saudi Arabia. In fact, he added, the Islamic system prevents crime in two different ways: i) from their earliest years children are taught to avoid sin, which is the equivalent of avoiding crime, and ii) in Islamic society the economic situation cannot be considered as a cause of crime.

41. In expressing agreement with Mr. *Al Rabi*, Mr. *El Geledi* suggested that an assessment could be made of the possibility of introducing the main principles of Shar'ia into the UN standards and norms.

42. Mr. *Jescheck* referred to the well-established co-operation between non-governmental organizations and the Branch in the preparations for the Seventh Congress. He drew attention to the draft Standard Minimum Rules for Juveniles which are being prepared for the Congress and which will be discussed at the Bellagio meeting of the Four Societies in April. The main focus of this document will be the specialized composition of juvenile courts, the educational approach to the problem and the trend towards alternative measures for young offenders.

43. Mr. *Murad* remarked that following the Quinquennial Con-

gresses no evaluation was made of the implementation of the resolutions recommended by the Congresses: this could avoid the gap between decisions at international level and implementation at local level.

44. Mr. *Vetere* replied that the Branch had received a mandate from the Fifth Congress for the assessment of the implementation of its recommendations (a report on this was prepared for the Sixth Congress and the General Assembly), and a similar mandate had been received from the Sixth Congress. He added that most of the issues for the Seventh Congress reflect the follow-up of the Sixth and stem directly from it, and that in the field of crime prevention and criminal justice time was an important element in achieving concrete results. It should be remembered, for example, that 30 years elapsed from the first formulation to the adoption of the Standard Minimum Rules for the Treatment of Offenders. Now the spontaneous respect of those standards is high in many countries, probably due to the fact that these were previously very broadly discussed at various levels.

45. Mr. *Al Akhras* expressed doubts on the possibility of co-ordination between the UN Standard Minimum Rules and the Shar'ia, and added that recidivism proved that a punitive system alone could not cope with crime.

46. Mr. *Hobe* stressed the importance of implementation and mentioned that the Four Societies had submitted a draft recommendation on crime victims. This draft was currently under examination by the International Committee for Co-ordination, following which it will be transmitted to the Seventh Congress. He added that he would like to have Mr. Murad's observations on the draft as the Islamic criminal system is more advanced than its European counterpart on victimology.

47. Mr. *Hino* also expressed concordance with the statemants regarding implementation of UN resolutions, and added that UNAFEI is aware of the non-observance of the Standard Minimum Rules in South East Asia. On the subject of the transfer of prisoners, he expressed the view that agreements should be bilateral because of the differences in the juridical and political systems.

48. Mr. *David* said that from his personal experience the Standard Minimum Rules were not yet fully observed in all of the Latin

American, African and Asian countries; this was in part due to the lack of control structures, while the very frequent changes of régimes was another reason.

49. The *Chairman* formulated the hypothesis that the non-implementation of UN standards was often due to economic causes, adding that in fact countries sometimes under-write obligations that they cannot fulfill.

50. At this point the Chairman announced that Professor Bolle had communicated his inability to participate in the Conference and had transmitted his best wishes for the success of the discussions.

51. Mr. *Mueller* said he did not like to see the discussion on Agenda Item VI end on a pessimistic note because of non-observance of UN Standards, and added that, on the whole, the United Nations performed its functions very efficiently. The forthcoming Congress, and in particular the topic on juvenile delinquency, should be successful as the relevant documents had been prepared through a long procedure of progressive refinement.

52. On the subject of application and implementation of standards and norms in criminal justice, Mr. *Montero Castro* considered that the long-term efforts of the United Nations towards the assurance of respect of human rights run in two parallel directions: the elaboration and promotion of compelling juridical instruments on one hand, and the formulation and recommendation of guidelines and norms on the other. He added that the most important task currently existing is the implementation of these guidelines and norms overcoming the following obstacles: national policies, lack of information on the part of many officials and technicians, and peculiar local social, cultural and political conditions. He said, however, that these obstacles could be overcome through the strengthening of means of communication and the exploring of new potential areas of priority as, for instance, that of alternatives to imprisonment. Finally, he emphasized the importance of intensifying co-operation among all the institutions, both United Nations and non-governmental, in the field of crime prevention.

53. In summarizing the results of the discussion, the *Chairman* concluded by saying that, even if not always observed, the UN standards and rules are of enormous importance.

VII. *The effects of Islamic legislation on criminality*

54. The *Chairman* opened the discussion on Agenda Item VII and invited Mr. Kara to take the floor.

55. In summarizing his paper, Mr. *Kara* stressed the peculiarity of Islamic penal law and its coincidence with ethics and religion. While Christianity could develop in the framework of a strong political entity, the Roman Empire, so keeping a merely religious identity Islam had to organize a political society; its unified code was, consequently, at the same time moral, religious and juridical.

56. The Islamic penal system includes two main types of crime: "hadd" (or "houdoud") and "tazir". The former are further divided into two categories: one, which includes adultery, defamation, theft and robbery, violates a divinely ordained command and deserves a fixed corporal punishment (amputation of the hand, lapidation, crucifixion, etc.); this "theological sanction" cannot be modified; the second, which also includes violations of religious principles, are punished not by God but by man (the "cadi" or the victim): the punishment is retaliation or ransom and both the victim and the judge have discretionary power to forgive or reduce the sanction.

57. The second type of crime, "tazir", is a violation of human laws, with punishment ranging from admonition to the death penalty and the judges have wide discretionary power in the individualization of the sanctions. While "hadd" crimes must be proved through confession or the testimony of at least two eye-witnesses, "tazir" crimes are much more easily proved and therefore, "hadd" crimes not formally proved are often punished according to the "tazir" rules.

58. The *Chairman* invited comments or questions from the participants.

59. Mr. *Jescheck* expressed the view that despite the great differences between Islamic and European laws, there were also some similarities: for instance, discretionary power in punishment existed in both systems.

60. Mr. *Al Masri* said that the fundamental difference between Islamic and European penal law was that in the former every major crime is a sin, that the punishment as well as the penally sanctioned prescriptions were the will of Allah and could not be changed by

man. This consideration was undoubtedly an impediment to a close comparison of the two systems.

61. Mr. *Al Rabi* agreed with the previous speaker and added that in Islamic law the infliction of punishment eliminated both the sin and the crime and was accepted by the guilty as the normal and even desirable consequence of his behaviour.

62. Mr. *David* expressed extreme interest in the discussion and recalled that in both Spain and in Latin America many traces of Islamic juridical civilization still existed. As Americo Castro had underlined, one of the reasons for comprehension of the Islamic conception of right was the fact that the idea of state, fundamental of the western civilization, does not exist. He thought that a research in Spain could give more possibility of comprehension of Islamic penal law, as in the structures and institutions of that country many Islamic elements remained. In fact, from his point of view, the Spanish system can not be considered as being completely European.

63. Mr. *Hobe* said that many points of contact could be found between the two systems as, for instance, the religious root of criminal justice, the concept of retribution through punishment and its purgative effect.

64. Mr. *Al Akhras* considered that a point of contact between Islamic and European laws could also be identified in the link existing between penal and social justice which was now being recognized by western countries but of which the Islamic system had always been aware. He added that this was a point which should be kept in mind in the preparation of UN standards.

65. Mr. *Kara* emphasized the preventive function of Islamic criminal law, adding that the punishment is an overall deterrent.

66. On the subject of the differences and similarities of the two systems, Mr. *Al Khani* referred to the independence of judges and lawyers which had been agreed upon within the framework of the European systems during the course of a meeting in Siracusa and which was very similar to that existing in the Islamic system. A further point of contact was that of victimology to which attention is now being devoted in western countries but which was always present in the Islamic system.

67. Mr. *Al-Al* illustrated his paper on the Effect of Islamic Education on Crime Prevention.

68. He added that Islamic education represents a favourable basis for the studying of the problem of crime, since it works on a process of adaptation of the individual to society, contributing to the formation of his values, his thinking and his emotions. In fact, Islamic education is an instrument for the formation of man, for the care of his mental, physical, social, psychological growth. It is particularly aimed towards the physical and psychological welfare of the individual who is protected from birth – and even before, taking into account the psychological state of happiness of the pregnant mother – by a proper family and social atmosphere.

