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ISLAM AND CIVILISATIONAL RENEWAL

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Professor Mohammad Hashim Kamali

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AIMS AND SCOPE

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- ICR explores contemporary dynamics of Islamic experience in legal and religious practice, education and science, economic and financial institutions, and social and intellectual development.
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CONTRIBUTIONS AND EDITORIAL CORRESPONDENCE

Comments, suggestions and requests to: journals@iais.org.my

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EDITORIAL

We present six full-length articles in the January 2015 issue of our flagship journal, *Islam and Civilisational Renewal*. We have been publishing the ICR since 2008, and I am pleased to inform our readers that all issues older than two years are now available on IAIS Malaysia website and accessible for *free*.

The articles section starts with my own paper, “Catholics and Muslims in Dialogue: Working Together to Serve Others,” which focuses on two themes: challenges facing the youth and working together to advance interreligious dialogue. I make a number of suggestions about how the youth of today can be empowered and become full-fledged, active participants within their respective communities. The second part of my discussion on interreligious dialogue presents a stock-taking of problems and successes of the past, followed by challenges that both our communities face at present. This is followed in turn, by reflections and proposals on how those challenges could be addressed.

In her paper, “The ‘White Army of Terror’: European Converts to Islam and Public Imagination,” Monika Gabriela Bartoszewicz addresses the issue of the representation of European converts in European mass media. The three dominant images of Muslim converts presented in the mainstream media are described as “gullible and/or brainwashed”, “young and angry” and “swift and deadly”. Sadly, these stereotypes are also reproduced in some scholarly literature. The paper underscores the need to overcome this kind of stereotyping, because it unfairly links converts to political violence. Some suggestions are made by way of actionable policy recommendations.

In “Overcoming *taqlid* (indiscriminate imitation) in Muslim Institutions of Learning,” IAIS Research Fellow Abdul Karim Abdullah revisits some issues brought about by the widespread and lingering practice of *taqlid* and its effects on Muslim consciousness. The adoption of *taqlid* as a methodology in traditional education has distanced the later Muslims – scholars and lay people alike – from the primary source of Islam, the Qur’an. He calls for a fresh reading of the Qur’an to bridge the gap that between the Muslim community and this foundational source of the Islamic civilisation. He suggests ways as to how *taqlid* can be reduced and overcome.

In her “Women’s Rights: The Qur’anic Ideals and Contemporary Realities,” Dr. Elmira Akhmetova also IAIS Research Fellow, surveys the history of the rights of women in Islam. Women are equal to men yet different in some aspects of their rights and responsibilities. But the current conditions of women in contemporary Muslim societies are a far cry from the status they enjoy in the Qur’an and in actual practice during the early days of Islam. Thus it is necessary to empower women to become full and respected members of their respective societies. She recommends that a staunch advocacy of people’s rights and good governance would help the process of reform.

Tawfique al-Mubarak and Ahmad Badri Abdullah, also IAIS Research Fellows, team up to investigate *ijarah*-based financing as an alternative to the debt-based contracts that have proliferated in Islamic finance. The paper highlights the benefits of compliance with the *maqasid* (higher objectives) of the Shariah. These include higher profitability and a more effective management of risks, both Shariah and default. Some unresolved Shariah issues, such as the implementation of the contract of leasing ending with a sale are also addressed. In addition, the paper makes practical recommendations for overcoming governance and legal issues in the implementation of these contracts.

In “Can Rights be the Underlying Assets of Sukuk?: The Malaysian Experience,” Auwal Adam Sa’ad explores the Malaysian experience of using rights as assets for securitisation purposes. “Rights” in the sense in which they are used here are intangible assets, which can include government awards, goodwill, trademarks, receivables, concessions, and other rights. The paper surveys the views of the classical scholars to determine whether intangible rights are acceptable for the purpose of securitisation. Using a case study for the purpose of analysis, the paper advances the view that rights can be used as assets, as they are valuable and are capable of being possessed and owned.

In addition, we present five viewpoints and also five items in our Significant Events and Developments section, which include Tun Abdullah Ahmad Badawi’s speech on “Islamic Jerusalem (*Bait al-Maqdis*) as a Model for Peaceful Co-existence and Mutual Respect for all Humankind.” The Viewpoints section starts with HE Surin Pitsuwan, former Secretary-General of ASEAN, on “Peacemaking Efforts among ASEAN Nations,” followed by one of my own entitled “*Fiqh Al-Aqalliyāt* (Jurisprudence of Minorities) in Light of the Higher Objectives (*Maqāsid*) of Shariah.” Stephen Young, the Global Executive Director of Caux Roundtable has contributed a viewpoint on “How the Qur’an Rejects Extremism.” The last two viewpoints are contributed respectively by the Deputy CEO of IAIS, Mohamed Azam Mohamed Adil, on “The Federal Constitution: Is Malaysia a Secular State?” and Marco Tieman, Executive Director of LBB International and Adjunct Professor with Universiti Tun Abdul Razak Malaysia on “Halal Certification Procedures: Some Unresolved Issues.”

I thank all contributors as well as the ICR editorial team for their support. I also invite interested readers to send their contributions, whether in the form of full papers, viewpoints, significant event reports and speeches or book reviews. I hope that these modest contributions can help generate viable responses to the many problems and challenges facing our global community, both Muslim and non-Muslim, arising in a variety of contexts.

Mohammad Hashim Kamali
Editor-in-Chief

ARTICLES

CATHOLICS AND MUSLIMS IN DIALOGUE: WORKING TOGETHER TO SERVE OTHERS*

*Mohammad Hashim Kamali***

Abstract: This paper explores the ways Muslims and Catholics can cooperate to help the youth and advance better interreligious understanding among themselves. Cooperation needs to be informed by the nature of the issues involved and how best they can be addressed. The youth feel marginalised and in the decision-making bodies, the employment sector and government. Youth culture and lifestyle, youth issues among minority religious communities are also faced with challenges. The second part on interreligious dialogue looks into the ways how Catholics and Muslims have engaged with one another in the past, their main achievements, and the challenges they have faced in better understanding one another. Interreligious dialogue has also developed in various ways and become diversified over the years, not just focusing on doctrinal matters but also on practical cooperation. The aftermath of 9/11 brought our two communities face to face with new challenges over the spread of outlandish and extremist interpretations of our religions and the more pressing threats to security and peace we now face on both sides. The paper concludes with a set of practical recommendations.

Preliminary Remarks

The selected topics of the present Forum focus on ‘working together’ to serve the youth, to serve society and to advance inter-religious dialogue – all emphasising practical cooperation and service. These are also inter-related in that helping the youth involves helping society and would most likely also benefit interreligious understanding if Catholics and Muslims help their youth through joint cooperation. In both our great religions, each individual is called upon to work and service in response to that which gives purpose.¹ The good things that are done in such service can be the basis for collaboration in seeking better lives for all persons everywhere.

A sparkle of the divine light and spirit of our Creator inheres in everyone and all of us, which constitutes, in turn, the genesis of our association with dignity, an association that cannot be expunged nor terminated.² The dignity of others around us – both near and far – calls us to moral relationships of solidarity and justice with them. To work for the benefit of others opens the path to experience of our own dignity and to our ability to honour the dignity of others. Work is relational and deeply moral, and working together adds to the moral substance of its outcome. Work also challenges us to go beyond the comfortable and the accustomed. Work is, furthermore, a quest for meaning and the achievement of human dignity in the eyes of our Creator.⁴ Work without faith can be mean and selfish and fall short of our stewardship responsibilities within creation. Work with faith, however, brings us to our proper stewardship and is not disconnected from our salvation hopes and possibilities.⁵

Working together underpins the Qur’anic concept of *ta’āwun*, and the verse in which it occurs⁶ specifies two areas of cooperation among people: cooperation in good works (*al-birr*) and in pursuit of piety (*al-taqwā*), both of which have practical import. Cooperation and working together is thus an integral part of both our great religions. I confine this presentation to the first two of the three selected themes, and draw attention toward the end to helping the religious minorities together. I conclude with a set of actionable recommendations.

I. Working Together to Serve the Youth

The young are arguably the segment of population most open to embracing alternative visions of life worth living as they grow into their own responsibilities as citizens, parents and leaders. Yet the more accelerated pace of mobility and change in the era of globalisation, the information revolution, university campus life and modes of education have brought the youth face to face with many unprecedented challenges.

Youth is also an age of instability and flux due to changes in relationships, societal expectations, and the development of new emotional and psychological characteristics. The result is often a feeling of anxiety to cope with the hectic pace of life, survive and succeed. These pressures are not unique to Arab or Muslim countries; they are felt throughout the world. Many young Muslims feel, however, that they have little control over their lives or a stake in their nation’s future. Such pessimism leads to disengagement. To quote Malaysia’s Prime Minister, Najib Razak “We risk losing a generation of young Muslims to apathy and extremism. I believe Islamic countries must better understand what young people aspire to.”⁷

The youth also respond to challenges, and those who successfully do so, become harbingers of progress. Many of the momentous changes in the Muslim world during the decades of Islamic revivalism since the 1960s were youth movements for the most part reflecting their frustrations and aspirations – so that “Islamic revivalism has in such cases effectively become a youth movement.”⁸ Youth involvement in the early stages of the Arab Spring in the Middle East and North Africa (MENA) region was similarly described in 2011 as “the sight of corrupt old Arab tyrants being toppled at the behest of a new generation of youth idealists, inspired by democracy, united by Facebook and excited by the notion of opening up to a wider world.”⁹ I now raise the question: what are the challenges our youth are grappling with?

Although most of the challenges facing today’s youth are not restricted to any one ethnic or religious group, the nature of the issues faced may, more specifically, differ in different countries and communities. Youth in minority and immigrant communities have their own sets of problems, whereas young people in these groups as well as the larger societies surrounding them experience common challenges with regard to employment and marginalisation. The youth almost everywhere feel they are marginalised and under-represented in the economy and government. Politically and economically disenfranchised, young people find an outlet in protest. Two major challenges that currently face the youth are demographic and technological.

The Muslim world is experiencing a “youth bulge.” In 2010, people under 30 comprised about 60 percent of the population in Muslim-majority countries. A younger population means a bigger labour force. A youth bulge introduces latent energy into a nation’s economy and society. Left untapped, it can become a destabilising force.

In 2010, youth unemployment in the Middle East was 25 percent and in North Africa 24 percent. In Malaysia, while the country enjoyed full employment, one quarter of the graduates, or 52,000, mostly from public universities – were unemployed. The writing is on the wall. Graduates remain unemployed because they lack the skills to make them relevant in the workplace. They lack language skills and industry-related competencies.¹⁰

When young people lack opportunity, they grow restless. From 1970 to 2000, eight out of 10 countries experiencing new civil conflict had populations in which 60 percent were under 30. Furthermore, 23 percent of the world population are Muslim, but the 57 member countries of the Organization of Islamic Cooperation (OIC) conduct just over 8 percent of global trade. Structural reforms are thus needed to create employment opportunities, dynamic private sectors, political and constitutional reforms to enhance accountability and opportunity reallocation in the system.

The age of information technology has its own generation, the digital natives – those who have only ever known a connected world. Empowered by technology, young people can articulate their frustrations to a global audience. This has profound implications over the emergence of a new international political consciousness.

These two forces – demography and technology – shape young people's aspirations: they crave for freedom of opportunity. They reach out and often take the course of the debate outside traditional boundaries over such issues as accountability, role of media, poverty and corruption, racism, and environmental issues. Traditional career choices, lawyer or doctor, for instance, are changing – youth are taking new roles as film makers, artists, entrepreneurs and business managers. Access to education is also improving, yet young people often find that their qualifications do not match the opportunities available.

The information revolution is here to stay. This should not, however, mean unregulated behaviour. The youth should be equipped with the skills to think critically about sources, and have better grounding in values. They should understand that free information does not mean it is accurate; they should also appreciate and encourage the best traditions of discourse. To quote Najib Razak again: “we should see our youth not as a liability, but as an asset. They are an untapped resource that can lay the foundations for great success. Economic and political reform can give young people what they aspire to: a future defined by opportunity, not despondency.”¹¹

Youth Culture and Lifestyle: ‘Youth culture’ is typically associated with dress fashion, forms of entertainment, music, sports and sport heroes, and the attempt to live in the present moment – which can lead to a certain generational gap and rebellion against traditional society. Modern lifestyle is also characterised by an earnest search for meaning. It is the loss of meaning of life for many of the youth that leads them either down the road of immediate sensual gratification, drug abuse and violence, or alternatively the quest for new philosophies, cultures and even religions.¹² Survey reports among American children of immigrants indicate that parents often did not understand the American social context and its youth culture, which made it difficult for parents to be supportive as their children negotiate their way through adolescence.

Survey reports in the U.S. carried among Muslim youth also indicate that they did not feel supported by their parents, peers, educational institutions, or the larger society. The Islamic centres and mosques were similarly felt to have little knowledge of the challenges facing the youth and were, therefore, unable to provide contextualised religious education. Muslim youth felt torn between their parents' culture and mainstream American culture, prompting them into

maintaining a dual identity, one in the family and immediate community, and a separate “American” identity among peers and the school environment – so as to increase their acceptance and sense of belonging.¹³ While some youth mentioned negative portrayal of Islam in the media, almost 70% reported experiencing negative incidents due to their religious beliefs. Negativity and disconnect with the larger society often led them to radicalisation and engagement in risky and destructive behaviour.¹⁴ Traditional sexual ethics were also questioned especially in big cities. Only the fear in recent decades of dreaded diseases such as AIDS had to some extent put a limit to sexual promiscuity.

Teaching is most needed in a human community overcome by material concerns and secular suspicions of religion. Whereas true religion enhances our capacity for having dignity of self and respecting the dignity of others, advocacy of sectarian biases turn us away from our highest and best nature. Cultivating both the sense of service and acts of service within ourselves and among all peoples will bring together the human family in mutual respect, cooperation, peace and justice throughout the world.

Muslim Youth and the Role of Religion: It is the responsibility of scholars (*‘ulamā*) to provide the needed responses to challenges facing the youth, to make those responses easy for the people to understand, and address issues in the context of real life situations. They should, furthermore, present Islam in a contemporary language and draw attention to the most universal and all-encompassing teachings of Islam away from narrow and disputed theological positions. Some progress has been made along these lines in recent decade but the effort needs to be carried further.

Muslims should also increase their knowledge of Christianity. During the last two centuries, Western scholars have studied Islam extensively, some without predetermined biases, even sympathetic, but many have also done so with preconceived notions of Islam. Yet there have not been many studies of Christianity from the Islamic point of view in a contemporary language the way our ancestors did a thousand years ago. Today’s Muslim youth should be able to distinguish between western modernity and what remains of the authentic religious traditions of the West, which have a great deal more in common with Islam as members of the Abrahamic family of religions.¹⁵

The Qur’an values morally upright conduct, honesty, humility and compassion in everyone, including the youth. Everyone is accountable for what they do and none is to carry the burden of another. Yet religion and ethical norms have been challenged by secularist modernity and scientism. Pursuing social and moral causes based on purely human constructs may be liable to change with the rapidity of social change. The youth should oppose bigotry and corruption

in their own society and wherever they live, but the criteria for such judgment should, as Seyyed Hossein Nasr observed, be grounded in religious beliefs and ethics.¹⁶

Economic activity and finance must also relate to social objectives. Our share of material wealth comes with responsibilities to those around us; we have benefited from those who have gone before and need to provide for those who will come after.¹⁷ The dangers of rampant ‘financialisation’ and ‘monetisation’ of the economy are visited upon us when financial transactions are reduced to mere exchange of papers that move further and further away from economic realities and welfare needs of the people. Such transactions are known to benefit mainly the banks and financial operators themselves, much to the detriment of a stable and sound moral economy that relates to societal needs. In this domain, the revival of Islamic economics and finance in the latter half of 20th century merit attention. Islamic banking, finance, and insurance proceed, in principle, over the real economy and advise against financialisation of the kind that wreaked havoc to the global financial system. Disparity levels between rich and poor have grown wider, and the number of people caught in poverty trap has increased, despite unprecedented overall growth in the larger economies.¹⁸

It is not common knowledge, even among Muslims, that youth feature prominently in the Islamic scripture. The Qur’anic depiction of Prophet Abraham, for instance, is of a young man rebelling against his people’s decadent ways, and the tyranny also of a king (Nimrod), who claimed divinity.¹⁹ The narrative of Pharaoh similarly features a group of youth who defied Pharaoh and joined Moses: “And none believed in Moses except some youngsters of his people...”²⁰ The wise Luqman counsels his young son to widen his horizons in facing the vicissitudes of youth with a blend of rationality and emotion.²¹ Prophet Noah’s problematic relations with his wife and son underscore the values of individual character, filial and family loyalties.²² The story of young Prophet Joseph, as is well known, accentuates self-discipline and control of passion.²³ The Qur’anic narrative concerning the youth of al-Kahf underlines the potency of faith and prayer, perseverance and peaceful resistance against political tyranny.²⁴

Prophet Muhammad’s mission was supported, in no small measure, by the youth, most of whom had not reached the age of twenty; the Prophet had a good rapport with them and entrusted many among them with leadership positions. Speaking of the social make-up of his followers, the Prophet said in a hadith that “he was supported by the young, and opposed by the old,”²⁵ attested by the fact also that many of the Prophet’s closest friends and supporters were younger people.²⁶

The Islamic scripture thus recognises the youth as a particular segment of society with their own set of challenges. This can be seen from the naming

of some chapters (surah) and the main characters that feature in them. Youth issues are also identified and addressed in their own context, be it personal character, religion, family, politics or society. Textual guidelines provided in each narrative also consist mainly of teaching by example in connection with real life situations.

II. Working Together to Enhance Inter-Religious Dialogue

Catholics and Muslims together comprise over half of the world population. In their long-standing relations, they had varied experiences. At times they have misunderstood, opposed and even exhausted each other in polemics, yet their extensive commonalities have also held the promise of cooperation in good works between them alive. From the viewpoint of scripture, as Nasr wrote, Islam shares with Christianity and Judaism devotion to the one God, to the goodness of creation, the immortality of the soul, the accent on the inner life and the very basic principle that revelation is given in scripture. We are all people of the book in this sense, and though our books are different we share common narratives, sacred history, and basic values such as the sanctity of life, reverence for the laws of God, humane treatment of others, honesty, justice, kindness to neighbours and so forth. And this gives us, despite all differences, common grounds for discussion of the issues that both divide and unite us.²⁷

Our common challenges include the economic crisis, environmental concerns, weakening of the family unit, violence and threats to world peace. But the biggest challenge remains, as Cardinal Jean-Louis Tauran, President of the Vatican's Pontifical Council for Interreligious Dialogue aptly said is *ignorance*. "We don't really know each other. At the same time, dialogue is a necessity." Tauran noted that Pope Francis, when he was still Cardinal of Buenos Aires, appreciated the value of training Catholics in dialogue with Muslims. "We have to invest in education," he said, "there should be courses in seminaries about world religions, especially Islam. Dialogue takes place between people who have the same skills to discuss what they have in common."²⁸

These statements stand true for both sides. The Qur'an ordains the faithful to engage in interreligious dialogue with the people of scripture in the best of forms and in wisdom (al-Nahl, 16: 125). The expressions employed in this verse and also in (al-'Ankabūt, 29: 46), prompted Yusof al-Qaradawi to write that interreligious dialogue must aspire to excellence. "Only the best and most persuasive options that appeal to intellect and reason, conveyed most tactfully in acts and in words would qualify." There must be intellectual decency and respect for the views and beliefs of the different other. Abdullah Yusuf Ali also wrote that dialogue must

neither be dogmatic nor self-regarding, but sincere and considerate, motivated by the love of God and love of fellow humans.²⁹ Wisdom in a dialogue also implies rationality and role-relatedness. Each dialogue party should take into account the other party's culture and values and show understanding of its overall position. Dialogue should, furthermore, be informed by relevant technical knowledge of the issues.³⁰

Qaradawi recounts his own experiences of the 1970s when he participated in a Muslim World League delegation to the Vatican on "Human Rights in Christianity and Islam," together with his colleagues Muhammad Ma'ruf al-Dawalibi and Muhammad al-Mubarak. The proceedings of that dialogue were subsequently published in a book by the same title. Qaradawi added, "I recall Professor al-Mubarak saying that these encounters and dialogues are positive and beneficial for Islam and Muslims."³¹ Qaradawi further recounts his participation in separate dialogues in Paris and in Cologne in the mid-1990s together with a number of Azhar University scholars including Muhammad al-Ghazali and Mahmud Hamdi Zaqzuq - that they were engaged in penetrating questions and answers, that led to "understanding, information and closeness – *tafāhum, ta'āruḥ, wa taqārub* – that I thought were beneficial for both sides."³² In this connection, Qaradawi also quotes the hadith that "wisdom is the lost property of the believer; he is entitled to it wherever he finds it."³³

Wahabah al-Zuhaili observed that Muslims should maintain their relations with followers of other religions on the basis of dignity, equality and justice, and aim at "strengthening the foundations of security and peace. There should be no hostility... Islam also stands for moderation (*wasatīyyah*), which offers a firm basis for developing our relations with other communities and nations."³⁴ The two important factors which encouraged interreligious dialogues between the Vatican and the Muslim faculty at Al-Azhar University since the late 1990s, according to Scott Alexander, Director of Catholic-Muslim Relations at the Catholic Theological Union in Chicago were 1) Vatican Council II's initiative to approve *Nostra Aetate*,³⁵ and 2) personal endorsement of Pope John Paul II, who reached out to Muslims on many occasions - including his visit in May 2002 to the Umayyad Mosque in Damascus.³⁶

In a 1985 address to the Muslim youth in Casablanca, Pope John Paul II said:

Christians and Muslims! We have many things in common, as believers and as human beings. We live in the same world, marked by many signs of hope, but also by multiple signs of anguish. For us, Abraham is a model of faith in God, of submission to His will and of confidence in His goodness. We believe in the same God, the one God, the living God, the God who created the world and bring His creatures to their perfection.

This resonates well with the Qur’anic verse addressing people of the scripture: “We believe in what has been sent down to us and sent down to you. Our God and your God is one, and to Him do we surrender.”³⁷

It is a testimony to the strength of these two communities that at a challenging juncture of their relations, following Pope Benedict XVI’s 2006 Regensburg Lecture, *A Common Word Between Us and You* was initiated. A number of leading Muslim personalities approached the Pope and sought dialogue with him, to which he responded positively. Later the Pope himself went on record to say that “Inter-religious dialogue and intercultural dialogue between Muslims and Christians cannot be reduced to an optional extra. It is in fact a vital necessity on which in large measure our future depends.”³⁸ Christian leaders welcomed the Common Word initiative with enthusiasm. The messages the two sides exchanged between them basically came to this: we need to work together because we share an interest both religiously and also with regard to the security of our populations. Muslims, Jews and Christians hold in common between them the love of God, and love of neighbour.

The question as to ‘who is the neighbour’ may need to be readdressed in the context of today’s highly globalised world, which only serves to accentuate the meaning and purpose of neighbourliness. We have many interests in common, and the one uppermost is that as neighbours we should be able to live in peace and security alongside one another.

The Qur’anic conception of neighbour is inclusive of “neighbours who are near, neighbours who are distant, the companion by your side, and the wayfarer [you meet]”.³⁹ The first two need no explanation. As for companion by your side, this may be one’s friend and associate, or one who may be sitting next to at a congregation, meeting or event, just as the wayfarer one meets may be a travel companion or even a casual acquaintance on one’s travels. The renowned Qur’an commentator *al-Qurṭubī* (d. 1273 CE) wrote that neighbours in this verse include Muslims, Jews, Christians and polytheists. Abdullah Yusuf Ali further commented that of the four types of neighbours referred to in this verse, “the last is much wider” than the preceding three.⁴⁰

Without wishing to enter details, hadith reports provide categorical evidence on how the Prophet Muhammad, pbuh, repeatedly advised his Companions to be kind to their neighbours, observe their sensitivities and respect their rights. The Prophet had himself done so on numerous occasions, and also elaborated, more specifically, the rights of neighbours over one another. The neighbour’s rights include as in the following hadith:

If he seeks your help, help him; if he asks you for a loan, loan him;
if he becomes poor, support him; if he falls ill, visit him; if he dies,

participate in his funeral; if a calamity befalls him, comfort him; do not build higher than his house nor block fresh air and light on him; and do not annoy him.⁴¹

Following the Regensburg Lecture, the then Archbishop of Buenos Aires, and now Pope Francis advised “careful construction of a relationship with Islam that Pope John Paul II built over the last twenty years.” Muslim religious scholars and institutions welcomed Pope Francis’s election, as he had indeed lived up to his reputation of humility, compassion, and support for genuine dialogue. After his election at a large gathering with ambassadors from foreign countries, Pope Francis called for more inter-religious dialogue “particularly with Islam.”⁴²

Leonard Swidler, a Temple University Professor, wrote that dialogue is about experience, listening and explaining, not just scoring points in an argument. He advised that a dialogue participant may define himself but not the other, as one seeing from outside cannot fully define another. To invite others to reveal their opinion, one must reveal one’s own opinion first even if the truth be unpleasant. Participants should also come to the dialogue with no hard and fast assumptions as to where the points of disagreement may be.⁴³ Dialogue needs to be a continuing effort of engagement and response to issues. The alternative would be, as Dr Adil Ozdemir and Dr Terence Nichols of University of St. Thomas’s Centre for Muslim-Christian Dialogue jointly wrote “Misunderstanding and suspicion;” dialogue is therefore “a vital necessity.”⁴⁴

Dialogue occurs in many practical ways too. David Burrell recounts Muslim-Christian personal encounters at university campuses, as roommates, in conversations, and in mixed neighbourhoods. In religiously mixed societies in the Middle East, neighbours share in each others’ feast day celebrations, exchanging food and concern for family members in need. In such circumstances, those involved often come to realise how much more they need to know about their own faith in encountering what they have of another’s. What is telling about each of these scenarios is that persons are drawn to persons in a milieu which calls for sharing, only to discover that their sharing reaches into hitherto unsuspected faith dimensions. So sharing human concerns allows the manifest differences to be fruitful rather than off-putting.⁴⁵

The rising interest in peace studies has put a spotlight on religion as the missing link. Religion was often not included in such studies, but this has now changed. In his *Religion: The Missing Dimension in Statecraft*, Douglas Johnston noted the near silence about religion in many contemporary fields – peace and development studies among them. The religious dimension is significant whether a community enjoys a fragile peace or is enmeshed in outright violence. There is

little probing analysis of how religious factors are involved in peace building.⁴⁶ In her *The Mighty and the Almighty*, Madeline Albright stressed that the religious factor must be taken into account. Human security, a widely-used but also a fuzzy term, marks a shift about security. Historically, the literature on *security* was dominated by armament and war, which is now changing toward a broader concept of the development of human potential.

Religions for Peace, the global interfaith organisation, took the concept of security still further by using the notion of “shared security” to underline the message that no one is safe unless everyone else is.⁴⁷ Interconnectedness is the hallmark of globalisation, which has also meant globalisation of crises. Interconnectedness has, moreover, accentuated common responsibility, which underlines the work of international interfaith forums, such as the Common Word, Charter for Compassion, the Earth Charter, Building Bridges Seminar, and Groupe de Recherche Islamo-Chretien. Smaller national level Muslim-Christian forums also operate in Lebanon, Egypt, Turkey and elsewhere over issues mainly of pluralism and interfaith cooperation.

From the Islamic perspective, dialogue is meant to identify and strengthen commonalities between the dialogue partners, who are also advised to recognise but manage and reduce their differences. All effort toward these objectives should be informed by ethical norms and goodwill.⁴⁸ Interreligious dialogue should aim at securing the common good, enjoining what is right and rejecting what is wrong and harmful.⁴⁹ These objectives could subsume a wide variety of subjects: global security, international peace, socio-economic justice, ensuring adequate supplies of food and energy, as well as waging a joint campaign against human trafficking, drug abuse, production of weapons of mass destruction, and terrorism.⁵⁰

A different approach to interreligious dialogue which has become the focus of much attention as of late is the dialogue of praxis. It is essentially about working to bring different religious communities together to address practical problems that may have little to do with religious beliefs. The result can be better understanding and even new friendships and alliances. Dialogue of praxis may thus focus on environmental issues, media coverage, water issues, policy and practice of orphanages and the like.⁵¹

To take a somewhat unlikely example, an interfaith group in Ghana came together concerned about garbage and sanitation. They called their effort a ‘crusade against filth’ underlining the idea that cleanliness is a common theme in every religion. The impulse to act also came from an upcoming sporting event. So the religious leaders worked together on a clean-up campaign, public education and media outreach. They succeeded initially but then ran up against problems as they lacked a clear organisation and had no comparative advantage in running

garbage trucks. However, returning to Accra a year later, the religious leaders were focused on a complex election saga that threatened to produce tension. But because they had known each other on the garbage challenge, they were able to mobilise and head off conflict during the elections.⁵²

Notwithstanding many promising initiatives that have come from younger Catholics and Muslims in Britain, France, Germany and elsewhere in recent years, most of the participants in interreligious dialogue have remained nevertheless to be older people. As for the question: who is involved? Religious leaders, scholars and experts or lay congregations? In response it is said that inter-religious dialogues are often held among exclusive groups who hardly need persuading, and they operate in relative isolation from the lay congregations.

One particular area of common concern where Christians and Muslims can work together is to improve the conditions of the religious minorities.

III. Working Together to Help Religious Minorities

Muslim minorities living in the West face the challenges of a secular consumerist culture as well as issues of identity and citizenship that have taken a turning for the worse in the aftermath of 9/11. Yet compared to Muslim minorities elsewhere, those living in the West enjoy greater freedom to practice their religion. Some of the challenges they face are unprecedented and the rules of Islamic law concerning them have also remained relatively under-developed. This would explain the emergence of a new branch of Islamic jurisprudence under the rubric of *fiqh al-aqaliyyat* (jurisprudence of minorities) in recent decades, which is still developing.

While endorsing the numerous UN Conventions on the rights of minorities, Abdullah b. Bayyah considers the case of Muslim minorities in non-Muslim majority countries, from the juridical viewpoint, as a situation of necessity – even emergency (*awḍāʿ ḍarūrah wa idtirār*). This would justify concessionary rulings, the development indeed, of a special jurisprudence that takes into account the prevailing conditions of each country and community.⁵³

Broadly, Muslim minorities are expected to observe the religious and ethical guidelines of Qur'an and hadith concerning their relations with followers of other faiths. They must accordingly cultivate mutual respect and friendship with their host communities. The same holds true with regard to the treatment of religious minorities living in Muslim majority communities. It is important, however, that text and scripture is read and interpreted in the light of historical and contemporary developments. Sayyid Fadlullah of Lebanon thus wrote in his comment on the Qur'an (al-Mumtahanah, 60:8) - that this verse “emphasises upon us to treat

them [non-Muslim minorities] well, show favour to them, be just to them by acknowledging their rights, and not impinge on their legal and human rights.”⁵⁴

In response to a question whether Muslim minorities abroad may submit to the laws of non-Islamic countries, Sayyid Fadlullah made the following observations: If the laws in question do not contradict a clear injunction of Islam, then Muslims must abide by them, according to contract, and the entry visa, leave of stay or asylum by which he or she has been admitted into the host country is their contract. “A Muslim must abide by the rules of public order in any society he dwells in.”⁵⁵ The detailed five-point advice that Fadlullah gives to Muslim youth and emigrants who live away from their home countries may be summarised as follows: 1) to be honest and trustworthy; 2) to preserve their internal unity and protect it in terms of ideas and voicing of their legitimate needs and interests; 3) to build good relations and preserve peace and security in their host country; 4) to open up to beneficial political, cultural and social conditions that help them live at ease wherever they are; and 5) to present a positive image of Islam.⁵⁶

The historical context has evidently changed due to new political realities. The modern nation state has effectively removed the earlier distinctions among citizens based on religion. The laws of citizenship and constitutional guarantees of equality before the law have, on the whole, departed from the earlier positions of differentiation based on religion in favour of citizens’ equality in rights and obligations. A number of Muslim scholars, including Muhammad al-Ghazali, Abdul Hamid Mutawalli, Yusuf al-Qaradawi, Salim el-Awwah, Rashid al-Ghanouchi and the present writer have gone on record to say that non-Muslim minorities have the same rights and obligations as other citizens - they pay tax and participate in military service just like other citizens. The *fiqhi* expression *dhimmi* (non-Muslim citizens) should therefore be replaced by *muwāṭinūn* (compatriots); for they are citizens and compatriots in the full sense entitled to be treated equally before the law, as I elaborate below.⁵⁷

Dhimmi is a derivative of *dhimma*, a contract that is concluded between two parties. It is not a ruling or *hukm* of Shariah of permanent standing and has no independent existence unless it is created by the contracting parties. *Dhimma* exists when the parties to it are in existence. In historical terms *dhimma* came to an end, as Salim el-Awwah has aptly observed,⁵⁸ with the onset of colonial rule in the Muslim lands, because the parties to it no longer existed, hence neither the *dhimma* nor its bearer *dhimmi* existed any longer. This was because the western colonial state did not apply the regime of *dhimma* and no *dhimmi*s could therefore be said to exist as of that time. The whole concept of *dhimma* has therefore been replaced by *muwāṭanah* (citizenship).

On a broader note, Muslims and Catholics may decide to explore the prospects of cooperation between them in many other areas, such as the ones outlined below.

Conclusion and Recommendations

- Muslim and Christian leaders and intellectuals are called upon to learn more about each other, their beliefs and their concerns with a view to minimise misunderstanding and ignorance that breed suspicion, unfounded accusation and prejudice.
- Selected Muslim and Catholic universities and institutions of learning should establish exchange programmes for visiting individuals and groups to take specially designed orientation courses. This may also include youth visits and interviews that could help generate better understanding of the two religions. If so desired, the programme may be further extended to involve researchers and twinning of research projects on issues of mutual concern.
- School and university textbooks in Christian and Islamic countries should be revised to refrain from making derogatory references to each other, and advise their respective youth to nurture conciliatory approaches toward better understanding. That said, derogatory references to Christianity are probably less of an issue in Islamic sources and literature compared to their western counterparts – due mainly to Islam’s recognition of Christianity as a valid religion.
- Governments should provide opportunities for youth and women to participate in decision-making and in leadership training programmes. This is already happening in varying degrees but greater effort is needed and called for.
- The ‘*ulamā*’, imams, church leaders, interfaith groups and associations should improve the ways they communicate with youth and women. They may need to make themselves less judgmental and more approachable so as to improve the climate of understanding with youth and women that need their guidance.
- Universities should revise their curricula to address youth and societal issues in consultation with civil society and business leaders to map out the skills required of their graduates. Youth unemployment can partially be addressed by greater access to vocational and technical training.
- Islamophobia and extensive misrepresentation of Islam in western media have become widespread and a hindrance to successful interreligious cooperation. Religious leaders, scholars and media leaders are called upon to rectify false and exaggerated presentations of both Christianity and Islam in their respective constituencies.⁵⁹

Notes

- * Paper presented at the Third Catholic-Muslim Forum on *Working Together to Serve Others*, the Vatican, 11-13 November 2014.
- ** **Mohammad Hashim Kamali**, Founding CEO of IAIS Malaysia, graduated from Kabul University, and took his PhD in Islamic and Middle Eastern Law at the University of London in 1969. Professor Dr M. H. Kamali served as Professor of Islamic Law and Jurisprudence at the International Islamic University Malaysia (IIUM, 1985–2007), then Dean of the International Institute of Islamic Thought and Civilization (ISTAC). He also held Visiting Professorships at McGill University's Institute of Islamic Studies; Capital University, Ohio; and the Wissenschaftskolleg, Berlin. A member of the Constitution Review Commission of Afghanistan (2003), he has provided expert legal consultation to the new constitutions of Iraq, the Maldives and Somalia. Eminent authority on Islamic legal studies, he has published over 150 academic articles and 35 texts, including standard textbooks at universities worldwide. He can be contacted at ceo@iais.org.my.
- 1. Bible, Genesis, 9:1; *Laborem Exercens* (social encyclical based on Pope Leo XIII's *Rerum Novarum* 1891, published in September 1981); al-An'ām, 6:164; Hūd, 11:61. Interesting details are found in a "Statement of Concern and Common Understanding," issued by Steven B Young, Ibrahim M Zein, Theodore Cardinal McCarrick, and Abdullahil Ahsan exploring commonalities in the scriptural sources of Christianity and Islam.
- 2. Qur'an, 17:70. See for details Mohammad Hashim Kamali, *The Dignity of Man: An Islamic Perspective*, Cambridge: Islamic Texts Society, 2002.
- 3. Compendium (of the Social Doctrine of the Church, 2004, published by the Pontifical Council for Justice and Peace at the request of Pope John Paul II), 193; Qur'an, al-Nisā', 4:58, 125; al-Mā'idah, 5:9.
- 4. *Laborem Exercens*; Qur'an, al-Tawbah, 9:105; al-Inshiqāq, 84:6.
- 5. Bible, James, 2:17; Qur'an, al-Baqarah, 2:25, 82, 277; Aal 'Imrān, 3:57.
- 6. al-Mā'idah, 5:3.
- 7. Najib Razak, "The Challenges of Muslim Youth," *The New York Times*: Opinion Pages, December 14, 2012.
- 8. Seyyed Vali Reza Nasr, "Youth Movements," in ed. J. L. Esposito, *The Oxford Encyclopedia of the Modern Islamic World*, OUP 1995, vol. 4, p. 362: Due partly to their presence in large numbers on university campuses, student leaders played a visible role in Islamic revivalism and anti-government protest movements. Notable examples were Organisation of the Iranian People's Mujahidin in the 1970s who adhered to the left-of-centre interpretations of the Islamic scholar 'Alī Shari'ati (d. 1977), Hamas in the Occupied Territories of Palestine, and the Muslim Youth Organisation of Afghanistan. The Afghan youth movement disappeared in the 1980s and mostly joined the Jami'at-e Islami and Hizb-e Islami, both of which played important roles against the Soviet invasion of Afghanistan.
- 9. Declan MacCullagh, "Islam and the Arab Revolutions," *The Economist*, <http://www.economist.com/node/18486005> (accessed 3 June 2014).
- 10. Cf., John Anthony Xavier, "Are our varsities still relevant?", Kuala Lumpur, *New Straits Times*, 20 August 2014, p. 14.
- 11. Najib Razak, "The Challenges".

