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## THE TOLERANCE IN ISLAMIC LEGAL MODEL

Tolerance, complex and difficult theme to treat, still excites the interest of different disciplines and provoke hard debate between specialists and other. It is a concept which indicates the reaction of individual and institutions (government, religious order or other entity) accepting which opposes beliefs, rules, moral and habitual conduct. It is the ability to receive what is unknown, different, and incomprehensible or what we disapprove. In concrete words tolerance is the expression of individual and collective consciousness in the social model.

Historically, tolerance dates back to archaic forms of our civilization, and it always required a consensus between the formal and the informal, between practices and institutionalization. In our days, tolerance is a synonym of security and safety, a condition of peace; both in international and internal relationship tolerance represent the effective resolution to conflicts deriving from religious, political and cultural diversity.

Given the importance accorded to tolerance, as requirement of sustainable peace and democracy, scholars and priests, despite the difference in practices, tried in a compromising way to establish a conventional acknowledgement for this word. Formally tolerance is described as consensual fair and objective value of our system, it is seen and experienced as an attitude recognizing and respecting the beliefs and practices of others, whose opinions, race, religion or nationality, are different from ours. In so much that human consciousness or subconsciousness observe and respect the idea of tolerance, as conventionally agreed, the life of nations and peoples is safe and peaceful, but when this condition fails, and tolerance is rejected, peace and safety become mythical concepts.

Human history showed disastrous practices and consequences when the necessity of tolerance is ignored and when it imperative character is outdated; man is swept into behaviors blamed and qualified with the worst terms in our language. Hatred and selfishness dominate the reason and thought of people, atroci-

ties are committed in the name of some ideology, in the name of false dignity and wrong patriotism.

In Europe, Nazism and fascism ideologies pulled towards the war Europeans States then after the rest of the world, although that, these ideologies are still producing harmful thought and behaviors, damaging the relationship between groups in the same society and between countries. Genocide against Muslims in the former Yugoslavia<sup>1</sup> still marks European and universal consciousness, thousands of innocents Muslims were exterminated because of intolerance, and because of them faith. To overcome the fears, European Union imposed in its founding principles a large idea of tolerance and respect for the other: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women prevail".

In the latest decades, Africa has been the theater to the most deadly and devastating conflicts of all its modern history after its liberation of foreign diplomatic guardianship. War and rebellions seem to be the preferred method resolving disputes in a land where wars end up switching on again. The expression of the "enfant warrior" has enriched our atrocious vocabulary. Democratization Processes applied there strangely must brook the social mechanism in which peoples have always lived in peace combating with own instruments poverty and hunger.

In the Middle East and Asia the old wars for borders and autonomy teak the aspect of wars for democracy (especially in Islamic countries). Inference of several processes and actors converted peace initiatives to a perpetual war; to a degradation and destruction for infrastructures and annihilation of economy. International efforts don't generate a final resolution that why sustainable peace, stability and development are conditions belonging more to the past than to a real reasoning in this region.

## **Tolerance in the legal concept**

Tolerance as defined in international treaties and constitutions is a concept with numerous characteristics which make it a moral value even a duty, it is designed as a specific perception and behavior. Tolerance is a virtue and attitude coexisting with the law rule in different legal system and societies despite they

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<sup>1</sup> The events in Srebrenica in 1995 included the killing of more than 8 000 Bosnian Muslim men and boys, as well as the mass expulsion of another 25 000–30 000 Bosnian Muslim civilians, around the town of Srebrenica in Bosnia and Herzegovina, committed by units of the Army of Bosnian Serb Republic (VRS) under the command of General Ratko Mladić.

could reflect an appearance in total contrast. In fact tolerance, as a value of a pluralistic society obeys to temporary circumstances and to large flexibility, which if applied in an absolute way, can make judge and public administration tolerating acts and facts forbidden by law. The application of tolerance as a principle that pushes to accept which we should not (in contrary to the law rule) would compromises the effectiveness of the rule of law; it would teak the form of an implicit abrogation even if it is temporary. Public power will seem weak and indecisive instead of enforcing the law. Such situation is against the main characteristic and duty of the public power and threatens the stability of the system. However, if tolerance makes us accepting which we should not, in contraposition to law rule, it could never create a right<sup>2</sup>. Considering what precede logical question raise up: “How tolerance and the rule of law can coexist in the same society?”