69. Mr. *Bututah* illustrated his paper on the application of the penalty for theft and its effect on crime prevention. He said that according to Sharia thieves are punished by amputation of the hand, which was a much criticized penalty but that it should be defended as it was in accordance with a penal system which, with centuries of civilization behind it, has demonstrated its efficacy in the field of crime prevention.

70. Mr. *Mueller* asked Mr. *Bututah* for a definition of theft in Islamic law, and whether the object of the crime could also be money. He also asked about movable goods and about the difference between theft and robbery.

71. Mr. *Bututah* replied that according to Islamic law, theft applied to any movable object worth more than approximately 30 US Dollars.

72. Mr. *El Geledi* added that use of force during a theft transformed it into a different category of crime, as explained in the paper contributed by Mr. *Kara*, in which case the penalty is not amputation of the hand but banishment.

73. The *Chairman* underlined the importance of crime definitions in the comparison of different juridical systems, adding that these vary through a very broad scale in all systems, especially as regards the crime of theft. He thanked the contributors and gave the floor to Mr. *Mannan* for a summary of his paper on “Guidelines for Key Issues in Islamic Economics”.

74. In summarizing the paper Mr. *Mannan* pointed out that from the Islamic point of view economics are an integrated part of the social framework without distinction between the spiritual and material activities of man nor between religious and secular

activities in society. Consequently, there is a social framework which can be expressed in terms of religious, moral, social, economic and political dimensions without distinguishing among all these different view-points; every economic relationship is therefore based on goodwill and co-operation. As regards the application of this fundamental principle, Mr. Mannan explained that the concept of private ownership of property is relative as absolute ownership is with Allah. In particular, misuse of resources to the disadvantage of future generations is discouraged. Two points should be stressed in connection with the operation of the factors of the comprehensive ethical framework, the second is the prohibition of interest. The first point leads to the main consequence that a balance between wages and profit is not due to the struggle between capital and trade unions but to the accomplishment of the moral and religious duty of the employer to pay fair wages and of the employee to perform efficiently and honestly the assigned tasks. The second point leads to the statement that in Muslim economy interest is prohibited but capital is not costless as this can be expressed in terms of "opportunity cost". Another very peculiar characteristic of Islamic economics is the fact that consumption is a positive consequence provided it is "moderate". As far as money is concerned, the fundamental idea of an essentially equity-based economy leads to the concept that money is a mere medium of exchange. The fiscal and monetary policies are based on the principles of benevolence and care for the "have-nots". Mr. Mannan concluded his summary by pointing out that the Islamic concept of development is multi-dimensional with a focus on man's growth in his relationship with economic, social, moral, religious and spiritual variables and with the natural environment.

75. Mr. *David* congratulated Mr. Mannan for his brilliant résumé and emphasized the gravity of economic crime, especially as related to bank transactions and the environment.

76. Mr. *Jescheck* asked whether studies had been conducted on the special consequences of the ethic and religious conceptions of economics in Islamic countries, in particular as related to economic crimes.

77. In replying, Mr. *Mannan* referred to the special link existing between law and science on one hand and religion and ethics

on the other in both the criminological and the economic fields. He said that in western countries the economic factor prevails above all others, in the communist countries the political factor prevails, while in Islamic countries ethics and religion hold first place with political, social and juridical approaches being little more than a consequence.

78. The *Chairman* suggested that a study of criminogenic factors in different systems could be very stimulating. He asked about taxation and tax evasion within the Islamic system, to which Mr. *Mannan* replied that in accordance with the general ethic and religious inspired system, payment of taxes was like a prayer, voluntarily recited in accomplishment of a religious need.

79. Mr. *Røstad* agreed on the interest of conducting an in-depth research on the subject.

80. The *Chairman* thanked the participants for their interventions; he said that the results of the Conference would leave the participants with some doubts and some queries but he added that, if we believe in the Greek philosopher, Pyrrho of Elis, this was proof of the seriousness and the quality of the papers presented and the resulting discussions; this was also proof of the extreme utility of the Conference.

81. In conclusion, he stressed the importance of the topic and considered that he could interpret the hopes of the participants that a joint study be conducted on Islamic economic crime within the framework of Islamic economic values.

82. Mr. *Murad* assumed the Chairmanship and invited Mr. El Rifai and Mr. Leone to present the draft Recommendations.

VIII. *Conclusion of the Conference and approval of Recommendations*

83. Following a lengthy and in-depth discussion the Recommendations were unanimously approved and the final texts are given hereunder.

84. The *Chairman* thanked the participants, adding that the Conference was the first of its kind to be held in Saudi Arabia; he also thanked the Branch representatives, the UN Interregional Adviser, the Four International Societies, the Regional Institutes,

the researchers and scientists from the Arab region, with a special expression of gratitude to UNSDRI for its valuable scientific contributions to the Conference and for the particular efficiency in its organization and monitoring.

85. Mr. *Asuni* said that the Conference had been a great success and this was due in no small measure to the quality of the papers presented and the active participation in the discussions. He added that the idea for the Conference had emerged during the course of a meeting in Rome at which Mr. Murad had participated and it was also the result of the peculiar relationship existing between the Arab Center and UNSDRI. He said that as he had been absent from Rome on mission for some time prior to the Conference, the bulk of the preparatory work had been left to Mr. Leone and to some of the UNSDRI staff, to whom he expressed his gratitude. He also especially thanked the Arab Center, Mr. Murad and his collaborators and, above all, the Vice-Minister of Interior, H.R.H. Prince Aziz.

86. The *participants* in turn expressed their gratitude and pleasure for the successful outcome of the Conference; they also recalled that, at the suggestion of Mr. Al Khani, it had been unanimously agreed that a telegram should be addressed on their behalf to the Chairman of the Arab Center.

87. Mr. *Shikita* underlined the concreteness of the results of the discussions and warmly congratulated Mr. Leone and Mr. El Rifai for their tremendous efforts which were fully demonstrated by the outcome of the Conference.

88. Mr. *Ancel*, in his capacity of President of the International Societies, said that the Conference was an excellent example of international co-operation which merited a significant follow-up.

89. In his capacity of Interregional Adviser, Mr. *David* renewed his thanks to the Arab Center and to UNSDRI, adding that the Conference could be regarded as a concrete step forward in co-operation between Arab and western cultures.

90. In declaring complete satisfaction with the Conference discussions, which had taken place in an atmosphere of friendship and cordiality, the *Chairman*, Mr. *Murad*, expressed his conviction that the participants had been greatly enriched by this experience.

2. RECOMMENDATIONS

Recommendation No. 1

Considering the increasing importance in the contemporary world of the phenomena of social maladjustment and deviance which can be associated with unbalanced development;

Considering the irreplaceable rôle of action-oriented research in the field of crime prevention;

Considering the limited resources made available by the international community for action-oriented research in crime prevention;

Considering that the already existing United Nations and non-United Nations research structures represent valuable tools for the facing of the abovementioned phenomena;

Considering that international co-operation represents an indispensable contribution to the achievement of the goals pursued by the present Conference;

Considering that the already established co-operation among the abovementioned structures can and must be improved;

Recommends that in order to strengthen the collaboration in this field concrete and pragmatic steps are undertaken namely:

- to convene on an annual basis a meeting of the participating institutions in the present Conference,

- other significant institutions whose activities in this field are considered particularly relevant can be invited to such a meeting,

- to establish a more regular flow of information among the participating institutions in the present Conference on:

- annual or pluri-annual work programmes,

- any other information, even on an informal basis, related to their initiatives,

- the findings and output of these initiatives;

Recommends furthermore that each institution undertakes all

possible efforts in order to directly involve other institutions – on an *ad hoc* basis and taking into account their respective competence and expertise – in the implementation of its work programme specific components;

Recommends finally that governments make further efforts to provide increased financial contributions for action-oriented research, so as to further strengthen international co-operation in this field.

