

Islamic Policy of Environmental Conservation

1,500 Years Old – Yet Thoroughly Modern*

Mohamed A. 'Arafa**

Abstract

Any legal system plays a significant role in the principle underlying its legal doctrines. The legal system works in compliance with, or as a consequence of cultural order. In other words, any legal system is restricted to a certain environment and subject to cultural impact. Culture and law operate in conjunction. Politics and economy are, among others, the main disciplines affecting that legal system including environmental laws and natural resources. The present article attempts a comparative analysis of three different legal systems and their approaches to environmental law, contributing to the extensive literature on this area of law in numerous areas of the world such as the United States, Europe, and the Middle East. However, that literature appears to have had little coverage of the treatment of environmental law in Islamic law, one of the three main global legal systems together with common and civil law. The bold spread of Islamic tendency in the Middle East that followed the so-called “Arab Spring” assures major changes in the political and economic sphere, including environmental and natural resource levels. Environmental threats are very pressing all over the world, as the Earth needs to be protected through the adoption of universally applicable legal rules and the right to a healthy environment needs to be elaborated on in international instruments. It is very significant to understand Islam’s overall view of the universe to comprehend the gap between Islamic theories and practices in Muslim countries. The universe is full of diversified creatures that aim to fulfill man’s needs and prove God’s greatness. The Qur’an states: “Have you not seen that God is glorified by all in the heav-

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** Adjunct Professor of Islamic Law at Indiana University Robert H. McKinney School of Law (USA); Assistant Professor of Criminal Law and Criminal Justice at Alexandria University Faculty of Law (Egypt). SJD, Indiana University Robert H. McKinney School of Law (2013); LLM, University of Connecticut School of Law (2008); LLB, Alexandria University Faculty of Law (2006). Dr. ‘Arafa is a Visiting Professor of Business Law at the Arab Academy for Science, Technology, and Maritime Transport (‘College of Business Management’). Moreover, Professor ‘Arafa is a Domestic Public Mediator under Alternative Dispute Resolution, Indiana Rule ADR 25 (2012) and served as an Associate Trainee Attorney and Executive Attorney Assistant at ‘Arafa Law Firm (2007).

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ens and on earth, such as birds with wings outspread? Each knows its worship and glorification, and God is aware of what they do."All creatures in the universe perform two specific roles: a religious role of evidencing God's perfection and presence and a social role of serving man and other creatures. The final outcome is the solidarity of the universe and the realization of its common good (benefit).

Man's position in the universe is premised on two principles: the stewardship of man which means that man is not only a creature but also God's khalifa (steward) on earth; God is the only proprietor of earth; and man is a mere beneficiary, and man can exploit nature for his/her and other creatures' benefit without depleting it and the principle of trust that all natural resources created by God are placed as a trust in man's hand and needs of coming generations must be taken into consideration by man. Islamic environmental law uses a "duty paradigm" in the sphere of the right to healthy environment, as human beings must not destroy, deplete, or unwisely use natural resources but have an obligation to develop and enhance natural resources. Any disturbance of God's equilibrium in the universe is a transgression and athm (sin) against the divine system. Last but by no means least, Islamic law regards man as a creature with elevated status. In Islamic environmental law, the human is not the owner of nature, but a mere beneficiary. Islamic environmental safety is based upon the principle of "use" without "abuse". Environmental protection under the Islamic legal scheme does not differ from any modern environmental legal system.

Keywords: environment, waqf (endowment), khalifa (steward), God's equilibrium, Arab Spring.

If anyone travels on a road in search of knowledge, Allah will cause him to travel on one of the roads of Paradise.¹

– The Prophet Mohammad (PBUH)

Knowledge is a treasure, but practice is the key to it²

– Ibn Khaldoun, *Al-Muqaddima*

1 Quote of The Prophet Mohammad Ibn 'Abdullah (570-632). S. Al-Bukhari, *Knowledge*, No. 356, 311, Vol. 1, Book. 3, translated in University of Southern California, Center for Muslim-Jewish Engagement, <www.usc.edu/org/cmje/>.

2 Quote of Ibn Khaldoun, Al-Muqaddima, scholar and statesman (1332-1406). *Al-Muqaddimah Ibn Khaldoun [The Introduction or Prolegomenon]*, Vol. 21, Arabic Source, Dar AlShaab, 1959. Ibn Khaldoun was a lawyer, sociologist, economist, and Muslim jurist. He wrote his masterpiece, *Muqaddimah or Prolegomenon*, in 1377 AD. It is the first volume of seven volumes of *Kitab Al-Ibar*. See Ibn Khaldoun, 'The Muqaddimah: An Introduction to History', in N.J. Dawood (Ed.), *Franz Rosenthal (Trans.)*, Princeton University Press, Princeton, NJ, 1958 (providing an English translation).

A. Introduction and Overview

As is generally known,

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.³

Environmental security is a focal issue of the new epoch, in particular because the degradation of the environment by human actions is continuously increasing and becoming one of the primary struggles of the present time.⁴ Domestic and international legal mechanisms are becoming increasingly effective in protecting against environmental destruction.⁵

For many Muslim nations, Islamic Sharie'a is considered the main, or one of the main, sources of legislation. In the meantime, those countries represent a hazardous source of environmental pollution to the world.⁶ Accordingly, it is imperative that Muslims examine the Islamic rules for environmental protection to effectively regulate the performance of those countries that do not admit to be

3 See *Declaration of the United Nations (U.N.) Conference on the Human Environment*, in the Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.48/14/Rev. 1 (Principle 1) (16 June 1972), < www.un-documents.net/unchedec.htm >, last accessed 30 October 2013. According to the summary record of the 55th meeting of the UN Commission on Human Rights (UNCHR) in April 1999, Neil Popovic, who contributed to the drafting of the declaration on human rights and the environment, highlighted the issue of environment and human rights, recommending that the UNCHR had a responsibility to address the human rights aspects of Agenda 21, advising that the mandate of the special rapporteur on illegitimate movement and dumping of toxic wastes be transformed to a special rapporteur on human rights and the environment. However, no resolution or decision was made at the end of the 55th session in regard to human rights and the environment. UN Doc. E/CN.4/1999/89 (22 December 1998). See, generally, *Promotion and Protection of Human Rights: Science and Environment*. Report of the Secretary-General Submitted in Accordance with Commission Decision 1997/102. Moreover, the provisional agenda for the 51st session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities has not itemised consideration of environmental issues and human rights. UN Doc. E/CN.4/Sub/1999/1, Provisional Agenda (12 May 1999). See also, Y. Khalailaha, 'A Right to a Clean Environment in the Middle East: Opportunities to Embrace or Reject', *Environmental Law Reporter News & Analysis*, Vol. 42, 2012, p. 10280.

4 See M.R. El-Helw, *Kanun Hemaiaat Al-Bieah Fi Dwa'a Al-Sharie'a [The Law on the Environmental Protection in Islamic Sharie'a Law]*, Dar Al-Matpouat Publishing Press, 1999, pp. 34-47.

5 *Id.*, at 42-44.

6 *Id.* It should be borne in mind that a comparative analysis of different legal systems' approaches to environmental law contributes to the extensive literature on this area of law in numerous areas of the world such as the United States, Europe and the Middle East. However, that literature appears to have had little coverage of the treatment of environmental law in Islamic law, one of the three main global legal systems together with common and civil law.

bound only by Islamic rules and confirm that Islamic law is a legal system and a public social order of all times and places.⁷

Since the 1970s, the jurisdictional reach of environmental law has extended from a national to a transnational level to cover detrimental undertakings and offer greater environmental fortification.⁸ Thus, the failure to entirely attain this purpose supports the idea of finding another source of commitment, such as Islamic rules that bind Islamic nations that have become an important source of ecological pollution.⁹ Environmental threats are very pressing all over the world. Consequently, the Earth needs to be protected through the adoption of universally applicable legal rules and the right to a healthy environment needs to be elaborated on in international measures.¹⁰ It is very important to understand Islam's overall view of the universe to comprehend the gap between Islamic theories and practices in Muslim countries.¹¹ The universe is full of diverse creatures that aim to fulfil man's needs and prove God's greatness.¹² In this domain, the Qur'an – which is the primary source of Islamic environmental law – states: "Have you not seen that God is glorified by all in the heavens and on earth, such as birds with wings outspread? Each knows its worship and glorification, and God is aware of what they do."¹³ In the same vein, Allah (God) has created everything in this universe in due proportion and measure both qualitatively and quantitatively.¹⁴

In Islamic environmental law, all creatures in the universe perform two specific roles: a *religious* role that evidences God's perfection and presence, and a

- 7 See, generally, A.A. Bagader *et al.*, 'Environmental Protection in Islam', *IUCN Environmental Policy & Law Review*, No. 20, 1994, p. 2.
- 8 See J. McCromick, 'The Role of Environmental NGOs in International Regimes', in N.J. Vig & R.S. Axelord (Eds.), *The Global Environment*, CQ Press, Washington, DC, 1999, p. 52. See also, A. Bouvier, 'Protection of the Natural Environment in Time of Armed Conflict', *International Review of the Red Cross*, Vol. 285, 1991, pp. 567-571.
- 9 El-Helw, 1999. J. Donnelly, 'Ethics and International Human Rights', in J.-M. Coicaud & D. Warner (Eds.), *Ethics & International Affairs: Extent and Limits*, 2001, pp. 128, 134.
- 10 Bagader *et al.*, 1994.
- 11 See, generally, M.T. Sabounji, *Islam and the Environment*, The Hassanian Lectures, 1991. R. Al-Sayyid, *Contemporary Muslim Thought and Human Rights* (Expert paper submitted to United Nations Seminar 'Enriching the Universality of Human Rights: Islamic Perspectives on the Universal Declaration of Human Rights'), UN Doc. HR/IP/SEM/1999/1 (Part II Section 2), 15 March 1999, 253, 260.
- 12 *Id.*, Bagader *et al.*, 1994; El-Helw, 1999, at 26.
- 13 The English translation of the Qur'anic provisions given in this article has been taken from The Holy Qur'an Arabic text with Translation in English text at < www.alislam.org/quran/search2/>. Qur'an ('The Holy Book of Muslims') represents the first and the major source of Islamic Shari'ah law, in which it is the word of God and was revealed to the Prophet Mohammad (PBUH) verbally through the Angel Gabriel over a period of 22 years (610-632 CE). See The Glorious Qur'an, at Surat (Chapter) Al-Nour (The Light, 24:41).
- 14 God has not created anything in this universe in vain, without wisdom, value and purpose. The Qur'an reads: "We have not created the heavens and the earth and all that is between them carelessly. We have not created them but for truth", "Verily, all things have We created by measure", "[...] Everything to Him is measured", and "And We have produced therein everything in balance." See The Glorious Qur'an, at Surats (Chapters) Al-Dokhan (The Smoke, 44:38, 39), Al-Qamar (The Moon, 54:49), Al-Ra'd (The Thunder, 13:8), & Al-Rahman (The Mercy, 55:7).

social role that serves man and other creatures.¹⁵ The final outcome is the solidarity of the universe and the realisation of its common good (benefit). According to the Sharie'a law, the preservation of the environment is a religious duty demanded by God, as He said, "Do good, even as God has done you good, and do not pursue corruption in the earth"; "Verily God does not love corrupters," "Eat and drink, but waste not by excess; Verily He loves not the excessive," and "Do not cause corruption in the earth, when it has been set in order."¹⁶ These previous Qura'nic verses are dominant voices in international environmental law; they recurrently denounce any environmental damage. The Qur'an punishes these acts because they breach or violate God's trust and mercy.¹⁷

It was not only the Qur'an that addressed the main principles of Islamic protection of the environment. The Prophet Mohammad (PBUH)'s Sunnah emphasised the same Islamic norms that guarantee the maintenance of the environment and natural resources.¹⁸ Sunnah – the second primary source of Sharie'a – underlines the environmentally friendly nature of various sections in the Qur'an. Prophet Mohammad ordered Muslims to protect their environment when he said in a prophetic speech, "If any Muslim plants a tree or sows a field, and a human, bird or animal eats from it, it shall be reckoned as charity from him."¹⁹ Therefore, harming the environment and not bearing any liability in contributing to its fortification is considered to be a violation and a great *ithm* (sin) of God's orders and his messenger, which will beget an eternal punishment.²⁰

- 15 R. El-Hamed & M. Sbarini, *Al-Bieah wa Moshkelatha [The Environment and Its Difficulties]*, Arabic Source, 1979, p. 150. ("The introduction by man into any part of the environment of waste matter or surplus energy, which so changes the environment as directly or indirectly adversely to affect the opportunity of man to use or enjoy it."). See J. McLoughlin, *The Law and Practice Relating to Pollution Control in the United Kingdom*, 1976, Graham & Trotman, 1 January 1976, p. xxxiii.
- 16 See The Glorious Qur'an, at Surats (Chapters) Al-Qasas (The Stories, 28:77) & Al-A'raf (The Heights, 7:31, 56). See also, D.D. Caron, 'Protection of the Stratospheric Ozone Layer and the Structure of International Environmental Lawmaking', *Hastings International Comparative Law Review*, Vol. 14, 1991, pp. 755, 760 -761. See also, Cnn.Com, 'Antarctic Ozone Hole Larger Than Ever', SCI-TECH, 6 October 1998, available at <www.cnn.com>, last accessed 30 October 2013.
- 17 El-Helw, 1999.
- 18 The second principal source of Islamic law is the *Sunnah (Hadith)* or the traditions of Prophet Mohammad (PBUH). The *Sunnah* consists of compilations of Mohammad's actions, sayings, judgments, attitudes and opinions during his lifetime. See, generally, N. Mohamed, 'Awadin, Masder Al-Fiqh Al-Islami [Sources of Islamic Law]', 3rd ed., 2001, p. 37.
- 19 Moreover, he said, "If the day of resurrection comes upon any one of you while he has a seedling in hand, let him plant it." See *Hadith related by Imam Ahmad Ibn Hanbel in the Musnad & Al-Tabarani in Al-Mu' jam Al-Kabir on the authority of Abou Ad-Dara', with a reliable chain of transmission. Hadith of sound, related to the authority of Anas Ibn Malik by Ibn Hanbel*. See Abou Al-Hussein Muslim Ibn Al-Hajjaj Ibn Muslim Ibn Warat Al-Qushayri Al-Nisaburi (Sahih Muslim), Abou Dawud Sulayman Ibn Ash'ath Azdi Sijistani (Sunan Abou Dawud) & Muhammad Ibn Ism'ail Al-Bukhari (Sahih Al-Bukhari), in *Al-Adab Al-Mufrad and on the authority of 'Abd-Allah Ibn 'Umar & Abou-Hurayrah*, <www.usc.edu/org/cmje/>. It should be borne in mind that 'PBUH' is an acronym of 'May Peace Blessing Be Upon Him'.
- 20 *Id.* Prophet Mohammed warned that a "person who starves an animal to die is punished by God in the fire of hell" and "A person sins God pardon for the act of giving water to a dog in desperate thirst."