Evidently the legislative power alone will be insufficient to satisfy this question and defines what the society should or should not tolerate, it is to the society itself to decide its principles and values, certainly not by the democratic voting process. Democratic vote in the parliament institution or in direct referendum could be valid to manage choices made by the Administration but at the same time can easily exclude a minority or a group of citizens just because of them tendency or religion, or simply because they don't obtain the majority on the vote. In positive law system tolerance, perceived as an object of law, seems to lose its characteristics and function; it opposes law and menace it stability. To avoid such a conflict first we must distinguish tolerance from indulgence, from indifference and redefine tolerance according to the law and not against it. Tolerance cannot be a behavior which we adopt in a special occasion or event, nor can be opposed to institutionalized attitude of the society (law). Tolerance in legal concept can be a description of a spontaneous acting intended as a natural need of human being. As we need law to organize our life, we need tolerance to favorite peace and reject unfairness and discrimination.

Although the apparent paradox between tolerance and the rule of law, tolerance is protected by law as a political value, not only but international authorities and instances consider that pluralism, openness and tolerance are the components of a democratic society. The United Nations' Declaration of Principles on Tolerance states that tolerance is a virtue and defines it as following: “respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human”.

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<sup>2</sup> J. MOURGEON, “*Tolérance et règle de droit*”, Les cahiers de droit, vol. 30, n° 4, 979–986 – décembre 1989.

## Religious tolerance

Tolerance in Religion means allowing people from different faith to practice their beliefs without subjugation or prejudice; no one is authorized to interfere with other person way of honoring his divinity.

Reading about religious tolerance, we can be ported to believe that this principle appeared around the enlightenment époque thanks to some philosophy or thank to some political regime that established it. In reality what appeared, or more exactly reappeared, in that period was the reconquest of tolerance that political regime and religious orders had confiscated before.

To understand religious tolerance, at minimum in the monotheistic system, we must keep in mind that tolerance under its institutional aspect (definition) or as practice was indicated, first in the main sources of these religions (holy books), then in the guidance of prophets. So the meaning of the tolerance up to Judaism or Christianity must be found in the Bible (old and new testaments), as well as for tolerance in Islam that must be expressed in the Quran.

What happened is that people losing this reference, leaving the practice of tolerance (as it was really indicated in them books), adopted several philosophies and interpretations to fill the blank. Religious tolerance as institution hasn't to depend on the decision of some political regime nor can be the domain of political power proclamation.

In modernized societies there is often confusion between religious freedom and tolerance concept. Religious freedom is an expression of opinion freedom, it unifies two elements: first, it is an individual freedom because it is for the individual to adhere or not to a religion, to freely choose or refuse it. Second it is also a collective freedom because it gives rise to a practice which must be guaranteed as a free exercise in the social group<sup>3</sup>.

This free choice and practice of a religion inevitably impose the problem of the relationship between the religion and the individual from one part and the religion and the State from another. In effect if the individual is free to choose and practice his faith doesn't mean that he is tolerant with different religions practiced on his neighbourhood or far from him; and if a State identifies itself in a religion or maintains a close relationship with it doesn't mean that it tolerates different individual choice or tolerates other faiths.

So if considering legal concept, religious one and the divergence in practices of tolerance delimits our horizon when speaking about a conventional definition, we can imagine how difficult it will be our job introducing tolerance in the

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<sup>3</sup> M.J. ROBERT, "La liberté religieuse", *Revue internationale de droit comparé*, vol. 46 N°2, 629-644. Avril-juin 1994.

Islamic legal model. For centuries Islamic system and particularly Islamic legal model has been under pressure, it was condemned for a long time to abandon its main characteristics and adopt a secular aspects, in a sort of modernization process. Consequence to such process is that *Shari'ah* rules are more confined in limited space, precisely in family law and inheritance. Considering the precedent, we note actually that majority of Islamic States are taking part, directly or indirectly in some war, all life aspects in this countries (politics, economy, religion, human rights), are subjected to serious interrogations from international forces and instances, under menaces and avalanche of criticism.

### Islamic legal model and its main sources

Islamic legal system is a set of substantial, general and specific rules aiming to organize the life of believers (Muslims and others) on earth to gain salvation in the hereafter. It builds its identity around divine principles and rules revealed, codified in a unique text in the Quran. As all legal system Islamic one developed a large catalogue of precedents and rich jurisprudence to give answer to the new situations and questions rising in Muslims life.

### The main sources of Islam

*Quran*, as first source of Islam, is the word of *Allah*, the Lord of the Worlds, revealed to His Messenger Muhammad, to bring mankind forth from darkness into light Allah said in *Suratu "al-Hadeed"* (n; 57)<sup>4</sup>, verse 9: "It is He who sends down upon His Servant [Muhammad] verses of clear evidence that He may bring you out from darknesses into the light. And indeed, Allah is to you Kind and Merciful".