12. Seyyed Hossein Nasr, *A Young Muslim's Guide to the Modern World*, Kuala Lumpur: Reprint of 1993 ed. by Islamic Book Trust, 2007, pp. 230-2.
13. Sameera Ahmed and Maha Ezzeddin, "Challenges and Opportunities Facing American Muslim Youth," *Journal of Muslim Mental Health*, vol. 4, no. 2 (2009), 159-74, at 160-1.
14. *Ibid.*, 162.
15. Cf., Nasr, *A Young Muslim's Guide*, 238-9.
16. *Ibid.*, 243.
17. Centesimus Annus (encyclical written by Pope John Paul II in 1991 on the 100th anniversary of *Rerum Novarum*), chapter 4; Qur'an, 43:32; 24:33.
18. Yet there is a groundswell of criticism that Islamic banking and finance too have imitated conventional banking practices and are mostly grappling with the same problems as their conventional counterparts.
19. *Šāffāt*, 37:102.
20. *Yūnus*, 10:83.
21. *Luqmān*, 31:12-13.
22. *Al-Ra'd*, 13:43-46.
23. *Yūsuf*, 12:12:24.
24. *Al-Kahf*, 18: 12-15 and *passim*. It is interesting to note that the Qur'an names this sura after the youth of al-Kahf and the sura *Luqmān* after the wise (old) man *Luqmān*. See for further details *Āyatullāh al-'Uzmā al-Sayyid Muhammad Ḥusayn Fadlullāh, World of Youth (Dunyā al-Shabāb)*, tr. Khaleel Muhammed, Montreal: Organisation for the Advancement of Islamic Knowledge and Humanitarian Services, 1998, pp. 14-57.
25. The Arabic version reads "*fa-ḥalafanī al-shabāb wa khalafanī al-shuyūkh.*" Even though al-Bukharī and Muslim have not recorded this hadith, its meaning is endorsed by the fact that most of the prophet's early supporters were youth.
26. This included leading figures such as 'Alī b. Abū Ṭālib, 'Umar b. al-Khattāb, Zubayr b. al-'Awwām, and Usāmah bin Zayd.
27. See further details Seyyed Hossein Nasr, "Islam's Attitude Toward Other Religions in History," in ed. Muhammad Suheyl Umar, *The Religious Other: Towards a Muslim Theology of Other Religions in a Post-Prophetic Age*, Lahore: Iqbal Academy Pakistan, 2008, pp. 123-4; Steven Kepnes, "Islam As Our Other: Islam As Ourselves," in ed. Suheyl Umar, *The Religious Other*, 257.
28. <http://blogs.reuters.com/faithworld/2013/10/04/french-catholic-muslim-conference-concerned-about-future-for-dialogue/> (accessed 24 October 2014).
29. Abdullah Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary*, Leicestershire: the Islamic Foundation, p. 689, n. 2161.
30. Cf., Osman Bakar, *The Qur'an on Interfaith and Inter-Civilisation Dialogue: Interpreting a Divine Message for Twenty-first Century Humanity*, Kuala Lumpur: International Institute of Islamic Thought Malaysia (IIITM) and Institute for Study of the Ummah and Global Understanding, 2006, p. 28.
31. Yusuf al-Qaradawī, *Thaqāfatunā Bayn al-Infītāḥ wa'l-Inghilāq*, 2nd printing, 1425/2005, p. 50.
32. *Ibid.*, 51.
33. *Ibid.*, 31.
34. Wahbah al-Zuhaili, *Qadāyā al-Fiqh wa'l-Fikr al-Mu'āṣir*, Damascus: Dar al-

- Fikr, 2006, p. 415. Zuhaili quotes in authority the Qur'an (2: 143) : "And thus We made you into an ummah justly balanced that you may be witnesses over nations, and the Apostle a witness over yourselves."
35. Nostra Aetate, the Second Vatican Council's document issued in 1965 provides guidelines on how the church should relate to non-Christian religions, and lists a few common elements with Islam: worship of one God, esteem for the Virgin Mary, reverence for Jesus Christ, belief in a day of divine judgment, fasting, charity and prayer.
 36. <http://www.washingtontimes.com/news/2003/dec/1/20031201-091332-2655r/#ixzz39xXZi5u0> (accessed 24 October 2014)
 37. Al-'Ankabūt, 29:46.
 38. <http://www.stthomas.edu/media/catholicstudies/department/documents/2010-Nove.pdf> (accessed 24 October 2014).
 39. Al-Nisā', 4:36.
 40. Cf., Abdullah Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary*, footnote no. 552.
 41. Abu Bakr al-Bayhaqī, *Sunan al-Bayhaqī*, Riyadh: Maktabah al-Rushd, 2003/1423, Vol.12, p. 104, hadith no. 9113. Al-Bayhaqī added the note that one of the narrators of this hadith was *weak*. See for a discussion also Arif Ali Nayed, *Duties of Proximity: Towards a Theology of Neighbourliness*, London: Global Centre for Renewal and Guidance, & Dubai: Kalam Research & Media, 2010, 6-7.
 42. Zafar Siddiqui, *Star Tribune*, May 23, 2013: <http://www.startribune.com/printarticle/?id=208683701> (accessed 24 October 2014).
 43. Leonard Swidler, *Dialogue in Malaysia and the Global Scenario*, Kuala Lumpur: University of Malaya Centre for Civilisational Dialogue, 2003, p.79.
 44. <http://www.stthomas.edu/media/catholicstudies/department/documents/2010-Nove.pdf> (accessed 24 October 2014).
 45. David B. Burrell, "Christian-Muslim Dialogue in a World Gone Religiously Awry," *The Muslim World*, vol. 100, No.4 (October 2010), 414.
 46. Qamarul Huda and Catherine Marshall, "Religion and Peacebuilding," in *Integrated Peacebuilding: Innovative Approaches to Transforming Conflict*, edited by Craig Zelizer, Westviews Press, 2013, p. 151: A simplistic gauge is to flip through book indices. Thus in a 2000-page history of the World Bank's first 50 years, only one reference in the index is to religion and a passing mention of a 1962 conference of Catholic bishops. Islam does not appear, nor Muslims nor Imams.
 47. See for details, Katherine Marshall, *Interfaith Engagement and Positive Peace: What Works and What is Missing*, Kuala Lumpur: International Institute of Advanced Islamic Studies (IAIS) Malaysia Occasional Paper Series 7, 2013, pp. 6-7.
 48. Cf., al- Hujurat, 49:13.
 49. Al-Baqarah, 2: 148; Aal-'Imran, 3:104 and 110.
 50. Cf., Osman Bakar, *The Qur'an on Interfaith*, 21-23.
 51. Cf., Marshall, *Interfaith Engagement*, 15.
 52. *Ibid.*, 16-17.
 53. Abdullah b. Mahfuz b. Bayyah, *Ijtihād bi-Taḥqīq al-Manāṭ: Fiqh al-Wāqī' wa'l-Tawaquq*, Silsilah Waraqāt Ṭāba, No. 8, 2014, p. 50.

54. Grand Ayatollah Sayyid Muhammad Hussain Fadlullah, *Islamic Lanterns: Conceptual and jurisprudence questions for natives, emigrants and expatriates*, Eng. Tr. S. al-Samarra'i, Beirut: al-Malak Press, 1425/2004, p. 95.
55. Ibid., 91-92.
56. Ibid., 250-57.
57. Cf., Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam*, Cambridge: Islamic Texts Society, 2002, p. 78; Idem., *Citizenship and Accountability of Government: An Islamic Perspective*, Cambridge: Islamic Texts Society, 2011, p.113. See also Nasr, "Islam at the Dawn of the New Christian Millennium," 30.
58. This was the subject of a lecture delivered in London by Salim el-Awwah "*al-Muwāṭanah hiya Asās al-'Alāqah bayn al-Muslimīn wa Ghayrihim*," *Islam* 21, No. 20 (December 1999), 11. See also generally Rashid al-Ghanouuchi, *Huqūq al-Muwāṭanah: Huqūq Ghayr al-Muslim fi'l-Mujtama' al-Islāmī*, 2nd revised edn., Herndon: Va: al-Ma'had al-'Ālamī li'l-Fikr al-Islāmī, 1989/1410. Although Muslim jurists have identified *dhimmah* as a permanent contract, yet it cannot exist unless it is concluded in the first place, and it comes to an end or dissolved under certain conditions. A contract normally comes to an end when the contracting parties no longer exist.
59. In 2001, two percent of all news stories in western media presented images of Muslim militants, while just over 0.1 percent presented stories portraying ordinary Muslims. Ten years later in 2011, militant images went up from two percent to 25 percent, yet coverage of ordinary Muslims remained the same as in 2001 at 0.1 percent. See for details John L. Esposito, "2013 AAR Presidential Address: Islam in the Public Square," *J. of the American Academy of Religion*, vol. 82, no. 2, June 2014, pp. 291-306 at 301.

THE ‘WHITE ARMY OF TERROR’: EUROPEAN CONVERTS TO ISLAM AND PUBLIC IMAGINATION

*Monika Gabriela Bartoszewicz**

Abstract: This paper focuses on the representation of European converts to Islam in the public imagination. Firstly, the theoretical grounds for representations of converts in public imagination are identified and media images of converts involved in political violence are presented. The second part of the paper discusses the three prevailing motifs pertaining to European converts to Islam within the context of political violence. The Young and Angry, Swift and Deadly, and Gullible and/or Brainwashed motifs present in public imagination, and ubiquitous in the media and pop culture, are often mimicked in scholarly analyses. While these three images are not the only media representations of European converts to Islam, they are the most prevalent and thus indicate the main influences in shaping the public imagination. This paper accordingly elucidates how such conceptualisation leads to a false and misleading perception of the connection between European converts to Islam and terrorism.

Keywords: converts; Islam; media; stereotypes; public imagination; terrorism

Introduction

The specificity of the terrorist threat to Europe, with its home-grown, bottom-up dynamics, drew attention to European converts to Islam who are believed to be present in terrorist organisations in large numbers, where they occupy key positions and are considered to be assets of high operational value. The specificity of converts made them a particularly interesting object of public imagination both reflected and shaped by the media understood as printed and broadcasted information (i.e. newspapers and magazines, radio, TV and online media). These visions are fuelled and reinforced by media coverage, which furthers the spectre of ‘the white army of terror’.

The cliché stipulates that, because converts want to prove themselves worthy of newfound faith, they are more prone towards radicalisation and fanaticism that know no national boundaries.¹ This paper challenges the inflammatory, distorted and infused with disparaging stereotypes images implying that converts are the prodigal sons and daughters who went over to the ‘dark side of the force’ and allied themselves with the enemies who fight against everything the public holds dear. Trying to find an explanation for the tremendous success of stereotypes in shaping the public imagination, one needs to examine media influence over the people’s common perception as well as their ability to project, repeat and spread images easily convertible to stereotypes.

As Meili Steele points out, the difficulty with talking about public meanings from the outside derives from problems with developing a conception of public imagination, which would allow for bringing together contrasting approaches to the question of meaning.² This paper follows her understanding of ‘social imaginary’ as “the images, plots, symbols, and background practices through which citizens imagine their lives”. Thus, public imagination serves as a tool for recontextualising beliefs, concepts and images, enabling people’s situations or phenomena, which are not amenable to replicating existing institutions of meaning. This definition is accepted because it avoids the tensions between the objectivity and subjectivity of shared dimensions when discussing political life, and it simultaneously transcends the mental landscape of an individual to reach out to the collective.

This paper is an attempt to map out the realm of public imagination regarding European converts to Islam. The previous research in this area was restricted to European Muslims³ or to minorities in general.⁴ The present paper builds on the previous studies. However it offers a refined analysis of European converts to Islam arguing that: a) there is a palpable shift from the ethnic to the cultural criterion and so, consequently, b) converts are portrayed as the ‘other’ or, as Saeed⁵ phrased it, ‘the alien within’, and c) projected into the sphere of public imagination in a limited repertoire of representations which can be grouped into three stereotypical images: Young and Angry, Swift and Deadly, and Gullible and/or Brainwashed. Such images are transferred to the public at large and taken seriously as a social fact. In order to develop this argument, it is necessary to examine the media coverage of European converts to Islam and identify common denominators of these repetitive narratives on which the storylines are built.

Popular images prevalent in the media, newspapers, books and films reinforced the stereotype of a convert as a somewhat disturbed individual posing a terrorist threat to the society and the state. Such seeds sown in the fertile ground of mass imagination produced a persuasive visualisation of an ineluctable danger posed by the converts. Thus, a topos was born and took root with its own dynamics and meaning, contributing to what Sheila T. Murphy described as a “perceptual baggage” of shared beliefs – in this case regarding the European converts to Islam.⁶ This stems from the simple logic stipulating that a set of uncomplicated assumptions will be easily translated into a potent image. A symbol transforming the often contradictory and confusing reality into an easy and digestible world that can be fixed and the problems, otherwise incomprehensible, solved according to the tangible, cognitive assumptions based on a worrying lack of knowledge and recognition. Simultaneously, the very same public imagination which shaped the picture of a European New Muslim (ENM) in a trivialised and demonised way became a basis for security policies and strategic analyses.

Images and Stereotypes

Stereotypes, i.e. generalisations about social groups attributed to all the members without regard to variations existing among them, populate the media even though the researchers find these representations false. According to Gorham, stereotypical representations are important for two reasons: as agents conveying certain meaning and enabling action based upon it.⁷ Writing on the history of stereotyping, Sitaru noticed that the Western world inherited an assortment of stereotypes on Islam from the colonial period.⁸ These are deeply embedded in public imagination influencing and reinforcing pejorative perceptions through repetitive images and motifs. Seiter reminded that Walter Lippman, who coined the term 'stereotype' in his seminal book *Public Opinion* (1922), insisted that there is a clear link between public imagination and the stereotypes as the latter are simply pictures, i.e. images, employed by people to project and comprehend the reality.⁹

Myth and purposefully misleading information constitute the core of a stereotype building a simplistic, rigid and erroneous image based on discriminatory set of values.¹⁰ Seiter¹¹ underlies that stereotypes have a descriptive aspect which can be accurate albeit selective as well as an evaluative component applied to justify social differences resulting in an image tainted by ideology. Repetition of stereotypes, concludes Seiter, in terms of narrative conventions is so ubiquitous because it provides the lowest common denominator for building storylines which in turn resonate with the public imagination.¹² In order to become a stereotype, the given image needs to be reinforced and thus Graber concurs that it is very difficult to dispel the mythical images because they are so entrenched and incessantly repeated and because findings that contradict established orthodoxies are not well received by the public given the inherent resistance of stereotypes to information which contradicts them.¹³ In this context, Saeed argues further that the media representations focus on those who are the subject of public anxiety.¹⁴ This is reinforced by Bullock and Jafri, who in their analysis expose how the media shape who belongs and who does not belong to a given community (e.g. nation).¹⁵ Following the footsteps of their reasoning, I argue that European converts to Islam are seen and presented in the media as an implant of 'otherness' rather than being viewed as religious Europeans in their own unique way. Instead, converts are portrayed as outsiders, as the 'other', members of religion hostile to European values, espousing hatred, violence and gender oppression.

This is crucial since, as Murphy asserts, media portrayals not only may activate stereotypes, but also influence the subsequent judgments involving members of the stereotyped groups, and as such have a direct impact on the social as well as political reality around us.¹⁶ Ramasubramanian accentuates that people form

stereotypes about others even with minimal or no direct contact with given social group.¹⁷ This ability to reach the public imagination via a ‘cognitive shortcut’ gives the media special consideration. The generative capacity of stereotypes, underlies Tarlo, incorporates the circulation of counter-stereotypes by groups, which are more likely ‘othered’ as well as influences the processes of self-stereotyping.¹⁸ Ramifications of this dual dynamics allowing the stereotypes to have an immense impact on communities are even more pronounced when we take into consideration the research by Burris and Jackson who claim that a devout religious commitment partially reflects individual’s motivation to engage in religious self-stereotyping.¹⁹ By this token, if converts perceive themselves as exemplary religious group members and they absorb the media narratives shaping the realm of public imagination, they might be conditioned to align with the ubiquitous images presented by the media in spite of initial differences.

Converts

In reality, of the whole convert community, the overwhelming majority leads a peaceful existence and only a small fraction is radical. An even smaller number proceed to engage into terrorist activities. Edwin Bakker in his study, *Jihadi Terrorists in Europe* reports that there were fourteen converts to Islam (thirteen people with a Christian and one with a Hindu background) participating in terrorist attacks.²⁰ While the situation has considerably changed with the growth of the Islamic State of Iraq and Levant,²¹ and then the establishment of the caliphate – a single state, transcending hitherto national borders based on the Qur’anic law of Shari’ah.²² In the many human rights abuses, massacres, acts of terrorism, including the execution of James Foley, and other forms of political violence widely covered by the global media about 3,000 fighters from the West are involved of whom many seem to be converts.²³ In spite of being a minority, this small group of individuals has become emblematic, often taken as representative of the whole convert community projected onto the public imagination.

In this study I map out only the most repetitive images, clichés and stereotypes identified during my research bearing in mind that only recently has the interest in the whole convert community in Europe increased significantly. In public imagination conversion to Islam is most commonly explained in terms of “eccentricity, the insincere by-product of a marriage, the outcome of psychological crisis or disorder, social maladaptation...”²⁴ Those who speak about converts either perceive them as a danger to the secular state or focus on the religious and cultural ‘otherness’ of their identity. This is even more pronounced in the contemporary world, where security and strategic considerations have a central place. The public imagination stipulates that, after conversion, New Muslims want to prove their

worth and sincerity of belief and thus become 'more Muslim than Muhammad', in turn becoming particularly vulnerable towards radicalisation. In the absence of any meaningful narratives from the converts themselves, proxy hypotheses are built on thin grounds of extrapolation. Extreme examples are projected as a norm and embedded within negative discourses. The troubled childhood/adolescence thesis is often invoked, like in the case of Vladimir Khodov, who was one of the six leaders in the 2004 Beslan school hostage crisis or Pascal Cruypennick, a white convert from Belgium, who was arrested on suspicion of sending suicide bombers to Iraq.

Cruypennick spent some time in prison, married and divorced an African woman and finally converted to Islam. As a Muslim, he pressed his girlfriend, a young Rwandan convert Angelique, to travel to Iraq on a suicide mission. Angelique did not yield and later gave an emotional interview on Belgian television explaining how Cruypennick tried to manipulate her. According to the media, unhappy childhood, trauma of physical abuse he had suffered from his father and subsequent divorce of his parents pushed him into the life of crime.

Similarly, Jérôme Courtailler and his younger brother David who came from a French Catholic petit-bourgeois family are presented as the sons of a respected butcher who, after his business failed, divorced his wife, and abandoned his family. The Courtailler brothers first turned to alcohol and drugs, and then converted to Islam. Jérôme moved to London, where he subsequently radicalised, travelled to Pakistan, and is now being held in Holland, suspected of an attempt to blow up the U.S embassy in France.²⁵

Media coverage on Islam in general and on converts in particular focuses too much attention on sensationalised and/or violent events with frequently inaccurate or simplistic imagery, ignoring the nuances and allowing the stereotypes to develop in the audience's mind. It almost feels as if the same story is retold over and over again, with only a minor adjustment and small details, like the name or the country of origin amended here and there. The narrative shifts from the focus on ethnicity, to identity and culture. This is proved in a study by Sheridan, whose results suggest that religious affiliation might constitute a more powerful prejudice predictor than race or ethnicity which is exacerbated by feelings of fear and vulnerability and a perceived threat of the 'enemy within'.²⁶ There are no major differences between Cruypennick, Khodov and Courtailler. In the precipice of public imaginary one can find the same elements just in different configurations: rebellious youth, influence of an impressionable older colleague, conversion and radicalisation with subsequent engagement in some sort of illegal activity. At the same time, the stories of converts presented in the popular discourse in spite of the deceiving depth and richness of details are devoid of any information that could contextualise political violence.

Taking the *topos* of a violent convert out of context and infusing it with life independent of reality is, perhaps, most palpably observable in the case of Rakan Ben Williams. Ben Williams studied in a Western educational system, prayed in Christian churches and lived a Western life; he drank alcohol, lived promiscuously, and hated Muslims. But then, Ben Williams experienced an existential shift and secretly became a devoted Muslim adopting Al-Qaeda's aims and values. Hidden in Europe, undetectable, Rakan Ben Williams is 'the one who thirsts for the blood of the Crusaders, the secret soldier of Al-Qaeda,' gathering information and planning attacks and various Islamic websites presented his warnings as well as hunger for martyrdom. It would be terrifying if not for the fact that Rakan Ben Williams does not exist in reality – he is just a created figure, a media creation, stereotype of the model jihadi warrior who was born and raised in the West and now fighting against it meant to inspire other converts to follow his footsteps.²⁷

Although the world of media is not a monolith, there are dominant and recurrent themes that prevail (positive exceptions notwithstanding) and thus a conceptual framework should be adopted. Imaginary patterns stem from mixing unrelated factors (e.g. gender and religion) and maintaining confusion through semantic relativity that orchestrates discursive conflicts of two different cultures whereby Islam is incompatible with democratic values as a religion of violence. The catalyst for the growth of such images is drawn by a negative discursive frame, which leaves a vast space for media manipulation and stereotyping. In public imagination, there are three main motifs regarding European converts to Islam within the context of political violence. Media, which feed the repository of images and visualisations, usually portray the converts as Young and Angry or Swift and Deadly. Occasionally, a third picture of a Gullible and/or Brainwashed convert resurfaces. Only very rarely the converts are presented in a different way, although invariably such stories are meant to show an 'exception to prove the rule.'

Young and Angry

The Young and Angry portrait grounds this study in a broader perspective of social reality beliefs. Media stories projecting this image into the public realm tie together identity, socio-economic cohesion and security issues, and associate converts with social conflict on the one hand, and with cultural disharmony on the other. There are several stories presenting young people as young idealists revolting against the established system. This is, perhaps, best seen among several French converts, including the Courtailler brothers David and Jerome, and Christopher Caze all of whom fought in Bosnia and were later involved in other jihadist activities. Christopher Caze, a 25-year-old former medical student

who travelled to Bosnia as a hospital medic and returned to France as a radical Islamist only to lead the so-called Roubaix Gang with links to GIA. In March 1996, when the leaders of the Group of Seven industrialised nations, including French President Jacques Chirac were to meet in Lille, near Roubaix, Caze's group filled a Peugeot with explosives and compressed gas, and parked it three blocks from the meeting site. French police defused the bomb and raided the group's hideout in Lille. Four of the terrorists were killed there and Caze, who managed to escape, was stopped the next day at a roadblock and shot during an attempt to ram his way through the blockade. In short, this motif accounts for a youthful rebellion expressed in religious terms. As Roy observed, "To convert to Islam today is a way for a European rebel to find a cause; it has little to do with theology,"²⁸ and thus converts are portrayed as revolutionaries, who are not involved in actual conflicts and instead feed off the imaginary perception of dissent.

The Young and Angry motif is also the favourite explanation for female radicalisation. It provides a repertoire of images potent enough to interpret the phenomenon of women-terrorists. In this context, the iconic image of Muriel Degauque, the first white female suicide bomber, epitomises the Young and Angry motif in public imagination. Muriel Degauque was born and brought up as Catholic in the small factory town of Monceau-sur-Sambre in Belgium. In spite of her working class background, she graduated from the best high school in the area. Her life changed diametrically after the tragic death of her brother, who was killed in a motorcycle accident: she started to drink heavily; became a drug user (although she was never arrested); and she sometimes ran away from home or was seen sleeping at the doorstep of a local community centre. In her early twenties Muriel moved out to Brussels and married a much older Turkish man, whom she subsequently divorced two years later, in 1990. Being a very pretty, blue-eyed blonde, she had several boyfriends, leading her mother to remark that she lost count of how many relationships her daughter had.²⁹ In the late 1990s, Degauque met an Algerian man who introduced her to Islam, to which she converted (nonetheless, without forming any romantic relationship with him). Shortly after becoming Muslim, she met Issam Goris, who was seven years her junior, the son of a Belgian man and a Moroccan woman, and known to Belgian police as a radical Islamist.³⁰ They got married in 2000 and moved to Morocco where Degauque learnt Arabic and studied the Qur'an.

The couple returned to Belgium two years later; by then Degauque was no longer Muriel but Myriam. Media stories presented how new religion became the axis of her whole life and replaced everything that was there before. Migration to a foreign country followed by a social and cultural rupture only intensified the importance of Islam. Media representations formulated the same concerns

regarding her lifestyle: Degauque was wearing not only a headscarf but a chador, i.e. a full length robe worn by Muslim women in North Africa. Eventually, she wore a burqa with gloves so no one could recognise her, not only the regular Belgians who did not suspect a white Belgian, but even her friends who had known her for a long time.³¹ Journalists targeted convert's social circles and reported that Degauque removed herself from all kinds of non-Islamic influence and with the exception of her parents, she socialised only with Muslims. Another theme explored by the media was the fact that not only did she conform to the strictest interpretations of Shari'ah, but also required other people, including non-Muslims, to follow them. For instance, when she and her husband were visiting her parents, she would eat separately from her father and forbid them to turn the TV on or to allow any alcoholic beverages to be consumed in the house. During interviews Mrs Degauque described her daughter as "more Muslim than Muslim,"³² and explained how the relations with her family suffered because parents remained sceptical towards Islamic lifestyle of their daughter. The family grew very distant, eventually to the degree that Degauque did not even visit her mother when she was hospitalised. Similarly, Mr And Mrs Degauque did not even know that their daughter left the country when in August 2005 Muriel called for the last time from Syria informing her parents she would be gone for more than a year. On 9 November 2005, at the age of 38, Degauque committed a suicide attack against American forces in Baquba, Iraq driving past a U.S. patrol and wounding one soldier, in what is believed to be the first European woman convert suicide mission which became a focal point of all the media stories.³³

Gullible and/or Brainwashed

Prevalence of this motif in popular imagination was relatively short-lived and its proliferation proved to be inversely proportionate to the degree of terrorism's pervasiveness. In the past more than now converts were depicted as helpless individuals driven into the arms of religious group by "brainwashing" where groups mould new members through manipulation. It is worth mentioning though that the popular theory of brainwashing and coercive conversion is non-existent among European converts to Islam and these theoretical explanations of submission to powerful manipulation and group forces³⁴ are not present and therefore cannot be used to explain the phenomenon of converts' engagement in terrorism. Another variance of the Gullible and/or Brainwashed stereotype invokes an image of female convert lured to faith via marriage or romance. Several media stories purveyed images of Samantha Lewthwaite, the White Widow, involved in the terrorist attack in a Nairobi shopping mall, which killed more than 70 people³⁵ or Sally Jones (Umm Husain), a female British convert who travelled to Syria

to join the Islamic State with her jihadi husband³⁶ emphasising their naivety or opportunism.

Notwithstanding the reality, popular imagination feasts on the deathly potential of such a combustible concoction when a susceptible convert is preyed upon, radicalised and lured into terrorism. The Gullible and/or Brainwashed motif is best exemplified in the case of Mohammed Rasheed (Nicky Reilly), who in May 2008 was persuaded to attempt a suicide bomb attack in a restaurant in Exeter by British-based radicals.³⁷ According to the media his actions and even his conversion are supposed to be manifestations of his vulnerability. The media reported that Reilly, a recent convert, stood out as the lone English convert in the Islamic Centre for Ply and Cornwall in the Mutley area where he attended prayers.³⁸ In a statement released on the evening following the alleged attempted bombing, Deputy Chief Constable Tony Melville said: "Our investigations so far indicate Reilly, who has a history of mental illness, had adopted the Islamic faith. We believe, despite his weak and vulnerable state, he was preyed upon, radicalised and taken advantage of." This statement was constantly repeated and expanded on in all the media reports that followed. In the fertile ground of popular imagination the seed grew quickly and Reilly became the victim – a vulnerable individual who had been brainwashed and corrupted. Having been brainwashed, he cannot be held fully responsible for his own actions. So there is transference of responsibility for the alleged attempted bombing as his involvement in the attack was in some way involuntary.

This motif shows interestingly how in the public imagination conversion to Islam is causally linked to mental illness or other deficiencies rendering the convert unable to apprehend reality. Reilly's naivety is the main factor which removes responsibility not only for his involvement in the attempted bombing, but also for his conversion to Islam. This understanding is clearly visible in the comments from Reilly's neighbours, who claim that Reilly is "naïve and easily led" and "can't think for himself."³⁹ Furthermore, because Reilly is "mentally ill" with "the mental age of a ten-year-old," his actions, including his conversion to Islam, were not done of his own volition. To the contrary, in the discursive space of public imagination, Reilly was presented as an individual with mental health problems, who has been brainwashed into converting to Islam and was then radicalised, i.e. persuaded to carry out a terrorist attack.⁴⁰

In Reilly's case, the gullibility factor is encapsulated in his mental health problems. While all the public images presented Reilly as someone with "a history of mental illness" or "mentally disturbed," the details varied considerably. While some argued that Reilly was sectioned under the Mental Health Act, and had been in residential treatment, others acknowledged that the convert is a former mental patient, but instead of diagnosing him with schizophrenia, they argued

that Reilly's psychiatric needs are rooted in the fact that he suffers from some other form of disability. The images differed slightly from Asperger's Syndrome to autism to an obsessive compulsive disorder. Furthermore, as if one factor was not strong enough to account for engagement in terrorist violence, other narratives presented Reilly as someone with a history of self-harm and several suicide attempts. According to these versions Reilly had a very low IQ, which not only caused learning difficulties, but also made him unable to exercise proper judgements. Again, in the plethora of public images the details varied: Reilly either self harmed by slashing his wrists or took an overdose when he was 16 only to stab himself in the stomach. Alternatively, his suicidal tendencies were accentuated. Similarly, the public imagination could not decide whether Reilly made only two apparent suicide bids or tried to commit suicide several times. The final reason why it was possible to brainwash Reilly into committing a terrorist attack is because the convert comes from a dysfunctional family.

Thus, the narratives suggest that Reilly should be seen nearly blameless as in the whole terrorist plot he was a manipulated puppet, while his conversion and his actions are merely manifestations of his vulnerability. These vulnerabilities rendered him inept and lacking life-skills and subsequently provided an easy prey for Islamic radicals. In public imagination, Reilly "obviously met up with the wrong people" and "was brainwashed into becoming a Muslim"⁴¹ by others who masterminded the whole terrorist plot. While the case of a "Big Friendly Giant"⁴² still remains somewhat exceptional, the aim of a Gullible and/or Brainwashed motif in public imagination is to highlight how vulnerable people are being taken advantage of by extremists.

Swift and Deadly

The Swift and Deadly motif is the most ubiquitous of all the media portraits of European converts to Islam present in public imagination. It preys upon the subconscious fear of terrorist attack that is impossible to predict and prevent, and in this sense the figure of a blonde, blue-eyed convert epitomises all the terrors. "I lived exactly the kind of life that every young person in the West wants to live. But I could not see any meaning," wrote Eric Breiningner, also known as Abdul Gaffar El-Almani in his memoirs.⁴³ Breiningner is an author of *Mein Weg nach Jannah* (My Path to Jenna – Jenna meaning paradise in Arabic), an autobiography believed to be a genuine account of the German convert that was published after his death on one of the jihadist websites and served as a foundation for the media representations. The Swift and Deadly image provides the parameters of the media debate and the stories converts within a discourse directly referring to security issues. Representations follow the pattern of

describing the departure from 'normal' to 'radical' or 'extremist.' For instance, media revelled on Breininger's pre-Islamic life of 'a typical western teenager,' which included frequenting parties and numerous relationships with girls. What was normal for him before the conversion, in hindsight became "following condemned Satan's way."⁴⁴ Breininger's quest for the meaning of life took a new turn, when in his workplace he came into contact with a Muslim colleague who introduced him to Islam and took him to a local mosque.⁴⁵ Breininger found the truth and sense his life was lacking; like a castaway who discovers a paradise island. Breininger converted and radicalised almost simultaneously, and his conviction that everyone must live their lives according to the values he professes, progressed incredibly fast.

The period of total withdrawal and swift transformation constitutes the second building block of media representations pertaining to the Swift and Deadly image. Media representations emphasise how converts fail to acknowledge the important and meaningful intermediate positions, hybrids and syncretism. To illustrate this point, they inform the public how after conversion Breininger devoted himself to the study of Islamic audio lectures and books. He quit school, stopped playing football, withdrew from his social circles and spent more time with new "brothers in Islam".⁴⁶ The representations are securitised in terms of their impact on social harmony. Accordingly, they present how Breininger convinced his German girlfriend to convert and marry him under Islamic law. However, because it was not enough, he then demanded of his wife to stay at home, avoid going out and observe the strictest Salafi interpretations of Shari'ah. The woman refused to conform, as she converted only to please Breininger, not out of genuine conviction; they ended the relationship and Eric moved in with another convert, Daniel Martin Schneider, who in April 2007 was arrested as a prime suspect in the Ramstein Plot. A week before Schneider was arrested, Breininger left for Pakistan to obtain military training in one of the Islamic Jihad Union camps.