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In Islamic law, man does not possess the Earth, and has been granted a stewardship to accomplish and manage it in accordance with the objectives envisioned by the Creator (God), to utilise it for his own benefit and the benefit of other creatures.²¹ As a result, the environment should be kept healthy and safe by the contemporary generations for inheritance by future generations, since environmental ruin interrupts public interests, particularly when it causes water, air and soil pollution.²²

Islamic law premises man's position in the universe on two Islamic juristic principles: (a) *khilafah* (the stewardship) of man, which means that man is not only a creature but also God's *khalifa* (steward) on Earth, as God is the only proprietor of Earth and man is a *mere* beneficiary, and (b) man can exploit nature for his/her and other creatures' benefit without depleting it, and the principle of *amanah* (trust), namely that all natural resources created by God are placed as a trust in man's hands and the needs of coming generations must be taken into consideration by man.²³ Islamic environmental law uses a 'duty paradigm' in the sphere of the right to healthy environment, as a human being cannot destroy, deplete or unwisely use natural resources but has an obligation to develop and enhance them.²⁴ Any disturbance of God's equilibrium in the universe is a transgression and a great sin against the divine system.²⁵

In Islam, creation of environmental damage may be considered to go beyond mistreating God's property, where environmental damage could be interpreted as a violation of private interests as well.²⁶ The difference between these two views, God's property as public property and private property, reflects the nature of the penalty that results from the destruction of both.²⁷ Every action that represents a breach of public interest is considered a crime against society and entails the pun-

- 21 Bagader *et al.*, 1994, at 27. The Qur'an reads: "He Who has spread out the earth for you and threaded roads for you therein and has sent down water from the sky: With it have We brought forth diverse kinds of vegetation. Eat and pasture your cattle; verily, in this are signs for men endued with understanding." See The Glorious Qur'an, at Surat (Chapter) (Taha, 20:53-54). Consequently, Prophet Mohammed said in a speech that "The world is beautiful and verdant, and verily God, be He exalted, has made you his stewards in it, and he sees how you acquit yourselves." See Sahih, Muslim *on the authority of* Abou Sa'id Al-Khudri.
- 22 See S. Khan, *An Islamic Approach to Environment*, 1 November 2012, <<http://envirocivil.com/environment/an-islamic-approach-to-environment/>>. See also, M. Hassan, *Upon Teaching the Environmental Law From Islamic Point of View*, Arabic paper presented in the Conference of Environmental Legislation in the Arab Region, 30 September to 2 October 2000, p. 34.
- 23 See O.A. Bakhshab, 'Islamic Law and the Environment: Some Basic Principles', *Arab Law Quarterly*, Vol. 3, 1988, pp. 293, 298. See also, generally, A. Hashish, *Al-Mafhoum Al-Kanoni Lel-Bieah in Islam [The Legal Conception of Environment in Islam]*, Arabic Source, 2006.
- 24 *Id.*
- 25 Khan, 2012; El-Helw, 1999.
- 26 Hassan, 2000, at 34. For instance, the damage of an agricultural field, maintained by a private person, by the wastes of nearby plants is considered a violation to both the assets (properties) of God and the individual.
- 27 See A.-H.B.A. Masri, 'Islam and Ecology', in F. Khalid & J. O'Brien (Eds.), *Islam and Ecology*, 1992, pp. 1, 3. N. Al-Duaij & E. Al-Anzi, *The Environmental Laws and Regulations in Islamic Waqf: Application to the Situation in Kuwait*, 2009, available at <http://works.bepress.com/eisa_al_enizy/2>, pp. 3, 4.

ishment of *Ta'azir*, which used to be a preventive sentence and for which reconciliation was not accepted.²⁸ Muslims' *Imam* (leader) applies such sanctions even if there is no plaintiff, where the *Qadi* (judge) fulfils this role.²⁹ On the other hand, if the environmental contravention is interpreted as an abuse of private interest, the punishment of *Hudud* or *Qesas* will be implemented; however, compromise or reconciliation can always be made in such kinds of criminal acts.³⁰

On the basis of the fundamental Islamic environmental norms, in Section B this article discusses the right to a clean environment as it exists within the 'duty' paradigm and solidarity rights. Section C presents the Islamic protection of the basic natural resources and man (environmental challenges) in the Middle Eastern region, followed by an analysis of Islamic law norms on sustainable development and the environment, highlighting the case of the clean water laws within the Islamic perspective. Section D will address the Islamic strategy of the environmental security and the responsible Islamic institutions for the preservation and protection of nature. Finally, this article concludes by saying that Islamic environmental safety is based upon the principle of 'use' without 'abuse'. Environmental protection in the Islamic legal scheme does not differ from any modern environmental legal system (environmental international law), and calls attention to the significance of having a clear agenda towards the current debate. This plan may be intended primarily by principles of Islamic law that establish the protection of the environment.

B. A Right to a Clean and Healthy Environment Within Islamic Theory: Duty Pattern and Solidarity Rights

Under Islamic environmental standards, humanity is viewed as having *Khilafah* (vice-regency) over, or being a trustee of, the environment.³¹ A human being is a distinctive and unique part of this universe and has a special position among its other parts, the components of which are complementary to one another in a cohesive whole.³² In this regard, the Qur'an makes the following assertion:

Allah is he who created the heavens and the earth and caused water to come down from the clouds, and brought forth therewith fruits for your [human] sustenance. He has constrained to your service the winds that vessel may sail

28 Regarding the various classifications of crimes and punishments in Islamic law, see A. Mohamed, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?* *Annual Survey of International & Comparative Law Journal*, Vol. 18, 2012, pp. 188-195.

29 *Id.* See also, Hassan, 2000, at 34.

30 Al-Duaij & Al-Anzi, 2009, at 3.

31 See D. Fisher-Ogdend & S. Ross Saxer, 'World Religions and Clean Water Laws', *Duke Environmental Law & Policy Forum*, Vol. 17, No. 63, 2006, p. 11 ("One of the basic beliefs in Islam is the concept of human stewardship. Building on the idea that God created the earth, the *Qura'n* reveals that God provides for humanity by putting everything in service to humans."). See also, F. Denny, 'Islam and Ecology: A Bestowed Trust Inviting Balanced Stewardship', *Earth Ethics*, Vol. 10, 1998, p. 10.

32 Bagader *et al.*, 1994, at 2.

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through the sea by [His] command, and the rivers also he has constrained to your service. He has also constrained to your service the sun and the moon, both carrying out their functions incessantly; and He has subjected to you the night as well as the day. He has given you all that you asked to Him; and if you try to count the favours of *Allah*, you will not be able to number them.³³

The notion of stewardship is strengthened even more by the philosophies of order and equilibrium that are found elsewhere in the Qur'an.³⁴ Humankind is to follow God in sustaining order, as He said, "Create not disorder in the earth after it has been set in order."³⁵

Egypt has followed the Muslim teachings in its legislation and jurisprudence.³⁶ The Egyptian courts have given the constitutional provision in Article 2 of both the 1971 Constitutional Charter and the 2014 Constitution a narrow interpretation, and hence allowed room for some modern legal thoughts like Egyptian envi-

33 See The Glorious Qur'an, at Surat (Chapter) Ibrahim (Abraham, 14:33-35). See also, K. Stilt, 'Islamic Law and the Making and Remaking of the Iraqi Legal System', *George Washington International Law Review*, Vol. 36, 2004, pp. 695, 725. See, generally, B. Taylor, *Encyclopedia of Religion and Nature*, Continuum, New York, 2005, pp. 597-598. ("Environmental ethics can be defined, in very general terms, as efforts to articulate, systematize, and defend systems of value guiding human treatment of and behaviour in the natural world. Philosophical and religious environmental ethics however, did not emerge until the last three decades of the twentieth century. The roots of modern environmental philosophy predate the emergence of 'environmental ethics' as an academic field.")

34 The Glorious Qur'an, at Surat Al-A'raf (7:57).

35 M. Rafiq & M. Ajmal, 'Islam and the Present Ecological Crisis', in O.P. Dwivedi, *World Religions and the Environment*, 1989, p. 119.

36 As Islam represents the official State religion, the Egyptian Constitution specifically integrates the Muslim faith, as this constitutional document both in 1971 and in 2014 states that "the principles of the Islamic *Sharie'a* are the main source of legislation." Stilt, 2004, at 720.

ronmental laws.³⁷ In this sense, the Egyptian government supports the Islamic model of human stewardship, as there is no precise mention in the main Egyptian Law No. 4 of 1994 on the Protection of Environment of the Muslim belief.³⁸ Instead, these are embodied in an Islamic Declaration on Sustainable Principles, and refer to humans as having a “lieutenancy mission on Earth”.³⁹ It remains to be seen how effective the environmental statutes and regulations will be.

However, it could be claimed that Islamic traditions are sympathetic to the general values of environmental protection, achieving environmental safety through human rights in a Muslim State may obscure application.⁴⁰ Islamic nations and secular countries may have central differences in their attitude towards environmental defence within their legal systems.⁴¹ The standard that there is a “universal consensus on the ethical basis of nature conservation, and

37 Stilt, 2004, at 723 (*quoting the 1971 Egyptian Constitution*). See Constitution of the Arab Republic of Egypt, 18 January, 2014, at Art. 2 (Egypt), <www.sis.gov.eg/newvr/theconstitution.pdf> compare to the Abrogated Constitution of the Arab Republic of Egypt (11 September 1971) (*amended* 22 May 1980, 25 May 2005, 26 March 2007) (*replaced* 20 March 2011), <www.egypt.gov.eg/english/laws/Constitution>, at Art. 2 (Egypt). The Egyptian Environmental Affairs Agency, established in 1982 and made permanent by the Egyptian Law No. 4 of 1994, has tasks very similar to the U.S. Environmental Protection Agency. It should be noted that the Egyptian agency was first created by Presidential Decree and later legislation continued the existence of the EAA permanently. For further details on comparing the Egyptian agency powers with the U.S. Clean Water Act, 33 USC §1251, see Law No. 4 of 1994 on the Protection of the Environment *amended* by Law No. 9/2009, *Al-Jarida Al-Rasmiyya(h) [The Official Gazette]* (Egypt), at Arts. 2, 3, 4, 5, & 48-83, <www.eeaa.gov.eg/English/law4.doc> & <www.eeaa.gov.eg/English/main/law4.asp>, last accessed 31 October 2013). [Some provisions of the Executive Regulation of Law 4 were amended by Prime Minister's Decree No. 1741 of 2005]. The Environmental Protection Law has defined the responsibilities of the agency in terms of the following:

- a preparation of draft legislation and decrees pertinent to environmental management;
- b collection of data both nationally and internationally on the state of the environment;
- c preparation of periodical reports and studies on the state of the environment;
- d formulation of the national plan and its projects;
- e preparation of environmental profiles for new and urban areas, and setting of standards to be used in planning for their development; and
- f preparation of an annual report on the state of the environment to be prepared for the President.

38 Stilt, 2004, at 724.

39 See Islamic Declaration on Sustainable Development, United Nations World Summit on Sustainable Development, *Meeting* 26 August to 4 September 2002, p. 7, <<http://muslimenvironment.wordpress.com/2010/10/25/islamic-declaration-on-sustainable-development-johannesburg-august-september-2002/>>, last accessed 31 October 2013). (“1. Generalizing assessment of environmental and health impacts of development projects. 2. Legal and Institutional Aspects of Environment: (a) conducting a comparative study on Islamic countries’ environmental laws and conferring an Islamic character on their contents, (b) making Islamic countries’ environmental laws consistent with their commitments under related international conventions.”).

40 El-Helw, 1999. See also, Hassan, 2000.

41 See K. Ahmad, ‘Introduction’, in S.A. A’ala Maududi, *The Islamic Law and the Constitution* (edited and translated to English by K. Ahmad), 1960. Despite the diversity of legal systems among Muslim countries, it is extensively recognised that these nations share a legal tradition that sets them separately from Western countries, which tend to reject religious rules as the basis for their legal systems. See A.A. An-Na’im, ‘Civil Rights in the Islamic Constitutional Tradition: Shared Ideals and Divergent Regimes’, *John Marshall Law Review*, Vol. 25, 1992, pp. 267, 268.

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secondly, that human rights standards are or at least should be universally applicable throughout the world⁴² is based on the evidence that there are no differences between rights-based perceptions of environmental protection in secular and Islamic countries and that all key world religions comprise common ethical doctrines and social values promoting conservation of the living environment and imposing an obligation to protect this environment.⁴³

Although there are various Qur'anic verses (roughly 500) that refer to the correlation between man and the environment, the Qur'an does not have a rights-based attitude towards protection of the environment, instead underlining the duty of the individual Muslim to care for the natural environment and not to deplete it.⁴⁴ This paradigm duty is deep-rooted in the divine orders (beliefs) that the Earth in its entirety is a creation of God, and that both man and the State are charged to take responsibility for God's creation as part of their religious commitments.⁴⁵

One should bear in mind that there is a global coherence on a human right to a clean environment under international law, which occasionally takes the form of using religious texts to support general statements on human rights to a clean environment in Islamic law.⁴⁶ In this regard, Article 17 (a) of the 1990 Cairo Declaration on Human Rights in Islam states that: "Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environ-

42 M. Lau, 'Islam and Judicial Activism: Public Interest Litigation and Environment Protection in the Islamic Republic of Pakistan', in A. Boyle & M.R. Anderson, *Human Rights or Environmental Rights? A Reassessment*, *Fordham Environmental Law Review*, Vol. 18, No. 471, 2007, p. 286. See also, M. Palmer, 'The Encounter of Religion and Conservation', in J.R. Engel & J.G. Engel (Eds.), *Ethics of Environment and Development*, 1990, p. 50; J.W. Nickle, 'The Human Right to a Safe Environment: Philosophical Perspectives on Its Scope and Justification', *Yale Journal of International Law*, Vol. 18, 1993, p. 281.

43 Lau, 2007, at 285-302.

44 Masri, 1992. For a full-account discussion on this point, see M.Y. Izzi Deen (Sanarrai), 'Islamic Environmental Ethics, Law, and Society', in J.R. Engel & J.G. Engel (Eds.), *Ethics of Environment and Development*, Belhaven, London, 1990, p. 189.

45 Izzi Deen, 1990. The emphasis on religious duties rather than on rights is common in the discourse of human rights in Islam. See An-Na'im, 1992.

