

ISLAMIC LEGAL TEXTS: A CONCEPTUAL DISCUSSION ON THE POLITICAL SCENARIO IN THE MIDDLE EAST¹

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Abstract

Senario politik di negara-negara Arab di Timur Tengah khususnya dengan merujuk kepada Palestin dan Iraq semakin sukar diramalkan. Keadaan ini dilihat semakin bertambah rumit selepas kematian Yassir Arafat dan kemenangan George W. Bush di dalam pilihanraya baru-baru ini bagi penggal kedua sebagai Presiden Amerika Syarikat. Pelbagai teori politik telah diwarwarkan di dalam menganalisis senario di Timur Tengah. Tidak kurang juga pelbagai cadangan dan jalan penyelesaian yang telah dilakarkan oleh pelbagai pihak terhadap masa depan di Timur Tengah. Sebagai satu input ilmiah, artikel ini mengemukakan konsep masalah atau kepentingan umum khususnya dengan merujuk kepada dalil-dalil perundangan Islam (nuṣūṣ naqlī) di dalam menganalisis senario di Timur Tengah. Tanpa melibatkan perbincangan usul fiqh terhadap konsep masalah, artikel ini akan menjurus kepada huraian nusus naqli dan hubungkaitnya dengan masalah serta senario politik di Timur Tengah.

INTRODUCTION

The existing and ongoing conflict in the Middle East can be seen as an expression of the intense struggle by the Muslim *ummah* to preserve their

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religion, life, honour, intellect, wealth and lineage. In Islamic jurisprudence, these six fundamental 'necessities' (*Ḍarūriyyah*) are vital to the preservation of 'public interest' (*Maṣlahah*),² for the Muslim *ummah* in accordance with divine Islamic legal texts; i.e. the *Qur'an* and the *Ḥadīth*. In other words, if the public interest of the Muslim *ummah* cannot be preserved, consequently the dignity of Islam will be a profound loss.

It is to be borne in mind that the dignity and integrity of the Muslim *ummah* depend on a way of life which adhere to the principles laid down by the *Qur'an* and the *Ḥadīth*. Should the Muslim *ummah* ignore or overlook one of the divine principles such as 'public interest', they will risk devastating effects on that way of life as can be seen in the context of contemporary Middle East.

This hypothesis raises some profound questions; how can the Muslim *ummah* regain its dignity through re-applying the vital principle of public interest in its way of life? How can the existing problems in the Middle East be resolved through the principles set out in the *Qur'an* and the *Ḥadīth*? Who will be responsible to lead the struggle to liberate the Middle East from domination of invaders?

To suggest some possible answers to these sensitive questions, this article will put forwards a hypothesis involving the concept of public interest in Islamic legal texts in line with the six fundamental 'necessities' therein; i.e. preservation of religion, preservation of life, preservation of honour, preservation of intellect, preservation of wealth and preservation of lineage.

² As far as can be ascertained, there are eleven prominent jurists who discuss either six or five necessities as the main principle of 'public interest' (*Maṣlahah*); al-Ghazālī (1997), *al-Mustaṣfa min 'Ilm al-Uṣūl*, Damshiq: Dār al-Fikr, v.2, p.258; al-Rāzī (1992), *al-Maḥṣūl fī 'Ilm Uṣūl al-Fiqh*, Beirut: Muassasah al-Risālah v.2, p.220 and p.612; al-Amidī (1986), *al-Iḥkām fī Uṣūl al-Aḥkām*, Beirut: Dār al-Kitāb al-'Arabī, v.2, p.252; Ibn Hajīb (1983), *Hashiah al-Sharif al-Jurjānī 'ala Mukhtaṣar al-Muntaha al-Uṣūlī*, Beirut: Dār al-Kutub al-'Ilmiyyah, v.2, p.153; al-Qarafī (1993), *Sharḥ Tanqīh al-Fuṣūl fī Ikhtisār al-Maḥṣūl min al-Uṣūl*, Qaherah: Maktabah al-Kulliyah al-Azhariyyah, p.391; al-Baydāwī (n.d.), *Minhāj al-Uṣūl ila 'Ilm al-Uṣūl*, (n.p): Ṭab'ah Maḥmud Sabih; p.59, Ibn Taymiyyah (n.d.), *Majmū' al-Fatāwa*, Qaherah: Maṭbū'ah al-Sha'b, v.1, p.343; al-Banānī (1938), *Hashiah al-Banānī*, Qaherah: Muṣṭafa al-Bābī al-Halabī, v.2, p.281; al-Shāṭibī (n.d.), *al-Muwāfaqāt*, Beirut: Dār al-Kutub al-'Ilmiyyah, v.1, p.38, v.3, p.47 dan *al-I'tisām* (1991), Beirut: Dār al-Kutub al-'Ilmiyyah, v.2, p.189; al-Zarakshī (1988), *al-Baḥr al-Muḥiṭ fī Uṣūl al-Fiqh*, Kuwait: Dār al-Ṣafwah, v.5, p.206, Ibn 'Ashūr (1998), *Maqāṣid al-Syarī'ah*, n.p: al-Baṣā'ir Lilintāj al-'Ilmī, p.89.

THE CONCEPT OF PUBLIC INTEREST IN ISLAMIC LEGAL TEXTS

a. Preservation of Religion

Preservation of Islam as a divine religion and a way of life, must be given absolute priority by every Muslim, particularly the Muslim *ummah* in the Middle East. The Muslim state and its constitutional laws must be devoted to implementing and applying Islamic law in every aspect of life. This is especially so in the land of the Prophets s.a.w., where the majority of Muslims live. The Muslim *ummah* must adhere to the principles of the *Qur'an* and the *Hadīth* as primary sources of Islamic law to achieve prosperity and stability. For this reason, the *Qur'an* warns of failure in the world and the Hereafter for those who seek an alternative for Islam;

‘And whoever seeks a religion other than Islam will never be accepted by Him, and in the Hereafter he will be an outcast’ (*Sūrah Āli ‘Imrān*: 85)

Therefore, liberation from domination in the Middle East can only take place in the context of absolute commitment to preserve Islam as the one divine religion and way of life. This liberation must be seen as the expression of divine intention and divine mission, in contrast with the present secular struggle between those who fight for democracy and nationalism and those different splinter groups who claim to have achieved *Jihād*, as we see, for example, in the existing conflict in Iraq and Palestine-Jerusalem.