The third main component of the storylines focuses on hatred and violence. In a propaganda video released in 2008 and picked up by the media, especially in Germany, Breininger was seen armed and in fighter's gear. The audience could hear him confessing that he wants to die as a soldier of God.⁴⁷ After his death the verbal claims were further reiterated by invoking his diaries where he wrote: "Hate of the kuffar [Arabic for "the infidels"] grew in me," and the implication is that he believed his choice to be the only option viable for every Muslim person: "Every Muslim should instil in themselves that one must live according to Allah's laws and that we need to rebuild an Islamic Nation."⁴⁸ His theological deliberations and passages suffused with the pathos of a soldier of God were widely quoted. Simultaneously, the two continuous variables, the threat from

within and the threat from without, were interacting powerfully to enhance the impression of imminent danger. In case of Breininger this referred to his calls to all Muslims, not only males, to join the *mujahidin* (fighters). The rationale behind it was the fact that many of the fighters wanted to start a family and Breininger insisted that terrorist camp is an ideal environment for raising children free from the harmful influences of the western societies. Thus, a vision of raising a 'white army of terror' was projected, especially that Breininger was allocated in the German Taliban Mujahidin group created in the first place for German-speaking Muslims who wanted to join *jihad* or, as Breininger described it: "to fulfil their duties to Allah and fight in the path of Allah to make Allah's word reign supreme."⁴⁹ He was ecstatic to see the group steadily grow,⁵⁰ especially that the new group consisted of whole families with children making Breininger's dreams of new generation of *mujahidin* a reality.⁵¹ The final message, usually a direct transcript from Breininger's diary, was unequivocal:

With God's permission this offspring will become a special generation of terrorists that is not listed in any of the enemy's databases. They speak their enemy's languages, know their manners and customs and are able to mask and infiltrate the land of the kuffar [infidels] because of their appearance. There they will Insha'Allah be able to conduct one after another operation against Allah's enemies thereby sowing fear and terror in their hearts.⁵²

Conclusion and Recommendations

My explorative research analyses the most frequent stereotypes shaping the public imagination by focusing on media images via discursive patterns concerning European converts to Islam. By examining various types of media narratives, it identified themes, topics and patterns grouping them into three most distinctive stereotypes regarding converts to Islam. The list is by no means exhaustive; to the contrary, exceptions or deviations occur. Nevertheless, it indicates the main influences in shaping the public imagination with regards to European New Muslims.⁵³

In an attempt to address theoretical blind spots, this paper offers the flavour of the three prevailing motifs present in public imagination pertaining to European converts to Islam within the context of political violence. By examining various types of media narratives, I pinned down themes, topics and frames grouping them into three most distinctive stereotypes: Young and Angry, Swift and Deadly, and Gullible and/or Brainwashed. Hence, three very persistent stereotypes inhabit the realm of public imagination and set out the agenda for public discussion

framing how the audience should think and talk about European converts. What those three images have in common is the refusal to comply with the Western way of life, renouncing the shared values and the core beliefs constituting an alien element within the society. The power and impact of such stereotypes and their concrete consequences should not be underestimated. In the words of Emma Tarlo: "Much has been written about the power dynamics involved in the creation of dominant stereotypes and their oppressive effects as they collective imaginaries and become a basis for collective action."⁵⁴

The first one, *Young and Angry* picture presents converts as disaffected and often troubled young people, who perceive the current wave of Islamic terrorism as the new revolution and join an idealist fight against the evils of the world, against the rich, the powerful, and the unjust. From this perspective, The Qur'an appears as the new *Das Kapital*. The first motif renders the road from convert to jihadist remarkably short and simple and the terrorist potential is immense. In public imagination only because someone new to Islam does not have the cultural bearings or religious grounding sound enough to resist radical interpretations of Muslim faith. Consequently, it should be relatively easy to influence such person and, furthermore, it is believed that many young converts come with romanticised notions of the clash of ideas so typical for adolescents.

The second one presents converts as operational assets for the jihadist circles, whereby the instrumental value of European New Muslims is underlined not only in case of proselytising, logistics or support, but also for planning and carrying out terrorist attacks. Converts are portrayed as Swift and Deadly being the ultimate hidden enemy. The second picture partially explains why, in spite of the small numbers drawn to terrorism, the security services are stubbornly focusing on converts, and why they perceive them as a serious and growing terrorist threat. It furthermore coincides with a belief in coercive conversion and radical groups pressurising the newcomers into committing acts of political violence.

The third and final motif explains converts' terrorist activities with brainwashing and naivety. Murphy warns against a belief that, through an exposure to "disconfirming information,"⁵⁵ which directly contradicts the prevailing stereotype it will be rendered obsolete and diminished is naïve. Atypically counter-stereotypic examples that are too exceptional or deviant either have no impact or provoke a 'boomerang effect' bolstering the stereotype instead of conquering it. If Murphy is correct, then the (rare) media stories conveying extremely positive convert images, do more harm than good. Furthermore, it needs to be observed that just like violence breeds violence, stereotypes breed stereotypes. Pointing towards strong negative stereotypes of Westerners among Muslims, Sitaru observes that the arising stereotypical imagery is interconnected and shapes parallel paradigms of self and other's

perception while provision of complex information does not mean that certain images will lose credibility.⁵⁶

Religious illiteracy of journalists identified by Wright might be one of the reasons for the media bias.⁵⁷ Unfortunately, the motifs present in public imagination, ubiquitous in the media, pop culture and presented as social dogma are often mimicked in scholarly analyses, which leads to a false and misleading perception of the connection between European converts to Islam and terrorism. Popular images present converts as gullible individuals, easy to influence and prone to fall into an outbidding spiral when trying to prove their worth to the new brethren. The 'youthful anger' hypothesis is adjusted and presented rather as an 'outbidding spiral' with converts wanting to prove their true Muslimness and show without any doubts that in spite of being newcomers to religion they truly belong to the community of believers. Therefore, as opposed to the inchoate rage of a young person who is in general very impressionable, we have 'youngsters' in religious terms, who want to prove that as Europeans they left behind everything from where they came and everything that in their view the West stands for moral emptiness, hedonism, secularism, shallow consumerism and even a perception of a Western conspiracy against Muslims. What is more, they are swift and deadly as they never hesitate, possess an intimate knowledge of the enemy and are nearly impossible to intercept. In spite of the fact that some of these elements are true to a certain degree, it is necessary to point out that these are not present throughout all the cases of converted individuals. What in public imagination is presented as a rule, in reality proves to be rather an exception.

The paper suggests the following policy recommendations:

- There is a need for a proper conceptual framework for the media portrayal of 'others'. Muslims with the radical and extremist inclinations constitute a very small minority among the European converts and do not represent the entire population of the European converts to Islam. Therefore, media bias and prejudice in covering of Islam and Muslims should be rectified. All forms of ethnic and religious discriminations in the public space should also be restrained.
- Since the religious illiteracy of journalists is one of the main reasons for media misrepresentations of the European converts in media, the journalists are advised to enlighten themselves about Islam and its position on radicalism prior to writing on the subject.
- New converts to Islam are in need of the proper guidance in understanding the principles of Islam. Comprehension of the universal values of Islam such as moderation, mercy, justice, equality and respect toward all human beings may enable them to live more peacefully with themselves and their larger societies and functional lives.

- In order to break the existing stereotypes, media could narrate more successful and encouraging stories of European converts and their contributions to humanity and their respective countries.

Notes

- * Dr Monika Gabriela Bartoszewicz is the Head of Research in the Centre for the Thought of John Paul II in Warsaw, Poland. She can be contacted at mbartoszewicz@centrumjp2.pl.
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OVERCOMING TAQLID IN MUSLIM INSTITUTIONS OF LEARNING

*Abdul Karim Abdullah**

Abstract: The emergence of *taqlid* or indiscriminate imitation of the work of former scholars by later scholars was a major turning point in Islamic history. It created two classes of scholars, those who referred to the primary sources of the Shariah (the early scholars), and those that did not (the later scholars). As a result of the expectation to follow and build on the work of the early scholars, the Qur'an and Sunnah attained the status of "remote" sources, at least as far as the later scholars were concerned. The works of the early scholars, by contrast, were brought forward and came to be treated, for all practical purposes, as "primary sources." The distancing of the later Muslims from the Qur'an was reflected in how Muslims came to relate to the sacred text. Scholars began to look *outside of the Qur'an* itself for the *meaning* of the Qur'an, more specifically in the commentaries of their predecessors. Other Muslims were advised to focus on recitation and leave the interpretation of the sacred text to scholars. As it was the Qur'an that provided the impetus to the rise of the Islamic civilisation in the first place, civilisational renewal will require a re-engagement with the Qur'an, by scholars as well as the wider Muslim community. Reopening access the Qur'an will have to begin with a reappraisal of learning methodologies currently in use. This will require first and foremost overcoming *taqlid*.

Keywords: *taqlid*; education; civilisation; reform; knowledge

Introduction

Existence manifests itself in the form of cycles. Civilisations arise, grow and decline. The Islamic civilisation was no exception. Like other civilisations, it experienced both growth and decline. After declining, it emerged again in different parts of the world.¹

There is no doubt that the key factor in the rise of the Islamic civilisation was the *enlightenment* conveyed by the Qur'an, delivered and implemented by the last prophet, Muhammad, (pbuh).² "No other sacred scripture has ever had a similarly immediate impact upon the lives of the people who first heard its message and, through them and the generations that followed them, on the entire course of civilisation."³

Success requires, among other things, knowledge of the difference between right and wrong. Man left to his own devices is unable to answer the deepest questions, those relating to good and evil, right and wrong, or noble and base: "on

its own, the human mind is incapable of understanding the complete objective truth about, and the higher purposes of, the human experience.”⁴

The rise of empirical science, while contributing to economic progress and development, has distanced man from *revealed* knowledge. The insight provided by divine revelation is obtained as much by intuition as by intellection, as divine revelation touches on themes beyond the purview of empirical science. Relying as it does exclusively on sensory perception, empirical science is unable to provide credible answers to deeper questions, in particular questions regarding good and evil.

Empirical science is ill equipped to enlighten man about ethics, to make statements of a normative character. Such science can only *describe*, but not *prescribe*. It can only answer questions about “what is” but not questions about “what ought to be.” The application of the modern scientific method – experimentation and analysis – can only identify and describe specific cause and effect relationships in the physical universe. These relationships are summed up in the form of generalisations of varying degrees of precision, depending on the subject, known as “scientific laws.” Empirical science, due to its dependence on sensory perception, is unable to comment on any aspect of – or even to acknowledge – metaphysical reality.

Human reason without the assistance of divine revelation within the humanities similarly has its limitations. It is limited in its ability to grasp the deepest, transcendental truth. Once again, the inadequacy of merely human effort to answer the deepest questions obliges man to turn to knowledge obtained from a higher source. This knowledge comes to man in the form of what is known as *divine revelation*.

The latter provides man with a bridge to the “beyond” or what the Qur’an refers to as the “unseen” (*al-ghayb*), the realm of existence inaccessible by means of mere sense perception. Revealed knowledge is the guiding light received by man from his Creator. It enables man to live in accordance with the divine will, to conduct himself with justice and to fulfill his destiny.

Divine revelation provides humanity with guidance in the form of universal principles. The fact that these principles have been revealed during particular historical periods, or in response to specific historical developments, does not diminish the universality or applicability of those principles at other times.⁵

The universality of the ethical principles conveyed in the Qur’an, and illustrated in the practices (*sunnah*) of the prophet (pbuh), makes possible their application at different times and in a variety of different contexts. However, if universal principles are confused with practices that may have been appropriate for a particular historical period but may not be suitable for another one, difficulties may arise.⁶ Expecting past – historically bound – interpretations to provide viable

responses to contemporary problems is problematic, as early scholars “could have no conception of the necessities of the twenty-first century Muslims.”⁷

Emergence of *taqlid*

Taqlid has been defined as “indiscriminate imitation of others.” *Taqlid* in the sense in which this term is used here obliged scholars to defer to the works of their predecessors, rather than refer directly to the primary sources of the Shariah.⁸ It was expected that a Muslim “should follow one or the other of the established schools of thought and abandon his judgment in favour of interpretations of the earlier centuries.”⁹ Intellectual activity was reduced to making commentaries on commentaries.

With the so-called closure of the door of *ijtihad*, the ‘*ulama* resorted less and less to the sources of Shariah finding solutions to problems. Instead of addressing social issues and attempting new solutions the ‘*ulama* of the later ages ... occupied themselves mainly with elaboration ... of the works of their predecessors.”¹⁰

Taqlid may be practiced by a layman or a scholar. The common factor in both types of *taqlid* is that an appeal to authority takes precedence over reasoning based on evidence as the criterion for differentiating sound opinion from an unsound one.¹¹

No human activity is immune from the practice of *taqlid*. It may be found in jurisprudence (*usul al-fiqh*), interpretation (*tafsir*), or in other pursuits. As *ijtihad* (juristic reasoning) presupposes interpretation, it follows that the results of jurisprudence depend in a decisive way on the *methodology* of interpretation applied in the reading of sacred text.

The institutionalisation of *taqlid* took place in stages. It narrowed the scope and diversity of Muslim intellectual inquiry.¹²

At first, *ijtihad* was prohibited. Then in the fifth and sixth centuries, scholars were restricted to *tarjih*, or giving preference to the opinion of one imam or another on questions of *fiqh*. But then *tarjih* was prohibited and scholars were restricted to choosing between rulings within a single *madhhab*.¹³

It appears that the practice of confining themselves to elaborating the works of their predecessors, without accessing the primary sources of the Shariah directly, distanced the later scholars from the first and foremost source of the Shariah, the Qur’an. This was a consequence of the adoption of a specific hermeneutical principle. The principle in question

required that participants in a school tradition ... preserve loyalty to the tradition by taking into account the interpretative achievement of older masters ... law had to be justifiable by reference to the continuity and established identity of the school. Muslim jurists were not, as individuals, in solitary and direct confrontation with revelation: they found their way back to the meaning of revelation through tradition.¹⁴

By obliging later scholars to access the primary sources of the Shariah through the eyes of former scholars, the practice of *taqlid* altered the relationship between the believer and the sacred text. The believer – whether scholar or expert – no longer enjoyed, as the early generations of Muslims did, direct access to the sacred text, but was expected to refer, and indeed to defer to the views of renowned scholars.¹⁵

No doubt, *taqlid* was introduced with good intentions. After all, even children learn first by imitating those older than themselves. Thus, some forms of *taqlid* – such as that applied in religious practices or *ibadat* – are not only acceptable but even necessary, especially in the case of the vast majority of ordinary Muslims. Yet even a child has to grow up at some point, and stop depending on his or her parents. The fact that a young person no longer needs to “imitate” his or her more knowledgeable peers is a sign of maturity. Such a person knows the reasons for his or her actions and is also broadly aware of their consequences. Such a person thereby becomes *responsible* for his or her actions.

Taqlid was introduced in part as an answer to the growing plurality of opinions and a desire to put an end to the proliferation of debates and disagreements about what precisely constitutes Islamic law.¹⁶ There may have been a perceived need to codify the law and introduce a degree of uniformity into it and in that way to make it easier to administer it, especially by less knowledgeable judges.¹⁷

However, *taqlid* is problematic for several reasons. First, simply following – without reflection – the religion of one’s forefathers is censured in the Qur’an in several verses, namely in 5:104-5, 17:36, 21:52-54, and 43:22-24. Moreover, the uncritical acceptance of the views of former scholars departed from the tradition of *ikhtilaf* (differences of opinion) that characterised the early generations of Muslims.

No researcher or scholar has ever found a valid text from either the Qur’an or the hadith, or even an argument based on pure reason, to support Islam’s approval of *taqlid*, for the very idea is alien to Islam’s view of humanity. The teachings of Islam clearly state that all assertions must be supported by either verifiable evidence or proof ... If such conditions cannot be met the assertion is to be rejected.¹⁸

Despite worthy efforts by renowned institutions of higher learning such as the University of Al-Azhar, going back for decades if not longer, *taqlid* continues to be practiced in several parts of the world. In India, for example, “Hanafi jurists have long argued — as did many of those belonging to the other schools of Sunni law — that all continuing legal reflection ought to take place within the parameters of the school, in strict conformity to the methodological principles articulated and agreed upon by the earlier masters.”¹⁹

The practice of *taqlid* also persists in some institutions in Pakistan. For example, “The ulama of Deoband not only adhered to the Hanafi school, but also insisted that any deviation from *taqlid* was a serious matter of concern and must be confronted because it was no less than *bida’* (innovation). To the Deobandis, the gates of *ijtihad* were firmly closed.”²⁰

The adoption of *taqlid* was justified by the claim that the earlier generations of Muslims had a *better* understanding of Islam than the later generations. The better understanding was due to the closer proximity of the earlier generations to the prophet (pbuh). This resulted in the perception that “the sayings and opinions of the *salaf* (predecessors) are nothing short of sacred. This is especially true in regard to the understanding, *ijtihad*, and interpretations of the *salaf* some of which have been elevated by the traditionalists to the status of revelation itself.”²¹

One result is that “in our traditional institutions” the authority of past scholars “is elevated to the level of the prophet (pbuh) and sometimes even above it.”²² Another result is that “The word of the *Imam* of the *Madhhab* is occasionally followed in defiance of the word of Allah (s.w.t).”²³

In response to the restrictions placed on independent inquiry by the need to defer to the views of former scholars, a number of contemporary scholars have called for “reform and renewal in Islamic thought.”²⁴ In particular, there have been calls “to free the discipline from the dominance of past scholars.”²⁵ What is required is to rekindle the “tradition of reason and intellectual inquiry, which will in turn lead to a culture of learning among the Muslims.”²⁶

Islam must not be ossified and fossilized by blind imitation of traditional thought and opinion. Rigid obscurantism, exclusively literalist doctrines and atavistic doctrines of a past ideal, prevents Islam from being a religion for all time as intended by Allah. We must be open to the prospect of reform (*islah*) and renewal (*tajdid*).²⁷

The key to the renewal of the Islamic civilisation lies in overcoming *taqlid*.²⁸ It needs to be recalled that, “differences of opinion are the basis of all progress in human thinking and, therefore, a most potent factor in man’s acquisition of knowledge.”²⁹

Consequences of *taqlid*

The adoption of *taqlid* had a number of adverse consequences. First, it contributed to a decline of critical reason.³⁰ “The persistent decline of critical reason among Muslims is due partly to the notion that the exercise of personal judgment and *ijtihad* ceased with the epoch-making works of the legists and imams of the past.”³¹

A decline of critical reason carries a number of risks. As “tradition” evolves, new ideas are added to it in the form of scholarly contributions. Yet there is no guarantee that all such contributions will faithfully reflect, and be consistent with the fundamental teaching of Islam as recorded and transmitted in the Qur’an.

The application of critical reason is also vital to the well being of the individual. It is unlikely that a person could attain to faith without the use of the intellect, required in acquiring and applying knowledge, whether revealed or otherwise. The Qur’an consistently exhorts people to use their intellect (*‘aql*). It is likewise unlikely that, after acquiring it, a believer would be able to maintain his or her faith without the continued use of his or her intelligence.

The view that a commitment to faith somehow requires a person to abandon the use of his reason may be a result of a misunderstanding of attaining religious consciousness. A commitment to “faith” properly understood does not require the believer to abdicate the use of his reason.

On the contrary, a commitment to “faith” *requires* the engagement of the intellect not only at a basic (empirical) level but also at a higher (intuitive) level. At the basic level, sense perception alerts the believer to the visible “signs” (*ayat*) of God. The intellect in turn draws the necessary conclusions from this perception. At the higher (intuitive) level, the intellect or more precisely what the Qur’an calls the “heart,” enables the believer to grasp the reality that lies beyond the totality of what can be accessed by mere sense perception.

A major consequence of the adoption of *taqlid* was that “The creative impulse of Islamic thought suffered setbacks as a result.”³² In this way, “the door to independent legal thought was shut and then barred.”³³ Later generations of scholars were expected to follow the views of the former generations of scholars.³⁴ *Taqlid* also contributed to the rise of fatalism (*jabr*):

It became increasingly common for political leaders to seek justification for their mistakes and aberrations by citing this doctrine [of fatalism]. Quite simply, if their actions and decisions had been determined beforehand, they could not be held accountable for them, and their subjects could have no justification for rising in revolt against them. In effect, it gave them a *carte blanche* to rule the ummah as they saw fit. As it was to their advantage, many rulers and court-supported scholars

favoured it despite the opposition of the traditional ulama ... *Taqlid* thus cleared the way for fatalism, which in turn prepared the ground for tyranny, injustice and despotism.³⁵

Taqlid also altered the conception of what constitutes *knowledge*. This alteration resulted in a marginalisation of worldly knowledge and the prioritisation of religious knowledge.

***Taqlid* and knowledge**

Education enables a person to live well. In a religious context, this means to live in accordance with the will of God. Knowledge enables a person to avoid harm, both to himself as well as to others. It also enables a person to obtain benefits.

Knowledge begins with the emergence of consciousness of the self and of the “other.” The “other” in the first instance includes the parents of a newborn, siblings, friends, neighbours, classmates and fellow citizens.

The most important “other” is God. The awareness of God takes both an intellectual and an intuitive form. When a person attains the awareness of ultimate reality – God – that person attains God-consciousness (*taqwa*). Thus, the highest form of cognition is consciousness of God. The purpose of education is to enable a person to become conscious of God and live accordingly.

Religious knowledge provides guidance on how to conduct oneself. It also provides guidance on how to utilise other kinds of knowledge. Empirical knowledge provides the means of cultivating the earth and obtaining various benefits from it.

The content of religious education is provided by divine revelation. Knowledge of the world (physical universe) is provided by the empirical sciences. The two types of knowledge, utilised together, help man to fulfill his responsibilities as the vicegerent (representative) of God on earth. What is needed is to strike a balance in the pursuit of the two types of knowledge.³⁶

Knowledge of revelation is obtained by means of the religious sciences, while empirical knowledge is obtained by scientific experimentation. Religious sciences include Qur’anic exegesis (*tafsir*), theology (*kalam*), jurisprudence (*usul al-fiqh*) and others. Empirical knowledge includes the knowledge of physics, biology, chemistry and other subjects.

The knowledge of revelation is obtained from the “first book” of God, the Qur’an. Empirical knowledge is gained from the “second book” of God, the world of creation.³⁷

Both “books” contain the signs (*ayat*) of God. We are advised to study and reflect on *both* “books.” One challenge we face is how to integrate these two types of knowledge.

The knowledge of the modern sciences increases our capacity to produce goods and services, but revealed knowledge provides guidance on how to use the knowledge of the modern sciences for good rather than evil purposes.

The dichotomy between religious and modern education arose when the pursuit of religious education was separated from worldly education. Despite the fact that a number of Muslim institutions of learning have made significant strides in overcoming this dualism, the segregation of religious education from modern education persists in some Islamic institutions to this very day.

The growing emphasis on religious education at the expense of (modern) scientific education appears to have been part of a long-term trend. Under the Mughals (1556-1858), for example, "Within madrasa education, the tradition of *manqulat* (revealed/transmitted knowledge) was consolidated over time at the expense of the tradition of *ma'qulat* (rational sciences)."³⁸ However, this was not always the case: "Interestingly, in the early days of the empire, it was the study of *ma'qulat* that spread widely."³⁹

In Pakistan, madrasa education still gives preference to religious knowledge at the expense of other kinds of knowledge. The result is an ineffective educational system, in much need of reform.

The sect-specific Islamic curricula of madrasas without any integration with sciences, arts, humanities etc. segregate it from any other need based educational system followed all over the globe ...⁴⁰ [Thus] ...

Reforms in the educational system of madrasas are needed by including scientific and non-theological subjects in curricula and improving the existing pedagogical practices.⁴¹

In order to restore the balance in education, the notion of what constitutes knowledge needs to be broadened, to incorporate modern scientific knowledge into the curriculum, in addition to traditional religious knowledge, in all institutions where this has not yet been accomplished. The two kinds of knowledge need to be integrated and pursued together. They complement each other.⁴² Empirical knowledge *confirms* divinely revealed knowledge: "the Qur'an has encouraged rational argumentation in religious matters, and it has consistently recommended investigation and inquiry into almost all aspects of creation."⁴³

***Taqlid* and the study of the Qur'an**

Taqlid also impacted the role that the Qur'an was to play in the lives of ordinary Muslims. While the later scholars were advised to follow the earlier scholars, ordinary Muslims in turn were expected to rely on contemporary scholars for

their understanding of the Qur'an. As a result, ordinary Muslims also became distant from the Qur'an.

In the case of the latter, this "distance" is illustrated by the fact that while not a few Muslims can recite the Qur'an, few actually *comprehend* what they recite. Students are encouraged to imitate correct pronunciation to perfection by recognised reciters. Little emphasis is placed on the *comprehension* of the sacred text.

The emphasis on recitation at the expense of comprehension has been justified by the claim that the Qur'an is a "difficult" book that only a few can understand, namely qualified jurists. But there is little support in the sacred text itself for this view. On the contrary, the Qur'an asserts that it is "easy to understand and remember." The statement,

And We have indeed made the Qur'an easy to understand and remember
...⁴⁴

is repeated for emphasis in four different verses in one chapter alone. That the Qur'an was not intended only for a "select few" is confirmed by the fact the Qur'an presents itself as "a message to all the worlds."

As a result of the view that the Qur'an is "difficult" to understand, Muslims are generally exhorted to read the sacred text only with the help of a teacher to guide them.⁴⁵ Requiring people to read the Qur'an only when a guide is available, however, does not help to bring the message of the sacred text any closer to the believer.

Focusing on recitation at the expense of comprehension effectively separates *reading* of the sacred text from its *comprehension*. The result is recitation without comprehension. "The basic approach to Qur'an studies ... emphasised correct pronunciation and memorization."⁴⁶ This has been identified as problematic by a number of commentators.

It is ironic to note ... that the vast majority of Muslims are wont to rote reading of the Qur'an which is patently vacuous and devoid of thinking. The Qur'an is usually read, committed to memory, and cited for its spiritual merit rather than intellectual stimulation and enrichment. This is evidently not the advice one obtains from the Qur'an itself.⁴⁷

Another observer noted, "our traditional system, for all its virtues, is sharply criticized ... for relying largely on rote learning and parrot fashion repetitions ..."⁴⁸ The result of rote reading is that the message of Islam is poorly understood and presents a "contradictory and confused picture."⁴⁹

The relationship between the divine text (the Qur'an) and the student needs to be re-articulated so as to enable the divine text to speak to the believer.

Many writers are critical of the current stress on parroting entire sections of books without exercising reason or critical thought, as a result of which few students are said to actually properly comprehend what they are taught. Critics see the madrasas as discouraging debate, dialogue and critical reflection, and as treating their students as passive students, thus cultivating a climate of stern authoritarianism.⁵⁰

What is required is a more *intellectual* approach in education.⁵¹ More emphasis needs to be given to *comprehension* of the sacred text than has hitherto been the case. Also, student centered learning should be introduced. Some contemporary institutions of higher learning have already adopted interactive methods of learning:

The method of teaching is through dialogue. The question is put to the student and they are encouraged to find their own solutions. We do not mock them if they err; we simply show them that this suggestion does not work; we help them find the solution. Our method is not the fast food package that is handed to the students without any effort on their part. Rather, it is the carefully prepared banquet, which they work to bring about, and which they greatly enjoy.⁵²

A method that requires exertion and effort on the part of students is preferable to a method that only requires passive acceptance of “processed” and ready-made “knowledge.” The Qur’an encourages thinking and questioning. “Islam ... advises analytical knowledge and understanding that generate insight rather than a purely dogmatic approach.”⁵³ The Qur’an needs to be presented in a way that makes it “truly comprehensible.”⁵⁴

This method will need to emphasise comprehension as much as pronunciation. In other words, it will require restoring the balance between recitation and comprehension. The main challenge in Islamic studies is “how to foster a critical approach while maintaining loyal commitment ...”⁵⁵ This can be realised by an educational system that is well-grounded in tradition and is able at the same time to foster “independent thought based on a well developed critical ability.”⁵⁶

Conclusions and recommendations

The Islamic civilisation rose to prominence on account of the guidance contained in the Qur’an. This guidance was elaborated and extended to apply into various walks of life by various scholars and other leaders over the centuries. The practice of requiring later scholars as well as students to look for the meaning of the Qur’an primarily if not exclusively in scholarly commentaries, meant that the later Muslims came to obtain guidance from sources other than those which provided guidance to the earliest generations of Muslims.

The overdependence on commentaries rather than on the direct guidance contained in the Qur'an itself ensured that the later Muslims' understanding of Islam became essentially a *derivative* understanding.

Thus, renewal will require re-opening access to the primary source of the Islamic civilisation, the Qur'an. Within the institutions of learning, the understanding of knowledge will need to be broadened, to include comprehension of the text of the Qur'an in addition to learning how to recite it.

The conception of knowledge will likewise need to be broadened to include knowledge of the modern sciences. This will require not only a review of the curriculum or the subjects studied, but also of the methods of teaching used. Teaching needs to be interactive rather than a one-way process characteristic of "teacher centred learning," where the teacher is a "sage on the stage" than a "guide on the side." *Taqlid* will have to give way to a greater utilisation of the intellect. Reliance on the work of past scholars needs to be reduced.

- *Taqlid* needs to be overcome and the reliance on the works of past scholars needs to be reduced. Reliance on rote learning should also be reduced and critical and inquisitive thinking should be encouraged.
- A balance in the pursuit of modern knowledge and religious knowledge needs to be re-established. The duality between them should give way to the unification of religious and modern forms of knowledge.
- A balance between pronunciation and comprehension in the teaching of the Qur'an needs to be restored.
- It is recommended to introduce student centred learning. Students should be expected to work with minimal supervision by the teacher and make presentations of their research in class.

Notes

* *Abdul Karim Abdullah (Leslie Terebessy)*, Assistant Fellow at IAIS, earned his MA in political philosophy from the University of Toronto, Canada (1999) and a MEd (1986) from the University of Toronto's Ontario Institute for Studies in Education (OISE). A former lecturer, editor, writer and coordinator of the English programme at University Sains Islam Malaysia (USIM), his current projects involve research into the current financial crisis, critical thinking in Muslim societies, and Islamic Finance. He has edited *Islamic Studies at World Institutions of Higher Learning* (Kuala Lumpur: USIM 2004). He can be contacted at abdulkarim@iais.org.my.

1. When the Abbasid caliphate was destroyed by the Mongols in 1259, it was eventually replaced by the Mughal civilisation, the Safavid civilisation, and the Ottoman civilisation.
2. The word "knowledge" (*'ilm*) is mentioned in the Qur'an more than 700 times

- in 87 different forms. *The Institute of Islamic Knowledge*, accessed online on 5 September 2014, <http://al-quraan.org/about_us.html>
3. Asad, Muhammad, *The Message of the Qur'an*, Dar al-Andalus, Gibraltar, 1980, p. i.
 4. AbuSulayman, AbdulHamid, *Crisis in the Muslim Mind*, The International Institute of Islamic Thought, Herndon, USA, 1993, p. 68, accessed online on 26 March 2014, <<http://deenrc.files.wordpress.com/2008/03/crisis-in-the-muslim-mind-by-abdulhamid-abusulayman.pdf>>
 5. One account of modern efforts to respond to the rigidity in *usul al-fiqh* (Islamic jurisprudence) caused by *taqlid* may be found in David Johnston, "A turn in the epistemology and hermeneutics of twentieth century *usul al-fiqh*," *Islamic Law and Society*, Vol. 11, No. 2, Brill, 2004, pp. 233-282; accessed online on 27 Aug. 2014, <<http://www.jstor.org/stable/3399305>>
 6. Al 'Alwani, Taha J. "Taqlid and the stagnation of the Muslim mind," *The American Journal of Islamic Social Sciences*, Vol. 8. No. 3, 1991, pp. 513-524, p. 522, accessed online on 5 September 2014; <http://i-epistemology.net/attachments/393_V8N3%20December%2091%20-%20TJ%20Al%20Alwani%20-%20Taqlid%20and%20Stagnation.pdf>
 7. Kamali, Mohammad Hashim "Reading the Signs: A Qur'anic Perspective on Thinking," *Islam and Science*, Volume 4, Winter 2006, Number 2, p. 161.
 8. Nyazee, Imran Ahsan Khan, *Theories of Islamic Law: The Methodology of Ijtihad*, Islamic Book Trust, Kuala Lumpur, 2002, p. 10.
 9. Kamali, Mohammad Hashim, "Reading the Signs: A Qur'anic Perspective on Thinking," p. 161.
 10. Kamali, Mohammad Hashim, "Methodological Issues in Islamic Jurisprudence," *Arab Law Quarterly*, Vol. 11, No. 1, Brill, 1996, pp. 3-33, p. 6; accessed online on 27 Aug. 2014, <<http://www.jstor.org/stable/3381731>>
 11. What is at times overlooked, however, is that even an appeal to authority, whether divine or scholarly, requires the use of language, and with language a method of structuring it. The methodology of structuring statements (syntax or grammar) in turn presupposes a distinction between meaningful and meaningless statements. In all statements, *logic* or lack of it, plays a significant role. Credible statements require the use of valid (logical) inferences. When inferences are made in an illogical way, conclusions may become unreliable. For example, a credible inference should be free of contradictions. A statement cannot be true and false at the same time. Where contradictions emerge, one of the statements becomes untenable. Sufficient scholarly effort thus also needs to be directed to the resolution of contradictions and inconsistencies, whether apparent or real. What also tends to be overlooked is that the human intellect ('*aql*) becomes active not merely when one applies the fourth methodology of arriving at a ruling of the Shariah, known as *ijtihad* or juristic effort. The human intellect needs to be applied at every stage of learning or analysis, beginning with the Qur'an. One cannot simply refer to the Qur'an without utilising the human intellect in one way or another. One cannot even recite or read the Qur'an without applying the intellect to some degree.
 12. Halstead, J. M. "An Islamic concept of education," *Comparative Education*, Vol. 40, No. 4, Special Issue (29): Philosophy, Education and Comparative Education

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13. Kamali, Mohammad Hashim "Methodological Issues in Islamic Jurisprudence," p. 6.
 14. Calder, Norman, Joseph A. Kéchichian, Farhat J. Ziadeh, Abdulaziz Sachedina, Jocelyn Hendrickson, Ann Elizabeth Mayer and Intisar A. Rabb, "Law," *Oxford Encyclopedia of the Islamic World*, *Oxford Islamic Studies Online*, accessed on 5 Jan, 2015. <<http://www.oxfordislamicstudies.com/article/opr/t236/e0473>>
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 16. Abdelaal Mohamed A. "Taqlid v. Ijtihad: The Rise of Taqlid as the Secondary Judicial Approach in Islamic Jurisprudence," *The Journal of Jurisprudence*, HeinOnline, 2012, pp. 171 – 172, accessed online on 12 Jan. 2015; <<http://www.jurisprudence.com.au/juris14/abdelaal.pdf>>
 17. Fadel Mohammad, "The Social Logic of *Taqlid* and the Rise of the *Mukhatasar*," *Islamic Law and Society*, E. J. Brill, Leiden, 1996, pp. 193 - 233.
 18. Al 'Alwani, Taha J. "Taqlid and the stagnation of the Muslim mind," p. 516.
 19. Zaman, Muhammad Qasim, Ashraf 'Ali Thanawi, *Islam in Modern South Asia*, Oneworld, Oxford, 2007, p. 59, accessed online on 6 Jan. 2015; http://www.wisdomfort.com/books/WF_English_Books/History_Biographies/ENG_History_Biographies_003_MawlanaAshrafAliThanwi_MQasimZaman.pdf
 20. Riaz, Ali "Madrasah Education in Pre-colonial and Colonial South Asia," *Journal of Asian and African Studies*, 46(1), 2010, pp. 69–86, p. 81.
 21. AbuSulayman, AbdulHamid, *Crisis in the Muslim Mind*, p. 36.
 22. Badawi, M.A. Zaki "Islamic Studies in British Universities: Challenges and Prospects," in *Islamic Studies in World Institutions of Higher Learning*, Islamic University College of Malaysia, 2004, p. 9.
 23. Id., p. 9.
 24. While the Arabic *islah* is typically rendered as "reform," it has a broader meaning. *Islah* also means "repairing," "rebuilding" or "restoring" something to its original condition. In general *islah* aims to overcome corruption (*fasad*). Thus, the term *islah* has a distinctively ethical connotation. By contrast, the term *tajdid* is generally translated as "renewal" or "restoration." Moreover, the term *islah* is a Qur'anic term, while the expression *tajdid* is to be found in the prophetic traditions. See Mohamed Abubakr A al-Musleh, *Al-Ghazali as an Islamic Reformer (Muslih)*, A thesis submitted to The University of Birmingham for the degree of Doctor of Philosophy, Department of Theology & Religion School of Historical Studies The University of Birmingham July 2007, University of Birmingham Research Archive e-theses repository, pp. 31-33, accessed online on 16 April 2014, <<http://www.scribd.com/doc/172931962/AL-GHAZALI-AS-AN-ISLAMIC-REFORMER-MUSLIH>>
 25. Badawi, M.A. Zaki "Islamic Studies in British Universities: Challenges and Prospects," p. 9.
 26. Badawi Abdullah, *Islam Hadhari: A Model Approach for Development and Progress*, p. 169.

