

**The Draft Constitution
of the
Khilafah State**

“The Introduction and the incumbent reasons”

Members of Hizb-ut-Tahrir in Europe

Part One

General Rules

The Messenger of Allah (saw) was reported to have said: ***“The Prophethood shall remain among you for as long as Allah wills it to remain; Then He shall remove it if He wishes to do so. Then there shall be a Khilafah on the method of the Prophethood; it will remain for as long as Allah wills it to remain. Then He shall remove it if He wishes to do so. Then there shall be a harsh rule; it will remain for as long as Allah wills it to remain. Then He shall remove it if He wishes to do so. Then there shall be a despotic rule; it will remain for as long as Allah wills it to remain. Then He shall remove it if He wishes to do so. Then there shall be a Khilafah on the method of Prophethood.”*** -Narrated by Ahmed and Al-Tayalissi.

Introduction

Truly praise be to Allah. We praise Him, seek His help and forgiveness, and seek His refuge from the evils of our souls and the wrongs of our deeds. He whom Allah guides none shall misguide him and he whom Allah misguides none shall guide him; and I bear witness that there is no god but Allah, Alone with no associates, and that Mohammed is His servant and His Messenger. He sent him with the Truth as a conveyor of glad tidings and as a herald till the Hour of Judgement. He who obeys Allah and His Messenger, he is rightly guided, and he who disobeys them, he shall not harm Allah in the slightest. We pray to Allah our God to make us from among those who seek His pleasure and avoid His wrath for we are but by Him and for Him.

The Messenger of Allah (saw) said: ***“The most truthful of speech is the Book of Allah, and the best of guidance is that of Mohammed. The most evil of matters are novelties and each novelty is an innovation and each innovation is a deviation and each deviation is in Hell fire.”***

Indeed, the most horrific of innovations, considered to be the peak of all deviations in this day and age, is that of the rule by other than what Allah has revealed, and of following the ways of the nations of Kufr and the people of aberration, who have appointed themselves as a god to the exclusion of Allah, legislating for people the systems of life and determining for them the principles of behaviour. Despite the fact that Allah (swt) has honoured the Muslims with the best Message and the most perfect Deen, they however have been in this century afflicted by rulers upon whom Allah (swt)’s following saying applies: He (swt) says: [14-28,29] ***“Did you not turned your vision to those who have changed the favour of Allah into blasphemy and caused their people to descend to the house of perdition. In Hell they will burn therein; an evil place to stay in.”*** T.M.Q.

Those rulers legislated for the Ummah that which Allah (swt) never ordered, and the made of their systems and their rules a carbon copy of the capitalist West, thus their reality was a confirmation of Al-Mustafa’s Hadith (saw) who said: ***“You shall follow the ways of those before inch by inch and yard by yard, even if they entered a lizard’s hole you will follow them.”*** We said: ***“O messenger of Allah! You mean the Jews and the Christians?”*** He (SAW) replied: ***“Who else?”*** Now that the Islamic Ummah has realised that she had strayed from the straight path, she has no alternative but to proceed towards rebuilding the rightly guided Khilafah State, who will resume the Islamic way of life; also, to envisage the new life towards which she aims to move, so that she could implement Islam in a comprehensive and radical manner, that would govern all life’s aspects, so that she may achieve happiness through it and so that she may save humanity from that which it had fallen into in terms of oppression, rebellion and tyranny, and from that which it is suffering in terms of hardship, misery and deprivation.

Motivated by the sense of duty, we herewith put forward to the Muslims, through a serialised publication, a draft constitution for the Khilafah State, in the hope that it may enlighten the minds which the painful reality had dominated or those which had been smitten by the capitalist West. Not only such minds are no longer capable of envisaging the Islamic way of life, but they also ruled out the possibility of a state rising on the basis of Islam. Meanwhile, others are attempting to harmonise between the Truth and falsehood and mix darkness with the Light.

We are absolutely certain that the clear visualisation of the Islamic way of life that Muslims aim to resume, will help crystallise and incorporate the objective of the Islamic Da'awah carriers in the minds and hearts of the Islamic Ummah; this will foil the enemies' attempt to dupe the Ummah with partial reforms here and there. Hopefully, this will also help unite the Muslims, for the unity of the thought that emanates from the Islamic Aqeedah, and that is built upon it, acts as the main factor in uniting the Muslims in the absence of the Khalifah around whom the Ummah rallies under the wing of the state of Islam.

We wish to mention that the book entitled **“The Draft Constitution or the incumbent reasons”** published in 1382 Hijri (1963) by *Hizb-ut-Tahrir*, acts as the main reference for this series, in addition to the book of **“The Islamic State”** and **“The Ruling System in Islam”** both of which are also published by *Hizb-ut-Tahrir*. The articles of this constitution are considered -according to information available to us- an unprecedented and a leading study in this field, and the main features of this study are:

- 1- The articles of this constitution are characterised by the fact that they are exclusively and purely Islamic opinions and thoughts. They contain nothing whatsoever that is non Islamic, nor are they influenced by anything that is non-Islamic. They are rather Islamic in every sense and nothing else, and they are based upon nothing but the foundations and texts of Islam.
- 2- When the constitution's articles were deducted or when they were obtained from the Islamic schools of thought and the opinions of the Sahaba® , they were confined to the general evidences which have been established by conclusive and decisive evidence. These are The Book, the Sunnah, the General Consensus of the Sahaba and analogy (Qyyas).
- 3- This constitution has the benefit of the legal design that contains general principles; thus it could be considered as a jurisprudence reference in its topic, in addition to the benefit of being accurate in applying the rules to their relevant circumstances.
- 4- By proposing this constitution of the Khilafah State, which the Muslims are working towards establishing, with the help of Allah (swt), we invite the Muslims in general, and the intellectuals, the scholars and the prominent figures in particular to air their views and to take an active part in debating the matter. We warmly welcome every correspondence sent to the addresses listed on the inside of the front cover, and every direct contact with members of *Hizb-ut-Tahrir* in the Islamic lands which represent the party's field of activity.

We look forward to receiving all suggestions whether these were a criticism of a thought or a rule, or a suggestion to add and expand any of the existing thoughts and rules, for this is every Muslim's right over another Muslim. Imam Muslim reported on the authority of Ataa Ibn Yazid on that of Tamim A-d-Dari that the Messenger of Allah (saw) said: **“The Deen is a name of sincerity and well wishing.” Upon this we said: “For whom?” He (saw) replied: “For Allah, His Book, His Messenger and for the leaders and the general Muslims.”**

Though we are aware of the effort exhausted in research, study and contemplation over this work, and while we adhere to the established principle of : **“Our opinion is sound but it could be**

wrong.”, we reiterate our welcome, from the bottoms of our hearts, for any amendment to any rule that might have been wrongly deduced, or any correction of any reality that might have not been fully perceived, or anything similar.

We pray to Allah (swt) for success and soundness, and to make this action of ours solely devoted to His sake and blessed with His Grace and Mercy.

We supplicate Him, the *Qayyum* of heavens and earth to confer upon the Ummah of the seal of prophets and the Imam of Mojahideen Mohammed (saw), a mighty and dignified victory, that will restore to this Ummah the state of Islam and raise over the world the banner of Iman, the banner of *“there is no God but Allah, Mohammed is the Messenger of Allah”*. This to Allah is not dear.

General rules

Article 1

“The Islamic Aqeedah constitutes the foundation of the state. Hence, nothing is permitted to exist within her entity, or apparatus, or accountability or any other aspect connected to her, unless the Islamic Aqeedah is its basis. At the same time, the Islamic Aqeedah acts as the basis of the constitution and Shari’ah laws; thus nothing related to the constitution or laws is permitted to exist unless it emanates from the Islamic Aqeedah.”

The state comes into being by the emergence of new ideas upon which it becomes built. The authority -i.e. the governing of people’s affairs and the management of their interests- changes when these thoughts change, for if the thoughts turned into concepts, i.e. if their meaning were perceived and if their credibility were established, they would influence man’s behaviour. This behaviour would then proceed according to these concepts. Thus, man’s viewpoint about life changes; and according to its change, his viewpoint towards the interests also changes. The authority is the guardianship of these interests and the supervision of their management; thus the viewpoint about life is the basis upon which the state is built and it is the basis upon which the power is established. A typical example of this is the agreement struck between the Aws and the Khazraj before Islam pertaining the crowning of Abdullah Ibn Ubay Ibn Salul in Madinah. Ibnu Ishaq reported: “When The Messenger of Allah (saw) came to Madinah, the leader there was Abdullah Ibnu Ubay Inbu Salul Al-Aufi. None of his own folk contested his authority. The Aws and Khazraj were never united behind a man before or after him until Islam came, as they did to him. Abdullah Ibnu Ubay’s people had made a sort of jewelled diadem to crown him and make him their king when Allah (swt) sent His Messenger (saw) to them. So his folk forsook him and turned to Islam, giving their leadership and their loyalty to the Messenger of Allah (saw). The Messenger of Allah (saw) issued a document concerning the emigrants and the Ansar (helpers) and describing them as being one single Ummah to the exclusion of all other people. He (saw) addressed them by saying: *“Whenever you differ about a matter, it must be referred to Allah and to Mohammed.”* This serves as evidence that authority changes according to the change of the viewpoint about life.

However, the viewpoint about life is generated by a specific thought about life. Hence, this viewpoint about life becomes the basis of the state and the basis of the authority.

Since the specific thought about life is reflected in the host of concepts, criteria and convictions, this host of concepts, criteria and convictions are considered a basis; the authority looks after people’s affairs and supervises the management of their interests according to this host of concepts, criteria and convictions.

Therefore, the basis is a host of thoughts and not just one single idea. It is this host of thoughts that generated in its entirety the viewpoint about life, and consequently, the viewpoint towards the interests was established and the authority set about managing them according to this viewpoint.

Therefore, the state was defined as being an executive entity for a host concepts, criteria and convictions which a group of people had adopted. This is as far as the state is concerned, in its capacity as a state, i.e. as an authority that assumes looking after the interests and supervises the management if these interests.

However, this host of thoughts upon which the state is founded, i.e. this host of concepts, criteria and convictions, could either be built upon a basic thought or not built upon a basic thought. If it were built upon a basic thought, it would be solidly built, with strong pillars and a firm entity; for it would rest upon an unprecedented basis. This is so because the basic thought is the thought that has no other thought before it, that is the intellectual Aqeedah. In such case, the state would be built upon an intellectual Aqeedah. Whereas if the state were not built upon a basic thought, this would render its destruction an easy affair and the demolition of its entity and the usurping of its authority would not be difficult; because it would not have been built upon an intellectual entity from which the thoughts upon whose basis the state was established; in other words, an intellectual entity from which emanate the host of concepts, criteria and convictions which represent the idea of the state in life, and consequently the viewpoint of this state towards life; that viewpoint from which the state's viewpoint towards the interests originates.

The Islamic State is built upon the Islamic Aqeedah, because the host of concepts, criteria and convictions which the Ummah has adopted, emanate from an intellectual Aqeedah. The Ummah has first of all adopted this Aqeedah and embraced it as a conclusive Aqeedah based on a decisive evidence. Hence, this Aqeedah was her collective idea about life, and accordingly her viewpoint about life was shaped and form it her viewpoint towards the interests originated; also, the Ummah derived from it the host of concepts, criteria and convictions. Therefore, the Islamic Aqeedah is the basis of the Islamic State.

