

JOURNAL OF
COMPARATIVE LAW

Vol. 4, No. 1
Jan. 2017

ENVIRONMENTAL PROTECTION IN THE ECO-DYNAMICS OF ISLAMIC LAW

By
Hamzah Adesola Dawood*

Introduction

The uniformity and orderliness in the creation of the universe are the clear expression of omnipotence and omniscience of the Designer and Fashioner of the environment. This uniformity can be observed in the diversity of nature and is constantly appealed to in the Qur'an as a sign of the Unity of the Maker.¹ The Qur'an says:

In the creation of the heavens and the earth, and the alternation of night and day, and the ships that run in the sea with that which profits men, and the water that Allah sends down from the sky, then gives life therewith to the earth after its death and spread in it all (kinds of) animals, and the changing of the winds and the clouds made subservient between heaven and earth, these are surely signs for a people who understand.²

There are several cycles that are operational in the nature-system, e.g. the water cycle, the nitrogen cycle, carbon cycle which maintain a balance in their quantity.

Allah in His perfect arrangement of the creation has made the maintenance of these cycles so neat and orderly.

Similarly, Allah has made the ecosystem of the environment peaceful and serene. But man had continued to make move to distort this arrangement.³

Man was created from the earth and he grows by way of it, as the plants also grow from it, that water is a fundamental of life, and that the Almighty Allah in His divine mercy and benevolence has honoured man in this world, by making him His vicegerent on earth. Thus, he entrusted him with the building it by using its natural resources and its goods, environmental conditions, so as to have better understanding of His power and His abundant blessings to him.⁴ And that the natural environment of this

* Lecturer in the Department of Business Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria (LLB, LLM)

¹Hamzah, A.D., (2007), Islamic Perspective of the Environment, Daily Independent Newspaper (a Nigerian Daily Newspaper) of 24th July, 2007.

² Qur'an 2:164

³Hamzah, A.D., *ibid.*

⁴ Al-Balagh Foundation, (2009), Environmental Protection in Islamic Shari'ah, (www.islamiceducationcenter.org) p. 4.

world, like mountains, is meant for protecting the equilibrium of the earth and its living creatures, by production and consumption, which live under the system of life's equilibrium.⁵

The Islamic environmental philosophy is first of all holistic – it assumes a fundamental link and interdependency between all natural elements and bases its teachings on the premises that if man abuses or exhausts one element, the natural world as a whole will suffer the direct consequences.⁶ This fundamental principle underscores the formation and foundation of all actions and utterances of the Prophet of Islam and it is a philosophy that defined him as a person.⁷

Therefore, the capacity of the Islamic legal system to transform our global village into the standard of our dream and aspiration is not after all, utopian.⁸ Both theory and practice coupled with historical antecedent confirm its capacity to effect positive transformation.

This capacity has been manifested in the course of its march on the terrain of history. For instance, in the medieval period i.e. 900-1400 AD, Islamic system flourished as it produced science and technology out of which emerged authorities in Medicine, Pharmacology, Ophthalmology, Chemistry, Mathematics, Geography, History, Sociology, Law, Linguistics and Exegesis⁹ among other disciplines. The Muslim Scholars that emerged during this period were renowned intellectuals in those fields. Their sagacity and commitment to research work is monumental. These intellectuals include inter alia, al-Razi (865-925), Ibn Sina (980-1073), Ibn-Rushd (1037), al-Khawarizm (780-850), and Imam al-Ghazzali (1058-1111), Tabari (838-923).¹⁰ During this period, notable institutions of higher learning emerged. They include Baytul Hikmah (House of wisdom) in Baghdad (present capital city of Iraq), al-Ashar University Cairo (present capital city of Egypt),

⁵ Ibid.

⁶ Francesca, D. C., (2003) A Pioneer of the Environment, (Islam Online's Contemporary Issues) p. 1.

⁷ Ibid.

⁸ Bidmos, M. A., (2008) ~~Utilizing the Potential of Islamic Education in Nation Building~~ (An Inaugural Lecture Delivered at University of Lagos) University of Lagos Press, p. 21.

⁹ Ibid.