27. Id., p. 39
28. For a critique of *taqlid* by 19th century scholars, see for example Ahmad Aziz, "Sayyid Ahmad Khan, Jamal al-din al-Afghani and Muslim India," *Studia Islamica*, No. 13, Maisonneuve & Larose, 1960, pp. 55-78, accessed online on 17 September 2014, <<http://www.jstor.org/stable/1595240?origin=JSTOR-pdf>>
29. Asad, Muhammad, *The Message of the Qur'an*, Dar al-Andalus, Gibraltar, 1980, p. viii.
30. The effect of *taqlid* on human reason was in a sense the exact opposite of the effect of the European Enlightenment, which elevated human reason to a status higher than was the case during the time of Church dominance.
31. Kamali, Mohammad Hashim "Reading the Signs: A Qur'anic Perspective on Thinking," p. 161.
32. Id, p. 158.
33. Al-'Alwani, Taha Jabir, "The Crisis of Fiqh and the Methodology of Ijtihad," *The American Journal of Islamic Social Sciences* 8 (1991), p. 332, quoted in Kamali, Mohammad Hashim "Methodological Issues in Islamic Jurisprudence," *Arab Law Quarterly*, Vol. 11, No. 1, Brill, 1996, pp. 3-33, p. 6; accessed online on 27 Aug. 2014, <<http://www.jstor.org/stable/3381731>>
34. A number of classical Muslim scholars rejected *taqlid*. See for example, Montada, Josep Puig, "Reason and Reasoning in Ibn Hazm of Cordova (d. 1064)," *Studia Islamica*, No. 92, Maisonneuve & Larose, 2001, pp. 165 -185, p. 170; accessed online on 25 Aug. 2014; <<http://www.jstor.org/stable/1596196>>
35. Al 'Alwani, Taha J. "Taqlid and the stagnation of the Muslim mind," p. 522.
36. Riaz, Ali "Madrassah Education in Pre-colonial and Colonial South Asia," *Journal of Asian and African Studies*, 46(1), 2010, pp. 69–86, p. 79.
37. Al 'Alwani, Taha J. "Taqlid and the stagnation of the Muslim mind," p. 518.
38. Riaz, Ali "Madrassah Education in Pre-colonial and Colonial South Asia," p. 73.
39. Loc. cit.
40. Sial, Abdul Wahid and Syed Waqas Ali Kousar, *The structural influence of madrasa education on student effectiveness in Pakistan, does it need to reform?* Accessed on 6 August 6, 2014, <http://works.bepress.com/wahid_sial/5/>
41. Loc. cit.
42. This "balance" is sometimes spoken of as the need to integrate both *naqli* (transmitted) and '*aqli* (acquired) knowledge.
43. Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, Ilmiah Publishers, Kuala Lumpur, 1998, pp. 15 - 16.
44. Qur'an, 54:17, 54:22, 54:32, 54:40.
45. This advice is rooted in the commonly held view among the Muslims that the reader "should not follow his own opinion" about the meaning of the Qur'an, as he is likely to be led astray by his own desires (*ahwa*). Bayat, Zubair Ismail, *The Concept of Taqlid or Ittiba' in Islamic Law*, pp. 17, 81, 83, 85, 87, 96, 98, 102, 104, 143.
46. Kamali, Mohammad Hashim "Reading the Signs: A Qur'anic Perspective on Thinking," p. 164.
47. Id. p. 163.
48. Badawi, M.A. Zaki "Islamic Studies in British Universities: Challenges and Prospects," p. 8.

49. Loc. cit.
50. Sikand, Yoginder, "Reforming the Indian Madrassas: Contemporary Muslim Voices," p. 136, accessed online on 12 August 2014; <<http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismAndSecurityinSouthAsiach6.pdf>>
51. A number of scholars argued for a more intellectual approach in education. For example, "Muhammad 'Abduh (b. 1849–d. 1905) was a chief reformer in the movement of Islamic reform that sprang from Egypt in the late 19th century. He engaged in reform in a time when Muslim society was in a period of stagnation and decline ... His arguments for Islamic reform were firmly grounded within the Islamic discursive tradition that allows for a critical mode of human reasoning (*ijtihad*), as distinguished from one opposed to unreasoned acceptance of established religious authority (*taqlid*)." *Oxford Bibliographies*, accessed online on 22 December 2014;
52. <<http://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0001.xml>>
53. The institution is the Muslim College in London, UK. Badawi, M.A. Zaki "Islamic Studies in British Universities: Challenges and Prospects," pp. 10 – 11.
54. Kamali, Mohammad Hashim "Reading the Signs: A Qur'anic Perspective on Thinking," p. 146.
55. Asad, Muhammad, *The Message of the Qur'an*, p. iii.
56. Badawi, M.A. Zaki "Islamic Studies in British Universities: Challenges and Prospects," p. 9.
57. Id., p. 11.

WOMEN'S RIGHTS: THE QUR'ANIC IDEALS AND CONTEMPORARY REALITIES

*Elmira Akhmetova**

Abstract: This article is a study of the rights of women in Islam in comparison with the status of women in the contemporary Muslim world. Men and women in Islam, regardless of their age, social class and education, are equal as citizens and individuals, but not identical, in their rights and responsibilities. It suggests that, in the early age of Islam, women were given full confidence, trust and high responsibilities in leadership, educational guidance and decision-making. But this Islamic empowerment of women bears little relation to the real condition of women in modern Muslim societies. Women suffer the most in the MENA and other conflict-ridden regions from insecurity, domestic abuse, low access to education and medical care. The absence of good governance also results in gender inequality and violation of the rights of women. Without good governance, the status of women is not likely to improve. Muslim women have a potential to play a fundamental role in curbing corruption, social ills, violence and crime in the Muslim world. Therefore, in order to achieve stability and prosperity, the government must ensure a platform for women to participate in decision-making and benefit from the rights they are accorded in Islam.

Introduction

The status of women in society is neither a new issue nor a completely resolved one. Many studies have been done in this field from different perspectives. They generally suggest that, in ancient civilisations, and even until the late nineteenth century, a woman was seen as a property of her husband. She did not have any rights to own assets or exercise any civil or public positions; could not be a witness, surety, tutor, curator, could not adopt or be adopted, or make will or contract. In the late eighteenth century, the question of women's rights became central to political debates in Europe, particularly in France and Britain. Throughout nineteenth century, European women were granted the rights of employment, vote and property. Yet, even today, despite the hue cry for equality and human rights for all, violence against women is prevalent. Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society. As the United Nations Human Rights Council reports, violence against women in our days takes a dismaying variety of forms, from domestic abuse and rape to child marriages and female circumcision. All are violations of the most fundamental human rights.

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly. The Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights. It entered into force as an international treaty on 3 September 1981 and its implementation is monitored by the Committee on the Elimination of Discrimination against Women. Yet, discrimination against women continues to grow, particularly in war affected regions. In a statement to the Fourth World Conference on Women in Beijing in September 1995, the United Nations then-Secretary-General, Boutros Boutros-Ghali, said that violence against women is a universal problem that must be universally condemned.¹

The main focus of this paper is in line with these studies. Yet, it gives more emphasis on the comparison between the ideal, presented by the Islamic sources and practiced in the early years of Muslim history, and the current reality of women's rights. Most of the contemporary scholars with a proper knowledge of Islam concur that it was Islam that empowered women for the first time in human history with the most progressive social, legal, economic and political rights since the seventh century. William Montgomery Watt, for example, suggested that Muhammad, the Prophet of Islam (pbuh), "can be seen as a figure who testified on behalf of women's rights."² Yet, women in the contemporary Muslim world are suffering most from insecurity, war, domestic and cultural abuses, low access to education and medical care.

Women in the Light of the Qur'an and Sunnah

The Noble Qur'an and the Sunnah of the Prophet of Islam, Muhammad (pbuh), indicate equity and parity between men and women although their functions in marriage, family and society are not identical. The Qur'an emphasises that God in His perfect wisdom has created all species in pairs, and so men and women have been created of the same species; as it is stated that: "He created you from a single being; then of the same kind made its mate" (al- Zumar 39:6). In the chapter of al-Nisā', Allah Almighty also said that: "O mankind! Fear Allah Who created you from a single person [Adam], and from him [Adam] Allah created his wife [Hawwa], and then from both of them, He created many men and women spread [all over the world]. And fear Allah through Whom you make claims [of your mutual rights]. And do not cut-off the relations with your blood relatives. Indeed, Allah is All-Watching over you" (al-Nisā' 4:1).

According to Islamic view, men and women complement each other and are a means of mutual fulfilment. Family life is not based on formal hierarchy of rights and responsibilities, but the basis for husband-wife relationship in

Islam are: *sakīnah* (peace, restfulness, honour), *muwaddah* (affection), *rahmah* (forgiveness, grace, mercy, compassion) and *rufq* (gentleness). In his Last Sermon, Muhammad (pbuh) said:

O People, it is true that you have certain rights with regard to your women, but they also have rights over you. Remember that you have taken them as your wives only under Allah's trust and with His permission. If they abide by your right then to them belongs the right to be fed and clothed in kindness. Do treat your women well and be kind to them for they are your partners and committed helpers. And it is your right that they do not make friends with any one of whom you do not approve, as well never to be unchaste.³

The passages from the Noble Qur'an confirm that woman is completely equated with man in the sight of God in terms of her rights and responsibilities. It is clearly stated that: "Every soul will be (held) in pledge for its deeds" (al-Muddathir 74:38). In another occasion, the Qur'an articulates that: "Whoso does good, whether male or female, and is a believer, these will enter the Garden; they will be provided therein without measure" (al-Mu'min 40:40).

Accordingly, men and women are spiritually akin one to another, and are equally the recipients of God's favours and bounties in this life and they will be equally rewarded in the hereafter. On the economic aspect, Islam dictated the right of woman to independent ownership, which she had been completely deprived before the rise of Islam and even after in many societies up to the early twentieth century. A woman's right to her money, real estate and other properties, whether she is married or single, is fully acknowledged in Islamic law. She maintains her full rights to buy, sell, mortgage or lease any of her properties. Also, there is no ruling in Islam, which forbids woman from seeking employment although Islam regards her role in society as a mother and a wife as the most sacred and essential ones. Moreover, there is no restriction on benefitting from woman's skill and knowledge in any field.⁴

There is no textual ruling in the Qur'an and in the Sunnah of the Prophet (pbuh) and in the consensus of scholars (*ijmā*), to deprive women of public and political rights as well.⁵ According to Mohammad Hashim Kamali, during the time of the Prophet (pbuh) and the early years of Islam, women were not excluded from public life, and any restrictions that were subsequently imposed on them were partly due to circumstantial developments that did not command normative and undisputed validity in the Shari'ah.⁶ There was a long line of women scholars and activists who attained high positions and were renowned for their excellence as scholars, social workers, public figures, educators during the time of the Prophet (pbuh) and during the next generations, when

Islamic civilisation was flourishing. Let me bring only a few examples in this occasion.

During the life time of the Prophet Muḥammad (pbuh), along with the men, women were assigned to the principal administrative posts. The Prophet appointed a woman, called Samrā' binti Nuhaik Al-Asadīyyah, as a muhtasib (market inspector), to regulate commercial activity and guard public interest; and she was kept at her position during the rule of the first two caliphs.⁷ Caliph 'Umar ibn Al-Khaṭṭāb appointed to a position of market inspector and manager another woman, Al-Shifā' (Lailah) binti 'Abdullah, who was well-known and highly respected in the community for her knowledge, piety and morality.

Moreover, 'Āisha bint Abī Bakr, the beloved wife of the Prophet (pbuh), played a key role in the growth, development, and understanding of Islam. She transmitted a great amount of knowledge learned from Muḥammad (pbuh) and is considered as the best scholar on the role of women in Islam. Being a role model to a significant amount of others added to her attributions as a consultant regarding Muhammad's (pbuh) prayer and practices, soon she introduced herself into a world of politics. In the Battle of the Camel in 656 CE, for instance, 'Āisha participated by giving speeches and led an army on the back of her camel.⁸

The next example of scholarly excellence at the generation of the *tābi'īn* ('followers') is 'Amrah bint 'Abd al-Raḥmān, the pupil and secretary of 'Āisha bint Abī Bakr. With her extensive knowledge, 'Amrah was considered an authoritative voice of ḥadīth and overrode many other male scholars during that period. The renowned Umayyad caliph 'Umar Ibn 'Abd al-'Azīz (r.717-720 CE), a great scholar in his own right, said that no one remains alive, who is more learned in the ḥadīth of 'Āisha, than 'Amrah. Later in her life, she was classified as a judge (').

'Āisha, the daughter of an eminent *ṣaḥāba*, Sa'd ibn Abī Waqqās, was well learned in Islamic sciences to the point that a number of famous jurists and scholars on ḥadīth, including Imām Mālik, Ḥakīm ibn 'Utaybah and Ayyūb al-Sakhtiyānī, were her pupils. Imām Shāfi'ī also studied *'ilm al-ḥadīth* in Egypt with a woman from the descendent of the Prophet (pbuh), Sayyida Nāfisa bint Al-Ḥassan ibn 'Alī ibn Abi Ṭālib, one of the leading scholars of that time.

Accordingly, women were actively engaged in public, political, economic and educational spheres of the early Islamic society. Appointment to the influential posts was based on qualifications and skills of the individual, and not on his or her gender. The subsequent subchapters of the paper provide a survey of political rights of women throughout Islamic civilisation.

Women as Citizens of Islamic Governance

Respect towards all human beings, regardless of their gender and social status, is the primary rule in Islam. As citizens of Islamic governance, men and women are afforded with equal protection and security. Any fair examination of the teachings of Islam into the sources of the Sharī‘ah and history of Islamic civilisation will definitely find clear evidences of women’s equality with man on political sphere too, what we call today ‘political’ or ‘citizenship rights.’ Along with male citizens, women enjoy at least six basic rights under the Islamic government: the right to vote; the right to nomination for political office; the right of consultation in the affairs of the government; the right to express an opinion on political matters; the citizen’s right not to obey a deviant ruler; and, lastly, the right to health, welfare, occupation and education.⁹

Every citizen of an Islamic polity is entitled to participate in the election of the ruler and other representative government bodies. The Prophet (pbuh) received the pledge of alliance (*bay‘ah*) from both men and women on at least two or three occasions, the first two of which are known as the First ‘*Aqabah* and the Second ‘*Aqabah*, and the third as *Bay‘at al-Riḍwān*.¹⁰

In addition, the citizen of an Islamic polity enjoys the right to criticise and to express his or her opinion on the conduct of government as well as political matters. This right is manifested in the prominent Qur‘ānic principle of *ḥisbah*, which means promotion of good and prevention of evil (*amr bi’l-ma‘rūf wa-nahy ‘an al-munkar*). Under *ḥisbah*, no individual in the state, regardless of his or her gender, religious belief or social strata, can be prohibited from promoting a good cause or putting a stop to an evil one.¹¹

In the Qur‘ān and Sunnah as well as in Islamic history we may find various examples of women who had participated in serious discussions and argued even with the Prophet (pbuh) himself.¹² The same equal treatment of both men and women in regard to the essence of human dignity, accountability, and matters pertaining to property, educational, public and social rights and responsibilities maintained in the early years of Islamic history. During the time of the second caliph, ‘Umar ibn al-Khaṭṭāb, for example, a woman argued with him in the mosque, proved her point and caused him to declare in the presence of people: “A woman is right and ‘Umar is wrong.”

Women as a Ruler in Islamic Governance

In the previous pages I have suggested that there is no textual ruling in the Qur‘ān and in the Sunnah of the Prophet (pbuh) to deprive women of public and political rights. The *fuqahā’* (jurists), however, differed as to whether women enjoy unconditional equality in political rights and participation in government.

General consensus (*ijmā'*) is believed to have been reached that only men are eligible for the positions of the head of the state,¹³ the caliph.

An Andalusian *faqīh* (jurist) of the eleventh century, Ibn Ḥazm (994-1064CE), for example, has held an opinion that, except for the caliphate itself, women are eligible for all other offices of the Islamic government.¹⁴ The founder of the Ḥanafī school of Islamic jurisprudence, Imām Abū Ḥanīfah (699-767CE), also maintained that women may become judges in matters in which they are admissible as witnesses, which means practically all matters except the prescribed penalties (*hudūd*) and retaliation (*qisās*).¹⁵

In running of people's affairs, Islam fully considers inhabitants' public interests (*maṣlahah*), which take precedence over individual interests. Therefore, eligibility for leadership in Islam is based on qualifications and skills. In this context, the renowned Maliki jurist of the thirteenth century, Shihāb al-Dīn al-Qarāfī (1228-1285) said that:

In every post or authority, a priority should be given to the one who is the most capable to run it properly. In wars, for example, those who are more experienced in leading armies and fighting plans should take priority in leadership. In judiciary, those who are more aware of legal rules and intelligent enough to deal with people's complaints should be judges. Those who are more capable to take care of the orphans and their money should take the responsibility.¹⁶

Thus, if a woman or a man possesses the sufficient qualifications to lead his or her community, company or institution, then he or she could be appointed as the leader, the manager, or the head of the office. The debarment of women from becoming a caliph by the general consensus of the early *fuqahā'*, therefore, was not due to gender-based discrimination, but mainly related to her competence and fitness for that position.

In the early years of Islamic rule, the caliph occupied the central stage in a four dimensional religious-judicial-military-economic space, which was shared with all members of the community, men and women alike. The caliph had four principal responsibilities. First, he was the religious head of the community and led the congregation in prayer. Second, he was the supreme judge and responsible for the implementation of the shari'ah. Third, he was responsible for the defence of the state and led the army in times of war. Fourth, he was responsible for the economic well-being of the *ummah*; ensured fair taxation, administered public works and arranged for correct and complete documentation of contracts and civil transactions.¹⁷

In the views of the Ḥanafī, Shafi'ī, Ḥanbalī and Ja'farī schools of jurisprudence, a woman may lead a congregational prayer of other women and children only, but

not of men. The Mālikī school of *fiqh* was even stricter. Since a woman could not lead Friday (*jum'ah*) prayers of the whole community, this automatically barred her from aspiring to be a caliph or imām. This ruling, accordingly, was associated directly with her and the community's religious and spiritual functions and responsibilities, rather than indicating the discrimination of women's political rights in Islam. Soon later, this ruling has been extended by analogy (*qiyās*) to a number of other public offices, which are also reserved exclusively for men,¹⁸ contributing largely to the exclusion of women from public sphere. Yet, the spiritual and religious space remained open to women up to the tenth century. All great mosques built in the eighth and ninth centuries, had a separate section for women.

According to Nazeer Ahmed, the exclusion of women from public sphere occurred gradually over centuries and must be understood in the broader context of the fragmentation of the unitary caliphate and the separation of the masses from the rulers.¹⁹ In the early years of Islamic rule, there was no distance between the head of the community and the members of the community. The young and the old, the poor and the rich, women and men, immigrants and locals had equal access to the leader. Due to the spread of extremism from the Kharijites, the Umayyad caliph Mu'āwiyah ibn Abī Sufyān (r.661-680) was the first Muslim ruler who surrounded himself with guards as a precaution against possible assassination. This was the first step in the bifurcation of political space between the ruler and the ruled.²⁰

Very soon, in addition to security matters, the running of a vast empire over three continents required the creation of a new position, the vizier, to organise, manage and provide oversight to the executive functions. The Umayyad dynasty in Andalusia split the office of the vizier into several departments. Coordination between the different viziers and communication between the sovereign and the vizierates led to the creation of a new official, called a *ḥājib*. The *ḥājib* functioned as a chief minister, his position was considered higher than that of the viziers. He was the chief representative of the caliph and directed the central secretariat in Cordoba. With the initiation of the *ḥājib*, thus, the separation of the ruler from the ruled became institutionalised. The caliphs gave up the tradition of leading the congregational prayers. The Abbasid caliph Hārūn Rashīd (r.786-809) was the first caliph to employ professional *khātib*s to lead prayers. Likewise, the privilege of administering justice and issuing legal opinions (*fatwa*) was also delegated to hired *qādis*.

When the Turks rose in power in the tenth century, they supplanted the institution of the caliphate with a new institution of the sultanate; thus, the separation of temporal rule from religious authority was complete. The Turk sultans became the political and military rulers. Their religious responsibility

of dispensing fatwas was entirely surrendered by delegating it to professional *qāḍīs*. As the same time, the Ottoman sultans kept the time-honoured title 'caliph' along with its latest prototype, the 'sultan,' and remained being the nominal and titular head of the Muslim community. Such separation of political and military authority from religious responsibility, as Nazeer Ahmed suggests, led to the rise of despots.²¹

A sultan was not required to lead the congregational prayers as well; and this function was delegated to professional *khāṭibs*. Women, accordingly, should not be precluded from becoming a sultan anymore. The access of women to political and public space, however, happened rarely, especially among the Arabs.

The Turks, in fact, were more open to the entry of women into the political, judicial and military space. Turkish women rode into battle with men, took part in the affairs of state and sat next to sultans and jurists advising them in the dispensation of justice.²² Ibn Battuta, a Muslim traveller of the fourteenth century, for example, recorded that the conquered city of Iznik had been ruled by one of the consorts of the sultan.²³ In the sixteenth and seventeenth centuries, the Ottoman Empire had a period, called the Sultanate of Women. Starting from the reign of Suleyman the Magnificent (r.1520-1566) for nearly next 130 years, the women of the Imperial Harem of the Sultanate exerted extraordinary political influence over state matters and over the male *de-facto* Ottoman sultans. The majority of the sultans during this time were minors and it was their mothers, the *Valide Sultans*, or their wives, the *Haseki Sultans*, who effectively ruled the sultanate.

The Seljuks, the predecessors of the Ottomans, often had women of nobility playing the prominent role in public policy and affairs too. Such space for women's participation in political and public affairs has been seen by Ann K. S. Lambton, the famous British historian and leading figure on medieval and early modern Persian history and Islamic political theory, as a legacy of the tribal background and cultural traditions of the Turkic nations.²⁴ Nazeer Ahmed also observed that:

With the introduction of Turkish and African blood into Islam and the later infusion of Mongol, Indian and Indonesian elements, the rigid separation of women from politics and culture was challenged. And it was from among these "newcomers" that the great queens of Islam emerged, women such as Razia Sultana of Delhi, Shajarat al Durr of Cairo and Noor Jehan of the Great Moghuls, who distinguished themselves in the political space and left their indelible mark on Islamic history.²⁵

Such cases of women excellence in political and public affairs, however, were exceptional, and the vast majority of common women did not enjoy any political

rights. The universal brotherhood and sisterhood that has been created by the Prophet (pbuh) was shattered and, in its place, class distinctions between the ruler and the ruled and sex distinctions between men and women had emerged. The masses were secluded from political life and, among the masses, women were even more secluded.²⁶

The Status of Women in the Contemporary Muslim World

I have already emphasised in the previous pages that Islam empowered women since the seventh century. Women took an active part in building what is today called Islamic civilisation. But this Qur'ānic empowerment of women bears too little relation to the real condition of women in many contemporary Muslim societies. Modern Muslim women are mainly marginalised and severely suffering from the consequences of political upheavals, poverty, injustice, corruption and other social ills prevalent in their societies.

The Muslim world today, particularly the Middle Eastern and North African (MENA) region, is experiencing a period of significant political, economic and social transition. It is badly shaken by large-scale bloodshed, political upheavals, poverty and economic depression, particularly following the recent outbreak of the Arab Spring since October 2010 and its aftermaths. For decades, the citizens of these post-colonial nation-states, men and women, suffered from an unending cycle of despotism, economic and political exploitation, poverty and public cruelty. Most of the countries are governed by monarchies, which failed to respond to the needs and opportunities of their own people, or to create a milieu of trust, appreciation and sincerity between the political elite and the people. Within two decades or slightly more, the legitimacy of the ruling families to represent the entire populace became a crucial subject in many Muslim states. Overall, the post-colonial governments in the MENA region failed to ensure the well-being and security of their citizens. Poverty, malnutrition and lack of health security are also among the foremost problems of the MENA countries. The region is home to about seventy million of the world's poor (living on less than two dollars per day) and twenty million of the world's extremely poor (living on less than US\$1.25 per day). Despite possessing 70 per cent of the world's energy resources and 40 per cent of its natural resources, the gross domestic product (GDP) of all member states of the Organisation of Islamic Cooperation (OIC) is less than that of Japan.²⁷

Furthermore, evils like corruption, nepotism, injustice or chauvinism are widespread in Muslim societies. The results of Corruption Perceptions Index 2013 (CPI), prepared by Transparency International, warn that the abuse of power, secret dealings and bribery wreck the personal and public well-being in

the Muslim world, and ranked many Muslim countries as having the highest perceived levels of corruption in the world. The latest Index in 2013 scored 177 countries and territories on a scale from 0 (highly corrupt) to 100 (very clean). In that list, the ten bottom countries which were ranked as most corrupted, excluding North Korea, are Muslim-majority countries. Somalia and Afghanistan, along with non-Muslim North Korea, made up the worst performers in the year, scoring just 8 points each. It is followed by Sudan (11 points), South Sudan (14 points), Libya (15 points), Iraq (16 points), Uzbekistan, Turkmenistan and Syria (17 points each). Only three Muslim-majority countries score above 50: United Arab Emirates (69 points), Qatar (68 points) and Brunei (60 points).²⁸

Such current scenario of the Muslim world suggests that the actual spirit of Islamic principles of governance, i.e. ensuring the welfare and security of the people, and establishing peace and justice in society, is gone. The basic civilian and human rights of the citizens under their authorities, regardless of their gender, age and religious, social or ethnic backgrounds, were ignored as well.

The Arab Spring created more instability, economic depression, insecurity and bloodshed in the entire region. The Middle East got neither democracy nor good governance, but the emergence of the ISIS or the so-called 'Islamic State of Iraq and Syria' with its extremely harsh militant principles. As a result, the well-being of women has deteriorated deeply in the recent years, especially in war and conflict zones. Women are the main victims of insecurity, war and radicalisation. Gender-based violence, one of the world's most widespread human rights violations, escalates sharply among conflict-related displaced communities. In the case of Syria, gender-based violence predated the crisis and has been singled out as one of the most salient features of the current conflict. According to the United Nations High Commissioner for Refugees (UNHCR), since the outbreak of civil war in Syria in March 2011, over 3 million have fled to the country's immediate neighbours, mainly to Turkey, Lebanon, Jordan and Iraq. Another 6.5 million are internally displaced within Syria;²⁹ and the majority of them are women and children. In Jordan, as United Nations reports, women, girls and boys, who make up close to 80 per cent of this country's nearly half a million Syrian refugees, are vulnerable to an increased risk of sexual, physical, and psychological abuse, yet have limited opportunities to access safe spaces or social services.³⁰

The report prepared by Amnesty International in 2014 indicates serious cases of abuse and offence against the vulnerable young women and children by ISIS militants. In August 2014, ISIS militants abducted hundreds, possibly thousands, of Yazidi minority, mainly women and children, from the Sinjar area in north-western Iraq, according to the Amnesty report entitled "Escape from Hell." Hundreds of Yazidi women and girls have had their lives shattered by the horrors of sexual violence and sexual slavery in ISIS captivity. The captives,

including girls aged 10-12, faced torture, rape and forced marriage, and were “sold” or given as “gifts” to ISIS fighters or their supporters in militant-held areas in Iraq and Syria.³¹ Such cases of war crimes against the vulnerable stratum of the society indicate a direct link between human insecurity and the violation of women’s rights. Since women often face cultural, social, economic and political discriminations in their daily lives, they encounter even more oppression, distress and social exclusion in war-ridden societies.

The status of women in relatively peaceful Muslim societies is not encouraging as well. Widespread evils like corruption, nepotism, injustice and chauvinism often inflict the cases of gender discrimination. Since injustice and corruption hits poor, disadvantaged and vulnerable groups the hardest, women are more likely to bear a heavier burden as they are often marginalised and over-represented among the poorest. According to the United Nations, an estimated 70 per cent of the world’s poor are women.³²

Transparency International also reported that women are more disadvantaged in corrupt systems. Corruption creates additional obstacles for women to access and use public goods, including basic services, as well as to participate in their country’s political processes. For instance, as the primary care takers in families, women have a higher likelihood of experiencing corruption, whether enrolling their children in school, seeking medical treatment for their kids or older relatives, or interacting with public officials to access government subsidised programmes.³³

Besides, in many countries, corrupt judicial procedures and the prevalence of nepotism and gender discrimination makes it in the majority of cases impossible for women to win lawsuits in a transparent and open way. Roslyn G. Hees, Senior Advisor at Transparency International, observed that: “A corrupt legal system reinforces existing gender discrimination in many countries. Women’s civil rights are grossly unfair with regard to marriage/divorce, family law, child custody, financial independence and inheritance and property rights. Often they have no ability to make decisions without the consent of a male relative.”³⁴ Therefore, Transparency International strongly recommends that anti-corruption measures need to be gender responsive to facilitate gender equity and women’s empowerment.³⁵

In sum, the absence of good governance caused many calamities in the Muslim world, including the violation of the basic civilian and human rights of the citizens. As a vulnerable segment of society, women are more likely to be oppressed and discriminated in corrupted and war-ridden societies.

Encouraging Developments across the Muslim World

In spite of many depressing political and social turbulences taking part in the contemporary Muslim world, the awareness about the original status of women in Islam and the potential impact of women empowerment on attaining of good governance and a strong society is increasingly common among Muslim educated circles. In that course, several governments bestow equal rights for education and employment to both genders. The Malaysian government, for example, invests in education without any gender discrimination for a long time. Speaking at the Third Women Deliver 2013 Global Conference, Prime Minister of Malaysia, Datuk Seri Najib Tun Razak, stated that 65 per cent of students in tertiary education institutions in the country are women.³⁶ Improvement in access to higher learning has helped to empower a larger percentage of Malaysian women, and more are seen moving into higher-paying occupations. According to the statistics from the Mid-term Review of the 8th Malaysian Plan, the proportion of women who are legislators, senior officials and managers has increased from 5 per cent in 2000 to 5.3 per cent in 2002.³⁷ Currently, Malaysian women represent the workforce at 47 per cent. Such an active participation of women in public and economic spheres is one of the factors for economic and political stability in the country.³⁸

Malaysia is a rapidly developing economy in Asia. Since the 1970s, this middle-income country has transformed itself from a producer of raw materials into an emerging multi-sector economy. The Gross Domestic Product (GDP) in Malaysia expanded 5.60 per cent in the third quarter of 2014 over the same quarter of the previous year. GDP Annual Growth Rate in Malaysia averaged 4.68 per cent from 2000 until 2014, reaching an all time high of 10.30 per cent in the first quarter of 2010.³⁹

Malaysia is perceived as having relatively low corruption levels as well. In the Corruption Perceptions Index (CPI), among ASEAN countries, Malaysia is ranked third, behind Singapore and Brunei; while globally, it managed to position itself better than other developed countries including Italy, Greece and the Czech Republic.⁴⁰ The example of Malaysia once more confirms that gender unfairness and corruption are closely interlinked. Where countries have made advances in women empowerment and gender fairness, they have witnessed lower levels of corruption over time.

Furthermore, women are an important source for understanding corruption and designing effective strategies to address the problem that affects their everyday lives.⁴¹ Recent studies have showed that empowered women, who have an opportunity to participate in decision-making, are powerful actors that can contribute to the fight against corruption. A study by the IRIS Centre, University of Maryland, observes that higher levels of women's participation in public life

are associated with lower levels of corruption. This cross-country data revealed that corruption is less severe where women comprise a larger share of the labour force, and where women hold a larger share of parliamentary seats.⁴² Another influential study made by the World Bank in 1999, entitled “Are Women Really the ‘Fairer’ Sex? Corruption and Women in Government,” also suggested that higher rates of female participation in government are associated with lower levels of corruption. After studying 150 countries in Europe, Africa and Asia, the research came to the conclusion that women are more trustworthy and less prone to corruption. It consequently suggested that women may have higher standards of ethical behaviour and appear to be more concerned with the common good.⁴³

Hence some Muslim countries initiated a policy of employing more women in their anti-corruption campaigns. Let me bring the example of Afghanistan, one of the most corrupted and worst hit country by the consequences of the US-led War on Terror since 2001. During his visit to the International Institute of Advanced Islamic Studies (IAIS) Malaysia on 10th December 2013, His Excellency Abdul Salam Azimi, the Chief Justice of Afghanistan and the head of the Afghan Supreme Court, affirmed that women in Afghanistan are less prone to corruption. There are already more than 180 female judges in Afghanistan today, which constitutes approximately 10 per cent of total Afghan judges (5 years ago – 3 per cent). According to Abdul Salam Azimi, there has not been even a single case of corruption with these female judges in the face of the high level of corruption in the existing Afghan legislative system overall. Chief Justice Azimi consequently intends to assign more female judges in order to lessen the endemic of corruption in the Afghan society. However, the appointment of female judges in the provinces is still extremely challenging due to safety, economic and customary reasons. At present, ten female judges are based in Balkh, five in Herat, two each in Takhar and Baghlan, with the rest based in Kabul. But the presence of female judges in all courtrooms of the country is highly essential for two reasons. Firstly, as has been articulated earlier, female judges are perceived as less corrupt. Secondly, if a female judge is present in a province, a female complainant can share her problems with full confidence while she may not feel easy to share them with a male judge.⁴⁴

The similar approach of gender attentive distribution of power is intended to expand to other segments of the Afghan government. The current House of People (Wolesi Jirga), which holds the power to enact, amend and repeal laws, has 69 women members out of total 249 delegates (27.7 per cent), emerging as the 37th country with largest female participation in legislature out of 189 countries in the world. Other countries scored as follows in 2013: Germany (32.9 per cent), France (26.9 per cent), UK (22.5 per cent), Turkey (14.2 per cent), Russia (13.6 per cent), Malaysia (10 per cent), Iran (3 per cent) and Egypt

(2 per cent).⁴⁵ In the long run, it is believed that the engagement of women in the Afghan leadership as decision-makers, role models and conflict solvers might bring peace, harmony and betterment to an Afghan society, which is exceedingly suffering from occupation, war and conflicts for several decades.

Conclusion and Recommendations

After a brief evaluation of the status of women and their rights and responsibilities as citizens of Islamic governance in comparison with the contemporary state of women in the Muslim world, the paper suggests the following conclusions and recommendations.

Firstly, Islam has empowered women with the most progressive rights since the seventh century. In the early years of Islam, women constituted an important portion of their societies with their specific duties and inborn features given by God. They served as full vibrant members of their societies as skillful educators, leading scholars, successful entrepreneurs, and shining public and political figures. Also, along with men, women enjoy full and equal basic civilian and human rights as citizens of an Islamic polity. Respect towards all human beings, regardless of their gender or social status, is the primary rule in Islam.

Secondly, Islamic empowerment of women, as the paper establishes, bears little relation to the real condition of women in modern Muslim societies. Today the Muslim world is suffering from various political and economic calamities, and social ills, which are directly related to or the reasons of the ignorance of the citizens' rights. The post-colonial governments in the MENA region failed to ensure the well-being and security of their citizens; and women are the stratum that suffered most from insecurity, domestic abuse, cultural influences, and low access to education and medical care. For decades, women remained marginalised, isolated and excluded from decision-making. They were not given any opportunity to amend the unfair systems through peaceful means endorsed by the Shari'ah, such as by participation in fair elections, consultation, the assessment of the conducts of the government, and freedom of expression.

Thirdly, the paper establishes a direct relation between good governance and the rights of women. The absence of good governance results in gender inequality and violation of the rights of women. Gender inequalities, in turn, undermine good governance, sustainable growth, development outcomes and poverty alleviation. In addition, gender inequality and corruption are closely interlinked. Since women often face cultural, social, economic and political discriminations in their daily lives, they encounter even more oppression, distress and social exclusion in the corrupt and war-torn societies. Therefore, unless the Muslim states establish good governance, there will be no improvement in the status of

women. The paper accordingly proposes that the status of women is an indicator of good governance.

Lastly, Muslim women have a potential to play fundamental roles in curbing corruption, social ills, violence and crime in the Muslim world; and the active participation of women in legislature, law-making and policy-making processes could be considered as one of the principal keys for the success of the ummah. At the end, the paper proposes the following policy recommendations:

- Evils of gender-based discrimination, corruption, nepotism, intolerance, and political and economic injustice should be prevented by the authorities as being extremely harmful for the well-being and security of society, and its stability. Any government must guarantee the rights of every citizen under its authority, regardless of their gender, age, and religious, social and ethnic backgrounds.
- The will and rights of women citizens should not be neglected or interfered with by external and internal actors. The governments must ensure a platform for women to participate actively in legislature, law-making and policy-making processes. The promising potential of women in the Muslim world should be recognised and directed in a correct manner through proper education, respect and supervision. The Prophetic (pbuh) model of women empowerment may be considered as the best model on that direction.
- Muslim religious leaders, judges, *‘ulamā’*, *muftis* and associations must concentrate on achieving a better understanding of the role of women in Islamic society as individuals and citizens. In order to heal the wounds and negative outcomes of the ill treatment of women in the Muslim world for a prolonged-period, they must condemn publicly all types of gender-based discrimination, domestic violence and abuse, ill-treatment of women in society and the violation of the rights of women.
- Appointment to the higher-paying and managing occupations should be based on the qualifications and skills of the candidates rather than on his or her gender. Thus, if a woman or a man possesses the sufficient qualifications to lead his or her community, company or institution, then he or she could be the leader, the manager, or the head of the office; and this is in line with Islamic teachings.
- The media and educational system should be actively utilised to raise public awareness about the status of women in Islam under Islamic governance. The Islamic concepts of governance and citizens’ rights could be included in university curricula, and textbooks should be prepared to train the Muslim youth to adopt the proper treatment of women and more harmonious ways of life.