Taking the scenario of Iraq, the handover of Iraq from the occupational Coalition Provisional Authority (CPA), to the interim Iraqi government which took place on June 30, 2004 increases leads more tortures, bloodshed and killings. These uncivilised actions can now be seen obviously in Fallujah. Moreover, most dominant western media depict Muslims in Fallujah as the uncivilized species of terrorists. This unfair depiction of Muslims in Fallujah has been highlighted by many western media as the way to deny the brutality of their army against the people of Iraq. But undoubtedly, the Muslim *ummah* of Iraq would hope to regain the peace, prosperity and dignity which was theirs in the glorious past. Baghdad was a centre of power for the Abbasid Caliphs from 132H/750C.E to 656H/1258C.E; and the period from 750C.E to 833C.E. is regarded as ‘the golden prime’ by the historian Philip K.Hitti.³

³ Philip K. Hitti (1968), *History of The Arabs from the Earliest Times to the Present*, Edinburgh: Macmillan, p.297.

Would Baghdad return to its golden prime after this? And, on what basis can the Muslim *ummah* in Iraq regain their dignity of life? We must remember that this is a nation which has been demolished and humiliated during the era of Saddam Hussien and also the period of invasion by the occupational Coalition Provisional Authority (CPA). Does the interim government realise the importance for the Muslim *ummah* in Iraq of religious stability as the basis on which to rebuild the ruins of political, economic and social life?

If we accept that the ongoing conflict in the Middle East is an expression of the struggle by the Muslim *ummah* to hold the six fundamental principles especially to the preservation of public interest; and what about the secular struggle in Palestine-Jerusalem?

In answering this question, the scenario in Palestine-Jerusalem is shot through with worsening political uncertainties, which in turn creates a context of profound disgrace for the Palestinians and for the Muslim *ummah* in general. The Balfour declaration of 1917 is the heart of these uncertainties. A separate state of Israel, with Jerusalem declared its capital city,⁴ essentially ousted the Palestinians and with them the Muslim *ummah*. Key terms here are 'occupation', 'confiscation', 'destruction' and 'assassination'; what has been inflicted on the people and the land of Palestine has resulted in worsening political uncertainties which we shall now describe and analyse. The third most sacred place⁵ of Islamic Jerusalem (*Bait al-Maqdis*), as shown by the Holy al-Qur'an itself has been exclusively occupied by Israel;

'Glorified (and Exalted) is He (Allah) [above all that (evil) they associate with Him] Who took His slave (Muhammad s.a.w) for a journey by night from *al-Masjid al-Harām* (at Makkah) to *al-Masjid al-Aqsa* (in Jerusalem), the neighbourhood whereof We have Blessed, in order that We might show Him (Muhammad s.a.w) of Our *Āyāt* (proofs, evidences, lessons, signs, etc.). Verily, He is the All-Hearer, the All-Seer' (*Sūrah al-Isrā'*: 1)

With regard to the above verse, it is clear that *al-Masjid al-Aqsa* is a most sacred blessed place for a neighbourhood or region. Factual history⁶

⁴ Dan Cohn-Sherbok and Dawoud el-Alami (2003), *The Palestine-Israeli Conflict*, London: Oneworld Oxford, p.148

⁵ The first most sacred place is *Masjid al-Haram* in Makkah and secondly is *Masjid al-Nabawi* in Madinah.

⁶ Many researchers incline to the facts that the ruling of Islamic Jerusalem can be divided into two authorities; firstly, under Muslim rule whereby includes the ruling of the Rightly-Guided Caliph (*al-Khulafā' al-Rāsyidūn*), Disciples

shows that Jerusalem was a safe place for the Jews particularly under Muslims rule. During Umar and Salah al-Din's rule, the Jews were invited to reside permanently in Islamic Jerusalem after they had been excluded and expelled by the Christian Byzantines and the Crusaders.⁷ Islamic Jerusalem is thus blessed as a symbolic meeting place for humanity, above all for the Muslim *ummah*, Christians and Jews. Sadly, what was intended as a meeting place for humanity has become since 1948 a symbol of *inhumanity* and division. Apart from this, *al-Masjid al-Aqsa* has almost become a metaphor for the intense struggle of the Muslim *ummah* by means to preserve and protect the holy place of Islam.

Question arises regarding the reason to preserve and protect this holy site by means of struggling. If we accept that it is one aspect of the desperate need to preserve against all odds those fundamental Islamic 'necessities', then we begin to understand why any proposed solution to this conflict must encompass principles laid down in the Holy Qur'an. In other words, any practical solution will outline ways forward which integrates and combines what is the most important to the heart of Islam. To go against this vital principle is to offer only rhetorical solutions. In the case of Iraq, for example, implementation of the proposed democratic solution by the interim Iraqi government will be closely monitored by Iraqis and the Muslim *ummah* all over the world. The interim government will either genuinely lead Iraq 'towards a free democracy', or it will degenerate into a 'puppet' government controlled by America and the Allies. To gain free democracy in Iraq, the interim government must be respected by Iraqis. Since the cabinet of an interim Iraqi government consists of Sunnis, Shiites and Kurds, the best option is to gain the unity and cohesion amongst them through the implementation of Islamic law. By doing this, the extremism of grouping would be avoided. No dictatorship is allowed under the sovereignty of Islamic

and Successors, Umayyads, Abbasids, Fatimids, Seljuqids, Ayyubids, Mamluks and Ottomon in the period of 636-1099AD. Secondly, under non-Muslim rule i.e. the Byzantines (pre-Islamic era), the Crusaders (1099-1187AD), the British Mandate (1922-1948AD) and the current Israeli authority (1948-present). See Mohd Roslan b. Mohd Nor (2004), *A Selected Quranic Discourse on Justice and Counterbalance: The Future of Islamic Jerusalem in the Face of Israeli Hegemony*, p.1-2, Mohsen M. Saleh (2001), *The Palestinian Issue: Its Background and Development up to 2000*, K.Lumpur: Fajar Ulung, p.15.

