

# AN ISLAMIC PERSPECTIVE OF ENVIRONMENTAL LAW AND POLICY.

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*“Protection of the **environment** is essential to **Islamic** beliefs and mankind has the responsibility to ensure safe custody of the **environment**.”<sup>1</sup>  
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**[Abstract It]:** *Questo contributo analizza la caratteristica peculiare della religione islamica che detiene uno straordinario ethos e sensibilità verso la protezione ambientale del pianeta nel suo insieme. Adottando un approccio basato sulla religione, è possibile considerare le due principali fonti tradizionali del diritto islamico, il Corano e la Sunna, come un enorme serbatoio verde pieno di principi e concetti legali, nonché vere e proprie politiche interne. In una certa misura, queste vengono effettivamente trasformate in azioni pragmatiche volte ad influenzare positivamente la nostra società civile globale e contemporanea nella lotta contro l'attuale crisi ambientale su larga scala. In altre parole, l'Islam contiene valori e credenze che - in senso lato - hanno il potenziale per cambiare ed altresì migliorare il comportamento collettivo della società civile internazionale. Teoricamente, sebbene non sia la panacea per tutti i mali, l'Islam può agire come uno strumento socio-legale in grado di "sintonizzare la legge con la natura". In quanto religione e stile di vita che regolano le relazioni umane e lo sviluppo socioeconomico, l'Islam sta diffondendo attraverso il suo tipo di codice di condotta l'importanza dell'obbedienza al Creatore e del pieno rispetto per l'ambiente. Tutto sommato, nel suo insieme, si dovrebbe notare che l'ethos ambientale islamico, portando con sé principi e concetti legali e politiche interne, è in grado di contribuire alla creazione di strumenti giuridici eco-progettati per il benessere e la prosperità del mondo.*

**[Abstract En]:** *This paper analyzes the peculiar characteristic of the Islamic religion holding an extraordinary ethos and sensitivity towards the planet's environmental protection at large. By adopting a religious-based approach, it is possible to consider the two main traditional sources of Islamic law, the Quran, and the Sunnah, like a huge green tank full of legal principles and concepts as well as inner policies. To some extent, these are actually transformed into pragmatic actions aiming to positively influence our contemporary global civil society in fighting against the current environmental crisis on a*

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<sup>1</sup> Fatima Al-Banna, 'Islam and Environment Protection' ([ecomena.org](http://ecomena.org) 13 September 2020) accessed 30 December 2020.

*large scale. In other words, Islam contains values and beliefs that – broadly speaking – have the potential to change and improve international society's collective behavior. Theoretically, though it is not the panacea for all ills, Islam can act as a socio-legal tool capable of "tuning the law with nature." As religion and way of life regulating human relationships and socio-economic development, Islam is disseminating through its sort of code of conduct the importance of obedience to the Creator and full respect for the environment. All in all, taken as a whole, one ought to note that the Islamic environmental ethos, by carrying with itself legal principles and concepts as well as inner policies, is able to contribute to creating eco-designed legal instruments for the wellbeing and prosperity of the world.*

**Sommario:** **1.** Introduction. – **2.** Section I: From a scientific and legal definition of environment to an Islamic one. – **3.** Section II: Main Islamic Principles and Concepts of Environmental Law governing the protection of nature. – **4.** Section III: Influence of Islamic environmental *ethos* in domestic experiences. – **5.** Section IV: The Islamic Declaration on Climate Change. – **6.** Section V: Conclusions.

## INTRODUCTION

This paper analyzes the peculiar characteristic of the Islamic religion holding an extraordinary *ethos* and sensitivity towards the planet's environmental protection at large. It is possible to consider the two main traditional sources of Islamic law, the *Quran*, and the *Sunnah*, like a huge *green tank* full of legal principles and concepts as well as inner policies. These are actually transformed into pragmatic actions aiming to positively influence our contemporary global civil society in fighting against the current environmental crisis<sup>2</sup> on a large scale. In other words, Islam contains values and beliefs that – broadly speaking – have the potential to change and improve the international society's collective behavior. It does so *inter alia* by increasing the environmental awareness and its importance within numerous national legal systems<sup>3</sup> and serving as a powerful *catalyst* to the legal development of the

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<sup>2</sup> Seyyed Hossein Nasr, "Islam, the Contemporary Islamic World, and the Environmental Crisis" in Richard C. Foltz, Frederick M. Denny, Azizan Baharuddin (eds), *Islam and Ecology, A Bestowed Trust*, (Harvard University Press 2003).

<sup>3</sup> Under this perspective, it is possible to refer to a so-called *liberal Islamic ethos* characterized by "attitudes and institutions [that] are liberal in the sense of being broad-minded and tolerant towards members of society that differ in religious conviction or political ideology from the majority. See, Sohail H. Hashmi, 'Cultivating a Liberal Islamic Ethos, Building an Islamic Civil Society' (2007) 27 (1) *Journal of the Society of Christian Ethics* <<http://www.jstor.org/stable/23561848>> (accessed 7 April 2020)

environmental protection regime at the international level. This paper offers an intellectual point of view about the opportunity of literally incorporating Islamic *green values* into the mainstream of law-making and decision-making processes in the public sphere<sup>4</sup> and combining it with the enrichment of the essential civic practice of interfaith dialogue that improves morality of individuals.

This is what Islam as a whole is being called to. All in all, it is possible to assume a *holistic* approach to scale up legal solutions for creating the operational conditions of sustainable economic development now and for the future generations to come in Muslim and non-Muslim societies. **Section I** provides a comprehensive Islamic definition of environment referring to the *Quran* and the Islamic intellectual community or “the learned ones” (*Ulama* - علماء). Of note, due to its multidimensional character, to define what is the meaning of the term environment today is a quite challenging task. **Section II** focuses on the set of the Islamic environmental legislative principles and theoretical concepts that govern the protection and conservation of nature. Subsequently, **Section III** aims at providing some critical insights primarily to demonstrate how this vibrant Islamic *ethos* contained in the *Quran* is fundamentally shaping environmental laws, policies, and institutions in several countries. This section assesses the Indonesian practice of Islamic law in relation to the case of *transboundary haze*. Then, **Section IV** shades the light on the climate change and land degradation related issues. These challenges are crucial and even present in the modern *soft law*<sup>5</sup> instruments, namely: (i) the *Muslim Seven Year Action Plan (2010 – 2017)*<sup>6</sup> and its subsequent (ii) *Islamic Declaration on Global Climate Change 2015*. Consequently, Islam (together with other religions) disseminates a sort of *Eco-Theology* or *Ecological Message*<sup>7</sup> to preserve and protect our global common goods. It is also provided an assessment about new legal and financial instruments such as the environmental courts and *green Sukūk bond*. **Section V** provides the conclusions.

## SECTION I

### **From a scientific and legal definition of environment to an Islamic one.**

It is necessary to begin methodically defining what precisely the term environment means. The environment is described as a *fluid* or *prismatic* concept because of its

<sup>4</sup> Sayyid Tahir and Ziaul Haque, ‘Islamic Perspectives on Economic Development’ (1995) 34 (4) *The Pakistan Development Review*.

<sup>5</sup> Pierre-Marie Dupuy, ‘Soft Law and the International Law of the Environment’ (1990/1991) 12 *Michigan Journal of International Law*.

<sup>6</sup> Muslim Seven Year Action Plan (2010 – 2017)

<sup>7</sup> Akhtaruddin Ahmad, *Islam and the Environmental Crisis* (Ta-Ha Publishers Ltd. 1997).

multidimensional character pertaining to science, ecology, policy, media, and advocacy. There are many definitions available at the **scientific level**, mainly linked to ecology. For instance, the *Oxford Dictionary of Ecology* provides us a broad definition of the term environment, namely: “the complete range of external conditions, physical and biological, in which an organism lives. Environment includes social, cultural, and (for humans) economic and political considerations, as well as the more usually understood features such as soil, climate, and food supply.”<sup>8</sup> Although this outlined general definition constitutes the foundation of the so-called *ecosystem approach* adopted in many multilateral environmental agreements, it is not able to provide a legal definition.

As to the specific ever evolving **legal definition** of the term environment, one initial definition could be found in the 1972 Stockholm Declaration describing it as: “the natural resources of the Earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems.”<sup>9</sup> In 1986, the New Zealand Environmental Act includes in the definition of the term environment the following wide-ranging factors: “a) the ecosystems and their constituent parts; b) all natural and physical resources; c) the social, economic, aesthetic and cultural conditions which affect the environment or which are affected by changes to the environment.”<sup>10</sup> Thus considered, as noted by Salter, there are several dimensions to be taken into account within the legal boundaries of the definition of environment, precisely among these the following ones: (i) natural (e.g., wilderness), (ii) manmade (e.g., cultural heritage) and (iii) human dimension (e.g., human security and health).<sup>11</sup>

In the general practice of Public International Law, the *International Court of Justice (ICJ)* notably stated that: “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”<sup>12</sup> It is theoretically possible to give a concise and well-founded legal dimension to the definition of the environment through this statement made by the *ICJ* recognizing that there is a clear tendency to expanding this definition as long as an holistic approach is assumed.<sup>13</sup>

Most importantly in our present context, it is to understand the definition of environment that **contemporary Islam proposes** as an “ecologically oriented

<sup>8</sup> Michael Allaby, *Oxford Dictionary of Ecology* (Oxford University Press, 2005) 154.