- Since women in positions of power are perceived as less corrupt and more honest, an active participation of women in law-making and public spheres is highly essential. More researches should be conducted to observe a close correlation between women's active participation in public life and well-being of society. In the Muslim world in particular, which suffers most from the evils of corruption, the rights of women to education and work should not be marginalised. Religious leaders, scholars and judges could play an important role in the betterment of Muslim countries through publicly condemning all types of corruption, cheating and bribery, as well as empowering the status of women in their societies.

Notes

- * *Elmira Akhmetova*, a Tatar scholar from Russia, is Research Fellow at IAIS Malaysia. She has published a number of academic articles, book chapters and monographs on the issues of Islamic history, interfaith dialogue, Islamic political thought and civilisational studies. (Email: elmira@iais.org.my and eakhmetova@yahoo.com).
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44. See, Akhmetova, "Women and Corruption," 274-275.
45. Ibid.

MAQASID IN RISK MANAGEMENT: AN ANALYSIS OF IJARAH CONTRACT WITH SPECIAL REFERENCE TO MALAYSIA

Ahmad Badri Abdullah and Tawfique Al-Mubarak*

Abstract: Ijārah-based financing is currently generating greater interest among industry players and policy makers due to its minimal risk exposure. Being asset-backed it has a lesser risk overload, no default risk and better profits and now offers a viable alternative to controversial debt-based financing instruments. This paper attempts to highlight the benefits of applying the objectives (*maqāṣid*) of *ijārah* contract and how a diligent compliance to its *maqasid* can help manage Shari'ah and business risks. It is also hypothesised in this study that a sincere compliance to the Shari'ah's objectives in financial transaction (*maqāṣid al-mu'āmalāt*) would reduce risks in the Islamic banking industry. Current applications of *ijārah*-based instruments by Islamic banks in Malaysia are analysed to show the gaps between its theoretical presumptions and the actual applications on the ground. Some unresolved Shari'ah issues relating to the implementation of *al-ijārah thumma al-bay'* (AITAB) (a contract of leasing ending with a sale) as well as issues regarding *ṣukūk al-ijārah* (leasing bond) are discussed in order to provide evidence for such dissonances. The study recommends constructive measures to be undertaken by policy makers to resolve the governance and legal problems with regard to the implementation of AITAB and *ṣukūk al-ijārah*.

Keywords: *Ijārah*, *maqāṣid al-mu'āmalāt*, *al-ijārah thumma al-bay'* (AITAB), *ṣukūk al-ijārah*, hire purchase

Introduction

Ijārah closely resembles 'leasing' or 'hire purchase' in the conventional banking system. Contemporary scholars find it a valuable tool to earn legitimate profit while avoiding usury (*ribā*) in Shari'ah compliant financial transactions. It is an asset-backed mode of financing, which has a lesser risk overload, no default risk, and better prospects of profit for the Islamic banks and its clients.

Although primarily the objectives (*maqāṣid*) have been broadly categorised into three categories of necessity (*darūrī*), needs (*ḥājī*) and luxury (*taḥsīnī*), further classifications include the general objectives (*maqāṣid'ammah*), the specific objectives (*maqāṣid khāṣṣah*), and the partial objectives (*maqāṣid juz'iyah*). Generally, the objectives of financial transactions (*maqāṣid al-mu'āmalāt*) would fall under the category of specific objectives, since these only deal with certain objectives of a specific branch of knowledge of the Shari'ah. Ibn 'Āshūr identified five *maqāṣid* for the financial transactions, namely:

circulation of wealth (*rawāj* or *tadāwul*), transparency (*wuḍūh*), preservation (*hifẓ*), constancy (*thubūt*), and equity (*‘adl*). Similarly, other objectives such as development of human civilisation (*isti‘mār al-arḍ*), social and economic growth, poverty alleviation and opening up employment opportunities, could be considered among the Shari’ah objectives regarding financial transactions in the context of evolving circumstances. Considering the above mentioned objectives from the broad range of the five essential objectives identified by al-Ghazālī, these would serve the purpose of preservation of wealth (*hifẓ al-māl*) altogether.

This paper attempts to identify the Shari’ah objectives upheld by the *ijārah* contract specifically and consequently how such compliance helps in managing Shari’ah and business risks. The paper hypothesises that a sincere compliance to the objectives of financial transactions would reduce risks in Islamic banking industry. Moreover, it also analyses the current practice of *ijārah*-based instruments in Islamic banks so as to highlight the dissonance between theoretical presumptions and the actual applications on the ground.

The *Ijārah* Contract: Definition and Scope

Ijārah is an Arabic word, derived from *al-ajr* which means substitute, compensation, recompense, reward, return or counter value (*‘iwad*).¹ Al-Kāsānī notes that the Qur’ānic term *ujār* (sl. *ajr*) denotes anything that is given in exchange for a usufruct.² The terms *kirā’*, *iktirā’* and *isti‘jār* are also synonymously used for *ijārah* in the classical fiqh books. The Mālikī scholars generally use the term *ijārah* for contracts of services, like the services of a porter, a shepherd, or a teacher; while the term *kirā’* is often used for renting and leasing assets or properties.³

Ijārah is a contract of sale of specified usufruct for a counter value. The usufruct and the time period it is valid for should be specifically defined in the contract.⁴

Ijārah is established from the Qur’ānic narrative of Prophet Shu‘aib and his two daughters (28:26-27), in which the prophet was advised by one of his daughters to hire prophet Mūsā on wages. In another verse, prophet Mūsā told Khidr that he could have demanded recompense for setting up the wall straight (18:77). These verses imply that *ijārah* was already in practice during the time of prophets Shu‘aib and Mūsā. Similarly, the verses on hiring wet nurses on wages for their services (2:233, and 65:6-7) further substantiate the legality of *ijārah*.

The report (*hadīth*) narrated by ‘Ā’isha, may Allah be pleased with her, about the Prophet, pbuh, and Abū Bakr engaging an expert guide to usher them to Madīnah during their migration, is an authentic (*ṣaḥīḥ*) report which proves the practice of *ijārah* by the Prophet himself.⁵ The Prophet also commanded the

believers to pay the wages of the employee (*ajār*) before his sweat dries up, with no delay.⁶ This is in fact a confirmation of permission for the *ijārah* contract.

The pillars of an *ijārah* contract, according to the Ḥanafī School are the offer and the acceptance, but other schools also include the two parties of the *ijārah* contract and the subject of the contract (i.e. the usufruct and the rental agreed upon) among the pillars.⁷ However, the Ḥanafī scholars consider the other two components among the inevitable conditions for an *ijārah* contract.⁸

An *ijārah* contract ideally needs to fulfill some basic conditions, which includes:

1. The subject of *ijārah* should be existent, and have a valuable use. Things with no usufruct at all cannot be leased.
2. The corpus of the asset should remain under the ownership of the lessor, and only the usufruct is transferred to the lessee. Therefore, any item which cannot be used unless it is consumed cannot be considered for lease, for example food, money, fuel, etc. These falls under the rules of loan, and not lease, hence any rental imposed on these items will be considered as usury.⁹ The Ḥanafī scholar al-Kāsānī presents examples of leasing a *dirham* or some wheat leased for weighing, whereas the corpus remains unconsumed, hence the charge of rental on the lease will be valid.¹⁰
3. It is also important that both the parties in *ijārah* should have consent on the contract.¹¹
4. The usufruct of the asset should be defined and specified.
5. The rental and the period of the lease should be clearly determined.
6. The lessor should be fully capable of handing over the asset to the lessee for its uses.¹² And also that the leasing period should not go beyond the useful life of the asset. In both the cases, the usufruct will not be accessible; hence the contract will be rendered invalid.
7. Since the ownership of the leased asset remains with the lessor, he has to pay for all relevant liabilities emerging from the ownership, like tax, and maintenance cost, etc. And the lessee will only be liable to pay for costs emerging from the use of the asset, like electricity and water bills in a house lease, and road tax in the case of a car lease, etc.
8. The lessee is liable to compensate the lessor for any damage caused to the asset due to negligence or misuse from the part of the lessee. And if the damage was caused due to factors beyond the control of the lessee, the lessor shall bear the cost as the owner of the asset.¹³

Maqāṣid al-Sharī'ah and the Maqāṣid al-Mu'āmalāt

The term *maqṣad* refers to “purpose, objective, principle, intent, goal, end...”¹⁴ And it denotes the purposes behind the rulings in the Shari’ah, in the simplest sense. It had also been used interchangeably with the term *maṣlahah* (interest/benefit) or similar words in the works of the earliest contributors in the field of *maqāṣid*, like those of Imām al-Ḥaramayn al-Juwainī (d.478 H.), Abū Hāmid al-Ghazālī (d.505 H.), Fakhr al-Dīn al-Rāzī (d.606 H), Saif al-Dīn al-Āmidī (d.631 H.), Najm al-Dīn al-Ṭūfī (d.716 H) and others. In fact, al-Ṭūfī went on further to declare that no purpose or objective (*maqṣad*) is valid as long as it does not bring in a benefit (*maṣlahah*) or repels harm (*mafsadah*).¹⁵ The deep-rooted relationship between the two terms is quite evident from this. However, there are also some differences between the two terminologies. The benefits (*maṣālīḥ*) are described as circumstantial (*iḍāfi/nisbī*), while the objectives (*maqāṣid*) on the other hand are meant to be constant and permanent, hence stand a degree above the ranks of the benefits. Likewise, the objectives are based on the textual grounding in the Qur’ān and the Sunnah, while only the accredited benefits (*maṣālīḥ mu’tabarah*) has a similar grounding unlike the unrestricted benefits (*maṣālīḥ mursalah*) or the nullified benefits (*maṣālīḥ mulgha*).¹⁶

Al-Ghazālī categorised the objectives into two primary categories; the religious (*dīnī*) objectives and the temporal (*dunyawī*) objectives. The temporal purposes are further divided into four types, which are all individually meant to serve the single religious purpose. The four temporal purposes are the protection of life (*nafs*), intellect, progeny, and property (‘*aql*, *nasl* and *māl* respectively).¹⁷ Al-Shāṭibī further categorised the Shari’ah ordinances into three levels; i) the necessities (*ḍarūrīyyāt*), ii) the needs (*ḥājīyyāt*), and iii) the luxuries (*taḥsīnīyyāt*).¹⁸ The first level of objectives, the level of necessities, represents essential matters without which the life would be chaotic and disastrous. These necessities are the five essentials which al-Ghazālī considered in his categorisation; i.e. preservation of one’s faith, life, lineage, wealth and intellect. Al-Qarāfī added a sixth essential, the preservation of dignity and honor (‘*irḍ*). The second level of objectives, the needs level (*ḥājīyyāt*), are those which are required to repel hardship in one’s living. For instance, marriage, education, trading, etcetera is not obligatory upon individuals. Individuals may opt to marry or not to marry, to educate themselves or not to educate, and as such is not a threat to their life. However, without these one has to face hardship. On a similar note, if these become widespread it may become a threat to the society as a whole hence would render a matter of necessities (*ḍarūrīyyāt*). And the third level is that of the luxuries (*taḥsīnīyyāt*), or the level of luxuries and beautifications, which makes one’s life easier to easiest. Typical examples of this category include one’s choice to use perfume,

or beautiful clothing, comfortable cars, or spacious homes and others alike. Although these are encouraged in Islam as indications of Allah's mercy upon His servants, they should not be among the priorities of an individual.

These levels of objectives proposed by the classical Islamic jurists have faced the need for revision in compliance with the contemporary needs of the society. The objectives, as they have proposed, have been classified into three hierarchical levels: 1) the general objectives (*'ammah*), 2) the specific objectives (*khāṣṣah*), and 3) the partial objectives (*juz'īyyah*).¹⁹ The first level of the objectives is deemed observable at the highest level of Shari'ah like the preservation of the five necessities, establishment of justice, facilitation, confirming human rights and dignity etc. The specific objectives are often observed at a specific scope within the Shari'ah, like the objectives in the laws of inheritance, objectives of the financial transactions, objectives of the criminal law, or objectives of worship matters (*'ibādāt*) etc. And the third level is the objectives behind a specific ruling or a specific issue. For instance, the objectives behind dower (*mahr*) in marriage, objective behind having witnesses in contracts, objectives behind the prohibition of usury, objectives behind the commandment of almsgivings (*zakāh*), or endowment (*waqf*) establishments, objectives behind the encouragement of praying at the mosque, and other examples alike.²⁰

The Shari'ah's Objectives Pertaining to Transactions (*Maqāṣid al-Mu'āmalāt*)

Generally, the objectives of financial transactions (*mu'āmalāt*) would fall under specific objectives category, for the fact that these objectives only deal with certain objectives of a specific branch of knowledge of the Shari'ah. Ibn 'Āshūr identified five objectives for financial transactions, namely: circulation of wealth (*rawāj* or *tadāwul*), transparency (*wuḍūh*), preservation (*hifẓ*), durability (*thubūt*), and equity (*'adl*).²¹ 'Abdullāh bin Bayyah, a contemporary scholar of *fiqh*, considers servitude to Allah (*'ibādāh*), building civilisation (*'imārah*), vicegerency (*istikhlāf*), lawful gain or ownership (*kasb*), and similarly consumption and rightful use of the property (*istikhlāk*) among the many objectives of financial transactions which the Shari'ah upholds.²² Considering these from the broad range of the five essential objectives identified by al-Ghazālī, these serve the purpose of *hifẓ al-māl* (preservation of wealth) altogether. In the following section, we will attempt to identify the objectives which *ijārah* contract upholds.

The Objectives of the *Ijārah* Contracts

As already mentioned, specific contracts and rulings could also have separate objectives, but these should not go against the general objectives of the Shari'ah.

Likewise, in the *ijārah* contract the usufruct and the time period of the contract need to be specified and accurately defined.²³ This implies that the primary objective of the *ijārah* contract is access to the usufruct (*manfa'ah*) of an asset which the lessee needs but does not own. He enjoys the use of the asset for a specified time for a rental. *Ijārah* also fulfills the objective of circulation of wealth in the market economy as prescribed in the Qur'ān (al-Hashr, 59:7). This is of special relevance to the *ijārah* contract where the purpose of the usufruct is to generate wealth. For instance, in *ijārah* of land which is used to produce crops or food items with the active engagement of farmers, agricultural workers and service contractors. *Ijārah* as such provides work or business for the lessee; or in the case of *ijārah* of a lake or a pond which is used for farming fish,²⁴ which may then be sold in the market or exported and can thus generate employment opportunities along the line. All of these underline the purpose of wealth generation. *Ijārah muntahiyah bi al-tamlīk* – which is a modern variant of *ijārah*, entitles the lessee to own the asset at the end of the lease contract, and serves the purpose of eventual transfer of ownership to the lessee. This is in line with the Qur'ānic guideline “so that wealth does not remain concentrated among the rich” (Q 59:7) – the transfer of ownership and the objective of circulation of wealth (*rawāj*) are explicitly realised in this form of *ijārah*. These are the general objectives of *ijārah* itself and many of its applications in Islamic finance. These objectives, in effect, fulfill another objective; which is to prevent an asset from being kept idle, remain unutilised or even hoarded (Q 3:180; 9:34-35), a vital means to the growth of market economy. The primary objective of *ijārah* is to facilitate employment and proper utilisation of services and generally nurture growth of human capital and its flow into the market.

In the Qur'ānic narrative of Prophet Shu'aib and his two daughters (Q 28: 26-27), wherein the Prophet was advised by one of his daughters to hire young Mūsā for wages, the verse implies that an objective of *ijārah* is to create employment opportunities, where the capability, talent and trustworthiness of employees are ascertained and utilised for production purposes. A perfect relationship between the leader and the follower is also emphasised here. Creating employment opens up the opportunity for development (*tanmiyyah*), a general objective of Islamic finance – and that the economic and human development is accomplished here.

The essential conditions of the *ijārah* contract include that the subject should exist at the time of contract, and be for a useful purpose. Since the prime objective is usufruct, things with no usufruct at all cannot be leased. This would include mainly perishable items and foodstuffs. It is also important that both parties in *ijārah* should consent to the contract.²⁵ This complements the objective of avoiding unjust appropriation and usurpation of another's wealth (*akl al-māl bil-bāṭil*) (Q 4:29). Similarly, the objective of stability and constancy in wealth is

also fulfilled with the acknowledgement of ownership and the lessee's legal right to use the property.

Another condition of a valid *ijārah* is that the usufruct of the asset be defined and specified and that the rental and the period of the lease also be clearly determined. These specifications are meant to fulfill the objective of clarity by avoiding uncertainty and ignorance (*gharar* and *jahālah*) in the contract, and thus, prevent possible conflict among the two parties, and a fundamental element in terms of managing risks.

The *ijārah* based Islamic bond (*ṣukūk*), a popular product in the *ṣukūk* industry, offers interesting potential for securitisation and development of secondary market for *ijārah* assets and financiers. Theoretically, these types of *ṣukūk* are asset-backed; hence they should be safer, less prone to default, with minimum risk, and an attractive tool for monetisation of untapped assets. However, there are some divergences in practice, due mainly to the fact that most of the *ijārah* based *ṣukūk* are asset-based in which the underlying assets may only be theoretically available, thus failing to fulfill the requirements of asset-backed *ṣukūk*.

The prime purpose of such *ṣukūk* is to generate liquidity. The real *ijārah* based *ṣukūk* are asset-backed in nature, are therefore well accepted due to the fact that they are potential instruments to avoid debt-based securitisation. Debts are detrimental to the economy. Debts, with the interest or profit to be paid over the capital borrowed, cause inflation. In the event of voluminous debts it may be unable to carry government's expenditure capacity for national development; similarly there will be a sharp decrease in investment, as the wealth created is spent out to pay debts. Unemployment, higher cost of living, and instability in the economy are among the other devastating harms that debt may cause.²⁶ The asset backed *ṣukūk al-ijārah* have the potential to mitigate risks and further maintaining an economy devoid of debt based instruments, and promote a more equitable distribution of wealth in the society.

***Ijārah* and Risk Management**

From the foregoing discussion, we have found that the underlying objectives of the *ijārah* contract are mainly to ensure transactions are devoid of deception (*gharar*), usury (*ribā*), and ignorance (*jahālah*). Being asset-backed in nature, the *ijārah* contract is more prone to guarantee default-free transactions, thus mitigating the risks that the bank would have shouldered. Since the agreements should be on mutual consent it leaves behind no scope of doubt among the contracting parties, as such mitigates the risks of information asymmetry as well.

Our central argument in this paper is that if the Islamic banks sincerely ensure that the contracts – *ijārah* is a case study here – fulfill their inherent objectives,

it would be easier to manage the diversified risks. It is also important that the banks maintain a synergy between the theories and practical applications so as to eliminate or at least minimise the Shari'ah risks. Therefore, compliance to the objectives of the Islamic financial contracts is an essential tool to mitigate risks and securing a sound Islamic banking system free from risks.

Risk Management in Islamic Banking and Finance

Risk management is a method by which a financial institution identifies, quantifies and takes appropriate measure either to mitigate or to contain risks. It is imperative since the Shari'ah upholds the principle of blocking the means to evil and harm. In turn, the approach of risk management needs to comply with measures and guidelines envisaged by the Shari'ah encompassing among others, the resistance towards any form of usury and uncertainty. As it signifies the fact that entitlement of income is liable to loss, risk management is closely related to risk sharing. In a trust contract for instance, where financing involves money capital, risk sharing between lender and financier is compulsory whereby the financier does not have legitimate claim for interest money on the capital.²⁷

There are some risks which are faced by both Islamic and conventional banks. These shared risks among the banks range from credit risk, liquidity risk, operational risk, FOREX risk, and rate-of-return risk. Besides, there are some other risks which are faced in a higher degree by Islamic banks due to its unique underlying principles and philosophy. Among others, ownership risk is essential in Islamic banks as they involve in real market transactions. In *murābahah* or *ijārah* for instance, even though the commodity is immediately sold to clients at the time of purchase, the risks for the first-purchaser (banks) prevail at the post-sale period as clients may somehow sue the banks if the delivered goods do not meet their preferred specifications. Moreover, some have argued that this kind of risk is significantly greater in *ijārah* contract due to the longer period of such agreement. However, price risk is drastically reduced through the binding promise which is agreed upon in *murābahah* and financial lease even though it prevails in other forms of financing. Opportunity cost of liquidity risk is higher for Islamic banks as they cannot opt for treasury bills or other interest-bearing instruments and the only alternative is to have *murābahah* overnight deposits with other Islamic banks. Similar situation applies to moral hazard risk whereby it multiplies in sharing-based finance offered by Islamic banks rather than lending-based conventional finance.²⁸ Furthermore, Shari'ah-compliance risk arises from the failure to comply with the Shari'ah rules and principles and to pay due observance on this very aspect is the salient feature of an Islamic bank.

In managing and mitigating such risks, Islamic banks as well as Muslim investors are more restricted in the use of credit enhancement or risk mitigation techniques as Islamic finance institutions are bound by the principle which closely relates the pursuit of earning profit from an investment in an asset with the bearing of the risks inherent in the asset. This signifies the realism of Shari'ah as it grants the entitlement for a person to earn a return either by expending human hours or by owning an asset that actually and factually produces a return. In turn, any measure to escape from risks will eventually result in the tainting of the ensuing profit by *ribā*. Therefore it is essential for Islamic banks to diligently choose techniques that curtail risks which are in tandem with Islamic principles and its objectives. Therefore, theoretically speaking, Islamic bankers need to show their preference for *murābahah* and *ijārah* for its minimal risk exposure and their apparent feature in assuring that investors are earning profits by virtue of ownership of assets that grow.

Challenges to Implementing *Ijārah*-based Instruments in Malaysia

Scholars and experts in Islamic finance seem to unanimously agree on the great potential of *ijārah* as a viable alternative to interest-based financing. In Malaysia, *ijārah* has been developed into a new model of financing namely *ijārah thumma al-bai'* (a contract of leasing ending with a sale), widely known as AITAB and *ijārah muntahiyah bi al-tamlīk* (a contract of leasing ending with ownership). The difference between the two is that in the case of the former, the legal title of an asset is transferred to the lessee at the end of the contract through a sale agreement, whereas for the latter, the transfer is effected through gift, token price, or a gradual transfer throughout the lease contract.²⁹ While the former is widely utilised in vehicles financing, the latter is adopted by some banks for corporate financing.³⁰ Islamic hire purchase contracts in Malaysia fall under the purview of a number of government organs such as the Ministry of Domestic Trade and Consumerism which exclusively owns jurisdiction over higher-purchase ventures, and Ministry of Transportation which handles the approval of vehicle's licence and road tax. Furthermore *ijārah* has also been adopted in developing an asset-based security product namely *ṣukūk al-ijārah*, which is the most dominant and widely used for both domestic and international issuance.

The AITAB Enigma

Even though the above-mentioned theoretical discourse on *ijārah* suggests fuller compliance with the Shari'ah's objectives pertaining to transactions as a feasible measure for risk mitigation, an inductive analysis of actual practices of AITAB in Malaysian Islamic banks show otherwise. Challenges faced in

the implementation of AITAB could be categorised into two aspects namely governance and jurisprudential issues. Both are in fact systemic in nature which may inflict effects between each other.

Governance issues or the lack thereof, are indeed the crux of the problem for AITAB instrument. Despite having been one of the most popular Islamic financial instruments, AITAB suffers from a lack of Shari'ah legal framework to govern its practices as it falls under the rubric of conventional Hire Purchase Act 1967. Therefore, any disputes regarding such transaction will be referred to the conventional regulation. Furthermore, with regard to determination of fixed rate, standard documentation, and formation of agreement, AITAB transaction is a replication of the Hire Purchase Act 1967. In terms of court's jurisdiction, Islamic banking transactions also fall under the civil court's jurisdiction and the court handles commercial case by referring to the existing law. Although the Hire Purchase Act contains some advantageous features,³¹ it somehow violates the original spirit and objectives of *ijārah* and the basic principles and requirements of Islamic transactions such as unclear documentations in respect of *ijārah* and sale contract, limited application to just a certain type of goods, as well as the involvement of interest calculation for its term charges.³² Some Islamic banking practitioners have in fact put their utmost effort to introduce an alternative legal framework so as to govern the practice of AITAB by proposing the *Mu'amalah* Higher Purchase Bill (2002). The Bill provides a Shari'ah compliance framework for hire purchase transaction, as well as offering a wider scope of application covering houses of not more than RM250, 000 and machinery equipments. The Bill has gone through its proper passage from the Attorney General's Office and the Prime Minister's Office, but it is yet to be implemented.³³

Besides the above-mentioned issues, there are several other drawbacks with regard to the practice of AITAB which range from customers' attitude, lack of experienced bank officers to handle such transactions, poor awareness and co-operation among dealers, complicated documentations, and competition with the conventional higher purchase instrument in the market.³⁴

The jurisprudential or legal issues on the other hand encompass issues of ownership, maintenance, liability, penalty, and legal treatment.³⁵ Regarding the issue of ownership, banks as owner of assets in AITAB instruments are supposed to take on risks, liabilities and responsibilities on those assets. However, in practice, banks attempt to avoid all kind of responsibilities despite claiming the ownership of the assets. For instance, according to the principle of *ijārah*, the lessor who is at the same time the owner of the leased asset, needs to bear any cost pertaining to the asset. This could possibly include the cost of insurance for motor vehicles. However, the current practice in Malaysia shows that the lessee is the one who is responsible for the insurance cost of vehicle in the AITAB

contract. This measure is legally backed by Section 26(1) Hire Purchase Act 1967 which clearly states that owner of the vehicle (bank) is liable to bear the insurance cost for the first year under lessee's name and Section 26(2) of the same enactment that elucidates the lessee's responsibility to bear the insurance cost for the next two years and the following years.³⁶ Besides this, even though the leased asset under AITAB is registered under the name of the bank, surprisingly it is not recorded as fixed assets of the bank. This evidently shows that banks attempt to minimise their commitment and liability to the risks and ownerships of the leased assets. Furthermore the hire purchase instrument offers no option of defect (*khiyār al- 'aib*)³⁷ to the lessee to either reject or cancel such transaction, which will cause injustice to the lessee. In summing up, AITAB instrument is seen to adopt a risk transfer approach that transmits all possible risks to the lessee rather than opting for a risk sharing measure which is an inherent attribute in the original *ijārah* contract.³⁸

There are also some alarming issues with regard to the calculation of profit margin or term charges in AITAB which are actually measured by referring to interest rates which are independent from the real value of the asset's usufruct. Abdul Halim and Sharman explicate on the two assessments method of the hire purchase financing instruments adopted by Islamic banks in Malaysia, namely Constant Rate of Return (CRR) and Rule 78. While the former was originally used by conventional banks in determining the value of lease contract, the latter was introduced in 1995 in conjunction with AITAB's initiation by Bank Islam. CRR formulates reductions in the lessor's principal due to amortisation of payments of such principal by the lessee. This is in fact an indirect gradual purchase of the assets by the lessee whereby the lessor ownership will decrease with time until it is wholly owned by the lessee at the end of the contract. CRR has somewhat adopted the principle of *mushārah mutanāqishah* (MM) which signifies a partnership with the decline of ownership on the lessor's part. However, unlike MM, CRR does not take into account the sharing ratio for determining the parties' profits. Rule 78 on the other hand employs the concept of simple interest – principal plus the profit – where its profit is based on interest rate.³⁹ Therefore, both CRR and Rule 78 are bounded by the concept of time value of money that has no significant variation from conventional method.⁴⁰ Moreover, in the event of default, a lessee is expected to pay the amount of rent up to the period of repossession together with the cost of repossession. This measure is in fact a carbon copy of conventional repossession procedure whereby the calculation method for the contract settlement is currently referred to in such procedures.⁴¹

Shari'ah Issues of *Ijārah*-based Islamic Bonds (*Ṣukūk al-Ijārah*)

Ṣukūk al-ijārah are 'securities of equal denomination of each issue, representing physical durable assets that are tied to *ijārah* contracts as defined by Shari'ah'.⁴² It can be divided into three categories; *sukuk* for the ownership of leased tangible assets, *ṣukūk* for the ownership of usufruct, and *ṣukūk* for the ownership of services. It is worth noting here that the unique attribute of *ṣukūk al-ijārah* is that the underlying assets are not present at the time when the contract is concluded as they are yet to be produced or provided. Despite being an asset-based instrument *ṣukūk al-ijārah* has however been subjected to criticisms in term of its process of development and implementation.⁴³

One of the issues that is highlighted with regard to *ṣukūk al-ijārah* is the commitment imposed on the *ṣukūk* holders to lease the asset which has been sold to them, to the obligor. Even though there are some classical scholars from the Hanafites, Shafi'ites, and Hanbalites schools who deem that such an arrangement resembles the *bay' al-ṭinah*⁴⁴ in usufruct, there are other scholars who permit such practice on the ground that it does not conflict with the nature of sale contract.

Moreover, there is also concern pertaining to the promise made by the original owner to repurchase the asset after the lease period especially at their face value price. Even though some fiqh councils in Malaysia have declared the permissibility of such practices the opposing position is worth taking into account. Some scholars have argued that a binding promise from *sukuk* issuer to repurchase the asset of *ṣukūk al-ijārah* is tantamount to capital guarantee which is absolutely prohibited. It is in fact an exchange of spot cash for a greater amount of delayed cash due to the fact that the asset is not really transferred to the *sukuk* holder in the real sense. Furthermore, this arrangement contravenes the very objective of Islamic transactions that is the distribution of profits emanate from real commercial ventures on a just basis (*rawāj*). On top of that, the structure of the *ṣukūk al-ijārah* with such kind of binding promise totally resembles an interest-bearing bond.⁴⁵ Therefore, this controversial feature might finally induce Shari'ah risk on *ṣukūk al-ijārah* in the future if it is perceived to be contradicting Shari'ah's guidelines and objectives.

Conclusions and Recommendations

Due to its basic advantages and its compliance to the higher objectives of Shari'ah particularly in economic transactions, *ijārah* has become a feasible alternative to the controversial Islamic financial instruments such as *bay' al-ṭinah* and *bay' al-dayn*. This has generated substantial interest among governments and financial companies in *ijārah*-based financing and securitisation due to its potential in financing infrastructure developments and services. It is interesting to note that

in his October 2014 National Budget speech, Malaysia's Prime Minister Najib Razak has announced that Malaysia is extending tax break on *sukuk* structures that are acceptable to Middle Eastern investors which are the *ijārah* and *wakālah* bonds up until the year 2018. He also indicated that the same incentive is no longer given for *tawarruq*. Apparently, such measure aims to attract more *ṣukūk* investor globally due to the wide acceptance of *ijārah* and *wakālah* among scholars as well as to do away with *tawarruq* or commodity *murābahah* due to its contentious status.⁴⁶ It is indeed a commendable initiative by the Malaysian government in the pursuit of promoting *maqāṣid*-compliance financial instruments which are directed to the real economy. Nevertheless, those abovementioned Shari'ah issues pertaining to *ijārah*-based instruments in its actual implementation do need attention from policy makers and industry practitioners in order to find feasible solutions for the governance and jurisprudential predicaments in both AITAB and *ṣukūk al-ijārah*. In this respect, several recommendations for the improvement of *ijārah*-based instruments to ensure its compliance with the Shari'ah's objectives regarding financial transactions is proposed here as follows:

1. The government of Malaysia should take proactive measures in order to resolve the legal hurdles over the implementation of AITAB. This can be done either by enacting the Mu'amalah Hire Purchase Bill as its legal framework or by adding some amendment to the Hire Purchase Act 1967. Enacting Mu'amalah Hire Purchase Bills also means that Shari'ah courts need to be given wider jurisdictions so as to make judgement in commercial cases. Nonetheless, the feasible solution at the moment is to infuse some Islamic compliance elements within the existing hire purchase enactments.
2. The calculation method for profit margins or term charges in AITAB need to incorporate a profit-sharing ratio in order to determine the distribution of profits (or losses) between the contracting parties.
3. Banks should adopt a risk-sharing method in providing the AITAB financial services to their customers. Therefore they need to bear some reasonable maintenance costs of the leased-assets. Alternatively, banks could also employ the principle of *mushārakah mutanāqishah* if they are reluctant to bear the ownership liability of the leased-assets.
4. Lessee should be given the option of defect (*khiyār al-'aib*) in cases where the asset's specification does not meet the contract's agreement.
5. In *ṣukūk al-ijārah*, the issuer should redeem the ownership of the usufruct after allotment and subscription payment, at the marker price, or an agreeable price between the transacting parties, on the condition that the redemption price is not deferred.
6. *Ṣukūk* issuer or manager should not guarantee the principal or income of

the bond in the event of total or partial damage due to the fact that the loss needs to be borne by the šukūk-holder.