Recommendation No. 2

Considering the importance of the work undertaken by the Conference;

Considering that it is of paramount importance to widely circulate the proceedings of the Conference;

Considering that the quinquennial United Nations Congresses on the Prevention of Crime and the Treatment of Offenders are the widest and most appropriate forums for disseminating the findings of the Conference and circulating them in the related international political, scientific and cultural community;

Recommends that the reports of the Joint Arab Security Studies Center – United Nations Social Defence Research Institute Conference on Research in Crime Prevention, held in Riyadh from 23 to 25 January 1984, is distributed to all participants in the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held in 1985.

Recommendation No. 3

Considering the invaluable benefits of the dissemination in the Arab political and scientific milieu of particularly significant non-Arab literature in the field of criminology and sociology;

Considering that this literature is rarely available in Arabic;

Considering on the other hand that Arab scientific literature in this field is scarcely known outside the Arab world;

Considering that a better understanding of all possible scientific

approaches to the crime prevention and treatment of offenders problems is of mutual interest to Arab and non-Arab milieux;

Acknowledging the valuable contribution of the Arab Security Studies Center and of the other Arab institutions participating in the Conference consisting of the researches on Islamic legislation and its effects on crime prevention:

Recommends that substantial efforts are undertaken by the Arab Security Studies Center and the United Nations Social Defence Research Institute in order to identify, translate, publish and disseminate relevant and significant texts from non-Arab and Arab sources.

3. OPENING SPEECHES

Opening speech by H.R.H. Prince Ahmed Bin Abd al Aziz, Vice-Minister of Interior, Kingdom of Saudi Arabia

Gentlemen,

I have pleasure in welcoming you to Riyadh and in wishing you every success for your Conference. I take this opportunity to express my appreciation for the co-operation existing between the UN and its scientific units on the one hand and the Arab research centres on the other, a co-operation which has become a reality through the efforts of the Arab Security Studies and Training Center in Riyadh.

I also have pleasure in participating in this Conference, which has gathered an elite of experts in the field of the prevention of crime and the treatment of offenders.

The fact that this Conference is taking place in Riyadh is not devoid of significance: in fact, the capital of the Kingdom of Saudi Arabia enjoys a security which is due to the strict enforcement of the Islamic legislation "Sharia" by the Government of His Majesty King Fahd Ben Abdel Aziz.

Security is the ultimate goal of all human efforts and this Conference aims at achieving security for mankind and society.

The fact that this Conference is devoting part of its work to the study of the application of Islamic law in the fight against crime is proof that the Arab orientation is in the right direction. Sharia is a catalyst for the welfare of society and individuals.

Since the foundation of the Kingdom by the late King Abdel Aziz, the importance of Islamic legislation in the fight against crime has been recognized; consequently, the Kingdom is endeavouring to strictly adhere to this legislation. Your researchers have indicated a high crime increase in the various parts of the world both in industrialized as well as in developing countries. This increase is due

to the economic development process which focusses on the material gains while neglecting the moral aspects. We are all aware of the problems stemming from ultra rapid development if this is not accompanied by an increased interest in the intellectual and moral dimension of Man.

Gentlemen,

A variety of ambitious projects have been carried out in the Kingdom. Our society has rapidly created an important industrial and economic infrastructure but, on the basis of the Islamic conception of development, we were conscious from the outset that it was of paramount importance to distinguish a material from a socio-cultural development. It was consequently necessary to establish an equilibrium between these two components for man to become the objective and an instrument of development.

Maintaining security in our country encourages us to do our utmost to reach a global understanding of the problems of mankind in a century characterized by trouble without precedent. This emphasizes the importance of co-operation and harmonization of efforts on both the Arab and the international scene.

I am sure that this Conference will add a new wealth to human experience in the field of security. The creation of the Arab Security Studies and Training Center responds to the need of utilizing all Arab efforts in the field of security in the broader meaning of the term.

The fact that H.R.H. Prince Naif Ben Abdel, Minister of Interior, is President of the Governing Board of the Center is another proof of the interest of our Government in scientific research in all its fields, and specifically in security.

Lastly, I wish to express my appreciation to the Arab Security Studies and Training Center and to greet the representatives of all the organizations specialized in the fight against crime.

I also wish to pay homage to UNSDRI, to the international and Arab organizations participating in this important Conference and to all the personalities present.

**Opening speech by Mr. Tolani Asuni, Director of the United Nations
Social Defence Research Institute (UNSDRI), Rome**

Your Royal Highness, your excellencies, distinguished colleagues and friends. It is with great joy, honour and humility that I take this opportunity to say a few words.

This is a unique opportunity for the units of the United Nations concerned with the issue of crime prevention and criminal justice, including regional and interregional units, and the Crime Prevention and Criminal Justice Branch on the one hand and the four non-governmental International Societies concerned with the same subject to get together on a specific issue "Research in Crime Prevention". Thanks to our host the Arab Security Studies Center for making this possible.

It is hoped that concrete agreements will be reached during the deliberations towards fruitful collaboration in the field of crime prevention and criminal justice. It is needless to point out that the inter-governmental organizations have their strengths and weaknesses as do non-governmental organizations. Fortunately, the strengths and weaknesses of the two sets of organizations do not fall within the same area, so they can complement each other in their activities.

For instance, while inter-governmental associations need to be extremely conscious of the sensitivity of member states in their researches and pronouncements, non-governmental associations do not have the same degree of constraint. While inter-governmental associations have to be concerned with policy and practice-oriented researches, non-governmental associations can afford the luxury of esoteric research with no immediate policy implications. Inter-governmental institutions need the approval and, if possible blessing, of member states to carry out research in the respective countries; non-governmental organizations do not necessarily need this but depend on identified individuals of repute to carry out projects. While this may have its advantage, it is exposed to the risk of using an individual who for one reason or another is persona non grata to his government, and this may colour the government's perception of the concerned organization.

Inter-governmental organizations in their activities tend to be truly world-wide. Non-governmental organizations encounter enor-

mous difficulties in involving representation and active participation from developing countries and they therefore run the risk of having their deliberations focussing on issues, values and perspectives of developed countries which may not be relevant or appropriate for developing countries. Yet it is often said that both developing and developed countries can learn from each other: developing countries can learn from the mistakes already made by developed countries and developed countries from the innovation of and retention of traditional practices of developing countries. For instance, in traditional societies any criminal justice system which does not take due account of victims is not considered to be just and fair. Yet in developed countries it is only in the last few decades that the consideration of victims has come to the forefront.

I should not fail to mention the rôle of the United Nations Interregional Adviser on Crime Prevention and Criminal Justice as a catalytic agent for co-operation among the different units of the United Nations and also member states, especially those of the developing countries of the world.

This gathering of eminent people who are acknowledged leaders in the issue of crime prevention and criminal justice, who have devoted their lives to the problems and issues, and have extensive and varied experiences have the chance in your deliberations to produce a workable guideline of collaboration and co-operation which will enhance the high level of collaboration and co-operation already attained.

This meeting also provides the opportunity to deliberate and have an exchange of views on Item 5 "Formulation and Application of United Nations Standards and Norms in Criminal Justice" of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This item has been discussed at the interregional preparatory meetings, and we have yet this chance to look at the item again with the participation of experts from this region and members of the Four International Societies.

Lastly and not of least importance is the presentation of papers on the effects of Islamic legislation on criminality by our colleagues from this region. We are looking forward with eager anticipation and keen interest to these reports.

Opportunity is being provided for us to visit the magnificent

building of the Arab Center for Social Security Studies which is a veritable and concrete manifestation of the interest and concern of the Arab states in the problems of crime. This is a noble example of intra-regional co-operation. I wish to take this opportunity to congratulate them, and extend to them our best wishes on this laudable effort.

My Institute, the United Nations Social Defence Research Institute, is happy to co-sponsor this noble endeavour to organize this august conference and I wish to acknowledge the support of everyone concerned in making this meeting a reality, especially our host. It is an example of co-operation. For you all to have taken time off from your very busy assignments is deeply appreciated and we are looking forward to an exciting time.

I welcome you all and wish you all a happy stay in this booming city of Riyadh, and a fruitful and successful deliberation.