⁷ K. Armstrong (1997), "Sacred Space: The Holiness of Islamic Jerusalem," in *Journal of Islamic Jerusalem Studies*, al-Maktoum Institute for Arabic and Islamic Studies, Dundee, Scotland, p.14, 18-19.

government. For this reason, The United Nations must realise that the implementation of Islamic law within the framework of democracy would become a meeting point amongst groups and tribes of Iraqis to develop their country. Although the final resolution of the interim constitution, as laid down by the UN Security Council, has stated nothing about Islamic law, it may nevertheless be considered as the divine solution to gain the unity and peace particularly amongst Iraqis.

In the Palestine-Jerusalem circumstance, the occupation of Israel is the core issue in this respect. No religious causes between Islam and Judaism take place in this conflict.⁸ Although the *Qur'an*⁹ and the *Hadīth*¹⁰ frequently portray the attitude of the Jewish people upon the Prophets and believers, it is nevertheless commanded to respect and to accept religious diversity.¹¹ Since the Islamic Jerusalem and Palestinian are controlled by the Israeli government, 'the ball is in their court'. Only justice, human rights and freedom would be formed as the best expression for the solution upon the ongoing conflict.

⁸ Yūsuf al-Qarāḍawī argues clearly in this regard that, "*Muslims do not fight Jews because they are Jews, but because they occupied the Islamic land in Palestine.*" See his article, "Al-Quds fi al-Wa'yi al-Islami" in *Journal of Islamic Jerusalem Studies* (1997), al-Maktoum Institute for Arabic and Islamic Studies, Dundee, Scotland, no.1, vol.1, p.13.

⁹ There are at least 18 topics related to the Children of Israel revealed in the *Qur'an*, such as 'favour bestowed' (2:47-53, 60, 122; 45:16,17), 'rebelling against Allah's obedience' (2:54-59,61,63-74; 5:71; 7:138-141), 'their relations with Muslims', (2:75-79), 'their arrogance' (2:80,88,91), 'their covenants' (2:80,83-86,93,100; 5:12,13,70), 'bought the life of this world at the price of Hereafter' (2:86), 'greediest of mankind for life' (2:96), 'ask for a king' (2:246-251), 'exceeded the limits'; 'broken into various groups'; 'monkeys' (7:161-171), 'promised twice' (17:4-8), 'delivered from enemy' (20:80-82), 'given Scripture and leaders' (32:23-25, 40:53,54) 'and the learned scholars of, knew it' (*Qur'an* as true) 26:197.

¹⁰ Based on the Hadīth that agreed upon by Bukhari and Muslim, there are 43 *Aḥādīth* which mention the Jews and their attitude upon the Prophet, disciples and Muslim *ummah*. The topics are most similar to the *Qur'an* with details in some of the *Aḥādīth*.

¹¹ In line with this commandment, the *Qur'an* says; "O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that (believer) who has *al-Taḳwa* [the pious and righteous persons who fear Allah much (abstain from all kinds of sins and evil deeds which He has forbidden) and love Allah much (perform all kinds of good deed which He has ordained)]. Verily, Allah is the One Who forgives and accepts repentance, Most Merciful." (*Sūrah al-Hujurāt*: 13).

b. Preservation of Life

Islam, as a religion of peace and humanity, gives priority to the preservation of life. It becomes the highest priority in Islam as the *Qur'an*¹² and the *Hadīth*¹³ clearly state that human life is the giving and mercy from Allah almighty. The preservation of life in religious way means the worshipping and thankfulness to Allah the Almighty. Indeed, there are many Qur'anic terms that ordain and command the Muslim *ummah* to be *Muttaqin*¹⁴ (those who fear Allah), *Mu'minin*¹⁵ (those who believe in Allah and other pillars), *Muflihīn*¹⁶ (those who are successful in this world and the hereafter), *Khyar Ummah*¹⁷ (the best nation who enjoins people to do good things and to stop evil) and the like. These terms obviously demonstrate that Islam is the way of life for civilised inhabitants in this world and the hereafter.

Furthermore, the end of life is death, which will be determined by Allah almighty as the creator for all creations including humankind. Therefore,

¹² "Whoever work righteousness - whether male or female - while he (or she) is a true believer (of Islamic Monotheism) verily, to him We will give a good life (in this world with respect, contentment and lawful provision), and We shall pay them certainly a reward in proportion to the best of what they used to do (i.e. Paradise in the Hereafter)." (*Sūrah al-Nahl*: 97).

¹³ Anas bin Malik, (may Allah be pleased with him), reported: Allah's Messenger (peace be upon him) said: "None of you should make a request for death because of the trouble in which he is involved, but if there is no other help to it, then say: O Allah, keep me alive as long as there is goodness in life for me and bring death to me when there is goodness in death for me." (Agreed upon by Bukhārī and Muslim).

¹⁴ There are 41 verses of the Qur'an in which reveal the term *taqwa* or *muttaqin* as follows; (2: 2-5,103,177,197,203,212,237), (3: 15-17,76,102,120,123,125,130,133-136,138,179,186,198,200), (4: 1,128-131,5), (5: 2,4).

¹⁵ There are 34 verses of the Qur'an in which reveal the criteria of *Mu'minin* as follows; (2: 285), (6: 122), (8: 74), (9: 44,71,88), (11: 17), (23: 1-9), (24: 62), (25: 63-68), (27: 3), (48: 29), (49: 15), (52: 18), (57: 12,16,19), (58: 2), (87: 14,15), (98: 7,8).

¹⁶ The Qur'an reveals the term *muflihūn* or *aflāḥah* in 38 verses as follows; (20: 64), (23: 1), (87: 14), (91: 9), (2: 189), (3: 130,200), (5: 35,90,100), (7: 69), (8: 45), (22: 77), (24: 31), (26: 10), (6: 21,135), (10: 17,77), (12: 23), (20: 69), (23: 117), (28: 37,82), (10: 69), (16: 116), (2: 5), (3: 104), (7: 8,157), (9: 88), (23: 102), (24: 51), (30: 38), (31: 5), (58: 22), (59: 9), (64: 16), (28: 67).