<sup>9</sup> Principle 2 in the Declaration of the UN Conference on Human Environment, Stockholm 1972, published in Molitor (ed), *International Environmental Law, Primary Materials*, 1991, p 81.

<sup>10</sup> R J Somerville, *Environmental Audit: Insurance; Indemnities and Proposals for Reform in New Zealand Environmental Law*, p 355.

<sup>11</sup> Cf J R Salter, *European Environmental Law, International Environmental Law and Policy Series*, 1994; W H Rodgers, *Environmental Law*, 1977, p 1. See, also, Giuseppe Poderati, ‘A Smart Legal Instrument in the face of a Global Danger: THE MINAMATA CONVENTION on Mercury 2013’ (*ambientediritto.it*) forthcoming 2021.

<sup>12</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, para. 29.

<sup>13</sup> Ben-David, Michelle. “Defining International Environmental Law.” *Ecology Law Quarterly*, vol. 38, no. 2, 2011, pp. 553–561, *JSTOR*, <www.jstor.org/stable/24115079> (accessed 29 December 2020).

religion"<sup>14</sup> wearing the vests of a long-lasting legal tradition too. Primarily, the term environment in Islam is defined by using the word *muhīt* (محيط). This term derives from the word *hata* that means "to encompass." God is the Creator of the environment which is the place where humanity lives benefiting from the amazing bounties that altogether constitute what is called nature. Everything attached to nature is considered as a sign (*āyah* آيات)<sup>15</sup> of God. Hence, the environment is sacred and divine at the same time. It is fascinating that according to the *Quran* every creature has its own rights with some limitations (e.g., defense of the sanctity of human life).<sup>16</sup>

As noted by Sayyed Hossein Al Nasr, "the Qur'an describes God as *muhīt* (surrounding or encompassing) everything; the root of the word *environment* is the concept of *surroundings*."<sup>17</sup> Mankind, particularly through Western technologies, can make the huge mistake of being so ambitious to aspire and try to dominate nature. This ambition, so far, produced environmental pollution, disasters, and damages that can lead, if not monitored, to destroy human and wildlife on Earth.<sup>18</sup>

Islam, using the word *muhīt*, promotes an economic development plainly in harmony with nature. Considering that, within the Islamic perspective, God is everything existing on Earth. Hence, the *Ummah* (the community of Muslims - أمة - believing in God's guidance and in the teachings of Muhammad) and the *Ulama* must activate the whole set of Islamic principles and norms in connection with nature by taking on a responsibility to protect the planet. This vibrant Islamic *ethos* is committed to considering the environment as sacred inasmuch this represents the link between God and the humanity as well. Islam pays attention to the ongoing

14 Mawil Izzi Dien, *The Environmental Dimensions of Islam* (Cambridge: Lutterworth, Press 2000). Mohammad Hammoud, *Environment, Ecology and Islam, Insight, New South Wales: Islamic Foundation*, 1990, Vol. 5:3, p. 19; Abdul Hadi Skinner, *Environmental Harmony-Islamic Dimensions, Insight, New South Wales: Islamic Foundation*, 1990, Vol. 5:3, p. 25; Sumaiya Quasim, *Man in Harmony with Nature, Insight, New South Wales: Islamic Foundation*, 1990, Vol. 5:3, p. 23.

15 Ibrahim Özdemir, 'Toward an Understanding of Environmental Ethics from a Quranic Perspective' in *Islam and Ecology*, (Harvard University Press 2003).

16 'Izz ad-Din ibn 'Abd as-Salam, in *Qawad'id al-Ahkam fi Masalih al-Anam*. Sayed Sikandar Shah Haneef, *Homicide in Islam*, Kuala Lumpur, A.S. Noordeen, 2000, pp. 1 – 13. As the Qur'an provides: "On that account: We ordained for the children of Israel that if anyone slew a person (take away a life) unless it be for murder or for reading mischief in the land - it would be as if he slew the whole people. And if anyone saved a life, it would be as if he saved the life of the whole people" in al-Ma'idah: 35. For the protection of animals, see, Abdul Hadi Skinner, *Environmental Harmony-Islamic Dimensions, Insight, New South Wales: Islamic Foundation*, 1990, Vol. 5:3, p. 25.

17 "Unquestionably, they are in doubt about the meeting with their Lord. Unquestionably, He is, of all things, encompassing" | "While Allah encompasses them from behind" see the *Holy Quran* 41:54 and 85:20. See, Seyyed Hossein Nasr, 'Sacred Science and the Environmental Crisis: An Islamic Perspective' in *Islam and the Environment*, Ed. Harfiyah Abdel Haleem, (Ta Ha Publishers 1998).

18 Seyyed Hossein Nasr on *Islam and Preservation of the Natural Environment*, (Center for International and Regional Studies, Georgetown University School of Foreign Service Qatar (Doha, 26 January 2009); Sumaiya Quasim, *Technological Development and their Environmental Impact, Insight, New South Wales: Islamic Foundation*, 1990, Vol. 5:2, p. 8 – 9.

*nexus* between health, human security, and environment, with particular reference to economic activities centered on the exploitation of natural resources.

As highlighted by Abdulbar Al Gain, it is possible to assert that the concept of *muhīt* focuses on “the relation between man and the environment itself [...] having regard to the interaction the man’s sustainable utilization and development of natural resources.”<sup>19</sup> Here, it must be stressed that vibrant Islamic *ethos* – opposite to the greed characterizing the *aggressive* capitalism – pushes the whole humanity towards the implementation of economic projects and activities able to meet the environmental protection’ needs.

As a matter of fact, the entire *Ummah* activities must focus on the preservation and continuation of life. In the face of technological development, this is to be considered as an imperative coming from the *Quran* and directly ordered by God. Under this perspective, Islam sheds the light on the concept of sustainable development<sup>20</sup> and the legal principles of the duties to protect and to prevent damages to it.<sup>21</sup> These principles are going to be developed in the other sections.

## SECTION II

### **Main Islamic Principles and Concepts of Environmental Law governing the protection of nature.**

A number of principles related to the environmental protection are enshrined in the *Quran* and, currently, these have been retrieved by the most representative contemporary Islamic scholarly. These valuable legal theoretical principles and concepts are considered, nowadays, as mandatory environmental legal provisions for the Muslim community across the globe.

Of note, through comparative studies and other relevant intellectual activities, these devised principles and concepts grabbed the attention of the non-Muslim environmental epistemic community. It is worth pushing this point a step further. As a matter of fact, these principles and concepts constitute the legal ground of critical legal instruments to specifically address different occurring global environmental related issues, such as climate change and land degradation.

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<sup>19</sup> Abubakr Ahmed Bagader, *Environmental Protection in Islam / Protection de l’Environnement en Islam*. IUCN, Gland, Switzerland and Cambridge, UK (1994).

<sup>20</sup> For a definition of sustainable development, see the Brundtland Commission’s Report, *Our Common Future*, (1987).

<sup>21</sup> On this principle, see Jorge E. Viñuales, *The Rio Declaration on Environment and Development, A Commentary* (Oxford University Press, 2015), pp. 107 – 138.

### A. **Principle 1: Stewardship (Khilafah) of the Planet**

The crux of this principle is that the humankind is appointed by God to be the *steward* of the planet. It means that humans are the guardians of the environment. Here it is significant to emphasize the importance of a religious-based approach to environmental related issues. In fact, as noted by Saint Thomas d'Aquin (one of the greatest intellectual representatives of the Catholicism), humankind holds intellectual faculties (e.g., the capacity of reasoning, will, and so forth) that other creatures do not have.<sup>22</sup> In other words, intelligibility, provided by God to humans, makes the difference and allocate moral responsibility (on humans) for protecting not only the environment but also the natural lifecycle of our ecosystem. In the same line, the Islamic perspective considers the intellect as a God's given to the humankind. These intellectual faculties are functional to carry out the environmental protection. Thus, it is worth noting that humanity must serve the planet.<sup>23</sup> The principle of *Khilafah* (خِلَافَةَ) does not give to the humanity the possibility to dominate the nature. In fact, humanity plays a role as a vice-regent of God (*Allah* الله) to live in harmony with nature seeking to avoid overexploitation and wastefulness of natural resources.

Unquestionably, the *Quran* plainly states that: "And it is He who has made you successors upon the earth and has raised some of you above others in degrees [of rank] that He may try you through what He has given you."<sup>24</sup> And, "then We made you successors in the land after them so that We may observe how you will do."<sup>25</sup> This is also confirmed in the official authentic *hadith* (الحديث).<sup>26</sup>

Thus considered, humanity is called to do a rational use of the resources provided by God throughout the creation of the planet. Therefore, it must be concluded that the principle of *Khilafah* is a source of two general legal obligations for the *Ummah*, namely (i) "to look after the environment and not to damage it"<sup>27</sup> and (ii) "to look after the Earth because it is all Allah's creation."<sup>28</sup> Through the principle of *Khilafah*, of particular importance are also for Islamic land users (and not only) the adoption of

<sup>22</sup> Saint Thomas d'Aquin, *The Summa Theologiae*, (Benzinger Brothers Printers to the Holy Apostolic See 1485).

<sup>23</sup> Fazlun M. Khalid and Joanne O'Brien, *Islam and Ecology* (Cassell Publishers Limited 1992).