Besides, the Messenger of Allah (saw) established the Islamic State upon a specific basis; thus this very basis must be at all times and in all places the basis of the Islamic State. When the Messenger of Allah (saw) established the authority in Madinah and assumed the rule in there, he established it on the basis of the Islamic Aqeedah from the very first day, and the ayat (verses) of legislation had not been revealed yet. Hence, the Messenger of Allah (saw) made the Shahada (testimony) of ***“There is no god but Allah. Mohammed is the Messenger of Allah.”*** as the basis of the Muslims' life and the basis of relationships between people, as well as the basis of removing grievances and settling disputes. In other words, he (saw) established it as the basis of all aspects of life, and the basis of authority and government. He (saw) did not stop at that, but he also legislated Jihad and made it an obligation upon the Muslims in order to carry this Aqeedah to all people. Abu Dawood reported on the authority of Abu Hurayra that the messenger of Allah (saw) said: ***“I have been ordered to fight people until they profess that there is no god but Allah. If they said it, their lives and their wealth would be inviolable to me, except that which is by right and Allah (swt) will hold them accountable.”***

The Messenger of Allah (saw) has also made the continuous presence of the Aqeedah as a basis for the state an obligation upon the Muslims, and he (saw) ordered the Muslims to brandish the sword and to fight if the flagrant disbelief were to become manifest; i.e. if the Aqeedah ceased to be the basis of authority and rule. The Messenger of Allah (saw) was asked about the tyrant rulers: ***“Do we challenge them with the sword?”*** He (saw) replied : ***“No, as long as they continue to establish prayer amongst you.”*** He (saw) made the Baya'a based on the Muslims' obedience of the people in authority, unless they witness a flagrant Kufr. Muslim reported in his Sahih on the authority of Auf

Ibn Malik that the Messenger of Allah (saw) said: ***“The best of your Imams are those whom you love and who love you, and they invoke Allah’s blessings upon you and you invoke His blessings upon them; and the worst of your Imams are those whom you hate and who hate you, and whom you curse and who curse you.”*** Those present asked: ***“Should we not challenge them with the help of the sword?”*** He (saw) said: ***“No, as long as they continue to establish prayer amongst you. If you then find anything detestable in them, you should hate their administration, but do not withdraw yourselves from their obedience.”*** Bukhari reported that Ubadah Ibn-us-Samit said in the Hadith of the Baya’a: ***“The Messenger of Allah (saw) called upon us so we pledged our Baya’a to war in complete obedience to the Messenger of Allah (saw), in weal and woe, in ease and hardship and evil circumstances; that we would not wrong anyone, that we would speak the truth at all times and that in Allah’s service we would fear the censure of none, and that we would not dispute the people in authority unless we witness a flagrant Kufr of which we have proof from Allah.”*** In the narration of Al-Tabarani, the wording was: ***“..open Kufr...”***. Also, in another narration, the wording was : ***“..unless the disobedience to Allah is flagrant..”***

All this indicates that the basis of the state is the Islamic Aqeedah, for the Messenger of Allah (saw) established the authority upon its basis, ordered the brandishing of the sword in order to maintain it as a basis for the authority; he also ordered Jihad for its sake.

It is on these grounds that the first article of the constitution was drafted; this article prohibits the state from having any concept, conviction or criterion that does not emanate from the Islamic Aqeedah. To have the Islamic Aqeedah as a nominal basis for the state would not be sufficient; this basis should rather be reflected in every aspect related to the state’s existence and reflected in every one of its matters, be it minor or major. Hence, it is forbidden for the state to have any concept about life, or about the rule, unless this emanates from the Islamic Aqeedah. The state would not tolerate any concept not emanating from this Aqeedah; thus it would not tolerate the concept of democracy to be adopted within the state, because it does not emanate from the Islamic Aqeedah, in addition to its contradiction to the concepts which emanate from it. Also, the concept of nationalism would not be allowed to have any consideration whatsoever, because it does not emanate from the Islamic Aqeedah, in addition to the fact that the concepts which emanate from this Aqeedah abhor, prohibit and outline its danger. Likewise, the concept of patriotism should not have any existence, for it does not emanate from the Islamic Aqeedah, not to mention its contradiction to the concepts which emanate from it. Furthermore, the Islamic State should not have any ministerial departments based upon the democratic concept, nor should there be in her government any imperial, monarch or republican concepts, for these do not emanate from the Aqeedah of Islam and they contradict the concepts emanating from it. Also, it is categorically forbidden to account the Islamic State on other than the basis of the Islamic Aqeedah, whether this were by individuals or groups or blocs. Hence, such type of accounting, that is based upon other than the Islamic Aqeedah would be prohibited. The establishment of movements and bloc on other than the basis of the Islamic Aqeedah would be prohibited. The fact that the Islamic Aqeedah acts as the basis for the State necessitates all this from the State itself and makes incumbent upon the citizens over which she rules; for her life, in her capacity as a state, as well as the life of every matter originating from her in her capacity as a state, every action linked to her in her capacity as a state and every action established with her in her quality as a state must have as a basis the Aqeedah of the State, that is the Islamic Aqeedah.

As for the second issue in the article, its evidence is reflected in the fact that the constitution is the basis law of the State; thus it is a law, and the law itself is the order of the ruler and Allah (swt) ordered the ruler to rule by He (swt) revealed to the Messenger of Allah (saw), and described he who rules by other than what Allah has revealed as Kafir if he believed in that which he ruled by and believed in the unsuitability of what Allah (swt) revealed to His Messenger; He (swt) described the ruler who rules by other than what He revealed, but did not believe in it a Fasiq (rebel). This

indicates that Iman in Allah and His Messenger must be the basis of which the ruler orders, i.e. the basis of the laws and the basis of the constitution. As for Allah's (swt) command of the ruler to rule by what He (swt) revealed, i.e. by the Shari'ah rules, this is established in the Book and the Sunnah. Allah (swt) says: [4 -65] ***"No By your God, they shall not believe until they make you judge of what is in dispute between them and find in their souls no resistance against your decision, but accept them with the fullest conviction."*** T.M.Q.

Allah (swt) also says: [5-49] ***"So rule between them by what Allah has revealed and do not follow their desires and beware lest they tempt you away from what Allah has revealed to you."*** T.M.Q.

Allah (swt) has confined the State's legislation to that which He had revealed and He warned against ruling by other than what He had revealed, for He (swt) says: [5-44] ***"Whoever rules by other than what Allah has revealed, they are the disbelievers."*** T.M.Q. Muslim reported on the authority of Aysha ® that the Messenger of Allah (saw) said: ***"He who generates in our order that which is alien to it, it must be rejected."***

This indicates that the legislation of the State must be confined to what emanates from the Islamic Aqeedah; these are the Sharia'ah rules which we trust that Allah (swt) has revealed to the Messenger of Allah (saw), whether their revelation were explicit, by stating that it is the rule of Allah, and it is reflected in the Book or the Sunnah or the Sahaba unanimously consented that it is the rule of Allah, or implicit rules, which are taken by way of analogy whose Illah (reason) is a Sharia'ah Illah. This is why the second issue has been drafted in the article.

Besides, since the actions of the servants are subject to the adherence to the address of the Legislator (swt), their governing should therefore be from Allah (swt), and the Islamic Sharia'ah has been to all people's actions and relationships, whether these relationships were with Allah (swt) or with themselves or with other people. Hence, there is no place in Islam for people to enact laws in order to govern their relations, for they are restricted to the laws of Shari'ah. Allah (swt) says: [59-7] ***"Whatever the Messenger brought you take it; and whatever he forbade you abstain from it."*** He (swt) also says: [35-36] ***"It is not fitting for a believer, man or woman, when a matter has been decided by Allah and His Messenger, to have any option about their decision; if anyone disobeys Allah and His Messenger, he is indeed far astray."*** The Messenger of Allah (saw) said: ***"Truly Allah has commanded a host of duties, so do not neglect them; He also prohibited certain things, so do not violate them and He imposed certain limits, so do not transgress them."*** He (saw) also said: ***"He who generates in our order that which is alien to it, it must be rejected."***

Therefore, it is Allah (swt) who legislated the rules, not the ruler, and it is He (swt) Who obliged people and the ruler to adhere to them in their relations and in their actions, Who confined them to these rules, prohibiting them from following any other rules. Therefore, there is no room for man to enact laws and govern people's relations, and there is no room for the ruler to force people or give them the choice to follow conventional principles and rules to govern their relations.

Article 2:

Dar Al-Islam (Islamic Household) is the territory where the rules of Islam are implemented and whose security is upheld by Islam. ***Dar Al-Kufr*** (household of disbelief) is the territory where the rules of Kufr are implemented or its security is by other than the security of Islam.

Explanation and evidences:

Linguistically ***"Dar"*** (household) is the place, the dwelling and the country. It also means the tribe. ***"Dar Al-Harb"*** (the warfare household) is the enemy's territory. The household is considered an

Islamic household if it met two criteria: 1- If it is ruled by the Islamic rule, with the rules of Islam implemented upon it. 2- If its security is upheld by the Muslims, i.e. by their authority. Evidence of this is reflected in the fact that the two terms of Islam's Household and Kufr Household are Shari'ah terms adopted to refer respectively to the land that comes under the authority of Islam and to the land that is not under the authority of Islam. These two terms have been deduced from the collection of rules pertaining those who come under the authority of the Muslims and those who do not come under their authority. Their evidence is reflected in the Hadith extracted by Muslim in his Sahih on the authority of Sulayman Ibnu Buraydah on that of his father who said: ***“The Messenger of Allah (saw) said: “...Then invite them to move from their household to that of the Muhajireen (emigrants) and tell them that if they did so, they would enjoy the same rights and they would have the same duties as those of the Muhajireen.”*** The opposite understanding of this Hadith means that if they did not move they would not have what the Muhajireen have, i.e. what those living in Dar-al-Islam have. This Hadith has outlined the differences in the rules pertaining those who move to the Muhajireen household and those who do not do so. The Muhajireen household was Dar-al-Islam and the rest was a Dar-al-Kufr. This is how the terms of Dar-al-Islam and Dar-al-Kufr or Dar-al-Harb were deduced. Hence, the qualification of the term Dar i.e. Household to the term Harb i.e. warfare, or Kufr, or Islam, is in fact a qualification of the rule and the authority. Dar-al-Harb or Dar-al-Kufr is the territory that comes under the authority of the people of war, even if in reality only, and Dar-al-Islam is the household that comes under the authority of the people of Islam. It becomes therefore clear that the precept in considering the household status should be subject to the authority of the people to whom the household is attributed; thus, it is an essential prerequisite.

The authority can only be established through two matters: 1- The management of people's affairs by a specific host of thoughts. 2- The power that protects the subjects and executes the rules, i.e. the security. This is how the two conditions have come about; i.e. the implementation of the rules and the security being in the hands of the Muslims.