¹⁷ There are 16 verses of the Qur'an in which reveal the criteria of *Ummah* as follows; (2: 143), (2: 128), (2: 134,141), (2: 213), (5: 48), (10: 19), (11: 118), (16: 93), (21: 92), (23: 52), (42: 8), (43: 33), (3: 104), (3: 110), (3: 113).

humanity has no capability and right to determine their death. It is a sin to kill a life without divine motive and juristic reasons. Although the *Qur'an*¹⁸ and the *Ḥadīth*¹⁹ state the martyrdom as the highest honour of death, it is nevertheless bounded with the divine motive and conduct.²⁰

The term *jihād* is in line with the life in which the sacrificing of wealth, effort and life are given in the name of strengthening Islam as a divine religion. There are many types of *jihād* in line with the principles which are laid down in Islamic legal texts. For instance, the *jihād* of holy war, the *jihād* of seeking knowledge, the *jihād* of performing pilgrimage and others but the highest *jihād* is to die as a martyr. Nevertheless, reward is also given to those struggler who sacrifice and devote their lives, effort and wealth for the sake of Islam.²¹ Furthermore, *jihād* of holy war has its specific ethics that must be followed as been suggested by the *Ḥadīth*.²²

¹⁸ There are at least 4 topics related to Martyrs revealed in the *Qur'an* such as 'not dead' (2: 154), (3: 169), 'rejoice in Grace and Bounty from Allah' (3: 170, 171), 'receive forgiveness and mercy' (3: 157, 158), 'will receive good provision' (22: 58,59).

¹⁹ Abū Hurairah, may Allah be pleased with him, reported: The Messenger of Allah (may peace be upon him) said: While a man walks along a path, finds a thorny twig lying on the way and puts it aside, Allah would appreciate it and forgive him. The Holy prophet (may peace be upon him) said: The martyrs are of five kinds: one who dies of plague; one who dies of diarrhea (or cholera); one who is drowned; one who is buried under debris and one who dies fighting in the way of Allah the Great and Almighty (Agreed upon by Bukhari and Muslim, no.1130). See CD *al-Bayān* (2000), issued by Sakhr.

²⁰ Umar bin al-Khaṭṭāb, may Allah be pleased with him, reported: The Messenger of Allah (peace be upon him) said: (The value of) an action depends on the intention behind it. A man will be rewarded only for what he intended. The emigration of one who emigrates for the sake of Allah and His Messenger (peace be upon him) is for the sake of Allah and His Messenger (peace be upon him); and the emigration of one who emigrates for gaining a worldly advantage or for marrying a woman is for what he has emigrated (Agreed upon by Bukhārī and Muslim, no.1128). *Ibid*.

²¹ "That you believe in Allah and His Messenger (Muhammad s.a.w), and that you strive hard and fight in the Cause of Allah with your wealth and your lives: that will be better for you, if you but know!" (*Sūrah al-Ṣaff*: 11).

²² Narrated Sulaymān bin Buraydah on his father's authority (from 'Āishah r.a.): Whenever Allah's Messenger appointed a commander over an army or a Sariyah, he instructed him to fear Allah himself and consider the welfare of the Muslims who were with him. He then used to say, "Go out for Jihad in Allah's Name in Allah's Path and fight with those who disbelieve in Allah.

In connection with the Middle Eastern struggle for liberation from domination and humiliation, the expression of martyrdom or *al-Istishhādiyyah* has been controversially discussed either in accordance with Islamic legal texts or in contrast with Islamic principle; simultaneously, many terms have been illustrated to this kind of expression such as terrorists attacks, suicide bomber, Islamic militant and the like. These critical expressions will be examined in order to gain a better understanding and knowledge upon that expressions.

On April 21, 2001, the London-based Arabic language newspaper *al-Sharq al-Awsāt*, highlights the view of Saudi Grand Mufti, Sheikh Abdulaziz bin Abdallah al-Sheikh, who is unsure whether killing oneself in the midst of the enemy is endorsed by Islamic law or is considered as *Jihād*. He concerns that the killing could be classified as committing suicide; an action considered to be an unforgivable sin.

This view causes a great debate among Muslim scholars and intellectuals. Many of them disagree on the term suicide bombers to depict the Palestinian human bombers to resist the Zionist occupation in their homeland. At this stage, they prefer the term *al-'Amaliyyāt al-Istihhādiyyah* in connection with Palestinians fighting.

The action of *al-Istishhādiyyah* or martyrdom operations has been juristically discussed in terms of its legitimacy particularly in many *fatawas* or Islamic legal opinions, which are issued by many scholars in connection with

Go out for Jihad and do not indulge in Ghulul, or be treacherous, or mutilate anyone, or kill a child. When you meet your enemy the polytheists, summon them to three things, and accept whichever of them they are willing to agree to, and leave them alone: Call them to Islam, and if they agree accept it from them, and summon them to leave their abodes and transfer to the abode of al-Muhājirīn (the Emigrants). But if they refuse, then tell them they will be like the desert Arab Muslims, thus they will have no Ghanimah or Fai' unless they participate in the Jihad with the Muslims. If they refuse Islam, demand the Jizyah from them, and if they agree accept it from them. If they refuse seek Allah the Most High's help against them and fight with them. When you besiege a fortress, and its people wish you to grant them the protection of Allah and His Prophet, grant them neither but grant them your protection, for it is less serious to break your guarantee of protection than to break that of Allah. And if they offer to capitulate and have the matter referred to Allah's Judgement, do not grant this, but let them have the matter referred to your judgement, for you do not know whether or not you will concur with Allah the Most High's Judgement regarding them." (Muslim, *Ṣaḥīḥ Muslim*, in *Kitāb al-Jihād*, no.1089). *Op.cit.*

the expression of struggle by Muslims to protect their life, honour, family and homeland for Allah s.w.t. Many proofs of Islamic legal texts i.e. the Qur'an and the *Ḥadīth* have been referred to legitimate *al-Istishhādiyyah* as a divine expression of *Jihād* to fight enemies who invade a Muslim's country.

Many scholars refer to variety of verses in the Qur'an in line with *jihād* of the holy war. For instance, Dr. Yūsuf al-Qaradawī²³ refers to verse 60 of *Sūrah al-Anfāl*,²⁴ whereas Dr. Aḥmad Abd. Karim Najib²⁵ refers to verse 195,²⁶ 207²⁷ of *Sūrah al-Baqarah* and verse 84²⁸ of *Sūrah al-Nisā'*. To elaborate these verses in connection with martyr operations, the references are made to *mufasssirūn* (Qur'anic commentators) such as Qurtubī,²⁹ al-Jassas³⁰ and Ibn al-'Arabī.³¹

²³ See <http://Qaradawi.net>.