Notes

- * Ahmad Badri bin Abdullah is Research Fellow at IAIS Malaysia, with a focus on *maqasid al-shari'ah* (the higher objective of Shari'ah), *usul al-fiqh*, and contemporary Islamic jurisprudence discourse. He is pursuing his PhD in the study of *maslahah*. He can be contacted at badri@iais.org.my.
- * Tawfique Al-Mubarak is a Research Fellow at International Institute of Advanced Islamic Studies, Malaysia. The author is thankful to Dr Tazul Islam for his insights on the concept behind this paper. He can be contacted at tawfique@iais.org.my.
- 1. E. W. Lane, *An Arabic-English Lexicon*, Vol. 1 (Beirut: Librarie Du Liban, 1968), 23-24; Abdullah Alwi H. Hassan, *Sales and Contracts in Early Islamic Commercial Law* (KL: The Other Press, 2007), 226; Muhammad Ayub, *Understanding Islamic Finance* (UK: Wiley & Sons 2007), 279.
- 2. 'Alā al-Dīn Al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, Vol. 4 (n.p.: Dār al-Kutub al-'Ilmiyyah, 1986), 174. The term *ujār* has been used in the Qur'ān for the wage in hiring a wet nurse (65: 6) and the dowry in exchange for the marriage contract (4: 25) as well, wherein it denotes the counter value for a usufruct.
- 3. *Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah*, 252-253; Abū 'Umar Y. 'Abdillāh al-Qurtubī, *Al-Kāfī fī Fiqhi Ahlu al-Madīnah*, Vol.2 (Riyāḍ: Maktabah al-Riyāḍ al-Ḥadīthah, 1980), 744, 753-754.
- 4. 'Uthmān Shubayr, *Al-Mu'āmalāt al-Māliyyah al-Mu'āṣirah fī al-Fiqh al-Islāmī*, 4th ed. (Amman: Dār al-Nafā'is, 2001), 326.
- 5. M. Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, edited by M. Zuhair ibn Nāḍir, vol. 3 (Beirut: Dār 'Uq al-Najāt, 1422 H.), 89, ḥadīth no.: 2264.
- 6. Abū 'Abdullah Ibn Mājah al-Qazwīnī, *Sunan Ibn Mājah*, edited by Fu'ād 'Abdul Bāqī, vol. 2 (n.p.: Dār Iḥyā' al-Kutub al-'Arabiyyah, n.d.) 817; ḥadīth no.: 2443. The ḥadīth has been authenticated by Nāṣir al-Dīn Albānī, *Irwā' al-Ghalīl fī Takhrīj Ahādīth Manīr al-Sabīl*, vol. 5 (Beirut: al-Maktab al-Islāmī, 1985) 320.
- 7. *Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah*, Vol. 1, 254; Al-Kāsānī, vol. 4, 174; Muḥyū al-Dīn Sharaf al-Nawawī, *Rawḍatul-Ṭalībīn wa 'Umdah al-Muḥtājīn*, edited by Zuhair al-Shīwīsh, vol. 5 (Beirut: Al-Maktab al-Islāmī, 1991), 173
- 8. Cf., Al-Kāsānī, *Badā'i' i'*, vol. 4, 176
- 9. Mufti M. Taqī Usmani, *An Introduction to Islamic Finance* (e-book), accessed on 22nd March, 2013, http://www.muftitaqiusmani.com/index.php?option=com_content&view=article&id=6:an-introduction-to-islamic-finance&catid=4:books&Itemid=8, 111.
- 10. Cf., al-Kāsānī, *Badā'i' i'*, vol. 4, 175
- 11. Cf., *al-Fatāwā al-Hindiyyah*, vol. 4, 411
- 12. Cf., Abdullah Alwi H. Hassan, *Sales and Contracts*, 229
- 13. Cf., Mufti M. Taqī Usmani, *An Introduction*, 112

14. Jasser Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (London and Washington: IIIT, 2008), 2-3.
15. Ibid.
16. Mohammad Hashim Kamali, *Maqāṣid al-Sharī'ah, Ijtihād and Civilisational Renewal* (London and Washington: IIIT, and KL: International Institute of Advanced Islamic Studies (IAIS) Malaysia, 2012), 17-18. In fact, the *maṣālīḥ mulgha* are unacceptable, as the term itself suggests.
17. Al-Ghazālī, Shifā' al-Ghālīl in Imran Ahsan Khan Nyazee, *Outlines of Islamic Jurisprudence* (e-book: Advanced Legal Studies Institute, n.d.), 165.
18. Ibrāhīm ibn Mūsā (Abū Ishāq) al-Shātibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, A. 'U. Mashhūr Ḥassan, ed. (7 volumes) (n.p.: Dār Ibn 'Aff'En, 1997), V.2, 17-22; and Auda, *Maqāṣid al-Sharī'ah*, 3-4.
19. Aḥmad al-Raysūnī, *Madkhal ilā Maqāṣid al-Sharī'ah* (Cairo: Dār al-Salām, and Rabat: Dār al-Amān, 2010), 11-13; and Auda, *Maqāṣid al-Sharī'ah*, 4-5.
20. Auda, *Maqāṣid al-Sharī'a: A Beginner's Guide*, 6-7.
21. M. Tāhir Ibn 'Āshūr, *Ibn Ashur's Treatise on the Higher Objectives & Intents of Islamic Law*, 282.
22. See 'Abdullāh bin-Bayyah, *Maqāṣid al-Mu'āmalāt wa-Marāṣid al-Wāqī'āt* (London: Al-Furqan Islamic Heritage Foundation, 2010), 69-77.
23. Cf. 'Uthmān Shubayr, *Al-Mu'āmalāt al-Māliyyah*, 326.
24. Such *ijārah* of lakes or ponds are not permissible in the Ḥanafī School, as the leased item (water) is a fungible item. However, other Schools have permitted it. See al-Kāsānī, vol. 4, 175; and *al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah*, Vol. 1, 277. In fact, Ibn Qaiyyim considers all such *ijārah* permissible because here one can benefit from the asset which is reproduced after consumption while the corpus remains in its original form. Ibn Qaiyyim based his argument on the Qur'ānic verse of hiring a wet nurse (65: 6), which itself is a corpus ('*ayn*) allotted for *ijārah*.
25. Cf., *al-Fatāwā al-Hindiyyah*, vol. 4, 411.
26. For a detailed discussion on the effects of debt, see Abdul Karim Abdullah, "Debt and Economic Activity," *Islam and Civilisational Renewal* (ICR) 4, no 3 (2013): 407-22.
27. M. Kabber Hassan & Rasem N. Kayed, "The Global Finance Crisis, Risk Management and Social Justice in Islamic Finance" *ISRA International Journal of Islamic Finance*, v.1, no.1 (2009), 44-46.
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31. It provides protection to hirers and guarantors against unscrupulous dealers, clear procedure and formalities of transaction, indicates rights and liabilities of the owner, hirer, and guarantor, as well as remedy and penalty for claimant and offernder. See *Ibid*, 11.
32. Md. Abdul Jalil, "Islamic Hirer Purchase Law is Getting Special Attention in Malaysia: A Socio-Legal Analysis," *Journal of Sociological Research*, v.4, no.2 (2013), 29-31.
33. See N. Irwani Abdullah, "Implementation of Muamalah Hire Purchase Bill in Malaysia: Chasing A Mirage?" *IIUM Law Journal*, v.17, (2009), 99 -123.
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36. Hire Purchase Act 1967(Act 212) & Regulation, available online at <www.kpdnkk.gov.my/c/document_library/get_file?uuiid...> accessed on 30 November 2014.
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43. Said Muhammad Bouheraoua et.al, "A Critical Appraisal of Shari'ah Issues Related To Şukūk Al-Ijārah" *ISRA International Journal of Islamic Finance*, v.4. no.1(2012), 167.
44. It refers to an arrangement that involves sale of an asset to the purchaser on a deferred basis and subsequent purchase of the asset at a cash price lower than the deferred sale price or *vice versa*. See Bank Negara Malaysia, al-Bay' al-'Inah, Exposure Draft, 4.
45. *Ibid*, 174. See also Muhammad Ridhwan Ab.Aziz et.al, "The Structure of Şukūk Ijārah: An Initial Analysis From The Perspective of Maqasid Al-Shari'ah"
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CAN RIGHTS BE THE UNDERLYING ASSETS OF SUKUK?: THE MALAYSIAN EXPERIENCE

Auwal Adam Sa'ad*

Abstract: *Ṣukūk* market has hitherto focused on issuances based on intangible underlying assets. Right (*haqq*) is intangible in nature which can in principle include government awards, goodwill, trademarks, receivables and other related rights as applied in the Islamic capital markets. This paper looks into the opinions of classical Muslim schools and scholars on whether or not these assets are acceptable assets for *ṣukūk*. The paper incorporates analysis of the current applications of right as an underlying asset for *ṣukūk* in Malaysia. The analysis includes a case study on *ṣukūk* that uses right as an underlying asset, and raises some Shari'ah questions surrounding its applications. The study stipulates that right is an eligible asset for *ṣukūk* transactions, because it is valuable and capable of ownership and possession. However, it is recommended that *ṣukūk* based on government award should only be issued by government entities; private companies should not issue *ṣukūk* based on government awards because it was based on *iqṭā'* principle which only the government has the right to grant its ownership to the general public.

Keywords: Right; Underlying Asset; *Ṣukūk*; Shari'ah

INTRODUCTION

Rights are intangible in nature; they could not be physically seen or touched as tangible assets. The shari'ah rules related to contract of sale of *ṣukūk* asset requires the subject matter to suit certain conditions on its legality, value, existence, and possible delivery. *Ṣukūk* asset must be a valuable property that is capable of ownership and possession; it appears that certain assets that are used for *ṣukūk* transaction may not easily suite this requirement. The paper aims to examine issues related to financial rights by looking at the opinion of Muslim jurists from the four Islamic schools of jurisprudence, coupled with a case study of *ṣukūk* that experiences the use of right as an underlying asset for transaction.

THEORIES ON RIGHTS (*HUQŪQ*) UNDER ISLAMIC LAW

The word *haqq*¹ could be used to mean wealth and debt, as when Allah the Almighty said: "And let the one who has the obligation [i.e the debtor] dictate".² *Haqq* here means a debt or something established and proven. *Huqūq* as such refer to Shari'ah rulings related to a subject matter or its usufruct which can allow its owner to utilise from the usufruct or its outcomes".³ Kamāl bin Hammām

defined it as a legal capacity given by the lawgiver for a usage except when it is otherwise restricted.⁴ Most of the definitions of *haqq* are thus related to the Lawgiver which indicate that the source of all *haqq* or ownership rights is the Almighty Allah and the Shari'ah as a manifestation of His will.

Selling a "right" or usufruct is a disputed issue amongst the Islamic scholars, Imām ibn 'Arafah from the Māliki school identifies *bay'* (sale contract) as a contract of exchange for a physical item that is not usufruct or pleasure.⁵ According to this definition lease, rent and marriage are not considered sale contracts as they are not physical objects. Imām al-Dasūki commented on this definition and said: "that means the sale contract can only occur on items that are not usufruct." Another definition has it that a sale contract consists of transfer of an asset for a return, while buying is to take over its possession.⁶ These definitions belong to scholars from the Māliki school. We can understand that according to them, the subject matter of a sale contract must be a physical item and not usufruct.

The Hanafi scholars are in harmony with Mālikis in prohibiting the sale of non-physical items and usufructs. However, they even excluded usufruct from the definition of property. Ibn 'Ābidīn has stated that it is essential in a sale contract that it should consist of exchange of property with another property, and usufructs are not regarded as property in the Hanafi School. By contrast, the Shāfi'i School has developed the meaning of *bay'* (sale contract) to mean the usufruct that could last forever, such as the right to sell the use of a road which is situated on other people's land, which is regarded as a valid sale contract according to Shāfi'i School even if it is clearly a sale of usufruct. Imām Khaṭīb al-Sharbīnī from the Shāfi'i school defines the sale contract as a contract of exchange of property which could lead to possessions of a material object or an everlasting usufruct.⁷ The reasoning behind the requirement for a sold item to be a material object is that sale contract has the meaning of permanent ownership of the sold item, which differentiates it from lease contract (*ijārah*). That is the reason why the Shāfi'i school regarded the sale of a permanent usufruct a valid sale contract.

It is also important to demonstrate that the Muslim jurists set a condition for an item to be accepted as a valid subject matter of a sale contract that it has to be a property. This explains why they did not address the contract of marriage as a sale contract.

The Hanbali scholars discuss this with greater depth and clarity compared to the Shāfi'is. In legalising the sale of the usufruct and not considering the sold item to be a necessary material object, they defined a sold item as a property or any permissible usufruct, and also identified property as anything that includes a material object or usufruct.⁸ We can understand that some scholars emphasised on a reservation that the subject matter of a sale contract has to be a material object, even though there are others who opine the legality of the sale of an everlasting

usufruct. The Hanbali school legalises the sale of the usufruct disregarding whether it is everlasting or not.⁹

CLASSIFICATIONS OF RIGHTS

Right (*haqq*) is classified into different types. It can be classified according to the owner of the rights into three types. Firstly, the rights of the Almighty Allah, such as *Īmān* (faith), or something related to the public usage which could not be claimed by anyone but the Almighty Allah. This is called *haqq-Allah* in order to show that no human being has the right to hold or prevent it to others.¹⁰ Secondly, rights of human, or right that is privately owned by a person and could not be taken away by any one. Thirdly, interrelated rights of Allah and human beings, and this is divided into two, namely the interrelated rights where the right of Allah is more dominant such as *ḥadd al-zinā* and the interrelated right where the right of human beings is more dominant,¹¹ such as *qisās*.

Imām al-Qarāfī is of the opinion that all the rights of human beings are under the right of Allah, because all rights originated from Allah (SWT). He said there are rights of Allah where you cannot find the right of human beings in them, but there is no right of human beings without a right of Allah in it.¹² Imām al-Shāṭibī also said: there is no Shari'ah ruling which is not related to the rights of Allah, it is a component for worshiping Allah, if a right is given to a person, it is his right that dominates, but it must have connection to the right of the Almighty Allah.¹³

Right could also be classified according to its content into two types namely; financial rights (*ḥuqūq māliyyah*) and non-financial rights. Financial rights are rights related to *māl* or property, which is the category mentioned by Prophet Muhammad (peace be upon him) in *aḥadīth*: "Whoever leaves a *māl* (wealth) or *haqq* (right), it belongs to his successors."¹⁴ These types of *ḥuqūq* are numerous, such as the right to ownership of tangible assets, debt, usufruct, right to *shuf'ah* (pre-emption), easement, right of a person to a will, right to reclaim the willed asset, and right to the bounty of war after taking possession, although the war combatants according to the Hanafi school have no right to possession prior to the distribution of the bounty.¹⁵ However scholars from the Shāfi'i school of jurisprudence are of the opinion that the war combatants will have the right to possess (*tamalluk*) before the distribution, therefore they can say that they possessed their portion from the bounty, although they will only have the right of *milk* (ownership) after the distribution.¹⁶ Imām Ahmad ibn Hanbal is of the opinion that the bounty of war will be automatically owned by the combatant as soon as the property is freed from the hands of their opponents.¹⁷

Non-financial rights are the rights which are not connected to wealth or property. Examples of such include the rights of the relatives of a murder victim to retaliate,

their right to pardon the killer and the right to child custody (*haḍānah*). Our main concern here is the right of human beings which is related to the *māl* (wealth). Imām Ibn Rajab from the Hanbali school classified the rights of human-beings into five as follows: rights of possession (*ḥaqq al-milk*), rights of taking over (*ḥaqq tamalluk*), right to usufruct (*ḥaqq al-intifāq*), right to exclusion (*ḥaqq al-ikhtiṣāṣ*) and right for the redemption of property (*ḥaqq muta 'alliq bistifā'il ḥaq*).¹⁸

Ḥaqq al-milk, can be classified into two, namely complete and partial ownership (*tām* and *nāqis*). The complete ownership or *milk al-tām* is defined as possessing the complete asset including the material object and the usufruct, so that the owner will have all the rights associated with the asset.¹⁹ One of the *milk al-tam* components is that it is an absolute and permanent ownership that could never be taken away from the original owner and it is not subject to withdrawal, as in the case if someone snatched it from the owner and the owner denied its ownership, the subject matter is still his own despite his denial.²⁰ However it can accept a change of ownership through the accepted Islamic norms for transfer of ownership such as contract of sale, will or inheritance. The owner has an absolute right to use or invest the subject matter as he likes; he can rent it out, sell it, give it away for free, or bequeath it in his will because he possesses both the material object and the usufruct.²¹

Partial ownership (*al-milk al-nāqis*) is defined as ownership of either the material object alone or the usufruct alone.²² It is called ownership of the usufruct or the right to use; it can be a right for a person to use, meaning that the right is attached to the person and not the subject matter. It can also be attached to the subject matter without considering the owner or the person that should use it. This is called the right of easement (*ḥaqq al-irtifāq*), which is restricted only for realty. Partial ownership could be classified into two types, namely ownership of the material object alone, meaning that a person can possess the material object while another person owns the usufruct. For example if a person wills his house to another for his entire life, the owner possesses only the house but the house usufruct is owned by the occupant by means of the will. In this case, even if the owner of the house dies, the ownership of the usufruct by will continues until the duration of the will ends as prescribed by the owner or by the death of the occupant upon which the ownership of the usufruct will be transferred to the heirs of the original owner.²³ The ownership of the material object turns into complete ownership at the end of the will agreement.

Secondly, ownership of the usufruct only. There are four ways of usufruct acquisition, namely borrowing (*'i'arah*), lease (*ijārah*), endowment (*waqf*) and *ibāḥah*. *'I'arah* or borrowing is identified by the Hanafi and Māliki Scholars as free usufruct ownership. The person who receives ownership of the usufruct through borrowing can also lend it to someone else but he cannot lease it to

anyone, because *'i'ārah* or borrowing is not a binding contract as the owner can eliminate it at anytime. However, *ijārah* is a binding contract and a weak contract cannot overcome a strong one.²⁴

According to Shāfi'i and Hanbali schools, *'i'ārah* or borrowing is defined as legal usage of free usufruct; therefore the borrower cannot rent the subject matter to anyone.²⁵ However, leasing or *ijārah* could be identified as possessing the usufruct of the subject matter for a return, the lessee can lease the subject matter to a third party for free or for a return if the usage is identical, but if the usage is not the same then the lessee has to ask the permission of the owner before he can lease it to a third party. As for the usufruct ownership by will, only the target person has the right to the usufruct, however he can pass the usufruct to anyone either for free or for a return subject to the approval of the owner.²⁶

Ibāḥah simply means to allow or permit someone to utilise from something such as food, drinks and roads. Muslim scholars have agreed that a person who is permitted to use a *mubāḥ*, should not have the legal capacity to allow or prevent it to a third party. The difference between *milk* and *mubāḥ* is that, for *milk* the person who owns something has the right to use and allow others to, but for *mubāḥ* he only has the right to use it by himself and does not have the right to allow or prevent others.²⁷

Some contemporary Muslim scholars classified right according to its transferability and tradability into three types, namely personal financial right (*ḥaqq māli shakhṣī*), corporeal financial right (*ḥaqq māli 'aynī*) and financial right on receivables or debt (*ḥaqq al-dayn*).²⁸

The personal financial right (*ḥaqq māli shakhṣī*) is transferable via inheritance but not tradable. An example of the personal financial right is the right to claim compensation for an injury. This financial right is transferable to the legal heirs but not tradable to a third party.²⁹

The corporeal financial right (*ḥaqq māli 'aynī*) is transferable and tradable to a third party. This financial right is called right to ownership (*ḥaqq al milkiyyah*), such as shares and intellectual property rights; these rights can be bought and sold to third parties.

Lastly, the financial rights to receivables or debt payments (*ḥaqq al-dayn*) which are still in the obligation of the debtor (*ḥaqq fī dhimmah*), These financial rights are transferable and tradable but subject to strict rules related to the nature of the financial rights that are ribā-bearing. These financial rights are transferable through inheritance and transfer of debt (*hawālah*). They are also tradable according to some jurists, but subject to the strict rules on exchange of money for money (*sarf*). This is because, debt is considered to be similar to money, which is *ribā*-bearing, and can only be exchanged for the same denomination at par and spot transaction.³⁰

Easements (*Huqūq al-irtifāq*)

Haqq al-Irfāq or *al-irtifāq* (easement) is defined as a permanent right attached to a tangible property for a shared benefit of another property,³¹ such as water wells, subways, roads, neighborhood and the right of access to tall buildings. The easement rights are restricted in the above mentioned examples by the Hanafi school of jurisprudence, however according to the Māliki school, the rights to easement are not restricted; it can be instigated through a mutual contract.³² For example, there might be an agreement that any building in a neighborhood should not exceed a specific height limit, thus creating an easement for residents of that neighbourhood.³³ Easement is not regarded as *māl* on its own according to the Hanafi school, because it could not be taken or stored, this is according to their definition of *māl* and such could not be sold, donated or leased out for money. They regard it as financial right due to its relation with tangibles, then they allowed it to be sold together with the tangibles.

Imām al-Kāsānī illustrated this by reference to water wells attached to a property should not be sold alone, such as to sell a right to drink for one day or another, because drinking is a right and it cannot be bought or sold alone. However, if a land is sold together with the well then it is acceptable. It cannot be leased, because the return of leasing is the same as the return for contract of sale, but it is lawful to lease a house together with its well.³⁴ Furthermore, the right to easement as also includes the right to pre-emption (*shuf'ah*) which should not be sold in any situation similar to the case of easement because the right to pre-emption is a right attached to property, which is an easement.³⁵ However, the Hanafis still regard the right to easement as a financial right even if it is not a *māl* on its own. Imām Kāsānī said: "A well or a drinking point is not a property but a financial right".³⁶

However, the majority of the Māliki, Shāfi'i and Hanbali scholars are of the opinion that easement is *māl* on its own and could be donated, sold, or leased out separately.³⁷ There is no argument between scholars that the easement rights could not be dropped with the death of the owner, but will be transferred to his successors together with the tangible assets owned by him, because it is a financial right that has the meaning of *māl* and attached to a tangible asset. Therefore death will not have an influence on its ownership regardless as to whether it is a dependent right or it is *māl* on its own.³⁸ The case study below will demonstrate how financial rights are used as assets in *sukūk* structure.

CASE STUDY OF *ŞUKŪK* STRUCTURE ON RIGHTS (*HUQŪQ* ASSET)

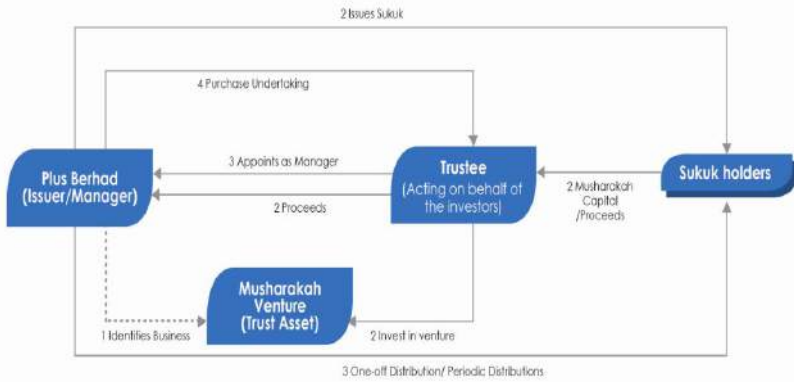
In 2012, the Malaysian company “Projek Lebuhraya Usahasama” (PLUS) closed a record breaking landmark RM30.6 billion (US\$9.86 billion) *şukūk* programme comprising two tranches of government guaranteed and non-government guaranteed ‘AAA’-rated issuances of varying tenors, sizes, expected returns and yields to maturity. This *şukūk* deal is the world largest to date with the largest single issuance from Malaysia. The *şukūk* was based on an Islamic medium term notes (“*Şukūk Mushārah*”) issuance programme of up to RM23.35 billion in nominal value based on the Islamic principle of *Mushārah* (“*Şukūk Programme*”). In respect of each issue of *Şukūk Mushārah* under the *Şukūk Programme*, PLUS Berhad will identify its business comprising rights under the respective toll-road concessions granted by the government of Malaysia (“GOM”) or part thereof which will be used as the underlying asset for that particular *Mushārah* transaction.³⁹

The potential holders of the *Şukūk Mushārah* (“*Şukūk holders*”) shall via the trustee, from time to time, form a *Mushārah* amongst themselves, which is a partnership amongst the *şukūk* holders, to invest (via the trustee) in the underlying asset (“*Mushārah Venture*”) via the subscription of the *Şukūk Mushārah* to be issued by PLUS Berhad. PLUS Berhad shall make a declaration that it holds on to the trust, the underlying asset for the benefit of the *şukūk* holders. The *Şukūk Mushārah* shall represent amongst others, the *şukūk* holders’ undivided proportionate interest in the *Mushārah Venture*. PLUS Berhad shall receive *Mushārah* capital arising from the subscription of the *Şukūk Mushārah*, which is equivalent to the proceeds from the *Şukūk Mushārah*. There will be at least two *Şukūk holders* forming the *Mushārah* at each issuance.⁴⁰

Any profit or losses derived from the *Mushārah Venture* will be distributed or borne by each *şukūk* holder in proportion to each *Şukūk holder*’s respective contribution of the *Mushārah Capital*. In respect of *Şukūk Mushārah* without periodic distribution, income from the *Mushārah Venture* of up to the Expected Return shall be distributed on a one-off basis (“One-off Distribution”) upon the maturity date of the *Şukūk Mushārah* or the Dissolution Date, whichever is earlier. In the event of any shortfall between the One-off Distribution and the Expected Return for the relevant period, PLUS Berhad shall make top-up payments to make good the difference. The Top-up payment will be set-off against the Exercise Price. Any income in excess of the Expected Return shall be retained by PLUS Berhad as an incentive fee.⁴¹

At maturity, PLUS Berhad (as the “Obligor”) shall undertake to purchase the *şukūk holders*’ interest in the *Mushārah Venture* by entering into a sale agreement and pay the Exercise Price on either the maturity date of the *Şukūk*

Mushārah or on the Dissolution Date, whichever is earlier. PLUS Berhad shall be entitled to set-off the Exercise Price with any top-up payment(s) made.⁴²



Source: Annexure 1 (PLUS Berhad-Sukuk Programme)

Step (1) In respect of each issue of *Şukūk Mushārah* under the *Şukūk* Programme, PLUS Berhad will identify its business comprising rights under the respective toll-road concessions granted by the Government of Malaysia (“GOM”) or part thereof which will be used as the underlying asset (“Underlying Asset”) for that particular *Mushārah* transaction.

Step (2) The potential holders of the *Şukūk Mushārah* (“*Şukūk* holders”) shall via the Trustee, from time to time, form a *mushārah* amongst themselves, which is a partnership amongst the *Şukūk* holders, to invest (via the Trustee) in the Underlying Asset (“*Mushārah* Venture”) via the subscription of the *Şukūk Mushārah* to be issued by PLUS Berhad. PLUS Berhad shall make a declaration that it holds on trust, the Underlying Asset for the benefit of the *Şukūk* holders. The *Şukūk Mushārah* shall represent amongst others, the *şukūk* holders’ undivided proportionate interest in the *Mushārah* Venture. PLUS Berhad shall receive *mushārah* capital (“*Mushārah* Capital”) arising from the subscription of the *Şukūk Mushārah*, which is equivalent to the proceeds from the *Şukūk Mushārah*. There will be at least two *şukūk* holders forming the *mushārah* at each issuance.

Step (3) The expected return of the *Şukūk* holders from the *Mushārah* Venture “Expected Return” shall be the yield for the *Şukūk Mushārah* up to the maturity date of the *Şukūk Mushārah* or the date of declaration of an Event of Default/ Dissolution Event (“Dissolution Date”), whichever is the earlier. Pursuant to the management agreement to be entered into between PLUS Berhad and the Trustee (acting on behalf of the *şukūk* holders), the Trustee shall appoint PLUS Berhad as

the manager of the *Mushārah* Venture. In respect of *Ṣukūk Mushārah* with periodic distribution, income from the *Mushārah* Venture of up to an amount equal to a certain percentage of the face value of the *Ṣukūk Mushārah* per annum, "Expected Periodic Distribution" shall be distributed periodically in the form of periodic distribution "Periodic Distribution" to the *Ṣukūk* holders of that particular *Ṣukūk Mushārah*. The Periodic Distribution shall be made semi-annually or such period to be determined prior to each issuance of the *Ṣukūk Mushārah* (each such date for distribution, a "Periodic Distribution Date"). In the event of any shortfall between the Periodic Distribution and the Expected Periodic Distribution for such relevant period, PLUS Berhad shall make top-up payments to make good the difference. The Top-up payments will be set-off against the Exercise Price (as defined hereinafter). Any income in excess of the Expected Periodic Distribution shall be retained by PLUS Berhad as an incentive fee. In respect of *Ṣukūk Mushārah* without periodic distribution, income from the *Mushārah* Venture of up to the Expected Return shall be distributed on a one-off basis ("One-off Distribution") upon the maturity date of the *Ṣukūk Mushārah* or the Dissolution Date, whichever is the earlier.

In the event of any shortfall between the One-off Distribution and the Expected Return for such relevant period, PLUS Berhad shall make Top-up payment to make good the difference. The Top-up payment will be set-off against the Exercise Price. Any income in excess of the Expected Return shall be retained by PLUS Berhad as an incentive fee.

Step (4) Pursuant to a purchase undertaking granted by PLUS Berhad (as Obligor) in favor of the Trustee (acting on behalf of the *ṣukūk* holders) (Purchase Undertaking), PLUS Berhad shall undertake to purchase the *ṣukūk* holders' interest in the *Mushārah* Venture by entering into a sale agreement ("Sale Agreement") and pay the Exercise Price on either the maturity date of the *Ṣukūk Mushārah* or on the Dissolution Date, whichever is earlier. PLUS Berhad shall be entitled to set-off the Exercise Price with any top-up payment(s) made.⁴³

There are *Shari'ah* issues that need to be clarified related to this important *ṣukūk*. Firstly, the issue of the asset sold to the *ṣukūk* holders, the concession right whether it is really sold or the *ṣukūk* holders have only purchased part of the income receivables of the PLUS companies for a period of time, by way of giving debt to the company for a specific duration of time, which is not lawful according to the majority scholars. However, there are contract rights which are applicable by the *Shari'ah*, such as giving up one's right to someone for a fee. Most of the recent Hanafi and Shāfi'i scholars endorsed this idea, and this is the position of the Hanbali school as well. According to this idea, a person can sell his right and step down in favor for another person in exchange of an amount of money. Therefore, according to this argument, PLUS *ṣukūk* is a *Shari'ah* compliant *ṣukūk*

because it sells its concession right to investors for money, and the relationship between PLUS and investors is purchase of a Shari'ah compliant intangible right, which is similar to *nuzūl 'an al-waḡā'if bil māl* (waive in exchange for a fee).

Some scholars also argued that this kind of *ṣukūk* is valid because it is based on *Badal al-kuluwwi*. *Badal al-kuluwwi* is where a person enters into an *ijārah* agreement for realty for instance, and rents out the usufruct rights to another person and takes a fee for that. Because he owns the usufruct right at that moment, therefore he has the right to sell it to another person. Based on this, PLUS has the right to sell its concession right to investors for money and for a specific duration of time.

Secondly, though the *ṣukūk* is based on the *mushārah* principle, the Islamic partnership contract, there remains some hurdles challenging the partnership nature of PLUS *ṣukūk*. In the *ṣukūk* documentation, the PLUS Company undertakes to top up payment where the anticipated profit was not realised by the underlying venture. This act of top up is not a Shari'ah recognised mechanism, as a *mushārah* contract is concerned with profit and loss sharing, which should be determined according to the outcome of the venture. The originator should not act to secure the investors' mandate to maintaining stable income.

CONCLUSIONS/FINDINGS AND RECOMMENDATIONS

Under Islamic law, the subject matter of *ṣukūk* transaction has to be a valuable property that is capable of ownership and possession. It is concluded that the view of the majority scholars of the inclusion of rights and usufructs in the meaning of property in Shari'ah is a preferred view. These rights and usufructs can be termed as financial rights. The view is more flexible and can potentially cover many types of new financial rights, as long as those financial rights can be subjected to ownership, control and exploitation. Malaysian scholars regarded the government awards and concession contracts as valuable assets that are capable of being bought and sold. The basis of the opinion is the analogy between the government award and the concept and practice of *iqṭā'* which is an approved practice in Islamic law. Generally, *iqṭā'* refers to the practice of the head of state (Imām) awarding certain portions of an undeveloped government land to any individual for the purpose of growth exploitation. *Iqṭā'* was practiced by the Prophet Muḥammad (peace be upon him) and the prominent companions. For the enhancement of the industry the paper recommends the following:

1. *Ṣukūk* market players can make use of right and usufruct as underlying asset for *ṣukūk* structure since it is valuable, legal and capable of being possessed or sold. It is also hinted that legal ownership of the right must

be certain before its incorporation as *ṣukūk* underlying asset. All properties with an unlawful usufruct cannot be owned or sold and therefore should not be regarded as *ṣukūk* asset.

2. *Ṣukūk* which underlying asset is government awards or concession agreement should be strictly issued by government entities alone; private entities should not use government awards (*iqṭā'*) as asset in their *ṣukūk* structure.
3. For *mushārah* *ṣukūk* issuances, it is recommended that there should be a strict adherence to the *mushārah* principle that profit must be distributed according to the outcome of the venture. Any act of maintaining stable income for the investors will attract Sharī'ah issues and it is a violation of the *mushārah* venture principles.
4. Public interest must be established before using a public owned property as *ṣukūk* asset.

Notes

* Auwal Adam Sa'ad acquired his LLB Sharī'ah from Islamic University Madina, Kingdom of Saudi Arabia in 2006. In 2009, he obtained Master of Comparative Laws from Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia. He is currently a PhD candidate at Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia. He has been a part time lecturer at the same faculty, and a research assistant at the International Sharī'ah Research Academy (ISRA). His major areas of interest and specialisations are Islamic Commercial law, Islamic Banking and Finance, with special concern on *Sukūk* and Islamic Capital Markets in general. He has authored several articles and attended numerous conferences and attended training of Sharī'ah advisers and experts pioneered by the department of Islamic Capital Markets of the Securities Commission of Malaysia.

1. *Ḥuqūq* is a plural of *Ḥaq* and literally means truth or rights although the word *Ḥaq* has various related meaning according to Sharī'ah. The word *Ḥaq* could be used to mean the name of the Almighty Allah (SWT). Allah the Almighty says: "But if the Truth [i.e, Allah] had followed their inclinations, the heavens and the earth and whoever is in them would have been ruined." Meaning that if the Almighty Allah would follow the inclinations of disbelievers then the world and the heavens would be spoiled. The word *Ḥaq* could be used to mean the Holy Qur'ān, Allah the Almighty says: "However, I gave enjoyment to these [people of Makkah] and their fathers until there came to them the truth and a clear Messenger" The truth here means the Holy Qur'ān. The word *Ḥaq* also means Islam, Allah the Almighty said: "And say, the truth has come and falsehood has departed. Indeed is falsehood by nature ever bound to depart." *Ḥaq* means truth, the Almighty Allah said: "It is the promise of Allah which is truth" *Ḥaq* means compulsion, Allah the Almighty said: "And if we had

willed, we could have given every soul its guidance, but the word from me will come into effect that I will surely fill Hell with Jinn and people together,” Qur'an Sūrat Mu'minun verse 71, Qur'an Sūrat Az-Zukhruf verse 29, Qur'an Sūrat Al-Isra', verse 81, Qur'an Sūrat As-Sajdah, verse 13, Qur'an Sūrat Yunus, verse 4.

2. Qur'an 2/282.
3. Ahmad bin Idrīs bin Abdurrahman Abul-'Abbās Al-Qarāfī "*Kitāb Al-Furūq*", Lebanon: Dār al-Gharb, (1994) vol.3 p.209.
4. Muḥammad bin 'Alī bin Muḥammad Al-Shaukānī "*Fath al-Qadīr*", Lebanon: Dār al-Gharb, (1994) vol.5 p.456.
5. Muḥammad 'Alā'uddīn Afandī Ibn 'Ābidīn "*Hāshiyāt Raddul Mukhtār*" Lebanon: Dār al-Fikr li'n Nashr, (2000) vol.4 p.50-51.
6. *Majallat Majma' al-Fiqh al-Islāmī*, Maktabat al-Shāmilah, vol.5 p.2035.
7. Ibid., vol.5 p.2036.
8. Shamsuddīn Abu Bakr bin Abū Sahl Al-Sarkhasī "*Al-Mabsūṭ*", Lebanon: Dār al-Fikr li'n Nashr, (2000) vol.11 p.78.
9. Ibid.
10. *Majallat Majma' al-Fiqh Al-Islāmī*, Maktabat al-Shāmilah, vol.5 p.1866.
11. Ibid., vol.4 p.1754.
12. Ahmad bin Idrīs bin Abdurrahman Abul-'Abbās Al-Qarāfī, "*Kitāb Al-Furūq*" Lebanon: Dār al-Gharb, (1994) vol.1 p.141.
13. Ibrāhīm bin Mūsā bin Muḥammad al-Lakhmī al-Shāṭibī, "*Al-Muwāfaqāt fi Uṣulil Ahkām*" Giza: Dār Ibn Iffān, (1997) vol.2 p.333.
14. Muḥammad bin Ismā'il Al- Bukhārī, "*Kitāb al-Jāmi' al-Ṣaḥīḥ*" *al-Hawālāt* Cairo: Dār al-Nashr, (1987) ḥadīth no. 2175 and Muslim, "*Kitāb Jāmi' al-Ṣaḥīḥ*" *al-Farā'idh*, Beirut: Dār al-Jīl, and Dār al-'Āfāq al-Jadīdah, ḥadīth no. 1619, both via Maktabat al-Shāmilah.
15. *Majallat al-Buḥūth al-Islāmiyyah*, Kingdom of Saudi Arabia: Ar-Ri'āsah al-Āmmah lil-Buhuth al-'Ilmiyyah wal-'Ifṭā', (1994) vol.40, p.362.
16. Ibid.
17. Abdullah bin Ahmad bin Qudāmah al-Maqdisī "*Al-Mughnī*", Lebanon: Dar al-Fikr (1984) vol.9 p.238.
18. Imām Al-Shāṭibī, "*Al-Muwāfaqāt fi Uṣulil Ahkām*", Dār Ibn 'Affān (1997) vol.2 p.333.
19. Wahbah Al-Zuhailī, "*Al-Fiqh al-Islāmī wa Adillatuh*", Syria, Damascus: Dār al-Fikr, vol.4 p.414.
20. Ibid.
21. Ibid.
22. Ibid.
23. Ibid., p.415.
24. Ibid., p.416.
25. Ibid.
26. Ibid., p.417.
27. Ibid.
28. Engku Rabiha Adawiah Engku Ali, Islamic Law Issues in Sale-Based Financing Structures as Practiced in Malaysia, "*Essential Readings in Islamic Finance*", Kuala Lumpur: Centre for Research and Training, (2008) p.550.

