The Muslim Concept of Sovereignty: Islamicjerusalem during the First Muslim Conquest as a Case Study

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Introduction

The issues of sovereignty have captured the interest of many researchers, and political elite. Not only because of its challenging nature but also it is a valuable project for any parties who claim to be the champion of sovereignty. The question of sovereignty, which essentially deals with political power, has become a debatable issue among the Western scholars since the sixteenth century. They focused the discussion along the holder of sovereignty, the absoluteness of sovereignty, and the internal and external dimensions of sovereignty. However, Muslim scholars have only begun to pay great attention to those issues since the nineteenth century. They have attempted to revise the notion of sovereignty in accordance to Muslim principles of statehood and came with various theoretical findings.

In order to understand the Muslim concept of sovereignty, the researcher decided to choose Islamicjerusalem during the first Muslim conquest as a case study. This is due to the fact that the first Muslim conquest of Islamicjerusalem by ꜥUmar al-Khaṭṭāb was an essential turning point in the history of

the Muslim Arab East and in the world history as a whole. Indeed, Islamicjerusalem is a very ancient, significant region with a unique value for all the millions of people of different religious persuasions who believe it to be their very own sacred place.

Theoretical Framework of the Muslim Concept of Sovereignty

As the question of sovereignty has only become a matter of great concern to the Muslims in the latter centuries, the researcher has found inadequate materials elaborated in details regarding the topic by the classical Muslim scholars. Most of the sources found discuss very brief about the concept of sovereignty without going into details to develop theoretical framework of the Muslim concept of sovereignty. Therefore, the researcher seeks to examine; how did they define Muslim concept of sovereignty? What do the Qur'ān and Sunnah say about sovereignty? Since there are some attempts by modern Muslim scholars to develop the concept, the researcher will also investigate the relation between their views and the previous classical Muslim scholars.

Classical Muslims Viewpoint

The researcher is inclined to focus on three prominent early Muslim scholars, Al-Māwardī, Ibn Taymiyya and Ibn Khaldūn, who seemed more explicit in discussing the concept of sovereignty. According to Al-Māwardī (974-1058 CE), the *imamate*, or supreme leadership, is intended as vicariate of the

prophecy in upholding the faith and managing the affairs of the world. Its establishment is unanimously considered to be obligatory on the community. There is disagreement, however, as to whether the obligation is derived on rational grounds or imposed by heavenly law. Those who subscribe to the former view argue that rational beings tend by nature to submit to a leader who would keep them from inequity and settle their conflicts and disputes. Without rulers, men would exist in a state of utter chaos and unmitigated savagery.[1]

Al-Māwardī also argues that those who base the obligation on the revealed law rather than reason maintain that some of the legal functions performed by the sovereign might conceivably not have been required by the faith. Rather than making them necessary, reason mandates that each rational being refrain from injustice and hostility, and adhere to fair dealing and cordial relations with others, in all things following the dictates of his own mind, not being led by other people. According to revealed law, however, he must submit the conduct of his affairs to the leader sanctioned by the faith.[2]

Ibn Taymiyya (1263-1328 CE) also has an interesting idea regarding the topic. Some Western scholars such as Rosenthal have suggested that Ibn Taymiyya must have been influenced by Greek philosophy since he was well-read in it.[3] Nevertheless, it seems that nature and substance of Islam itself were adequate to inspire Ibn Taymiyya with the sociological approach to the theory of the state. Apparently, his methodology

to explain the Muslim political philosophy is much more profound than that of his predecessors.[4]

Ibn Taymiyya claims that when it is proved that the state is a necessity, the best thing is to accept the authority of Allah and His Prophet; for Allah orders good and forbids evil, and permits the use of clean things and prohibits the use of unclean ones. Acceptance of all this, he holds, is obligatory on all mankind, and these functions cannot be realized without power and authority. Similarly, all the obligations, extending help to the oppressed and the enforcement of the penal provisions of the Qur'ān, cannot be fulfilled without power and authority.[5]

Ibn Khaldūn (1332-1406 CE) has also endeavoured to examine the nature of political power in human civilization to which they applied the term royal authority.[6] He says: "*Royal authority in reality belongs only to those who dominate subjects, subjugate the people, collect taxes, send out military expeditions, and protect the frontier regions; and have no one over them who is stronger than they. This is generally accepted as the real meaning of the royal authority*."[7]

He proceeded to describe the relation between royal authority and laws, and distinguished three kinds of states according to the kind of law governing them. Accordingly, Ibn Khaldūn classified royal authority into three kinds. The first kind is natural royal authority, which was based on arbitrarily forcing the masses to act. Secondly, political royal authority, which was based on rational politics, by which he meant a law established by human reason; and which induces the masses to

act in continuance of the interests of their worldly interests. Thirdly, the one based on revealed political norms.[8]

Ibn Khaldūn has described *sharī*ʿ*ah* (Muslim law) as a comprehensive system of human affairs, which covered their worship of Allah and their dealings with their fellow men. It also included the organisation of royal authority. Therefore, royal authority was dictated to follow the course of the revealed religion because all human affairs should be supervised by the insight of the lawgiver. Such royal authority belonged to the prophets who instructed the divine law, and to those who took their position after them, the caliphs. Thus, the caliphate, in its essence, was a succession to the lawgiver, the prophet, whose duty was to further, like him, both the religious and sequential interests of the masses.[9]

Significantly, the researcher has found that the classical Muslim scholars have developed their views strongly based on the Qur'ān and Sunnah. As Allah says: "*O ye who believe! Obey Allah, the Messenger and those of you who are in authority*" (al-Nisā' 4:59), Al-Māwardī states that Allah has thus made it obligatory for us to obey those in authority; namely the sovereigns with power over us. Accordingly, Hishām Ibn ʿUrwa quotes Abū Sālih, on the authority of Abū Hurayra, as saying that the Messenger of Allah said, "*You will be ruled after me by some who are benign, and some who are depraved. Listen to them and obey them in all that is right. The good they do will be for your benefit and theirs; the bad they do will be for you and against them.*"[10]

The researcher has found more interesting and reliable fact from the Sunnah regarding the concept of sovereignty, which is the establishment of the first Muslim state by Prophet Muhammad after migrating from Makkah to Yathrib in 622 CE. For ten years Prophet Muhammad was not only the leader of the emerging Muslim *ummah* in Arabia but also the political head of Madīnah. As the leader of Madīnah, Prophet Muhammad exercised jurisdiction over Muslims as well as non-Muslims within the city. The legitimacy of his rule over Madīnah was based on his status as the Prophet of Islam as well as on the basis of the compact of Madīnah.[11]