Opening speech by Mr. Farouk Murad, President of the Arab Security Studies and Training Center, Riyadh

Your Royal Highness, Prince Ahmed Bin Abd al Aziz, Vice-Minister of the Interior, Mr. Minoru Shikita, Chief of the UN Crime Prevention and Criminal Justice Branch, Vienna, Conference Participants.

On behalf of the Arab Security Studies and Training Center I have the honour to welcome you and to pay homage to the personalities involved in scientific studies and the prevention of crime in both the Arab world and regional research centres.

I would like to pay homage to H.R.H. Prince Ahmed Bin Abd al Aziz, Vice-Minister of Interior, for having honoured us with his presence at this opening session of the Conference and for the important speech he delivered.

It is a pleasant coincidence that this Conference is taking place in Riyadh where the Arab Security Studies Center is located and as Riyadh is the heart of the Arab and Islamic world.

I am sure that our Conference will achieve its goals, thanks to the atmosphere of security, justice and peace reigning in the Kingdom.

Gentlemen,

The Arab Center does its utmost to create the scientific foundation aimed at achieving justice and protecting the Arab world against crime.

The Center has also created a unit to co-ordinate the work of the different research institutes in the Arab region. The Arab Center is now sponsoring this Conference which in turn complements the Arab efforts in the field of security with those of the international scene.

No efforts are spared by the Arab Centre to implement Islamic legislation in the fight against crime as we are persuaded that the external values based on faith are able to protect society against the extreme dangers menacing its very existence.

This philosophy is an application of the directives of H.R.H. Prince Naif Ibn Abdul Aziz, Minister of Interior and President of the Governing Council of the Arab Center.

I also wish to express my hope that our Conference will help in isolating crime in all its dimensions since crime has a sharp and dangerous influence on the developmental process and on progress in the whole world, and in particular in the developing countries. Co-operation between research centres for identification of the best methods for application of the scientific remedies against crime is therefore of considerable importance.

We put everything in our power at your disposal to facilitate the work of the Conference.

May I now express the wish that the Conference may produce positive and concrete results, which could be presented at the next UN Congress on the Prevention of Crime and the Treatment of Offenders, which will take place next year.

4. POSITION PAPERS

Mr. Pedro David *

The needs experienced by developing countries in crime prevention and criminal justice are mainly felt in the areas of action-oriented research to solve concrete and specific problems related to policy, to the adoption of innovative programmes and activities for the training of personnel, to the exchange of information, and to integral diagnosis of crime prevention and treatment in the context of development planning – including data gathering and information on various issues of criminality in relation to urbanization, migration, unemployment and industrialization. Thus it is imperative to reorient, or intensify when needed, research activities in the field of UN research and affiliated institutes towards the satisfaction of these needs, among which the training of personnel is one of the most pressing in the context of development.

In the area of crime prevention and criminal justice in developing countries it is quite often necessary to have to face the lack of or insufficient information on: the structure, functions, services, programmes and activities of the UN or affiliated research institutes on the one hand, and these institutes' absence of information on the concrete needs and programmes of member countries of the region on the other. In order to fill the existing gap it is highly desirable that units or mechanisms are established at both ends.

Considering that UN research and affiliated institutes are often seriously limited in their activities because of budgetary, financial or technical constraints, it is highly advisable for the various institutes in all regions to interchange resources at all levels in order to integrate their activities in a more effective and harmonious way.

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There is need for fluid and constant information and co-ordination throughout all the various components of the UN system to ensure a systematic and integrated response to the challenges posed by the escalation of criminality in many parts of the world. It is highly recommended that existing mechanisms be activated for these purposes and that these be established when they do not exist.

In order to sustain constant progress in the fight against criminality and to facilitate the implementation of standards and norms in the area of crime prevention and criminal justice it is advisable for UN member countries to explore various forms of collectively structured and monitored procedures for the more effective implementation of these norms and standards.

1. *Co-operation on "action-oriented" research in the field of crime prevention by the United Nations and related bodies*

(1) Research Activities in General at UNAFEI

A great number of research projects have been undertaken by scholars in the fields of criminology and penology. However, as academic interests and viewpoints have dominated this circle of researchers, their contributions cannot be easily utilized by tomorrow's policy-makers. In the fields of criminal justice administration and social defence, it is essential that research be policy-oriented.

The research projects undertaken by UNAFEI are marked by a comparative approach and an eye towards practical utility. They are mainly of a survey type. The research findings have been published and widely distributed. But, apart from these works, UNAFEI's training programmes are themselves a unique example of an imaginative amalgamation and consolidation of research programmes. The reasons for this are as follow:

i. UNAFEI is developing and compiling comparative data on various aspects of criminal justice. One methodology frequently used by researchers for comparative surveys is to send out questionnaires and analyse the completed returns to reach meaningful conclusions. At UNAFEI, experts from many countries gather together as participants in the Training Courses. Instead of dispatching questionnaires the participants themselves are questioned in order to clarify ambiguities in their presentations. These results are compiled, analysed and published in the Resource Material Series, 23 issues of which have been so far published. Even though this process traditionally might not be called research, the qualitative data published in the

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Resource Material Series is more reliable, more timely and more valid than many research works which use questionnaires as their major source of data.

ii. The financial and human resources available at UNAFEI have been allocated so that the Institute's predominant rôle should be the implementation of effective training programmes. Conducting research on a large scale with its own staff within the regular budget is not deemed feasible without substantially lowering the level of training.

iii. In addition, the training process at UNAFEI can be considered analytical research. For example, when imprisonment is high in one group of countries and low in another group of countries, specific questions to the participants from each respective group are posed to identify those factors appearing to cause the differences in imprisonment rates. When the rates are similar among countries in spite of seemingly different national conditions, the discussion is structured so as to identify the reasons for the similarity.

Through this process of induction, it is possible to identify and isolate factors affecting the fluctuations of imprisonment rates. The results of these training exercises will also be published in the Resource Material Series. The Resource Material Series, which is published twice a year, is not simply a report on training but a compilation of research findings in its broader sense, resulting from regional co-operation.

The Resource Material Series has thus far been quoted more than once in the Secretariat's working papers for the United Nations Congress. In this sense, the greater contribution of UNAFEI has been to obtain practical solutions to the problems of people working in the field and not necessarily to increase knowledge on criminology.

Therefore, while research is becoming increasingly important, the UNAFEI staff and all its former participants duly take pride in the facts mentioned above since they are reliable indicators that the contributions of regional co-operation in Asia and the Pacific are profiting member states of other regions.

(2) Actual Problems of International Co-operation in the Field of Research

When UNAFEI conducted the "Comparative Research on the

Effectiveness of Social-Legal Preventive and Control Measures in Different Countries on the Interaction between Criminal Behaviour and Drug Abuse" which was requested by UNSDRI, UNAFEI faced several problems. These were as follows:

i. The first problem UNAFEI faced in the execution of the research was to complete the Japanese version of the Guided Interview Data Collection Form and the Vignettes before stepping into the field work, and then translating these results into English after collecting the data. This translating work took about two months. When research is conducted in several countries, it should be recognized that accurate translations will take a great deal of time.

ii. The second problem was the selection of samples for the comparison group. In Japan, the personal use and possession of drugs are prohibited by law and drug users are extremely reluctant to speak to officials about their experiences. Therefore, it is almost impossible for UNAFEI to identify and make contact with any drug addicts who have had contact with the sub-systems of criminal justice administration.

iii. Another problem concerned the cases selected for the Vignettes, all of which were 18 year-old males. In Japan, persons under 20-years old are classified as juveniles and are subject to special procedures designed for their protection and treatment. If the Vignettes were designed to obtain the subjects' perceptions and images of the way the system functions in adult cases, in Japan 20 year-old male cases would have been much more appropriate.

iv. Regarding the financial aspects of the research, UNAFEI could not depend on the good will of the interviewers and the interviewees. Thus UNAFEI had to pay very modest honorariums to each interviewer (around US \$ 10 per case).