¹⁰ Ibid.

and Qyrawan University in North Africa and Cordova University in Spain.¹¹ Muslim scholars had achieved advancement in the above-mentioned disciplines, and particularly medical sciences to successfully perform surgical operations on patients who required such operations. This was at a time when patients were treated with holy water in Europe because it was considered sacrilegious and heretical to subject a patient to surgical operation.¹²

On a number of occasions Prince Charles of England was reported to have paid glowing tributes to Islamic contributions. For instance, at the opening ceremony of the Department of Islamic Studies at the Cambridge University and secondly at Harvard University, USA, where he remarked that Islamic input served as the nucleus of western thought. He did not hesitate to inform his audience that the Muslim intellectual activities in Spain launched and stimulated the Europeans into the enviable intellectual position they occupy today.¹³

The Islamic system that has made such monumental impact on human civilization, that has achieved so much in the area of science, law and humanity, that has produced great men of intellect could not be said to have nothing to offer in the area of environmental sciences and its protection. Therefore, the idea of the Prophet Muhammad (peace and blessings be upon him) as a pioneer of environmentalism should not strike anyone as strange. Indeed, the term “environment” and related concepts like “ecology”, “ecosystem”, “environmental awareness” and “sustainability”, are modern-day inventions, terms that were formulated in the face of growing concerns about contemporary state of the natural world around us.¹⁴

A closer look at passages of the Holy Qur’an and the sayings and practices (Sunnah or Hadith) - the two primary sources of Islamic Law reveal that environmental protection is abundantly provided for in the dynamics of the Islamic legal system. And that Prophet Muhammad (pbuh) must be a staunch advocate of environmental protection.

¹¹ Ibid.

¹² Ibid.

¹³ Bidmos, M. A., *ibid* at p. 22.

¹⁴ De Chatel, F., (2003), A Pioneer of the Environment, Islam Online, p. 1.

“One could say he was an “environmentalist avant la letter”, i.e. to say “an environmentalist to the letter” and a pioneer in the domain of conservation, sustainable development and resource management, one who constantly sought to maintain a harmonious balance between man and nature.”¹⁵ As could be seen later in this work, the Prophet had been reported to have demonstrated a profound respect for fauna (i.e. animal life of a region or period)¹⁶ and flora (plant life or a region or period)¹⁷, as well as an almost visceral connection to the four elements, earth, water, fire and air.¹⁸

Sources of Islamic Law

Under Islamic law, sources fall into two categories, namely, primary and secondary sources. Qur'an and Sunnah are the two primary sources. Sources here means

the places where its rules are first to be found.¹⁹ Sources provide evidence of validity to every rule of law and

legislation. It is requisite that the law should postulate one course or more first causes whose operation is ultimate and whose authority is un-derived. In every legal system, there

are ultimate principles from which all others are derived, but which are themselves self-existent – the Grundnorm.

Under the Islamic law, the basic sources of legal evidence are the Book – that is, the Qur'an – and, then, the Sunnah, which clarifies the Qur'an.²⁰

Qur'an is the Grundnorm and its legislation consists of an enunciation of general principles, although in

certain areas, the Qur'an also provides specific details. Being the first principal source of the law, the Qur'an lays

down general guidelines on almost every major topics of Islamic law.²¹

Experience shows that every 'alim (jurist) who has resorted to the Qur'an in search of the solution to a

¹⁵ Ibid.

¹⁶ Pocket Oxford Dictionary, (1994), Oxford University Press, Walton Street, Oxford OX2 6DP.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ M. Hamidullah, (1987), Muslim Conduct of State, Sh. Muhammad Asharaf, Lahore-7 (Pakistan) p. 28.

²⁰ Qadr, A.A. (1986), Islamic Jurisprudence in Modern World, Taj Company, p. 174.

²¹ Hashim, K. M., (2003), Principles of Islamic Jurisprudence, The Islamic Texts Society, Cambridge, p. 37

problem has found in the Qur'an a principle that has provided him with some guidance on the subject.²² The relevant excerpt usually quoted to support this contention runs thus: "We have neglected nothing in the Book."²³

Sunnah which is the second primary source of the law is a proof next to the Qur'an in all shar'i (legislation)

matters. Islamic Jurists are unanimous on the point that Sunnah is a source of Islamic law and that in its ruling with regard to halal (permissible or lawful thing) and haram (unlawful thing) it stands on the same footing as the Qur'an.²⁴ It provides explanation to the first primary source - the Qur'an, and in many instances makes provisions for fresh legislative rules.

The secondary sources of Islamic Law are Ijma' (consensus of opinion), Qiyas (analogical deduction), Istihsan (Juristic Preference or Equity in Islamic Law),

Maslah Mursalah (Consideration of Public Interest) and Urf (Custom) etc.

The Qur'an

Qur'an is the first primary source of the Islamic Law. The word Qur'an literally means 'reading' or 'recitation'. It may be defined as 'the book containing the speech of God revealed to the Prophet Muhammad in

Arabic and transmitted to us by continuous testimony or through report by an indefinite number of people (tawatur).²⁵ Muslim Jurists are unanimous on the fact that its authenticity is proven by universally accepted testimony and it is a proof of the prophecy of Muhammad, the most authoritative guide for Muslims, and the first source of the Islamic Law otherwise called the Shari'ah.²⁶ They are also unanimous that on the fact that the Qur'an is evidence for or against Muslim, male or female because it is the book of Allah revealed as guide for him or her. This has been confirmed by virtue of its miraculous nature.²⁷

²²Shatibi, (n.d.), Muwafaqat, III, 217 as quoted by Hashim Kamali, *ibid*.