46 For instance, the Final Report of the UN Special Rapporteur on Human Rights and the Environment begins with a quote attributed to the successor of the Prophet Mohammad, the first *Caliph* (leader) Abou Baker Al-Siddiq, in order to explain that the Islamic guidelines exemplify a moral proposal to protect the environment. The report then hints at the development of the right to a clean environment, thereby inferring that a consensus on environmental morals can be drawn on the basis of either a rights-based or duties-based conceptual framework. See UN Doc. E/CN.4/Sub.2/1999/9 Report, *supra* note 3. There are a number of Islamic countries that have declined to join internationally recognised human rights into their national legal systems, and many Islamic nations have countered Western international human rights agreements with their own Islamic interpretations of human rights deeds or more limited human rights. This declaration is the most current example regarding the protection of human rights, including nature in Islamic law passed by the Organization of the Islamic Conference (OIC), which represents most of the Muslim countries all over the world. See Cairo Declaration on Human Rights in Islam, 5 August 1990, UN GAOR, *World Conference on Human Rights* (4th Session, Agenda Item 5), UN Doc. A/CONF.157/PC/62/Add.18, 1993 [English translation], <www.oic-oci.org/english/article/human.htm>, last accessed 31 October 2013.

ment that would foster his self-development and it is incumbent upon the State and society in general to afford that right.”⁴⁷

The concept of environment is used extensively in Sharie’a law, including its application in discussions of the natural environment, the social environment and the economic environment.⁴⁸ This notion of environmental security demonstrates itself in many particular areas. First, in the area of pollution, Prophet Mohammad indicated that: “No one shall urinate on stagnant water, [and] avoid thou the abhorrent act of emptying your bowels near water sources, in the middle of the road, and in the shade.”⁴⁹

In the light of this provision, Professor Al-Khayyat notes that:

[w]hat is striking in these commands is the use of the word “*la’n*” (curse) which involves expulsion, repudiation, and exile from the community unless *twabaa(h)* (repentance) is proved.⁵⁰ Consequently, she who intentionally pollutes or damages the environment to harm the public interest becomes accountable and banishable.⁵¹

Environmentalism “stands on the basis of faith [...] [and] any kind of corruption whatsoever – whether in the natural or social environment – is considered a violation of God’s law[.]”⁵² The role of individuals as vicegerents deeply impacts the misuse of natural resources when such misuse occurs. In terms of capitalism, which is based on self-interested individuals, ‘exploitation’ carries the negative implication of using the environment for personal interest.⁵³ On the contrary,

47 *Id.*

48 See A.M. Nasir, ‘Islam and the Protection of the Environment’, *Islam Today*, Vol. 13, 1995, pp. 67-68 & 84-96.

49 See Sahih Muslim & Al-Bukhari, *supra* note 19. A. Nanji, *The Right to Development: Social and Cultural Rights and Duties to the Community*, in Proceedings of the Seminar on Islamic Perspectives on the Universal Declaration of Human Rights, pp. 345, 346, UN Doc. HR/IP/SEM/1999/1 (Part II Section 2), 1999, p. 355.

50 M.H. Al-Khayyat, *On the Preservation of the Environment: An Islamic Perspective*, The Hassanian Lectures, 1998, pp. 152-165.

51 *Id.*, at 166. In this domain it is worth mentioning the significance of personal cleanliness in Islam. In this respect, the Prophet said, “Cleanliness is half of faith”. Nasir, 1995, at 100. Nasir emphasises: “Islam links faith and *Iman* (belief) to purity and cleanliness. Some of the pillars of Islam, as *Salat* (prayers) and *Hajj* (pilgrimage) can only be accomplished in case of purity and washing in pure, clean water, free of any pollution. This rule teaches the community how to protect sources of water from contamination and to keep them clean.” *Id.*, at 99-100. The use of such robust language strengthens the importance of conservationism in the Islamic practice.

52 Nanji notes that “[t]he role of stewardship entrusted to human beings also necessitates an ethical stance towards the development of natural resources and the public space inhabited by human beings. This stewardship, thus defined, is both a right and a duty to perpetuate these gifts of *Allah*.” Nanji, 1999. See also, Nasir, 1995, at 73-82 (noting that under Islamic law, the right of possession is not absolute, but is “a kind of vicegerency from the True Owner – God. Thus, man should respect, in the use of this right, the purpose and wisdom for which God made him a vicegerent of His Property”).

53 El-Helw, 1999, at 50-59.

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under the Islamic ideal based on stewardship, exploitation carries the positive meaning of a trusteeship with God meant to benefit the group.⁵⁴

Professor Nasir recites that in Sharie'a law, "ownership is a social [r]esponsibility, a fact which confirms the relationship between [community] and land, and the extent of Islam's interest in regulating it."⁵⁵ Accordingly, through both the policy of trust and stewardship placed in creatures by God, environmental abuse or mistreatment becomes a divinely motivated responsibility of group improvement, not a self-motivated form of obliteration.⁵⁶ However, in spite of the numerous Islamic divine commandments (laws) against environmental exhaustion, unfortunately, the existing Muslim world in general is not very concerned about environmental conservation. Islamic environmentalists illustrated that even though vice-regency makes man the main authority on Earth, he should not be wasteful, but rather should apply his power sensibly and only in ways that serve God's will.⁵⁷ By the same token, because Islamic values hold that each of God's creations serves His will in its own way, man should avoid defeating nature to the point where it can no longer accomplish the purpose that God envisioned.⁵⁸

- 54 See J. Morgan-Fosterd, 'Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement', *Yale Human Rights & Development Law Journal*, Vol. 8, 2005, p. 67, at 91 (analysing some of the bases for environmental protection in Islam) ("The right to a healthy environment is a new development in international human rights law, first discussed in the 1970s and codified in international human rights instruments in the past twenty years. Against these recent developments on the international level, a right and duty towards environmental protection have existed in Islam since the time of the Prophet Mohammad, present in both of the foundational Islamic textual sources (the *Qur'an* and the *Sunnah*).")
- 55 *Id.*, at 82. See also, J. Abraham, 'An Ecological Reading of the Qur'anic Understanding of Creation', *Bangalore Theological Forum*, Vol. XXXIII, No. 1, 2001, <[www .religion -online .org/ showarticle .asp?title=1632](http://www.religion-online.org/showarticle.asp?title=1632)>, last accessed 31 October 2013 (citing Abd-al-Hamid, 'Exploring the Islamic Environmental Ethics', A.R. Agwan (Ed.), *Islam and the Environment*, Institute of Objective Studies, New Delhi, 1997, pp. 47-48.
- 56 Morgan-Fosterd, 2005, at 13. Environmental deprivation generally is a matter of concern only when pollution has itself become a threat to economic development.
- 57 M.R. Hassanien, 'Greening the Middle East: The Regulatory Model of Environmental Protection in the United States-Oman Free Trade Agreement, a Legal Analysis of Chapter 17', *Georgetown International Environmental Law Review*, Vol. 23, 2011, p. 465.
- 58 *Id.* G.E. Roughton, 'The Ancient and the Modern: Environmental Law and Governance in Islam', *Columbia Journal Environmental Law*, Vol. 32, 2007, pp. 99, 102. In this sense, God says, "He it is Who created for you all that is in the Earth; then He turned towards the heavens, and He perfected them as seven heavens; and He knows all things" and "Say, 'Shall I seek a lord other than *Allah*, while He is the Lord of all things?' And no soul acts but only against itself; nor does any bearer of burden bear the burden of another. Then to your [Lord] will be your return, and He will inform you of that wherein you used to differ." See The Glorious Qur'an, at Surats (Chapters) Al-Baqarah (The Cow, 2:30) & Al-An'aam (The Cattle, 6:165).

Furthermore, Arab environmental scholars consider the principle of non-corruption the cornerstone of Islamic theory on environmental defence.⁵⁹ The Qur'an reads thus: "mischief has appeared on land and sea because of (the meed) that the hands of men have earned that (God) may give them a taste of some of their deeds, in order that they may turn back from Evil."⁶⁰ Also, God says, "And when he goes away, he strives throughout the land to cause corruption therein and destroy crops and animals. And Allah does not like corruption."⁶¹ In this respect, Professor 'Abdel Aziz Fahmy distinguished between the principle of non-corruption under Sharie'a law and the rule of the fruit of the poisonous tree (which is known in European Roman law as *fraus omnia corrumpit*), and he realised that the Islamic norm is more inclusive than the Roman standard one as corruption includes more than deception and fraud.⁶²

Islamic international environmental law comprises great norms and attitudes on environmental care. Environmental experts should pay more attention to these green principles advocated by Islam.⁶³ To summarise, this section has discussed how the notions of creation, natural purity, stewardship and non-corruption enrich and conceptualise the Islamic attitude on transnational protection of the environment. Islam, which represents the religion of more than 20% of the world population, will be a driving force in strengthening international environmental law. The next section discusses Islamic protection of the basic nat-

- 59 N. Mohamed, *Revitalizing an Eco-justice Ethic of Islam by Way of Environmental Education: Implications for Islamic Education*, SunScholar Research Repository, Stellenbosch University, 2012, <<http://scholar.sun.ac.za/handle/10019.1/20280>>. ("This thesis affirms the important position of religious thought as a determiner of environmental action. It presents, from within a liberatory tradition of Islam, a theocentric eco-justice ethic which is based on the sovereignty of God, the responsible trusteeship of humankind and the intrinsic value of Creation. It puts forward an activist, transformative approach to environmental education, premised upon an integrated knowledge structure and educational objectives which require reflective and critical engagement with all ecological knowledge, responsible environmental action, and social transformation.") See also, Genesis 1:27-28 (King James) ("So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God Said unto them, Be fruitful, and multiply, and replenish the Earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the Earth.")
- 60 "It is *Allah* Who has created you, and then He has provided for you; then He will cause you to die, and then He will bring you to life. Is there any of your 'partners' who can do any of these things? Glorified be He and exalted above that which they associate with Him." The Glorious Qur'an, at Surat (Chapter) Al-Rum (The Roman, 30:41).
- 61 In the same vein, "And remember *Allah* during the appointed number of days; but whoso hastens to leave in two days, it shall be no sin for him; and whoso stays behind, it shall be no sin for him. This is for him who fears God. And fear *Allah* and know that you shall be brought together before Him [...] And of men there is he whose talk on this life would please thee, and he would call *Allah* to witness as to that which is in his heart, and yet he is the most contentious of quarrellers." The Glorious Qur'an, at Surat (Chapter) Al-Baqarah (2:204 & 205).
- 62 See, generally, 'A.A. Fahmy, *Al-Qua'd Al-Romania wa Al-Fiqhiyah [Roman Norms and Doctrines]*, Arabic Source, 1947 (on file with author). See also, Hassani, 2011, at 12.
- 63 Islamic scholars should undertake further research and examination into the Islamic position on nature and the environment to improve its condition and its compatibility with all features of modern life.

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ural resources and man (environmental encounters), followed by an analysis of *jurisprudential fiqh* (Islamic juristic rules) on sustainable development and the environment, addressing the responsible Islamic institutions for the preservation and protection of nature.

C. The Protection of the Basic Natural Resources and Man Under Islamic Law: A New Tool for Sustainable Development and Greening of the Environment

Islamic believers, known as Muslims, prevail in numerous countries in the Middle East. Humankind is observed as having stewardship over, or being a guardian or trustee of, the environment.⁶⁴ One of the rudimentary theories in Islamic environmental law is the concept of creation along with *fitrah* (natural purity – a concept that “encompasses an altruistic spirit, thoughtfulness in action, and a conservationist bias”).⁶⁵ Building on the idea that God created the Earth, the Qur’an and the Sunnah’s teachings along with other sources of this divine law disclose that God provides for humanity by putting everything in service to humans.⁶⁶ This principle demonstrates that man is part of nature, and God expects him to make ethical selections in response to what he encounters on Earth.⁶⁷

In this respect, there are four notions that address the principle of sustainable development according to modern positive environmental standards: “parties need to preserve natural resources for the benefit of future generations”; “natural resources may only be exploited in a manner that is ‘sustainable’”; “the use of natural resources must be ‘equitable’”; and “environmental considerations must be integrated into economic and other development plans and programmes, and developmental needs must be taken into account in applying environmental objectives.”⁶⁸ Comparing these notions to the Islamic attitude on natural resources and environment, a great resemblance will be acknowledged. The core and purpose of maintainable growth exists in Islam as the term ‘sustainable development’ has been emphasised in light of the Sharie’a values.⁶⁹

The *Qur’anic* provisions designate that in his role as [vice-regent], man should not exercise absolute dominion over nature or abuse the environment, but rather should take what he needs abstemiously and moderately in order to serve the Creator (God) while maintaining the natural equilibrium that God ordained.⁷⁰

64 Denny, 1998.

65 Mohamed, 2012.

66 *Id.*, at 10.

67 Roughton, 2007, at 107.

68 G.W. Mugwanya, ‘Global Free Trade Vis-a-Vis Environmental Regulation and Sustainable Development: Reinvigorating Efforts Towards a More Integrated Approach’, *Journal of Environmental Law & Litigation*, Vol. 14, 1999, p. 418.

69 Roughton, 2007, at 107.

70 *Id.*

As a result, the Qur'an stipulates that God has granted man, in effect, a usufruct and a right of tenancy with a precondition attached – "he has granted man the right to live on Earth and to use to the extent that he carries out God's will and preserves what God has granted him."⁷¹ In the same vein, Roughton notes that Fazlun M. Khalid refers to man's rights on Earth as usufructuary – God is the only proprietor of the Earth and everything in it, while man may use it for its utility value only.⁷² Other environmental intellectuals have added that, in light of the Sharie'a prohibitions against environmental waste and mismanagement, man's usufructuary privileges come with a supplementary obligation to preserve and develop the Earth for the benefit of upcoming generations.⁷³ Sustainable development is deep-seated in Islamic norms as the Qur'an inspires man to rationally approach the environment.⁷⁴ The equilibrium (balance) conception also supports the idea that man should act with control and reasonableness towards nature and the natural surroundings.⁷⁵

In addition to giving everything on Earth a divine purpose, under the Islamic environmental model, God has formed and created a stable and measured environment for His creations that is sensibly calculated so that they may effectuate His devotions.⁷⁶ Thus, it is mandatory that man conserve the proportions and stability of the environment that God created rather than disrupting or distracting this equilibrium.⁷⁷ Therefore, it is recommended that man's regular relationship to the rest of God's creation should be one of "ecological utilization", whereby he lives according to God's will while protecting natural resources and

71 *Id.* See also, El-Helw, 1999, at 55-59.

72 See, generally, F.M. Khalid, 'Islam and the Environment', *Social & Economic Dimensions of Global Environmental Change*, Vol. 5, (edited by P. Timmerman in *Encyclopedia of Global Environmental Change*), 2002 ("The roots of Islamic environmental practice are to be found in the Qur'an and the guidance (*Sunnah*) of Prophet Mohammad [...]. The universe we inhabit is a sign of God's creation as is the environment of our innermost selves [...]. *Allah* is the sole owner of the Earth and everything in it. People hold land on usufruct – that is, for its utility value only. There is a restricted right to public property.").

73 *Id.*, at 4. ("The primary duty of the Islamic State is to promote the good and forbid wrong doing. As part of these functions, it has the mandate to protect land and natural resources from abuse and misuse.") He refers to man's interest in Earth as that of trustee, with a charge to care for the natural order. Under the trustee idea of the stewardship, man may employ nature for his own necessities, but must also guarantee that his care benefits the rest of nature and in the meanwhile carries out God's will.

74 Fahmy, 2011, at 150.

75 Khalid, 2002, at 7. Regarding the Balance principles, Khalid said, "All creation has an order and a purpose and is in a state of dynamic balance. If the sun, the moon, the stars did not bow themselves, *i. e.*, serve the purpose of their design, it would be impossible for life to function on earth."