This is as far as the evidence of the two conditions is concerned. As for the implementation of the rules of Islam and the non implementation of the rules of Kufr, the evidence is derived from the Hadith of Auf Ibn Malik pertaining the ***“worst rulers”***. To quote from the Hadith: ***“They asked: O Messenger of Allah, do we not challenge them with the sword? He said: No, as long as they continue to establish prayer amongst you.”*** It is also derived from the Hadith of Ubadah Ibn-us-Samit pertaining the Baya'a. To quote from the Hadith: ***“...that we would not dispute the people in authority unless we witness a flagrant Kufr..”*** In the narration of Ahmed it says: .. ***“As long as they do not order you to perform a flagrant act of disbelief..”*** These texts indicate that the rule by other than what Allah has revealed, such as the non establishment of the Deen's pillars in the land, such as the ruler's non abidance by the rule of Allah and such the ruler ordering what Allah (swt) has not ordered, necessitates the brandishing of the sword in the face of the ruler. This serves as evidence that the implementation of the rules of Islam is a prerequisite of Dar-al-Islam, otherwise, fighting and the brandishing of the sword becomes necessary. As for the fact that the household's security must be in the hands of the Muslims, this is deduced from the actions of the Messenger of Allah (saw). He (saw) used to order the conquest of any land that did not fall under his authority, and used to wage war against them, whether the inhabitants of those lands were Muslims or not; proof of this is that he (saw) has prohibited the killing of the Muslims living in such lands. In the narration of Bukhari on the authority of Humayd who said: ***“I heard Anas ® say: “Whenever the Messenger of Allah (saw) wanted to conquer a place, he would wait until dawn, if he heard the Athan (call to prayer) he would refrain, and if he did not hear it, he would pray and then attack.”*** In the narration of Al-Tirmithi, it was reported on the authority of Ibnu Isam Al-Muzani, on that of his father, who had accompanied the Messenger of Allah (saw); he said: ***“Whenever the Messenger of Allah (saw) dispatched a task force or an expedition, he used to say to them: “If***

you see a mosque, or if you hear a Muath'thin, do not kill anyone." The Athan (call to prayer) and the mosque are part of Islam's rituals; this indicates that the land inhabited by Muslims is not immune from a conquest and a full scale war. This means that it would still be considered as Dar-al-Harb, i.e. Dar-al-Kufr; because although Islam's rituals were manifest in that land, its security however was not upheld by the authority of the Messenger of Allah (saw), i.e. by the authority and the security of Islam. Consequently, such a land has always been considered as Dar-al-Kufr and it has been conquered just like any Dar-al-Harb. This is explained further by the fact that the rebels (Al-Bughat) would be subjected to a disciplinary fighting rather than a full scale war, despite their rebellion against the ruler, because their security in this case would still be in the hands of the Muslims; whereas if their security were in the hands of the Kuffar, they would be subjected to a full scale war. This means that if the security were in the hands of the Kuffar, this would not make the household in question a Dar-al-Islam, even if the Islamic rituals were manifest, for its security should also be by Islam. The meaning of the term "***The security of Islam***" is that the land is made secure and safe by the authority of Islam, and the meaning of the term "***The security of Kufr***" is that the land is made secure and safe by the authority of Kufr. security is the opposite of fear. Abu Dawood extracted on the authority of Mus'ab Ibnu Sa'ad on that of Sa'ad who said: "***on the day of Makkah's conquest, the Messenger of Allah (saw) gave his security to all people except four men and two women and he named them.***"

This is the meaning of security, and to add it to Islam or to Kufr is in fact an addition to the authority that provides this security, because the security within the state is in fact in the authority. The security is domestic and foreign. The domestic security denotes that every single individual from among the subject should have his life, his honour and his wealth made safe. The foreign security denotes that all the states frontiers should be made safe by its own authority against any attack (and not any other).

Therefore, the fact that the household is Dar-Al-Kufr or Dar-Al-Islam is related to the reality of the household; this is so because Muslims are commanded to go to war i.e. to fight people until they profess that there is no god but Allah, or until they submit to the rules of Islam. If they submitted to the rules of Islam, they would no longer be fought even if they chose to remain Kuffar, and if they did not come under the rule of Islam they would be fought. Hence the reason for their fighting would be the fact that they are Kuffar and they do not respond to the Da'awah, and the reason for refraining from fighting them is their acceptance of the rule of Islam. So if they are ruled by Islam and they remain Kuffar, the reason for stopping the fight will have been vindicated, and the ending of the war will have become obligatory; which clearly indicates that ruling them by Islam is what transferred their land from Dar-al-Harb to a Dar-al-Islam. Thus the rule by Islam is upon which the continuity or the cessation of the war depends. This indicates that the description that determines the household as being a Kufr household or an Islamic household is the rule by Islam, and being a rule, i.e. an authority denotes that the domestic and foreign security is by it i.e. by the authority of Islam, otherwise, it loses its quality of being a rule.

Therefore, the rule by Islam and the security which is one of its prerequisites, are the two components which qualify the definition of the household as being Dar-al-Islam or Dar-al-Harb.

This is Dar-al-Islam; that is the territory which is ruled by the authority of Islam, upon which the rules of Islam are implemented and whose domestic and foreign security is upheld by the security of Islam. If these two conditions were not met, it would be considered a Dar-al-Kufr and the rules pertaining Dar-al-Kufr would apply, regardless of the fact that the inhabitants of the territory were Muslims or non Muslims.

Article No 3

The Khalifah adopts a host of specific Shari'ah rules, which he will enact as a constitution and as laws. If he adopts a Shari'ah rule, this rule alone becomes the Shari'ah rule that must be acted upon and it becomes a binding law that every citizen must obey openly and privately.

Explanation and evidences:

The evidence of this article is derived from the Ijma'a (General Consensus) of the Sahaba. The Ijma'a of the Sahaba has been established in stipulating that the Khalifah reserves the right to adopt specific Shari'ah rules. It has also been established that it is obligatory to act upon the rules adopted by the Khalifah. A Muslim is forbidden from acting upon other than what the Khalifah has adopted in terms of Shari'ah rules even if these rules were Shari'ah rules adopted by a Mujtahid. This is so because the rule of Allah that becomes duly binding upon all the Muslims is that which the Khalifah adopts. The rightly guided Khulafa' proceeded in this manner. They adopted a host of specific rules and ordered their implementation; thus, the Muslims, with the Sahaba amongst them, used to act upon these rules and abandon their own Ijtihad. For instance, Abu Bakr ® adopted in the matter of divorce a rule stipulating that the triple divorce would be considered as one divorce if it were pronounced in one go. He also adopted in the matter of distributing the wealth upon the Muslims a rule stipulating that wealth should be distributed equally amongst the Muslims, regardless of seniority in Islam or anything else. The Muslims followed him in this while the judges and the Walis implemented the rules which he had adopted. When Omar ® took office, he adopted in the same two matters different opinions to those of Abu Bakr's; thus he imposed the rule stipulating that the triple divorce is considered as three. He also distributed the wealth among the Muslims according to their seniority in Islam and according to their needs, rather than equally. The Muslims duly followed him in this while the judges and the Walis implemented the rules he had adopted. Then Omar ® adopted a rule stipulating that the land conquered in war is a spoil for Bayt-al-Maal, (the State's treasury) not for the fighters, and that the land should remain with its owners and should not be divided among the fighters nor among the Muslims. The Walis and the judges duly complied and implemented the rule which the Khalifah had adopted.

Therefore, the rightly guided Khulafa' proceeded in this way, adopting and ordering people to abandon their Ijtihad and the rules which they had acted upon and adhere to that which the Khalifah had adopted. The Ijma'a of the Sahaba was established on two matters; these are the adoption and the obligation of acting upon that which the Khalifah adopts. Based on this Ijma'a of the Sahaba, the celebrated Shari'ah principles were obtained. These are: **1- The Sultan reserves the right to effect as many judgements as the problems which arise. 2- The order of the Imam settles disagreement. 3- The order of the Imam is binding.**

In essence, the adoption is necessary when a difference of opinion in the one matter occurs. Hence, in order to act upon the Shari'ah rule in this matter, it is imperative to adopt a specific rule in this matter. This is so because the Shari'ah rule, which represents the address of the Legislator related to the actions of the servants, have come in the Qur'an and the Hadith, and many of these carry several meanings according to the Arabic language and according to Shari'ah. Hence, it is natural and inevitable for people to differ in their understanding and for this difference in understanding to reach the level of disparity and contradiction in the intended meaning. Thus, it is inevitable for different and contradictory understandings to be reached. These could be a host of different and contradictory understandings in the one matter.

Bukhari extracted on the authority of Nafi', on that of Ibnu Omar ® who said: *“the Messenger of Allah (saw) said on the day of Al-Ahzab (the battle of the Ditch): “None of you should pray Asr except in Bani Quraytha.” The time of Asr entered while some were still on the way; so some said: “We should not pray until we reach Bani Quraytha.” Others said: “No, we should pray*

because the instruction does not mean this.” This was mentioned to the Messenger of Allah (saw) and he did not rebuke any of them.” When the Messenger of Allah (saw) said: *“None of you should pray Asr except in Bani Quraytha.”*, some understood that he was urging haste and they prayed in the way, while others understood that he (saw) had literally ordered them to pray Asr in Bani Quraytha, thus they delayed Asr until they reached their destination. When the Messenger of Allah (saw) heard of this, he approved of both camps’ actions.

There are many verses and Ahadith similar to this. The difference of opinion in the one matter makes it incumbent upon the Muslims to adopt one opinion from among these various opinions, for all of them are Shari'ah rules, and the rule of Allah (swt) in the one single matter does not multiply. Therefore, it is imperative to determine one single rule and adopt it. hence, the Muslim’s adoption of one specific Shari'ah rule is necessary and inevitable when he undertakes the action, for the undertaking of the action obligates the Muslim to accomplish it according to the Shari'ah rule, whether this were a *Fardh* (obligatory), or *Mandub* (recommended), or *Haram* (forbidden), or *Makruh* (despised), or *Mubah* (permitted), and this makes it incumbent upon the Muslims to adopt a specific Shari'ah rule when taking the rules to act upon them, whether he were a Mujtahid or a Muqallid or otherwise.

As for the Khalifah, it is imperative for him to adopt a host of specific rules according to which he assumes managing people’s affairs. Hence, it is necessary for him to adopt certain rules pertaining what is of general nature to all the Muslims, in terms of government and authority matters, such as Zakat, levies, Kharaj (land tax) and foreign relations, and also, in terms of all that is related to the unity of the State and the rule.

However, his adoption of the rules is subject to scrutiny. If the Khalifah could not undertake an action, whose undertaking necessitates managing people’s affairs according to the Islamic Shari'ah rules, unless he adopted a specific rule in that matter, in this case the adoption would be obligatory upon the Khalifah. This would be in concordance with the Shari'ah principle stipulating that: *“Whatever is necessary to accomplish a duty is in itself a duty.”*, such the signing of treaties for instance. However, if the Khalifah could manage people’s affairs in a specific matter according to the Islamic Shari'ah rules without having to resort to the adoption of a specific rule in this matter, in this case the adoption would be permitted for him rather than an obligation, such as *“Nisab Al-Shahada”* (the minimum number of witnesses in a testimony) for instance. In this case, it is permitted for him to adopt or not to adopt, for in essence, the adoption is permitted and not obligatory; this is so because the Sahaba ® have unanimously consented that the Imam can adopt and they have not consented that the Imam must adopt. Therefore, the adoption itself is Mubah, and it does not become obligatory unless the obligatory management of people’s affairs cannot be accomplished except through adoption; then it becomes obligatory so that the duty could be accomplished.

Article No 4

The Khalifah does not adopt any specific Shari'ah rule in matters related to rituals except in Zakat and Jihad, nor does he adopt any thought from among the thoughts related to the Islamic Aqedah.