²³ Qur'an chapter 6 verse 38.

²⁴Shawkani, (n.d.) Irshad, p. 33 as quoted by Kamali M. H., *Ibid* at p. 63

²⁵Hashim, K. M., (2003) Principles of Islamic Jurisprudence, The Islamic Texts Society, Cambridge, p.18.

²⁶ *Ibid*.

²⁷ Ali, H. (1976), *UsulTashri'il Islam*, Dar Al-Ma'arif, Cairo, p. 17.

According to the Qur'an, man is part of the natural world in his formation, growth and the continuity of his existence on this earth; interacting with the natural components and their environmental conditions, continuously.²⁸ The Holy Qur'an, in many instances, has referred to man's relationship with nature and the environment. The following are some of those instances touching on the issue of the environment: -

"And Allah has made you grow out of the earth as a growth."²⁹

"...and We have made of water everything living..."³⁰

"And to Samood (We sent) their brother Salih. He said: O my people! serve Allah, you have no god other than He; He

brought you into being from the earth, and made you dwell in

it, therefore ask forgiveness of Him, then turn to Him; surely my Lord is Nigh, Answering."³¹

"He created the heavens without pillars as you see them, and put mountains upon the earth lest it might convulse with you, and He spread in it animals of every kind; and We sent down water from the cloud, then caused to grow therein (vegetation) of every noble kind."³²

"Do you not see that Allah has made what is in the heavens and what is in the earth subservient to you, and made complete to you His favours outwardly and inwardly? And among men is he who disputes in respect of Allah though having no knowledge, nor guidance, nor a book giving light."³³

"...and sent down upon you water from the cloud that He might thereby purify you, and take away from you the uncleanness of

Satan..."³⁴

"...and We send down pure water from the cloud."³⁵

"...and He has made the ships subservient to you, that they might run their course in the sea by His command..."³⁶

"And He it is Who has made the sea subservient that you may eat fresh flesh from it..."³⁷

"From it We created you and into it We shall send you back and from it will We raise you a second time."³⁸

²⁸ Al-Balagh Foundation, (2009), Environmental Protection in Islamic Shari'ah, (www.islamiceducationcenter.org) .

²⁹Qur'an 71:17

³⁰Qur'an 21:30.

³¹Qur'an 11:61.

³²Qur'an 31:10.

³³Qur'an 31:20.

³⁴Qur'an 8:11.

³⁵Qur'an 25:48.

³⁶Qur'an 14:32.

³⁷Qur'an 16:14.

³⁸Qur'an 20:55.

"And when he turns back, he runs along in the land that he may cause mischief in it and destroy the tilth and the stock..."³⁹

The above excerpts show that the Qur'an has always influenced and still influences man's view of the place he occupies within the ecosystem.⁴⁰ Of course, the main purpose of the Qur'an, according to Muhammad Iqbal, is "to awaken in man the higher consciousness of his manifold relation with God and universe."⁴¹ It talks about man as a part of the natural environment he interacts with; gaining from it and, likewise, giving to it. He is, also, responsible for its growth, as well as, preventing vices and corruption in it.

Man, this living creature, represents a part of the natural system which activates its components towards understanding and the coordination between each other. Thus, the natural world can be defined as the balance and the accurate, scientific, calculated equilibrium from the most learned and knowledgeable being.

The amount of hard water, the salinity of a sea, the sweetness of a river, the ratio of oxygen, the grade of light

rays, the degree of heat and the quantity of rain, fish, animals, plants, etc., all this, is well calculated without the least error.

The earth and its gravitational force, rate of movement, and power of absorption, have an effect on the life of man, animals and plants, and its continuous existence in this universe shows that the knowledgeable Creator has arranged it accurately. And that the natural environment of this world, like mountains, is meant for protecting the equilibrium of the earth and its living creatures, by production and consumption, which live under the system of life's equilibrium.

Thus, the rains which fall, the plants which grow, all this, is a proof of Allah's greatness, His power, knowledge and wisdom, and any action of the Wise Knower must be accurately calculated without the least contradiction, and even if it is abused it will act in accordance with the natural system and protect the

³⁹Qur'an 2:205.

⁴⁰ Ibrahim, O., (1997), *The Ethical Dimension of Human Attitude Towards Nature*, (Ankara: Ministry of Environment, p. 1.