(3) UNU-UNAFEI Joint Meeting on Research Project

The United Nations University had launched preparations for a research project on "Management Issues on Ordinary Crime Prevention and Control: A Cross-Cities Study". UNAFEI will cooperate with the UNU in implementing this project, i.e., UNAFEI will convene the Consultants' Meeting in May 1984, for the purpose of i. highlighting the identified and identifiable areas of difficulty, and developing proposals for tackling the difficulties encountered or en-

visaged; and ii. on the basis of the proposals emanating from i. above, to propose further specific methodological procedures which can be adopted for the cross-cultural studies envisaged by this project.

2. *Considerations on the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, with particular attention to item 5: "Formulation and application of United Nations Standards and Norms in criminal justice"*.

(1) The Congress' recommendations have been promoted in Asia and the Pacific region since 1961 by UNAFEI. The extent of the Congress' influence across the region via the 1440 participants in its courses has been as important as it is difficult to measure.

(2) Following consideration of Agenda Item 4 of the Sixth UN Congress, under the title "Juvenile Justice: Before and After the Onset of Delinquency", the Congress adopted Resolution 4 titled "Development of Minimum Standards of Juvenile Justice". The participants in the 58th International Training Course on Juvenile Justice Administration held at UNAFEI from 18 May to 11 July 1981 attempted to reach consensus on various points to be covered in the drafting of the proposed Guidelines for the formulation of the Standard Minimum Rules for Juvenile Justice Administration.

(3) UNAFEI devoted its 61st International Training Course on Improvement of Correctional Programme for More Effective Rehabilitation of Offenders from 7 September to 27 November 1982 to an intensive and extensive study of the regional application of the UN Standard Minimum Rules for the Treatment of Prisoners through general discussion in 18 sessions. An outline of these discussions was published in the Resource Material Series No. 23 in 1983.

(4) UNAFEI convened the International Meeting of Experts on the Development of the UN Draft Standard Minimum Rules for the Administration of Juvenile Justice from 14 to 19 November 1983, at the request of the United Nations Crime Prevention and Criminal Justice Branch. The meeting was held to further elaborate the Standard Minimum Rules for administration of juvenile justice and the handling of juvenile offenders, with a view to presenting its product to the Committee on Crime Prevention and Control at its Eighth Meeting for consideration and transmission to the Interregional Preparatory Meeting in China.

(5) The Draft Guiding Principles are the result of the recommendations of the Sixth UN Congress. The idea of the Guiding Principles is to place crime prevention and criminal justice in an international context, especially in light of the new United Nations Resolution concerning the New International Economic Order. There might still be very arduous discussions concerning the potentialities and the structure of the New International Economic Order.

Most of the items described in the Draft Guiding Principles appear to be appropriate and generally acceptable in Asia and the Pacific region. The Sixth Congress has recommended that we continually undertake action and policy-oriented research in order to find workable means to implement the Guiding Principles and to improve them further if necessary.

UNAFEI would like to undertake a seminar on International Co-operation in Crime Prevention and Criminal Justice (Part D of the Draft Guiding Principles) such as: assistance for investigation, assistance of judiciary, and transfer of prisoners in the course of the 65th International Seminar which will be held from 14 February to 16 March 1984. In the near future, UNAFEI will endeavour to devote attention and resources to other parts of the Draft Guiding Principles so as to complete and develop the Asian Regional Principles.

CROSSNATIONAL CO-OPERATION IN RESEARCH ON CRIME
PREVENTION: the well that has yet to be tapped

1. *Research and the cultural relativity of crime*

There is no dearth of criminological research in the world. The universities and governments of many countries are hard at work, producing new studies daily, ranging from studies of specialized questions to overviews of the entire criminal justice system. The constant stream of brochures dropping in the mail slot of research institutes announce "forthcoming classics" and new publication series or journals in criminology. There is also no lack of data which criminologists can use as the basis for their next study: criminologists in the United States and Europe, for example, are already swamped by a deluge of statistics and government reports.

Interest in research or criminal policy innovations carried out in another country remains slight. As a result, the research and experience which accumulates in each country remains almost an untapped well: rather than take advantage of research that has been carried out elsewhere (assuming that one is even aware of this research, which is often an unnecessarily optimistic assumption!), researchers will instead carry out their own research projects, and governments will experiment with their own criminal policy innovations.

There is a strong basis for this reluctance to utilize research or criminal policy options which have been developed in another country and for a different criminal justice system. The assumption that all crime prevention and control measures are culture-based is understandable - although not necessarily accurate.

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The legal system and criminal justice system in each country is the result of long development. It is the result of a unique combination of economic, social, cultural and legal factors. While simplistic generalizations can be made of, for example, the respective rôle of the police, the prosecutor and the court in all criminal justice systems, the framework in which they operate is so different that it is difficult to present generalizations that have any practical significance. While it may be interesting for a researcher to read, for example, of studies of police patrolling and police response time in the United States, of the effectiveness of probation and parole in Scandinavia, or of programmes for drug abusers in Japan, his interest may be limited at most to the methodology, and not to the substance.

Similarly, crime itself is culture-based. While the philosophic point may be made that all crime is due to such universal factors as greed, envy, hate or need, the way and degree in which such emotions appear depend on the environment. One could even say that ultimately, it is the criminal law of the country in question that determines what is regarded as crime.

2. The universality of crime prevention

Despite this cultural relativity of crime and crime prevention, however, there should be no bar to adapting criminal policy innovations and crime prevention schemes developed elsewhere for use in one's own country. Although the unique combination of background factors in each country leads to considerable differences in how the problem itself appears, the background factors themselves are fairly universal. For example, it has been observed that such factors as urbanization and an increase in mobility, the number of young persons, and the standard of living are often associated with an increase in property offences as well as certain other criminality. All of these background factors in themselves can appear in a number of different countries; it is the fact that the resulting increase in crime has not always taken place that makes crossnational comparative studies a promising source of new information.

The link between urbanization and criminality is a case in point. The general observation has been made that the higher the degree

of urbanization, the higher the crime rate. Such a correlation has been seen in, for example, the United States, Europe, and several developing countries in Africa, Asia and Latin America.

There are, however, reverse examples, of where even a rapid rate of urbanization has not led to a marked increase in crime. One example is the city of Riyadh itself, which has undergone a population explosion almost unmatched in recent history – and yet quite apparently lacks the ills which are commonly thought to accompany such development. Studies have indicated that it is not urbanization *per se* which leads to higher crime rates in some societies and at some stages, but for example the combination of a deterioration of social control and the increase in opportunities for crime.

It is the search for these common background factors and commonalities in the functioning of the criminal justice system that should be taken as the focus of crossnational research. There is little to be gained from research which points out the differences existing between systems; it is unfortunate that much wellmeaning research ultimately founders, and is reduced to simplistic lists of these differences. Basically, the criminal justice system has the same purpose: the control and prevention of crime. What should be sought are reflections of this common purpose. Once a study has pointed out, for example, that the police and the community tend to have similar relations in different societies, and that a certain police-community co-operation programme in one country has proved successful in preventing crime, attempts can be made to see if this programme can be adapted elsewhere.

3. *Crossnational co-operation in crime prevention*

As noted above, there exists a considerable amount of criminological data which can be used in analysing the success of various crime prevention plans. This data includes statistics, information on criminal policy reforms, reviews and discussions of criminal policy, research results and, perhaps most importantly, new ideas for how crime prevention can be made more effective. The first step in establishing crossnational co-operation is to catalogue and cross-reference this information, provide the appropriate background notes, and make it more widely accessible. This is one of the goals of the national

correspondent network of the United Nations Crime Prevention and Criminal Justice Branch, and it is one of the main activities of the United Nations regional institutes for Asia and the Far East, Latin America and Europe, as well as the United Nations Social Defence Research Institute.

The exchange of such information will provide new ideas and approaches, it will lead to an improvement in methodology and the technology of data transfer, and it may prevent needless duplication of effort. The recent international interest in victimization studies is an example of the benefits of taking stock of what is being done in other countries: the first such studies during the 1960s and 1970s were critically reviewed and replicated in for example, the United States, England, the Federal Republic of Germany and the Scandinavian countries. The insight in victimological factors, and the awareness of such problems as domestic violence led to important reforms in many of these countries.