هُوَ الَّذِي يُنَزِّلُ عَلَى عَبْدِهِ آيَاتٍ بَيِّنَاتٍ لِّيُخْرِجَكُم مِّنَ الظُّلُمَاتِ إِلَى  
النُّورِ وَإِنَّ اللَّهَ بِكُمْ لَرَءُوفٌ رَّحِيمٌ ﴿٩﴾

In Quran *Allah* has explained in detail what is right, legal and allowed (*halāl*) and what is illicit, wrong and unlawful (*harām*); He has shown also the basics of good manners, the rulings of worship and dealings with others, Allah said in *suratu an-nahl*, verse 16: "...and We have sent down to you the Book as an ex-

<sup>4</sup> *Suratu al-Hadeed*(n: 57), verse 9. English interpretation of Quran.

position of everything, a guidance, a mercy, and glad tidings for those who have submitted themselves”<sup>75</sup>.

وَيَوْمَ نَبْعَثُ فِي كُلِّ أُمَّةٍ شَهِيدًا عَلَيْهِمْ مِنْ أَنْفُسِهِمْ وَجِئْنَا بِكَ  
شَهِيدًا عَلَى هَؤُلَاءِ وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ  
وَهُدًى وَرَحْمَةً وَبُشْرَى لِلْمُسْلِمِينَ

Second resource of Islam is *Sunnah* that is the way of life prescribed as normative for Muslims on the basis of the teachings and practices of the messenger Muhammad and interpretations of the Quran. *Sunnah* denotes the practices of Prophet Muhammad that he taught and practically instituted as a teacher of the *Shari'ah*<sup>6</sup>. According to Muslim belief, this practice is to be adhered to in fulfilling the divine injunctions, carrying out religious rites and moulding life in accord with the will of God.

*Al-Ijma* is considered the third source of *Shari'ah* after the Qur'an and the Sunnah. Muslims refer to *Ijma*, as a binding source, only on situation when we have a universal consensus of the Muslim scholars. Except *Ijma* of the companions of the prophet, any agreement of majority can be a proof but cannot represent a binding rule of *Shari'ah*.

Fourth source of Islam is *Qiyas* that means comparison to establish equality or similarity between two things, it's is the extension of a *Shari'ah* ruling from an original case (*Asl*) to a new case (*Far'*) because the new case has the same effective cause (*'Illah*) as the original case. Priests and jurists do not consider the rule derived through *Qiyas* as a new rule.

Islam is more than a religion; it's a wide system of security, safety, and peace, this is what professor Bernard Lewis confirmed in his interview published on 2003: “But Islam is a tolerant religion, more tolerant than Christianity. As the Qur'an says, ‘there is no compulsion in religion: la ikraha fi'deen’”<sup>7</sup>.

We cannot constrain someone to embrace Islam because it is against the spirit of Islam. Faith or *al'imān* must be accepted with free will and conscience without rejecting the principle of “dialogue” with other religions.

Performing prayers, Muslims are totally engaged in a direct contact with *Allah* (God), they use this moment as well for asking forgiveness and mercy, for them and for other believers. They ask with strong will that Allah keep them away from

<sup>5</sup> *Suratu an-nahl* (n:16) verse 89. English interpretation of Quran.

<sup>6</sup> *Shari'a*: (rules to follow), Islamic law revealed by God to the prophet to realize justice in earth and in eternal life. It includes all Quran verses and Sunnah (prophet Hadith).

<sup>7</sup> B.M. MADANY, “in depth”, a Conversation with Bernard Lewis as seen on C-Span 2, on 6 April 2003.

all behaviors, acts and thoughts that may lead to malediction and provoke divine fury. Ending prayers Muslims greet those on their right and left by wishing peace: “peace and mercy of Allah upon you”.

Prophet of Islam was asked about the most beneficial act in Islam, the prophet answered: “feeding others and greeting those you know and those you do not know”.

### Tolerance in *Quran*:

Islam is a religion of tolerance and raise of embarrassment and hardship; Allah Said in suratu *al-ma'idah*, verse 13: “So for their breaking of the covenant We cursed them and made their hearts hard. They distort words from their [proper] usages and have forgotten a portion of that of which they were reminded. And you will still observe deceit among them, except a few of them. But pardon them and overlook [their misdeeds]. Indeed, Allah loves the doers of good”<sup>8</sup>.