<sup>24</sup> Holy Quran 6:165

<sup>25</sup> Holy Quran 10:14

<sup>26</sup> The Prophet declared: "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."

<sup>27</sup> See *Surah 30:30*: "Devote thyself single-mindedly to the Faith, and thus follow the nature designed by Allah, the nature according to which He has fashioned mankind. There is no altering the creation of Allah."

<sup>28</sup> See *Surah 13:3-4*: "Allah is He Who raised up the heavens without any pillars that you can see. Then He settled Himself on the Throne and constrained the sun and the moon to serve you; each planet pursues its course during an appointed term. He regulates it all and expounds the Signs, that you may have firm belief in the meeting with your Lord. He it is Who spread out the earth and made therein firmly fixed mountains and rivers, and of fruits of every kind He has made pairs. He causes the night to cover the day. In all this, verily, are signs doer a people who reflect."

sustainable land management (SLM)<sup>29</sup> techniques in fighting against land degradation and desertification. In point of fact, SLM techniques are used in Islamic countries, such as Morocco, Tunisia, and Turkey *inter alia* for drip irrigation, water management, olive tree plantations, and development of rainfed agriculture.<sup>30</sup> Within this context, it is possible to assert that achieving Land Degradation Neutrality (LDN) can be considered not only as a target (as Sustainable Development Goals – SDGs<sup>31</sup>) but also as a fundamental principle of international environmental law and policy. In fact, it is a theoretical argument and assumption of the writer that the implementation of LDN as a principle of international environmental law could be effectively realized, should Governments (i) use modern environmental and social impact assessment tools, (ii) implement a bottom-up approach (boosting public participation, access to information and to justice) and (iii) adopt incentives in order for farmers to uptake Sustainable Land Management (SLM) best practices. To be able to reduce the global amount of degraded land would allow to create new income sources, to design new urban (e.g., sustainable cities) and rural policies (with the establishment of sustainable cities), and to mitigate climate change effects. Considering the current status of soil at the global level, a religious-based approach, in the current *parlance* through Islam, can settle LDN pragmatically and organically as a global target even within the context of climate change adaptation and mitigation policies. Certainly, implementing the LDN principle also in Islamic countries could have a great positive impact in the new generation of land tenure reforms worldwide, improving the environmental governance and protecting land as an ecological capital and valuable asset. Going to scale and achieving land degradation neutrality by stopping the loss of healthy and productive land, would make a vital contribution for the future of humanity on Earth.

This brings up a critical point. In somewhat simplistic terms, it is arguable that the obligations generated by the principle of *Khilafah* combined with the Islamic *ethos* for the protection of the environment are pragmatically creating a very broad positive

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29 “Sustainable Land Management is defined as the use of land resources, including soils, water, animals and plants, for the production of goods to meet changing human needs, while simultaneously ensuring the long-term productive potential of these resources in the maintenance of their environmental functions.” See, G. Schwilch, R. Hessel, and S. Verzaandvoort, *Desire for greener land. Options for sustainable Land Management in drylands*, 2012, Berne Switzerland.

30 See, *supra* note 29, p. 70 – 75.

31 Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss. 15.1 by 2020 ensure conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands, in line with obligations under international agreements; 15.2 by 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests, and increase afforestation and reforestation by x% globally; 15.3 by 2020, combat desertification, and restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land-degradation neutral world.



attitude,<sup>32</sup> for instance, even traditional oil producers' countries are starting to green their economies.

The so-called *Green Ummah* is in action as the servant of God. It is currently taking care of the Earth by shaping environmental policy to better undertake the environmental crisis.<sup>33</sup> Smart, informed and connected groups of Muslims are actively spreading *environmental democracy* and the adoption of a *bottom-up* approach advocating for improvement of certain procedural rights, namely: (i) access to information, (ii) public participation, and (iii) access to justice across the world.

## **B. Principles 2 – 3: Trusteeship (Amanah) and Accountability (Aakhirah)**

The relationships between God, the humankind and the environment are firmly grounded on the principle of *Trusteeship (Amanah امانة)*. This principle entails that *muhīt* is given by God to the humanity within the terms of a *sacred trust* having the practical purpose of protecting the environment and procure benefits to it.

It is important to remember here that, in today's legal system, *trust* is a legal instrument of Common Law (also adopted in Civil Law countries). This instrument is chiefly used in the field of corporate and business development to improve the "governance and efficiency"<sup>34</sup> of economic assets. Its definition appears to be well-established as "A fiduciary relationship in which one party, known as a trustor, gives another party, the trustee, the right to hold title to property or assets for the benefit of a third party, the beneficiary. Trusts are established to provide legal protection for the trustor's assets, to make sure those assets are distributed according to the wishes of the trustor."<sup>35</sup>

32 "The failure to completely achieve the goal of recognizing and establishing legal environmental rights and norms in Muslim majority countries in the Middle East supports the idea of finding another source of obligation, such as Islamic rules that bind Islamic States, some of which constitute major sources of environmental pollution. Incidentally, some of the populations in the Arabian Gulf have the highest per capita carbon footprints in the world, including Qatar and United Arab Emirates, and also have significant influence on oil and gas markets, namely Saudi Arabia, Qatar, and the United Arab Emirates. They also happen to be strongly influenced by Islam. In Muslim majority states, these arguments may find more resonance compared with more secular arguments, and thus may be strategically deployed" see, Nadia B. Ahmad, *Faith-Based Approaches to Ecological Harmony and Environmental Protection*, *Race & Law Review*, 21 (1), 2020, p. 12.

33 Ibrahim Abdul-Matin, *GreenDeen, What Islam Teaches About Protecting the Planet* (Berrett-Koehler Publishers 2010).

34 Ralph Chami and Connel Fullenkamp, 'Trust as a mean of Improving Corporate Governance and Efficiency' (2002) IMF Working Paper 02/33, <<https://www.imf.org/en/Publications/WP/Issues/2016/12/30/Trust-As-a-Means-of-Improving-Corporate-Governance-and-Efficiency-15658>> (accessed 13 June 2020)

35 Note also that: "The trustee can be the settlor himself – in which case, the settlor declares himself to be holding trust property on trust for the beneficiary" See, *Trust Law in Singapore*, Singapore Legal Advice, Personal & Family Section, available at <https://singaporelegaladvice.com/law-articles/what-is-a-trust-trust-law-in-singapore/> (accessed on 3 April 2018). See the definition of trust available at

Several points need to be developed here. First and foremost, the reference to this legal institute is adequate to the values propagated by the Islamic environmental *ethos*. In particular, it creates a so-called fiduciary scheme in which two or more people *shared* the property of something in a responsible way. Second, this arrangement can produce a *stable* relationship among the parties. Third, one ought to note that *mutual* and *shared confidence* are characterizing this juridical relation. Lastly, it should be said that every decision is taken by the trustee in *cooperation* with the trustor. Of note, the trust is generating an obligation of a *moral* character. In a sense, the trustee must act and perform his duties in *good faith* to procure benefits to the third party.

Furthermore, it comes to be relevant in our present context the *doctrine of public trust* elaborated in the Roman Law under the Emperor Justinian (A.D. 535) stating the following maxim of law: “By the law of nature, these things are common to mankind: the air, the running water, the sea, and the shores of the sea.”<sup>36</sup> In other words, it is not possible to consider *res nullius* what are our today’s global commons, such as the living environment.

It is officially recognized that further development of this doctrine has been re-elaborated in the United States of America (1892)<sup>37</sup> to discipline land use and ownership of natural resources. It must be stressed that the *doctrine of public trust* can be considered as a tool for protecting the environment. As noted by Cohen, the concerned public authority performs the “role of public guardian of those valuable natural resources which are not capable of self-regeneration and for which substitutes cannot be made by man.”<sup>38</sup>

Thus considered, the public authority has the duty protect pursuant the legal principle of *public interest*. The public authorities are entrusted with “high fiduciary duty of care and responsibility to the general public.”<sup>39</sup>

Beyond that, nowadays, even the affected people and Non-Governmental Organizations could sue the public authorities for lack of actions and measures set up to protect and preserve the environment.<sup>40</sup> And that is, definitely, a significant legal and civic advancement linked to environmental democracy aspects.

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<https://www.investopedia.com/terms/t/trust.asp>. For further details, Graham Moffat, Gerry Bean, Rebecca Probert, *Trusts Law: Text and Materials* (Cambridge University Press 2009).

36 Note that further development of the public trust doctrine took place with the promulgation of the Magna Carta in England in 1215 having regards to better protect the freedom of navigation. See the definition elaborated by the Roman Emperor Justinian, *The Law of Property*, Institutes, 2.1 available at [https://www.ssc.wisc.edu/~rkeyser/?page\\_id=571](https://www.ssc.wisc.edu/~rkeyser/?page_id=571)

37 See U.S. Supreme Court decision in *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892)

38 Cohen, *The Constitution, The Public Trust Doctrine and the Environment*, 388 (Utah Law Review 1970).

39 *Supra* note 32, p. 388.

40 Ved P. Nanda Jr., *The Public Trust Doctrine: A Viable Approach to International Environmental Protection* 291 (Ecology Law Quarterly 1976) available at: <http://scholarship.law.berkeley.edu/elq/vol5/iss2/4>

Of note, the number of environmental public interest litigations is growing worldwide, and it pushes national and local public authorities to assume a proactive attitude in tackling current environmental issues.