As Prophet of Allah, he had sovereignty over all Muslims by divine decree so profoundly manifest in the statement of *Shahādah* (There is no God but Allah and Muhammad is His Messenger). When Muslims declare their faith, they not only assert the sole divinity of Allah but also the sovereignty of Muhammad as His Messenger and agent on Earth. But Muhammad did not rule over the non-Muslims of Madīnah because he was the Messenger of Allah. They did not recognize this particular credential of his. He ruled over them by virtue of the tri-partite compact that was signed by the *Muhājirūn* (Muslim immigrants from Makkah), the *Ansār* (indigenous Muslims of Madīnah) and the Jews.[12]

Thus, the researcher is inclined to argue that the Qur'ānic and Sunnah concept of sovereignty is universal, transcendental, indivisible, inalienable and truly absolute. Allah the sovereign is the primary law-giver while agents such as the Muslim state and the *khalīfah* enjoy marginal autonomy

necessary to implement and enforce the laws of their sovereign. Human is not only the primary agent of the sovereign but also enjoys a margin of autonomy. This margin of autonomy by virtue of vicegerency is the Muslim equivalent of popular sovereignty.

Modern Muslims Viewpoint

With regards to the issue of sovereignty, Sherwani claims that early Muslim thinkers are full of theories about the ideal of sovereign, theories which are interesting in that they delineate as sovereign who is not above, but certainly and deliberately below the basic laws of the community. The principle of Muslim laws are regarded as Divine in their origin, and the theocratic basis of the state entails the idea that state is held in trust for the people by the sovereign under this law. Hence, he stated that Ibnu'l-Jamāᶜah, after enumerating the rights of the *Sultān* or *Khalīfah* as against the people, goes on to consider, reciprocally, the rights of the people as against the *Khalīfah* or *Sultān*.[13]

Abu Shādī argues that among the fundamentals of Islam was that the Muslim community possessed sovereignty. He describes the concept that Islam attributed to the community through its representatives *ahl al-hall wa al-ᶜaqd* (the people who bind and loosen) the power of election and deposition of the ruler, and *shūrā* (a process of consultation) in governmental decisions.[14]

The researcher has found that Khir also attempted to highlight that there is a tendency dominated the thought of the Muslim reformists, who used the notion of popular sovereignty to denote the participation of the Muslim populace in governmental affairs.[15] Khir added: "*An outstanding advocate of the stress laid on the role of the Muslim community in relation to its ruler is Muhammad Rashid Ridhā who explicitly admitted that he used the term sovereignty of the nation (sultat al-ummah) in its modern political sense to express his ideas.*"[16] Apparently, Hassan al-Bannā, the founder of the movement of the Muslim Brothers (*al-Ikhwān al-Muslimūn*), and Abd al-Qadīr ʿŪda, a leading thinker of the movement, have also accepted Ridha's idea in his usage of the concept *sultat al-ummah* and its applications and reproduced his thesis in their writings. Nevertheless, it is important to state here that they never accepted the full connotations of the Western concept of sovereignty of the nation as initiated by Rosseau.[17]

On the other hand, the group of Islamists includes Al-Maudūdī, Sayyid Qutb and Saʿīd Halīm Pasha, who emphasized the supremacy of Allah's laws, the *Sharīʿah*, preferred to assign sovereignty to it or to Allah.[18] Al-Maudūdī conceives of the term *al-hākīmiyyah*, a derivative of an Arabic word that means 'to govern', which has been used by Muslim political thinkers ever since to mean sovereignty. He argued that according to Islam, sovereignty belonged to Allah. He alone was the Law-giver and that believers could neither resort to totally independent legislation, nor could they modify any law laid down by Allah. Al-Maudūdī, also recognized the vicegerency of

man and explained that each believer was a repository of the *khalīfah* (vicegerency). Thus sovereignty lies in Allah, state is an agency of the sovereign and every believer is Allah's vicegerent on Earth. This however means that both the state and believers can legitimately act on behalf of the sovereign. Thus in Al-Maudūdī's interpretation the sovereign has created dual agency in the Muslim state and the *khalīfah*, creating a balance or division of power between state and society.[19]

Actually, Wahbah al-Zuhaylī has come with profound argument regarding the concept of sovereignty. Al-Zuhaylī has divided the sovereignty employed by Muslim state into two divisions. Firstly, regarding the internal capacity, the state has absolute power over the people and institutions within the Muslim state. Everyone, including the state leader is subject to law and will remain so for all eternity.[20] He cited Al-Māwardī sayings:

"By doing what is due to the community in the manner outlined, the sovereign accomplishes also what is due to God in relation to their rights and duties, and they owe him in return two things so long as his policy has not changed: obedience and support."[21]

Secondly, regarding the external capacity, it is clear that the Muslim state has an authority and total independence without allowing any other authority to decrease or to abandon its supremacy. He refers to the Holy Qur'ān: *"...and Allah will not give the disbelievers any way (of success) against the believers."* (al-Nisā' 4:141). Indeed, the power or authority

inquires self-rule, since then, the Muslim jurists oblige the *imām* (sovereign) to strengthen border posts by deterrent equipment and fighting force so that the enemies may not gain the chance to violate what is sanctified or shed a Muslim's or protected non-Muslim's blood.[22]

The researcher is inclined to agree with a conclusion derived from Khir's analysis that in spite of those disagreements about the meaning and location of sovereignty, there is no real difference of opinions regarding the basic outlines of the Muslim political system.[23] Interestingly, there is relation and continuation among those ideas and seemed complementing each other.

It is thus obvious that despite Islam's emphasis on God's sovereignty, it does not oppose people tasks and allows the believers to form such a state. Recognition of Muslim laws does not eliminate the role of human opinion, or legislation. Yusuf al-Qaradāwī argues that the acceptance of the principle that legislation of rule belong to Allah does not take away from the *ummah* its right to seek for itself the codes necessary to regulate its ever changing life and worldly affairs. He says: "*What we seek is that legislations and codes be within the limits of the flawless texts and the overall objectives of the Sharīʿah and the Muslim message. The binding texts are very few, while the area of 'permissibility' or legislative-free space is quite wide.*"[24] Therefore, Khir concludes that it is only a problem of terminology which made some Muslim scholars assign sovereignty to Allah and others associate it with the community.[25]

The researcher also intends to argue that implicitly, Al-Zuhaylī's definition of Muslim sovereignty clarifies that Muslim concept of sovereignty has interrelation with two other principles of Muslim state, people and territory. In short, Muslim concept of sovereignty could be divided into two divisions, sovereignty over the people and sovereignty over the territories. Thus, the researcher attempts to develop further discussion and analysis based on these two divisions of Muslim concept of sovereignty.