Mere exchange of information, however, is not enough. Almost all criminological research is done in the industrialized countries. Owing to the cultural relativity mentioned above, this means that criminological research is geared to the needs of these countries. On the other hand, the problem of crime can be said to be most pressing in the developing countries, which can ill afford the luxury of criminological research when many such countries lack even the basic necessities. One can well imagine the reaction of those in charge of criminal policy planning in some of the poorer countries if they are advised to take advantage of the latest technological developments in surveillance equipment or to construct youth re-education centres with a multitude of programmes and highly educated staff members.

Thus, researchers from the industrialized countries can be of most help by designing studies that also take into consideration the needs of the developing countries. The researchers in question should not assume the superiority of their own criminal justice system and crime prevention strategies (scarcely a tenable assumption in the light of the present crime problem in many of the industrialized countries!). On the contrary, researchers from more developed countries are beginning to learn, for example, about the value of informal social control in crime prevention. One of the more popular themes

in research today in Scandinavia is called "green" criminal policy, based on very informal mechanisms of crime prevention and control. What these researchers are interested in achieving is instilling a sense of community and of social responsibility – traits which (perhaps overly romantically) are associated with an earlier stage of development.

4. *Current international cooperation*

The Big Four international associations in criminology (International Association of Penal Law, International Penal and Penitentiary Foundation, International Society for Criminology, International Society for Social Defence) have performed commendable and invaluable work in the international publication of criminological research. Through their publications and the organization of international congresses and meetings, they have contributed to a greater international understanding of the crime problem.

Several regional arrangements have been made for the collection and dissemination of criminological data. The Council of Europe, for example, has regularly published data on the work carried out in member countries. The Scandinavian Research Council for Criminology has carried out ground-breaking work in bringing researchers together and organizing research projects in several Scandinavian countries simultaneously. The International Centre for Comparative Criminology in Montreal has gone to considerable effort in the arranging of seminars, inter-university research and co-operation among governments and non-governmental organizations.

On a bilateral level, there have been many studies in comparative criminology, usually carried out by academic researchers in the two countries in question.

It is in the field of the United Nations that the most promising developments in international co-operation in crime prevention appear. The arrangement of the UN World Congresses on the Prevention of Crime and the Treatment of Offenders, as well as the world crime surveys are only one aspect of the work of the UN Crime Prevention and Criminal Justice Branch. The establishment of the regional institutes and of the United Nations Social Defence Research Institute have provided an international framework for fu-

ture crossnational co-operation. The recent international study organized by UNSDRI on juvenile social maladjustment and human rights in the context of urban development is highly commendable in its specific effort to extend international research to the developing countries, and for its focus on the effects of development.

5. *Pitfalls of international co-operation*

It was noted above that crossnational studies should focus on aspects of the criminal justice system which are the same in various systems. However, this emphasis on common features should not blind the researcher to the effect of differences. Instead, the research must be designed to take these differences into consideration, and in the optimum case even to take advantage of them. Consequently, the frame of reference in the different countries must be made clear. Those carrying out the study should agree in advance on the practical details of the methodology, the analysis of the data and even on the terminology. Ideally, the researchers should themselves be from the country being studied, or at least well familiar with the crime situation there. The research strategy itself need not necessarily be one that has been designed from scratch as a neutral instrument for crossnational comparisons: research designs which have proven valid in one country have been successfully adapted for comparative work.

If these preliminary steps are not taken, the following scenario may result: a researcher with time and money to spend decides to replicate in another country his study of – for example – how the police deal with theft. Having translated his questionnaire into the language in question he sends it off to a random sample of the police in this country. After analysing the results and noting that the police in country A could report fewer thieves to the prosecutor than would those in country B, he publishes his report saying that country A is more liberal than B.

Such a study will undoubtedly leave those in charge of criminal policy in both countries A and B frustrated. All too many questions will be left unanswered – how is theft defined in the countries in question, how much is theft reported to the police, is there a difference in the opportunity structure for theft, is there a difference

between what the police do in theory and in practice, are any unofficial measures taken, what is the attitude of the public to these measures, and so on.

The above assumption that studies can be easily replicated in another country is a surprisingly common one. It is in part due to the inability of the researcher to understand that systems differ in theory and in practice – the fact that “theft” is used as a label in both countries certainly does not necessarily mean that the phenomenon itself is the same. The assumption, however, is also in part methodological: the researcher fears that if the study design or hypothesis is changed, then the value of the international comparison will disappear.

A corollary of this pitfall is an excessive readiness to use criminal policy measures which have been advertised as successful elsewhere. This is the reverse of the problem mentioned at the beginning of the paper, that of an unwillingness to recognize research or criminal policy innovations developed elsewhere.

An example of this excessive readiness to copy what has been done elsewhere is the recent interest in diversion. This category of measures was hailed in the United States as a great improvement in criminal justice administration, and much interest has been displayed in it in many countries. However, the programmes which are used in diversion need not necessarily fit in with the criminal justice systems of other countries – and indeed, they have not always lived up to the claims made on their behalf in the United States.

This “copy-cat” mentality becomes all the worse when it extends to the developing countries which believe that the smugness and self-satisfaction of researchers from the industrialized countries indicates that they have the answers. The result of this will be that no attempt is made to utilize the crime prevention resources unique to the country in question. This was perhaps one of the basic errors made by colonializing European powers in the field of criminal justice: they attempted to graft their legal system on a totally different culture.

Both types of problems can be avoided only through an evaluation of the data provided. Although this is one of the basic needs in crossnational research, it is also one of the most difficult: the best intentions may easily fall prey to an interpretative bias.

6. *The principles of international cooperation*

The problems and potential outlined above can be summarized as the following principles:

1. The growth in the problem of crime in many countries underlies the evident and pressing need for international co-operation in criminology. Such co-operation will not only contribute to preventing a deterioration of the crime situation in the developing countries, but also to a greater understanding of the options available in one's own country.

2. All research must keep in mind the uniqueness of criminal justice systems in the different countries. The researcher must constantly be cautious of assuming that what is true of his criminal justice system is true of that elsewhere.

3. In order to assure that the researcher has sufficient background data on the system in question, research should ideally be carried out in each country by researchers from the country in question. The international rôle would be to provide co-ordination and quality control of the research.

4. While bearing in mind (2) above, the research should focus on features of criminal justice common to the systems being studied, and not on the unique aspects of each system. More could be gained by a study of how different systems work in the same way and contribute to the same goals. Such an approach would render it easier to recommend adaption of certain policies and innovations.

5. All efforts should be made to make criminological data and research results available to a wider international audience.

VI. APPLICATION AND IMPLEMENTATION OF STANDARDS AND NORMS OF THE UNITED NATIONS CONCERNING CRIMINAL JUSTICE

When dealing with the present subject, one fact stands out: the progress made by the United Nations towards the assurance of respect to human rights – this being one of the reasons for its existence –, a progress evidenced in the Universal Declaration of Human Rights and implemented in the “International Agreement of Political and Civilian Rights” and its protocols, as well as in other international documents.

As it is well known, the efforts of the United Nations in this particular matter are conveyed in two parallel directions: the elaboration and promotion of compelling juridical instruments or agreements, and the formulation – and recommendation – of guidelines and norms.

Even though UN has been making great efforts in preparing guidelines and rules, basically determined by an open interpretation of the criminal justice system, we believe, as Mr. Murad said yesterday, that there is much work ahead for an efficient implementation of those rules. As a matter of fact, we consider this lack of implementation to be the most acute problem we are facing today. It is our opinion that we have to find a mechanism that in some way may lead the governments to a more prompt and effective incorporation of the rules in their legislations.

Nevertheless, on many occasions this lack of implementation of rules is not the result of the absence of legislation but from institu-

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tional policies. Such was the case found in a recent research made by ILANUD in relation to pretrial detention, which is used excessively even when other mechanisms are at hand, such as *juratory caution*, these other mechanisms are not frequently utilized even though they have proved to yield favourable results.

There is another element which must not be overlooked and which has come to our attention over many years of experience in ILANUD training courses. It is the unawareness of many officials and technicians concerning the existence of standard minimum rules and guidelines of the United Nations on criminal justice. This problem of implementation is related to another, which also blocks the application of UN rules and guidelines: the lack of specialized personnel. We are not talking about lawyers or judicial professionals – who by tradition undergo an acceptable academical formation – but about the many other officials of the law enforcement of penitentiary systems.