فِيمَا نَقَضُوا مِيثَقَهُمْ لَعْنَهُمْ وَجَعَلْنَا قُلُوبَهُمْ قَاسِيَةً  
يُخَوِّفُونَ الْكَلِمَ عَنْ مَوَاضِعِهِ وَنَسُوا حَظًّا مِمَّا ذُكِّرُوا  
بِهِ وَلَا تَزَالُ تَطَّلِعُ عَلَى خَائِنَةٍ مِنْهُمْ إِلَّا قَلِيلًا مِنْهُمْ فَاعْفُ عَنْهُمْ  
وَاصْفَحْ إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ ﴿١٣﴾

The order expressed in the end of this verse and addressed from Allah “God” to his prophet is to pardon, to forgive and to overlook those whom did not respect the pact (with God), breaking the covenant rejecting the obligations they assumed as believers. The hope is that maybe they correct this behavior and turn as they must be, so prophet of Islam was not ordered to punish but to show tolerance and forgiveness.

Prevalent though in occident sustains that “Islam” was spread by the sword, and that Islam is synonymous of oppression, coercion and denial of fundamental rights and freedoms. “Islam” means both “submission” to God and “peace”, tolerance is one of its essential characteristics. Quran proclaimed in unambiguous way that all human has the same origin, that it was created from a single soul. Allah (God) says in suratu “*An-Nisa*” verse 1: “O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah,

<sup>8</sup> Suratu *al-ma'idah*, (n: 5), verse 13. English interpretation of Quran.

through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer”<sup>9</sup>.

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا  
وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ  
اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿١﴾

In Islamic system, righteousness is the unique criterion that generates consideration and value for people, no discrimination can be made because of race, or color; no consideration because of the social rang. The diversity among human is for a noble reason and clear goal, it is summarized in Suratu “*al- hujurat*” verse 13: “O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted”<sup>10</sup>.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ  
لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾

Nations are enhanced to go beyond the simple coexistence and actively seek a mutually concordance and build supportive reciprocal relationships. Islam in its universality includes all previous messages and religions revealed by God to his messengers, there is no preference or supremacy of a specific monotheist message or specific nation. This is the message we can read in suratu *al-Šhurā*, verse 13: “He has ordained for you of religion what He enjoined upon Noah and that which We have revealed to you, [O Muhammad], and what We enjoined upon Abraham and Moses and Jesus – to establish the religion and not be divided therein. Difficult for those who associate others with Allah is that to which you invite them. Allah chooses for Himself whom He wills and guides to Himself whoever turns back to Him”<sup>11</sup>.

<sup>9</sup> *Suratu an-nisa*, (n:4), verse 1. English interpretation of Quran.

<sup>10</sup> *Suratu al-Hujurat* (49), verse 13. English interpretation of Quran.

<sup>11</sup> *Suratu al-Šhurā* (n:42), verse 13. English interpretation of Quran.



﴿شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ  
 وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا  
 فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا نَدْعُوهُمْ إِلَيْهِ اللَّهُ يَجْتَبِي إِلَيْهِ مَنْ  
 يَشَاءُ وَيَهْدِي إِلَيْهِ مَنْ يُنِيبُ﴾

Tolerance, despite its broad sense, never meant submission to injustice, renounce to proper belief, or permitting some concession in this propos. Practicing tolerance means that people are free to adopt some conviction but must accept others, when they do the same. No one can impose his ideas or believe to other.

Respect for diversity is not a feeling depending on some ideology or moral but have to be a spontaneous behavior (natural). To obtain such result, tolerance must be taught in earlier age and introduced as a daily practice in the instruction complex system (school, family, public and private entities), otherwise we should not expect miracle.

In Islam there is no compulsion in religion, analogically no coercion is accepted in other practices, but in the same time tolerance is seen as legal requirement for any fair and successful social system, for the respect of human rights, pluralism and for the observation of the law.

### The misconception of apostasy

The large sphere of tolerance in Islam is hardly accepted by people who confuse between the *Shari'ah* as a legal system of religious origin and between the practice in force in the Islamic countries, and in its legal traditions. So they deny the tolerance in Islam basing their opinion on the misconception existing in Islamic countries that condemns and punishes the apostasy.

God Almighty made the punishment of the apostate for the day of judgment, and did not make it mundane. The rule punishing apostasy is a political decision imposed by the political circumstances and the power, it is not a legitimated norm, and is without any legal support from the Quran. The criminalization of apostasy practiced in the majority of Islamic countries began and continued as a political issue, and will remain so, to serve the political order.

Islam decided otherwise, freedom of belief in the Holy Quran is absolutely guaranteed and surrounded by several verses confirming the freedom of belief.