Sovereignty over the People

The researcher has found interesting argument raised by Saᶜīd Halīm Pasha to outline the basic mechanisms of Muslim concept of sovereignty over the people. Actually, his political thought consisted of establishing three independent, but closely united institutions: executive, legislative and controlling aspects.[26]

Executive Aspect

Since absolute authority or ultimate sovereignty rests in Allah, the Muslim state must uphold the supremacy of Muslim law; furthermore, since the Muslim community is to be governed in accordance with the Muslim law, it must have a directing head to implement or execute it. Ibn Abī'r-Rabīᶜ states that it is absolutely necessary that the ruler of a state should be the best among the people and he should be supreme in the land.[27]

Therefore, authority in the Muslim state would reside in one person, for, if there is more than one supreme ruler in the land, it is bound to entail constant quarrels between the pseudo-sovereigns, and the whole state would be in a great turmoil.[28] According to Pasha, his main task was to regulate and harmonize the functions of the various powers of the state and settle any differences between them. As head of the executive authority, he would delegate sufficient rights to his ministers and governors to administer effectively.[29]

Legislative Aspect

Since the right to legislate was simply a matter of competence, it should belong to that class of specialists who possess deep knowledge of *Sharīʿah* and high moral qualities. The legislative assembly like the controlling parliament was to be elected by the nation. However, the controlling assembly had no authority over the executive. It has only the right to criticise, urge and warn. In the event of differences between the two, the head of the state should intervene and act as an arbitrator. The head of the state himself was to be personally responsible both to the representatives of the *Sharīʿah* and the representatives of the nation who should provide for a mechanism and procedure of extreme simplicity to depose him *"when his faults, his vices or shortcomings had rendered him insupportable."*[30]

The researcher argues that Pasha's view about legislative aspect should be enhanced by the Muslim legislative perspectives since Muslim sovereignty gives a strong emphasis on the practice of Muslim law. Thus, regarding the Muslim

legislative principles, for the most part and in general, establish universal rules under which countless particular cases are incorporated. For these Muslim principles in their fixed formulations are, in the words of Shaikh Mahmūd Shaltūt, intended *"to be detailed on the unchangeable and brief on the changeable… for it is illogical for a Sharīᶜah which is everlasting, permanent and general to engage in detailing rules on particulars which take place in its present and its future… Accordingly, it is inevitable that brevity prevails and general principles suffice."*[31]

Controlling Aspect

Although the executive authority should be free in its domain, the principle of sovereignty of the *sharīᶜah* necessitates that the Muslim community should supervise its government and see that is was maintaining the supremacy of the *sharīᶜah*. This could be fulfilled by an assembly elected by the nation which would control the acts of the government. But that national parliament would be a controlling, not a legislative authority.[32]

Muhammad Rashid Ridhā clearly stated that the Muslim employment of the principle of sovereignty of the community surpassed its modern application in the West. He bases his conviction on three grounds, the idea of *shūrā* (a process of consultation), the doctrine of *ijmaᶜ* (consensus) and the concept of *ulū al-amr* (possessors of the right of command).[33] In fact, the researcher has found that it is very important point to prove how

Islam gives the community significant roles to ensure their leaders and government remain in the right path.

Sovereignty over the Territory

According to Javid Iqbāl, a sovereign Muslim state is not a national state, for a Muslim community is based on faith and consists of people who may belong to different tribes, races and nationalities; speak different languages; or be of a different colour. He said: "*What all of them have in common is their spiritual aspiration and that they regard themselves as a nation because of this common spiritual aspiration...It is not a territorial state in the strict sense of the term since the Qur'ānic concept of sovereignty is universal, that is no territorial. Hence, it aspires to become a universal state. Nevertheless, it is not utopia or an imaginary state; it has to be initially founded as a territorial state.*"[34]

Basically, the researcher agrees with the idea initiated by Iqbāl. Nevertheless, it seems to be more appropriate if he elaborates his concluding remarks with a clear example to explain what he means by '*it has to be initially founded as a territorial state.*' Indeed, the Muslim state of Madīnah is the best example to support his argument since it was founded as a territorial state and gradually expanded to become a universal state. Thus, the sovereignty over the territory is also very significant with respect to the Muslim concept of sovereignty.

According to Al-Zuhaylī, an analysis about territory will include the land (city, village, forest, desert, mountain and etc.), rivers, coastal area and surrounding seas if applicable.[35]

Unreservedly, it will relate to economical aspect as well as international policy. Hence, the researcher attempts to make it clearer by outlining three important points relating to territorial aspects i.e. security, land tax and revenue, status and international relation.

Security

Islam as a way of life has its own military policy. Besides *jihād* of liberation and calling for the path of Allah, it also emphasizes on defensive *jihād* for the purpose of preserving the sovereignty of Muslim state.[36] Hence, the researcher argues that the security of the Muslim state must rest in the hands of the Muslim authority and not with any other entity, state, or power. The state should not depend on any other foreign entity to secure its security. Complete authority over its internal affairs and its territory must reside exclusively with the state and the Muslim *ummah* for such an entity to be the Muslim state.

El-ᶜAwā has outlined two conditions, which a person taking charge of governmental affairs in the Muslim state should adhere to. These are security of territory so that people may live in their homes safely and travel in security, and fortification of borders with preventive equipment and repelling aggression.[37] Obviously, this is the important point to be raised regarding the sovereignty over territory, which needs armed forces to look after its security especially alongside the defined boundaries.

Land Tax and Revenue

The researcher argues that Muslim sovereignty over the territory also relates to the land and its revenue. In fact, Islam has its own system of land taxation such as *al-kharāj* and *al-ʿushr*.[38] Al-Māwardī described that one of the four departments under the sovereign's *dīwān* (administrative office) has to do with the dues and taxes from the provinces.[39] This department, which relates to tolls and dues from the provinces, includes six sections:[40]

The first is definition of the province in terms of its distinctive features, and mention of its subdivisions that have different regulations. Thus, each region is assigned its own borders and if it has districts with different rules they are specified. The second is a statement of whether the province has been conquered by force or by treaty, whether its land has been established as a source of tithe or tax (*kharāj*), and whether its part are treated in the same way or differently.

The third covers the conditions of the land tax and the surface area it applies to, and whether it will be by sharing of the crop, or an estimated payment on the yield. The fourth section mentions about the free non-Muslim subjects in each district, and how the tax supposed to be computed for them.[41]

The fifth, if the province is rich in minerals, covers the kinds of metals and amount of each, so that the duty on metal may be taken. This, however, is not accurately determined by area, or fixed by estimate of change in it, but according to the amount extracted if any. The sixth section applies if the province is a land adjacent to enemy country whose property has been

providing tithes for the land of Muslims by the clauses of an established pact, in which case the truce with them is recorded in the register.[42]

Obviously, the Muslim taxation system has indicated that Muslim concept of sovereignty over the territory also concerns with economic factors for the sake of state development and stability.