If to the latter we add the working conditions and status differences of both groups, the gap becomes wider. Obviously, the preceding has to be understood as a very general consideration of facts but, anyhow, we cannot ignore the cultural, social, economical and political conditions which in many ways restrain us from reaching our goals.

Such a diversity of deficiencies, however, can be approached positively. There are many valuable practices in a said cultural group that can be advantageously adopted by another. Therefore, it is necessary to strengthen the existing means of communication and to create other channels of information that might help the diffusion of all valuable aspects and knowledge. It is also important to take into account the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, specifically, the one for exploring new alternatives to imprisonment and community participation in this process.

Concerning the need for alternatives to imprisonment, we have to consider that the ultimate goal of punishment is the rehabilitation of the offender and therefore alternatives to prison should also lead to that goal. We believe that this important matter should be the subject of a debate with the aim to attain a uniform criteria.

Many different alternatives to prison have been suggested, but the problem as a whole has not been sufficiently analysed.

As is well known, difficulties exist in intensifying international co-operation for the implementation of the United Nations' norms, mainly because it concerns the internal administration of the nations; however, we can always give additional support and trust it may occasionally yield positive results. It is in this direction that we must intensify our work with the different regional institutes in the fields of research, training, information and technical assistance. Primarily, we look forward to further occasions of dialogue and a closer relationship between the UN Criminal Justice Branch, the regional institutes, the Regional Socio-economical Commissions and other institutes and non-governmental organizations, in order to unify our efforts in dealing with common objectives.

As I am a researcher myself, my contribution may be modest, and especially influenced by practical experiences.

On the topic under discussion I will consider myself as a spokesman for my native country, Norway and my part of the world: Scandinavia.

Criminological studies and criminological work gained a firm position in the early 50's, and after a period of a series of national reports, it was decided, in the early 60's, to set up a regional collaboration among all Scandinavian countries.

For more than a decade we have had a Scandinavian Board of Criminology assisting the national institutes in this field, co-ordinating criminological studies and also establishing links with the Council of Europe and the UN.

Criminological research in the Scandinavian countries has followed lines which may be observed in western criminology in general.

Originally research was centered mainly on the offender – and in that respect it was extremely restricted to offenders spending long terms of imprisonment; later the focus was extended to prisoners on shorter terms of imprisonment. Nevertheless, research was being conducted within strongly limited boundaries: restricted to offenders who were being punished. Then the awareness developed that this method of research concerned only a part of the real offenders and therefore many studies were centered on research on hidden delinquency, self-reported crime studies, victim studies.

A second stage in the development was marked by studies of social conditions which were considered as criminogenic factors.

Later a third stage was reached – research on the situation of criminality shed light on the position of the victim and on practical measures which could contribute to an action-oriented prevention of crime.

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I think that the work of the Scandinavian Board of Criminology has demonstrated the value of close collaboration within this science.

Such collaboration ought to be established among national institutes and then broadened to regional institutes. Close collaboration with the UN Institutes is essential for the success of this collaboration.

In speaking on behalf of the Four Societies, I would like to assure the assembly that the Big Four are very interested in close collaboration with regional institutes.

* * *

During the last two decades many countries have witnessed a great increase in foreigners involved in crimes committed in their territories. The number of foreign prisoners has risen substantially in many countries creating problems for the authorities within the criminal justice system as well as for the offenders themselves. Offenders sentenced to imprisonment have often experienced serious difficulties. Different language, culture, customs and religion render it severe for many prisoners to serve sentences of imprisonment in foreign countries. A more humane fulfilment of the sentence might be obtained through transfer of prisoners to their home countries, where the prisoner would have contact with relatives, with social agencies and other bodies, providing better possibilities for his resettlement in society.

As mentioned by Mr. Shikita at the Caracas Congress, the item of Transfer of Foreign Prisoners was under debate and a Resolution was adopted on this item, urging Member States to consider the establishment of procedures whereby transfer of prisoners might be effective.

The IPPF found this to be within its own tradition - having for many years struggled for the establishment of Standard Minimum Rules for Prisoners - to take an active part in the preparation of international instruments for the transfer of foreign prisoners. During a meeting last year with the International Committee for Cooperation, the Foundation made a proposal to set up a Select Committee.

This proposal was adopted and a Select Committee was set up composed of members of the Four Associations.

The Committee met in Milano last Summer and in Siracusa in January this year. The foundations for its work were very positive in that it could draw advantages from a Model Agreement adopted at a Seminar in Vienna. The Committee contributed some improvements to the Model Agreement which were adopted at the Siracusa meeting, together with recommendations regarding the Treatment of Foreign Prisoners. The Model Agreement will now be presented to the Crime Prevention Committee in the UN.

We have thus seen a practical – and I dare to say effective – form of co-operation between non-governmental organizations and the UN and in my opinion it would be desirable to see this work extended to cover greater parts of the world before the next UN Congress. As an action-oriented programme for practical collaboration it might prove beneficial to discuss this problem in broader circles.

Mr. Minoru Shikita *

Mr. Chairman,

The topic "Formulation and Application of United Nations Standards and Norms in Criminal Justice" reflects the long-standing concern of the United Nations with the humanization of criminal justice with the view to securing the protection and preserving the dignity of all those who come into contact with the criminal justice system. In fact, this concern has been reflected on the agenda of each one of the last Six United Nations congresses. The present topic derived directly from the recommendations of the Sixth Congress, in particular, the resolutions on: alternatives to imprisonment, the development of measures for the social resettlement of prisoners, the transfer of offenders and the Code of Conduct for Law Enforcement Officials, and human rights instruments and their implementation for prisoners; the latter requesting the inclusion of a specific item concerning the implementation of human rights for prisoners in the agenda of the Seventh Congress.

Consequently, and in accordance also with the recommendations made by the Committee on Crime Prevention and Control at its seventh session held in March 1982, the discussion on this topic could be on the following four items, namely: 1) the review of the existing standards and norms; 2) the assessment of the impact achieved as well as the difficulties encountered; 3) the need for the formulation of additional standards and norms; and 4) the furtherance of study on the question of death penalties that do not meet the acknowledged minimum legal guarantees and safeguards.

In fact, despite the differences and characteristics based on political and economic conditions, cultural traditions and nationality

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which inevitably exist in the criminal justice system and practices of each country, the maintenance of peace, public safety and order, as well as protection of human rights are common objectives of criminal justice. Therefore, general and fundamental principles to be applied to any criminal justice system and practices could be established.

The efforts made by the United Nations to have an impact on the system and practices of each country through the formulation of standards and norms and thus to make a contribution to the welfare of human beings should be understood in this context.

In general, it was observed that the substance of the standards and norms formulated by the United Nations including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of all Persons against Torture and Cruel, Inhuman or Degrading Treatment or Punishment was embodied in the laws and followed in practice.

Those standards and norms were sufficiently understood by officials concerned with criminal justice so that they could be confident that internal laws and practices were consistent with the international standards. In turn, such a confidence of the concerned officials indirectly contributed to the promotion of desirable practices in criminal justice directed at the fullest promotion of human rights.

Mr. Chairman,

Within the scope of this topic, may I now make a few observations on a very important and timely subject, namely, the question of foreign prisoners. As you are aware, the Sixth Congress recognized the difficulties of foreigners being detained in prisons abroad on account of such factors as different language, culture, customs and religion. The Congress considered that the aim of social resettlement of such prisoners could be achieved in the best way by giving them the opportunity to serve their sentences in their home country. Therefore, the Congress, in its resolution 13, urged member states to consider the establishment of procedures to this effect. The Congress further requested the Committee on Crime Prevention and Control to give priority to the development of a model agreement for the transfer of offenders with a view to presenting it to the Uni-

ted Nations General Assembly as soon as possible. In this context, distinguished delegates, I should like to draw your special attention to the Draft Model Agreement on the transfer of prisoners, formulated by an international seminar organized by the Vienna Alliance of NGO's on Crime Prevention and Criminal Justice in February of this year. The Draft Model Agreement is available for you in English at this Meeting, and I have the pleasure to announce that it will be further elaborated by a meeting of experts, to be jointly organized in Siracusa, Italy by the International Association of Penal Law, the International Society of Social Defence, the International Society on Criminology, and the International Penal and Penitentiary Foundation in co-operation with our Branch, for submission to the Committee on Crime Prevention and Control next year.