²⁴ "And make ready against them all you can of power, including steeds of war (tanks, planes, missiles, artillery) to threaten the enemy of Allah and your enemy, and others beside whom, you may not know but whom Allah does know. And whatever you shall spend in the cause of Allah shall be repaid unto you, and you shall not be treated unjustly."

²⁵ See <http://islamtoday.net/articles>

²⁶ "And spend in the cause of Allah (i.e. *Jihād* of all kinds) and do not throw yourselves into destruction (by not spending your wealth in the cause of Allah), and do good. Truly, Allah loves *al-Muḥsinūn* (the good-doers)."

²⁷ "And of mankind is he who would sell himself, seeking the pleasure of Allah. And Allah is full of Kindness to His servants."

²⁸ "Then fight (O Muhammad s.a.w) in the cause of Allah, you are not tasked (held responsible) except for yourself, and incite the believers (to fight along with you), it may be that Allah will restrain the evil might of the believers. And Allah is stronger in might and stronger in punishing."

²⁹ Imam Qurtubī clarifies that the verse 207 of *Sūrah al-Baqarah* is about the one who goes into the enemy by himself only to fight in the holy war for the sake of Allah. See al-Qurtubī (n.d.), *Jāmi' li Aḥkām al-Qur'ān*, Beirut: Dār al-Kutub al-'Arabī, v.2, p.261.

³⁰ Al-Jassas argues that if one man advances alone on a thousand men, there is no harm at all if he thinks that he could be saved or that he could inflict harm on them. If he is not seeking to be saved nor to inflict harm on them, I would dislike it because he is disposing himself without to benefit the Muslims. But if he was seeking to motivate the Muslims, in order for them to do the same and so that they would kill the enemy and inflict maximum damage, it is allowed to do so. See al-Jassas (n.d.), *Aḥkām al-Qur'ān*, Damshiq: Dār al-Fikr, v.1, p.327.

³¹ Ibn al-'Arabī argues that if someone says I want to kill myself for the sake of Allah, this is an abstract saying, if he did so for the sake of Allah and that led to him being killed, he is doing a good deed. This is the way of the

Apart from the Qur'anic verses, many *Aḥādīth* have been referred to uphold the legitimacy of martyrdom operations in which the Prophet praises his disciples who engage in the battlefield for the sake of Allah and Islam. Many narrators of the *Hadīth* have been referred in this respect such as Bukhārī,³² Muslim,³³ Abū Dāwud and Tirmidhī.³⁴ These narrations are then

disciples of the Prophet s.a.w used to do. See Ibn al-'Arabī (1972), *Aḥkām al-Qur'ān*, v.1, Beirut: Dār al-Ma'rifah, p.166.

- ³² When the people drew themselves up in battle array, 'Amīr caught hold of his sword that was rather short. He drove a Jew before him to strike him with it. (As he struck him), his sword recoiled and struck his own knee, and 'Amir died of the wound. When the people returned (after the conquest of Khaibār) and Salamah had caught hold of my hand, and said: The Messenger of Allah (may peace be upon him) saw that I was silent (and dejected); he said: What's the matter with thee I said to him: My father and my mother be thy ransom, people presume that 'Amīr's sacrifice has been in vain. He asked: Who has said that I said: So and so and 'Usaid bin Ḥuḍāir al-Anṣārī. He said: Who has said that has lied. For him (for 'Amīr) there is a double reward. (He indicated this by putting two of his fingers together). He was a devotee of Allah and a warrior fighting for His cause. There will be hardly any Arab who can fight as bravely as he did. (Agreed upon by Bukhārī and Muslim, Chapter on the Battle of Khaybār, no. 1070). *Op.cit.*
- ³³ It is narrated by Anas b. Malik that the Messenger of Allah and seven of the Ansar faced a large number of *Quraishes* on the Battle of *Uhud*. He said: "The one who can fight them will be rewarded with Paradise or will be my friend in Paradise." One of the Ansar began to fight and died and the seven were also dead. The Prophet s.a.w said: "Our companions were not just with us - meaning that they have got paradise and left them alive." Nawawī, (n.d.), *Sharḥ Ṣaḥīḥ Muslim*, v.7, p.430.
- ³⁴ Aslamah ibn 'Imrān narrated; "We were in the city of the romans, and they sent a big division against us, from the Muslim came another army the same size and more, the group was under the control of Abd al-Raḥmān ibn Khālīd bin Wālīd, one Muslim alone went towards the army of the enemy (of a few thousand) and he entered into them and called them to fight." People started to say "Subḥāna Allāh, this man has put himself into harm." Abū Ayyub al-Anṣārī stood, and said: "O people you made incorrect interpretation of this verse, this verse revealed to us when Islam has established and many supporters. At that time, some Muslims say (secretly), let us stay in our property and become richer. Thus, Allah s.w.t revealed the verse (spend for the sake of Allah and do not put yourself into harm). To put yourself in harm means that we stay in our houses and abandon fighting. Abū Ayyūb al-Anṣārī was a mujahid and went on to fight even in his old age, and was buried in the land of the Romans. (Narrated by Abū Dāwud in *Kitāb al-Jihād*, no.2151; Tirmidhi in *Kitāb Tafsīr al-Qur'ān*, no.2898; See www.hadith.al-islam.com.

commented by numbers of scholars who verify the significance and legitimacy of martyrdom operations.³⁵ For Ibn Taymiyyah³⁶ and Muḥammad al-Ṣālīh al-‘Athimīn,³⁷ martyrdom operations are considered as Public Interest of the Muslim *ummah*.