Status and International Relation

Actually, the discussion about the historical Muslim theory of world division has a close correlation with Muslim sovereignty. Here, the researcher does not intend to explore extensively about that theory, but it seems very important to highlight some relevant points regarding the Muslim concept of sovereignty.

Generally, classical Muslim scholars have divided the existing territories in the world into two division, *Dār al-Islām* (Muslim territory) and *Dār al-Harb* (an abode of war). Nevertheless, they came with various interpretations regarding the definition of *Dār al-Islām*. For instance, Abū Hanīfa had emphasized on security and protection in his definition about *Dār al-Islām*.[43] While ʿAbd al-Qadīr al-Baghdādī had relied on the application of the Muslim legal system[44], Ibn al-Qayyim had emphasized on the ownership of the lands by Muslims as well as the application of the Muslim legal system.[45]

Although, modern Muslim scholars such as Al-Zuhaylī and Abū Zahrah argue that the Muslim theory of world division

is no longer applicable nowadays; they also emphasize on merely similar criterions as outlined by classical scholars to define the term *Dār al-Islām*.[46] Interestingly, El-ᶜAwā has argued that the notion of Muslim world division as initiated by the classical scholars has reliable reasons since they attempted to counter Romans world division, which based on racism. Thus, Muslim scholars introduced that division to expose a reliable notion, which based on faith and condition.[47] Undoubtedly, it seems applicable on that period and situation.

However, since the notion is derived from *ijtihad*[48], the researcher is inclined to agree with El-ᶜAwā's argument that it could be revised with passing of time. On the other hand, the researcher has found that they implicitly agreed regarding the relation between the Muslim concept of sovereignty over the territory and the status of the territory itself since most of the outlined criterions are among the aspects of Muslim sovereignty. Furthermore, Al-Būthī has stated explicitly that Muslim sovereignty over the territory is the foundation of recognizing that territory as *Dār al-Islām*.[49]

Significantly, with regard to the manifestation of the status of *Dār al-Islām*, Muslim scholars are in agreement that Muslims are strongly obliged to secure any part of *Dār al-Islām* and never allow its transformation into *Dār al-Harb* again. Al-Būthī stated that it is necessary for Muslims all over the world to protect *Dār al-Islām*, regardless of how weak they are or how strong and aggressive their enemy is.[50] Hence, the researcher argues that all Muslims are compulsorily responsible to their faith in order to defend and secure Muslim sovereignty over any

part of Muslim territory in the globe from any attempt to occupy or confiscate their land. Abū Shādī obviously highlights that the question of sovereignty could not be separated from the matter of Muslim faith.[51]

In addition, the Muslim sovereignty over the territory also emphasizes on the important roles of those territories to contribute actively at the international level towards establishing peace and stability. Indeed, Islam came to announce human brotherhood and give glad tidings of a call to universality, to eradicate all forms of discrimination, and to establish this noble system using all the practical and theoretical means at its disposal. Islam has reaffirmed the racial and ethnic unity of all mankind; the Prophet Muhammad said: *'For, man is from Adam, and that there is no supremacy of an Arab over a non-Arab and no supremacy of a black man over a red man except in piety'*[52]

A Discussion of the Muslim Concept of Sovereignty over the People of Islamicjerusalem during the First Muslim Conquest

The conquest of Islamicjerusalem by ʿUmar Ibn al-Khattāb has a profound impact on the history of Muslim Arab East and on the general course of world history. Furthermore, Muslims carried the new faith of Islam to distant regions and created the political and social conditions that allowed it to strike deep roots there. They thus represent the practical starting point in the evolution of the great civilization of medieval Islam,

as well as the beginning of the end of the late antique world. For a time, they also resulted in a dramatic change in the political patterns prevailing in the Muslim Arab East, which usually highlighted as a radical turning point in the history of the Muslim empire and also in the world.

Therefore, the researcher attempts to analyse the Muslim concept of sovereignty over the people of Islamicjerusalem during the first Muslim conquest based on the theoretical framework, which previously developed. Essentially, it focuses on the executive aspect, legislative aspect and controlling aspect.

Executive Aspect

In fact, the Muslim state during that time was led by ʿUmar, who was not only the leader of the Muslim *ummah* but also the political head of the state. As the leader of Muslim state, ʿUmar executed jurisdiction over Muslims as well as non-Muslims within the state. As the successor of the Prophet, he had sovereignty over all Muslims as mentioned in the Qur'an: "*O believers obey Allah and obey the Messenger and those in authority among you. If you should quarrel on anything, refer it to Allah and the Messenger.*" (al-Nisā' 4:59)

On the other hand, he ruled over the non-Muslims by virtue of the pacts that were signed by the authorities and the inhabitants of the conquered regions such as Syria and Iraq. Significantly, in Islamicjerusalem, ʿUmar's Assurance of safety to the people of Aelia has proven that Muslims have considered others to be treated fairly.[53]

Nevertheless, some Arab and Israeli writers emphasize in particular that Jews were initially excluded from Islamicjerusalem under the terms of that assurance. According to the same Muslim historians who rely on Al-Tabarī's account, the assurance forbade Jews to live with Christians in the region because of the conditions of the peace imposed by the Christians of Islamicerusalem.[54]

Here, the researcher has found a comprehensive analysis by El-ᶜAwaisī. He argues that the versions of ᶜUmar's Assurance have been expanded and embroidered with passing of time. Certainly, ᶜUmar had granted the people of Aelia an assurance of safety as mentioned previously, in return for their paying *jizya*. El-ᶜAwaisī concludes by saying: "*As for additions and conditions (expel the Jews from residing in Aelia) attributed to ᶜUmar Ibn al-Khattāb, they are the product of later historical periods, resulting from socio-political circumstances that differed greatly from the time of the first Muslim conquest of Jerusalem.*"[55]

Nizāmu'l-Mulk Tusī says in the introduction to his *Siyāsat-Nāmah*, or *Handbook of Politics*, that the sovereign has charge of the well-being of the people and the comfort and tranquility of his subjects as responsibility for the peace of the land.[56] Nevertheless, Islamicjerusalem is not the first region conquered after the establishment of the first Muslim state centred in Madināh. Thus, how did ᶜUmar as the sovereign perform his duty as mentioned by Tusī? Did he complete his responsibility by visiting Islamicjerusalem several times only?