76 The Qur'an explains and describes that Allah established the Earth in an equilibrium order that human beings may not disturb. God says, "He raised the heaven on high and set the balance of all things, that you might not transgress that balance. Give just weight and full measure" and "Sovereign of the heavens and the Earth, who has begotten no children and has no partner in His sovereignty; who has created all things and ordained them in due proportion." See The Glorious Qur'an, at Surats (Chapters) Al-Rahman (55:1-18) & Al-Furqan (The Criterion, 25:2).

77 See Hassanien, 2011, at 13.

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averting degradation of the natural world created by God.⁷⁸ The *Mizan/ Al-tanasoub* norm (Due Proportion), mentioned in several Qura'nic verses, guides Muslims' connections with the environment, and designates that man has to use the environment cautiously and only in ways that serve the balance.⁷⁹ This equilibrium is the keystone of sustainable development, and hence the concept of 'balance' or 'equilibrium' in Islamic international environmental law is comparable to the modern notion of sustainable development in the contemporary environmental international statutes and agreements.⁸⁰

As the social function of all things are, the crucial function of all creations as signs of their Creator establishes the foremost sound legal basis for environmental management. In Islamic law, the requisite of elementary natural resources is based upon texts from the Qur'an and Prophet Mohammad's teachings, along with the juristic principles. It should be noted that *fiqh* means the apprehension of Sharie'a principles, in which 'legal theory' of Western legal doctrine is part of Islamic philosophy.⁸¹ *Fiqh* was developed principally as an area of Islam that tried to comprehend Sharie'a without entering into the area of 'jurisprudence', or the philosophy of law in its Western conception.⁸² The Sharie'a juristic principles must be inferred within the development of Islamic jurisprudence known as *usul al-fiqh* (principles of jurisprudence).⁸³ Accordingly, the interpretation and implementation of basic Islamic legal norms, and the nature of this law, have been the focus of numerous debates among Muslim scholars.⁸⁴

78 *Id.* See also, Khalid, 2002, at 6-7. ("One could say with a reasonable degree of certainty that the environmental problems we see today would not have happened in a society ordered in accord with Islamic principles because its world view defined limits to human behavior and contained excess.") See, generally, F.M. Khalid, 'Islamic Pathways to Ecological Sanity: An Evaluation for the New Millennium, Ecology, and Development', *Journal of Industrial Ecology* (Bandung, Indonesia), Vol. 3, 2000.

79 *Id.*

80 *Id.* The perception of Islamic justice, which is a comprehensive concept that comprises several sorts of legal adjudication, has been used in a number of cases related to environmental protection in Muslim countries.

81 It should be noted that Islamic law (Sharie'a) is different from Islamic *fiqh* (jurisprudence). In other words, *fiqh* refers to the understanding of Islamic rules and principles. There are four major Sunni schools of jurisprudential thought (*fiqh al-mazaheb/ madhhabs*) in Islam, and these schools of doctrine have influenced the enlargement of Sharie'a in addition to the Shiie'a School of Islam. Islamic law is a *jurist* law, meaning its rubrics have been evolved throughout history by the scholarly writings of Muslim jurists. See, generally, K.M. Khan, 'Juristic Classification of Islamic Law', *Houston Journal of International Law*, Vol. 6, 1983-1984, p. 23.

82 *Id.*

83 For a further elaboration of the secondary sources of Islamic law, see, generally, I. Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Elements', *Journal of Islamic Law & Culture*, Vol. 7, 2002, pp. 27, 56 (defining the Islamic law, explaining the main elements of the Sharie'a along with its various sources, and discussing the methodologies and various schools of the Islamic jurisprudence).

84 *Id.* Indeed the Islamic law principles are the theme of questioned understandings in the Islamic history and in the contemporary world. See, generally, A.F. Hussien, '*Usul Al-Fiqh Al-Islami [Principles of Islamic Jurisprudence]*', Arabic Source, 2006 (explaining the distinction between Islamic law and Islamic jurisprudence).

On the other hand, *Al-wajibat* (duties) in Sharie'a are of central significance. Marcel A. Boisard has the following view: "Islam offers a uniting and cohesive vision of humankind, of society, and of the world."⁸⁵ In this framework, individual duties complement but also limit individual rights.⁸⁶

The Islamic stress on duties over rights is so noticeable that one scholar termed Islamic law as "an endless discussion on the duties of a Muslim."⁸⁷ This Islamic conception of social improvement is a mutual effort, whereby "[i]ndividuals, communities and indeed the state, act as the instruments by which these ideals are translated into practice".⁸⁸ Hence, all human beings – as well as wildlife and livestock – have the right to share in the Earth's resources, as man's mishandling of any resources is prohibited and the best use of all natural resources, both living and dead, is *fard* (mandatory). The following sub-section is an analysis of the protection of the basic natural elements within the Islamic justice principles.

I. Water: Importance, Legal Protection and the Case of Clean Water Law

Islam considers water as the origin of life, plants and animals, as all living organisms depend on water for their survival, existence and for the continuation of their life.⁸⁹ Also, water is the habitat of many creatures. Water also has other socio-religious functions, as it helps man *tahir* (purify), clean his body and clothes, from all dirt and impurities so as to meet God clean and pure.⁹⁰ And so, there is no doubt that preservation of this natural resource is vital for all creatures in the world, and is thus mandatory in Islamic law. At this point, an Islamic juristic principle governing this protection is "whatever is indispensable to fulfill the imperative is imperative".⁹¹

Accordingly, any act that obstructs or harms the ecological balance, biological and social functions of this resource either by polluting, poisoning or exhausting it with any material or substance that would degrade the environment for any beings and any such performances necessarily leads to the damages or ruin of life itself.⁹² The Islamic juristic norm regulating that stipulates, "what leads to the

85 See, generally, M. Boisard, *Humanism in Islam*, 1987 ("Humanism in Islam has not been drafted only out of sympathy for the Muslims but also on account of historical evidence: Islamic civilization was the first to outline clear and mandatory provisions for protecting the destiny of man and society, and for creating order in the ties between peoples.").

86 *Id.*

87 See F. Rahman, *Islam and Modernity*, 1982, p. 32 (quoting Professor Santillana).

88 Nanji, 1999. See also, Morgan-Fosterd, 2005, at 7-8 (explaining the importance of duties and strong support for solidarity rights in Islamic law).

89 Bagader *et al.*, 1994, at 6.

90 The Qur'an reads in this regard: "We made from water every living thing," "Verily [...] in the rain that God sends down from heaven, thereby giving life to the earth after its death", and "It is He who has made the sea of service, that you may eat thereof flesh that is fresh and tender." See The Glorious Qur'an, at Surats (Chapters) Al-Baqarah (2:164), Al-Anbia'a (The Prophets, 21:30), & Al-Nahal (The Bees, 16:14).

91 Bagader *et al.*, 1994, at 7. See also, Hussien, 2006, at 62-66.

92 *Id.*

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prohibited is prohibited.”⁹³ Furthermore, excess use of water is forbidden, even if water is abundant, and water cannot be monopolised in Islamic water law. Hence, upstream farms cannot monopolise water.⁹⁴ Should water be insufficient for all farms, older ones have a priority over newer ones. The same principle applies to underground water.⁹⁵ The Prophet (PBUH) bathed with 2 litres of water and performed ablutions with half a litre.⁹⁶

The fundamentals of Islamic water law purport to guarantee that water is accessible to all members of the Muslim *Ummah* (community), as water is considered common public property.⁹⁷ This is why in several modern Muslim nations, as Egypt, water statutes consider “water resources as belonging to the whole society (the State, or the public domain).”⁹⁸ An individual’s water right is restricted by its priority and preference of use, and it is not a product for limited proprietorship or exclusive possession, despite personal expenses in its attainment or sanitisa-

93 The *Al-majallah Al-‘adlyiah* provides that: “People have the right to use water from all sources, including those on private property. Private acquisition or sale of water or water rights is still uncommon in the Islamic world. Although water may be acquired through ownership of land on which it is located, the right of the public to use such water for specific purposes cannot be denied.” It is worth mentioning that *Al-‘majallah Al-‘adlyiah* is the first compilation and codification of Islamic civil and commercial law and was enacted by the Ottoman Empire in 1869 for the use of the recently established Civil Courts, and was later found in many forms in most Islamic nations. See F.M. Goadby, ‘The Moslem Law of Civil Delict as Illustrated by the Mejlle’, *Journal of Comparative Legislation & International Law*, Vol. 21, 1939, p. 62.

94 *Id.*

95 *Id.* See A. Ahmad, ‘Islamic Water Law as an Antidote for Marinating Water Quality’, *University of Denver Water Law Review*, Vol. 2, 1999, p. 169 (analysing the traditional law regulating water pollution in Muslim countries, showing the attitude of the law towards the environment generally, and the development of water resources and subsequent allocation of water rights). In this respect, Ahmad argued that:

[...] Water may not be reduced to the domain of private proprietorship [...] Maintaining the public character of water is the best way to reclaim its quality and enhance optimum utilization of available resources in those societies. The water laws of many developing countries are still based on or influenced by Islamic law. Considering the traditional worldview of Islam on water resources and water quality maintenance, it is a paradox that in Muslim countries water quality continues to deteriorate without any appreciable effort either by the public or the authorities to abate it. Islamic law treats water as distinct from other environmental elements, removes it from the pack of normal legal entitlements, and assumes its constant purity. Available data shows that water quality in Muslim nations is deteriorating due to enormous development challenges and rapid growth. Thus, water quality degradation is an emerging pollution problem in these countries that needs to be arrested quickly [...]

96 Sahih Muslim & Al-Bukhari, *supra* note 19.

97 *Id.* See also, El-Helw, 1999, at 199 & 255-268.

98 D.A. Caponera, *Principles of Water Law and Administration: National and International*, 1992, p. 68 (“In spite of subsequent written water laws introduced by external powers or other governments, the basic principles of Islamic water law are still observed and strictly followed, as local customs and usages, by the population.”).

tion.⁹⁹ In this regard, the Prophet set forth the standard when he stated: "All members of the community are equal partners in three things: water, fire, and pasture."¹⁰⁰ By the same token, good management and water maintenance are explicit requirements under Sharie'a rules as there is no admitted motive to engage in water excess, not even for what is considered one of the most imperative pillars of Islam, *wedo'e* (washing for (before) prayer).¹⁰¹

As a common natural resource, water in Islamic law falls in the category of *Huquq Allah* (rights of God). These rights are connected directly to God because their enforcement is highly underlined by Him, as these include the public interest concerns as a whole with no particular attachment to any person.¹⁰² These rights cannot be graced, remitted, exonerated or compromised unless *nadm* (regret or repentance) is fulfilled, and the *Qadi* (judge), the State or the plaintiff in this sort of rights has no discretionary power within their strict implementation, which distinguish them from *Huquq Al'ibad* (individual rights), which are mostly contractual or tortious.¹⁰³ In one practical case, *Al-dahak v. Muhammad Ibn Muslimah*, the plaintiff (the former) wanted to obtain water by digging a canal, and the only method by which he could reach the water was by excavating through the land of the defendant (the latter); the defendant strongly opposed the idea of digging a canal and laying it through his property. *Caliph 'Ummar Ibn Al-Khattab* decided in favour of the plaintiff, irrespective of the defendant's strong opposition.¹⁰⁴

Under the notion of mandatory duty in Islamic water law, the public authorities have a greater liability in defending water as a resource than they do in enforcing other laws.¹⁰⁵ This responsibility is settled once the government (State) takes progressive steps to clean and refresh polluted waters or to keep them in their natural situation by regulating polluters' deeds.¹⁰⁶ Islamic norms and values require that water be reserved free from contamination so that it may endure to achieve its religious and social tasks, as well as serve as an appropriate environ-

99 *Id.*, at 69. ("No one can refuse surplus water without sinning against *Allah* and against man. Also animals must not be allowed to die of thirst, and the water which remains after a man has quenched his thirst must be given to them. It would seem that the Prophet Mohammad declared that water should be, together with pasture and fire, the common entitlement of all Muslims, that he prohibited the selling of it, and that he had established a community of water use among men.") (citations omitted).

100 *Id. See, generally*, D.A. Caponera, *Water Law in Moslem Countries*, 1973, pp. 38-39. The Prophet (PBUH) stated: "No one shall urinate on stagnant water, and avoid thou the abhorrent act of emptying your bowels near water sources, in the middle of the road, and in the shade." *Sahih Muslim, supra* note 19.

101 The Prophet himself illustrates this issue. The Prophet observed his companion's extravagance in his use of water and asked, "What is this wastage, O Sa'ad?" Sa'ad said, "Is there wastage even in washing for prayer?" "Yes, even if you are by a flowing river!" the Prophet replied. Bagader *et al.*, 1994, at 6.

102 Ahmad, 1999, at 7. A. Hassan, *'Ali ibn Muhamamd ibn Habib Al-basri Al-Mawardi, Al-Ahkam Al-Sultaniyyah wa'l Wilayat Al-Diniyyah [The Law of Islamic Governance]*, 1978, p. 273.

103 Ahmad, 1999, at 7.

104 *Id.*

105 Hassanien, 2011.

106 Ahmad, 1999, at 7.

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ment for numerous beings, as polluted water cannot be used for any legitimate purpose such as drinking, swimming, washing or navigation.¹⁰⁷ Thus, a big resemblance between Islamic water law and the current positive laws regulating water quality as contract law, property law, environmental law and tort law has been realised.¹⁰⁸ A liability that results from water pollution under Islamic jurisprudence is *contingent* that one cannot 'own' water and is consequently liable for polluting public property.¹⁰⁹ One's state of mind is immaterial to the liability's inquiry, making intent-based defences inapplicable and ineffective.¹¹⁰

II. *Air: Significance and Legal Protection*

All creatures on the Earth depend on the air for breathing, and wind helps plants reproduce and exemplify the perfection and wisdom of God.¹¹¹ Conservation of the air is required in Islamic law. The Islamic juristic rule governing the protection of air identifies air as an essential aspect of life: "whatever is necessary to fulfill the imperative is imperative."¹¹² Air pollution is a disruption of the religious and social roles of the air, and any activity to impede these functions represents an attempt to disturb and transgress God's insight in the universe along with an obstruction of man's role in the development of the world.¹¹³ The legislative Islamic principles regulating the fortification of air are akin to those of water – as rights to the benefits derived from natural resources held in common: rights misuse is forbidden and punished; scarce resource exploitation is controlled; mutual welfare is secured and benefits are protected and damages have to be either contained or reversed.¹¹⁴ In other words, Sharie'a evolved within the strategies set by four ideologies agreed upon by Muslim scholars over the centuries, as "the interest of the community (public interest) takes superiority over the individual (pri-

107 *Id.*

108 *Id. See also*, O.A. Bakhshab, 1988, at 287, 293. S.H. Nasr, *Religion and the Order of Nature*, 1996, p. 281.

109 *Id. See also*, W.M. H. El-Malik, *Minerals Investment under the Shari'a Law*, 1993, p. 55.