Explanation and evidences:

Evidence of this article is derived from the fact that the adoption is in itself Mubah for the Khalifah and not obligatory upon him. Just as he is entitled to adopt certain rules, he is also entitled to refrain from adopting certain rules. It is not matter which he imposes upon people, because it is not them

who adopt, it is rather a matter that concerns him only; thus he is entitled to either adopt or to abstain from adopting. He is entitled to act according to what he deems fit. It emerged from the events of Al-Ma'mun, pertaining the Fitna (strife) of the creation of the Qur'an, that adoption in the thoughts related to Aqeedah matters has caused problems to the Khalifah and Fitna amongst the Muslims. It also emerged from the Fatimide's adoption of Imam Ja'afar's school of thought that this caused discontent amongst the followers of other schools of thought and a resentment towards this type of adoption, especially in the opinions related to Aqeedah matters and the opinions related to rituals. Therefore, the Khalifah deems it fit to abstain from adopting in matters related to Aqeedah and in rules related to rituals in order to avoid problems and in order to observe the consent and the tranquillity of the Muslims. Hence, the Khalifah chooses not to adopt in these two matters and Shari'ah has not made it an obligation upon him to adopt; thus he may choose not to adopt. Abstaining from adopting in matters of Aqeedah and in rituals does not mean that it is forbidden for the Khalifah to adopt in them, it rather means that the Khalifah chooses not to adopt, for he can either adopt or abstain from adopting. Thus he may choose not to adopt. That is why the article stated that the Khalifah does not adopt rather than stating that the Khalifah is forbidden from adopting, which indicates that he may choose not to adopt.

This is as far as the evidence of the Article is concerned. As for choosing to abstain from adopting in Aqeedah matters and in rituals, this is based upon two issues: The hardship caused by coercing people to follow a specific opinion related to Aqeedah matters and the fact that what prompts the Khalifah to adopt is in fact the management of the Muslims' affairs by one single opinion and the preserving of the unity of the State and the unity of the rule. Hence, he adopts in matters related to relationships between individuals and related to public matters and he does not adopt in matters related to relationship of man with his God.

Articles 5 & 6

-All citizens of the Islamic State enjoy the Shari'ah rights and duties.

-The State is forbidden from discriminating between the individuals in terms of rule, judiciary and management of affairs or anything similar. Every individual should be treated equally regardless of race, Deen, colour or anything else.

Explanation and evidences:

These two articles have been drafted in accordance with the rules of the Thimmi and in accordance with the rules pertaining Dar-al-Islam and Dar-al-Kufr. As for the Thimmi, he is he who embraces other than Islam and becomes a citizen of the Islamic State while adhering his faith which is other than Islam. The word Thimmi is derived from the word Thimmah, meaning the oath. Hence, the Thimmi are those to whom we give an oath to treat them according to the terms of peace we made with them, and to proceed in their treatment and in managing their affairs according to the rules of Islam.

Islam has come with several rules pertaining the people of Thimmah, in which it guaranteed for them the rights of citizenship and the imposed upon them the duties of citizenship. Islam also outlined that the Thimmi enjoy the same justice we enjoy and that they should abide by the same rules which we abide by. As for that which they enjoy in terms of justice and fairness, this is derived from the general command reflected in Allah (swt) saying: [4-58] ***“And if you judge between people that you judge with justice; truly how excellent is the teaching Allah gives you, for Allah is He Who hears and sees everything.”***

Also in His (swt) saying: [5-8] ***“And let not the hatred of others to you to make you swerve to wrong and depart from justice. Be just, that is next to piety and fear Allah, for Allah is well acquainted with all that you do.”***

It is also reflected in Allah (swt) saying pertaining the judgement between the people of the book. [5-42]: ***“If you judge, judge with equity between them; for Allah loves those who judge in equity.”***

As for abiding by that which we abide by, this is derived from the actions and sayings of the Messenger of Allah (saw). He (saw) used to exact the same punishment upon the Kuffar and the Muslims. The Messenger of Allah (saw) punished a Jew by killing him for killing a woman. A Jewish couple were brought to the Messenger of Allah (saw) because they committed adultery, so he ordered their stoning to death.

The people of the Thimmah are given by Islam the same protection given to the Muslims. Ahmed extracted in his Masnad on the authority of Abdul-Rahman Ibnu Abi Bakra on that of his father that the Messenger of Allah (saw) said: ***“He who kills a covenanted person unjustly he shall not find the scent of heaven; its scent is found the distance of a hundred year march.”*** In the narration of Al-Tirmithi on the authority of Abu Hurayrah that the Messenger of Allah (saw) said: ***“He who kills a covenanted person enjoying the oath of Allah and the oath of His Messenger, he shall not smell the scent of Heaven; its scent is found the distance of a seventy year march.”*** Also, a Muslim who had killed a Jew was brought to the Messenger of Allah (saw), so he killed him and said: ***“We are the worthiest in fulfilling our oath.”*** People of Thimmah enjoy the same rights as those enjoyed by Muslims in terms of managing their affairs and securing their living. Bukhari extracted on the authority of Abu Moussa Al-Ash’ari ® that the Messenger of Allah (saw) said: ***“Feed the hungry, visit the poorly and free the prisoner.”*** Abu Ubaydah said: ***“Therefore, the people of Thimmah are excluded from Jihad, their prisoners are freed and if they are salvaged, they return to their Thimmah and their oath as free, and there are many Ahadith in this subject.”*** Abu Dawood extracted on the authority of Ibnu Abbas who said: ***“The Messenger of Allah (saw) made peace with the people of Najran on condition that they hand over to the Muslims 2000 garments, half to be handed in Safar and the rest in Rajab, also to lend them thirty shields, thirty horses, thirty camels and thirty of each type of weapons, which the Muslims would use in war and would guarantee their safe return; this in case there were a conspiracy or betrayal in Yemen; and on condition that no church of theirs is destroyed, no priest is banished. They would also not be coerced away from their faith provided they did not innovate any matter and they did not deal in usury.”*** The Messenger of Allah (saw) used to visit the poorly from amongst the Thimmi. Bukhari extracted on the authority of Anas ® that a Jewish valet who used to serve the Messenger of Allah (saw) was once taken ill, so the Messenger of Allah (saw) visited him. This indicates that it is permitted to visit them, be courteous and sociable with them. Ali ® was quoted as saying: ***“Truly they paid the Jizyah so that their wealth becomes like ours and so that their blood becomes like ours.”*** Bukhari also extracted on the authority of Amru Ibnu Maymun on that of Omar ® who said: ***“And commend him that by the oath of Allah and the oath of His Messenger (saw), he should fulfil their oath towards them, to fight on their behalf and not to burden them with more than they could bear.”*** The Thimmi should not be interfered with in terms of their faith and their rituals, for the Messenger of Allah (saw) said: ***“He who has embraced Judaism and he who has embraced Christianity, they should not be coerced away from their faith.”***

Therefore, the Thimmi are subjects of the State, like any other subjects, enjoying the rights of citizenship, protection, guaranteed living and fair treatment; also enjoying the right of being treated with kindness, leniency and clemency. They can join the Islamic armed forces and fight alongside

the Muslims if they choose to do so, but they are not obliged to fight. They are viewed by the ruler and the judge in the same light as the Muslims are viewed without any discrimination in terms of managing their affairs and when implementing the rules of transactions and the penal code upon them. Therefore, the Thimmi enjoys all the rights, equally and exactly as those enjoyed by the Muslim; he is also expected to perform all the duties incumbent upon him, such as the fulfilment of the oath and the obedience of the State's orders.

This is as far as the rules of the Thimmi are concerned. As for Dar-al-Islam and Dar-al-Kufr, the Messenger of Allah (saw) has deprived the Muslims, who live outside the Islamic State and who are not her subjects, of the rights enjoyed by the State's subjects. Muslim extracted in his Sahih on the authority of Sulayman Ibnu Buraydah on that of his father who said: ***“Whenever the Messenger of Allah (saw) appointed anyone as Amir of an army or an expedition, he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He (saw) would say: “Conquer in the Name of Allah and in the Way of Allah. Fight against those who disbelieve in Allah. Conquer and do not embezzle the spoils; do not break your pledge and do not mutilate the dead bodies. Do not kill the children and if you encountered your enemies who are polytheists, invite them to three courses of action. If they respond to any of these, then accept it from them and withhold yourself from doing them any harm. Invite them to Islam; if they respond to you accept it from them and desist from fighting them. Then invite them to migrate from their household to the household of the Muhajireen and inform them that if they do so, they shall have all the privileges and obligations of the Muhajireen. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims, but they will not get any share from the spoils of war or Fai’ except when they actually perform Jihad with the Muslims...”*** This Hadith clearly indicates that he who does not migrate to Dar-al-Islam, he will not enjoy the citizenship rights even if he were a Muslim. The Messenger of Allah (saw) invited them to come under the authority of Islam so that they may enjoy what the Muslims enjoyed and undertake the obligations which the Muslims undertook, for he (saw) said: ***“Then invite them to migrate from their household to the household of the Muhajireen and inform them that if they do so, they shall have all the privileges and obligations of the Muhajireen.”*** This is a Shari'ah text stipulating that they should migrate to Dar-al-Islam in order to enjoy the same rights and fulfil the same obligations which apply to us, i.e. in order to be governed by the rules. Therefore, the Muslim who lives in Dar-al-Harb is not subjected to the rules; thus, he will not be granted the right of citizenship, for this can only be acquired by the individual if he moves to Dar-al-Islam, and he will be deprived of this right if he lived in other than Dar-al-Islam. The rules are also implemented upon the Thimmi who lives in Dar-al-Islam and he will be granted the right of citizenship because he has chosen to settle in Dar-al-Islam.

The individual's residence in Dar-al-Islam or in Dar-al-Kufr is referred to as fellowship. Hence, a person's fellowship means the household which he chooses as his residence; is it Dar-al-Islam or Dar-al-Kufr? if it were Dar-al-Islam, then the rules of Dar-al-Islam would be implemented upon it, and in this case a person would be a holder of an Islamic fellowship. If it were Dar-al-Kufr the rules of Dar-al-Kufr would apply upon it, and the person living there would not be considered as holder of an Islamic fellowship. Therefore, he who takes up Dar-al-Islam as his residence, he will be holding the Islamic fellowship, whether he is a Muslim or a non Muslim.

It is forbidden to discriminate in any way between those who hold the Islamic fellowship, due to the generality of the evidences pertaining the ruling and judicial matters and management of affairs. Allah (swt) says: [4-58] ***“And if you judge between people that you judge with justice...”*** This is a general address that applies to all people, Muslims and non Muslims alike. Furthermore, the Messenger of Allah (saw) said: ***“The evidence must be submitted by the plaintiff and the oath must be delivered by the defendant who denies the charge.”*** This is also general and it applies to

Muslims and non Muslims alike. Abu Dawood reported on the authority of Abdullah Ibn Zubayr who said: *“The Messenger of Allah (saw) has decreed that the two disputing parties should both sit before the judge.”* This is also general and it includes any two disputing parties, Muslims and non Muslims alike. In the narration of Bukhari, it was reported that Abdullah Ibnu Omar said: *“I heard the Messenger of Allah (saw) say: “You are all guardians, and each one of you is responsible for his guardianship. The Imam is a guardian and he is responsible for his subjects.”* The term *“subjects”* is general and it includes all the subjects, Muslims and non Muslims alike. Likewise, all the general evidences related to citizenship indicate that it is forbidden to discriminate between the Muslim and the non Muslim, or between the Arab and the non Arab, or between the white and the black. All the people who hold the Islamic fellowship should rather be treated equally, without any discrimination between them either by the ruler, in terms of looking after their affairs and in terms of protecting their lives, their honour and their wealth, or by the judge in terms of equality and justice.