Therefore, from an Islamic law functional point of view, it might be argued that (under the terms of the *doctrine of public trust*) the *Ummah* – broadly speaking also the humankind – but even the violating states are collectively accountable (*akhirah* الأخرة) for every activities and projects. And yet, exploitation of natural resources and economic development have to be done on behalf of God. Hence, humanity has to avoid wastefulness and corruption (*fasād fi'l-ard* فساد) that lead to environmental degradation. It is possible to refer to the appropriate standard of strict liability in the field of state responsibility for environment. As noted by Malcolm N. Shaw: “states are under an absolute obligation to prevent pollution and are thus liable for its effects of irrespective fault.”<sup>41</sup> Therefore, the level of responsibility is increased upon the state (e.g., prevention of transboundary harm from hazardous activities).<sup>42</sup>

## B. Principle 4 – Justice (*Adl*)

The *Quran* plainly states that: “The sun and the moon follow courses (exactly) computed; And the herbs and the trees both bow in adoration. And the firmament has He raised high, and He has set up the balance, in order to that you may not transgress (due) balance. So, it establishes weight with justice and not short in the Balance.”<sup>43</sup> Consequently, Justice is an essential driver for the achievement of a natural balance on Earth.

Furthermore, in the Day of the Judgement, according to the principle of Justice (*Adl* إنصاف), God will decide on how much fairly and respectfully humanity used and benefited from *muhīt*. That implies respect for the land, fauna and the flora, air as well as water. Under the God’s mandate, the *Umma* should make the efforts to *inter alia* improve the ecosystem and reduce the inequalities in accessing to natural resources worldwide. As general rule, there is also an Islamic responsibility to protect and either, to restore certain kind of environmental conditions in cases of reversible damages. It is possible to excerpt from *Adl*, two duties for the polluters: (i) a duty to prevent; having the logic that prevention is better to control, (ii) a duty to

<sup>41</sup> M.N. Shaw, *International Law*, Sixth Ed., Cambridge University Press, 2008.

<sup>42</sup> “In this context the precautionary principle could act as a framework norm which would oblige all states to refrain from adopting in any significant way countermeasures which would threaten the environment and the human health.” See, L. Boisson de Chazournes, *New technologies, the precautionary principle and public participation*, in T. Murphy (ed.), *New technologies and human rights* (Oxford University Press 2009 p. 161 – 194.

<sup>43</sup> The Holy Quran 55:5-10.

repair environmental damage. These mentioned duties are grounded on the Polluter-Pays principle.

From a legal standpoint, the Polluter-Pays principle found its roots in the theory of “externalities” (precisely, the production of negative externalities) implying that the costs of pollution be borne by those who cause it.<sup>44</sup> Thus, the polluter must pay it is equal to the internalization of costs related to individuals and corporations. This principle is well defined in Principle 16 of the Rio Declaration 1992 that states: “national authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”<sup>45</sup> And yet, under an Islamic perspective, logically this principle seeks to create justice (*Adl*) by “ensuring that the financial burden of such pollution is borne by those who caused it.”<sup>46</sup> The *Ummah* must comply with stringent measures (e.g., strict liability, at the level of individuals and corporations).

To reconcile these considerations, this fundamental and effective<sup>47</sup> principle of international environmental law and policy is perfectly aligned with the Islamic environmental *ethos*.

## B. The principle of *Balance (Mizan)*

The Islamic environmental *ethos* is centered on the principle of *Balance (Mizan* ‘مِيزَان’). This principle is expressed clearly in the Islamic *Sharia* (شريعة). As noted by Bagader, in Islam the “integration of the development and conservation of natural resources is clear in the idea of bringing life to the land and causing it to flourish through agriculture, cultivation and construction.”<sup>48</sup> This leads to a *mizan* functionally to protect *muhīt*, and human life in general.

44 OECD Council Recommendation on Guiding Principles concerning the International Economic Aspects of Environmental Policies, C(72)128 (1972), 14 ILM 236 (1975).

45 See Principle 16 of Rio Declaration on Environment and Development 1992.

46 Barbara Luppi, Francesco Parisi and Shruti Rajagopalan, *The rise and fall of the polluters-pays principle in Developing Countries*, (2012) 32 International Review of Law and Economics pp. 135-144. Furthermore, see also Emma Lees, *The Polluters Pays and the remediation of Land* (Cambridge University Press 2016).

47 Muhammad Munir, *Implementation of the Polluter Pays Principle or Economic Approaches to Pollution: Command and Control, Taxes/Charges, and Tradable Discharges Permits (TDPS)* (January 14<sup>th</sup>, 2014). Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2378796](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2378796). Furthermore, see also Muhammad Munir, *History and Evolution of the Polluter Pays Principle: How an Economic Idea Became a Legal Principle?* (September 8<sup>th</sup>, 2013). Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2322485](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2322485).

48 See Op. cit. in Fazlun M. Khalid and Peter Timmerman, *Islam and the Environment, Social and economic dimensions of global environmental change*, vol. 5 (Encyclopedia of Global Environmental Change 2002) 332 – 339.

Given its importance, the principle of *Mizan* is, nowadays, internalized in legal systems of many Muslim and non-Muslim countries and within the framework of the international environmental law and policy as well as international jurisprudential<sup>49</sup> and arbitral decisions.<sup>50</sup>

At the global level, it is relevant the current disequilibrium that human activities are producing pursuant prosperity and profit.<sup>51</sup> Differently, humankind has to synchronize its way of living with nature and cooperate with it.<sup>52</sup> Implementing legislative measures based on the principle of *Mizan* would put humanity on the right track to reduce this disequilibrium.

In point of fact, *Mizan* entails the obligation to prevent harm, and also it focuses on the creation of a healthy *muhīt* through sustainable economic development, for instance within the context of sharing natural resources among States. Activities such as agriculture and mining can be carried out avoiding putting in place a land use that ends in abuse or overexploitation of nature.

Several points need to be developed here. First and foremost, the *Mizan* is definitely a manifestation of the concept of sustainable development. The Brundtland Commission's report entitled *Our Common Future* published in 1987 provides a definition that exactly match with the whole Islamic perspective of environmental protection. Thus, it stated: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>53</sup> At the time, this seems obvious and is quite appropriate. In a sense, the environmental protection must be part of the economic development and not driver isolating it.

The Islamic environmental *ethos*, together with other religious organizations, seeks to realize a synergy among three modern dimensions of development (precisely an economic, a social and an environmental) all considering human life and conservation of nature, particularly of our commons (*res communis* in Roman law). The *Mizan*, intended as sustainable development, is a primary norm of Islamic environmental law.

49 *Gabčíkovo – Nagymaros Project (Hungary/Slovakia)*, International Court of Justice, Decision (25 September 1997).

50 *Iron Rhine Arbitration ('Ijzeren Rijn') (Belgium/Netherlands)*, Award (24 May 2005), RIAA XXVII, pp.35-125, para 59.

51 Of note, the UNEP's Millennium Report called up for a change because "the global human ecosystem is threatened by grave imbalances in productivity and in the distribution of goods and services...sustainable progression of extremes of wealth and poverty threatens the stability of the whole human system...the world is undergoing accelerating change, with internationally coordinated environmental stewardship lagging behind economic and social development. Environmental gains from new technology and policies are being overtaken by the pace and scale of population growth and economic development. The processes of globalization that are so strongly influencing social evolution need to be directed towards resolving rather than aggravating the serious imbalances that divide the world today" UNEP, *Global Environment Outlook 2000* (Earthscan London 1999).

52 Seyyed Hossein Nasr, *Man and Nature* (Unwin Paperback London 1990).

53 Brundtland Commission's Report, *Our Common Future*, 1987.

The second point that is necessary to highlight is that *Mizan* is realized through the implementation of the Principle of Public Participation.<sup>54</sup> Environmental issues require the participation of people at the local and national level too. And yet, the inclusion of new stakeholders promoting and scaling up sustainable solutions. Islam pushes the *Umma* to have a proactive attitude and solution oriented.

Certain concrete suggestions about the Islam and environmental democracy<sup>55</sup> would seem logically to arise from this above-mentioned principle. Given the magnitude of the environmental matters, the Islamic *ethos* induces public authorities to improve in their legislations the implementation of procedural rights, such as public participation, access to information and access to justice. These are the pillars of the environmental democracy. By combining them all, it is possible to pave the way for an effective harmonious ecological society that Islam constantly seeks to promote in the public sphere.

On closer examination, it must be stressed the concept of *public interest (maslaha)*.<sup>56</sup> This is a relevant legal aspect to legitimize the operationalization of the above-mentioned procedural rights. *Maslaha*<sup>57</sup> is pertinent to allow public participation<sup>58</sup> in the best interest of the contemporary *Umma* about not only in the context of conservation of nature-related issues but also to finance sustainable and climate-resilient growth in countries affected by climate change.<sup>59</sup>

Besides, it is worth noting the significant role played by the *consideration for public interest (maslaha mursala)*. Notably, public interest, as a source of *Islamic normativity*,<sup>60</sup> tries to ensure laws and policies are “eco-designed” through public participation in decision-making processes.