110 U.F. Moghul & A.A. Ahmed, 'Contractual Forms in Islamic Financial Law & Islamic Inv. Co. of the Gulf (Bahamas) Ltd. v. Symphony Gems N.V. & Ors.: A First Impression of Islamic Finance', *Fordham International Law Journal*, Vol. 27, 2003, pp. 150, 150-151 (discussing the viewpoint of Islamic finance and its relation to the environment).

111 God says, "Behold! [...] in the change of the winds, and the clouds which they trail between the sky and the Earth, here indeed are signs for people that are wise." The Glorious Qur'an, at Surat (Chapter) Al-Baqarah (2:164).

112 Bagader *et al.*, 1994, at 6. *See also*, El-Helw, 1999, at 150.

113 Khalid, 2002, at 3.

114 *Id.*, at 4. *See* F.M. Mangunjaya & J.E. McKay, 'Reviving an Islamic Approach for Environmental Conservation in Indonesia', *Worldviews*, Vol. 16, pp. 286-305, Global Religions, Culture, and Ecology: Islam and Ecology: Theology, Law, and Practice of Muslim Environmentalism (explaining an approach to combine Islamic principles of environmental protection with traditional methods of conservation, presenting an Islamic theology of creation care and highlighting some projects in the Muslim world) ("[...] (1) to strengthen standing of state law, especially with respect to environmental justice in the sector of mining; (2) provide correct clarification and understanding to all levels of society regarding religious law with respect to issues connected with the natural environment; and, (3) attempt to apply moral and ethical norms and sanctions to those concerned regarding the importance of environmental care in the mining sector [...]").

vate) interests”; “relieving hardship takes precedence over endorsing benefit”; “a bigger loss cannot be prescribed to lessen a smaller loss and a bigger benefit takes precedence over a smaller one” and “a smaller harm can be arranged to evade a bigger damage and a smaller benefit can be dispensed with in preference to a bigger one.”¹¹⁵

III. *Land and Soil: Concept and Islamic Legal Environmentalism*

The Creator has made the land a source of living and sustenance as human beings were created from water and soil. Land is home to many creatures, soil is used to grow food and mountains perform a role in stabilising the Earth’s crust.¹¹⁶ Islamic law considers the whole Earth as a place of worship, in which the Prophet decreed: “The whole earth has been made a place of worship for me, pure, and clean.”¹¹⁷ Accordingly, it is required that humans maintain the soil’s productivity and not expose it to erosion by any means (flood, wind, frosting, grazing, mining, etc.), but instead enhance its fertility and efficiency.¹¹⁸ Legally speaking, and according to the Islamic norm “what leads to the prohibited is prohibited”, destruction, corrosion and abuse of fertile land are prohibited.¹¹⁹

IV. *Animals and Plants: Importance and Islamic Legal Ideal*

Without doubt, no one may possibly deny the vitality of plants and animals as living resources of massive benefits. Without them, neither man nor other species could endure.¹²⁰ Plants and animals produce food from energy for man and all other creatures; provide man with medicine, oil, timber, fuel, leather, medicine; enrich the soil; preserve the water by detaining its run-off; moderate the climate and produce oxygen.¹²¹ Under Sharie’a law, Prophet Mohammad ordered Muslims to treat animals well, telling a story about a woman who will go to hell for

115 Khalid, 2002, at 3 (explaining the ethical dimension of Islamic environmental law). *See also*, M. Izzi Dien, *The Environmental Dimensions of Islam*, Cambridge University Press, Cambridge, 2000, p. 191.

116 The Qur’an states: “It is He Who has made the Earth manageable for you, so traverse ye through its tracts and enjoy of the sustenance which He furnishes” and “Behold, thy Lord said to the angels: I am about to create man from clay.” *See* The Glorious Qur’an, at Surats (Chapters) Al-Mulk (The Dominion, 67:15) & Saad (Saad, 38:71).

117 Bagader *et al.*, 1994, at 8.

118 *Id.*, at 9.

119 *Id.* *See also*, El-Helw, 1999, at 288-302.

120 *Id.*, at 112-119.

121 God considers them as living societies like mankind, and they praise and worship God. In this domain, The Qur’an reads: “Then let man look at his food, for that We pour forth water in abundance, and We split the earth in fragments, and produce therein corn, and grapes and nutritious plants, and olives and dates, [...], for use and convenience to you and your cattle”, “See ye the fire which ye kindle? Is it ye who grow the tree which feeds the fire, or do We grow it?”, “There is not an animal that lives on the Earth, nor a being that flies on its wings, but forms part of communities like you”, and “The seven heavens and the Earth, and all beings therein, declare His glory.” *See* The Glorious Qur’an, at Surats (Chapters) Al-Fajr (The Dawn, 80:24), Al-Waqi’ah (The Event, 56:71), Al-An’aam (The Cattle, 6:38), & Al-Isra’ (The Journey by Night, 17:44).

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torturing a cat.¹²² In addition, 'Ummar Ibn Al-Khattab (the second rightly guided *Caliph*) said, "If a mule stumbled in Iraq, I will be responsible for that before God: Why I had not paved the road for it."¹²³

Islamic environmentalism prohibits prolonged slaughter of animals. The Prophet stated, "When you slaughter, slaughter with goodness. Let each of you sharpen his blade and let him give ease to the animal he is slaughtering."¹²⁴ Fishing and hunting for food is permitted under Islamic law; however, the Prophet cursed anyone using a creature as a target and the taking of life as a mere sport.¹²⁵ Moreover, killing animals with fire is *haram* (forbidden) and absolutely banned, as Mohammad (PBUH) stated that a messenger was ordered to burn an anthill after an ant stung him. God blamed him: "Because an ant stung you, you have destroyed a whole nation that worships God."¹²⁶ On the basis of the Sunnah's teachings, Muslim legal *Mujtahdeen/ 'Ulmma'* (jurists) have ruled that God's creatures possess *hurmah* (inviolability), which exists even in wartime, as the Prophet forbade killing any animal such as ants, bees, captured livestock, etc., as killing them is considered to be an act of corruption in what God proscribed.¹²⁷ Also, the Prophet (PBUH) prohibited the cutting of trees for no purpose and the burning of the enemy's trees.¹²⁸ Moreover, animals enjoy a detailed body of legal rights in Islamic law, and their rights are enforceable by courts and public authorities.¹²⁹ According to this logic, one environmental Muslim scholar offered the following argument on the prophetic traditions:

The rights of livestock and animals with regard to their treatment by man: These are that he spent on them the provisions that their kinds require, even if they have aged or sickened such that no benefits comes from them; that he not burden them beyond what they can bear; that he not put them together with anything by which they injured, whether of their own kind or other species, and whether by breaking their bones or butting or wounding; that he slaughter them with kindness if he slaughter them and neither flay their skins nor break their bones until their bodies have become cold and their lives have passed away; that he not slaughter their young within their sight; that he set them apart individually; that he make comfortable their resting places and watering places; that he puts their males and females together during their mating seasons; that he not discard those which he takes in hunting; and neither shoot them with anything, that breaks their bones nor

122 God says, "We have not sent you but a mercy to all beings." The Glorious Qur'an, at Surat (Chapter) Al-Anbia'a (21:107).

123 El-Helw, 1999.

124 See Sunan Aboū Dāwūd, *supra* note 19.

125 Bagader *et al.*, 1994, at 11.

126 Sahih Muslim & Al-Bukhari, *supra* note 19.

127 Bagader *et al.*, 1994, at 11.

128 *Id.*, at 11. The Prophet said, "If any Muslim plants a tree or sows a field, and a human, bird or animal eats from it, it shall be reckoned as charity from him." Sahih Muslim & Al-Bukhari, *supra* note 19.

129 *Id.*

bring about their destruction by any means that renders their meat unlawful to eat.¹³⁰

The world we occupy is a sign of God's creation, as is the environment of our innermost selves. They originate from one source and are attached by only one objective, which is to serve the divine will.¹³¹

V. *Protection of Man from Harm Under Islamic Environmental Law*

In Islamic law, protection of man is based upon texts and juristic doctrines developed by Muslim jurists in order to afford life's modernity through *Ijtihad* (individual reasoning).¹³² The correlation between man and the universe is well defined and illuminated in the Qur'anic provisions and the Prophetic traditions as follows:

- a a relationship of meditation, consideration and observation of the creation and what it encompasses;
- b a linkage of justifiable and maintainable utilisation, improvement and service for man's benefit and for the satisfaction of his interests and welfares; and
- c a relationship of attention, care, devotion and nurture for man's good works are not restricted to the benefit of the human species, but rather cover the benefit of all creatures.¹³³

Damage of all forms is forbidden under Islamic law, and one of the most significant juristic principles is *Dr'a Al-mafased Moqadm 'Alaa Galb Al-maslaeh* (averting harm takes precedence over the acquisition of benefits) and *La Darr wala Derarr* (there shall be no damage and no infliction of damage).¹³⁴ Accordingly, all undertakings that intend to reach goods and secure benefits by way of filling human needs, developing communications and providing services of all aspects of life (agriculture, industry, trade, mining, etc.) should be carried out without any inju-

130 See Izz Al-Din AbdAl-Aziz Ibn AbdAl-Salam, *Qawa'id Al-ahkam fi Masalih Al-an'am*, Arabic Source, Cairo, d. 660/1262 ("on file with author") (discussing the individual rights, the legal and moral claims of other creatures upon each legally responsible person). He said, "It is, however, significant that in Islam the concept of rights or legal claims enforceable by law applies to animals as well as human beings."

131 The chief correlation is that between the Creator and the rest of His creation, the Creator Himself determined a subsidiary one, that between Man and the other creatures. Khalid, 2002, at 3.

132 For further details on *Ijtihad*, see, generally, N. Goolam, 'Ijtihad and Its Significance for Islamic Legal Interpretation', *Michigan Law Review*, Vol. 2006, 2006, pp. 1444-1445 (explaining the notion of *Ijtihad* as a source of law in Islamic law, its definition, theoretical underpinnings, its role in the interpretation of the Islamic provisions and historical development of the concept throughout the diverse ages of Islam).

133 Prophet Mohammad (PBUH) said, "There is a reward in doing well (good) to every living thing." Sahih Al-Bukhari, *supra* note 19. See also, Fahmy, 2011.

134 Hussien, 2006, at 100-105. See also, J. ad-Din as-Suyuti & Z. al-Abidin ibn Nujaym, *Al-Ashbah wa'n-Naza'ir [Similarities]*, Arabic Source, no year of publication.

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ries, harm or any acts of *fasad* (corruption) or *ifsad* (mischief).¹³⁵ Hence, it is essential that safeguards and precautions be taken into consideration within the processes of developing and implementing such performances, as they may not be accompanied by or result in any form of avoidable damage.¹³⁶

1. *Wastes, Exhausts, Drugs and Toxic Substances: Recycling Approach in Islam*

All waste and exhaust resulting from man's daily acts, industrial activities and the use of advanced and modern technologies worldwide should be judiciously reduced for the advancement of environmental protection against devastation or other negative impacts on the natural world.¹³⁷ A further central Islamic principle related to the protection of man in this area is the Islamic prohibition regarding insensitive consumption, that is, extravagance and profligacy.¹³⁸ Extravagance is not only the inconsiderate consumption of natural resources, but also constitutes a sign of disrespect towards the Owner and the Creator of all the bounties (God).¹³⁹ Islamic law prohibits excessive use of resources and requires that waste

135 See K. Hamdy, *Islamic Perspectives on Natural Resources Management and Sustainability*, Oregon State University & Consultant/Manager, KRM International, 2000 ("The complexity of natural resources management has challenged the most willing governments and their most dedicated [...] Recently more professionals have turned to religious teachings about nature and society, in order to tackle those intangibilities. In this context [...] efforts have been dedicated to the use of Islamic sources of law to inform natural resource management efforts [...] In Islam, the use of natural resources for consumption and profit lies at the juncture between individual worship ('*ibadat*'), and group transactions ('*mu' amalat*') [...] The relationship between human society ('*ummah*') and the natural environment is a defining factor of Muslim human ecology.") Also, Hamdy asked, "Does religion have a place in natural resource governance? And, if it does, do basic religious teachings have what it takes to judiciously inform the arduous task of sustainable balancing of the three constraints of greed (i. e. self-interest), efficiency, and fairness, that shape the decision-making processes of natural resource management?"

136 *Id.* See also, M. Abu-Sway, *Towards an Islamic Jurisprudence of the Environment: Fiqh Al-Bi'ah fil-Islam [Islamic Jurisprudence on Sale]*, Belfast Islamic Centre, 2000, <www.iol.ie/~afifi/Articles/environment.htm>.

137 See I. Ozdemir, 'An Islamic Approach to the Environment', *Islam Awareness*, 27 August 2013, <www.islamawareness.net/Nature/environment_approach.html>, last accessed 31 October 2013) ("The concept of [D]ivine unity is the basis and essence of Islam. Divine unity is apparent in the unity of humanity and of nature. God's vicegerents on the Earth, the holders of His trust, are therefore primarily responsible for preserving the unity of creatures, the integral wholeness of the world, the flora and fauna, and wildlife and natural environment. Thus, 'unity', 'trust', and 'responsibility' are the three basic concepts of Islam. These principles are at the same time the chief pillars of the Islamic environmental ethic. They form also the fundamental values taught by the *Qur'an*.")

138 *Id.*

139 *Id.* ("[...] According to Islam, everything in the universe is created by God. It is God Who adorns the skies with the sun, the moon and the stars, and the face of the earth with flowers, trees, gardens, orchards, and the various animal species. It is again God Who causes the rivers and streams to flow on the Earth, Who upholds the skies (without support), causes the rain to fall, and places the boundary between night and day. The universe together with all its richness and vitality is the work and art of God, that is, of the Creator. It is again God Who creates all plants and animals as pairs, in this way causing their procreation.")

must be kept to a minimum. As the Qur'an states, "Eat and drink, but waste not."¹⁴⁰

Similarly, Islamic law requires that waste be carefully disposed of, towards which end the juristic rule indicates that: "Damage shall not be eliminated by means of similar or greater damage."¹⁴¹ Any polluting or altering substance (such as toxic or chemical materials used in factories, houses, private or public agencies or places) should be treated at their causes (sources) with the best available treatment measures or reliable effective techniques. Care should be taken in the removal and dumping of any detrimental products to avoid greater environmental damages, including natural and social injuries.¹⁴² Similarly, Islamic environmental principles inspire the recycling and reutilisation of waste. As Mohammad (PBUH) recited, "No one shall urinate on stagnant water, and avoid thou the abhorrent act of emptying your bowels near water sources, in the middle of the road, and in the shade."¹⁴³ Thus, it is essential that all possible defences are taken to avoid any harmful damages to the environment and to reduce any deleterious effects. The Islamic rule indicates that "a private injury is accepted to avert a general injury to the public" in order to secure the man along with the natural and social environment.¹⁴⁴

2. *Pesticides and Insecticides*

These same Islamic principles and juristic rules apply equally to pesticides, insecticides and herbicides, as using such ingredients should not result in any form of corruption or damage to man and the environment.¹⁴⁵ In other words, such substances must not cause any harm to man or other creatures, even if this leads to some losses in agricultural productivity. Thus, control and banning of whatever may cause potential harm to man or the ecosystem is required, even if this control or proscription may affect some personal interests under Islamic law.¹⁴⁶ If the use of pesticides is inevitable, then the concept of *Al-darorah* (necessity) applies.¹⁴⁷ In this way, Islamic law encourages scientific research and the use of least destructive means, as *Al-darourat tobei'h Al-mahzourat wa Toukader Bekaderha* (necessities render prohibited things permissible) – "Every necessity is to be

140 The Glorious Qur'an, at Surat Al-A'raf (7:31).

141 El-Helw, 1999, at 215-224.

142 *Id.*, at 226-228. See also, S. Zafar, 'Environmental Sustainability in Islam, Echoing Sustainability in MENA', *ECOMENA*, 8 June 2013, <www.ecomena.org/sustainability-islam/>, last accessed 31 October 2013) ("Islamic beliefs, traditions and values provide an effective and comprehensive solution to the current environmental challenges faced by the human race. Islam has a rich tradition of highlighting the importance of environmental protection and conservation of natural resources. According to Islamic law, the basic elements of nature – land, water, fire, forest, and light – belong to all living things, not just human beings.").