Here, the researcher raises an important point regarding the implementation of Muslim concept of sovereignty. Factually, ʿUmar as the sovereign of Muslim state has delegated the tasks and deputised someone towards performing his responsibilities. During the conquest of Islamicjerusalem, ʿUmar had appointed an administrative governor for that region. Al-Tabarī related an account from Salīm Ibn ʿAbdullāh, who mentioned that ʿUmar had appointed ʿAlqamah Ibn Mujazziz governor of Aelia and appointed ʿAlqamah Ibn Hakim governor of al-Ramla.[57]

Legislative Aspect

Apparently, ʿUmar has shown a great concern regarding the implementation of Muslim law in Islamicjerusalem during the conquest. According to Abu Zirʿā al-Dimashqī, Ibn ʿAbd al-Barr and Ibn Hajar al-ʿʿAsqalānī, ʿUbāda Ibn al-Sāmit (d.34 AH) was appointed by ʿUmar as a judge and teacher in Islamicjerusalem. Al-Maqdisi, Ibn Manzūr, al-Hanbali and al-Dhahabi also agreed with this statement and noticed that ʿUbāda was the first Muslim judge in Islamicjerusalem.[58]

Gil claims that the implementation of Muslim law has implicated in distinguishing between Muslims and non-Muslims in Islamicjerusalem, which the latter indicated with inferior status. He argues that Muslim law did not come to a uniform conclusion regarding the degree of responsibility for the life of a *dhimmī*, that is to say, if a Muslim kills a *dhimmī*, is he liable to the death penalty, or must he simply pay blood money, as for the killing of a Muslim.[59]

The researcher has found that Gil's arguments are unjustifiable since Islam gives its citizens (Muslims and non-Muslims) the right to absolute and complete equality in the eyes of the law. Al-Būthī has explained that the uniformity of their rights and obligations is the foundation of equality in Muslim society, in which the rights and obligations of any person are neither greater nor lesser in any way than the rights and obligations of other people. He added that Islamicjerusalem is the best model with regards to the treatment of non-Muslims by the Muslim government.[60]

As far as the non-Muslim citizens of the Muslim State are concerned, the rule of Muslim law about them has been very well expressed by ᶜAlī in these words: "*They have accepted our protection only because their lives may be like our lives and their properties like our properties*"[61]. In other words, their lives and properties are as sacred as the lives and properties of the Muslims. The Prophet emphasized the duties of Muslims toward *dhimmīs,* threatening anyone who violates them with the wrath and punishment of Allah. He said: "*He who hurts a dhimmī hurts me, and he who hurts me annoys Allah.*"[62]

Controlling Aspect

ᶜUmar's commitment to implement *shūrā* is proven since his first departure toward liberating Islamicjerusalem. When, Abu ᶜUbayda referred the matter to ᶜUmar at Madīnah, ᶜUmar called a meeting of his Consultative Council, and asked for their advice. ᶜUthmān expressed the view that it was not necessary for

the Caliph to go, and that the defeated Byzantines would themselves surrender. ʿAlī said that Islamicjerusalem was as much sacred to the Muslims as the Jews or the Christians, and that in view of the sanctity of the place it was desirable that its surrender should be received by the Caliph personally. ʿUmar decided to accept the advice of ʿAlī.[63]

Furthermore, the negotiation between ʿUmar and Sophronius regarding the assurance of safety has affirmed Muslim's emphasis on controlling aspect especially in dealing with non-Muslims. Muslim rulers also employed *dhimmīs* to fill administrative posts in several offices established in Islamicjerusalem. According to al-Balādhurī, ʿUmar had also appointed a number of the captives from Caesarea as administrative officials.[64]

In addition, the Muslims in general, usually exempted monks from paying the *jizya*, as sources confirm. These facts clearly illustrate that the Muslims used two different ways of dealing with the inhabitants of the Aelia region; they distinguished between the Byzantine forces and other groups, as well as the robbers from among the local or foreign population. After the total submission of the Aelia region to Muslim authority, it seems that the Muslim governors and caliphs did not interfere in the internal religious matters of the Christians. This was apparent in particular with regard to the appointment of Jerusalem's Patriarch and the diocese of the churches.[65]

Muslim Concept of Sovereignty over the Territory: Islamicjerusalem during the First Muslim Conquest as a Case Study

Here, the researcher intends to examine the boundaries of Islamicjerusalem or Aelia as described by classical scholars as well as modern scholars. Subsequently, further investigation about the manifestation of the existence of its boundaries regarding the issue of Muslim sovereignty over the territory, will be analysed.

A Discussion of the Muslim Concept of Sovereignty over the Islamicjerusalem Region

The researcher attempts to analyze the Muslim concept of sovereignty over the territory of Islamicjerusalem during the first Muslim conquest based on the theoretical framework as previously developed. Essentially, it focuses on national security and social security, land tax and revenue, and the status and international relation.

Security

Khālid Ibn Mi\u1ebddān (d. 103 AH/ 721 CE), ͨUbāda Ibn Nusayy (d. 118 AH/ 736 CE), and Sayf Ibn ͨUmar (d. 180 AH/ 796 CE) mentioned that:

"He (ͨUmar) then sent to them (an army) and divided Palestine between two men; he put ͨAlqamah b. Hakim in charge of one half and stationed him in al-Ramla, and he put ͨAlqamah b. Mujazziz in charge of the other half and stationed

him in Jerusalem. Each of them stayed in his province with the soldiers who were with them."[66]

In light of the statement above, the researcher is inclined to raise two important points. Firstly, the researcher argues that ᶜUmar has given a great emphasis to secure the conquered territories especially Islamicjerusalem by placing ᶜAlqamah Ibn Mujazziz as a military and administrative governor there. This fact is apparently proven by ᶜUmar's second visit to Islamicjerusalem after the ᶜImwas plague in 18 AH. Although, he has cancelled the positions of the governors of Palestine and al-Ramla in his new administrative structure of Syria and appointed Yazīd Ibn Abī Sufyān as governor of Palestine and the Mediterranean Coast, he has kept ᶜAlqamah Ibn Mujazziz in his post as governor of Islamicjerusalem.[67] Moreover, he has appointed ᶜAbd al-Rahmān Ibn ᶜAlqamah Ibn Mujazziz as governor of Islamicjerusalem in place of his father after ᶜAlqamah's death.[68]

Secondly, the researcher argues that the appointment and the placement of the governors according to regions during the conquest have affirmed the significance of the Muslim concept of sovereignty over the territory. Undoubtedly, the established territories with its particular boundaries have facilitated the administrative and military aspects in order to assure safety and effectiveness of state management. Thus, ᶜUmar just remained the boundaries of the territories as applied in Islamicjerusalem. In fact, the researcher does not find even a single account, which mentions that Muslims have revoked the existing boundaries during the conquest. On the other hand, the researcher is

inclined to argue that this policy supports the argument that the boundaries of Islamicjerusalem are merely similar with the previous Aelia region.