29. Ibid.
30. Another classification of *ḥaqq* according to personal rights (*Shakhsī*) or *Al-Iltizām* and right *in rem*, (*Aini*), personal rights or *Al-Iltizām* are rights related to a person in which someone is obliged to compensate, repay, work or deny working for another person. Right *in rem* is an authority given by law over a particular property. Sheikh al-Sanhūrī demonstrated that the terms personal rights and rights *in rem* were not originally known by Muslim Jurists, it is a terminology imported from western jurisprudence. Muslim Jurists used the word right (*ḥaqq*) to mean all financial and non-financial rights; they differentiate the right of Allah and the right of human beings, and they use the word (*Ḥuqūq*) to mean easement right in some occasions. *Ḥaqq Shakhsī* or *Al-Iltizām* has four different legal connotations as follows. Firstly: Commitment to Debt, (*Al-Iltizām Bil-Dayn*) is a commitment on certain amount of money or property to be paid by a debtor. Debt could be initiated either by contract, contract of sale and a personal initiative such as *al-Nazar* (to swear) *al-Hibah* (gift) or *waṣīyyah* (will).
31. *Majallat Majma' al-Fiqh Al-Islāmī*, Maktabat al-Shāmilah, vol.4, p.826.
32. Abdul-Razzāq al-Sanhūrī, “*Maṣādir al-Ḥaqq fil-Fiqh al-Islāmī*”, Dār al-Hanā, Cairo, (1954) vol.1, p.30.
33. *Majallat Majma' al-Fiqh Al-Islāmī*, Maktabat al-Shāmilah, vol.4, p.826.
34. Abdulsalam Dawud Al-Abādī, “*Al-Mulkiyyah fil-Sharī'ah al-Islāmiyyah*” Mu'assasat al-Risālah, Damascus, vol.1 p.221.
35. Ibid.
36. Abū Bakr bin Mas'ūd bin Ahmad al-Kāsānī, “*Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*”, Dār al-Ḥadīth, Cairo (2005) vol.8, p.297.
37. 'Uthmān bin 'Alī bin Mahjīn al-Zaila'i, “*Tabyīn al-Ḥaqq'iq fī Sharḥ Kanz al-Daqqā'iq*” Maktabat al-Shāmilah vol.11, p.194.
38. *Al-Mausū'āt al-Fiqhiyyah al-Kuwaitiyyah*, Wizārat al-Awqāf wa-l Shu'ūn al-Islāmiyyah, Kuwait (2000) vol.39, p.264.
39. PLUS *Ṣukūk* Principal Terms and Conditions 2012, p.2.
40. Ibid., p.3.
41. Ibid., p.7.
42. Ibid., p.7.
43. Ibid., p.33

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VIEWPOINTS

Peace Making Efforts among ASEAN Nations

by Emeritus Profesor Dr Surin Pitsuwan

*(Transcribed by Tawfique Al-Mubarak from a public lecture at LAIS Malaysia
on April 14th 2014)*

Assalamu 'Alaikum wr. wb.

Bismillahir Rahmanir Rahim.

Dear Professor Director, Excellencies, Ladies and Gentlemen,

I am grateful for this opportunity to share with you some thoughts on the topic of the role of ASEAN nations in promoting peace and regional cooperation in Southeast Asia and the wider region of East Asia. I will be discussing concerns over non-interference, the situations in East Timor, Myanmar and Rohingyas, and also matters over Malacca Straits, and ASEAN's relations with China, and South China Sea issues during my tenure of office as Secretary-General of ASEAN.

I have been appointed as a Visiting Professor of the University of Malaya since the middle of last year (2013), but have not been able to fulfil my obligations due to other pressing responsibilities and engagements around the world. This morning my wife asked me "how many people would make up the audience you will be speaking to today?" I said, "I don't know." She responded, "Usually your audience is around twenty thousand!" She was referring to the political campaigns. Pak Syed Hamid Albar here (former Foreign Minister of Malaysia) knows well what political campaigns and academic exercises of this nature have in common and what makes them different.

When I was asked the first time I went into to politics in 1989, "So, what is the reason for leaving the classroom for politics?" I said, "I am still essentially a teacher, only the classroom is getting bigger, noisier, and more difficult to manage." So, in that Aristotelian mould of teaching – meaning trying to inform, trying to change and trying to transform the thinking and thought habits and behaviours of the young – a politician also has to be a good teacher. It is difficult and very challenging, but that is part of the profession. A good politician must also be a true teacher.

This morning, you would like to hear more about how ASEAN is involved and engaged in the area of peace and reconciliation; and the record for that is rather mixed. For a long time now ASEAN has been very reluctant and very shy about getting involved in conflict situations particularly among its own

member states. This is due to the fact that we emerged out of the geo-political background of the 1960s, at a time when all these countries were different. There were five of us originally, who got together in Bangkok on the 8th of August, 1967 against the background of the problems across the Mekong River, the drama of the Indo-China ideological war. And one of those five was Tun Abdul Razak, whose name I am now carrying as a fellow at the Oxford University's Centre for Islamic Studies (OXCIS). With that background, ASEAN was very much committed to promoting a better understanding among themselves, and promoting South East Asian studies. This is a very humble background, knowing that the diversity between us would make it extremely difficult for us to engage in issues of mediation and peaceful resolution of conflicts. So, the beginning was very humble. Let us promote better understanding among ourselves, our people, and let us create a sense of new identity among ourselves, and – according to the language of the 1967 Declaration – “secure for their peoples and for posterity the blessings of peace, freedom and prosperity.” This was very vague, but quite inspiring. However, at that time, the region had gone through many issues of tension and conflict. We realised that without giving some effort to the areas of mediation, peace, and reconciliation, the region would not be able to evolve into a more integrated region, which would be the basis for effective engagement and competition with the rest of the global community. By the time the 1980s came along, China was growing fast, India was opening up, and ASEAN was forced to think about forming a formal community. So, the first concord for ASEAN, the Bali Concord of 1976, was to promote cooperation and amity amongst ourselves. The second concord in 2003 was about the ‘ASEAN community’, of which the fruit was the Founding Document at the end of 2007 – the ASEAN Charter – which for the first time legally bound all members to become one integrated community by the year 2015. And then, another Bali Concord was declared in 2011, known as the “Bali Concord 3.” That was to discuss how to evolve the ASEAN Community into an effective regional structure of cooperation to engage with the rest of the world. So it was called the “ASEAN Community in the Community of Nations.” Essentially, this new vision points to the ASEAN Community being integrated seamlessly, cooperating effectively and competing successfully with the rest of the global community.

The problem of non-interference was still there; the culture of reluctance to go into the issue of mediation between states was very strong. Again, because of the diversity in our current governance structure and our backgrounds, all forms of government are present in ASEAN – an absolute (although benevolent) monarchy, two communist countries, maybe one or two strong “one-party states,” and definitely a few “noisy democracies,” like Thailand, Indonesia, and

the Philippines. This also includes the norms, governance, religions, history, and languages – all these are diverse. There is no one common standard for any member state to come into ASEAN, unlike the European Union. In Europe you have to be a liberal, open democracy; you have to have an open economy, and you have to have certain measures of economic performance; but in ASEAN, there is nothing as such! As long as you are in South East Asia, you are fine and eligible. In fact, one time Sri Lanka wanted to join and there was a joke among us: “So, what do you have in common with us?” Their response? “Well, we wear *sarong* too!” There is no common standard for us to come into the organisation, so we have to deal with this problem of diversity. So, we have to be reluctant on the issues of trying to get involved in inter-state conflicts. In fact there is an incident which is quite interesting and a bit humorous too. Two Theravada Buddhist states – the Kingdoms of Thailand and Cambodia – fought over a Hindu ruin (Phra Vihear) and both of them were expecting two Muslims to help – Pak Marty Natalegawa of Indonesia and myself! The fact of the matter is that we did help contain it, but we could not solve it all together; the issue was more political, extremely nationalistic, and more emotional than legal.

So, when there were changes of government, things transpired. However, what Pak Marty and I did could not be revealed on international TV. And it was for the first time that the inter-state conflict of ASEAN went to the UN all the way to the Security Council – partly because Pak Marty, the Chair of the ASEAN Foreign Ministers in 2011, served as the Permanent Representative of Indonesia at the UN; and the Chair of the Council at that particular time was his colleague – a lady from Brazil. Connections help. So, it was quite a personal journey trying to make some sense out of this intense conflict between two member states of ASEAN. Thankfully we had the prior experience of mediating between ourselves. It went to the World Court as well to re-examine the judgement of 1962 on the same case of Phra Vihear. When the Court stated, not literally here that, “Yes, the ruin belongs to Cambodia,” it did not mention anything about the land surrounding the temple. So, the Thais said, “We will draw a line around the temple, concede to Cambodia the land that the Temple sits on, but not the land in its vicinity.” And that was the decision lived by for decades until the issue flared up again in 2008. It was also the first case that went to the World Court; the first case for which the foreign ministers of ASEAN were called to Jakarta to talk exclusively about a dispute between two member states. This had never happened before. You can see the evolution now; it was the first incident that went to the UN, and the first incident that the UN and the World Court said “look ASEAN, you are mature now! You have your own mechanisms, the ASEAN Charter and other instruments; you have your own political and security community; go back and use those instruments which you have created in ASEAN.”

So, in a way, the conflicts between us somehow led the world to push responsibility back in our direction. As such, we have travelled a long way from the mode of tremendous reluctance in the beginning – because of our diverse backgrounds towards a greater willingness to engage in disputes or conflicts between ourselves. So, ASEAN is transforming through these series of engagements which we were forced by international and global opinion to take action on through a dedicated position and resolution.

Pak Syed Hamid, Sir, as former FM of Malaysia at that time, remembers the issue of East Timor very well. He was FM in Malaysia and I was FM of Thailand; and it so happened that the years 1999-2000 happened to be those when Thailand was in charge as Chair. In August of 1999, East Timor blew up in crisis, and the whole world was feeling partly guilty about it, that things had gone wrong for so long since the late seventies, which led to a lot of violence, violation of human rights, and suppression on the part of Indonesia. However, ASEAN was silent, and in any case would not want to get involved in the "internal affairs of Indonesia." Then there was a referendum at the end of August 1999 when Thailand had just assumed the chairmanship from Singapore the previous July. That was when I took the position that the ASEAN Chair would have an "enhanced mandate" in coordinating among ourselves and with our Dialogue Partners, and I took the role and mandate very seriously, trying to enhance the Chair's position. It was in my estimation from consultations with colleagues, including Pak Syed Hamid, that if ASEAN didn't do anything this time we were going to become irrelevant. However, we had to make sure that Indonesia asked for our assistance. We had to make sure that Pak Habibie invited us in, rather than ASEAN marching in uninvited. Along with this, the whole world was putting pressure on ASEAN, so it was a stressful situation. I am trying to give you this picture, because I am trying to present to you all the evolution of ASEAN in the area of peace and reconciliation. Even though we were reluctant, we were forced into these situations, because we had told the world we are mature enough; we had told the world that we have the instruments; we had told the world that we are capable, but we were reluctant, we were restrained by our own principle of non-interference. So, the East Timor conflict is very illustrative for mapping the ASEAN journey to the present period. It transpired that before President Bill Clinton of the U.S. left Washington to go to Auckland, New Zealand for the APEC Summit that time in September 1999; he made a very strong appeal to the world and to Indonesia that, "You had better allow international forces to go into East Timor and help you restore law and order." UN Secretary-General Kofi Annan did the same thing from New York. Australian Prime Minister John Howard called the Chairman of ASEAN from Canberra – because you know that Australia would not want to go into East Timor alone, knowing that the

Indonesian mentality was strongly against it and had a very bitter experience with past colonial interference. Four hundred years with the Dutch caused this sense of ‘anti-West,’ ‘anti-colonialism,’ and even ‘anti-Caucasian,’ to be very direct about it. Also, Australia could get into a quagmire if it waded into that fragile situation alone. So, they were extremely reluctant, though they were making all these calls and appeals, applying pressure on all of us. Even the European Union weighed in by way of sending Robin Cook, Foreign Secretary of the UK, to attend the APEC consultation in Auckland. So, as Chair of the ASEAN Foreign Ministers Meeting, I went to Jakarta to visit Pak Habibie after the APEC Leaders’ meeting in Auckland, New Zealand. I travelled through Singapore to call upon him, but I was conducted to the Office of General Wiranto first, who was the Commander of the Indonesian Armed Forces at the time and had some involvement in East Timor. He said to me: “Come, come in large numbers! We want to see the faces of our ASEAN and Asian friends in East Timor, as many as you can bring in.” That was quite a major shift for Indonesia. A huge shift! Being extremely jealous about its territorial integrity and sovereignty, and very strong in third world mentality, but for the first time asking ASEAN member states and East Asian neighbours – because Korea too came to help – to restore law and order in East Timor. When I was conducted to the Presidential Palace, Pak Habibie repeated the very same phrase as Gen. Wiranto; they probably coordinated closely about the message they wanted to convey to ASEAN and to the world. He said: “Please come, come in large numbers. And if you can, take command of that international force coming into East Timor.” That phrase should be recognised; what he meant was “never Australia!” Responding to the President, I said: “Mr. President, we are never going to come in such large numbers. We do not have the technology nor the resources. We also do not have that sort of military intelligence, and in my humble opinion we cannot be the commander of the international force in East Timor.” Then, Pak Habibie shot back, immediately – he must have thought about it long before – “Then, give it to one of the Nordic countries. Avoid Australia at all costs! Norway!”

But then it had to be Australia, because they were more ready; they were prepared; they very much wanted to lead that coalition in East Timor. And they did it, making ASEAN instrumental in bringing a new nation into existence. By the year 2005, East Timor was an independent state and a member of the United Nations. So, you can see the evolution of ASEAN on this issue of peace and reconciliation.

Myanmar is probably another one of our strong points. By the time of the crisis I had become the Secretary-General of ASEAN. The first six months – I came into office in January 2008, and in May 2008 – Cyclone Nargis devastated much of Myanmar. 140,000 people perished overnight! Four million more were suffering

and teetering between life and death! Not only that, but Myanmar was still under UN sanctions; isolated and pressured under the force of the Resolutions of the Security Council. It was only ASEAN which was trying to put a buffer between Myanmar and the international community. Again, we were expected – we were forced and pressured – to pry open Myanmar for humanitarian assistance from the anxious global community. And we did that. This humanitarian window helped Myanmar to rehabilitate itself with the international community – the UN even came to Yangon, while it was still under sanctions! Foreign ministers and ministers of development and international cooperation of many countries, including Mr. Ban Ki Moon of the UN, the U.S., and the European Union, came to Yangon, Myanmar. And we made it clear to Myanmar that: “The world can suspend or remove all conditions it had piled on you to help you in times of crisis, you only have to open up and engage with them”. ASEAN Foreign Ministers had a meeting in Singapore prior trying to convince Myanmar to open up, and Pak Hassan Wirajuda of Indonesia gave them an ultimatum in unequivocal terms: “You have three choices: One, the UN coming in alone to you, because the world is not going to see four million people die in front of them, and you close down your borders.” This was the first option, and the option afforded to them was the new concept of ‘Responsibility to Protect’ (R2P). If the government is not able to protect its own people from calamity, or itself is a party to genocide or crimes against humanity, then the world has a responsibility to protect those people according to the R2P concept.

The concept was still emerging at that time, working its way into the new language of diplomacy. Pak Hassan told the Foreign Minister of Myanmar: “You and the UN alone, because the world is not going to tolerate four million people dying in front of them, unlike Rwanda, unlike Kosovo. This time, the world is not going to let you continue with that.”

The second choice would be: “You and whatever coalition you would build to help you, which you would lead yourself.” And finally, the third choice: “You and ASEAN working together with the international community”. It was not a conflict reconciliation, but rather it was a rehabilitation of a member of ASEAN which had strayed outside the framework of international law and order. After four or five decades, we successfully brought Myanmar back into the community of nations.

With all these transformations of the ASEAN mentality and mindset from the beginning up to, let’s say, Aceh recently, and Myanmar – ASEAN is launching next year in Malaysia – I hope you are all are aware of that, Malaysia is going to take over the Chair after Myanmar at the end of this year; 2015 will be under Malaysia. As such, Malaysia is planning a big celebration at the end of next year, when ASEAN+6 leaders will be in Kuala Lumpur. And this time it could be

ASEAN+8, adding President Barack Obama of the U.S. and President Vladimir Putin of Russia. The latter are both members of the EAS (East Asia Summit), who will converge at the end of next year in Kuala Lumpur. So we will have the celebration next year of the ASEAN Community coming into being; and the organisation has to think systematically and formally about handling the issues of peace and reconciliation among between us. This is why the ASEAN Institute for Peace and Reconciliation (AIPR) was established in Jakarta. The challenges before us will be in translating the challenges we have accumulated as a body and as individual member states. Malaysia has had a collection of experiences mediating; such as the one in the Southern Philippines, which was recently formalised. Malaysia is also mediating the problem in Southern Thailand. Malaysia was not invited to mediate the problems in Aceh, because they are too close [personal] to the issue.

From 2003 to 2005, I was with the Opposition in Thailand, and I was asked to be part of the Acehnese settlement efforts, in Geneva, up in the Swiss Alps. The Versailles was representing Jakarta, and of course the exiled Acehnese from all over the world, particularly Sweden, were in Geneva. The first sentence that came out from the representative of Jakarta was: "You must first relinquish your claim and aspirations for independence before we can even begin to sit down and talk things over." I remember the Acehnese responding, right in front of us: "If we relinquish that, we have nothing to talk about!" Pak Syed Hamid, you were not involved in that. For some reasons, there was a belief that there are too many Acehnese in Kuala Lumpur and in the government here too. You were put aside, I was invited in, being a Muslim and former Foreign Minister of Thailand. We together, collectively, could very well pull our experiences and resources in this tradition of peace and reconciliation into something more formal in a newly established entity called the ASEAN Institute for Peace and Reconciliation in Jakarta. It is certainly about time that we should have this formal mechanism among ourselves, because we have a lot of challenges, inside and outside of ASEAN, between ASEAN, and in our engagement with the rest of the world. We also have enough issues on which to help each other and to come together, or maybe to contain or put down the 'sanctity' of the issue of non-interference. In the process of integration, your problem today is my problem tomorrow. You cannot have a community and integration saying that, "Your problems will remain yours; they are not going to spill over to me the next day." Absolutely not! Integration is integration; good and bad are going to be shared. So the downside of integration is the downside of the Community at large. We must collectively guard against this.

How many Rohingyas do you have in your country, Malaysia? Of all the ASEAN member states, Malaysia is shouldering the largest number of

Rohingyas; Thailand is probably second. However, there are more attempting to settle in Malaysia and more in transit through Thailand. So unless and until we take the issue seriously as ASEAN, the Rohingyas could be an issue of strategic instability for the entire region. People of 1.5 million – half inside, and half outside, not knowing who they are and cannot go anywhere – face so many troubles that the UN has called them “the most persecuted people in the world.” ASEAN cannot be silent on that. I was also thinking, “What would happen if they become extremists and radicalised?” One of the life lines of Global Commerce, the Malacca Straits, would be under pressure. The Malacca Straits could become the Eastern waters of Somalia. I have said this to Pak Najib, in his office, and he turned and looked to his intelligence people pondering, “Have you ever thought of it?” The entire region, including China, Japan and Korea, would be under pressure, because the East-West life-line of trade and energy transport will have to come through the Malacca Straits, where seventy thousand ships pass through every year. So the issue of the Rohingyas is larger than the Rohingyas! It has strategic implications on all of us.

The other one is between us – ASEAN and China, and the South China Sea. This is a great challenge for the region. Unless and until ASEAN can put our acts together and serve as a platform of effective negotiation, this issue is going to be quite a big challenge in the future. For a long time Indonesia was instrumental in mediating, because we thought only four countries were involved from part of ASEAN – Malaysia, the Philippines, Vietnam, and Brunei – and now the Natuna waters and islands are becoming a part of the contention of the overlapping areas, and Indonesia is under pressure. Now you can see the entire region being engulfed in uncertainty. The South China Sea is of strategic importance for the region – 80-90% of the energy resources that go to China, Japan, and Korea through South East Asia, will have to be shipped through the South China Sea, which has an area of more than four million square miles. That is a huge challenge before us and we have to somehow come together to find some common resolutions; these are our common strategic and security challenges.

In the area of peace and reconciliation, we have to find out, if not a total solution, then at least a temporary containment of the problem – not to let it spill over into the larger region of Asia or East Asia, because South East Asia – the ASEAN Region – has become more important to the world than it was 10 to 15 years ago; because together we are expected to be a new train of growth, pulling the global economy out of its own deep crisis; because of the strategic importance of the region; because what Henry Kissinger once observed at the end of the last century: “East Asia in terms of technology, economy, advancement in technology, science, and innovation; East Asia is on par with twentieth century Europe. But as far as institutions and processes, and systems to manage conflicts

and problems, and flash-points inevitable among them, East Asia is still like nineteenth century Europe.” And right now you can see this between Japan and China, Japan and Korea, China and India.

ASEAN must aspire to respond to the challenge that Henry Kissinger put to us three decades ago. That is, we must build a system, an institutional process, an organisation to handle the differences between ourselves and the rest around us. Failing that, we are not going to be a part of the twenty-first century or the Pacific Century that seems to be emerging, but rather under threat and in danger of being derailed because of all these problems that are now before us. As such, ASEAN is an instrument that is expected to help spearhead this effort; because the others could not do it, because they have too much historical baggage among between them, territorial or otherwise. You cannot expect the Chinese and the Japanese to spearhead a process of building up a system, a forum, an organisation to solve these problems, or to at least contain them. Neither do you expect the Japanese and the Koreans, nor do you expect the Chinese and the Indians to do it; it is only us – ASEAN.

So, Excellencies, Ladies and Gentlemen, we have to shift gears, change modes, and accept the challenge as ours. And I think we can do it. I hope next year, these issues will also be part of the consideration under the Chairmanship of Malaysia as the “midwife,” the “*tok bidan*,” bringing this baby – ASEAN – into the world.

Thank you very much. *Ma’assalamah*.

The *Fiqh Al-Aqalliyāt* (Jurisprudence of Minorities) in Light of the Higher Objectives (*Maqāṣid*) of Shariah

*Mohammad Hashim Kamali & Ahmad Badri Abdullah**

Muslim minorities living in the West face the challenges of a secular law and culture as well as issues of identity and citizenship that have taken a turn for the worse since the aftermath of 9/11. However, compared to Muslim minorities elsewhere, those living in the West enjoy greater freedom to practice their religion. Some of the challenges they face are unprecedented and the rules of Islamic law concerning them have also remained relatively under-developed. This would explain the emergence of a new branch of Islamic jurisprudence under the rubric of the still developing *fiqh al-aqaliyyāt* (jurisprudence of minorities) in recent decades.

The *fiqh* tradition has engaged – in considerable detail – with the status of non-Muslim minorities living in Muslim majority societies, but not with the position of Muslim minorities residing in non-Muslim majority countries. The large scale migration of Muslims to Western countries is a twentieth century post-colonial phenomenon for the most part, prompted partly by greater demands for labour as well as by the desire of migrants to improve their lives and working conditions.

There were Muslim minority groups living in the West and elsewhere even earlier with a set of outstanding challenges and issues in their relations with the indigenous populations of their host communities. Some Muslim minorities had deep roots in the histories of these countries and contributed significantly to the indigenous cultures of those nations. As a result of early historical mobility and more recent large scale migrations, Muslim minorities living in non-Muslim majority countries now constitute about one-third of the world Muslim population. The issues they face are therefore not marginal by any means and merit the earnest attention of scholars, politicians and law-makers to address the challenges they face through consultative and collaborative efforts with all those involved.

Broadly, Muslim minorities are expected to observe the ethical guidelines of Islam and the essentials of the faith as well as the guidelines of the Qur'an and Sunnah concerning their relations with the followers of other religions; they must accordingly cultivate mutual respect and friendship with their host communities. The same holds true with regard to the treatment of religious minorities living in Muslim majority communities. It is also important that texts and scriptures are read and interpreted in light of historical and contemporary developments. Many Muslim scholars of standing have subscribed to the view that Muslims living in non-Muslims majority countries must live as law-abiding citizens. They are also expected to be honest and trustworthy, and remain open to beneficial changes that help them live in peace and harmony.

Fiqh al-aqalliyāt is widely regarded as a new field of study, yet many scholars who have spoken on the subject have considered it as an extension of the rich edifice of *fiqh*. Yusuf al-Qaradawi has thus observed that *fiqh al-aqalliyāt* should retain its nexus with traditional *fiqh* as both draw support from the same sources (*maṣādir*) that are known to the Islamic juristic tradition. Nevertheless, the objectives of *fiqh al-aqalliyāt* are somewhat more specific due to the new conditions and challenges faced by Muslim minorities. When tackling newly emerging issues among minorities in a quest to respond to the challenges they face, the jurist is advised to pay attention to considerations of public interest (*maslahah*) that include the interests of these groups as well as the communities and nations in which they reside. Muslim scholars may be faced with situations where they have to weigh the relative merit of two conflicting benefits (*maṣālih*),

and demerits of two harms (*mafsadah*); or between benefits and harms in situations of conflict between them.

The Muslim jurist may be called upon at times to take recourse to the less preferred (*marjūh*) opinions of scholars within a specific school or even from different schools of *fiqh*. It is also acknowledged that some of the issues faced may need to be addressed in a wider context, even outside the scopes of *fiqh* and law due to the need to move abreast with the dynamics of political and economic developments affecting the lives of Muslim minorities. In sum, *fiqh al-aqalliyāt* would be unable to meet its desired objectives without a degree of openness to the influence of other disciplines and non-*fiqh* sources, such as sociology, economics, medicine, law, and political science.

To meet these challenges, Muslim scholars and researchers are similarly advised to take into consideration the higher goals and purposes (*maqāṣid*) of *Shariah*, and also the legal maxims of *fiqh*.

The *maqāṣid al-Shariah* is itself a relatively new and a burgeoning field of study and has invited renewed scholarly interest in recent decades. This is due largely to the inherent dynamism of the *maqāṣid* in the observance of values such as the sanctity of life, and the protection of religion, rationality and human intellect, progeny, and property. These are for the whole of humanity and should not be advocated in ways that may be detrimental to some at the expense of others.

Fiqh al-aqalliyāt can also benefit from the resources of *qawā'id al-fiqhiyyah* (Islamic legal maxims) that provide general as well as specialised juristic guidelines on a variety of issues. Legal maxims offer well digested yet incisive understanding of the data of the Qur'an and Sunnah along with the cumulative juristic wisdom of leading scholars and imams of the past.

Fiqh of minorities should aim then – according to several leading maxims – at bringing ease and relief to the minorities to enable them to overcome their difficulties. Muslim minorities should be able not only to preserve their religious identity, but also to perform their civic duties as good citizens of their respective countries. It is imperative then to vindicate justice and fair dealings as the higher objectives of Islam and as the pillars of peace and honourable living for all those who wish to coexist in peace and harmony.

Lastly, while endorsing the numerous UN Conventions on the rights of minorities, Abdullah b. Bayyah considered the case of Muslim minorities in non-Muslim majority countries, from the juridical viewpoint, as a situation of necessity, even emergency (*awda'darurah wa idtirar*). This would justify recourse to concessionary rulings, and indeed the development of a special jurisprudence that takes into account the prevailing conditions of each country and community. In saying this, Ibn Bayyah echoes a legal maxim of *fiqh*, which tersely says that “necessity makes the unlawful lawful – *al-darurat tubih al-mahzurat*.”

These are some of the ways *fiqh al-aqalliyāt* may be able to provide balanced positions through innovative *ijtihad* as well as observance of the textual dispensations of *Shariah* and its higher purposes.

Notes

- * *Mohammad Hashim Kamali* is the Founding CEO, International Institute of Advanced Islamic Studies (IAIS) Malaysia (Email: ceo@iais.org.my).
- ** *Ahmad Badri bin Abdullah* is Research Fellow at IAIS Malaysia (Email: badri@iais.org.my).

How the Qur'an Rejects Extremism

*Stephen B Young**

There is no Qur'anic justification for the murders, barbaric beheadings, and the maimings executed by supposedly faithful Muslims like ISIS loyalists, the Tsarnaev brothers in Boston, the Kouachi Brothers in Paris, or by the followers of Osama Bin Laden on September 11, 2001.

The crux of the Qur'anic case against such taking of life in the name of Islam is the wrongful appropriation of God's (Allah's) right and power, and committing murder and mayhem in the name of His religion. The Qur'an assigns death by retaliation to all cases of murder (2:178). It also provides "One who kills a human being without the latter being guilty of murder or corruption in the land, it would be as if he has killed the whole of humankind." (5:35). This clear enough, yet the wrong committed by these Sunni extremists also has an ideological dimension: it is idolatry, the worshipping of false gods and idols, in particular the putting of a person such as Al-Baghdadi or Osama Bin Laden, or oneself, in God's place as the arbiter of who should live and who deserves to die.

In Islamic terms the idolatry is called *shirk*.

God does not forgive those who serve other gods besides him. The Qur'anic guidance for this rule is found at Surah 4, at verse 48, and Surah 2 at verse 22.

The other month I tested my application of *shirk* to Islamic extremists with a Somali taxi driver taking me to the airport. He was a bit surprised to have an obviously non-Muslim turn the conversation to Qur'anic exegesis but readily agreed that the behavior of Islamic terrorists was, in his words, "very shirky."

I have been studying Qur'anic guidance for political action for some ten years now with highly reputed scholars at the International Islamic University,

Malaysia. This University is one of the most accomplished institutions of higher education in the Muslim world attracting distinguished thinkers from many Islamic countries.

With little effort the problem of idolatry in Islam is quickly apprehended. The reasons why *shirk* is so wrong for Muslims are readily apparent in a reading of Qur'an.

God has all right and power. (Qur'an 2:109) To God do all questions go for decision. (Qur'an 3:109) His will prevails over ours we are to hold fast to God, guided to the straight path by him and not by our own desires and pretensions. It is not for us, says Qur'an, to rebel against God's power and authority. We were not created by Him to challenge His judgment. God's mastery of life, death, the alpha and omega of all things is His sole prerogative, an aspect of divine oneness and omnipotence (*tawhid*) over space and time.

He has no partner in this omnipotence. Certainly not any human person. God never gave us a commission to think for him or to believe that we are his equal. We are to put our trust in God, not in our fellow man. (Qur'an 5:11) If we think we are God's equal, we are wrong. Such thinking is *Shirk*.

He decides who is good and who is not. He, in His mercy and compassion, has the last word on the last day. God has reserved to Himself judgment as to the fate of those who deny the truth. (Qur'an 73: 11,12) No one dies unless God wills the death. (Qur'an 3:145) God will resolve differences among men. (Qur'an 5:49; 3:26) God pardons, punishes whom he pleases. (Qur'an 3:129)

The duty of us as human individuals is only to warn others. Their actual fate is in the hand of God. (Qur'an 88:23 - 26; 73:11)

Qur'an records that we are not to take life, which God has made sacred, except by way of justice and law. (Qur'an 6:151)

Second, Qur'an teaches that humans are prone to error. Our judgment can never be as good as God's. No human can never fully know what God wants or wills. Our thinking is contingent, limited, bounded by our own biases, fears, and passions. We can never share in God's perfection.

If we should obey the greater part of those on earth, says Qur'an, we would be led away from God's path. (Qur'an 6:116) The teachings of Qur'an promises woe to those who write scripture for personal gain and say "This is from God." (2:78)

We are, Qur'an says, contentious, (Qur'an 18:54) given to injustice and ingratitude (Qur'an 14:34). We transgress in thinking ourselves our own masters. (Qur'an 96:6 - 7) We walk too proudly on the earth. (Qur'an 17:37) We mislead ourselves with our desires. (Qur'an 6:119)

Third, according to Qur'an, God enjoins charity, kindness, and peace among men. (Qur'an 4:114) God desires no injustice to mankind. (Qur'an 3:108)

He gave life to humanity with his breath so that each of us contains some portion of God's potentials. An important capacity of God is to be merciful and compassionate.

To reject mercy or to close our hearts to compassion is to fall short of God's standard of the good. It is to replace God's judgment with our own pettiness.

But how are we to know what verdict on the life of another is just in God's mind? How can we know when God will be merciful and compassionate with those of us who have done wrong? We cannot rely on other humans with their limited capacities to instruct us on God's will in any given case of human accountability. Thus, under strict Qur'anic guidance the entire body of scholarship since the death of the Prophet – the work of many brilliant minds – cannot take precedence over the will of God.

Fourth, we read in Qur'an that God created humanity – men and women equally – to be his steward in creation, to see to its flourishing. (Qur'an 2:30; 15:29) The responsibility of a steward is to serve the master as a subordinate, not as a partner. The steward must always ask what the master wants, what serves his purposes.

God's purpose is that people will have faith and do good works.

Everything that we have by which we can act and leave our mark in the world has been given to us in trust by God. They are powers held in trust, not owned by ourselves for our own amusement. Therefore, our intelligence, emotions, dedication, skills, and money must not be governed by our own will but in deference to God's guidance. We are to strive in the work of having faith and doing good works as stewards of God that his creation will be ever pleasing to him and fruitful to us.

Fifth, how do we determine God's guidance? All human interpreters of Qur'an are only partially qualified as discoverers of God's will.

We may from time to time come under the influence of "vain conjectures and whims of [our] own words." (Qur'an 53:23)

A danger leading to misunderstanding of God put before us by Qur'an is the wiles of Satan who seeks to lead us far from right guidance. We need to be on our guard lest our pride and desires draw us closer to Satan's intrigues. Satan stirs up our vain desires. (Qur'an 4:120) Qur'an warns that for humans "Satan makes their deeds seem fair to them." (Qur'an 6:43) It is Satan's predilection to urge us towards the path of Shirk.

Thus we can demand of an Osama Bin Laden evidence that he is free from delusions and vanity. Similarly is not the self-promotion by Al Baghdadi of himself to the position of successor of the Prophet Mohammad (Caliph) only specious vainglory? What special revelation did either of these men ever get from God to guide their politics?

Their personal reading of scripture does not necessarily make either of them God's trusted confident.

One check on our potential for getting it wrong is the opportunity for us to consult others and gain the benefit of their insights and understandings. Qur'an calls this *sura*. It provides checks on our intellectual limitations and emotional distractions.

The guidance that we should restrain our predilections by submitting to the checks and balances of others not only expands our range of understanding, it reminds us of our limitations, of our distance from the divine.

Rumi, the Sufi poet, captured the essence of rebellion against God present in *shirk* in his poem about Moses disparaging an apparent idiot who professed love for God. Rumi has God chastise Moses for his arrogance in thinking that he – the human – could step into the moral mind of the divine: “You have separated me from one of my own ... What seems wrong to you is right for him ... I am apart from all that.”

We have no evidence that acts of Islamic extremism are divinely guided. To the contrary, all the evidence before us indicates that they are heinous excesses of damnable human arrogance and false pride. They are *shirk*.

Notes

- * *Stephen B Young* holds a PhD in Law from Harvard University and is the Global Executive Director of the Caux Round Table (CRT), which brings together business leaders from Europe, Japan and other parts of Asia, as well as the United States, is committed to energising the role of business and industry as a vital force for innovative global change. Young is the author of *Moral Capitalism* (2004) and *The Tradition of Human Rights in China and Vietnam* (1989). He was previously Assistant Dean at the Harvard Law School and Dean of the Hamline University School of Law. He has taught at the School of Law and the Carlson School of Management at the University of Minnesota, the Minnesota State University, and the SASIN Graduate Institute of Business Administration in Chulalongkorn University, Bangkok. In 1966, Young discovered the UNESCO World Heritage site of Ban Chiang in Thailand.

The Federal Constitution: Is Malaysia a Secular State?

*Mohamed Azam Mohamed Adil **

Introduction

The discussion on whether Malaysia is an Islamic or secular state has been a much hotly debated topic recently. In the government's written answer to a question raised by Oscar Ling Chai Yew (DAP-Sibu) at Dewan Rakyat on 16 June 2014, Jamil Khir, Minister in the Prime Minister's Department re-asserted that Malaysia is an Islamic state. This view was supported by Tun Mahathir Mohamad arguing that in an Islamic state like Malaysia, justice applies to all, Muslims and non-Muslims alike. This was re-affirmed by Amin Mulia, the Dewan Rakyat's Speaker that Malaysia is an Islamic state simply because Islam is the only religion stated in the Federal Constitution. Unlike Turkey and India where the word "secular" is clearly provided in their respective Constitutions, such provision is not found in the Federal Constitution.

Notwithstanding the above, the relevant White Paper signifies that the country was meant to be a secular state. In the early stage of the drafting of the Constitution, the Reid Commission had proposed inserting a provision stating the country is a secular state. However, in the final stage, they agreed to accept a provision that made Islam the official religion of the Federation, but it shall not impose any disability on non-Muslim nationals professing and practising their own religions and shall not imply that the State is not a secular State.

Furthermore, the historians have suggested that Malaya was an Islamic state. Islamic laws were in practice which included criminal and civil laws. The most common Islamic laws notably are *Hukum Kanun Melaka*, *Undang-undang Pahang*, *Undang-undang Johor*, *Undang-undang Perak*, and others. However, when the British colonised Malaya, all these laws were gradually changed to English laws through courts' judgements where English judges preferred to refer to the English laws. The other way was through the introduction of English laws like the Contract Act, Penal Code, Criminal Procedure Code and others into the mainstream.