54 The *Rio Declaration on Environment and Development 1992* is a referential document where in Principle 10 it is affirmed that: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

55 See the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998, 2161 UNTS 447 (‘Aarhus Convention’).

56 Mawil Izzi Dien, *The environmental dimension of Islam* (James Clarke & Co. 2000).

57 “*Maslaha mursala* is a source of Islamic Shari’a designed to operate as a normative framework to ensure that law and policymaking promote the public interest” see Ezieddin Mustafa Elmahjub, ‘Protection of Intellectual Property in Islamic Shari’a and the development of the Libyan Intellectual Property System’ (Ph.D. thesis, Queensland University of Technology 2014).

58 The Qur’an instructs that any state matter should be settled by way of consultation (*shura*). “And those who have responded to their lord and established prayer and whose affair is [determined by] consultation among themselves, and from what We have provided them, they spend” see the Holy Quran (*Sahih International*) 42:38.

59 Through contemporary Islamic finance tools.

60 “Islamic Shari’a directs policymakers to design laws and policies that preserve religion (*Dīn*), human life (*nafs*), human intellect (*‘aql*), lineage (*nasab*) and human wealth (*mal*)” affirmed by Dr. Ezieddin Mustafa Elmahjub at the Seminar *Islamic Normativity in the Public Sphere* (NUS Law School – Center for Asian Legal Studies, 5 April 2018).

The third point is that seeking *Mizan* is the main scope of the Principle of Inter-Generational Equity. Humanity does not have to compromise the future of the generations to come while creating socio-economic progress and wellbeing. And yet, it should not be possible to leave the planet to our future descendants with scarce vital resources and vulnerable ecosystem to natural disasters.

The ecological message of Islam promotes policies and legislations characterized by a long-term vision to contrast overconsumption and corruption. Urging for a global action, the *Quran* plainly states that “Corruption has appeared throughout the land and sea by [reason of] what the hands of people have earned, so He may let them taste part of [the consequence of] what they have done that perhaps they will return [to righteousness].”<sup>61</sup> Thus considered, the *Ummah*, and broadly the humanity, has to get on the right track.

The environmental awareness must be more profound and stronger among the people creating sustainable infrastructures. It does not have to be underestimated the idea of building *green mosques*.<sup>62</sup> In such a way, the environmental protection would begin from the *Umma’s* religious life center.

By way of example, it is possible to refer to the already existing first *Eco-Mosque* located in Singapore equipped with an energy saving system and eco-friendly services.<sup>63</sup> Significantly, it is worth noting that small actions combined all together could lead the humanity to a better future without compromising the life of present and future generations.

Islamic law imposes a moral duty to repair and restore the environment and sustainably manage natural resources<sup>64</sup> avoiding transferring the costs of damages to

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61 Qur’an 30:41.

62 *Supra* note 26.

63 “In Singapore, the country’s first eco-friendly mosque was constructed in May 2009. Green perks include energy-saving solar tubes that are also skylights, a garden rooftop, motion sensor lights, and low-flow fixtures. It also has a ‘green wall’ – injecting a sense of serenity and calm into the prayer halls. Other features include motion sensor lights and taps fitted with water-flow-regulating devices. For these efforts, the mosque received the Green Mark certification from Singapore’s Building and Construction Authority. The mosque also features family-oriented spaces – including child-friendly toilets, a reading and play area as well as a function hall. Manchester and Abu Dhabi have also built green mosques too with different features” see, the Islamic Foundation for Ecology and Environmental Sciences, “Is your mosque an Eco Mosque: Singapore” <<https://muslimenvironment.wordpress.com/2010/04/03/islamic-foundation-for-ecology-and-environmental-studies-green-mosques-is-your-mosque-an-eco-mosque/>> (accessed 10 May 2020)

64 “The objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, with due regard to the needs and interests of future generations” see the Preamble of the New Delhi Declaration of Principles of International Law Related to Sustainable Development, adopted by the International Law Association on 2 April 2002.

the future generation. That is the key-point. It is all about the conservation of nature as well as human life on Earth.

On top of it, Islamic environmental *ethos* tends to give priority to the collective interest rather than the individual one. As a result, Islam moves socio-economic policies towards the realization of the principle of *Mizan*.

### SECTION III

#### **Influence of Islamic environmental *ethos* in domestic experiences.**

Setting up appropriate legal instruments and institutions to address environmental related issues at the domestic level it is fundamental to increase the level of effectiveness of environmental laws and policies. The Islamic *ethos* aims at creating *inter alia* (i) a more responsive and adequate set of rules of environmental protection and (ii) trustworthy and accountable government authorities.

Of note, Islamic countries like Pakistan and Egypt are also expanding their environmental awareness throughout their jurisdictions. In particular, in Pakistan the government set up a Judicial Commissions working on climate change justice.<sup>65</sup> While Egypt, pursuing the ideal of *green justice*, is trying to institutionalize specialized environmental courts creating even a figure of the *green Qadi* (قاضي).<sup>66</sup> All

<sup>65</sup> “It has progressed from an ownership of the precautionary principle in the Shehla Zia case in 1994 to a bold declaration of environmental justice and climate justice in the Asghar Leghari case in 2018” see Dr. Parvez Hassan, ‘Judicial Commissions and Climate Justice in Pakistan’ *A paper presented at the Asia Pacific Judicial Colloquium on Climate Change: Using Constitutions to Advance Environmental Rights and Achieve Climate Justice*, Pearl Continental Hotel, Lahore, Pakistan, 26-27 February 2018.

<sup>66</sup> Of note, “An Environmental Protection Fund (EPF) will in accordance with the Environment Act of 1994 (amended by Law 9/2009) be set up. The Fund will receive the amount specifically allocated to it in the General State Budget by way of support, donations and grants presented by national and foreign organizations concerned with environmental protection, fines and compensation awarded by courts of law or via out-of-court settlements for damage caused to the environment, as well as revenues from the protectorates fund” Ministry of Environment, Egyptian Environmental Affairs < <http://www.eea.gov.eg/en-us/aboutus.aspx>> accessed 10 September 2020. At the conclusion of the three-day meeting, the chief justices and judges unanimously adopted the following conclusions and recommendations: (1) They endorsed the Johannesburg Principles on the Rule of Law and Sustainable Development adopted at the UNEP Global Judges Symposium held in Johannesburg on 18-20 August 2002, which were presented to the World Summit on Sustainable Development (WSSD) as a contribution to the deliberations at the WSSD. (2) They reaffirmed once again their conviction expressed by the judges at the Global Symposium that: (I) the judiciary, well informed of the rapidly expanding boundaries of environmental law and aware of its role and responsibilities in promoting the implementation, development and enforcement of laws, regulations and international agreements relating to sustainable development, plays a critical role in the enhancements of the public interest in a healthy and secure environment; (II) the lack of knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law; (III) there exists an urgent need to strengthen the capacity of judges, prosecutors, legislators and all persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law, including multilateral environmental agreements (MEAs), especially through the judicial process. See, the



in all, these attempts are focusing on the promotion of the legal mindset that considers environment as a public interest matter and environmental degradation as an outcome of corruption of the planet.<sup>67</sup>

Here as follows it is necessary to examine briefly the domestic experience concerning Indonesia and South-East Asia international relations. Indonesia is a country affected by environmental issues having substantial impacts in the public health sphere.

To start with, Indonesia has a vast territory where the production of palm oil is representing one of the largest profitable industries. The palm oil industry creates jobs for more than 20 million people in Indonesia and contributes to the country's foreign business value of up to 25 billion US dollars.<sup>68</sup> Given the magnitude of the profit, many producers illegally opened land by means of fires<sup>69</sup> to increase the volume of palm oil production.

Surely, the enormous burning of forests caused a transboundary haze striking Singapore and other ASEAN countries, such as Malaysia. These two countries – but especially Singapore – were significantly affected by the haze becoming a matter of national security. With an urgent diplomatic action and recognizing the difficulties to put the situation under control, the Government of Singapore invited Indonesia to take the due countermeasures.

A high level of complexity characterized this issue. After years of negotiations, the ASEAN countries signed and ratified the Agreement on Transboundary Haze Pollution (2002); by way of illustration, Indonesia became parties to the Agreement only in 2014.<sup>70</sup>

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statement adopted by the Chief Justices and senior judges from Bahrain, Egypt, Djibouti, Iraq, Jordan, Lebanon, Libya, Oman, Palestine, Qatar, Sudan, Tunisia, and the United Arab Emirates at the conclusion of the Regional Conference and Symposium on Environmental Law and Sustainable Development, held from 29 to 31 May 2004, at the premises of the Supreme Constitutional Court of Egypt in Cairo.

67 Schwarte, C., 2003, Environmental protection in Islamic law: an overview on potential influences for legal developments in Iraq. *Local Environment*, 8(5), 567–576.

68 “GAPKI was established in 1981 to create a platform for various operators working on the issues related to the Palm Oil industry. GAPKI Technical Commission focused its activities on the elaboration of work programs concerning the following: (i) To promote palm oil industry; (ii) To improve competitiveness Indonesian palm oil business in International Markets; (iii) To design and implement a strategic vision for a sustainable palm oil industry. As the palm oil industry is continuing to expand, GAPKI has more than 600 plantation companies among its members. GAPKI organizes several activities to create awareness about the importance of making a sustainable palm oil production in Indonesia. For this purpose, it established an annual Indonesian Palm Oil Conference & Price Outlook. Today's Indonesia together with Malaysia control 90% of the oil industry, GAPKI wants to provide technical assistance supporting its members in the international markets.” See, GAPKI Palm Oil Producers Association, <<https://gapki.id/>> (accessed 11 July 2020).