It appears that based on the above selected proofs of Islamic legal texts, in July 2003, the European Council for Fatwa and Research that convened in Stockholm for its eleventh session discusses the legitimacy of martyrdom operations or *al-Istishhādiyyah*. In this conference, the focus was given on the paper research prepared by Dr. Yūsuf al-Qaraḍawī on definition of the term ‘terror’ in which examines martyrdom operations. As a result, the conference concurs with al-Qaraḍawī’s arguments:³⁸

“The martyrdom operations carried out by the Palestinians faction to resist the Zionist occupation are not in any way included in the framework of prohibited terrorism, even if the victims include some civilians.”³⁹

In line with this fatwa, al-Qaraḍawī gives six reasons that can be summarised as follows; i) Israel society is a military society, ii) Israel society is a society of invaders, iii) The blood and property of people of *Dār al-Ḥarb* [the domain of disbelief where the battle for the domination of Islam should be waged] is not protected, iv) It is permissible to kill non-Muslims in order to liberate the land of the Muslims from its occupiers and oppressors, v) The Zionist entity is one army, vi) Necessities permit prohibitions.

The Scholars of al-Azhar and the al-Azhar Center for Islamic Research have the same stand and view regarding Palestinians *al-Istishhādiyyah*.⁴⁰ In their argument, as long as the Palestinians keep their divine intention of *al-Istishhādiyyah* for the sole of Allah in which to protect their rights and to

³⁵ Ibn Ḥajar al-‘Asqalānī states that it is agreed by disciples to allow oneself into the areas of harm in Jihad for the sake of Allah. (See *Fatḥ al-Bārī*, v.12, p.316). Imām al-Nawawī also states that there is an agreement to sacrifice a life for the sake of Jihad. (See *op.cit.*, *Sharḥ al-Muslim*, v.12, p.187).

³⁶ Ibn Taymiyyah, *op.cit.*, *Majmū‘ al-Fatāwa*, v.28, p.540.

³⁷ Muḥammad al-Ṣālīh al-‘Athimīn (n.d.), *Sharḥ Riyāḍ al-Ṣālīhīn*, (n.p.), v.1, p.165.

³⁸ See *al-Sharq al-Awsāṭ* (London), July 19, 2003.

³⁹ The full text of translation is referred to this website <http://memri.org/bin/article> (14.6.04).

⁴⁰ See *al-Ḥayāt al-Jadīdah*, April 27, 2001.

liberate their land - the martyrdom operations is considered as the highest jihad in Islam.

Based on the above arguments, it can be concluded that the ongoing *al-Istishhādiyyah* particularly amongst Palestinians has been juristically endorsed by authoritative institutions such as the European Council for Fatwa and Research, the Scholars of al-Azhar and the al-Azhar Center for Islamic Research. Their analysis and subsequent arguments with reference to Islamic legal texts to endorse *al-Istishhādiyyah* are considered valid and authentic. By referring to verses of the Qur'an and many authentic *Hadith*, including the analysis from leading scholars, the legitimacy of *al-Istishhādiyyah* is proven particularly for desperate inhabitants such as Palestinians. Furthermore, the recent research at Master level with particular topic to 'Martyrdom Operations According to *Siyāṣah Syar'īyyah* (Islamic Political Science)'⁴¹ concludes that *al-Istishhādiyyah* is valid and in line with the principle of Jihad in Islam, particularly for Palestinians and Chechens in which their homeland are occupied by enemies.

Although the nature of *al-Istishhādiyyah* is similar to suicide bombing in many ways and contrast with the preservation of life, it has nevertheless been legitimised by the authority of Fatawas or Islamic legal opinions in which the condition of 'necessities permit prohibitions' is applied. In the nature of *al-Istishhādiyyah*, it appears that the preservation of honour is much more important than the preservation of life, particularly in the case of Palestinians. As Muslims are keen to die in honourable way, to die in the form of *al-Istishhādiyyah* for the sake of Allah to liberate the homeland from enemy occupation, is part of honourable death in Islam.

c. Preservation of Honour

In Islamic legal texts, the preservation of honour means to keep the Muslim life in accordance within the principles of Islamic law. The *Ḥadīth*⁴² of the

⁴¹ Johari Hussain (2002), *Martyr Operations According to Siyāṣah Syar'īyyah*, Department of Islamic Political Science, Academy of Islamic Studies, University of Malaya.

⁴² Nu'mān bin Bāshir, may Allah be pleased with him, reported: I heard Allah's Messenger (peace be upon him) as saying this (and Nu'mān pointed towards his ears with his fingers): What is lawful is evident and what is unlawful is evident, and in between them are the things doubtful which many people do not know. So he who guards against doubtful things keeps his religion and honor blameless, and he who indulges in doubtful things indulges, in fact, in unlawful things, just as a shepherd who pastures his

Prophet Muhammad (s.a.w) clarifies that Muslims must be aware of the lawful and unlawful things in their life in order to keep their religion and honour blameless. At this point, it can be learnt that to keep honour in Muslim life will therefore keep religion as well. In practice, should Muslims ignore to follow the main principles of Islamic law, the result will be a profound loss of honour and religion.

In relation to the particular situation in Iraq and Palestine-Jerusalem, it can be concluded that the honour of the Muslim *ummah* has been deliberately ruined through many ways and factors. One of the obvious factors is the control of tyrannical leaderships in Muslim countries, together with political, economic and military occupation by Israel in Palestine; and America and the Allies in Iraq. Thus, the life of Muslim *ummah* is mostly dishonoured and humiliated. In addition, the manipulation of all types of mass media to depict and illustrate many forms of expression in the Middle East effectively contributes to the process of dishonour and humiliates the Muslim *ummah* in general.

In Iraq, to regain the honour of Muslim life, Muslim leaderships in interim Iraqi government must have the honourable life to lead the Iraqi people in line with Islamic principles. In order to gain that honourable leadership, justice, integrity and security must be implemented at all levels of administration. Muslim leadership must devote to implement the Qur'anic ordains; 'A fair land and an Oft-Forgiving Lord'⁴³ The brutality of Saddam Hussien's era upon Iraqis must be acknowledged and identified as the main lesson for any Iraqi leadership and will not be tolerated. The best option to create unity and stability amongst Iraqis is to live under Islamic government in which the Qur'an and the *Hadith* are referred as the primary sources for the new Iraq's constitutional law. This option would avoid any different element amongst Sunni and Shi'ite Iraqis since the Qur'an and the *Hadith* are the centre and only the meeting point among them.