Finally, Mr. Chairman, may I turn to an equally significant subject within the scope of the present agenda item, namely, the question of death penalties that do not meet the acknowledged minimum legal safeguard, in particular arbitrary or summary executions and sham trials. As you know, the Economic and Social Council, in its recent spring session this year, strongly condemned and deplored this brutal practice. The Council requested the Committee on Crime Prevention and Control to further study this question and welcomed the Committee's intention that this issue be discussed at the Seventh Congress. In this context, I also should like to inform you that next year the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat will conduct its next quinquennial survey on the question of capital punishment, for submission to the Economic and Social Council in accordance with existing mandates.

Mr. Chairman, distinguished delegates and observers, before closing my statement on this topic. I wish to draw your particular attention to the fact that the most significant norms and guidelines in the field of crime prevention and the treatment of offenders, such as Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials, were originated and developed by the previous United Nations Congresses, the former at the first Congress in 1955 and the latter at the Fifth Congress in 1975.

Keeping up with the glorious tradition of the past, it is hoped that also at the Seventh Congress another set of significant norms and guidelines are developed such as the Model Agreement on the

Transfer of Foreign Prisoners and standards concerning alternatives to imprisonment. It is therefore my sincere hope that these matters will be given sufficient attention in the process of your deliberation so that a consensus on regional and world wide norms and guidelines may be reached.

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LIST OF UNSDRI PUBLICATIONS AND STAFF PAPERS

1969-1985

- | | | |
|------------------|--|--|
| 1969 Publ. No. 1 | Tendencias y necesidades de la investigación criminológica en América Latina (1) | F. Ferracuti
R. Bergalli |
| 1970 Publ. No. 2 | Manpower and training in the field of social defence. Personnel et formation professionnelle dans le domaine de la défense sociale. Mano de obra y capacitación en el campo de la defensa social | F. Ferracuti
M.C. Giannini |
| 1971 S.P. No. 1 | Co-ordination of interdisciplinary research in criminology (1) | F. Ferracuti |
| 1971 Publ. No. 3 | Social defence in Uganda: A survey of research (1) | |
| 1971 Publ. No. 4 | Public et justice: une étude pilote en Tunisie (1) | A. Bouhdiba |
| 1972 S.P. No. 2 | The evaluation and improvement of manpower training programmes in social defence (1) | R.W. Burnham |
| 1972 S.P. No. 3 | Perceptions of deviance. Suggestions for cross-cultural research (1) | G. Newman |
| 1973 S.P. No. 4 | Perception clinique et psychologique de la déviance

Sexual deviance. A sociological analysis
Aspetti sociali dei comportamenti devianti sessuali (1) | F. Ferracuti
G. Newman

G. Newman
R. Lazzari |
| 1973 S.P. No. 5 | Psychoactive drug control. Issues and recommendations. Contrôle des drogues. Résultats et recommandations. Control de fármacos psicoactivos. Problemática y recomendaciones | J.J. Moore
C.R.B. Joyce
J. Woodcock |
| 1973 Publ. No. 5 | Migration. Report of the Research Conference on Migration, Ethnic Minority Status and Social Adaptation, Rome, 13-16 June 1972 | |
| 1973 Publ. No. 6 | A programme for drug use research. Report of the proceedings of a workshop at Frascati, Italy, 11-15 December 1972 (1) | |
| 1973 S.P. No. 6 | Un programma di ricerca sulla droga. Rapporto del seminario di Frascati, 11-15 dicembre 1972 (1) | |

- 1974 Publ. No. 7 A world directory of criminological institutes (1) B. Kasme
- 1974 Publ. No. 8 Recent contributions to Soviet criminology (1)
- 1974 Publ. No. 9 Economic crisis and crime. Interim report and materials (1)
- 1974 Publ. No. 10 Criminological research and decision-making. Studies on the influence of criminological research on criminal policy in The Netherlands and Finland (1)
- 1976 Publ. No. 11 Evaluation research in criminal justice. Material and proceedings of a Research Conference convened in the context of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
- 1976 Publ. No. 12 Juvenile justice. An international survey, country reports, related materials and suggestions for future research (1)
- 1976 Publ. No. 13 The protection of the artistic and archaeological heritage. A view from Italy and India
- 1976 Publ. No. 14 Prison architecture. An international survey of representative closed institutions and analysis of current trends in prison design.
(A commercial publication, available from The Architectural Press, 9 Queen Anne's Gate, London SW-H 9BY)
- 1976 Publ. No. 15 Economic crises and crime. Correlations between the state of the economy, deviance and the control of deviance (1)
- 1976 Publ. No. 16 Investigating drug abuse. A multinational programme of pilot studies into the non-medical use of drugs J.J. Moore
- 1978 Publ. No. 17 A world directory of criminological institutes (2nd edition) (1)
- 1978 Publ. No. 18 Delay in the administration of criminal justice - India S.K. Mukherjee
A. Gupta
- 1979 Publ. No. 19 Research and drug policy J.J. Moore
L. Bozzetti

- 1981 The effect of Islamic legislation on crime prevention in Saudi Arabia
(This publication is a combined effort of the Government of Saudi Arabia and UNSDRI and contains the proceedings of a symposium on the above topic. UNSDRI was responsible for the English, French and Spanish editions which were distributed according to UNSDRI standards)
- 1982 Publ. No. 20 A world directory of criminological institutes (3rd edition)
- 1984 Publ. No. 21 Combatting drug abuse F. Bruno M.D.
- 1984 Publ. No. 22 Juvenile social maladjustment and human rights in the context of urban development
- 1984 Publ. No. 23 The phenomenology of kidnappings in Sardinia I.F. Caramazza
U. Leone
- 1984 Publ. No. 24 The rôle of the judge in contemporary society (2)
- 1985 Publ. No. 25 Crime and Criminal Policy - Papers in Honour of Manuel López-Rey Compiled and Edited by P. David
- 1985 Publ. No. 26 First Joint International Conference on Research in Crime Prevention (Riyadh, January 1984 in collaboration with the Arab Security Studies and Training Centre)

(1) Out of Print

(2) In collaboration with the International Association of Judges

Development as an ubiquitous process of social change may, for a number of reasons which are only partly known, lead to an impressive increase of social problems including the phenomena of deviance and criminality. Governments and the public at large are becoming increasingly concerned with the gravity of these problems. Nevertheless, the national systems responsible for socio-economic development and the instruments of international collaboration aimed at assisting governments in this specific area have for many years been unprepared to cope with them. In order to fill this gap the *United Nations Social Defence Research Institute (UNSDRI)* was established in 1967.

UNSDRI is part of the United Nations Organization and can be described as a special voluntary-funded Programme. It operates under the authority of the Secretary-General of the United Nations and works in close co-operation with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs as well as with other UN bodies and agencies.

The basic purpose of UNSDRI is to initiate, encourage, co-ordinate and conduct research on the complex interaction between developmental processes and crime-related problems with particular emphasis on the strategies and modalities of crime prevention and control in developing countries.

UNSDRI activities stem from, reflect and are oriented towards:

- a better understanding of the entire social context in which developmental processes evolve, including social problems and the generation of crime;
- the identification of deliberate actions for the prevention and control of social maladjustment and other critical processes and phenomena which inhibit the positive effects of developmental courses;
- the preparation of concrete models, plans and programmes as either preventive or responsive but at any rate effective tools congruent with the needs of developing countries and aimed at modifying unsatisfactory situations in the areas of crime prevention and control and treatment of offenders.

UNSDRI also organizes meetings providing the opportunity for an exchange of views between international scientific communities and among researchers and policy-planners and makers. *UNSDRI places the results of research and the acquired international experience at the disposal of the international community* through its publications (listed in an appendix to this volume) and contributions to international scientific journals and international conferences.