69 Law on the Protection and Environment Management 2009 (32) Indonesia. Article 69 (1) (h), clearly, stated: “Everybody shall be prohibited from: opening land by means of fire” and Article 69 (2) “The provision referred in paragraph one letter (h) shall take into account seriously local wisdom in the respective countries.”

70 Indonesia ratified the Agreement on Transboundary Haze Pollution in 2014, see Indonesian Ministry of Environment (communication 23 September 2014) <<http://www.menlh.go.id/indonesia-meratifikasi-undang-undang-tentang-pengesahan-asean-agreement-on-transboundary-haze-pollution-persetujuan-asean-tentang->

On closer examination, it is important to underline that the legal ground to solve this matter derives from the implementation of the international environmental law. As general rule, the “no harm principle” and the “duty not to cause damage”<sup>71</sup> are relevant to the matter. These principles relevant to the idea of prevention are based on the international laws referring to the friendly relations between neighbor States.

Firstly, the principle of no harm is relevant in the *haze* case. Historically, it was the first to arise in the “limited” context of transboundary harm to the territory of another State and it was well defined by the Tribunal in the *Trail Smelter case* with the following statement: “no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”<sup>72</sup> The principle of no harm assumed a crucial role in limiting the sovereign exploitation of natural resources (even in the *haze* case) expressing the duty not to cause harm to other States<sup>73</sup> or better to say *serious consequences*<sup>74</sup> or *significant harm*<sup>75</sup> as well as *significant damage*.<sup>76</sup>

Secondly, the duty not to cause damage by going beyond the transboundary context broadened the scope of the principle of no harm to a more comprehensive idea of prevention. In particular, the duty *in parlance* found its main legal source in Principle 21 of the Stockholm Declaration 1972 that explicitly refers to the duty not to cause the damage “to the environment of other States or of areas beyond the limits of national jurisdiction.”<sup>77</sup> Thus, the duty not to cause the damage seeks to determine the obligation of the State to prevent damage plus to protect the environment *per se* avoiding irreversible environmental damage.

These two devices of international environmental law consistently contributed to improving at least the current situation in the South East Asia.

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pencemaran-asap-lintas-batas/> (accessed 12 June 2020)

71 Maria Pia M. Altea, ‘Principle 21 of the Stockholm Declaration: A Customary Norm of International Environmental Law’ (1997) *XLI Ateneo Law Journal* 429.

72 *Trail Smelter, (USA vs. Canada)* RIAA III, 1905-1982 (‘*Trail Smelter*’), 1965. Furthermore, in the Corfu Channel case in 1949, the International Court of Justice (ICJ) acknowledged this principle as customary international law because it is recognized “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”

73 *Permanent sovereignty over natural resources*, 14 December 1962, GA res. 1803 (XVII).

74 *Trail Smelter*, *supra* n. 65.

75 *United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses*, 21 May 1997, 36 ILM 700 (not yet in force), art. 7 (1).

76 *Case concerning Pulp Mills in the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, General List No 135 (‘*Pulp Mills*’), para 101.

77 It is essential to underline that the ICJ recognized the customary nature of Principle 21 of the Stockholm Declaration 1972 in its *Advisory Opinion on the Legality of Nuclear Weapons 1996*. See, *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996 (‘*Legality of Nuclear Weapons*’).

However, it should be borne in mind in our present context that Indonesia “has the world’s largest Muslim population and South East Asia biggest economy.”<sup>78</sup> Within this context, Islamic law has a decisive, authoritative power and finds an important ground of implementation. Specifically, in the case of transboundary haze pollution, the work of Islamic lawyers and policymakers comes to be considered enthusiastically apposite and pertinent. The Indonesian Islamic Council issued a so-called *fatwa* (فتوى) against the intentional burning of land.<sup>79</sup> This *fatwa* is quite successful because a critical religious authority elaborated it. Despite the fact that *fatwa* is a *soft* legal instrument comparable to a legal opinion with interpretative function, it has a considerable authoritativeness on a particular issue. It has been pointed out by the doctrine that “*fatwās* illuminate the relationship between law and society.”<sup>80</sup>

The Islamic scholars’ reasoning is based on three moral and legal arguments. Even though the laws and regulations in certain cases could not be good, burning the trees is not moral. The Islamic *ethos* considers plants and trees as a precondition to sustain human life. It is a sin intended as an action against God who created the nature.

It is important to highlight that transboundary haze is a natural occurrence caused by dry season; however, there are pieces of evidence that producers opened lands by setting fires. *Fatwa* invites to greening the law and the social behavior of the involved people. Thus considered, it is pragmatically arguable that Islam could contribute to designing *due diligence* activities by means of Corporate and Social Responsibilities initiatives and creating a “no burning” norm valid for the Indonesian palm oil producers.

78 Indonesia Country Profile, *BBC* (London 9 January 2018) < <http://www.bbc.com/news/world-asia-pacific-14921238>> (accessed 14 August 2020)

79 Francis Chan, ‘Burning forest is a sin, rules Indonesian Islamic Council’ *The Straits Times* (Singapore 14 September 2016). Similarly, on the basis of the 1978 fatwa, wastewater reuse in Saudi Arabia expanded to a great extent. By doing so, in 1995, Saudi country reused about 15% of its treated wastewater for agricultural purposes. For further details, see, Faruqi, N.I., Biswas, A.K. and Murad, J.B., 2001, *Water Management in Islam* (New York: International Development Research Centre (IDRC) and United Nations University Press); “The Fatwa postulated that impure wastewater can be considered as pure water and similar to the original pure water, if its treatment, using advanced technical procedures, is capable to remove its impurities with regard to taste, color and smell, as witnessed by honest, specialized and knowledgeable experts. Then it can be used to remove body impurities and for purifying, even for drinking. If there are negative impacts from its direct use on the human health, then it is better to avoid its use, not because it is impure but to avoid harming the human beings. The CLIS prefers to avoid using it for drinking (as possible) to protect health and not to contradict with human habits. (CLIS, 1978) ... The Saudi Arabian experience demonstrates how responsive and reasonable Islamic Laws are in addressing the complex challenges of water resources management” see Walid A. Abderrahman (2000) Application of Islamic Legal Principles for Advanced Water Management, *Water International*, 25(4), p. 513 – 518.

80 For a concept of evolving fatwa see Umar F. Moghul and Samir H.K. Safar-Aly, Green Sukūk: The Introduction of Islam’s Environmental Ethics to Contemporary Islamic Finance’ (2014) 27 (1) *The Georgetown International Environmental Law Review*.

Finally, Islam prohibited harm to the planet. Following the Islamic environmental principles aforementioned, several economic projects and activities must be assessed *in concreto* before being implemented.

Carrying out an Environmental Impact Assessment (EIA) comprehensive of Islamic concepts and principles would improve the current status of the environmental protection.<sup>81</sup> Put in another way, through the Islamic understanding of nature it could be possible to evaluate potential “significant adverse impact”<sup>82</sup> on the environment as well as the public health. In a more critical vein, it is noteworthy to create Islamic standards of EIA<sup>83</sup> and critically harmonize them with the contemporary legislations.

## SECTION IV

### The Islamic Declaration on Climate Change

Unquestionably, environmental degradation is threatening human existence in the world. Chiefly, the phenomenon of climate change is increasingly putting at risk our food and water security; it is both an economical and existential issue. Besides that, climate change is one of the major causes of wars and migration around the world.<sup>84</sup>

Islam is not the solution, nevertheless together with other religions, it is calling up for global legal and political action to preserve the ecosystem and to integrate development in it. It is essential to find a way for sustaining future generations while facing the climate change impacts. On this issue, the *Umma* elaborated two relevant documents, namely (i) the *Islamic Seven-Year Action Plan on Climate Change* (2010 – 2017) and (ii) the *Islamic Declaration on Global Climate Change* (2015).<sup>85</sup>

The first document aimed at mobilizing the *Umma* in order to implement policies that are the manifestation of the Islamic ethical principles of environmental protection. This Plan, formally, corresponds to a sort of internal *Memorandum of Understanding* of the Islamic community worldwide. One ought to note that it leads to making people more aware about environmental related issues by (i) organizing

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81 Othman ABD-AR-Rhaman Llewellyn, ‘The Basis for a Discipline of Islamic Environmental Law’ in *Islam and Ecology. A Bestowed Trust* (Harvard University Press 2003).

82 Principle 17 of the Rio Declaration on Environment and Development (1992): “Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”

83 Nicholas Robinson, ‘EIA Abroad: The Comparative and Transnational Experience’ in S.G. Hildebrand and J.B. Cannon (eds.), *Environmental Analysis: The NEPA experience* (Boca Raton: Lewis, 1993), 679-702.

84 Interview with Khalid Fazlun, Director of IFEES (Birmingham, UK, 24 March 2018).

85 IFEES, *Islamic Declaration on Global Climate Change* (2015) available at: <[www.ifees.org.uk/](http://www.ifees.org.uk/)> (accessed 15 April 2020)

advocacy programs and activities committed to educating people on the environment and (ii) *greening* Haji and mosques as well as Quran books.

The second document seems to provide a global perspective on the climate change challenge. The statement just made requires one important qualification. In point of fact, this Islamic Declaration was signed in 2015 before the conclusion of the *Paris Agreement on Climate Change*. This Declaration advocated for the conclusion of a global, equitable and binding agreement on the issue.