In Palestine-Jerusalem, politically, Muslim life is totally dishonoured, threatened and denied by Israel. They became a dispossessed and marginalized people in their homeland⁴⁴ and unfortunately, international Muslim

animals round a preserve will soon pasture them in it. Beware, every king has a preserve, and the things Allah has declared unlawful are His preserves. Beware, in the body there is a piece of flesh; if it is sound, the whole body is sound, and if it is corrupt the whole body is corrupt, and hearken it is the heart (Agreed upon by Bukhārī and Muslim, no.933), *op.cit.*

⁴³ *Sūrah Sabā'*: 15

⁴⁴ Dawoud el-Alami, *op.cit.*, p.112.

organisations such as O.I.C and Arab League have no authority to protect the rights of Muslim Palestinians. Though the former has laid down many resolutions regarding the solution for the Palestine-Israel conflict, the international political authority is responsible to the Security Council of United Nations in which America has the greatest dominance. In fact, non-Muslim organisations such as G8 and Quartet have bigger authority to determine and control Israel's policy and military action upon Palestine-Jerusalem. Under these difficult circumstances, it can be seen that to regain the Palestinians honour, the action of *al-Istishhadiyyah* is part of individual efforts for uncertain solutions for the Palestine-Israel conflict.

d. Preservation of Intellect

The first revelation of the *Qur'an* commands reading in the name of the Lord who has created (all that exists).⁴⁵ This divine commandment is followed by many verses of the *Qur'an* insisting all Muslims to think intellectually upon the creations of the creator.⁴⁶ Furthermore, the *Qur'an* affirms that scholars and believers will gain the status quo and reward by Allah s.w.t.⁴⁷ Importantly, scholars are classified as the best group of believers who fear Allah s.w.t.⁴⁸ and this obviously highlights the preservation of intellect in Islam.

In Islamic law, the rule which forbids the drinking of alcohol or any kind of intoxicant⁴⁹ aims at preserving efficacy of the human intellect and preventing dysfunctional behaviour resulted from consuming alcohol. This ruling indicates that one of the main objectives of the implementing of Islamic law is to preserve the tradition of intellect and intellectuality of Muslim life.

The tradition of intellect and intellectuality can be depicted as a skeleton in Islam in the past, present and future. The valued collections of main references in many disciplines of knowledge indicate that Islam is a divine religion emphasizes the activity of research, analysis and publication. The

⁴⁵ *Sūrah al-'Alaq*: 1-5

⁴⁶ For instance in *Sūrah al-Ghāshiyah*: 17-20 ("Do they not look at the camels, how they are created?" [17], "And the heaven, how it is raised?" [18], "And at the mountains, how they are rooted (and fixed firm)" [19], "And at the earth, how it is outspread?" [20].

⁴⁷ "Allah will exalt in degree those of you who believe, and those who have been granted knowledge." *Sūrah al-Mujādilah*: 11.

⁴⁸ "It is only those who have knowledge among His slaves that fear Allah." *Sūrah Fātir*: 28.

⁴⁹ The Prophet said: "Every intoxicant is wine and every intoxicant is forbidden." (Agreed upon by Bukhārī: 5147 and Muslim: 1784)

numbers of prolific and prominent scholars - in the past and the present - in many types of knowledge, is another indicator to underline that Islam is based on valued knowledge and wisdom. Moreover, the expression of legal reasoning in the form of *Ijtihad* and *Fatāwas* signifies that Islamic law revealed from divine texts allows the flexibility in its application for humanity. At this stage, it can be concluded that Islam preserves the intellectual tradition through the divine sources i.e the *Qur'an* and the *Hadīth*.

Historically, the city of Baghdad was well known as the heart of Islamic knowledge particularly in the era of the golden age of Islam during 'Abbasids emperor. Many scholars were the product of Baghdad covering many branches of knowledge. Apart from scholars in Islamic knowledge, Baghdad had many leading scientists, chemists, astronomers, geographers, and mathematicians. However, The glory of Baghdad was ended by the attack and subsequent conquer by Monghul in 1258 C.E. Currently, Baghdad and Iraq as a whole retreated to the day of darkness. It is reported that since April 2003, many intellectuals and academics have been killed and about 2000 professors and lecturers have fled from Baghdad only one year after the US-led war.⁵⁰

In Palestine, the glory of intellectual activities was well known through the history of *Bilād al-Shām* in which consists of Syria, Jordan, Palestine and Lebanon. During the Umayyad Caliphate, Sham was the government's centre and Damascus was the capital city. In the *Qur'an*, the verse 71 of *Sūrah al-Anbiyā'* (*the land which We have blessed for the 'Ālamīn [mankind and jinn]*) refers to *Bilād al-Shām* which indicates to the land of the Prophets and Islamic Jerusalem. However, the ongoing situation in Palestine can be seen as too hopeless for scholars and intellect to get back their freedom and rights. The assassination of many Muslim scholars by Israel in the name of connection with so-called militant groups will contribute to the brain drain of Palestinian scholars.

e. Preservation of Wealth

The *Hadīth* of the Prophet insists that should a Muslim die to protect his wealth, the death is considered as martyr.⁵¹ The preservation of wealth is therefore a crucial matter in Muslim life, as wealth is a given by Allah

⁵⁰ <http://english.aljazeera.net>

⁵¹ 'Abdullah bin 'Amr, may Allah be pleased with them, reported: I heard Allah's Messenger (peace be upon him) had observed: He who died in defence of his property is a martyr. (Agreed upon by Bukhārī and Muslim, no. 83), *op.cit.*

through efforts and unexpected sources,⁵² the way of spending wealth is encountered in the hereafter. Being a rich and wealthy is a test in the human indicates that either a person becomes a steward of wealth, or sustains his rule as a servant of God.

The *Qur'an* commands believers to financially assist others in the form of *Zakāt*, *Infāq* and *Ṣadaqah*. This commandment is meant to share the profit amongst humanity and as expression of thanking Allah almighty as the most powerful Giver. In other words, the wealth must be managed to strengthen individual life of Muslim as well as the community or *ummah*.

Return to the Middle Eastern scenario, it appears that many of the Arab Gulf countries are the biggest producers of oil in the world. As the Prophet reminds in many *Ḥadīth* that this wealth (oil) will be a test for the Arab people; either they become stewards of wealth or sustains their rule as servants of God.⁵³ The existing conflict suggests that the Arab people are being tested by Allah.