Actually, the sovereignty over the Islamicjerusalem region has verified the duties and responsibilities of the sovereign to secure everybody who enters the land as well as who lives within the specified boundaries. Therefore, while *zakat* is charged from the Muslims, *jizya* is charged from the non-Muslims for the safety and security provided to their life, property and honour by Muslim authority.[69] Entrance fees are also charged from the pilgrims, who came from outside the region to be protected or become *musta'min*.[70]

Land Tax and Revenue

The researcher argues that Muslim concept of sovereignty over the territory does not convey any meaning of ownership. Hence, having sovereignty in Islam does not allow the Muslim authority to confiscate private land or expropriate properties owned by individual. Al-Zuhaylī explains the difference between *siyādah* (sovereignty) and *milkiyah* (ownership). He states that sovereignty in Islam gives the legal power to the state to take any suitable action if needed regarding the land under its authority such as introducing certain regulation or implementing state policy of property. However, it does not have right to abandon the individual ownership of private land, unless to be used for public necessity but also with compatible value of compensation.[71]

Obviously, Muslim conquerors did not expropriate the properties, which owned by the inhabitants of Islamicjerusalem during the first Muslim conquest. Furthermore, they did not attempt to settle in the more salubrious part of town, but in a district at the base of their own quarters at the foot of Al-Aqsā enclave. Although, some of them had built estates, they were allowed to do such only in uninhabited area.[72]

On the other hand, Islamicjerusalem is well-known with its moderate climate and fertile land. Al-Maqdisī says: "*God has gathered together there all the fruits of the lowlands, of the plains, and of the hill country, and of every conceivable kind, such as the citron, the almond, the date, the nut, the fig, and the banana, besides milk in plenty, and honey and sugar.*"[73] In short, the agricultural land in Islamicjerusalem with its rich produce is well-managed according to the Muslim regulations. Generally, it could be divided into two types regarding the levy exacted on the land; the *'ushr* (tithe) land and *kharāj* land. *'Ushr* is the tax of the tenth levied on the Muslims' annual incomes of their land at the rate of 10 percents. Whereas, *kharāj* is income tax levied on the annual incomes of non-Muslims' land at varying rates not exceeding 10 percents.[74]

It is important to note here that the *kharāj* system was also implemented during ʿUmar period. It is reported that he had appointed ʿUthmān ibn Hunayf to survey the land and determine the amount of tax appropriate to it. Accordingly, ʿUmar had approved different rates for lands in Iraq and historical Syria, which include Islamicjerusalem because the lands differ in three aspects.[75] These three aspects are positively or negatively affect

the amount of the tax, which the first is the quality of the soil, the second is the kind of crops and the third is the manner of irrigation used.[76]

In other words, the *kharāj* is merely similar with the modern land tax nowadays, but seems more reasonable with scrutinized assessment of above criteria by appointed tax-assessors. Implicitly, the applied economic system as a mechanism of Muslim sovereignty over the territory was properly structured to inculcate shared vision, sense of belonging and collective responsibility among the inhabitants towards developing the state physically and spiritually.

Status and International Relation

Factually, ʿUmar had entered the Islamicjerusalem peacefully, granted its inhabitants an assurance of safety and declared from that moment that Islamicjerusalem was a part of Muslim territory. Consequently, the Muslim conquest of Islamicjerusalem has changed its status into *Dār al-Islām*, which has affirmed Muslim sovereignty over the whole territory. Although, contemporary Muslim scholars are in disagreements regarding the applicability of the Muslim theory of world division in the current situation, they are unanimously agreed that any Muslim land should be secured and preserved its status.[77] Therefore, Muslims are required to secure Islamicjerusalem from any occupation since that historic moment to maintain the Muslim sovereignty over the region.

On the other hand, the Muslim territorial status of Islamicjerusalem does not deny its role in the global world. Indeed, Islamicjerusalem has very strong links with other Muslim territories surround it to establish international solidarity among them. For instance, it had established cooperation with the neighbouring territory to serve its external trade. Historically, Tyre has played an important role as a major port for external trades of Islamicjerusalem. As a mercantile centre and a meeting-place for shippers, it has assisted merchants from Islamicjerusalem to trade their products. At the same time, Tyre was also benefited from numerous agricultural products from fertile land of Islamicjerusalem.[78]

In addition, the Muslim sovereignty over the Islamicjerusalem has affirmed the continuation of pilgrimage to that holy place. As mentioned above, Bishop Arculf stated that the pilgrims had continued to come to Islamicjerusalem especially from the western world.[79] Le Strange elaborated that:
The Christians and the Jews come up to Jerusalem in great numbers, in order to make their visitation of the Church of the Resurrection and the synagogue that is there."[80]

Furthermore, the Jews were also permitted to move their religious council legislative body from Tiberia to Islamicjerusalem during that period.[81] Thus, the researcher is inclined to argue that Muslim sovereignty over the Islamicjerusalem will never exclude any religious community, but dynamically inspired to encourage an inclusive vision towards fostering peace and harmony.

Conclusion

This study has arrived at some significant conclusions. On one hand, it proves that Islam has come with its own concept of sovereignty. The concept is derived from Muslim primary sources, namely the Qur'ān and Sunnah. Then, early Muslim scholars such as Al-Māwardī, Ibn Taymiyya and Ibn Khaldūn developed it. Interestingly, most of the modern Muslim scholars, who involves in the discussion about the Muslim concept of sovereignty, seem deeply influenced with the classical Muslim scholars' point of views.

Although, there are some disagreements regarding the terminologies used to describe about the concept, they are commonly in agreement concerning the superiority of the Muslim laws, the duties of the sovereigns and the rights of the community in relation to its state. The researcher has found that the unique link among their views, which finally arrive at a common ground, is strongly guided by their understanding towards the Qur'an and Sunnah.

Subsequently, the study has found that Muslim concept of sovereignty could be divided into two divisions, namely sovereignty over the people and sovereignty over the land or territory. The Muslim concept of sovereignty over the people concerns to executive aspects, legislative aspects and controlling aspects. It emphasizes on reshaping good relation between the population and the authorities as well as among the inhabitants from various faiths and backgrounds. On the other hand, the Muslim concept of sovereignty over the territory concerns to

security affairs, taxation and land revenue, status and international affairs. Generally, it intends to assure security, to generate revenue from the land justly and to deal with global world effectively.

The study reveals that the Muslim concept of sovereignty is not only involving political matters, but also relating to the matter of faith. Thus, the researcher argues that understanding Muslim concept of sovereignty is among Muslims' responsibilities towards fostering peace and harmony particularly in Islamicjerusalem region and expanding it to the entire globe.