Broadly speaking, the Declaration wants to bring people together involving individual with different faiths and beliefs – because climate change can be contrasted by a common action that is going to transform the human society behavior. This common action includes an *equilibrium* in negotiations involving Developed and Developing Countries through a great emphasis placed on the implementation of the established Principle of Common but Differentiated Responsibilities.<sup>86</sup> Once again, within the Declaration, the *Ummah* is considered as *Khalīfah* to serve the Creator<sup>87</sup> following a planetary trusteeship scheme (*Amanah*) to protect the *Mizan*.<sup>88</sup>

Furthermore, the Islamic Declaration on Global Climate Change involves also fossil fuel-based economy countries since these have realized that it is necessary to shift to renewable energies as a primary source of income. This can be considered as a sort of one of the modern inner policies derives from the Islamic environmental

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86 The principle of CBDR seeks to find balance between development and the protection of the environment in addressing to global environmental problems and it has its origin in the protection of common concern areas (e.g., Antarctica). The principle of CBDR is applied in several treaties. One very important example Article 3 (1) of the UNFCCC 1992 where the CBDR are described with the following wording: “The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof”. A recent model to operationalize the principle of CBDR is illustrated in another instrument of public international law, namely the Minamata Convention on the use of mercury 2013. Of note, the preamble makes reference to the foundational principles of public international law. Urging for a global action, it evokes the Rio Declaration on Environment and Development 1992 as a whole and explicitly the principle of common but differentiated responsibilities of States (with special focus on developing countries and on economies in transition considering their financial, technological and capacity building resources). Taking in consideration the condition of developing countries, the preamble recognizes the “States’ respective circumstances and capabilities.” With this regards it seems relevant the analysis conducted on the CBDR by T. Honkonen, *The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreements*, Kluwer Law International, Law & Business, Vol. 5, Kurt Deketelaere, The Netherlands, 2009. Furthermore, see Hilary Chiew, ‘Implementation of Paris Agreement must preserve balance on all issues, say developing countries’ (*Third World Network*, 18 May 2016) <<https://twnetwork.org/climate-change/implementation-paris-agreement-must-preserve-balance-all-issues-say-developing>> (accessed 15 April 2020).

87 Islamic Declaration on Global Climate Change 2015, preamble.

88 “Indeed, Allah will admit those who have believed and done righteous deeds to gardens beneath which rivers flow, but those who disbelieve enjoy themselves and eat as grazing livestock eat, and the Fire will be a residence for them” (Quran 47:12).

*ethos* to preserve our natural ecosystem and *Mizan* improving the energy efficiency and decrease the amount of emissions of GHGs.

Of note, the establishment in 2009 of the treaty-based organization, namely the International Renewable Energy Agency in Abu Dhabi (UAE – a traditional Islamic oil-based economy country).<sup>89</sup>

Many of the inner environmental policies shaped by the Islamic *ethos* can be implemented predominantly in countries with a Muslim majority that are currently in political transition (e.g., Egypt, Iraq,<sup>90</sup> Libya and so forth). It would be good to internalize and strengthen these Islamic environmental principles in constitutional legal provisions of the new states.

As a theoretical model and discourse, the Islamic Declaration on Global Climate Change is calling up people and leaders of the world (and governmental institutions) to be aware of the existence of a “duty to cooperate in a spirit of global partnership” pursuant Principle 7 of the Rio Declaration on Environment and Development.<sup>91</sup> By mean of this principle, states must center their conduct of domestic and international affairs on the protection of global commons, especially with regards to mitigation and adaptation to climate change effects.

To reconcile all these considerations, it appears well evident that the two aforementioned documents (especially the Islamic Declaration on Global Climate Change) are successful. Teamwork done by religious faiths is fundamental for supporting the human society in undertaking climate change effects. It is worth to note that faith is the main driver, in some instances, helping the most climate vulnerable communities to react to disasters and devastation to re-build in a sustainable way and preserve decent human life.

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89 The International Renewable Energy Agency (IRENA) is an intergovernmental organization supporting countries in their transition to a sustainable energy future, <[www.irena.org/](http://www.irena.org/)> (accessed 15 April 2018). Furthermore, see Saleem H. Ali, ‘Reconciling Islamic Ethics, Fossil Fuel Dependence, and Climate Change in the Middle East’ (2016) 50 (2) *Cambridge Review of Middle East Studies*, <<https://doi.org/10.1017/rms.2016.135>> (accessed 15 August 2020).

90 For further details, see, Iraqi National Constitution, art. 33 (2005) (Iraq), available at <http://meria.idc.ac.il/journal/2005/issue3/Iraqiconstitution/constitution.html>.

Christoph Schwarte, ‘Environmental protection in Islamic law: an overview on potential influences for legal developments in Iraq’ (2003) 8 (5) *Local Environment, The International Journal of Justice and Sustainability*, <<https://doi.org/10.1080/1354983032000143725>> (accessed 15 August 2020)

91 “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command” see Principle 7 of the Rio Declaration on Environment and Development 1992.

**a) A brief observation on the Leghari v. Federation of Pakistan case.**

It seems justified to argue that international and domestic environmental law and policy combined with religious principles of environmental *ethos* have positively influenced some domestic jurisdictions.

The argument seems to be justified, bearing in mind that the Appellate Court in Pakistan declared responsible the national government for failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030).<sup>92</sup> The Pakistani farmer, petitioner, won the lawsuit boosting the legal field of climate change public interest litigation. The public authority inaction, delay and lack of seriousness were punished by the Court. This case shows that Islamic jurisprudence is inclined to adapt to new challenges – like Climate Change – using new legal techniques.<sup>93</sup> Under an Islamic perspective, everybody has the right to a healthy environment and human dignity. In an Islamic country, like Pakistan, this is significant. Climate change is an imminent threat putting at stake our life and economy.

**a) Climate Islamic Finance: *Green Sukūk***

Fighting climate change entails to create a different way of doing economy. It has been argued that economic public and private sectors must commit themselves to reducing GHG emissions and being oriented to sustainable development. This implies a moral obligation that all of us must care for the present and future generations. With this purpose, the Islamic Declaration of Global Climate Change plainly exhorts all the economic operators to divest from fossil fuels.

From a functional point of view, shifting to renewable energies and adopting a zero-waste or circular economy are among the effective strategies that could be implemented in our contemporary world.<sup>94</sup>

The Islamic environmental *ethos* is shaping the so-called conventional finance. It is possible to assert that its compliance with the Shariah provisions characterizes Islamic climate finance. Hence, it seems to be more ethically and socially responsible than the conventional one. The creation of *green bonds* constitutes a vital instrument to shift to a low carbon society allocating the money to exclusively eco-friendly projects around the world.

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92 Leghari v. Federation of Pakistan [2015] W.P. No. 25501/201

93 Ahmad Badri Abdullah, 'An analysis of Islamic Jurisprudence (*Fiqu*) As Applied Islamic Ethics' (2016) 5 (2) *Islam and Civilisational Renewal* <<http://www.iais.org.my/icr/index.php/icr/article/view/403>> (accessed 15 April 2020)

94 Islamic Declaration on Global Climate Change (2015) 3.4

Green bonds will finance projects and activities in predominantly in Developing Countries. This entails the risk for economic operators to deal with the political instability and lack of good domestic legislation. That is the weaker point.

As noted by Zhulkarnain Abdul Rahim “essentially, the *green sukūk* is just another fundraising tool, but there are requirements for the proceeds to be used only in environmentally friendly investments or sustainable/renewable energy investments, for instance. This is in addition to the fact that they would be Shariah-compliant. Hence, this is attractive for the majority-Muslim countries in the South East Asia region, for instance Malaysia<sup>95</sup> and Indonesia, to leverage on their natural resources in a more sustainable way.”<sup>96</sup> Islamic finance created a new financial tool that present different characteristics compared to the conventional one. The *green sukūk* based on shared risk, preservation of capital and no interest (*riba*) as prohibited by the Shariah. This tool is ideally connecting the gap between conventional and Islamic finance for the good of our planet.<sup>97</sup>

## SECTION V

### Conclusions

Theoretically, Islam can act as a socio-legal tool capable of “tuning the law with nature.”<sup>98</sup> As religion and way of life regulating human relationships and socio-economic development, Islam is disseminating through its sort of *code of conduct* the importance of the obedience to the Creator and full respect for the environment without forgetting the importance of ecology.

To conclude with, this paper showed that Islamic environmental *ethos* has legal principles and concepts as well as inner policies able to create or, at least, influence organically modern eco-designed legal instruments for the wellbeing of the world (particularly in the Middle East and South-East Asia areas) and improving its current state of affairs. The Islamic Lawyers (and not only) should focus their own intellectual activities on increasing the responsiveness and, above all, the rationality of Islamic laws in order to tackle issues such as land degradation, water

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95 Faris Hadad-Zeros, ‘Malaysia launches the World’s First Green Sukūk’ (14 October 2020) <<https://www.sukuk.com/article/malaysia-launches-the-worlds-first-green-sukuk-6361/>> accessed 19 April 2020. See, also Victoria Kwakwa, ‘How Islamic finance is helping fuel Malaysia’s green growth’ (15 September 2020) <<http://blogs.worldbank.org/eastasiapacific/how-islamic-finance-is-helping-fuel-malaysia-green-growth>> accessed 19 April 2020.