143 Sahih Muslim & Al-Bukhari, *supra* note 19.

144 El-Helw, 1999, at 230. In case any negative injuries occurred, we should search for effective and/or less innocuous substitutions or harmful options.

145 *Id.*, at 312-315.

146 *Id.*, at 316-319. See also, T. (Cheikh Amadou Tijaan) Cisse, *Islam, the Environment, and the Use of Vetiver Grass*, 2008, <www.vetiver.com/SEN-cisse2.pdf>.

147 *Id.* See also, Hussien, 2006.

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assessed according to its seriousness,” and “What is permitted due to an excuse ceases to be as such with the cessation of that excuse.”¹⁴⁸ It should be underscored that necessity is defined as:

where a person has to violate the law in spite of himself to prevent an inescapable evil befalling him, [e]ven though it is in his power not to [transgress] the law and allow the evil to befall him or someone else.¹⁴⁹

It is measured by its extent thereof, renders prohibited things permissible only to the extent necessary, and this legal regulation is derived from the Qur’anic verse concerning simplifying and easing sufferings and hardships.¹⁵⁰ In addition, it is important to show consideration at times of hardship.¹⁵¹

It is obvious that all the above-mentioned Islamic principles apply equally to radioactive substances, noise (as everyone in society has a duty to minimise noise)¹⁵² and to natural catastrophes (floods, storms, volcanic eruptions, earthquakes, epidemics, etc.), as they are means of testing people’s patience and, of course, whenever appropriate precautions must be taken prior to catastrophes and acts of man that may cause disasters on a large scale.¹⁵³

148 *Id.* In Islamic jurisprudence (*fiqh*), Muslim jurists along with Grand *Mufti/Sheikh* (Leader) explained these rules within the following guidelines:

- a “Objection in Islamic *Fiqh* is reserved for omitting what is agreed to be a requirement and performing something that is agreed to be unlawful. Objection is not for issues where there is a difference of opinion.
- b It is recommended to remove oneself from controversial issues.
- c Whoever is afflicted with something controversial must follow the opinion of those who permit it.”

149 Hussien, 2006.

150 For instance, drinking alcoholic beverages or eating pork or the meat of unslaughtered animals is not permitted except at times of necessity, because these are times when exceptions are permissible. *Allah* says, “He imposed no hardships upon you in religion” and “*Allah* does not burden any soul with more than it can bear.” The Glorious Qur’an, at Surats Al-Baqarah (2:286) & Al-Hajj (The Pilgrimage, 22:78).

151 H.Z. Rahim, ‘Understanding Islam Ecology in Islam: Protection of the Web of Life a Duty for Muslims’, *Washington Report on Middle East Affairs* (telling the truth for more than 30 years [...]), 1991, at 65, <www.washington-report.org/backissues/1091/9110065.htm>. In this regard, Cisse emphasised that the “development of the environment and natural resources is a mandatory religious duty to which every Muslim should be committed. This commitment emanates from the individual’s responsibilities, before God, to protect himself and his community. (i) no wastage or over-consumption of natural resources; (ii) no unlawful obstruction or destruction of any component of the natural resources; (iii) no damage, abuse, or distortion of the natural environment in any way; and (iv) sustainable development of the earth, its resources, elements, and phenomena through the enhancement of natural resources, the protection and conservation of them and of all existing forms of life, bringing new life to the land through its reclamation, and the rehabilitation and purification of the soil, air, and water.” See Cisse, 2008.

152 In this regard, the Qur’an stated: “And be moderate in thy pace, and lower thy voice; for the worst of sounds without doubt is the braying of the donkey.” The Glorious Qur’an, at Surat Luqman (31:19).

153 The Glorious Qur’an, at Surat (Chapter) Al-Sajdah (The Prostration, 30:41). In this respect, God says, “Mischief has appeared on land and sea because of what that the hands of man have earned.”

To summarise, Islamic law maintains that “damage shall be eliminated and removed to the extent that is possible”. However, the preventative means that are taken should not lead to other confrontational influence within the scope of the Islamic value, which identifies that “damage shall not be eliminated by means of similar damage”. The next section deals with Islamic legislative policies, procedures, rules and the public authorities in charge of the environmental shield.

D. Islamic Policy and Institutions of Environmental Preservation and the Management of Nature: Towards the Islamic Approach

Islamic law adopts a duty paradigm to realise the right to a healthy environment. According to Karel Vašák, third-generation solidarity rights “can be realized only through the concerted efforts of all the actors on the social scene”.¹⁵⁴ Vašák discovered his well-known notion on third-generation human rights. Also, a cluster of distinguished Muslim scholars defined the concept in almost equal terms in their scholarly writings to explain Islamic philosophies of human rights at the Vatican Colloquium on Economic, Social, and Cultural Rights in Islam.¹⁵⁵

However, although third-generation solidarity rights are feeble and self-improving in the international legal discourse, Muslim jurists mention them as a basic principle in the Islamic view of the human rights movements.¹⁵⁶ Owing to the equivalents between the Islamic standards and the basics of solidarity rights, the right to a healthy and clean environment is one of the most commonly proposed solidarity rights in the Islamic legal tradition.

I. *Legal Framework: The Fundamental Principles of Islamic Law’s Environmental Public Policy*

The responsibility for doing the right deed lies solely with the individual, who will be judged on the Day of Resurrection by God for what he did in his life, irrespec-

154 Morgan-Fosterd, 2005, at 11.

155 *Id.* In their concluding remarks, they emphasised the following:

We note that cultural rights as codified in the international conventions are personal and subjective rights, not general and imperative duties. We further note that these rights are framed in ‘negative’ terms only [...] [In contrast,] cultural rights in Islam have an obligatory character that cannot be renounced, contrary to the international conception which considers them as a personal and discretionary right which can be renounced by the beneficiary. They are both individual and collective obligations, the execution of which is incumbent on both the individual and the collectivity.

Id., at 11-12 (citing *Colloques de Riyad, de Paris, du Vatican, de Geneve, et de Strasbourg sur le Dogme Musulman et les Droits de l’Homme en Islam: Entre Juristes de l’Arabie Saoudite et Eminents Juristes et Intellectuels Europeens*, pp. 109, 132-134, Dar Al-Kitab Allubnani, Beyrouth, n.d.). See also, J. Renard, *Christian-Muslim Dialogue: A Review of Six Post-Vatican II, Church-Related Documents*, Dialogue Institute of the Southwest, 30 August 2013, <www.interfaithdialog.org/reading-room-main2menu-27/135-christian-muslim-dialogue-a-review-of-six-post-vatican-ii-church-related-documents/>. See L. Swidler, *Muslims in Dialogue: The Evolution of a Dialogue*, Edwin Mellen Press, Lewiston, NY, 1992, pp. 182-201, <<http://global-dialogue.com/swidlerbooks/muslim.htm>>, last accessed 31 October 2013.

156 *Id.* See, generally, P. Martin & T. Stahke, *Religion and Human Rights: Basic Documents*, 1998.

tive of the procedures that were taken in favour of or against him/her by the public authorities and administrative and municipal agencies, along with the courts.¹⁵⁷ Therefore, every Muslim should be committed to the protection of the environment and the salvation of its natural resources within the notion of mandatory duty to protect himself and the community, on the basis of his/her faith in accountability before God.¹⁵⁸ Under Islamic ethics, rules and social values in dealing with the environment, it should be taken into account by every Muslim that there should be (a) no wastage or overconsumption of natural resources; (b) no improper obstruction or demolition of any element of the natural resources; (c) no harm, injury or exploitation of the natural environment in any way and (d) sustainable development of the Earth (resources, elements). The protection and enrichment of the Earth and of its resources is a religious obligation in Islamic doctrine.¹⁵⁹

As explained by various Qur'anic provisions and verified thoroughly by the Sunnah's teachings, God is the owner of the universe, and man has only a usufruct right. Use of this right is subject to the juristic norm inferred from the prophetic tradition: "there shall be neither damage nor an infliction of damage."¹⁶⁰ The right shall be exercised only within its scope and for the achievement of its goal, and Muslims are prohibited from exploiting that right in causing any sort of harm or injury whether intentionally or unintentionally to a particular individual or the whole community.¹⁶¹ In other words, the exercise of the usufruct is counterbalanced by accountability.¹⁶² All individuals are entitled to reasonably benefit from common sources, and each person is entitled to use the common resource according to his/her necessities and needs and without causing any infringements or violations of the equal rights of other community members.¹⁶³

Islamic law authorises the intervention of public authorities to secure the common welfare and eliminate injustice or unfairness, as an original and primary responsibility. The abilities of each social class must be taken into consideration by the public authorities. Should a common source be insufficient, prioritisation

157 El-Helw, 1999, at 44-47.

158 *Id.*, at 45. ("Much dilapidation in the nature is due to individual's ignorance of what God requires of them, as greening and sustaining the environment is an Islamic religious duty commanded by *Allah*.")

159 See Cisse, 2008.

160 *Id.* Although the right to hold private property is thoroughly secured in Islamic law, there are significant boundaries on its use.

161 G. Smith, 'Islam and the Environment', *Earth Island Journal [News of the World Environment: World and the Spirit]*, June 2002, available at <<http://islamawareness.net/Nature/environment.html>>. ("[...] The Clash of Civilizations (which prophesizes an inevitable war between the armies of the God and the armies of *Allah*), Islam and Christianity have much in common. In their view of the natural world, both the Bible and the *Qur'an* share many of the same stories, heroes, and ethical concepts. But there are some differences. The *Qur'an* might even be said to be the 'greener' of the two holy books.")

162 *Id.* See, generally, I. Abdul-Matin, *Green Deen: What Islam Teaches about Protecting the Planet*, 2010. He argued that: "The Prophet Muhammad, peace be upon him, said that the Earth is a mosque. Since everything on the planet is sacred, nothing can be debased."

163 El-Helw, 1999, Hussien, 2006. See, generally, M. Amin El-Gamal, *A Basic Guide to Contemporary Islamic Banking and Finance*, 2000, <www.ruf.rice.edu/~elgamal/files/primer.pdf>.

of usufructs is made according to: (a) the degree of need and accurately assessed quantitatively and qualitatively; (b) the impact on the resource and (c) the priority of claim in time of the use of the resource.¹⁶⁴ In light of that, Prophet Mohammad (PBUH) recited, “The benefit of a thing is in return for the liability attaching to it” and “Liability for a thing is an obligation accompanying the benefit thereof.”¹⁶⁵

There is no doubt that a leader’s undertakings become illicit or illegitimate if they are based on autocracy without any care of the community’s public interest.¹⁶⁶ The Islamic public policy governing the *Imam/Hakem* (ruler) actions stipulates that the management of a subject’s affairs by the rules shall be according to their welfare, as this represents the final goal of the Islamic environmental legislation within the agenda of balancing the conflicting interests.¹⁶⁷

In Islamic law, all actions are assessed in terms of their outcomes as social *masalih* (benefits) or social *mafasid* (evils). Muslim rulers are required to promote the public welfare of society’s members. The failure to do so is assessed and potentially mitigated by different factors, such as the significance and urgency of numerous goods involved; inevitability or possibility of injury or benefit; ordering by raising the welfare of the greatest number and the capability of those affected to secure their interests without assistance.¹⁶⁸

Public policy and decision-makers must always seek the maximisation of public welfare through their policies. If an action simultaneously realises welfare yet leads to harm, the juristic principle of “the averting of harm takes priority over the realization of benefit” applies.¹⁶⁹ In his landmark statement, the well-known Muslim scholar Ibn Taymiyyah declared that:

[w]hat is required to safeguard is to safeguard all benefits and bring them to perfection, and to eliminate all determinates and minimize them. And if they prove irreconcilable, it is to safeguard the greater good by the exclusion of the

164 Rahman, 1982.

165 Sahih Muslim & Al-Bukhari, *supra* note 19.

166 See M. Izzi Dien, ‘Islam and the Environment, Theory, and Practice’, *Journal of Beliefs and Values*, Vol. 18, No. 1, 1997, p. 47 (providing a paradigm solution for many forms of environmental degradation, including that of water distribution, underlining Islam’s role as an important potential ground for settling disputes from which environmental international law may proceed) (“Despite the fact that Islam’s attitude in the theoretical environmental debate is both straightforward and well respected, many parts of the Muslim world are currently witnessing a cultural environmental rupture which can be ascribed to two causes. The sudden, almost shocking, introduction of the industrial age to these countries was not supported by a value system compatible with the prevalent Islamic values. The outcome has been a sad alteration of ‘satisfaction’ with the little that can be acquired from the environment, to a ‘dissatisfaction’ which can only be appeased by ever increasing consumption. Both Islamic values and industrial values need to be re-examined to extract from them a new value system that fits modern human beings, without rejecting the bedrock of Islam and the environmental elements that it supports.”).

167 Bagader *et al.*, 1994, at 18.

168 *Id.*, at 19. See Smith, 2002.

169 See, generally, Taqi ad-Din Ahmad ibn Taymiyyah, *Al-Siyasah Al-Shar‘iyah fi Islah Ar-Ra’i war-Ra’iyah [The Political Rules in Assessing the Ruler and the Ruled By]*, Arabic Book Review, 2008.