⁴¹ Iqbal, M., (1965), *The Reconstruction of Religious Thought in Islam*, p. 14.

environmental equilibrium, which, in one way or the other, is evidence of the greatness of the Creator and His wisdom.

Everything in this world and its natural surroundings, such as, water, animals, forests and plants, the aquatic living creatures, solar rays, heat, rain, the salinity of the sea and the sweetness of the rivers, was created for man, in order to make his life better.

In view of this fact, the Holy Qur'an enjoins man to reflect on the blessings of Allah to him and call him toward monotheism, thanksgiving and worshipping Him alone.

This is how the Holy Qur'an places man in the natural environment as part and parcel of it.

However, after explaining this relationship between life, intellect and nature, the Holy Qur'an discusses the activities, responsibilities and social systems which protect the well-being of the environment, as well as, protecting the divine will of the world of existence under the power of Shari'a.

Therefore, according to the Qur'an everything in the natural world is a sign (aya) of God and as such it is continuously praising Him. In short, the natural world as presented and described by the Qur'an, as stated above, is a living, holistic, orderly and perfect world, populated by angels, jinn, human beings and animals. Above all, the universe, with all its causal processes, is the prime sign (aya) and proof of its Maker.⁴²

In the light of the above, looking at the Qur'an's general attitude towards the universe, natural resources, and

the relation between human beings and nature we find out that: The main purpose of human beings is nothing else but

to serve God, to be grateful to Him, and to worship Him alone. Nature exists for human beings to use it and benefit from it for their own ends. The utility, serviceability, and

exploitability of nature by human beings are spoken of in numerous verses.

However, human beings are invited to use

this opportunity for the good and not to "corrupt the earth" [fasadfi'l-ard], a phrase often repeated in the Qur'an.⁴³

⁴² Qur'an 76:3-4; Qur'an 27:88, also, Fazlur, R. (1980), Major Themes of the Qur'an, (Chicago: Bibliotheca Islamica, pp. 68-69.

⁴³Fazlur, R., *ibid* at pp. 78-79; Nursi, B. S., (1995), The Words, (The Flashes Collection, trans. Sukran Vehide, (Istanbul: Socier Nesriyat) pp.

Let us now consider some specific examples of the eco-dynamics of the Qur'an.

Water and Air in the Scheme of Creation

Qur'an teaches that water occupies a central place in the scheme of creation and play indispensable role in the life of mankind. Thus, it regards water as the source of life. It says: "We have created alive everything through water."⁴⁴ "He has sent down water from the sky...."⁴⁵ Accordingly, the similar verses about rains, rivers, wind and other natural phenomena can be found in the Qur'an and all of them have been regarded as the signs of God. While rain was sent down to quicken the dead earth,⁴⁶ the wind, which comes as a promise of His Mercy⁴⁷ is responsible to announce the arrival of rain. It also so obedient to God's Will and Power it carried Solomon's throne.⁴⁸

The Qur'an constantly reminds believers that they are but the guardians of God's creation on earth and they should never take this creation for granted. It says: "Consider the water which you drink. Was it you that brought it down from the rain cloud or We? If We had pleased, We could make it bitter".⁴⁹ However, the icy wind, sarsar, destroyed the disobedient cities of 'Ad and Thamud.⁵⁰ Thus, the two phenomena are seen as two aspects of God's activity, the manifestation of His Jamal, kindness and beauty, and His Jalal, majesty, and wrath, in the two aspects of the wind which destroys the infidels and is a humble servant to the prophet Solomon. The sun, moreover, as a symbol of God, manifests both majesty and beauty; it illuminates the world and makes fruits mature.⁵¹

⁴⁴ Qur'an 21:30.

⁴⁵ Qur'an 13:17; and Lings, M. (1968), *The Qur'anic Symbolism of Water*, *Studies in Comparative Religion* 2, pp. 153-160.

⁴⁶ Qur'an 41:39.

⁴⁷ Qur'an 7:57.

⁴⁸ Qur'an 34:12.

⁴⁹ Qur'an 56:68-70.

⁵⁰ Qur'an 69:6.

⁵¹ Ibrahim, O., (1997), *The Ethical Dimension of Human Attitude Towards Nature*, (Ankara: Ministry of Environment, p. 7.