We read in *suratu al-Baqarah (Quran II)* verse 217 the following:

يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدُّ  
عَنْ سَبِيلِ اللَّهِ وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ  
أَكْبَرُ عِنْدَ اللَّهِ وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ وَلَا يَزَالُونَ يَقْتُلُونَكُمْ  
حَتَّى يَرُدُّوكُمْ عَنْ دِينِكُمْ إِنِ اسْتَطَعُوا وَمَنْ يَرْتَدِدْ مِنْكُمْ  
عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَئِكَ حَبِطَتْ أَعْمَلُهُمْ فِي  
الدُّنْيَا وَالْآخِرَةِ وَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا  
خَالِدُونَ ﴿٢١٧﴾

“They ask you about the sacred month – about fighting therein. Say, “Fighting therein is great [sin], but averting [people] from the way of Allah and disbelief in Him and [preventing access to] al-Masjid al-Haram and the expulsion of its people therefrom are greater [evil] in the sight of Allah. And fitnah (*turbulence*) is greater than killing.” And they will continue to fight you until they turn you back from your religion if they are able. And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever – for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally”.

And in suratu al-kahf (*Quran 18*) verse 29 we read:

وَقُلِ الْحَقُّ مِنْ رَبِّكُمْ فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفُرْ إِنَّا  
أَعْتَدْنَا لِلظَّالِمِينَ نَارًا أَحَاطَ بِهِمْ سُرَادِقُهَا وَإِنْ يَسْتَغِيثُوا يُغَاثُوا  
بِمَاءٍ كَالْمُهْلِ يَشْوِي الْوُجُوهَ بِئْسَ الشَّرَابُ وَسَاءَتْ  
مُرْتَفَقًا ﴿٢٩﴾

“And say, «The truth is from your Lord, so whoever wills – let him believe; and whoever wills – let him disbelieve». Indeed, We have prepared for the wrongdoers a fire whose walls will surround them. And if they call for relief, they will

be relieved with water like murky oil, which scalds [their] faces. Wretched is the drink, and evil is the resting place”.

In suratu Yunus (Quran 10) verse 99 we read:

وَلَوْ شَاءَ رَبُّكَ لَأَمَنَّ مِنَ فِي الْأَرْضِ كُلَّهُمْ جَمِيعًا أَفَأَنْتَ تُكْرِهُ  
النَّاسَ حَتَّى يَكُونُوا مُؤْمِنِينَ ﴿٩٩﴾

“And had your Lord willed, those on earth would have believed – all of them entirely. Then, [O Muhammad], would you compel the people in order that they become believers?”<sup>12</sup>.

### The tolerance of Islam and the people of the book<sup>13</sup>

Islam has been revealed in a geographical area where it was preceded by other monotheistic religions (Judaism, Christianity), and since the source of all these religions is unique, Islam officially granted a legal status well known to the followers of these religions. Quran reported several verses about the people of the book, which means non-Muslim adherents to faiths which have a revealed scripture called, in Arabic, *Ahl-Al-Kitab* (أهل الكتاب), and they are Jews, Sabians, Magians and Christians. They believe in the unique God, and practice a faith based on divine principles. Islam tolerates all these monotheistic religions; it further recommends respect to the rights and beliefs of these people. We read in suratu “*al-Ankabut*” (n:29) verse 46: “And do not argue with the People of the Scripture except in a way that is best, except for those who commit injustice among them, and say, “We believe in that which has been revealed to us and revealed to you. And our God and your God is one; and we are Muslims [in submission] to Him”.

وَلَا تُجَادِلُوا أَهْلَ الْكِتَابِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ إِلَّا الَّذِينَ ظَلَمُوا مِنْهُمْ وَقُولُوا آمَنَّا بِالَّذِي أُنْزِلَ إِلَيْنَا وَأُنْزِلَ إِلَيْكُمْ وَإِلَهُنَا وَإِلَهُكُمْ وَاحِدٌ وَنَحْنُ لَهُ مُسْلِمُونَ ﴿٤٦﴾

<sup>12</sup> The verses of Quran related to apostasy can be found on web: [www.quran.com](http://www.quran.com) (march 28, 2013).

<sup>13</sup> People of the Book or ahl al-kitab (Arabic: أهل الكتاب) are those which, according to the Quran, received the divine messages revealed to a prophet. In Islam, the concept includes all Christians, Jews (Karaites and Samaritans included), and Sabians (usually identified with the Mandaeans). The concept is sometimes extended to Zoroastrians who benefit from the status of their holy book, the Avesta.