Furthermore, the study has proven that Islamicjerusalem as a region is a significant and good case study to be analysed. Undeniably, the region is very rich to be examined from various dimensions. This study shows that Islamicjerusalem could be well-analysed historically, religiously, geographically and politically. Besides that, the researcher thinks that other dimensions such as economic, social and intellectual development relating to Islamicjerusalem are also significant to be explored academically. Hence, the researcher argues that this fact strongly supports the initiative to introduce, develop and establish Islamicjerusalem Studies as a new field of enquiry in academia.

This study also reveals profound understanding and strong commitment shown by the Muslim conquerors towards implementing the Muslim concept of sovereignty in Islamicjerusalem during the first Muslim conquest. Obviously, Islamicjerusalem during the time of ʿUmar has witnessed that

each mechanism of the Muslim concept of sovereignty over the people is projected to assure the concept of justice is optimistically live. Besides its concern on plurality, it also emphasizes on determining their rights, responsibilities, treatment, tolerance and means of co-existence. Indeed, the researcher agrees with El-ᶜAwaisi's argument that this concept of justice is a foundation of peace and stability.

On the other hand, the study has revealed that the Muslim theory of world division, which initiated by classical Muslim jurists was applicable especially during that significant period. Obviously, the first Muslim conquest of Islamicjerusalem liberated it from the Romans, whom have classified the territories based on racism. Therefore, early Muslim jurists have constructed that theory to counter Roman's prejudice theory of world division. Hence, El-ᶜAwā's argument regarding the factors behind their initiative in constructing the notion of *Dār al-Islām* and *Dār al-Harb,* seems dependable. Nevertheless, since the applicability of that theory depends on the situations and surrounding factors, the researcher has found that it could be revised to define the current status of Islamicjerusalem.

The researcher concludes that Islam has inspired its followers with the concept of sovereignty, which is not only established theoretically, but also well-proven on the ground of Islamicjerusalem during the first Muslim conquest. Significantly, the researcher is inclined to note that the Muslim concept of sovereignty is well-developed in line with Muslim's

vision of Islamicjerusalem, which promotes inclusive vision towards establishing peace and stability, particularly in that region and in the world as a whole. Thus, it seems necessary to instill that vision as the basis of implementing the Muslim concept of sovereignty, as El-ᶜAwaisi argues: *"...To achieve this goal, one could argue that sovereignty was necessary. However, the Muslims' vision of inclusion that is important, not having sovereignty over the area although that is important too."*[82]

[1] Al-Māwardī (2000), *al-Ahkām al-Sultaniyya w'al-Wilāyat al-Diniyya (The Ordinances of Government)*, translated into English by Wafaa H.Wahba, Garnet Publishing, Reading, p.3.

[2] Ibid.

[3] E.I.J. Rosenthal (1958), *Political Thought in Medieval Islam*, Cambridge University Press, p.53.

[4] Qamaruddin Khan (1992), *The Political Thought of Ibn Taymiyya*, Adam Publishers and Distributors, Delhi, p.31.

[5] Ibn Taymiyya (1961), *al-Siyāsah al-Sharᶜiyyah (Political System of the Muslim Law)*, Maktabat Ansār al-Sunnah al-Muhammadiyah, Cairo, p.173.

[6] ᶜAbd al-Rahmān Ibn Khaldūn (1967), *The Muqaddimah: An Introduction to History,* translated by Franz Rosenthal, Abridged and edited by N.J.Dawood, Routledge & Kegan Paul, London in association with Secker and Warburg, p.152

[7] Ibid.

[8] Ibid, pp.154-155.

[9] Ibid.

[10] Al-Mawardī, op.cit, p.3.

[11] Muqtedar Khan (2001), *The Compact of Madina: A Constitutional Theory of the Muslim State*, published in Mirror International on 30th May 2001.

[12] Muqtedar Khan, Ibid..

13   Haroon Khan Sherwani (1945), *Studies in Muslim Political Thought and Administration*, S H Muhammad Ashraf Kashmiri-Bazaar, Lahore, 2nd ed., p.255.

14   Anas ᶜAbd al-Fattāh Abu Shādi (2001), *al-Khiyārāt al-Muqtaraha li Wadhᶜī Bayt al-Maqdis fi al-Taswiyya al-Siyāsiyya al-Nihāiyya: Dirāsah Fiqhiyya*, Journal of Islamicjerusalem Studies, Muslim Research Academy, Vol.1, Winter, p.12.

15   Bustami Khir (1996), *The Concept of Sovereignty in Modern Islamic Political Thought*, (Leeds Institute for Middle Eastern Studies, Leeds), p.181.

16   Ibid.

17   Ibid. See also Fathī ᶜAbd al-Ghanī, (1984), *al-Dawlah wa al-Siyādah fi al-Fiqh al-Islāmī*, Maktabat Wahbah, Cairo, p.148.

18   Ibid, p.182.

19   Muqtedar Khan, op.cit.

20   Wahbah Al-Zuhayli (2002), *al-Fiqh al-Islāmī wa-Adillatuh (The Muslim Jurisprudence and Its Evidences)*, Dar al-Fikr, Beirut, 4th Ed., Vol. 8, p.6332.

21   Al-Māwardi, op.cit, p.17.

22   Ibid, p.14.

23   Bustami Khir, op.cit, p.184.

24   Yusuf al-Qaradawi (2000), *Priorities of Muslim Movements in the Coming Phase*, Awakening Publishing, Swansea, p.189.

25   Bustami Khir, op.cit, p.184.

26   Saᶜid Halim Pasha (1927), *The Reform of Muslim Society*, translated by Marmaduke Pickthall, Muslim Culture, Hyderabad, p.128. It is also a part of edited speech that was delivered by Marmaduke Pickthall in Madras, India in 1927 and was entitled *"The City of Islam."*

27   Haroon Khan Sherwani, op.cit, p.53.

28   Saᶜid Halim Pasha, op.cit, pp.128-133

29   Ibid.

30   Ibid.

31 Muhammad Salim el-ᶜAwa (1980), *On the Political System of Muslim State*, American Trust Publications, pp.78-79.

32 Ibid.

33 Bustami Khir,op.cit, pp.133-134.

34 Javid Iqbal (1986), *The Concept of State in Islam, from State, Politics and Islam* ed. by Mumtaz Ahmad, American Trust Publications, p.39.