Qur'an Concept of Environmental Protection

The Qur'anic philosophy of environmental conservation, protection and preservation is based on three

principles. They are the principle of Tawheed (unity), Khilafa (stewardship) and amana (trust).⁵²Tawheed stands for oneness of God, the Creator and Sustainer. It is a cornerstone of the Islamic faith. It recognizes the fact that there is one absolute Creator and that man is responsible to Him for all his actions⁵³ and inactions. The Qur'an says: "To God belongs all that is in the heavens and in the earth, for God encompasses everything."⁵⁴

The Qur'an considers all of God's creation to be equal before God. Thus, it holds that animals, but also land, forests and watercourses should have rights. To that extent, abusing one of God's creations, whether animates or inanimate being or a natural resource, is a sin.⁵⁵

The concepts of Khilafa, stewardship, and amana, trust, emanate from the principle of Tawheed. The Qur'an teaches that mankind is favored with a privileged position among God's creations on earth: he is chosen as khalifa, "vicegerent" and carries the responsibility of caring for God's earthly creations.⁵⁶ Every Mukalaf, i.e. mature and legally binding and responsible individual is given this task and privilege in the form of God's trust.⁵⁷ In the same vein, the Qur'an repeatedly warns believers against arrogance. They should always be conscious of the fact that if it were not by the special favour of God, they are no better than other creature. The Qur'an says: "Surely, the creation of the heavens and the earth is greater than the creation of man; but most people know not."⁵⁸

Specific instruction against wastage of environmental property, it says:

It is He who produces Gardens, with trellises and without, and dates, and tilth with produce of all kinds, and olives and pomegranates, similar (in kind) and different (in variety): eat of their fruit in their season, but render the dues that are proper

⁵² De Chatel, F., (2003), A Pioneer of the Environment, Islam Online, p.

2.

⁵³ Ibid.

⁵⁴ Qur'an 4:126.

⁵⁵ De Chatels, F., ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Qur'an 40:57.

on the day that the harvest is gathered. But waste not by excess:
for God loves not the wasters.⁵⁹

In similar expression, it says: “O Children of Adam! Wear your beautiful apparel at every time and place of prayer: eat and drink: but waste not by excess, for God loves not the wasters.”⁶⁰ Emphasizing the need for moderation in exploiting the environment, the Qur’an says: “And swell not thy cheek (for pride) at men, nor walk in insolence through the earth; for God loves not any arrogant boaster.” “And be moderate in thy pace, and lower thy voice for the harshest of sounds without doubt is the braying of the ass.”⁶¹ Commenting on the two verses, Yusuf Ali, says:

The “Golden Mean” is the pivot of the philosophy of Luqman as it is of the philosophy of Aristotle and indeed of Islam. And it flows naturally from a true understanding of our relation to God and His universe and to our fellow creatures, especially man. In all things be moderate. Do not go the pace, and do not be stationary or slow. Do not be talkative and do not be silent. Do not be loud and do not be timid or half-hearted. Do not be too confident and do not be cowed down. If you have patience, it is to give you constancy and determination that you may bravely carry on the struggle of life. If you have humility, it is to save you from unseemly swagger, not to curb your right spirit and your reasoned determination.

The salient point in this commentary is that man should be moderate in his activities generally and particularly in dealings with the naturally endowments provided for him by God in the ecosystem of his planet – earth.

The Sunnah (Hadith)

Sunnah is the second primary source of Islamic Law. Sunnah literally means a clear path or a beaten track but it is also used to imply normative practice, or an established course of conduct,⁶² way, custom, habit or manner. The word ‘Sunnah’ was used by the Arab in pre-Islamic era in reference to the ancient and continuous practices of the community that they inherited from their forefathers.⁶³ Bid’ah is the opposite of Sunnah which means

⁵⁹ Qur’an 6:141.

⁶⁰ Qur’an 7:31

⁶¹ Qur’an 31:18-19.

⁶² Kamali, M.H. (2003), Principle of Islamic Jurisprudence, The Islamic Texts Society, Cambridge, p.58.

⁶³ Ibid.

innovation and it is conceptually characterized by lack of precedent and continuity with the past.⁶⁴ When it is used as an adjunct to Prophet Muhammad in linguistic or technical senses, it means what emanates from the Prophet in words, action and whatever he has tacitly approved.⁶⁵

Hadith on the other hand, literally means a narrative, communication or news consisting of the factual account of an event. It is true that scholars have used Sunnah and Hadith almost interchangeably the two terms have meanings of their own.⁶⁶ Hadith is the repository of the Sunnah.⁶⁷ The former enshrines the latter.⁶⁸ Hadith differs from Sunnah in that the former is a narration of the conduct of the Prophet whereas the latter is the example or the law that is deduced from it. Hadith in this sense is the vehicle or the carrier of Sunnah, although Sunnah is a wider concept and used to be so especially before its literal meaning gave way to its juristic usage.⁶⁹

To scholars of science of Hadith, Sunnah refers to all that is narrated from Prophet Muhammad including his act, his sayings and whatever he has tacitly approved. It also includes all the reports which describe his physical attributes and character. To scholars of Islamic Jurisprudence, Sunnah refers to a source of law and a legal proof next to the Qur'an.⁷⁰

Proof of Sunnah

Scholars are unanimous that the Sunnah of the Prophet is a proof (hujjiyah) as the Qur'an testifies to its authority and enjoins the Muslims to comply with it.⁷¹ They are also unanimous on the fact that Sunnah is the second primary source of Islamic Law and to that extent, its rulings with regard to halal (permissible thing) and haram (forbidden thing) stands on the same footing as the

⁶⁴ Ibid.