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lesser, and to remove the greater harm by acceptance of the lesser. This is the mandate of the law.¹⁷⁰

From this doctrine, it is clear that under Islamic law the interests of the Muslim community (public interest) take precedence over the individual (private) benefits based on the principle that "priority is given to preserving the universal interest over particular interest".¹⁷¹ This, in other words, means achieving and protecting the mutual interest of the general public based on Sharie'a law that "the lesser of two evils shall be chosen", "severe damage shall be removed by means of lighter damage" and "if one of two opposing determinates is unavoidable, the more injurious is averted by the commission of the less injurious".¹⁷² Muslim intellectuals advocate that priority should be given to the actual and well-known benefit over the probable one.¹⁷³

Social interests and public benefits are addressed according to their significance, actuality and certainty in this regard. Islamic law classifies interests into (a) *daruriyat* (necessities), or those things indispensable to the preservation of the *Al-adaruriat Al-khams* (five Sharie'a objectives of life, religion, lineage, property and prosperity); (b) *hajiyyat* (needs), meaning those things whose absence leads to actual hardship and suffering and (c) *tahsinyyat* (supplementary benefits), which means things that refine life and enhance ethical values.¹⁷⁴

170 *Id.*

171 *Id.* And from this rule, "A private injury is accepted to avert a general injury to the public" juristic principle has emerged. Muslim scholars use this tool to answer new questions. Imam Al-Ghazali, a very well-respected Islamic scholar, created this doctrine in his mission for clarifications to new economic, environmental, social and political concerns that arose with the expansion of Islamic community. This source refers to all new notions and ideas that have neither been allowed nor forbidden by one or more agreed-upon sources of Islamic law. In arbitrating whether an idea or solution is appropriate according to *masalah mursalah* (consideration of public interest), scholars look to whether it endorses social welfare. Further, the rule derived from this secondary source of this law source must be logical and must not oppose or contradict the principles of the Qur'an, Sunnah and the overall spirit of the Sharie'a. See, generally, M. Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd edn, 2003, p. 238.

172 *Id.* See also, Hussien, 2006. W. Montgomery Watt, *The Faith and Practice of Al-Ghazali*, 1951 (providing background information on this important Muslim scholar).

173 *Id.* See also, Kamali, 2003 & Hussien, 2006.

174 *Id.* According to the Islamic *fiqh* rules, Muslim scholars emphasised that urgency and precedence should be given to the basic desires and needs. In the case of conflict between the less needs and supplementary benefits, lesser needs should have priority over the supplemental needs. As Islamic jurisprudence is unique in assuring the right of personal security and social order, Al-Imam Al-Ghazali recognised what are known today as the ("Five Essentials") and these became the neutral criteria for scholars to identify whether an idea or solution stimulates the public interest. Accordingly, Islam reassures five essential things (*makasid al-sharie' a al-islamia/al-daruriat al-khams*) to all individuals and prohibits unjustified violation of them by the State. These essentials are (a) Protecting Religion; (b) Protecting Lives; (c) Protecting mind; (d) Protecting Posterity and Intellect and (e) Protecting Property. On the other hand, Islamic law presents the structural framework for the community by maintaining the legal relationships among persons and protecting the interest of one person from being attacked by another. J. Naify, 'Al-Ghazali', in R.H. Popkin (Ed.), *The Pimlico History of Western Philosophy*, 1999.

Furthermore, the public authorities' (State) intervention in the dealings of society for environmental security necessarily requires that the aversion of harm to the poor take priority over the aversion of harm to the wealthy, and that the welfare of the poor take precedence over the benefit to the rich and that averting harm generally overrides the acquisition of benefits.¹⁷⁵

In the same vein, and within the duty of public authorities, two key features are included with regard to the remedy for environmental damage and its prevention. These establishments are obliged to take all necessary measures to *avoid* any environmental damage or minimise it before its occurrence. For instance, the State would have the right to suspend any perpetual or temporary activity if it were to cause environmental misuse, limit the scope of action (time, place, quality, kind, etc.), apply scientific technical standards or particular methods to avert the occurrence of damage or restrict its impact, and educate and socially advise the general public about real environmental hazards.¹⁷⁶ Further, public authorities may plan the exploitation and development of natural resources.¹⁷⁷

Moreover, the State's institutions are obliged to take all necessary measures to *eliminate* existing damage. For example, individuals along with institutions may be held liable for any environmental damages, whether intended or not. The Islamic juristic principle states: "The author of an act is responsible, even if the act is not intentional" and "Dire necessity renders prohibited things permissible"; social activities violating the environment must be deferred, and violators of the environment and animals' rights must be punished in case of clear negligence (recklessness) or disobedience of the general directions set out by the government for the promotion of ecological safety.¹⁷⁸ In addition, the government has the right to require compensation and indemnity (insurances, securities and collaterals) for irreparable environmental harms effected by establishments, enter-

175 *Id. See also*, Kamali, 2003 & Hussien, 2006. ("Regardless of law enforcement mechanisms, preservation of nature is every individual's religious duty.") The Qur'an stated: "Let there be of you a nation that calls to the good, establishes right, and eradicate wrong." The Glorious Qur'an, at Surat (Chapter) Al'O[I]mran (The Family of 'O[I]marn, 3:104).

176 Specialists, consultants and experts in all the various areas (*e.g.* biology, biochemistry, overhunting, overgrazing etc.) should be encouraged, trusted and delegated the power to determine the proper criteria and suitable standards. Authorities have the right to design the guidelines in planning sustainable development in this time of growth of human impact on the natural world. All development projects have to be evaluated according to their possible benefits and harm, either in the short or long run before receipt of approval. Such development should be accomplished within the legislative principles and Islamic institutions highlighted under the Islamic environmental legal system underlined.

177 El-Helw, 1999, at 255.

178 *Id. See also*, Hussien, 2006. The State's foundation has a right to intervene to protect animals' (local and wild) rights, whether in private possession, scientific institutes, zoos, etc. for any illicit purposes (killing, using methods to harm them). Under Islamic law, if the animal's owner mistreats, fails to provide or is unable to afford care and suitable maintenance (food, water, shelter and the like) to it, authorities are to force him to afford appropriate conditions, and if he refuses or is unable to do so, he will be compelled to sell it or slaughter it for food.

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prises, corporations and the like.¹⁷⁹ All of this shall be supported by the Islamic legal framework and attained by the institutional framework under Islamic environmental law.

II. Institutional Framework: Islamic Institutions for the Maintenance of Nature

One of the most important requirements for the active and effective preservation of the natural environment is the inclusion of official institutional measures, through which the operators may be made responsible for appropriate conservation programming for patterns, enticements and incentives aimed at the positive enrichment and conservation of the environment.

1. *Ihia' Al-Arad Al-Mawat (Land Revitalisation or Reclamation)*

According to the duty model in Islamic law, all individuals are required to share in the duty of bringing life to unpossessed land through its retrieval, cultivation or beneficial use as private property.¹⁸⁰ In other words, the reclamation of arid unowned land is a means to the acquisition of proprietorship (ownership) rights. In Islamic law, *ihia'* provides persons with an influential motivation to invest and participate in the appropriate use of the land and to offer the land for the prosperity and welfare of the community.¹⁸¹ Public authorities have the right and duty to prevent the development of vacant land if such improvement would result in any form of environmental abuse. This includes power over all sorts of lands that are set aside for public benefits such as inviolable zones, reserves and all lands having resources crucial to the public interest.¹⁸²

In this respect, the State has the right to make *iqta'at* (grants) of the unowned lands for public beneficial purposes such as farming, building and agriculture. In addition, these grants can be used to provide a means of reimbursement to individuals whose lands are intended for public use or limited to the public utility.¹⁸³ Should the beneficiary fail to reclaim the unowned land successfully within a reasonable period, the recipient is obliged to return the land to the State for development by other parties in various ways.¹⁸⁴ Lastly, the State may grant *ijarah* (long-term leases) or grant the right to *ijarah manfa'ah/istiglal al-arad* (usu-

179 *Id.* It should be noted that individuals and organisations should not be held accountable for damages that may result from exceeding their legal commitments and practising their proper obligations in the terms of their contracts, licences, permits, conditions under the notion that "Legal permission cancels liability".

180 El-Helw, 1999, at 301.

181 *Id.*, at 297-300. For further details on the environmental damages of the Second Gulf War, see *An Environmental Assessment of Kuwait: Seven Years after the Gulf War*, Kuwait Foundation for the Advancement of Sciences (Report prepared by Green Cross International, 1998).

182 *Id.*, at 302. In other words, reclamation cannot be executed in natural reserves or inviolable lands.

183 *Id.* These grants are regulated according to the principles of *ihia'*, and they may not include resources based on the public goods. These grants do not guarantee a property right in itself unless the beneficiary (recipient) resuscitates it effectively and practically efficiently, it becomes his/her own property.

184 *Id.* See also, Zafar, 2013. Lease and grants' usufruct are well matched for naturally susceptible lands that require specific management, administration and control techniques.

fruct/exploitation) to channel investments via effective control, actual supervision and active management over its consumption.¹⁸⁵

2. *Al-Hima (Reserves)*

The State may establish reserves for the procurement of the public good such as management of forests, wildlife, watersheds and other sorts of development.¹⁸⁶ Prophet Mohammad (PBUH) established the first public natural reserve in Islam to attain mutual benefit and the public good after eliminating the private reserves for elite use of powerful classes.¹⁸⁷ Government organisations are required to launch these reserves in the appropriate spots and strategic sites for the purpose of rapid natural improvements and ecological enhancements.¹⁸⁸

3. *Al-Harim (Inviolable/Protective Zones)*

The State may institute *Al-harim* (uninfringeable zones) where use and development is proscribed or circumscribed to avert the damage of utilities and mutilation of natural resources.¹⁸⁹ In Sharie'a law, towns and settlements should be surrounded by inviolable zones so as to secure people's basic necessities and needs.¹⁹⁰ Each settlement has a right to construct such zones managed by the persons and where use is rigorously limited.¹⁹¹

185 Khalid, 2002, at 4. ("People who reclaim or revive land (*ihya'al-mawat*) have a right to its ownership, land grants (*iqta'*) may be made by the State for reclamation and development, and land may be leased (*ijara*) for its usufruct by the state for its reclamation and development [...].")

186 *Id.* ("Special reserves (*hima*) may be established by the State for use as conservation zones.")

187 *Id.*

188 Woodcutting, cropping and hunting may be forbidden or constrained within the particular objectives of each reserve to protect the environment from any potential damage that may be caused.

189 Hassan, 2000. A.B.M. Ben Saad Al-Konain, *The Efforts of Saudi Judiciary in Developing the Environmental Protection* (Arabic paper presented in The Conference on The Role of the Judiciary in the Development of Environmental Law in the Arab Region), 26-28 October 2002.

190 Watercourses, roads, canals, lakes, squares and the like are surrounded by inviolable zones to facilitate their use in order to achieve public welfare. These sources should have these zone-approaching easements to preclude any harms and maintain their mutual proper usage. *See, generally*, S.H. Nasr, *Man and Nature: The Spiritual Crisis in Modern Man*, London, 1990. It should be noted that the sacred territorial area in both *Makkah* and *Madinah* for human beings is known as the two *Al-haramain* (inviolable sanctuaries), where plants (trees) cannot be cut down and wildlife (animals) are protected from any environmental harm or damage within their borders. They serve as examples of best practice. All construction, development and the like should be carried out with very cautious care and sensitivity. In this domain, the Prophet said: "It is sacred by virtue of the sanctity conferred on it by God till the Day of Resurrection. Its thorn tress shall not be cut down, and its game shall not be disturbed, and the objects lost in it, shall be picked up only by one who will announce them, and its fresh herbage shall not be cut." Sunan Abou Dawud, *supra* note 19.

191 Nasr, 1990. Furthermore, it is acceptable to create these zones head-to-head (adjacent) to sources of water and other utilities. *See, generally*, L.J. Kotzé & A. Paterson, *The Role of the Judiciary in Environmental Governance: Comparative Perspectives*, 2009 (explaining the constitutional rights to a healthy environment; reconciling environmental and aboriginal rights; recognising public rights to the environment in laws protecting private property; distilling the mandate of environmental authorities and creating specialist environmental courts).

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4. *Al-Waqf (Charitable Endowments)*

Waqf etymologically means *habs* (tying up). *Waqf* is a religiously motivated donation of a property that generates revenues, and is managed and regulated by Islamic law. According to the *Hanfi* School of jurisprudential thought, *waqf* means “the detention of the [c]orpus from the ownership of any person and the gifts of its income or usufruct either presently or in the future, to some charitable purpose ‘in charity of poor or other good objects’”.¹⁹² There is no explicit Qur’anic verse defined or mentioned directly or indirectly about the *waqf*, though it inspires charity, including *waqf*.¹⁹³ Further, Prophet Mohammed (PBUH) motivated Muslims to make charities, saying, “When Adam’s son dies, he will be disconnected except from three: continues charity, useful science, or well-raised kids prays for him.”¹⁹⁴ In this sense, some modern non-Islamic legal systems were inspired by the Islamic system of *waqf*.¹⁹⁵ According to the *waqif*s (the donor of *waqf*) will, *waqf* may be dedicated to serve relatives and society. It can be dedicated to helping financially incapable persons to marry, feed infants and children, assist the sick, disabled, orphans and elderly, and to cover the expenses of the needy.¹⁹⁶

Waqf is subject to the supervision and control of governmental institutions, where ministries and public offices were established in Muslim nations to regulate and govern the *waqf* properties.¹⁹⁷ The status of its ownership (assets) as

192 The main notion of *waqf* under Shari’*a* is the fact that definite assets should be protected in peacetime and in wartimes (times of armed conflict and aggression) from all sorts of destruction.

193 God says, “They ask thee what they should spend (In charity). Say: Whatever ye spend that is good, is for parents and kindred and orphans and those in want and for wayfarers. And whatever ye do that is good, *Allah* knoweth it well” and “If ye loan to *Allah*, a beautiful loan, He will double it to your (credit), and He will grant you Forgiveness: for *Allah* is most Ready to appreciate (service), Most Forbearing.” The Glorious Qur’an, at Surat Al-Baqarah (2:215 & 542).

194 Sahih Muslim & Al-Bukhari, *supra* note 19. Also, the Prophet Mohammed told ‘*Ummar Ibn Al-Khattab* to “[t]ie up the property and devote the usufruct to human beings”. *Id.* See also, W.F. Fretcher, ‘Islamic Wakf’, *Missouri Law Review*, Vol. 36, No. 2, 1971, pp. 153-155, <<http://scholarship.law.missouri.edu/mlr/vol36/iss2/1>> (“The institution of *wakf* rests upon the *Shari’a*, the religious law of Islam.”).

195 *Id.* It is worth mentioning that the English trust legal system is based on the notion of *waqf*. The trust legal system in England was used to give part of the income to individuals who are not able to share these assets and belongings. See M.M. Gaudiosi, ‘The Influence of the Islamic Law of *Waqf* on the Development of the Trust in England: The Case of Merton College’, *University of Pennsylvania Law Review*, Vol. 136, 1988, 1231.

196 See, generally, A.V.W. Thomas, ‘Note on the Origin of Uses and Trusts-Waqfs’, *Southwest Law Journal*, Vol. 3, 1949, pp. 162 at 164-165. Charitable endowments may be formed with particular conservation purposes.