96 E-mail from Zhulkarnain Abdul Rahim (Partner Dentons Rodyk) to author (12 April 2020).

97 ‘Green Sukūk’, The World Bank IBRD-IDA, Infographic, (19 September, 2017) available at <<http://www.worldbank.org/en/news/infographic/2017/09/19/malaysia-green-sukuk>> accessed 19 April 2020

98 Fritjof Capra and Ugo Mattei, *The Ecology of Law. Toward a Legal System in Tune with Nature and Community* (Berrett-Koehler Publishers 2015).



management, and the overarching issue of climate change. Basically, the mere human being survival might be considered as a value in large part of the world.

The international society is now more and more aware of the severity of the current environmental crisis, so it is necessary to find new ways to improve the relation human – earth and sources of obligation to protect the environment. Thus considered, a more than a possible idea, it is to adopt a religious-based approach. Within it, Islam, together with other religions, can create enduring civilizational values<sup>99</sup> increasing the convergence of efforts made by states, individuals, international organizations, NGOs (in practice by involving the whole civil society) to protect human life and the environment from transnational or global existential threats. Obviously, states can make new laws in favor of nature to protect species and human survival safeguarding future generations to come. It is possible to agree with the opinion of Harold Coward stating that “world’s religions can be strong copartners with law and public policy in achieving the goal of sustainability... by putting international declarations into practice.”<sup>100</sup> Logically, this statement might be interpreted as a cooperative partnership rather than a confrontational relationship between international law and world religions, such as Islam.<sup>101</sup> An appreciation of

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99 “While the voices of “the clash of civilizations” are echoing loud, and the so-called “war on terror” is influencing the fate of some communities and many groups of individuals in various countries of the world, it is appropriate to recall the humanitarian values that rally nations and peoples around them.” Sheikh Wahbeh al-Zuhili, *Islam and international Law*, *International Review of Red Cross*, 87 (854), 2005. David A. Westbrook, *Islamic International Law and Public International Law: Separate Expressions of World Order*, 33 VA. J. INT’L L. 819 (1993). James Cockayne, *Islam and International Humanitarian Law: From a Clash to a Conversation Between Civilizations*, 84 INT’L REV. RED CROSS 597 (2002). Abdullahi Ahmed An-Na ‘im, *Islam and International Law: Toward a Positive Mutual Engagement to Realize Shared Ideals* (2004) 98 Am Soc’y Int’l L Proc 159. Ignacio de la Rasilla del Moral and Ayesha Shahid *International Law and Islam: Historical Explorations*, Brill, 2018.

100 “What does this mean for law and public policy? Simply put, it means that the religions are rapidly developing the resources to join hands with international law in supporting the Universal Declaration of Human Rights and its call for dignity and justice to all. But the ethic of the Declaration is, as Louis Henkin has pointed out, a minimal ethic. Human rights “are essential, but not enough. The Declaration, the ideology of rights, says nothing about brotherhood, or love.” I would add our interconnection with nature to that list. That is the added plus that religion brings in its cooperation with law, a maximal ethic. In addition to insisting on the dignity and development of women, the new theologies summarized above require a just sharing of the earth’s re- sources and the protection of the environment. While law may provide the requirements of a minimal ethic, the world’s religions, through their new theologies, are establishing a maximal ethic as the goal to be achieved. Richard Falk, Professor of International Law and Practice at Princeton University, suggests that the great potentiality of religion is that it can set forth maximal social, economic, and environmental norms them into reality in people’s lives. Law may set forth which depend upon civil support for actualization. Religions major social force in this regard. Professor Falk observes potential in world religions is that they can reach globe more directly and more fully than any other societal institution.” See, Harold Coward, *Religious Responses to the Population Sustainability Problematic: Implications for Law*, 27 ENVTL. L. 1169, 1169 (1997).

101 “The relationship between Islam and international law has long been studied, primarily in the field of the law of war and international humanitarian law...The relevance of Islam to international law should be assessed with due regard to substantive legal principles and rules that Islam contains. A prerequisite for an objective assessment is to contextualize them through a glimpse into the Islamic conception of international law, the sources of Islamic international law, and the legal history of this law. Islam, like all other religions, consists of

the nexus between ecology and Islam shows that faith traditions provide centuries old legal customs<sup>102</sup> and norms for environmental ethics and can consider the understanding of the principles of environmental protection as a universal in nature and, furthermore, have a positive impact on various international law agreements.<sup>103</sup>

Interfaith partnerships could be pioneering in shaping a newfangled emerging global environmental ethics and a common sense of responsibility leading us towards a *religious ecology*<sup>104</sup> able *inter alia* to put an end to the lack of enforcement of environmental laws worldwide (e.g., the human right to a healthy environment) and generate resilience in people suffering for natural disasters. For instance, in this geological era of Anthropocene, to fully embrace the principle of Khilafah and the global stewardship emphasized by Pope Francis' encyclical document *Laudato Si': On Care for Our Common House*,<sup>105</sup> the international society could move towards a firsthand innovative balance between ecology and economy.<sup>106</sup> And yet, a unique and decent intrinsic relationship between man and nature without the typical temptation

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religious norms and practices.” see, Said Mahmoudi, *Islamic Approach to International Law*, Max Planck Foundation for International Peace and the Rule of Law, 2019.

102 “In connection with the notion of Customary Law as a living law, Satjipto Raharjo puts it as follows: There is a definition of "living law" with "law in action.” see R. Sulistyarini et al. (2018) *Int. J. Soc. Sc. Manage.* Vol. 5, Issue-2: 51-59

103 “The Islamic law of nations is not part of the dogma of Islam but is the product of a continuing process of juridical speculation by authoritative jurists over the ages. The Islamic law of nations is part of the corpus of Islamic law, just as the original *jus gentium* was a branch of municipal Roman law. Much has been said of the religious character of Islamic law. Islamic law is a religious law only in the sense that its basic ethical grounds and some of its general principles are to be found in the Quran and the pronouncements of the Prophet. Beyond that, the corpus of Islamic law as it developed over the ages is manmade in the sense that it resulted from the efforts of the jurists of the various schools of law. If civil law can be described as a legislator's law as to its source and common law as a judge's law, then Islamic law is a jurist's law. There is very little that is rigid and immutable in Islamic law.” see, Gamal M. Badr “A Survey of Islamic International Law “A Survey of Islamic International Law, Proceedings of the Annual Meeting (American Society of International Law), APRIL 22-24, 1982, Vol. 76 (APRIL 22-24, 1982), pp. 56-61. See, also Virally, *Le Principe de Reciprocity dans le Droit Internationale Contemporain*, 122 *Recueil des Cours* 1, 51 (1967)

Schacht, *Islamic Law in Contemporary States*, 8 *Am. J. Comp. L.* 133, 144 (1959).

104 “Religions have entered an ecological phase” see Roger S. Gottlieb, Introduction: Religion and Ecology—What is the Connection and Why Does it Matter? in *Oxford Handbook of Religion and Ecology* 4 (Roger S. Gottlieb ed., 2006), available at <<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195178722.001.0001/oxfordhb-9780195178722-e-1?print=pdf>> (accessed 30 December 2020).

105 Pope Francis, Encyclical Letter, *Laudato si': On Care for Our Common Home* (June 18, 2015), <[http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papafrancesco\\_20150524\\_enciclica-laudato-si\\_en.pdf](http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papafrancesco_20150524_enciclica-laudato-si_en.pdf)> (accessed 30 December 2020). “The call to ecological conversion draws on the profound spiritual idea of conversion, which at its simplest can be described as a radical reorientation of perspective that informs our goals and therefore guides our choices and actions. In the religious tradition, a conversion depicts both a turning point and a journey. The turn is both a turning away from and a turning towards. Paradoxically, this shift in perspective is experienced at the same time as a momentous break, away from deeply entrenched habitual patterns of thought and action, and as a minor adjustment, for in the moment of conversion we merely rediscover our original orientation and destination” see, Ileana M. Porras, *Laudato Si', Pope Francis' Call to Ecological Conversion: Responding to the Cry of the Earth and the Poor—Towards Integral Ecology*, 109 *AJIL UNBOUND* 136, 136 (2015).

(trend) of manipulating or dominating the natural environment just for greed. From the respect to natural and cultural diversity as well as the comprehension of the complexity of the teachings derived from these, it depends the future of the *homo sapiens* civilization. Humanity has the capability or duty of making radical and undeferrable choices. From these extremely difficult choices will depend the life or death of humanity itself and the world as it is known so far.

If it is true that since the 1972 Stockholm Declaration environmental law and policy have increased its level of adequacy, it is also objective to affirm that the law for nature is still to be done. Perhaps by finding new ecological paradigms or by adopting an effective and operational religious-based approach characterized by interdisciplinarity (it could be a real possibility). On a personal and final note, it might be necessary to bring back our legal and political mindset to the 1972 extraordinary momentum to fundamentally create a new harmonious order with nature; reminding the words of the above-mentioned declaration, “what is needed is an enthusiastic but calm state of mind and intense but orderly work.”<sup>107</sup>

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106 Father Ryan, SJ, Care for our Common Home: Jews, Christians and Muslims Confront Climate Change, *Origins*, 30 April 2020, 50 (1), p. 3 – 9.

107 Point 1(6) 1972 Stockholm Declaration.