⁶⁵ Hasaba Allah, A., (1985), *Usul Al-Tashri' Al-Islami*, Dar Al-Ma'arif, Cairo, pp. 253-254.

⁶⁶ Kamali, M.H., Ibid. 61

⁶⁷ Azami, M.M., (1978), *Studies in Early Hadith Literature*, American Trust Publications, Indianapolis, p.xvii.

⁶⁸ Alfred Guillaume, M.A. (1966), *The Traditions of Islam*, Khayats, Beirut p.10.

⁶⁹ Kamali, M.H. *ibid.*

⁷⁰ Kamali, M.H., Ibid p. 61

⁷¹ Khallaf, A.W., (1947), *IlmUsul Al-Fiqh*, Cairo, p. 37.

Qur'an.⁷² Qur'an not only testifies to the authority of Sunnah, it also enjoins the Muslim to comply with it.⁷³

Several verses of the Qur'an testify to this fact. It is a legal source from which rules of law could be derived and all rules derived therefrom constitute binding force.⁷⁴ For instance, the Qur'an says:

And whatever the Messenger gives you, take it, and whatever he forbids you, abstain from it.⁷⁵ It also says: "Obey God and obey the Messenger and those who are in charge of affairs among you. Should you happen to dispute over something, then, refer it to God and to the Messenger."⁷⁶ Another verse says: 'Whoever obeys the Messenger verily obeys God'.⁷⁷ 'Whenever God and His Messenger have decided a matter, it is not for a believing man or woman to follow another course of his or her own choice'.⁷⁸

Sunnah on the Environment

The Prophet recognized man's responsibility to God but always maintained humility.⁷⁹ Thus he said: "When doomsday comes, if someone has a palm shoot in his hand, he should plant it." It implies that even when all hope is lost for mankind, one should sustain nature's growth. The Prophet believed that nature remains a good in itself, even if man does not benefit from it.⁸⁰ In another Hadith the Prophet was reported to have urged his followers to share the resources of the earth when he said: "Muslims share alike in three things – water, herbage and fire," and he considered it a sin to withhold water from the thirsty.

The environmental philosophy of Islam is further demonstrated in the attitude of the Prophet towards the sustainable use of land, conservation of water and the treatment of animals. For example, the Prophet was quoted to have said: "The earth has been created for me as a mosque and as a means of purification."⁸¹ In this Hadith, the Prophet stressed the need to appreciate the sacred nature of earth or

⁷²Shawkani, (n.d.), Irshad, p. 33, as quoted by Kamali, M.H., *ibid*.

⁷³ Qur'an, Chapter 53 verse 3, *Ibid*.

⁷⁴ *Ibid*.

⁷⁵ Qur'an, Chapter 59 verse 7.

⁷⁶ Qur'an, Chapter 4 verses 58-59.

⁷⁷ Qur'an, Chapter 4 verse 80.

⁷⁸ Qur'an, Chapter 33 verse 36.

⁷⁹ De Chatels, F., *ibid* at p. 3.

⁸⁰ *Ibid*.

⁸¹ Al-Bukhari I:331.

soil not only as a pure entity but also as a purifying agent.⁸²

That explains why Islam permits the use of dust in the performance of ritual of tayammum (i.e. dry wudu) before prayer especially when water is not available or the use of water may be injurious to a believer who intends to perform Salat (daily prayer).

The Hadith also underscores the point that earth is made subservient to man, and thus man should not overexploit or abuse it to the extent that the earth has rights, just as the trees and wildlife living within it. As part of his conceptual framework to towards sustainable use, preservation and protection of land, forests and wildlife, the Prophet was reported to have created inviolable zones known as hima and haram. By this framework, the natural resources especially the water, were to be conserved and preserved through careful and sensible method of use. The culture of hima and haram had remained current even till the present time. Haram areas are often drawn up around wells and water sources to protect the groundwater table from over-pumping.⁸³Hima on the other hand, applies particularly to wildlife and forestry and usually designates an area of land where grazing and woodcutting are restricted, or where certain animal species are protected.⁸⁴

In several Hadiths, the Prophet was reported to have warned people against water pollution by forbidding urination in stagnant water.