Article No 7

The State implements the Islamic Shari'ah upon all those who hold the Islamic fellowship, Muslims and non Muslims alike as follows:

- 1st- All the rules of Islam will be implemented upon the Muslims without any exception.**
- 2nd- The non Muslims will not be interfered with in terms of what they believe and what they worship.**
- 3rd- The rule of apostasy will be implemented upon the apostates from Islam if they themselves were the apostates. As for their children, they will be treated as non Muslims if they are born as such, in accordance with their current status as being either polytheists or people of the book.**
- 4th- The non Muslims will be treated in matters related to foodstuffs and clothing according to their faith and within the scope of what the Shari'ah rules permit.**
- 5th- Matters of marriage and divorce will be settled among the non Muslims according to their faith, and will be settled between them and the Muslims according to the rules of Islam.**
- 6th- The State will implement the rest of the Shari'ah rules and all the Islamic Shari'ah matters, such as transactions, penal codes, testimonies, ruling systems and economics among others, equally upon the Muslims and non the Muslims; the State will also implement the same upon the Covenantors and the asylum seekers and all those under the authority of Islam in the same way it implements them upon the subjects, except for the ambassadors, consuls, envoys and similar, for they will have a diplomatic immunity.**

Explanation and evidences:

Truly Islam has come to all people. Allah (swt) says: [34-28] *“And We have sent you save as a conveyor of glad tidings and as a warner unto all mankind.” T.M.Q.* Just like the Kafir is obligated to abide by the *“Usul”* (foundations) i.e. the Islamic Aqeedah, he is also obligated to abide by the branches, i.e. the Shari'ah rules. As for the fact that he is obligated to abide by the rules, this is clearly mentioned in the Holy Qur'an; and as for the fact that he is obligated to abide by the branches, this is because Allah (swt) has obligated him with some of the branches, among which are those verses commanding the Kuffar to worship Allah (swt). He (swt) says: [2-21] *“O*

people worship your God who created you and those before you so that you may attain piety.” Allah (swt) also says: [3-97] *“Hajj thereto is a duty people owe to Allah for those who can afford the journey.”*

In addition to many several verses. Moreover, were the Kuffar not obligated to abide by the branches, Allah (swt) would not warn them against their violation, and the verses warning them against the forsaking of these branches are numerous; some of which are: Allah (swt) says: [41-6,7] *“And woe to the polytheists* Those who do not pay Zakat and they even deny the Hereafter.” T.M.Q.* Allah (swt) also says: [25-68] *“Those who invoke not with Allah any other god, nor slay such life as Allah made sacred, except for a just cause, nor do they commit fornication; and any that does this meets punishment” T.M.Q.* Allah (swt) also says: [75-31] *“So he gave nothing in charity, nor did he pray” T.M.Q.* Allah (swt) also says: [74-42,43,44] *“What led you into Hell-Fire* They will say we were not of those who prayed* Nor were we of those who fed the indigent.” T.M.Q.* Since the fact stipulating that the Kuffar have been obligated to abide by some of the commands and prohibitions has been established, this indicates that they have been obligated to abide by all the commands and prohibitions. Furthermore, the verses which stipulate the obligation to abide by the branches have come in a general term, and the general term remains as such unless the evidence of specification is mentioned; in this context, no evidence has been mentioned, specifying these verses to the Muslims; thus they remain general. For instance, Allah (swt) says: [2-275] *“Allah has permitted trade and forbidden usury.” T.M.Q.* Allah (swt) also says: [2-283] *“.Then pledge with possession...” T.M.Q.* Al-Tirmithi extracted on the authority of Zayd that the Messenger of Allah (saw) said: *“He who revives a barren land, it becomes his.”* Ibnu Maja extracted on the authority of Abu Hurayra that the Messenger of Allah (saw) said: *“There are three utilities which cannot be monopolised: water, pasture and fire.”* It was also reported on the authority of Al-Hassan on that od Samura that the Messenger of Allah (saw) said: *“The hand is liable for what it has taken until it is given back.”* There are many other rules to this effect. This serves as clear evidence that they are obligated to abide by the branches.

Furthermore, the obligation to abide by the foundation is in itself an obligation to abide by the branch; for the obligation to abide by the Salat entails the obligation to abide by the prostration, the recitation, the standing and so on. The Kafir is obligated to abide by the foundation, thus he is obligated to abide by the branch. As for the non acceptance of some branches from them such as Salat and fasting for instance, this is because their condition is the embracing of Islam; thus they would not be accepted of them until the condition is fulfilled. However, this does not mean that it is not obligatory upon them. As for the fact that they are not commanded to perform certain branches such as Jihad for instance, despite the fact their performance does not necessitate embracing Islam, i.e. it has not been made a condition, this is because Jihad is fighting the Kuffar for their Kufr, and the Thimmi is Kafir, thus it is inconceivable for him to fight the Kuffar for their Kufr; otherwise it would be permitted for him to fight himself. Therefore, he is not obligated to perform Jihad. However, if he accepts to fight a Kafir other than himself, it will be accepted of him, but he will not be forced into it, and this does not mean that he is not commanded by Allah (swt) to perform it. This is as far as them being obligated to abide by the rules of Islam is concerned. As for the fact that the ruler should implement all the rules of Islam upon them, this is reflected in Allah (swt) saying: [5-48] *“So judge between them by what Allah has revealed and do not follow their desires away from the Truth.” T.M.Q.* Allah (swt) also says: [5-49] *“And judge between them by what Allah has revealed and do follow their desires, and beware of them lest they seduce you from some of what Allah revealed to you. If they turn away, be sure that Allah’s purpose is to punish them for some of their crimes; and truly most men are rebellious.” T.M.Q.*

Allah (swt) also says: [4-105] *“We have revealed the Book to you with the Truth, so that you may judge between people by what Allah has shown you, and do not be an advocate for those who*

betray their trust.” T.M.Q. This is a general address that includes Muslims and non Muslims alike, because the word “*people*” is general: “*So that you may judge between people...*” As for His saying (swt) [5-42] “*They are fond of listening to falsehood and devouring anything forbidden. If they do come to you, either judge between them or decline to interfere.*” *T.M.Q.* This means that if one were to come to the Islamic State from abroad, seeking the arbitration of the Muslims, in a dispute with another Kafir or other Kuffar, the Muslims in this case are given the choice of either judge between the disputing parties or decline to do so. The verse was revealed concerning those whom the Messenger of Allah (saw) had made peace with and signed treaties with from among the Jews of Madinah, who were living as tribes and they were considered as other states. They were not under the authority of Islam; they were rather another state. Thus he (saw) had signed treaties with them. However, if they were under the authority of Islam, such as the Thimmi, or if they came as asylum seekers, it would be forbidden to judge between them by other than Islam; and he who refused to refer to the rule of Islam, the ruler would force him and would punish him for it. It is forbidden to conclude an indefinite Thimmah with the Kuffar unless two conditions are fulfilled. That they adhere to paying the Jizyah each year and that they abide by the rules of Islam, which denotes the acceptance of what is enforced upon them in terms of executing orders and abstaining from committing a prohibition. For Allah (swt) says: [9-29] “*Until they pay the Jizyah with willing submission and feel themselves subdued.*” *T.M.Q.* i.e. until they submit to the rules of Islam. The Messenger of Allah (saw) used to implement the rules of Islam upon them. Muslim extracted in his Sahih on the authority of Ibnu Omar that the Messenger of Allah (saw) stoned to death a Jewish man and a Jewish woman for committing adultery. Bukhari extracted on the authority of Anas Ibnu Malik who said: “*A girl came out in Madinah wearing ornaments, so a Jewish man struck her with a stone. She was brought to the Messenger of Allah (saw) while she was still alive, and the Messenger of Allah (saw) asked her: “Did so and so strike you?” Upon this she raised her head. He (saw) asked again: “Did so and so strike you?” She again raised her head denying that. So the Messenger of Allah (saw) asked her a third time: Did so and so strike you?” She lowered her head, agreeing this time. Upon this the Messenger of Allah (saw) summoned him and killed between two stones.*” Those Jews were subjects of the Islamic State. Also, the Messenger of Allah (saw) wrote to the people of Najran who were Christians saying: “*He who deals in usury from amongst you, he shall be denied the Thimmah.*” All this serves as evidence about the obligation to implement all the rules of Islam upon the subjects without any difference between Muslims and non Muslims. It is on this basis that Clause A of the article has been drafted.

As for clause B, the general order pertaining the implementation of all the rules of Islam, mentioned in Allah’s (swt) saying: [5-48] “*And Judge between them by what Allah has revealed.*” *T.M.Q.* ; this general rule has been specified by Shari’ah, thus excluding the Aqeedah the embrace, the rules which are to them a matter of faith and the rules pertaining the actions which the Messenger of Allah (saw) has allowed them to perform. The Aqeedah as well as all of these rules have been made an exception by Islam through a host of clear texts. Allah (swt) says:[2 -256] “*There is no compulsion in the Deen*” *T.M.Q.* and the Messenger of Allah (saw) said: “*He who has embraced Judaism and he who has embraced Christianity, they should not be coerced away from their faith.*” Hence, any action, which to them is considered as a matter of faith, we should not interfere with them and we should allow them to practise what they believe, even if this were not in our Deen part of Aqeedah matters. Also any action which the Messenger of Allah (saw) allowed them to perform, such as drinking alcohol, and getting married, we should also not interfere with them in regard to these actions.

As for clause C of this article, Islam has decreed a host of rules pertaining the apostate, one of which is that he should be killed if he does not repent, for the Messenger of Allah (saw) said: “*Kill the one who changes his Deen.*” In the narration of Bukhari on the authority of Ikrimah who said:

“A group of apostates were brought to the Amir of the believers Ali ® so he burnt them; Ibnu Abbas heard of this and said: If I had been him, I would not have burnt them because the Messenger of Allah (saw) has prohibited this by saying: “Do not punish with the punishment of Allah.” I would have killed them because the Messenger of Allah (saw) said: “He who changes his Deen must be killed.”:

Anas reported: ***“So I came to Omar® who said: O Anas, what happened to the six from Bakr Ibnu Wa’il? So I said: O Amir of the believers, they were killed in the battle. Upon this Omar ® recited Allah’s (swt) saying: “Inna Lillahi Wa Inna Ilayhi Raji’un.” So I said: “Could they have been dealt with by other than death? He said: “Yes, I would have invited them to Islam and had they refused, I would have thrown them in jail.”*** i.e. until they repented, and if they did not they would be killed. This is so because the apostate would be invited to Islam and all the means of repentance would be exhausted and if he still refused he would then be killed; an apostate should not be killed just for apostatising.

In the narration of Ahmed in his Masnad, on the authority of Abu Burdah, it was reported that ***Muath Ibnu Jabal joined Abu Moussa in Yemen. When he reached him, he noticed a man who was tied up; so he asked: “What is this.” Abu Moussa replied: “He had been a Jew, he then embraced Islam and then he Judaized again.” Upon this Muath said to him: “By Allah I shall not sit until his neck is struck. So his neck was struck and upon this Muath said: “The Messenger of Allah (saw) has decreed that: “He who revokes his Deen must be killed.” Or he (saw) said: “Kill the one who changes his Deen.”***

This is as far as the apostate himself is concerned . As for his children who are born as non Muslims, in other words, if a Muslim were to apostate from Islam, escape capital punishment and continue to embrace the faith to which he apostatised, i.e. continue to be a Christian, or a Jew or a polytheist, and if he were then to have children while retaining this status, thus his children are born as Christians or as Jews or as polytheists, would his children be considered as apostates, and would they be treated as apostates, or would they be considered as being of the faith they had at birth?