In suratu “*al ‘Imran*” (n:3), verse 199, we read: “And indeed, among the People of the Scripture are those who believe in Allah and what was revealed to you and what was revealed to them, [being] humbly submissive to Allah . They do not exchange the verses of Allah for a small price. Those will have their reward with their Lord. Indeed, Allah is swift in account”<sup>14</sup>.

وَأَنَّ مِنْ أَهْلِ الْكِتَابِ لَمَنْ يُؤْمِنُ بِاللَّهِ وَمَا أُنْزِلَ إِلَيْكُمْ وَمَا  
أُنْزِلَ إِلَيْهِمْ خَشِيعِينَ لِلَّهِ لَا يَسْتَرْوْنَ بِعَايَةِ اللَّهِ ثَمَنًا قَلِيلًا<sup>١٥</sup>  
أُولَئِكَ لَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ إِنَّ اللَّهَ سَرِيعُ  
الْحِسَابِ

Islamic rules and jurisprudence have ever recognized officially the autonomy of non-Muslims living in Islamic territory (*dāru al-Islam*); they accord them a special legal status.

### Dhimmi Legal Status in Islam

*Dhimmis*<sup>15</sup> or *ahlu ad-dhimmah*, (أهل الذمة), in Islamic law (*Šhari’ah*) means all non-Muslim under the protection of Islamic power on Islam land (*daru al-Islam*). It was a contract that guaranteed personal security and certainty of ownership in exchange of a tax called *Jizyah*; but in the situation where the Dhimmi could not pay; the tax was annulled completely or proportionally. The Dhimmis were not legally and socially inferior, nor discriminated but enjoyed a special legal status. They were integrated in the society, and Muslims accepted their testimony for or against the Muslims in the legal process, and freely they undertook their activities as the rest of citizens. Interests and transactions were realized without any distinction for what concerns the fulfillment of the obligations arising from it<sup>16</sup>. In the nineteenth century this status was abrogated (decline of Ottoman Empire) and replaced by an institution of positive law “*foreigner Status*”.

<sup>14</sup> Suratu *al ‘Imran* (n:3), verse 199. English interpretation of Quran.

<sup>15</sup> Dhimmi: is a person from different faith living in a territory overrun by Islam, he is under Islamic State protection, he is allowed to return his original faith, if he has. Dhimmi can undertake freely his activities as a citizen and is exempted from military service, in return he may pay a tax (if he has the possibility otherwise he can be exempted totally or partially).

<sup>16</sup> A. BEN YOUSSEF AL.-GHARYB, “*Tasamuh al-Islam ma’a Ghayr al-Muslimins*” al-maktabah al-arabiyyah, 11–66, 2010.

Islam orders to strengthen this relationship with Non-Muslims and to eliminate anything that will weaken or make it harder to achieve this goal. Allah said in suratu “*Al-Mumtahinah*”, (Verse 8) what can be translated as: “Allah does not forbid you (Muslims) to deal justly and kindly with those who have not fought against you in accounts of your religion and who do not drive you out from your homes. Verily, Allah loves those who deal with equity”<sup>17</sup>.

لَا يَنْهَكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴿٨﴾

Other aspect dealing with the concordance between the people of the book and Muslims is reflected in the fifth verse of suratu “*al-mā'idah*”: “This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them. And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking [secret] lovers. And whoever denies the faith – his work has become worthless, and he, in the Hereafter, will be among the losers”<sup>18</sup>.

الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسَفِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ ﴿٥﴾

This verse means that all the good things (*At-tayibat*) have been made lawful to you: the food of those who were given the Book (or People of the Book) is lawful to you, and your food is lawful to them and the chaste ones from among faithful women, and chaste women of those who were given the Book before you,

<sup>17</sup> M. BAIANONIE, *The Relationship between Muslims and Non-Muslims*”, Friday speech delivered at the Islamic Center of Raleigh, NC on March 29, 2002.

<sup>18</sup> *Suratu al-mā'idah* (n: 5), verse 5. English interpretation of Quran.

when you have given them their dowries, in wedlock, not in license, nor taking paramours. Should anyone renounce his faith, his work shall fail and he will be among the losers in the Hereafter.

As it is clearly expressed Islam not only tolerates other faiths, but goes further than a simple recognition, Muslims can eat from the food of Christians and Jews, Muslims male can spouse chaste women from the People of the Book, this marital relationships, of course, demand mutual love, affection, respect to the different belief and intimacy without this, the purpose of marriage is left unfulfilled. We have to remember for curious people whom can ask why Muslim women cannot have the same possibility, marrying a Jewish or Christian male.