In the treatment of animals, a large number of

Hadiths reflects the great kindness and concern the Prophet

Muhammad had for animals. He was reported to have said that: "If anyone wrongfully kills even a sparrow, let alone anything greater, he will face God's interrogation."⁸⁵ He was said to have particular consideration for horses and camels: to him they were valiant companion during journey and battle, and found great solace and wisdom in their presence.⁸⁶ He taught his followers that animals are members of God's creation and thus, should be treated with dignity. In slaughtering of animals, the Prophet laid down good examples of how to show concern and sensitivity to

⁸² De Chatels, F., *ibid* at p. 5.

⁸³ *Ibid*.

⁸⁴ *Ibid*.

⁸⁵ *Mishkat al-Masabih*.

⁸⁶ De Chatels, F., *ibid* at p. 6.

them. He recommended the use of sharp knives and a good method so that the animal can die quickly with as little pain as possible. He warned against slaughtering an animal in the presence of other animals, or letting the animal witness the sharpening of blades. He regarded such act as equal to “slaughtering the animal twice” which he vehemently condemned.⁸⁷

As earlier stated in this paper, other sources of Islamic Law beside the Qur’an and Sunnah are regarded as secondary sources. They include, Ijma’ (consensus of opinion); Qiyas (analogical deduction); Istihsan (Juristic Preference or Equity in Islamic Law), Maslah Mursalah (Consideration of Public Interest); and Urf (Custom) etc.

Each one of these secondary sources plays vital role in the development of the Islamic legal system. It is interesting to note that the theory and practice of each of this category are based on the primary sources. In other words, each and every one of them were formulated as a method of interpreting the two primary sources - the Qur’an and Sunnah, and none of them can derogate from or contradict these two primary sources.

If the two primary sources of law contain abundant provisions for the protection and conservation of the environment, and all the secondary sources merely serve as interpretation of those primary sources, it follows that the secondary sources can expand and open wider scope in designing policy and formulating rules for the protection and preservation of the environment. For example, the principle of Maslahah Mursala (consideration of public interest) has direct relevance and application to the subject of the environment.

Maslahah mursala (Considerations of Public Interest)

Maslahah literally means ‘benefit’ or ‘interest’. When it is however qualified as maslah mursalah, it refers

to unrestricted public interest in the sense of its not having been regulated by the Lawgiver insofar as no textual authority can be found on its validity or otherwise.⁸⁸ It is a synonym of Istislah and sometimes referred to as maslah mutlaqah due to its nature of being undefined by the

⁸⁷ Ibid.

⁸⁸ Khalaf, A.W., (1947), *IlmUsul Al-Fiqh*, Cairo, p. 84.

established rules of the Shari'ah.⁸⁹ Maslaha is actually a "Manfa'a (benefit). In more figurative terms, it applies to anything that produces "good", in the sense of "useful".⁹⁰ It can be said that formulation of policy for the protection and preservation of the environment are "beneficence". Beneficence is opposed to pollution and degradation of the environment is harmful, as benefit is opposed to harm. Beneficence is pleasure obtained or maintained.⁹¹

In technical sense, it is defined as a consideration that is proper and harmonious with the objectives of the Lawgiver; it guarantees a benefit or prevent harm; and the Shari'ah provides no indication as to its validity or otherwise.⁹² As practical examples of this principle, the Companions, decided to issue currency, to establish prisons, and to impose tax (Kharaj) on agricultural lands in the conquered territories despite the fact that no textual authority could be established as proofs for such decisions.⁹³

It should be noted that Maslah Mursala, according to majority view, does not cover issues of devotional matters and those matters of theology and legislation that are provided for in the clear texts of either the Qur'an or Sunnah. The origin of Maslah Mursala principle is found in the basic philosophy of Islamic legislation which is to secure the welfare of the people by promoting their benefit or by protecting them against harm.

Maslah Mursalah as a legal principle was first used by Imam Malik, the founder of the Maliki School. It was later elaborated and developed in the works of al-Ghazali.⁹⁴

Imam Malik approved the plea of public interest as one of the sources of the Shari'ah.⁹⁵ He named this new source al- Maslalih al-Mursalah.⁹⁶ He gave a number of reasons in

⁸⁹Kamali, M.H. (2003), Principles of Islamic Jurisprudence, The Islamic Texts Society, Cambridge, p. 351.

⁹⁰ Husain, H.H. (1994), Jurisprudence of Maslaha and Its Contemporary Applications, (Eminent Scholars' Lecture Series No. 7) Islamic Development Bank, Jeddah, p. 19.