The answer to this is that the children of the apostate who are born before their father’s apostasy are considered as Muslims without any doubt; and if they were to follow their father and apostate as well, they would be treated as apostates. Whereas if they were born after he had apostatised, from a disbelieving or an apostate wife, these children would be considered as Kuffar and not as apostates, thus they would be treated just like the people of the faith they inherited at birth are treated. Hence, every child born after his father’s apostasy from a disbelieving wife or an apostate wife, he or she would be judged as Kafir for he would be born from two disbelieving parents. Therefore, if the two parents became Jews or Christians, i.e. from the people of the book, he would be treated as the people of the book would be treated, and if the two parents became polytheists, he would be treated as a polytheist. This is so because ***Ibnu Mas’ud reported that when the Messenger of Allah (saw) wanted to execute Uqbah Ibnu Abi Mu’it, the latter said: “What with the children?” He (saw) said: “Hell fire.” In another narration : “Hell fire to them and to their father.”*** Abu Dawood reported on the authority of Amru Ibnu Murrah on that of Ibrahim who said: ***“Al-Dhahhak Ibnu Qays wanted to appoint Masruq as Amil (governor), so Umarah Ibnu Uqbah said to him: “Do you want to appoint a man whose father was among the killers of Uthman?” Upon this Masruq said to him: “ Abdullah Ibnu Mas’ud, whose report is to us trustworthy, told us that when the Messenger of Allah (saw) wanted to execute your father who said: “What happens to the children?”, He (saw) said to him: “Hell fire.” Therefore, I have accepted for you the predicament that which the Messenger of Allah (saw) had accepted for you.”*** It was also authenticated in Sahih Bukahri, in the section of The people of the Household, in the book of Jihad, on the authority of Ubaydullah on that of Ibnu Abbas on that of Al-Sa’ab Ibnu Jathama ® who said:

“The Messenger of Allah (saw) passed by Al-Abwa’ or by Waddan and he (saw) was asked about the people of the Household who used to be raided by the polytheists and take their women and children; he said: They are of them.” Therefore, every child born to two disbelieving parents is considered a Kafir and the rule pertaining Kuffar applies to him.

Hence, those who apostatised from Islam and became non Islamic sects, such as the Druze, the Bahai’, the Qadiani and the like, they are not treated as apostates because they are not so; thus they are judged as Kuffar and will be treated as such. Also, since they have not apostatised to a faith from among the people of the book, i.e. they have not apostatised to Christianity or to Judaism, they will be therefore treated as polytheists. Hence, their slaughtered meat will not be eaten and their women will not be wedded. This is so because the Messenger of Allah (saw) said about the Magi of Hajar: “Treat them like the people of the book, but do not eat their slaughtered meat and do not wed their women.” Imam Malik reported in Al-Muwatta’ on the authority of Ja’afar Ibnu Ali on that of his father that Omar Ibnul-Khattab ® mentioned the Magi and said: “I do not know how to deal with them.” Upon this Abdul-Rahman Ibn Auf said: “I bear witness that I heard the Messenger of Allah (saw) say: “Treat them as you treat the people of the book.”

As for those who apostatised from Islam and became Christians, as is the case in Lebanon with the family of Shihab, this family’s forefathers were Muslims and they apostatised to Christianity, and their children were born as Christians, these people and their like will be treated as people of the book.

As for clauses D and E, their evidence is derived from the fact that the Messenger of Allah (saw) allowed the Jews and the Christians to drink alcohol and accepted their marriages and divorces proceedings; thus his acceptance (saw) serves as a specification of the general rule. However, the approval of the Messenger of Allah (saw) with regard to the Kuffar’s marriage is given only when the two spouses are Kuffar; but if the husband were Muslim, and if the wife were either Christian or Jewish, the rules of Shari’ah would then be applied upon both of them. It is not feasible for the wife to be Muslim and the husband to be Kafir, for this is unlawful. Allah (swt) says: [60-10] ***“Then do not send them back to the Kuffar, they are not lawful wives for them nor are the Kuffar lawful husbands for them.” T.M.Q.***

Therefore, it is forbidden for a Muslim woman to marry a non-Muslim, and if she did, her marriage would be unlawful.

As for clause F, the evidence pertaining the implementation of all the rules of Islam is derived from the fact that the Kafir is obligated to abide by the foundations and the branches, thus he is commanded to submit to all the rules of Islam. This is general, and it includes the Thimmi and the non Thimmi from among those who live under the authority of Islam. Hence, all the Kuffar who enter Dar-al-Islam must be subjected to the rules of Islam, apart from the Aqeedah matters and the rules related to Aqeedah matters, as well as any action which the Messenger of Allah (saw) allowed them, whether these Kuffar were Thimmi, covenantors or asylum seeker, (i.e. refugees).

The ambassadors and their likes are excluded from this and the rules of Islam would not be implemented upon them, for they would be given diplomatic immunity. This is so because Ahmed reported on the authority of Abu Wa’il who said: ***“Abdullah said when Ibnul Nawwaha was killed: “This one and Ibnu Uthal had once come to the Messenger of Allah (saw) as envoys of Musaylima the liar and the Messenger of Allah (saw) said to them: “Do you bear witness that I am the Messenger of Allah?” They said: “We bear witness that Musaylima is the Messenger of Allah.” Upon this the Messenger of Allah (saw): “If I were to kill an envoy I would strike your necks.” Since then, a tradition has been established stipulating that the envoy does not get killed. As for Ibnu Uthal, Allah (swt) has taken care of him, as for this one he remained immune until***

Allah enabled us to slay him now.” This Hadith indicates that it is forbidden to kill the envoys who are dispatched by the Kuffar, and likewise all the other rules. However, this is exclusively applicable upon those who have the capacity of an envoy, such as the ambassador and the “*Chargé d'affaires*” and the like. As for those upon whom the capacity of an envoy does not apply, such as the Consul and the Commercial Attaché and the like, they would not have any immunity, for they do not have the capacity of an envoy. This matter should be referred to the convention, because it is a terminological expression whose reality should be perceived by way of looking into the convention, and it is part of establishing the Manat (reality) i.e. establishing whether they fit the description of envoys or not.

Article No 8

The Arabic language is exclusively the language of Islam and it is exclusively the language used by the State.

Explanation and evidences:

The evidence of this article is derived from the fact that although all people are addressed by the Qur'an, because of Allah's (swt) saying: [17-89] “*And We have explained to man in this Qur'an every kind of similitude*” *T.M.Q.* Allah (swt) also says: [30-58] “*And We have propounded for people in this Qur'an every kind of parable*” *T.M.Q.* Allah (swt) has However revealed it in Arabic and made it an Arabic Qur'an. Allah (swt) says: [12-2] “*We have sent it down as an Arabic Qur'an in order that you may learn wisdom.*” *T.M.Q.* Allah (swt) also says: [26-195] “*in the perspicuous Arabic tongue.*” *T.M.Q.*

Therefore, the Arabic language is the sole language of Islam, because it is the sole language of the Qur'an and because the Qur'an is the miracle (Al-Mu'jizah) of the Messenger of Allah (saw). The I'jaaz of the Qur'an, i.e. the wondrous nature of the Qur'an lies in its expression with this Arabic wording; i.e. with the Arabic wording and style. Although the I'jaaz is found in both the wording and the meaning inseparably, what is however meant by its I'jaaz in meaning is not the I'jaaz of what the Qur'an has brought in terms of meanings and topics, for the Sunnah has expressed these meanings and topics and yet it is not considered a miracle. The I'jaaz in meaning is established through the fact that the meaning is itself expressed by this wording and this style. Hence, expressing such a meaning in such a wording and in such a style is miraculous. Therefore, the I'jaaz lies in the Arabic wording that expresses the meaning with the Arabic style. In other words, Allah's (swt) saying: [8-58] “*If you fear treachery from any group, throw back their covenant to them so as to be on equal terms, for Allah does not love the treacherous.*” *T.M.Q.* , is in itself incapacitating to all people to produce something similar; its I'jaaz comes from the splendour in expressing these meanings, with this formulation and with such a style. Therefore, the miracle was the Arabic wording and the Arabic style which expressed this meaning. the I'jaaz in the Qur'an is confined in its Arabic, for it is the origin of the I'jaaz and the subject of the challenge to produce something equal to it. Hence, the Arabic language is an integral part of the Qur'an that cannot be separated from it. The Qur'an itself could not be considered Qur'an without it. It is therefore forbidden to translate the Qur'an, for if it were altered, it would lose its versification and it would no longer be Qur'an and nothing like Qur'an; it would rather be a commentary of it, and if its commentary were anything like it, people would not have failed to produce something equal to it when they were challenged to do so. Besides Allah (swt) saying: “*An Arabic Qur'an*” means that if it were not Arabic, it could not be called Qur'an. Furthermore, we worship Allah (swt) with its wording; thus the prayer cannot be performed but with it, for Allah (swt) says: [73-20] “*So read of the Qur'an as much as may be easy for you.*” *T.M.Q.*, and the Messenger of Allah (saw) said: “*A prayer is not accepted from he who does not recite the Fatihah of the Book in every prostration.*”

Therefore, the Arabic language is an integral part of Islam. As for Allah (swt) saying: [6-19] ***“This Qur'an has been revealed to me that I may warn you and all whom it reaches.” T.M.Q.***, this means: So that I warn you with what is in the Qur'an, and this applies to warning people with its wording and with its commentary, for all of this is considered as warning. By contrast, Allah (swt) saying: ***“Read”*** does not refer to the reading of its commentary, nor does it refer to the reading of its translation, because reading the Qur'an means just that, i.e. reading its text, and this is nothing like warning with the Book. It is fitting to warn with the Qur'an's wording and to warn with what is in it. Besides, Allah (swt) had decreed that the Messenger of Allah (saw) warning is made in Arabic, so Allah (swt) says: [26-193,194,195] ***“With it came down the Faithful Spirit * To your heart so that you may admonish * in the perspicuous Arabic tongue.” T.M.Q.*** This serves as a conclusive evidence that it is forbidden to read the Fatiha in prayer in other than the Arabic language, and this nullifies and refutes the argument of those who claimed that the verse in which Allah (swt) says: [6-19] ***“And this Qur'an has been revealed to me” T.M.Q.***, refers to the permissibility of reading the Fatiha in other than the Arabic language for those who do not master Arabic.

This is as far as the Arabic language being a fundamental part of Islam. As for the evidence pertaining the fact that the Arabic language should be exclusively the official language of the State, this is derived from the fact that the Messenger of Allah (saw) sent letters to Caesar, Kisra, and Muqawqas, in which he invited them to Islam; those letters were written in Arabic, though they could have been translated into their own languages. Therefore, the fact that the Messenger of Allah (saw) did not write his letters to Caesar, Kisra, and Muqawqas in their own languages, though they were non Arabs, and though he wrote in order to convey Islam to them, serves as evidence that the Arabic language is exclusively the official language of the State, because the Messenger of Allah (saw) did this. Besides, the fact that the need to translate was pressing, in order to convey Islam, and the fact that the Messenger of Allah (saw) did not translate, this serves as a Qarinah (conjunction) indicating the obligation of restricting the State's address of people to the Arabic language, whether the addressees were Arabs or non Arabs. Therefore, all non Arab people should learn the Arabic language, and it is forbidden of the State's official language to be other than the Arabic language. Imam Al-Shafii outlined in his celebrated book of Usul (foundations of jurisprudence) entitled Al-Risalah the following: ***“Allah (swt) has made it an obligation upon all nations to learn the Arabic tongue following their address with the Qur'an and their worshipping by it.”***

Therefore, all this makes it obligatory for the State to adopt the Arabic language as the exclusive official language. However, it must be made clear that the fact that the Arabic language is exclusively the State's language does not necessarily mean that the State could not use other than the Arabic language, for it is permitted for the State to use in an official correspondence other than the Arabic language, either for fear of distortion, or to acquire vital information or to convey the Da'awah abroad or for any similar reason. This is so because the Messenger of Allah (saw) used Hebrew and Syriac. Hence, the rule stipulates the singling of the Arabic language when adopting the State's official language, rather than preventing the State from using other than the Arabic language.