Ironically, when Malaya gained independence on 31 August 1957, the words Islamic state were not incorporated into the Constitution. Nor is the word "secular" found in the Federal Constitution. It was only on 29 September 2001, after 44 years of independence, during his tenure as Prime Minister, Mahathir Mohamad made a declaration that Malaysia was as Islamic state. This announcement was not followed by any amendment to the Federal Constitution. In his book

entitled *Malaysia Adalah Sebuah Negara Islam* (Malaysia is an Islamic State) Wan Zahidi Wan Teh argues that “Malaysia has fulfilled the requirements of an Islamic State”. According to him, a reference must be made to the opinion of Muslim scholars about the definition of an Islamic state. Firstly, the nation has to be under Muslim governance, its defence in the hands of Muslims, and it must be the responsibility of every Muslim to defend it. Secondly, the nation is controlled by Muslims and managed peacefully. Thirdly, the laws of an Islamic ruler are enforced, and finally, Islamic law is adhered to.

The Position of Islam in the Federal Constitution

Article 3(1) appears, to some extent, to reiterate the rights protected under Article 11(1) and also reaffirms the supremacy of Islam under the Federal Constitution. Furthermore, Islam is placed above other religions in the Federation, yet in *Che Omar bin Che Soh v Public Prosecutor* [1988] 2 MLJ 55, the Supreme Court (now the Federal Court) held that “although there can be no doubt that Islam is not just a mere collection of dogmas and rituals but it is a complete way of life covering all fields of human activities, may they be private or public, legal, political, economic, social, cultural, moral or judicial”, the provision of Article 3(1) merely provided for a ritualistic and ceremonial role of Islam. Sheridan also seems to agree with the *Che Omar* decision. He posits that Article 3(1) does not mean anything except that it imposes an obligation on the participants in any federal ceremonial to regulate any religious parts of the ceremony according to Muslim rites. However, according to Abdul Aziz Bari, this case does not elaborate clearly the position of Islam as stated in the Reid’s Commission Report and the White Paper. Thus, he argues that the *Che Omar* decision merely ruled that Article 3(1) should not become the basis to challenge the legality of statutes. In other words, it merely limits the operation of Islam as stated in the provision. It must also be noted that the extent and implementation of Islam in the Constitution should not be assessed or interpreted solely from the context or point of view of Article 3(1). But, it is also contended that the *Che Omar* decision merely differentiated the position of Islamic law as prescribed by Article 3(1) of the Federal Constitution. It was argued by the appellant since Islam is the religion of the Federation, and since the Constitution is the supreme law of the Federation, the imposition of the death penalty upon drug traffickers, not being an Islamic law *per se* and not in accordance with *hudud* or *qisas* laws, is contrary to Islamic injunctions and is therefore unconstitutional. The Supreme Court (now the Federal Court) rejected this argument, saying that provision in Article 3(1) does not actually give a meaning that Malaysia is an Islamic state, where in reality Islamic law only applies to Muslims merely in matters of personal laws. And since the Constitution

makes a clear distinction between private law and public law, offences like drug trafficking are under the Federal List, and therefore constitutional.

A wider interpretation on the position of Islam is thus necessary. Islam seems to be placed above other religions in the Federation. In *Meor Atiqulrahman bin Ishak & Anor. v Fatimah Bte Sihi & Anor*, [2000] 5 MLJ 382, the learned judge, Dato' Mohd Noor Abdullah interpreted Article 3(1) that states "Islam is the religion of the Federation but other religions may be practiced in peace and harmony in any part of the Federation" which means that Islam is the supreme religion and its position is not in par with other religions such as Christianity, Buddhism, Hinduism and others.

Perhaps the position taken by Shad Faruqi, Aziz Bari, Lee Min Choon and Hassan Bahrom that categorised Malaysia somewhere between the secular state and the Islamic state, could be the answer to the ambiguity of the position of Islam in Malaysia. Thus, according to Shad Faruqi, "Malaysia is neither a full-fledged Islamic state nor wholly secular" but that "in view of the fact that Muslims constitute the majority population, and Islamisation is being vigorously enforced, Malaysia can indeed be described as an Islamic or Muslim state". In addition, Shad Faruqi adds that "in a secular constitution, there is no prescribed official religion and no state aid is given to any religion or for any religious activities, but the word religion does occur at least twenty four times in the Federal Constitution". It must be emphasised that despite the Islamisation policy that has taken place for some three decades, there was no attempt by the present government to amend the Federal Constitution to declare Malaysia an Islamic state.

The other important point taken from Article 37 (reading with the Fourth Schedule) of the Federal Constitution is that the King upon taking the oath of office must truly declare that He will at all times protect the religion of Islam.

Despite the fact that the Federal Constitution does not provide a clear provision to advocate that Malaysia is an Islamic state, there are significant provisions such as Articles 3(1) and 12(2) in the Constitution that signify the religion of Islam is given a special position in the Federation. We may conclude that Malaysia is not a secular state, nor is it a truly theocratic state.

Notes

- * *Mohamed Azam Mohamed Adil* is Associate Professor and Deputy CEO, International Institute of Advanced Islamic Studies (IAIS) Malaysia (Email: mazamakil@iais.org.my).

Halal Certification Procedures: Some Unresolved Issues

*Marco Tieman **

There is a higher halal awareness among Muslim consumers, where the product in the supermarket is no longer assumed halal and its halal certificate and country of origin are more and more checked for the acceptance of and trust in new products. New Islamic brands are emerging in Muslim markets that are taking significant market share from conventional big foreign brands in both food and cosmetics. These Islamic brands have been classified by Alserhan¹ as true Islamic brands as these brands are Shariah-compliant, they originate from an Islamic country and their target is the Muslim consumer. Halal scandals over the past years have proven the vulnerability of halal food supply chains and the possibility of a halal issue to escalate into a major crisis for brand owners.

Halal certification has a relatively short history, which started in Malaysia in the 1980's and expanded to other countries and also to other products and services since. Today there are more than 400 known halal certification bodies (HCBs).² As a result, there are many different halal standards: local standards (either developed by a national standards development body or by the HCB itself), regional standards (e.g. the Arab Gulf Cooperation Council's halal standard) and international halal standards (IHI Alliance and SMIIC). The HCB provides auditing and certification services for which it charges either a fixed or a volume based fee. It is a product certification, addressing especially the ingredients and production process, which allows the producer to put a halal logo of the HCB on the product packaging. This logo communicates to the Muslim consumer that the product is halal certified according to the halal standard of the respective HCB.

These halal product standards are not static and through revisions could include requirements for first tier suppliers and customers in terms of transportation and storage. Some halal standards and certification bodies are also creating dedicated halal standards for logistics, food services, retail, and others; allowing halal producers to make the supply chain halal compliant through the adoption of local, regional and/or international halal standards. Halal regulations are further strengthened by Muslim countries in the Middle East and Asia for imports. New regulations are prescribing more products that require a halal certificate (for example: dairy ingredients, plant based extracts) as well as the recognition by the importing country of a selected number of HCBs in the world that can issue these certificates.

For the Muslim consumer the halal status is important at the point of consumer purchase as halal is a religious obligation. A halal logo on the product is a promise of the brand owner that the product is halal at the point of consumer purchase. A neglect of halal requirements throughout the entire supply chain is gradually weakening consumer confidence in halal brands. This halal assurance gap in distribution presents an increasing (reputation) risk for brand owners.

Many brand owners regard halal certification as a problem: a necessary compliance issue in order to sell to Muslim markets. It is not seen as an integral business philosophy addressing the entire supply chain (namely: sourcing, production and distribution) or even its value chain (including Islamic branding, financing, sustainability) as a whole. This makes companies rather following halal regulation instead of being proactive in developing their halal supply chain or value chain. As brand owners have regarded halal as (an ingredient and production) compliance issue, they have not addressed halal compliance with their supply chain partners (with the exception of producers of halal ingredients), as it was not required for certification. The result is that logistics service providers and traders are far behind in halal assurance and few are halal certified today.

The logistics service provider is an important partner in the supply chain responsible for transportation, warehousing and value added logistics (like co-packing for promotions). He consolidates good flows to ensure high utilisation of assets and minimises costs. However, halal has traditionally not been a criterion in consolidating cargo flows in transportation and storage. The result is that less-than-container and less-than-truck loads could mix halal and non-halal products in transportation, and warehousing could mix halal and non-halal products in storage.

The wholesaler and distributor provide a local stock point for a wide range of products sourced from all over the world, to support local retail and restaurants. Often these wholesalers and distributors are not dedicated to one brand and could even carry both halal and non-halal products in their product range. In their warehouse they could mix both halal and non-halal products. Wholesales and distributors could have their own trucks to transport these products to the retail and restaurants as and when demanded by their customers. However, many traders have outsourced their transportation requirements. Halal has traditionally not been a criterion in transportation. As the individual deliveries could be small, so-called milk-runs (combining several drop points and collection points in one trip) are often used to minimise transportation costs. As a result halal and non-halal goods could be mixed in transportation to retail.

In modern trade, large retail chains could have a distribution centre to consolidate shipments from manufacturers and wholesalers to their supermarkets in order to minimise number of truck deliveries to one supermarket. This could

result in mixing of halal and non-halal products, as halal often is not a criterion in consolidation for distribution to retail. The traditional supermarkets are delivered by various wholesalers and distributors, which could add up to many trucks bringing goods to these shops during a day. The retailer provides access of products sourced from all over the world to the final customer, both halal and non-halal products. Various supermarkets in Muslim countries have created a dedicated non-halal zone, clearly marked as such, for the sales of alcoholic drinks and pork products. This non-halal zone could have their own cashier, avoiding the risk of contamination on the supermarket cashier counter belt by non-halal products, and different trolleys. On the other hand, a number of supermarkets in non-Muslim countries have created a dedicated halal zone, clearly marked as such, for the sales of halal (meat) products and other ethnic products from (major immigrant) Muslim countries. As a non-Muslim country might host Muslims from different parts of the world, and as a consequence different halal requirements, it is difficult to please all Muslims as the halal meat requirements could be different. This has resulted in challenges in offering the 'right' halal assortment for supermarkets in non-Muslim countries that were trying with the right intention to serve the Muslim consumer.

Recent halal scandals have shown that a narrow view of halal certification by brand owners exposes the company and its brands in Muslim markets. Although current halal standards do not prescribe halal certification of the entire supply chain, brand owners should extend halal assurance towards supply chain management in order to protect their brand better. Halal assurance should by design cover sourcing, production and distribution. The purchasing function needs to be redefined in ensuring an effective alignment between halal policy, procurement strategy and purchasing process.³ Contingency plans should be drafted to allow for easy switch to other suppliers. The purchasing function plays therefore a key role in the design of more robust supply chains. In distribution, the company should address halal assurance towards to point of consumer purchase, including its logistics service providers, wholesalers, distributors and retailers. Halal should be covered in contracts and a criterion in logistics. Furthermore a solid crisis management team should be assembled to handle halal issues quickly and adequately and have a short communication channel with its halal certification body.

Governments and HCBs should extend halal requirements towards supply chain management for halal certification of producers and restaurants, as a narrow perspective, limited to ingredients and production, highly exposes the company in today's market place. For this HCBs should promote halal certification of supply chain parties, in particular the logistics service provider, traders and retailers. As logistics service providers deal with international movements, it is important

for HCBs to adopt the international halal logistics standard (IHIAS 0100:2010) in order to make international supply chains fully aligned and consistent. As supply chains today are global, the use of a different local halal logistics standard that is not aligned with the international halal logistics standard would create inconsistencies in the supply chain by definition in halal transport, storage and terminal handling practices, endangering the integrity of the entire halal supply chain. For trade and retailers new halal standards possibly need to be developed as existing local halal standards might not be applicable to them or create serious problems in the implementation, limiting the adoption rate of the halal standard by traders and retailers.

A better insight into the perception of the Muslim consumer regarding its halal supply chain and halal value chain requirements is critical for the halal industry and HCBs. This requires support from governments and universities in funding this type of research.

Notes

- * Dr. Marco Tieman is Adjunct Professor with Universiti Tun Abdul Razak (Malaysia), responsible for research in halal supply chain management. He is also Adjunct Professor with Universiti Malaysia Pahang (Malaysia). He obtained his Master's degree in industrial engineering [logistics] with the University of Twente (the Netherlands) in 1997 and his PhD in business management [halal supply chain management] with Universiti Teknologi MARA (Malaysia) in 2013. He is also the CEO of LBB International, an international logistics consultancy and research firm specialised in halal purchasing and supply chain management. He chaired the development of the international halal logistics standard (IHIAS, 0100:2010) under ICCI-IHI Alliance. Dr. Marco Tieman is the corresponding author and can be contacted at: marco@lbbinternational.com
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SIGNIFICANT EVENTS AND DEVELOPMENTS

Islamic Jerusalem (*Bait al-Maqdis*) as a Model for Peaceful Co-existence and Mutual Respect for all Humankind

Tun Abdullah Ahmad Badawi

Bismillahir Rahmanir Rahim,

Tan-Tan Sri, Dato-Dato Seri ...

Excellencies, dignitaries, distinguished guests, Professors, ladies and gentlemen,

Assalamu 'Alaikum Wa Rahmatullahi Wa Barakatuhu

It is a great honour for me to address the distinguished audience here this morning on an issue which all Muslims around the world bear in the core of our hearts with great love, reverence and sympathy. It is nothing but the Islamic Jerusalem or Bait al-Maqdis itself. Islamic Jerusalem has an immense significance in the divine texts as well as the glorious traditions of Islamic history. The Holy Qur'an has termed the place and its surrounding area as 'blessed land' in at least two instances. In Surah Isra (chapter 17), verse 1 it is mentioned:

“Glorified be He (Allah) Who took His servant for a journey by night from Al-Masjid-al-Haram (at Makkah) to Al-Masjid-al-Aqsa (in Jerusalem) – the neighbourhood whereof We have blessed – in order that We might show him of Our signs. Verily, He is the All-Hearer, the All-Seer.”

At another instance, in Surah al-Anbiya (chapter 21), verse 71, the Holy Qur'an reads:

“And We rescued him (Ibrahim) and Lut to the land (*Bait al-Maqdis*) which We have blessed for the world.”

The second verse illustrates an historical backdrop, when Ibrahim a.s. was persecuted in his own land – Iraq – he was ordered to migrate to the 'blessed land' – the land of Kan'aan or present day Palestine. It is the land of hope, where he settled down and later became the centre figure of the three monotheistic faiths – Judaism, Christianity and Islam.

On a similar background, when the oppressions and persecutions against the last messenger Prophet Muhammad (s.a.w.) was intensified in Makkah, Allah s.w.t.

granted him solace through the night journey to Bait al-Maqdis. It was at the Bait al-Maqdis where he led all the previous prophets in a congregational prayer – thus signifying the eminence of the place. It was again the same Bait al-Maqdis from where Allah s.w.t granted him the *mi'raj* – ascension to the heavens. Therefore, Islamicjerusalem or Bait al-Maqdis and its sanctity is beyond any question.

There is probably no other city on the face of the earth which witnessed the presence and dwelling of as many prophets of Allah s.w.t as Bait al-Maqdis. Great Prophets like Dawud and Sulaiman (a.s.) ruled from Bait al-Maqdis, so as the Jews have their reverence for the land. Prophet Isa (a.s.) was born in Bethlehem – which is in the vicinity of Bait al-Maqdis, as such the Christians consider the city a sacred one! And we Muslims believe in all the above mentioned prophets as part of our faith. Above all, Bait al-Maqdis was the first *qiblah* – the religious centre for the Muslims. Therefore, Bait al-Maqdis is as sacred to us as it is to the Jews or the Christians.

Unfortunately, the land of Islamic jerusalem did not enjoy the same esteemed privilege during the Persian and the Byzantine rule before the *fath* (opening) of Umar ibn al-Khattab in 16AH/637CE. The Jews and Christians of Islamicjerusalem had experienced severe torturous treatments and were subject to an exclusivist policy under the Byzantines. Despite the fact that the Byzantines were also Christians like the Monophysite Christians of the Islamicjerusalem, their theological differences held them apart, to the extent that the Monophysites were persecuted for having a faith closer to the Islamic monotheism. The Mount Temple was turned into a garbage dump by the Byzantines in order to harass and belittle the Jews and Christians, and restrict them from their worship.

When Khalifah Umar ibn al-Khattab arrived in Islamicjerusalem to receive the key of the city from the Patriarch Sophronius, he was warmly welcomed by the local Jews and Christians. A Jewish writer named Ben Zeev mentions that the Jews of Syria were patiently awaiting the arrival of the Muslim armies to rescue them from the cruel and tyrannical subjugation of the Byzantines.¹ Jews were thus allowed to settle in Islamicjerusalem five hundred years after they had been expelled by the Romans in 135CE.²

Upon witnessing the disgrace of the Mount Temple, Umar himself took charge to clean the area along with others, and re-instated the sanctity of the sanctuary. When he was offered to pray at the Church of the Holy Sepulchre, he refused to do so in fear of it being later turned into a masjid by the Muslims, and thus depriving Christendom from one of its holiest sites. Thus Umar established an inclusive model of a religious sanctuary.

In fact, it was his treaty with the Patriarch Sophronius which is historically known as the 'Pact of Umar' (or *al-'uhdah al-'Umayriyyah*) ensured full rights in detail for the non-Muslim residents of Islamicjerusalem. The treaty could be

considered as a model for an “inclusive, peaceful co-existence and mutual respect among the people of all faiths.” It will not do justice if I do not read a few lines from the ‘pact of Umar:’

“In the name of God, the Merciful, the Compassionate. This is the assurance of safety which the servant of God, Umar, the Commander of the Faithful, has given to the people of Jerusalem. He has given them an assurance of safety for themselves for their property, their churches, their crosses, the sick and healthy of the city and for all the rituals which belong to their religion. Their churches will not be inhabited by Muslims and will not be destroyed. Neither they, nor the land on which they stand, nor their cross, nor their property will be damaged. They will not be forcibly converted.”
[*Tarikh Tabari*]

With such a pact, Umar did not only recognise the presence of the Christians and the Jews, he rather went on further to ensure that justice, freedom, equality, protection, safety and security for their lives, properties and religion are well maintained. Thus, cultural, religious and demographic diversities were all accommodated within the one boundary of Islamic Jerusalem.

Referring to the historical ‘Pact of Umar’ and its assurance of peace, equality, honour and identity, Karen Armstrong claims:

“The Muslims had established a system that enabled Jews, Christians, and Muslims to live in Jerusalem together for the first time.”³

The Christians and the Jews continued enjoying the same privileges throughout the Muslim rule of Islamic Jerusalem. For instance, Ahmad ibn Tulun, the Turkish commander of Egypt (from 868-904CE) under the Abbasid Caliphate, appointed a Christian as the governor of Islamic Jerusalem. He also allowed a new Jewish sect to establish in the region.⁴ The Christians and the Jews enjoyed so much prosperity that they were at the upper hand in many instances. Karen Armstrong also claims that the Muslims had always been the minorities in Islamic Jerusalem until the Crusades.⁵

Considering Umar’s pact as a model for peaceful conflict resolution, and mutual respect among the faiths, a contemporary Muslim scholar of Islamic Jerusalem, Abd al-Fattah M. El-Awaisi observes:

“Umar’s assurance of Aman not only rejected the notion of the supremacy of one people or race over others but presented Islamic Jerusalem as a model both for peaceful co-existence and mutual respect; and for conflict resolution. As one of the main characteristics of Islamic Jerusalem is its competing political and religious claims, it could be argued that it should be

presented as a model for conflict resolution through ‘constructive dialogue’ and positive negotiation with its conflicting parties.”⁶

Islamic Jerusalem belongs to the Muslims as much as it belongs to the Jews and the Christians. There can never be a peace accord while excluding the rights of any of the three great faiths. Before we conclude, we would like to mention Abd al-Fattah M. El-Awaisi once again for his relentless efforts in Islamic Jerusalem studies, who argues:

“... Islamic Jerusalem had always held the key to war and peace in the region. Whenever it had been blessed with peace, the whole region has enjoyed peace, security and stability. There is no doubt that settling the issue of Islamic Jerusalem in a way that ensures justice and restores the rights of its people holds the key to world peace and regional stability.”⁷

An inclusive approach to accommodate adherents of all faiths under the Islamic Jerusalem would guarantee world peace. Having said so, the model of peace, security, and protection of life, religion and property assured by the Umar ibn al-Khattab could be considered as a basis for adapting a new world model for ‘peaceful co-existence and mutual respect for all humankind.’

With this, Thank you and Wassalamu 'Alaikum Wrt. Wbh.

Notes

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6. Abd al-Fattah M. El-Awaisi, *Introducing Islamic Jerusalem*, Al-Maktoum Institute Academic Press, Scotland, 2007.
7. Abd al-Fattah M. El-Awaisi, “A Muslim Model for Peaceful Co-Existence and Mutual Respect,” *Politics and Religion*, no.1, Vol. VIII, 2014, 72.

3rd Catholic-Muslim Forum (Vatican City, 11-13 November 2104)

Mohammad Hashim Kamali

Professor Kamali presented a paper at the third Catholic-Muslim Forum held at the Vatican, 12 November 2014. His paper entitled “Catholics and Muslims in Dialogue: Working Together to Help Others” focused on youth issues and the achievement of interreligious dialogue from the Islamic perspectives.

The Catholic-Muslim Forum is a two-yearly event and its third in the series was held in Rome for three days from Tuesday 11 to Thursday 13 November 2014. For this year’s Catholic-Muslim Forum was “Working Together to Serve Others”. Three particular issues were addressed in papers presented at the Forum. These were: working together to serve young people, enhancing our interreligious dialogue, and service to society.

Each of the two delegations consisted of twelve members. The Muslim delegation was led by HE Prof Seyyed Hossein Nasr and prominent figures included:

- H E Prof Mohammad Hashim Kamali
- H E Prof Mustafa Cerić
- H E Prof M Din Syamsuddin
- Prof Abdal Hakim Murad Winter
- H E Prof Aref Ali Nayed
- Prof Ingrid Mattson
- Imam Yahya Sergio Yahe Pallavicini

The Catholic delegation was headed by His Eminence Cardinal Jean-Louis Tauran, President of the Pontifical Council for Interreligious Dialogue and including:

- Rev. Miguel Angel Ayuso Guixot, M.C.C.I., Secretary
- Monsignor Khaled Akasheh, Bureau Chief for Islam
- H E Mons. Ilario Antoniazzi, Archbishop of Tunis, Tunisia
- H E Mrs Pascale Warda, Former Minister of Migration and Displacement, Iraq
- H E Mrs Anne Leahy, Ambassador Emeritus of Canada of the Holy See

HRH Prince Ghazi bin Muhammad of Jordan, coordinator of the Muslim side, could not attend the event. The assembled participants sent him a message expressing their good wishes.

After the presentations of the papers and the discussions which ensued in a cordial and fraternal atmosphere, the participants agreed on the following points:

1. The delegates recognised that their gathering took place in a time of severe

tension and conflict in the world, underlining the vital importance of enhanced service and mutual cooperation. In this context, the delegates unanimously condemned acts of violence against innocent persons, terrorism, oppression, persecution, and the desecration of sacred places. It is never acceptable to use religion to justify such acts or to conflate such acts with religion.

2. The education of young people, be it in the family, school, university, church or mosque, is of the utmost importance for the promotion of a well-rounded identity which builds respect for others. To this end, school curricula and textbooks should portray an objective and respectful image of the other.
3. The participants affirmed the importance of the culture of interreligious dialogue for deepening mutual understanding. This is required to overcome prejudice, suspicions and inappropriate generalisations, all of which damage the peaceful relationships we all seek.
4. It was felt that dialogue should lead to action, particularly among young
5. people. The delegates acknowledge many examples across the world of
6. active Catholic-Muslim collaboration in educational, charitable and relief efforts, and recognised the need to build on this record and to intensify mutual cooperation in future.

On Wednesday 12th November, His Holiness Pope Francis gave an audience in which he greeted all the participants, encouraging them to persevere on the path of Christian-Muslim dialogue, and was pleased to note their shared commitment to the selfless and disinterested service of society.

Finally, the delegates expressed their satisfaction at a fruitful encounter, and looked forward to the next meeting of the Forum.

Seminar On Ten Years of the Afghan Constitution (Kabul, Afghanistan, 29 November 2014)

Mohammad Hashim Kamali

Professor Kamali's new book entitled "Afghanistan's Constitution Ten Years On: What are the Issues?" was launched in Kabul at an event in Kabul Serena Hotel organised by the Afghanistan Research and Evaluation Unit on 29 November 2014. Professor Kamali spoke at the event which was officiated by the second Deputy President of Afghanistan, H E Sarwar Danish. A large number of prominent figures, MPs and media representatives attended the event. Prof Kamali also appeared on Afghanistan 1TV news and events that featured the occasion and book launch in

Kabul. Professor Kamali's book was published in three languages, English, Dari and Pashto.

In his speech at this book launch, Professor Kamali identified key constitutional issues that have arisen over the past decade since the promulgation of the 2004 constitution. The event also marked the tenth anniversary of that constitution. Former Foreign Minister, Dr Rangin Spanta, and Deputy Commissioner of Independent Human Rights Commission of Afghanistan, Mr Farid Hamidi also presented on the state of fundamental rights, and separation of powers, respectively. The seminar concluded with a question and answer session.

Concept and Programme: Afghan Legal Studies Conference (Kabul, Afghanistan, 1-3 December 2014)

Mohammad Hashim Kamali

Professor Kamali presented a paper entitled "Constitutional Interpretation and Adjudication and the Relationship Between Executive and Parliament During Karzai Administration" at the inaugural sessions of the Afghan Legal Studies Conference in Kabul. The Conference was held to provide a forum for scholars from Afghanistan and abroad where they can present the results of their research. The conference was organised by The Max Planck Foundation for International Peace and the Rule of Law of Germany, which provides assistance, consultation, and training to Afghanistan in various fields including legal research. The organisers plan to strengthen academic exchange among Afghan law professors, Ph.D. students and independent researchers and connect them with the international scientific community.

The Hamida Barmaki Organisation for the Rule of Law (HBORL), joint organiser of the event also provides assistance in the areas of rule of law, access to justice, human rights and social peace in Afghanistan. Fourteen candidates have been selected so far to write doctoral dissertations in different fields of law. Five of them presented some of their research results at the conference.

The organisers are also planning to publish an annual book series, the Yearbook of Afghan Legal Studies. Selected conference papers will subsequently be published in Dari in 1393/2014 in the first volume of this series. Professor Kamali was selected as member of the International Scientific Advisory Board of this proposed yearbook.

**Workshop on “Conceptualising the Ummah,”
Royal Commonwealth Society
(Kuala Lumpur, 10-11 December 2014)**

Elmira Akhmetova

This two-day event was organised by School of Government and International Affairs at Durham University, the United Kingdom, the School of Modern Languages and Cultures at University of Nottingham Malaysia Campus, and Royal Commonwealth Society, Kuala Lumpur. The workshop was a part of the joint project between the Universities of Durham, Edinburgh and Manchester, funded by the Arts and Humanities Research Council of the United Kingdom. This project seeks to examine how Muslims have dealt with the ideas of interconnectedness and unity, as seemingly contradictory trends have unfolded – as states and parochial identities became entrenched in the Muslim world and as broader networks have emerged. It aims to access the ways in which one of the central concepts of Islam, the ummah (the community of faith), has been conceived of by diverse intellectual circles as well as in the everyday practice.

This recent workshop, hosted by Royal Commonwealth Society and the School of Modern Languages and Cultures at University of Nottingham Malaysia’s Campus, Kuala Lumpur, explored the concept of the ummah that every Muslim, regardless of living in Muslim or non-Muslim country, assumes to be pivotal. The event featured ten themes presented by the intellectuals and researchers who work constantly in the field of political Islam, Muslim unity and the ummah identity. Speakers included Prof. Dr James Piscatori (Durham University), Prof. Dr Yahya Michot (Hartford Seminary), Dr Mohammad Talib (University of Oxford), Prof. Dr Syed Farid Alatas (the National University of Singapore), Assoc. Prof. Dr Gaik Cheng Khoo (the University of Nottingham’s Malaysia Campus), Dr Adis Duderija (University of Malaya), Kelly al-Dakkak (Oxford University), Ravza Altunta-Cakir (Durham University), Dr Syed Aun R. Rizvi (the University of Nottingham’s Malaysia Campus), Dr Sumit Mandal (the University of Nottingham’s Malaysia Campus), and Dr Elmira Akhmetova (IAIS Malaysia). Three questions that have repeatedly appeared guided the discussions were:

1. How extensive or encompassing is the intended unity or community?
2. How much difference among the Muslim groups is allowable in Islam?
3. Must community take institutional (or political) structure in order to achieve unity?

The political aspects of the Muslim unity and its affiliation with the

main principles of governance in Islam were deliberated throughout the workshop. Muslims often perceive unity in non-territorial terms as a spiritual interconnectedness, while some others see the ummah as in tenuous co-existence with established political entities or other parochial forms of community. Therefore some advocates of unity have even been accused of an ideologised, radical and fanatic campaign in the name of supposed orthodoxy as we can see such developments happening in the Muslim world since the colonial era.

The problem of sectarian division as a main challenge to the prospects of Muslim unity had been trashed out by the participants of the workshop. The presenters agreed that, in recent times, the long-lasting animosity and hostility between the Sunni and Shi'ah Muslims deepened even further leaving little hope for the unity of the entire ummah in the near future. The problem of radicalisation of the ummah due to the recent political developments in the Muslim World, particularly in the MENA region and Afghanistan, had been addressed by several presenters. Prof. Dr Yahya Michot raised the question of misuse of Islam and its principles by some contemporary political groups and individuals for their private gain, which he labeled as a *bazarisation* of the ummah feelings. Therefore, the way of moderation has been suggested to follow for Muslims by integrating and balancing the worldly and religious aspects of life, as well as of the physical and spiritual domains of existence.

BOOK REVIEWS

Ann Norton, *On the Muslim Question*

New Jersey: Princeton University Press, 2013, pp. xi +265 pages, hb, ISBN: 9780691157047.

by Asif Mohiuddin *Department of Islamic Studies, University of Kashmir, Srinagar, India*

Historically, most Western nations, from the age of enlightenment, established a firm divide between church and state. This chasm engendered a concept that stressed the separation of religious morality from secular law. The assumption that the secularisation of the world is a necessary precondition for the establishment of modern, democratic form of government, has gained a lot of currency among many Western policymakers. Indeed, the need for reform is a necessity in the Muslim context, but the path towards realising it in the form of secularisation is a debatable issue. Western history is characterised by the conflict between church and state, and this conflict has no precedent in the Muslim history. The nexus between religion and secular obligations, and a societal consensus is not as prominent in the Muslim context as it is in the Western societies. Ann Norton's book, "On the Muslim Question" provides deeper political and philosophical insights into the intricate relationship between Muslims and the West. Norton asserts that in the contemporary times the Muslim question is as fundamental as the emancipation of Jews in the context of enlightenment philosophy. Norton organises her work efficiently and manages to weave together the distinct but related topics in 2 parts containing 10 chapters along with an introduction and an index. Part I, "Muslim Question," examines a range of issues, from modern Muslim discourses on freedom of speech, women and terrorism, to democracy and equality. In the opening chapter, Norton analyses the issues pertaining to freedom of speech and expression. The Muslim reactions to controversies like Rushdie's satanic verses, the Danish cartoons, and the critical film about Islam by the Dutch provocateur, Theo van Gogh, perhaps reflect an underlying repugnance to liberal thought about free speech. At the root of the conflict between Muslims and the West, Norton identifies the Muslim treatment of women that has dominated the Western perception of Muslims. In the case of Ayan Hirshi Ali, she discloses that how the media and press can present Muslim women as passive victims of male power than as strong feminists who repudiate Islam and articulate against it. Norton observes that in order to avoid the scathing criticism from the critical analysts and feminists on the continuing oppression of women in the West, a

lot of attention is given to the plight of women in the Muslim World (p. 67). In the chapter, "Terror," the author addresses the question of terrorism. While emphasising that the fear of Islam and Muslims in the West has construed Islam as a religion that promotes terrorism, she argues that the fear of terrorism is real and its threats are true threats. In contrast to the general overview of citizens' perceptions and attitudes towards terrorism, professionals like, Ehud Barak, Robert Pape, and Alan Kruger conceive it as a familiar political choice rather than a non-reasonable strategy (p. 89). On the question of equality, Norton refers to the work of Syed Qutb and states that, for Qutb, there is equality of men and women in Islam, and their complimentary nature to one another. Equality is an important constituent of a modern democratic process. Norton draws our attention to the notion of equality as emphasised by Islam with regard to the question of democracy in the contemporary Middle East. According to her, Derrida insisted on the non existence of democratic values in Islam. The vision is seen to be structured by the parochial understanding of faith. Further, she advocates the presence of democratic values in the Muslim tradition, and recognises the work of classical Muslim philosophers, affirming their familiarity among the American democrats.

Part II, "In the Western street," analyses the European circumferences, American empire, Islamofascism, and the theory of clash of civilisations. The claim that Christianity has been very influential in the evolution of intellectual and political cultures of Europe and the subversion of Christianity means the subversion of democratic values is interpreted as a Janet and John reading of history. Norton emphasises that the idea of "Christian Europe," may make sense from a certain perspective but it largely ignores the diverse religious and historical roots of Europe. In chapter 8, Norton examines the work of Paul Berman. Berman visualises a nexus between Islamofascism and Nazism, considering Islamofascism as a successor to Nazism. Further, she discloses that the imagined history of Berman fails to acknowledge the absence of Islamofascism in a sense that Arabs and Muslims have already opposed fascism. Norton deconstructs the myth of American exceptionalism that emerged out of the exclusionist answer to the tumultuous influx of immigrants and their beliefs. Ultimately, she repudiates the clash of civilizations thesis, arguing that such a clash is not borne out in the daily lives of the people. Apart from the realm of legislation, the clash of civilizations theory is resisted and refuted by the social realities of the people.

The Work provides an insightful critique of existing forms of studying, interpreting and understanding Islam in the West. While offering a critical insight into concepts such as democracy, freedom of speech, Islamofascism, women, and the clash of civilizations, Norton reveals a different perspective on Islam by emphasizing its dynamic interaction with the West — in contrast to the caricatured

and stereotyped perception of Islam nurtured by the more robust purveyors of hate. The author makes a convincing case that, as in the past, the fear of Islam will prove to have been highly exaggerated. Throughout, she tries to approach Islam and the Muslim question by confronting the preconceived historical and contemporary ideological flaws surrounding the homogenous, misconstrued, and parochial understanding of Islam.

The major weakness of the book, however is that at some places the author construes an image of Islam and Muslims as fundamentally and irrevocably opposed to everything the West perceives and acknowledges. For instance, on the question of veil, Norton discerns veil as an indication of lack of freedom for women. This vague perception, moreover with its symbolic significance has projected veil as an object of political strife and cultural debate. Despite the delicacy of the issue, veil succeeds in deconstructing orientalist perception of veiling by contradicting Western stereotypes of the Muslim women as passive, weak and oppressed. The deconstruction provokes a reconsideration of firmly established discourses portraying orientalism as a veil of ignorance that has stemmed from the collective hatred of foreign cultures. Similarly, on the issue of democracy, the Muslims are depicted as the “Others,” having no tolerance for democratic values. But rather than being diametrically opposed to the principles of democracy, the Muslim tradition and the revolutionary movements in the Muslim World, including the Arab spring demonstrate a complex yet different perspective on the issue.

Finally, it can be said that Norton asks important questions that need to be answered with regard to the Western investments in their illusions of the Muslim peoples. In a nutshell, “On the Muslim Question,” is an indispensable reading for scholars as well as those interested in understanding the complex relationship between Islam and the West.

CALL FOR PAPERS

Islam and Civilisational Renewal (ICR) invites scholarly contributions of articles, reviews, or viewpoints which offer pragmatic approaches and concrete policy guidelines for Malaysia, the OIC countries, civic non-governmental organisations, and the private corporate sector. The principal research focus of IAIS is to advance civilisational renewal through informed research and interdisciplinary reflection with a policy orientation for the wellbeing of Muslim communities, as well as reaching out to non-Muslims by dialogue over mutual needs and concerns.

Our enquiry and recommendations seek to be realistic and practical, yet simultaneously rooted in Islam's intellectual and spiritual resources, Muslim political and social thought, inter-faith exchanges, inter-civilisational studies, and global challenges of modernity.

ICR invites contributions on the following topics:

- issues of good governance and Islamic law reform in Muslim societies
- science, technology, development and the environment
- minorities and culture-specific studies
- ethical, religious or faith-based issues posed by modernity
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