⁹¹ Ibid, (with slight modification).

⁹²Badran, (n.d.) Usul, p. 210. Sabuni, (n.d.) Madkhal, p. 131.

⁹³Khalaf, A.W., ibid at p. 84.

⁹⁴ Edger, B. (1974) Jurisprudence: The Philosophy and Method of the Law, Harvard University Press, p. 203.

⁹⁵Mahmassani, S. (1961) Falsafah al-Tashri'fi al-Islam, E.J. Brill, Leiden, Netherlands, PenerbitanHizbi, Malaysia, p. 88.

⁹⁶Shatibi, (n.d.) I'tisam, II, 95; Ghazali, (n.d.) Mustasfa, I, 139.

support of his position. According to him, the Companions have validated it and have formulated the rules of Shari'ah on its basis.⁹⁷ Secondly, when the Maslah is consistent with the objectives of the Lawgiver, it must be upheld, for disregarding or neglecting it amounts to neglecting the objectives of the Lawgiver⁹⁸ which is ultra vires the law. Lastly, when Maslah is of the class recognized and approved under the law, and it is neglected, the likely result is the infliction of hardship on the people, which must be prevented.⁹⁹

The meaning of interpretation by means of this method is to relate a particular rule to the appropriate meaning which is consonant with the general practices of the Shari'ah; in other words, to consider the reasonable meaning which conforms to the public interest and to the intent of the Shari'ah, and then to formulate a rule that such meaning requires.¹⁰⁰

It can be seen that the principle of Maslahah Mursala (Considerations of Public Interest) as an example of secondary source of Islamic Law has direct relevance to wide range of subjects of the environment. This principle can be useful in formulating policy on control and prevention of water pollution, noise pollution and neighbourhood noise, duty of care, preservation of habitats, air pollution, waste management, private and public nuisances, and even international environmental policy as the Islamic System is inherently international in all its characteristics.

Conclusion

God, the Creator and Nourisher, has created this world and entrusted it to human beings alone, they are not the owners and masters of the natural environment. They are only trustees, stewardships on earth.¹⁰¹ More importantly, this characteristic of stewardship covers on one hand, the maintenance and utilization of the natural

⁹⁷Kamali, M.H. (2003), Principles of Islamic Jurisprudence, (The Islamic Texts Society) Cambridge, p. 355.

⁹⁸ Ibid.

⁹⁹Shatibi, A.I.I., (1914), al-I'tisam, Matba'ah al-Manar, Cairo, II, 282-7.

¹⁰⁰Mahmassani, S., ibid.

¹⁰¹ Sheikh Idris, J. (n.d.) "Is man the Vicegerent of God, Journal of Islamic Studies, pp. 99-100

environment in accordance with what God created these things for, and to take into account the order and the ecological balance of nature on the other. Iqbal underlines this point eloquently when he said:

it is the lot of man to share in the deeper aspirations of the universe around him and to shape his own destiny as well as that of the universe, now by putting the whole of his energy to mould its forces to his own ends and purposes. And in this process of progressive change of God becomes a co-worker with him, provided man takes the initiative¹⁰²: "Verily God will not change the condition of men, till they change what is in themselves."¹⁰³

The challenge of environmental crisis caused a response in the mainstream of the world religions to

construct an environmental ethics, based on religious values. As a result of this awareness, studies about the

religious and sacred aspects of nature and its relevance for environmental ethics increased in recent decades. These and other relevant views which try to develop an environmental

ethics on somehow religious foundations regarded as eco- theology as well as eco-dynamics of Islamic Law.¹⁰⁴

As the world is faced with challenges of pollution and overexploitation, desertification and water scarcity in some part of the world and flood and violent storm

elsewhere, it is time for the international community as a whole, Muslims, Christians, Jews¹⁰⁵ and other members of this global community, to take a leaf out the sources of Islamic Law and address the current environmental crisis seriously and wisely.

The dynamics of Islamic Law provide enough blue- prints on how to develop a practical environmental ethics that can be applicable to all members of this global village. What is needed is to study the Qur'an and the Sunnah of the Prophet as a whole from ecological perspectives so as to reap the abundant benefits provided through the divine guidance.

¹⁰² Iqbal, *ibid* at p. 12.

¹⁰³ Qur'an 13:12.

¹⁰⁴ Nasr, *Religion and The Order of Nature*, p.192; Arne Naes, (1989), *Ecology, Community and lifestyle: Outline of an Ecosophy*, trans. David Rothenberg, (Cambridge: Cambridge University Press), p. 182-189.

¹⁰⁵ De Chatels, F., *ibid* at p. 6.