The question that springs to mind is: Would it be permitted to have in the lands ruled by the Islamic State a written and spoken language other than Arabic?

The answer to this is: The speaking and the writing of other languages could either be related to the State itself, or related to the subjects' relationship with the State, or related to the subjects themselves, or to the relationships of individuals with one another.

If it were related to the State itself or to the State's relations, in this case the language cannot be but Arabic, because the fact that the Messenger of Allah (saw) did not translate his letters to the non Arabs despite the pressing need to translate in order to convey Islam, serves as evidence stipulating the obligation of singling out of the Arabic language alone in the State's administration and relations or in anything related to her. Therefore, it is not fitting for the State to introduce in its educational curricula any other language apart from Arabic, whether these were the languages of the non Arab peoples living under the authority of the Islamic State or the peoples living outside the authority of the Islamic State. Also, public schools are prevented from adopting other than the Arabic language as an academic language and from introducing other than the Arabic language as a subject because they are obliged to adhere to the State's curricula. Therefore, every matter related to the State, or to her relations with the subjects or any other matter related to her, must be conducted in the Arabic language, oral and written.

However, if speaking and writing in other than the Arabic language were related exclusively to the subjects, or related to people's relationships amongst themselves, this would be permitted, because the Messenger of Allah (saw) permitted the translation of other languages into Arabic and permitted also the learning of other languages. This indicates that it is permitted to speak and to write in other than Arabic. Bukhari extracted in the section entitled "*The rulers' translation*", on the authority of Zayd Ibnu Thabit who said: "*The Messenger of Allah (saw) ordered me to learn the book of the Jews, until I became able to write the letters of the Messenger of Allah (saw) and read to him their letters if they wrote to him.*" In the Masnad of Ahmed, on the authority of Zayd Ibnu Thabit who said: "*The Messenger of Allah (saw) asked me once: "Do you speak Syriac? For I receive letters." I said: "No." He (saw) said: "Do learn it." So I learnt it in 17 days.*" This serves as evidence that it is permitted to speak and write in other than Arabic. In the times of the Sahaba there were people who used to speak and write in other than Arabic and they were not forced to learn it. The ruler used to summon interpreters whenever they needed to. Bukhari reported: "Omar said in the presence of Ali, Abdul-Rahman and Uthman: "What is this woman saying?" Abdul-Rahman Ibnu Hatib said: "She is informing you about the man who did so and so to her." Abu Jamrah also said: "I used to translate between Ibnu Abbas and other people." When Omar ® asked what that woman was saying, he meant the woman who was found pregnant, so Abdul-Rahman was translating for him; and the fact that Abu Jamrah used to translate for Ibnu Abbas what people were saying means that there were people who spoke other than Arabic. Therefore, speaking and writing in other than Arabic is permitted according to the Hadith and to the actions of the Sahaba. Accordingly, the State would allow the publication of books, newspapers, and magazines in other than Arabic, and their publication would not require a permission because it is part of the Mubah (permitted) actions. It is also allowed to television programmes in other than Arabic, that is if these stations belonged to an individual or to a group of people. However, this will be prohibited in the State's own radio and television stations, because everything related to the State must be exclusively in Arabic. As for that which is related to people among themselves, it will be permitted for them to use other than Arabic in everything; save for a specific item of Mubah that may lead to harm, in which case that matter will be prohibited.

Article No 9

Ijtihad is a duty of sufficiency and every Muslim reserves the right to perform Ijtihad provided he meets all its prerequisites.

Explanation and evidences:

The Islamic Shari'ah has made Ijtihad to deduce the Shari'ah rules from the address of the Legislator i.e. from the Shari'ah texts, revealed by Allah (swt) to the Messenger of Allah (saw), an obligation upon the Muslims. The fact that Ijtihad is an obligation has been confirmed through several Ahadith. In the narration of Bukhari on the authority of Amr Ibnul Aas who said that he heard the Messenger of Allah (saw) say: ***“If one were to give a ruling, so he made Ijtihad and reached the sound rule, he would get double the reward; and if he were to give a ruling, so he made Ijtihad and reached the wrong rule, he would still get a reward.”*** He (saw) also said: ***“...and a man who passed onto people his judgement without knowledge, he is in Hell fire.”*** This confirms that the judge must be acquainted with what he judges on. It is also reported that the Messenger of Allah (saw) said to Mu'ath and Abu Moussa Al-Ash'ari when he was about to dispatch them to Yemen: ***“What will you judge by?” They said: “If we did not find the rule in the Book nor in the Sunnah, we would make analogy between the two matters and whichever were closest to that which is right we would act upon it.”*** This analogy is in itself a kind of Ijtihad to deduce the rule which the Messenger of Allah (saw) approved of. It is also reported that the Messenger of Allah (saw) said to Mu'ath when he appointed him as Wali to Yemen: ***“What will you rule by?” He said: “By the Book of Allah.” He (saw) said: “What if you do not find the rule?” He said: “By the Sunnah of the Messenger of Allah.” He said: “What if you do not find the rule?” He said: “I will exert my own opinion.” Upon this the Messenger of Allah (saw) said: “Praise be to Allah Who guided the envoy of the Messenger of Allah to what Allah and His Messenger love.”*** This clearly indicates the approval of the Messenger of Allah (saw) with regard to Mu'ath performing Ijtihad. Furthermore, the knowledge of the rules is linked and related to Ijtihad, for the perception and cognisance of the rules could not be established without it. Hence, Ijtihad becomes obligatory because the Shari'ah principle stipulates: ***“Whatever is necessary to establish a duty is in itself a duty.”*** The Istinbat, i.e. the deduction of rules is in essence performed by Mujtahideen, because the knowledge of Allah's rule in a given matter cannot be reached but through Ijtihad, thus Ijtihad becomes indispensable. The scholars of Usul, i.e. foundations of Jurisprudence, have indicated that Ijtihad is a duty of sufficiency upon the Muslims and that it is forbidden for Muslims to have no Mujtahid at any given time, and if they all agreed upon forsaking Ijtihad, they would be sinful, because the way to recognising the Shari'ah rules is Ijtihad; so if an era were devoid of at least one Mujtahid upon whom it could be relied in perceiving the rules, this would lead to the disruption of Shari'ah, and that is forbidden. Besides, the Shari'ah texts makes it incumbent upon Muslims to perform Ijtihad, because these Shari'ah texts, i.e. the Book and the Sunnah and nothing else, have not come in an elaborate manner, but rather in a general manner that can be applied to all matters faced by humanity. Their understanding and the deduction of the rule of Allah from them requires the exhausting of efforts in order to obtain the Shari'ah rule from them for every matter. This Ijtihad is not an impossible task, nor is it extremely difficult; it is the process of exhausting one's effort in order to acquire the Shari'ah rules with the least amount of doubt. In other words, it is the understanding of the Shari'ah texts with the exhausting of one's utmost effort in order to attain this understanding and perceive the Shari'ah rule. This is in fact within everyone's reach. Ijtihad was to the Muslims in the early times natural and evident, and it had no prerequisites. However, since the Arabic tongue started to weaken, and since people started to devote less attention to discerning the Deen, it has become incumbent upon the Mujtahid to recognise the aural evidences from which the principles and the rules are deduced; it has also become incumbent upon him to discern the meaning of expressions which are credible in the Arabic tongue and in the usage of eloquent people. apart from these two conditions, there are no other conditions to performing Ijtihad. Therefore, in addition to being a duty of sufficiency upon the Muslims, Ijtihad is within the reach of all the Muslims. These are all the evidences of this article.

Article No 10

All the Muslims shoulder the responsibility of Islam. There is no clergymen in Islam and the State should prohibit any sign of their presence among the Muslims.

Explanation and evidences:

Although Mujtahids are scholars, however not every scholar is necessarily a Mujtahid, for a scholar could either be a Mujtahid or a Muqallid (imitator). If the Muslim were to take the Shari'ah rule in order to act upon, this requires some consideration: If he took the rule from a Mujtahid, he in this case would be emulating the Mujtahid; if he took it from a non Mujtahid, he would be learning that rule from the person he had taken it from, and he would not be emulating him. However, if the Muslim were to take the rule in order to learn it, he would be learning the rule, whether he took it from a Mujtahid or a non Mujtahid. Therefore, these scholars, be it Mujtahids or otherwise, are not clergymen, for none of them has the competence to legitimise anything or prohibit anything, and they are just like any other Muslim vis-à-vis every single Shari'ah rule. None of them should distinguish himself in anything pertaining the Shari'ah rules from the rest of the Muslims, no matter how high his standing reaches in terms of knowledge, Ijtihad and reverence. Hence, that which is Haram upon others does not become permitted for him, nor does the obligation upon others become Mubah for him. He is rather like any other Muslim individual. Therefore, the idea of clergymen held by Christians has no existence in Islam and the concept of clergymen is specific to Christians, because to them, a clergyman does legitimise and prohibit; thus attributing such a term to the Muslim scholar inspires the exporting of the Christian concept to the Muslim scholars, despite the fact that Muslim scholars do not legitimise nor do they prohibit anything. therefore, it is not fitting to attribute the term of clergyman to a Muslim scholar; and there exists a host of explicit Ahadith prohibiting the emulation of Christians and Jews. Bukhari extracted on the authority of Abu Said Al-Khudri that the Messenger of Allah (saw) said: *“You shall follow the ways of those before you inch by inch and yard by yard; even if they were to enter a lizard’s hole you would follow suit. We said : O Messenger of Allah, the Jews and the Christians? He (saw) said: Who else?”* This Hadith has been said within the context of prohibition. Hence, the emulation of the Jews and Christians is as it stands prohibited, let alone if this emulation were to lead to the generating of a Kufr concept among the Muslims. Considering the Muslim scholar as a clergyman is an emulation of the Christians who regard their scholars as clergymen; it also exports the Christian concept of clergyman to the Muslim scholar; hence, it is strictly prohibited, in terms of emulation and it is classified as even more strictly prohibited in terms of introducing the concept. Therefore, it would be wrong to refer to the Muslim scholar as a clergyman, and it is forbidden for the scholars to consider themselves as clergymen according to the Christians’ concept of clergyman. If one were to claim this within the context of this concept, he will be prohibited and punished for he will have committed a Haram. Hence, this article has been drafted.

Article No 11

Conveying the Islamic Da'awah is the main task of the State

Explanation and evidences:

This article has been drafted because as well as being an obligation upon the Muslims, carrying the Islamic Da'awah is also an obligation upon the State. Although carrying the Da'awah forms part of the implementation of Shari'ah in the relationships, and although it is a Shari'ah rule that the State must implement, just like the individual must, carrying the Islamic Da'awah however is to the State considered as the basis upon which her relationships with other states is built. In other words, it is

the basis upon which the whole of the State foreign policy is built. Therefore, carrying the Islamic Da'awah is the State's main task.