Politically, it can be seen that most of the Arab Gulf countries fail to utilise the wealthy of oil as a representation of a respected authority on the ongoing conflict in Iraq and Palestine-Jerusalem. It appears that the Arab Gulf countries or Arab League fail to follow the unity and stability of the EU (European Union), which becomes the balance power for the United State of America. Since the Arab countries share one religion i.e. Islam, one language i.e. Arabic and share many historical values, theoretically, they have more advantages in being recognised as a respected authority in their own continent compared with the USA and the Allies.

⁵² "And He will provide him from (sources) he never could imagine. And whosoever puts his trust in Allah, then He will suffice him. Verily, Allah will accomplish his purpose. Indeed Allah has set a measure for all things." (*Sūrah al-Ṭalāq*: 3).

⁵³ Abū Hurairah, may Allah be pleased with him, reported: Allah's Messenger (peace be upon him) said: "The Last Hour will not come before wealth becomes abundant and overflowing, so much so that a man takes Zakah out of his property and cannot find anyone to accept it from him, and till the land of Arabia becomes meadows and rivers." (Agreed upon by Bukhārī and Muslim, no. 558), *op.cit.*

f. Preservation of Lineage

The *Qur'an* commands believers to educate their family and relatives in line with the way of Islam and therefore to become good *ummah*.⁵⁴ For this reason, the *Ḥadīth* insists Muslim to follow specific criteria (between prospective couple) before marriage to form the basic foundation in building a good family.⁵⁵ To achieve this objective, the Prophet (s.a.w) reminds that parents are responsible to educate their children in accordance with Islamic teachings and values.⁵⁶ The failures of Islamic education will lead to a profound loss of quality for the future Muslim generations. Therefore, education is considered as the best way to preserve the quality of subsequent generations of the Muslim *ummah*.

Nevertheless, the factors of stability in political, economic and social life in a country, again, become the *de facto* element to build and preserve the future generations of the Muslim *ummah*. The uncivilised Israelites occupation of Palestine and the invasion and humiliation of America and the Allies in Iraq, deliberately contributes to the demolishing and ruining of the lineage system for Iraqis and Palestinians. When the houses of Palestinians are being demolished by Israeli armies, what left could be prescribed for the sake of preserving good Islamic education for future generation. When killing becomes a typical phenomenon in Iraq what else would be hoped for a better life, particularly for widows and orphans? To put it blatantly, the preservation of future generations have been deliberately threatened and marginalized by collective enemies particularly in Iraq and Palestine.

⁵⁴ *Sūrah Luqmān*: 12-19.

⁵⁵ Abū Hurairah, may Allah be pleased with him, reported: Allah's Messenger (may peace be upon him) said: A woman may be married for four reasons: for her property, her status, her beauty and her religion; so try to get one who is religious, may your hand be besmeared with dust (may you enjoy welfare) (Agreed upon by Bukhārī and Muslim, no. 848), op.cit.

⁵⁶ Abū Hurairah, may Allah be pleased with him, reported: Allah's Messenger (may peace be upon him) said: An infant is born according to his (true) nature. It is his parents who make him a Jew, a Christian, just as a she-camel gives birth to its young ones. Do you find any deficiency in their limbs? (Agreed upon by Bukhārī and Muslim, no. 1551), *Ibid*.

CONCLUSION

In Iraq and Palestine-Jerusalem, the preservation of public interest of the Muslim *ummah* must be considered as a main solution to achieve stability in political, economic and social life. The continuous domination of invaders and occupiers on both the Muslim land in Iraq and Palestine-Jerusalem will deliberately threaten and deny the rights of the Muslim *ummah* to preserve their six fundamental necessities of public interest i.e. religion, life, honour, intellect, wealth and its lineage.

The liberation of Muslim *ummah* from the domination of invaders and occupiers in their homeland through different types of struggle can be seen as the highest efforts of Jihad in their life. The controversial expression of *al-Istishhādiyyah* or martyrdom operations has been undertaken by individual and groups in their struggle to liberate their country from superpower domination. It is suggested that the best solution to prevent this type of expression is to return the rights of the Muslim *ummah* to manage and build their country in line with principles laid down by the Qur'an and the *Hadīth*.

To lead a struggle of building a sovereign government, Muslim leaderships must devote to implement every Islamic principles in order to bring justice, prosperity and stability in all fields of life. As leadership is responsible for its consignment, likewise, Muslim leaderships must follow the Prophet's way (s.a.w) to be respected leader by the people.⁵⁷ This is due to the fact that only respected leader will lead the effective struggle, particularly to build Iraq as a sovereign government.

For the Palestine-Jerusalem solution, as the Muslim *ummah* becomes a dispossessed and marginalized people without authority and credibility of international Muslim organisation in protecting their human rights, *al-Istishhādiyyah* can be seen as the only choice for Palestinian's struggle. An attempt has been made to introduce a purely academic approach regarding Palestine-Jerusalem solution. The new field of inquiry of Islamic Jerusalem Studies has been introduced by al-Maktoum Institute in Dundee, Scotland

⁵⁷ Ibn 'Umar, may Allah be pleased with them, reported: The Prophet (may peace be upon him) said: "every one of you is a caretaker, and is responsible for his consignment. The ruler is a caretaker of people, and is responsible for his subjects. A man is a caretaker of his family, and is responsible for them. A woman is a caretaker of her husband's house and children, and is responsible for them. A slave is a caretaker of his master's property, and is responsible for it. All of you are caretakers, and all of you are responsible for their consignment." (Agreed upon by Bukhārī and Muslim, no. 1084), *Ibid*.

which aims “to investigate all matters related to Islamic Jerusalem region and examines its various aspects with interdisciplinary and multi-disciplinary approaches in order to understand the uniqueness of this region and its effect on the rest of the world”.⁵⁸ To make this aim a reality, this new field must be opened widely for interested researchers from various fields and backgrounds. In addition, the inter religious discussion between Islam, Judaism and Christianity must be considered as an important approach to seek religious perspectives towards the solution in Palestine-Jerusalem and the Middle East in general.

⁵⁸ This definition is presented by Prof. Abd. al-Fattah el-Awaisi at *The International Academic Conference of Islamic Jerusalem Studies* on 31st May 2004, held at Shaikh Rashid Conference Hall, al-Maktoum Institute for Arabic and Islamic Studies, Dundee, Scotland.

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