35 Wahbah Al-Zuhayli, op.cit, p.6324.

36 Wahbah al-Zuhayli, ibid, p.5850.

37 Muhammad Salim El-ᶜAwā, op.cit, p.77.

38 See Al-Māwardī, op.cit, pp.162-163.

39 Ibid, p.224.

40 Ibid, p.226.

41 Ibid.

42 Al-Māwardī , ibid.

43 See Al-Kāsānī (1986), *Badāiᶜ al-Sanāiᶜ*, Dar al-Kotob al-Ilmiyya, Beirut, vol.7, p.131.

44 See ᶜAbd al-Qadīr Al-Baghdādī (n.d), *Usul al-Dīn*, Dar al-Kotob al-Ilmiyya, Beirut, p.270.

45 See Ibn al-Qayyim (1995), *Ahkām Ahl al-Dhimmah*, Dar al-Kotob al-Ilmiyya, Beirut, vol.1, p.265.

46 See Wahbah al-Zuhayli (1997), *Athar al-Harb fi al-Fiqh al-Islamī: Dirasah Muqaranah, Dar al-Fikr*, Damascus, 4th ed, p.173. See also Muhammad Abu Zahrah (n.d), *al-Jarima wa al-Uquba fi al-Fiqh al-Islami,* Dar al-Fikr al-Arabi, Cairo, p.320.

47 Muhammad Salim El-ᶜAwa (2001), *Bayt al-Maqdis fi Dow'I Fikrah Dār al-Islām wa Dār al-Harb*, Journal of Islamicjerusalem Studies, Muslim Research Academy, Vol.4/5:1, Winter 2001, pp.30-31

48 It is a technical term of the Muslim law and means the process of making a legal decision by independent interpretation of the sources of the law, the Qur'an and the Sunnah. The opposite of *ijtihad* is *taqleed* (imitation). The person who applies *ijtihad*, the *mujtahid* must be a scholar of Muslim law.

49   Muhammad Sa^{c}id Ramadhan al-Buthi (1995), *Jihad in Islam: How to Understand and Practice It*, translated by Munzer Abel Absi, Dar al-Fikr, Damascus, p.79

50   Ibid, p.78.

51   Anas ^{c}Abd al-Fattah Abu Shādi, op.cit, p.11.

52   Ahmad Ibn Hanbal (1995), *al-Musnad*, Dar al-Hadith, Cairo; Al-Albani stated in *Ghayat al-Maram* that the chain of this hadith is authentic.

53   ^{c}Abd al-Fattah El-^{c}Awaisi (2000), *^{c}Umar's Assurance of Safety to the People of Aelia: A Critical Analytical Study of the Historical Sources*, Journal of Islamic Jerusalem Studies, (Islamic Research Academy, Dunblane), Summer 2000, 3:2., p.47.

54   Mohammed Najeeb al-Ja^{c}bari (1996), *The Assurance of ^{c}Umar*, *Al-Liqa Journal*, a special issue on Jerusalem, Vol. 7/8, June/December, pp. 83-86.

55   ^{c}Abd al-Fattah El-^{c}Awaisi (2000), op.cit, pp.75-78.

56   Haroon Khan Sherwani (1945), *op.cit*, p.255.

57   Al-Tabari (1992), *The History of al-Tabari*, translated by Yohanan Friedman, State University of New York Press, Vol.12, p.193.

58   ^{c}Othman Isma^{c}el al-Tel (2003), *The First Islamic Conquest of Aelia (Islamic Jerusalem): A Critical Analytical Study of the Early Islamic Historical Narratives and Sources,* (Al-Maktoum Institute Academic Press, Dundee), p.256.

59   Moshe Gil (1996), *The Authorities and the Local Population*, in Joshua Prawer and Haggai Ben-Shammai, eds., *The History of Jerusalem: The Early Muslim Period, 638-1099* (New York and Jerusalem: New York University Press and Yad Izhak Ben-Zvi,),p.113.

60   Muhammad Sa^{c}id Ramadhān al-Buthi (1999), *op.cit*, pp.8-14.

61   Reported by Abu Dawud in *^{c}Aun al-Ma'bud*. cited by Abu al-A^{c}la Maududi in *Human Rights in Islam*.

62   Reported by al-Tabarani in *Al-Awsat* on good authority. cited by Yusuf al-Qaradawi in *the Lawful and Prohibited in Islam*, El-Falah for Translation, Publishing and Distribution, Cairo 1997, p.451.

63 See Al-Wāqidi, *Futuh al-Sham wa bi Hāmishi Tuhfat al-Nazirin fi man Hakama Misr min al-Wula wa al-Salātin li ᶜAbdullah al-Sharqāwi*, Maktabat wa Matbʾat al-Mashhad al-Husayyni, Cairo, Vol.1&2, p.148.

64 Al-Balādhurī (1966), *The Origins of the Islamic State*, being a translation from the Arabic of the *Kitab Futuh al-Buldān*, trans. by P. K. Hitti (Khayats, Beirut), p.218.

65 ᶜOthman Ismaᶜel al-Tel, op.cit, p.226.

66 Al-Tabari (1992), *The History of al-Tabari*, translated by Yohanan Friedman, State University of New York Press, Vol.12, pp.192-193.

67 ᶜOthman Ismaᶜel al-Tel, op.cit, p.257.

68 Ibid.

69 Muhammad Saᶜid Ramadhān al-Buthi (1999), *op.cit*, p.8.

70 Non-Muslim foreigner, who temporarily resides in another territory by its permission.

71 Wahbah Al-Zuhayli (2002), *op.cit*, p.6331.

72 Karen Armstrong (1997a), *A History of Jerusalem: One City Three Faiths*, Harper Collins Publishers, London , p.234.

73 Al-Maqdisī (1994), *The Best Division for Knowledge of the Regions: A Translation of Ahsan al-Taqāsim fi Maᶜrifat al-Aqālim*, translated by Basil Anthony Collins, (Garnet Publishing Ltd, Reading), p.141.

74 Al-Māwardi (2000), *op.cit*, p.164.

75 Al-Māwardī, ibid, p.165.

76 Ibid.

77 Loai ᶜAzmi Jebreel al-Ghazawi (2001), *The Legal Status of Jerusalem in Muslim Fiqh (Jurisprudence) and International Law (Unpublished)*, PhD. Thesis under Division of Law, Glasgow Caledonian University, pp.58-70.

78 See Moshe Gil (1997), op.cit, p.249.

79 ᶜOthman Ismaᶜel al-Tel, p.228.

80 Guy Le Strange, *History of Jerusalem under the Moslems*, Reprinted from *Palestine under the Moslems,*
Reprint of p.83-223, 303-341, 557-558 of the 1890 ed. published by Houghton Mifflin, Boston.

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81   Ibid, p.246.

82   ᶜAbd al-Fattah El-ᶜAwaisi, *Exploring Identity of Islamic Jerusalem.* This paper is presented during the 5th International Academic Conference on Islamic Jerusalem 2003 at Sheikh Rashid Conference Hall, Al-Maktoum Institute fro Arabic and Islamic Studies, Dundee, UK.