197 *Ramadan ‘Ali Al-Shorobasy, Ahkam Al-Wasyia wa Al-Waqf fi Al-Sharie’a Al-Islamia [The General Principles of the Wills, Trusts, and Estates in Islamic Shari’*a*]*, Arabic Source, 2005. “A *waqf*[k] known as *waqf-al-aulad* is an absolute religious endowment in Islamic law, typically denoting a building or part of land for Muslim religious or charitable objectives. The donated assets are held by a charitable trust. The grant is known as *masru’ att-ul-khidmat*; while a person making such devotion or dedication is known as *waqif*. Ibn ‘Ummar (RA) reported: ‘*Ummar ibn Al-Khattab* got land in *Khyber*, so he came to the Prophet Mohammad (PBUH) and asked him to advise him about it. The Prophet said (PBUH), if you like, make the property inalienable, and give the profit from it to charity.”

waqf is debated by Muslim scholars.¹⁹⁸ According to Islamic rules, once the *waqf* is created, the corpus will be devoted to God. Jurists acknowledge that although the dedication of the property does not result in the loss of the proprietorship itself, the usufruct is thereafter devoted to charitable commitments.¹⁹⁹

In this regard, Muslim *Ulmma* (jurists) classified *waqf* as follows: *waqf da'e ym* (permanent *waqf*, which lasts as long as the possessions last and is productive) and *waqf mo'aakat* (temporary *waqf*, which occurs for a limited period).²⁰⁰ Accordingly, *waqf* can be: (a) self *waqf* (for the *waqif's* benefit); (b) *waqf ahli* (for the relatives' or family's welfare); (c) *waqf khairi* (for the benefit of the community's public interest) and (d) *waqf moktalat* (mixed grant) (for the benefit of self, the public and/or relatives).²⁰¹ In charitable *waqf*, the earnings and usufruct are devoted to generous purposes that may be defined by the *waqf* statement, in which the *Qadi* (judge) has the right to designate these goals according to society's needs.²⁰²

On the basis of the background of the advisors, the benefactor may decide to offer his *waqf* for the general welfare to improve upon goals such as educational needs, construction of worship places or for service to the elderly.²⁰³ Moreover, if the consultant has experience with environmental issues and is able to persuade and encourage the *waqif* that environmental safety is vital and necessary for a clean and healthy environment, the donor may well be inspired to attain that purpose.²⁰⁴ The benevolent *waqf* can result in three conservational circumstances.

- 1 Charitable *Waqf* (Grant) with a General Environmental Objective: In this scenario, an environmental *waqf* is devoted generally to environmental security and the greening of the environment without identifying which area needs to be sponsored.²⁰⁵ Under the *Qadi's* control and authorisation, the supervisor

198 *Id.* In other words, *waqf* means the permanent dedication by a Muslim of any property for any purpose recognised by the Muslim law as religious, pious or charitable. It allows private contribution to public good as it is not subject to transactions, and the endowment's yield is devoted to the needy people. T. Mahmood, 'Islamic Family Waqfs in Twentieth Century Legislation', *Islamic and Comparative Law Quarterly*, Vol. VIII, 1988, p. 1.

199 Al-Shoronbasy, 2005, at 144. ("Most of the Islamic *waqfs* are subject to the similar principles and norms and Muslim scholars argued about its details that may reflect on the way of its roles (functions).")

200 *Id.*, at 145.

201 *Id.*, at 146-149. In the meantime, some definite *waqfs* can be *ahli* and temporary at the same time, or *khairi* and permanent in the same time period as well.

202 *Id.* See also, F.M. Goadby, 'Waqf in Egypt', *Journal of Comparative Legislation & International Law*, Vol. 10, 1928, pp. 319-320.

203 See, e. g., Egypt Law No. 48/1946 (*concerning the Rules of Waqf*), at Art. 7 amended by Egyptian Waqf Law No. 180/1952 (abolition of non-charitable *waqf*) (*amending the existing law of waqf* with a Decree of 14 September 1952), *Al-Jarida Al-Rasmiyya(h)* [The Official Gazette], 14 September 1952 (Egypt), at Art. 3. See also, A.M. Tawfiq, 'The Awqaf in Modern Egypt', *The Islamic Quarterly*, Vol. 4, 1998, pp. 257-265.

204 Tawfiq, 1998. For further information about the *waqf's* historical development in the Islamic world, especially Egypt, see F.J. Ziadeh, 'Land Law and Economic Development in Arab Countries', *American Journal of Comparative Law*, Vol. 33, No. 1, 1985, pp. 93-106, <www.jstor.org/stable/840119> (discussing aspects of land law in Arab countries and the historical development of the *waqf* system in Islamic law).

205 Al-Shoronbasy, 2005, at 153.

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has the authority to determine which environmental needs should take precedence and be treated as a priority before advancing the next one.²⁰⁶ But in the case of an environmental disaster, such as the occurrence of an earthquake or a flood, the manager can, by the judge's permission, move the grant's resources, either wholly or partially, to address new and crucial environmental harms. Such emergency manoeuvres may reallocate resources to other parts of the environment as long as the new objective falls within the overall environmental purpose indicated by the donor.²⁰⁷

- 2 Charitable *Waqf* (Endowment) with Explicit Environmental Goal: Here the environmental *waqf* is dedicated to the fulfilment of a precise, express ecological goal, such as the cleaning-up of the marine environment or sponsorship of certain environmental research.²⁰⁸ When this detailed and specific objective is accomplished, the administrator – under the full control, managerial supervision and the judge's approval – has to satisfy other new requests (necessities) such as those provided in the *waqif's* statement.²⁰⁹
- 3 Charitable *Waqf* (Donation) Without Any Environmental Purpose: Generally speaking, benevolent grants may be intended for purposes distinct and apart from any environmental goals, such as assistance for the needy. In such a case, the administrator has no discretionary power and should be restricted within these parameters.²¹⁰ Nevertheless, in cases of unexpected environmental crises, the officer, with the *Qadi's* consent, may direct the whole or part of the *waqf's* proceeds towards environmental conservation initiatives.²¹¹

It should be borne in mind that the protection and enrichment of the natural environment should be understood and interpreted in charitable terms as serving the public interests and sustaining God's properties, over which human beings have only vice-regency.²¹² Therefore, it is highly recommended that *waqf* be established permanently as a means to improve environmental safety in specific environmental sectors as a fixed time period makes no sense and wastes time, efforts and financial resources.²¹³ In contrast, temporal environmental *waqf* can be valuable in situations of environmental difficulties, as in cases of natural or human disasters that affect the normal ecological and economic systems (as this

206 *Id.*, at 154. Accordingly, if the grant was committed to the operations of clean-up of the nautical area, the public official's efforts should emphasise this environmental part.

207 *Id.*, at 157.

208 *Id.*, at 158-159. ("Officers should assure that the adjacent environment beyond the *waqf* property is safe and the protection of their *waqf* is guaranteed too.")

209 *Id.* In the previous cases, the administrator should find another contaminated maritime or naval area to clean, and another educational and research institution to maintain.

210 *Id.*

211 *Id.*

212 Thus, *waqifs* (donors) must give environmental protection the same high precedence as the maintenance of the mosques.

213 For instance, funding agrarian efforts in a desert zone may eradicate the several efforts completed throughout the previous period of supply when fund is terminated, where plants will die and sandstorms will cover the region.

sort of donation directly supports recovery efforts in such catastrophic conditions).²¹⁴

Meanwhile, where nature is under day-to-day threats, under the Sharie'a principles it is suggested that *waqifs* (contributors) direct wholly or partially their *waqf's* payments to serve environmental protection.²¹⁵ Consequently, numerous efforts should be undertaken to persuade *waqifs* (future donors) about the significance of environmental rehabilitation, and spending should occur to assist in environmental protection so as to serve our descendants and future generations.²¹⁶ Islamic organisations should play a predominant role in raising public awareness of the vitality of the environmental *waqf* by establishing a strategy for inspiring the launch of dedicated *waqfy* funds.²¹⁷

Both the administrator and the *Qadi* of the environmental *waqf* should maintain a minimum level of attentiveness to environmental issues, and should consult and collaborate with experts and attorneys in the environmental field.²¹⁸ Accordingly, the environmental administrator is bound by the *waqif's* statement to manage the *waqf* in such a way that it promotes, prioritises and protects the natural environment. For example, if the donor includes the natural protection in the statement, the manager is obliged to follow such a requisite and devote the incomes to that purpose.²¹⁹

214 In this sense it is highly recommended that the *waqf's* revenues be directed into cleaning up polluted areas from lethal wastes and harmful substances that were dumped perilously from any nuclear settings up into lands and watercourses. At all times, it is possible that in some extraordinary circumstances that could not have been predicted by the *waqif* may ascend in course of time and require the alteration of the original terms of the *waqf* tool. These conditions cannot be a reasonable ground for abolishing the original situation created by the *waqif* unless they were eligible as necessary and under them the receivers will not be able to use their dividends. See H. Cattán, *The Law of Waqf, in Law in the Middle East*, 1955, p. 210.

215 *Id.*

216 *Id.* See also, Goadby, 1928.

217 Each account is focused in a definite area to invite and convince persons to donate their possessions (assets) as *waqf* in these monies and then use the returns to attain its objectives. For example, including the health *waqf* (handicaps and the special accommodation) as in the environmental *waqf* pursues to combine the efforts and resources of mutually beneficial areas along with the execution of active ecological safety concerning the serious and expensive environmental intimidations.

218 In investigative cases, the judge may refer to consultants and professionals in each field counting the environmental field, and their appointment will be based on the professional skills along with experience in the required fields (trade, environment, business management, etc.) to select the most capable one to care and keep the *waqf*.

219 Al-Shoronbasy, 2005, at 153. For instance, in order to protect a machining factory from any ecological hazards, environmentalists should plant trees rather than construct a barrier (fence) around it. It is worth mentioning that Muslim scholars recognised *waqf* as perpetual, irrevocable and inalienable. The eternity of the *waqf* means that it lasts as long as the corpus itself, where the corpus's proprietorship does not belong to the *waqif* (donor) anymore, but to God. Irrevocability means that once a *waqf* is established there is no right for its condemnation as inevitability guarantees the stability of the Muslim *Ummah* (community), where recipients cannot live vulnerably by being prevented any time from the *waqf's* income only. Finally, inalienability averts *waqf* from being subject to any legal disposition as mortgage, sale, pledge, lease, gift, inheritance or any sort of alienation. See Cattán, 1955, at 203-208.

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Under Islamic environmental law, it is highly recommended that environmental courts be launched to inspect and examine environmental issues and to oversee the management of the environmental administrator.²²⁰ If the commissioner decides that the corpus is not productive anymore and does not cover the beneficiaries' needs, he/she can replace or exchange it from the same value with another one under the judge's observation.²²¹ So Muslim overseers, as believers in God, should keep, care, protect and serve *waqf* to be creative and dynamic in advancing environmental safety to match God's highness.

E. Conclusion and Policy Recommendations: The Future of Islamic Environmental Law and the Middle East's Uprisings – A Possible Thought?

Under Islamic law norms, environmental preservation and nature's care are imperative commands of God that must be obeyed by all beings. Environmental maintenance by man leads to the improvement of his welfare, and a benefit to the whole universe and the satisfaction of the Lord's will. Although ecological resiliency is problematic and has existed and been recorded throughout history, it has been extremely exaggerated in modern times, as man's aptitude to affect it has extended with incredible speed, while in terms of his accountability as a *khalifa* (vice-regency) on the Earth, he remains unfair, reckless and unwise.

Even though it may be conceivable to integrate the rules of Islamic environmental law within the statutory programmes of Muslim nations, serious environmental problems will persist unless proper and effective institutional measures are taken to replace the old and now virtually redundant ones. It is also interesting that secular efforts to meet environmental challenges in Muslim countries fail to follow and adopt the Islamic model in the Sharie'a code (Qur'an and Sunnah). It is highly recommended that the role of the Muslim environmental scholars be redefined owing to the fact that the nature of the Islamic State has changed and needs to be brought into conformity with modern standards and the Sharie'a requirements of updating and maintaining flexibility through the principles of *qiyyas/ ijtihaad* (individual reasoning, analogical deduction, public interest considerations and the use of the secondary sources of Islamic law). Islamic law supports all means necessary to lead to the advancement of public utilities, mutual values and common welfare of the community.

In light of this, the maintenance of the natural environment is an important ethical and moral principle under Sharie'a law. Moral consciousness along with religious awareness at the individual, institutional and social levels can inspire individuals to think positively about sacrifices committed for the common good rather than simply focusing on personal (self) interests. These ethical values

220 In environmental *waqf*, the environmental judge has the right to supervise the administrator after being designated, guarantee that he is satisfying his task of the better environmental care, and that his authorisation is not abused, and to take indispensable actions, including the right to replace him in case of proved negligence or recklessness (unqualified) and will be held liable.

221 Al-Shoronbasy, 2005.

should be incorporated within the environmental legislation and regulation, and effective implementation of necessary sanctions should be attained. The State (governmental institutions) is in charge of bringing environmental justice and equity through the fair allocation and distribution of natural resources. Technical knowledge, advanced scientific research and the monitoring of natural resources are required under Islamic law. Ecological public consciousness and the social cognisance of ecological concerns in basic education are highly encouraged among schools and universities, enabling the general public to contribute to the advancement of environmental security measures.

Before any developmental action with potential environmental impact is undertaken, it is highly recommended that the Arab governments give due consideration to the minimisation (calculation) of any potential environmental damage, exploration of all environmental impacts and due attention to all environmental aspects (health, science and natural beauty). Any domestic progress should not be accomplished at the injury or expense of others, or by the utilisation of any tool that may bring harm to any individual.

In Islamic countries, government administration is generally uncommitted to continuous implementation and review of environmental standards. The above understanding of the law regarding the upholding and greening of the environment requires efforts of a contemporary and continuous nature to be undertaken by Muslim governments to reinforce and strengthen their environmental statutes and enforcement procedures. There is no reasonable justification for incomplete interpretation and implementation of Islamic environmental law in these societies unless régimes are wholly rejecting Islamic environmental law. In such a case, these nations are not sufficiently entitled to embrace these philosophies and norms. As it were, though, these principles of environmental law establish a legal prerequisite, they are mandatory for Muslim nations.

In sum, Islamic law regards man as a creature of elevated status. In Islamic environmental law, humans are not owners of nature, but are *mere* beneficiaries. Islamic environmental safety is based upon the principle of 'use' without 'abuse'. Environmental protection in the Islamic legal scheme does not differ from any modern environmental legal system, as Islamic teachings support all undertakings and deeds whether local, national or international in their scope of applicability and recall for mutual collaboration and joint assistance in all areas to save the environment from any degradation.

These proposals cannot be executed without dedicated laws that comprehensively provide for the protection of the environment and nature in the Arab Middle East. Contemporary events dictate that now is the time for applying such drastic procedures. The latest Arab Spring uprisings have given rise to much political and legal chaos. This turmoil could be moderately alleviated by remodelling laws and regulations in various sectors to bolster a sense of community in Arab countries, and environmental law is a topic ripe for such reform. The challenges and the tests facing us are extraordinary in their status and size. The accomplishment of the environmental mission requires massive utilisation of resources, sound strategies, operational plans and definite actions so that we may, God will-

Mohamed A. 'Arafa

ing, conserve and propagate a good life and achieve prosperity for the present and future generations of all beings in the universe.