The answer is so simple and clear: first Muslim women have no guaranty for them faith, as it is in Islam, because there is no compulsion in religion; so when a Muslim spouses a woman from other faith (Christian or Jewish), he is not allowed to impose his religion to his wife, she can maintain her faith. But if a Muslim woman spouses a man from the people of the book there is no verse in the bible which guarantees her the same right.

Second the People of the book, in largest majority don't believe in the prophet of Islam, which means that no consideration is accorded to this religion, so how a spouse can live with a husband who don't respect her belief?

Basically Muslims must believe in all prophets of the monotheistic religions, without distinction, if they want to have salvation in the hereafter. In Quran are mentioned five pillars of "*al-Imān*" which means faith, and they are: God and His Angels and His Books and His Messengers and the Hereafter; the reference is to messengers not only to Islam messenger.

Historically, Islamic culture has ever been open to different scientific and philosophical ideas: Greek philosophy, Hellenistic one and also Persian. The scientific community especially in the Abbasid<sup>19</sup> era, found themselves working together, Muslims, Jews, Christians and Zoroastrians without exclusion. They realized, on that époque, one of the unprecedented translation in size and quality in the mankind history. Making in practice the idea of science as a universal patrimony open to the free contributions they concretized one of the fundamental principles of our modern system<sup>20</sup>.

Linking directly Islam to terrorism (*Islamic Terrorism*), intellectuals and instances in the west show the world their vision unfair and baseless; they show

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<sup>19</sup> Abbasid Caliphate was the third of the Islamic caliphates. The Abbasid historical period lasting to 1258 is considered the Islamic Golden Age. A number of medieval thinkers and scientists living under Islamic rule played a role in transmitting Islamic science to the Christian West. They contributed to making Aristotle known in Christian Europe.

<sup>20</sup> A.CHEDDADI, "*Un confronto di civiltà: la tolleranza nelle civiltà islamiche*", Regno-att. n.4, 2006, p.123.

their ignorance about Islamic system and affirm intolerance against Islam<sup>21</sup> as a distinguished faith. From a scientific point of view, until now no valid argument or proof against the intolerance of Islam was presented, but we assist to manipulation and exploitation of emotion pushing non-Muslims to hate Islam and Muslims from one part, and from a second one, constraining Muslims to defend their belief and their peaceful culture. From a rhetoric point of view Muslims defending their faith seem to defend terrorists (which is false), consequently this manipulated image is used, especially on mass-media, against Muslims and against the expansion of this belief.

In the latest decades we saw (with regrets) how the exploitation of ignorance about Islam allows some fanatics to use innocents and young people in terroristic attacks, without consideration neither for victims nor for the people sacrificed. As a result of such condemned acts the crucifixion of all Muslims around the world seems to be lawful and justified defense, not only but a patriotic act and a duty that unites the democratic and civilized world against rogue States.

Critics of Islam did not begin today, for a long time intolerant people tried to show that this religion promotes violence, bloodshed and brutality. Islam as legal and social alternative was and still is under attacks animated by intolerance and misconceptions, a process conducted by a sort of word mercenary<sup>22</sup>. Quran itself is understood and analyzed wrongly because of ignorance about Arabic language (its nuance, grammatical construction and forms). This is in reality a frequent problem facing Arabic Muslims too, especially when we know about the higher linguistic level and expressions of Quran. Other important observation regards the non-contextual interpretation, most often Quran is read out of its context, far from the circumstances of the revelation (*Asbab an-nuzul*), contrary to methodology rules, in a way that leads us to waste the true meaning and misunderstand the spirit of its legislation. The best example that testifies this and lets us understand the situation is reflected by the fifth ayah in suratu *At-Tawbah* (Quran 9:5); wrongly called sword verse.

We read the following: "And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful".

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<sup>21</sup> M.F. GÜLEN, "Toward a Global Civilization of Love and Tolerance", p 54–58, Published by the Light, Inc. New Jersey, USA.

<sup>22</sup> Word Mercenary: I define this category as eloquent people motivated by intolerance or by monetary or material gain, hiring their eloquence, to attack Islam and maintain Muslims under oppression, showing wrong images about intolerance and aggression to frighten people from Islam.



فَإِذَا أَسْلَخَ الْأَشْهُرَ الْحُرُمَ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ  
وَاخْذُوهُمْ وَأَحْصُرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا  
وَأَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ  
رَحِيمٌ

If we read this verse detached from its context, we will get an atrocious image about Islam its rules and its logic, but if we recall the context of this revelation we understand easily the meaning and the causes of such disposition.

First about the name “sword verse: *Ayat al-sayf*”, it was never mentioned in Quran or in the Sunnah such name; the verse belongs to a surah (verses) under the name of repentance “*At-Tawbah*”. It’s the surah number 9 in the Quran, it is about a legitimate defence of the Muslims against those who unjustifiably attack, persecute them and deny them their basic right.

Second, about the context of the revelation the first verse from this surah “*At-Tawbah*” tells us the following: “This is a declaration of disassociation, from Allah and His Messenger, to those with whom you had made a treaty among the polytheists”.

بَرَاءَةٌ مِنَ اللَّهِ وَرَسُولِهِ إِلَى الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ

Important announcement we get reading contextually is that the event was about a peace treaty binding the Muslims and the pagans of *Makkah*<sup>23</sup>, whom violated repetitively this treaty. So an ultimatum of four months was accorded to the pagans to change their behaviour and observe the obligations deriving from this treaty of peace (thing never done) otherwise war would be declared against them. This verse is strictly related to a war against a people who forced the Prophet and his companions to renounce to Islam, to leave their own homes and property, and even their hometown of Makkah to *Madinah*<sup>24</sup>. It didn’t stabilize a law rule imposing to fight against the world just because of the different faith.

<sup>23</sup> *Makkah*: the birthplace of the prophet Muhammad and the holiest city in Islam. It’s the first place where prophet received revelation of Quran; all Muslims perform pilgrimage “*Hajj*” visiting the “*Kaabah*” in this city. *Makkah* is Actual capital of Saudi Arabia.

<sup>24</sup> *Al-Madinah*: or *al-Madinah al-Munawwarah*, “the radiant city”, the second holiest city in Islam after Makkah. This city was the refuge where the prophet emigrated and where he died in 632 AD/11 AH.



Even though this rule was for a specific war and circumstances, the fourth verse from suratu “*At-Tawbah*” brings an important exception, in fact we read in this verse that: “Excepted are those with whom you made a treaty among the polytheists and then they have not been deficient toward you in anything or supported anyone against you; so complete for them their treaty until their term [has ended]. Indeed, Allah loves the righteous [who fear Him]”.

إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْقُصُوكُمْ شَيْئًا وَلَمْ يُظَاهِرُوا عَلَيْكُمْ أَحَدًا فَأَتِمُوا إِلَيْهِمْ عَهْدَهُمْ إِلَىٰ مُدَّتِهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ

The order to fight was clearly against aggressors whom contravene to the pact and attacked Muslims, not against the holy worldwide.

The same methodical problem in the comprehension of this verse faces other similar verses (and the Quran in general), putting them out of their contexts, when a good and objective examination can show that they can be defined only by the context in a way that makes them easily perceived and understood.

## Conclusion

Even though the necessity of a functioning and complete perception of tolerance, divergent practices are not so useful to formulate a conventional definition unifying nations hope about tolerance. It is hard to agree on a tolerance that opposes law rules and compromises the stability of institutions and peace in our social model. In the same time tolerance has no sense if it requires an abandon of proper faiths adopting the convictions of the fittest.

Promoting tolerance under the sign of acceptance for what is in contraposition to our formal and institutionalized attitude and practices will never be productive, never will dissolve debts about the meaning of tolerance. May be thinking tolerance under a more complex profile welding religious, legal and the variants can generate a global functioning definition with less risks related to temporary application and selfish interpretation.

Objective reflection on the broad sense of tolerance its usefulness and expectation impose some determinants questions which answer may facilitate an agreement on a more effective and functioning tolerance. Tolerance intended to maintain peace, justice and liberties.

- In the multicultural world pluralism, diversity and equity are universal rights or capitulations denied to Muslim countries?

- Still the west has to support the vision establishing that it well-being depends on the ill-being of the rest of the world?
- Which Status we recognize to human-being in the global era?
- Which governance forms can be more adapted to the new world order?

## **Tolerancja w islamskim modelu prawnym**

### **Streszczenie**

Czytając o tolerancji religijnej jesteśmy zmuszeni uwierzyć, że ta zasada pojawiła się w epoce oświecenia dzięki jakiejś filozofii czy systemowi politycznemu. W rzeczywistości oświecenie przyniosło tylko odzyskanie tolerancji, która wcześniej była skonfiskowana przez praktyki religijne i polityczne. Aby zrozumieć tolerancję w religiach monoteistycznych, musimy pamiętać, że była ona w swym aspekcie instytucjonalnym i praktycznym zdefiniowana już w świętych księgach tych religii.

**Keywords:** religious tolerance, monotheistic, holy books, ideologies, minority.

**Słowa kluczowe:** tolerancja religijna, monoteistyczny, święte księgi, ideologie, mniejszości.