Evidence about the fact that carrying the Da'awah is an obligation is reflected in Allah's (swt) saying: [6-19] ***"And this Qur'an has been revealed to so that I may warn you and with it and those whom it reaches."*** T.M.Q., meaning to warn whoever this Qur'an reaches. Hence, the warning is to you and it is also a warning to those you convey it to; thus it is an invitation to them to convey it on behalf of the Messenger of Allah (saw). In other words, it is not a warning to you only, but rather a warning a warning to you and to all those whom the Qur'an reaches. Al-Tirmithi reported on the authority of Abdul-Rahman Ibn Abdullah Ibn Masud who quoted his father as saying that the Messenger of Allah (saw) said: ***"May Allah brighten a person who had heard my saying, perceived it, memorised it and conveyed it; for one may be carrying Fiqh (knowledge) to someone who is more of a Faqih than him."*** Also, Allah (swt) say: [3-104] ***"Let there arise from among you a group calling to the goodness, commanding that which is good and forbidding that which is evil, and those are the one who will succeed."*** T.M.Q. He (swt) also says: [41-33] ***"Who is better in speech than one who calls to Allah, works righteous deeds and says I am one of the Muslims."*** T.M.Q. i.e. to the Deen of Allah. All these texts indicate that carrying the Da'awah is obligatory, and this obligation is general and applicable to both the State and to the Muslims as a whole. As for the fact that carrying the Da'awah must be the State's main activity, its evidence is derived from the Hadith of the Messenger of Allah (saw) in which he was reported to have said: ***"I have been ordered to fight people until they profess that there is no god but Allah. If they said it, their lives and their wealth would be inviolable to me, except that which is by right and Allah (swt) will hold them accountable."*** Abu Dawood also reported on the authority of Anas Ibnu Malik who said: ***"The Messenger of Allah (saw) said: *"..and Jihad has been ongoing since Allah sent me and will continue until the last generation of my Ummah fight the Dajjal; it shall not be disrupted by the tyranny of a tyrant nor by the justice of a just."**** Hence, the order to fight until those whom the Messenger of Allah (saw) profess that there is no god but Allah and that Mohammed is the Messenger of Allah, serves as evidence about the obligation of carrying the Da'awah upon the State, and the fact that this carrying, which is Jihad, is ongoing until the Day of Judgement serves as evidence that it is the State's constant activity, which she is forbidden from disrupting; thus it is the main duty, because the main duty is that which is constantly performed under all circumstances and without any disruption.

Besides, the Messenger of Allah (saw) was in a constant state of Jihad ever since he settled in Madinah until he (saw) departed this world; Jihad to him (saw) was the main activity. The rightly guided Khulafa' came after him and followed on his footsteps, assuming Jihad as their main duty. The State that the Messenger of Allah (saw) founded and headed, undertook Jihad as her main duty; when he (saw) departed, the State was headed by the Khulafa' from among the Sahaba ® and likewise, the State's main task was Jihad. Therefore, the evidence stipulating that carrying the Islamic Da'awah is the State's main task is derived from the Sunnah and the Ijma'a of the Sahaba. Besides, the Messenger of Allah (saw) used to convey the Da'awah since Allah (swt) sent him as a prophet until he departed this world. He (saw) was in Madinah the Head of State; since he settled in there, he made his foreign policy as the main activity and the State's focus of attention and preoccupation; the activities undertaken ranged from raids, expeditions, intelligence gathering, signing treaties and the like. All these activities were for the sake of conveying Islam and carrying its Da'awah to all people. When the Messenger of Allah (saw) sensed the strength of the State and her ability to carry the Da'awah internationally, he dispatched twelve envoys simultaneously to twelve monarchs inviting them to Islam. When he (saw) was satisfied about the might of the State within the Arabic peninsula, and about the spread of the Da'awah among the Arabs and people started to embrace the Deen of Allah (swt) in droves, he (saw) looked towards conquering the

Romans, hence the battles of Mu'ta and Tabuk. This also serves as evidence that carrying the Da'awah is an obligation upon the State and that it is her main task.

Article No 12

The only considerable evidences of the Shari'ah rules are the Book, the Sunnah, the Ijma'a of the Sahaba and the Qyyas (analogy).

Explanation and evidences:

This article does not imply that the State will adopt a method of Ijtihad, it rather means that the State will adopt and follow a specific method of Ijtihad; it rather means that the State will follow a specific method when adopting the Shari'ah rules; because the adoption of the Shari'ah rules could either be in some cases obligatory or in other cases permitted for the State. If this adoption were to be conducted in two contradictory methods, it would lead to a contradiction in the basics upon which the adoption has been conducted. Therefore, the State ought to adopt a specific method in adopting the Shari'ah rules. What prompted the adoption of such a method in the adoption of rules are three reasons: 1- The rule by which the Muslim should proceed is a Shari'ah rule and not a rational rule, i.e. it is the rule of Allah pertaining this matter and not the conventional rule; therefore, the evidence from which this rule is deduced must be that which the Revelation has brought.

2- It is imperative for the confirmation that the evidence, from which the rule has been deduced, has been brought by way of Revelation, to be conclusive. In other words, it is imperative for the proof about the fact that the evidence from which the Shari'ah rule has been deduced has been brought by way of Revelation, to be conclusive and decisive and not doubtful. This is so because it is part of the Usul (foundations) and not part of the branches, thus doubt is not sufficient, because it is part of the Aqeedah matters and not part of the Shari'ah rules. This is so because the evidence required to deduce the rule from is an evidence which has come by way of Revelation, not just any evidence. Therefore, it is imperative to decisively confirm it as being brought by way of Revelation, and the process of confirming that it is Revelation that has brought it is a Aqeedah matter not a Shari'ah rule. Therefore, it is imperative to establish that the evidence has come by way of Revelation in a conclusive manner i.e. by a conclusive evidence; because matters of Aqeedah can only be taken conclusively.

3- What is conclusive is that man's behaviour in life proceeds according to his concepts about life; and although the viewpoint about life has the Aqeedah as its basis, it is nevertheless formed of a host of concepts, criteria and convictions which are existent in the Ummah; and not all of these thoughts, which are reflected in this host of concepts, criteria and convictions, are part of Aqeedah matters, for in fact some of them are part of Aqeedah matters and others are part of Shari'ah rules; and since rules are deduced with the least amount of doubt, it is therefore feared that if the origin of the rules has not been conclusively confirmed as being brought by way of Revelation, then some of the non Islamic thoughts may creep into the Ummah due to the presence of Shari'ah rules deduced from a foundation which Revelation has not brought in the first instance.

It is for these three reasons that the adoption of a specific method, according to which the Shari'ah rules are adopted, is imperative. As for the fact that the evidences are confined exclusively to the four general evidences mentioned above, this is confirmed through study. We have studied and scrutinised the evidences which have been confirmed by a conclusive evidence to have been brought by way of Revelation, and we have not found other than these four at all.

As for the Qur'an, the evidence about the fact that it has been brought by way of Revelation from Allah (swt) in letter and spirit is conclusive. The I'jaz of the Qur'an serves as a conclusive evidence that it is indeed the word of Allah (swt) and not the word of man. Hence, the conclusive evidence has been established that the Qur'an is the word of Allah (swt). The Qur'an itself, which has been conclusively confirmed as being the word of Allah by the evidence of the I'jaaz, states that it is Revelation that descended it upon the Messenger of Allah (saw); Allah (swt) says: [26-193,194,195] ***"With it came down the Faithful Spirit * To your heart so that you may admonish * in the perspicuous Arabic tongue."*** T.M.Q. Allah (swt) also says: [6- 19] ***"And this Qur'an has been revealed to me so that I may warn you with it and those whom it reaches."*** T.M.Q.

Allah (swt) also says:[21-45] ***"Say I do but warn you according to Revelation, but the deaf will nit hear the call when they are warned."*** T.M.Q.

Allah (swt) also says: [20-1,2] ***"Ta Ha* We have not sent down the Qur'an to you so that you become distressed * But only as an admonition those who fear."*** T.M.Q.

Allah (swt) also says: [27-6] ***"As to you the Qur'an is bestowed upon you from the presence of One Who is Wise and All-Knowing."*** T.M.Q.

Allah (swt) also says: [76-23] ***"It is We Who have sent down the Qur'an in stages."*** T.M.Q.

Allah (swt) also says: [42-7] ***"Thus We revealed to you an Arabic Qur'an."*** T.M.Q.

These are conclusive evidences establishing the fact that the Qur'an has been brought by way of Revelation from Allah (swt).

As for the Sunnah, the conclusive evidence about the fact that it is Revelation that has brought it from Allah (swt) in meaning and that the Messenger of Allah (saw) expressed it by his own words, this evidence is also clearly indicated in the Verses of the Qur'an. Allah (swt) says: [53-3,4] ***"Nor does he speak of his desire * It is no less than Revelation sent down to him."*** T.M.Q.

Allah (swt) says: [4-163] ***"We have sent you Revelation as We sent it to Nouh and the prophets after him."*** T.M.Q.

Allah (swt) says: [10-15] ***"I only follow what is revealed to me."*** T.M.Q.

Allah (swt) says: [7-203] ***"Truly I follow what is revealed to me by my God."*** T.M.Q. Allah (swt) says: [21- 45] ***"Say I do but warn you according to Revelation."*** T.M.Q.

Allah (swt) says: [59-7] ***"and whatever the Messenger brought to you take it and whatever he forbids you abstain from it."*** T.M.Q.

These are clear evidences denoting that whatever the Messenger of Allah (saw) has uttered in terms of the Sunnah has come by way of Revelation; they also serve as clear evidences denoting that Allah (swt) has explicitly ordered us in the Qur'an to abide by what the Messenger of Allah (saw) ordered us and to abstain from what he (saw) prohibited for us. This command is general. Hence, the evidence about the fact that the Sunnah has come by way of Revelation is conclusive, because it has been established by a conclusive Qur'anic text, that happens to be definite in meaning.

As for the Ijma'a of the Sahaba, which is considered a Shari'ah evidence, it means the general consensus of the Sahaba that such rule is a Shari'ah rule, or their general consensus that the rule pertaining such and such matter is so and so. Hence, if they unanimously consented about a certain

rule as being a Shari'ah rule, their Ijma'a (general consensus) would be considered a Shari'ah evidence.

Evidence about this is reflected in two matters: 1- Allah (swt) praised them in the Qur'an through a text that is conclusive and definite in meaning. Allah (swt) says: [9-100] ***“The vanguards and the first from among the Muhajireen and the Ansar, and those who followed them in all the goods deeds, Allah is well pleased with them as they are with Him, and He prepared for them gardens under which rivers flow, to dwell therein forever, that is the supreme felicity.” T.M.Q.***

This praise by Allah (swt) of the Muhajireen (emigrants), the Ansar (Helpers) and those who followed them with righteousness, for their emigration and their support, is a praise of the Sahaba; because those praised are the Sahaba and the meaning of the Verse is confined to them. This praise is for all of them, and the truthfulness of those whom Allah (swt) praises in such a way is conclusive.

2- We have taken our Deen from those Sahaba, for they transmitted to us the very Qur'an that had descended upon the Messenger of Allah, our master Mohammed (saw). Hence, if we assumed that a flaw were to creep into one single matter from among that which they had agreed upon, this means that the flaw could creep into the Qur'an, i.e. the flaw could creep into the Deen which we had taken from them, and this is as far as Shari'ah is concerned impossible. Therefore, although it would not be rationally impossible for the Sahaba to unanimously agree upon an erroneous matter, for this could happen since they are but humans, this however could not possibly happen to them as far as Shari'ah is concerned; for if this were possible, it would then be possible for error to creep into the Deen, i.e. it would be possible for error to creep into the fact that this Qur'an that we have today is the same and the very Qur'an that descended upon our master Mohammed (saw), and this is impossible as far as Shari'ah is concerned; thus it would be impossible for them to generally consent on something erroneous. This serves as a conclusive proof that the Ijma'a of the Sahaba is a Shari'ah evidence. Besides, Allah (swt) says: [15-9] ***“We have without doubt sent down the Qur'an and We will assuredly protect it.” T.M.Q.*** Therefore, Allah (swt) has promised to protect the Qur'an, and he who transmitted this Qur'an is he who protected it, thus this serves as evidence about the truthfulness of their Ijma'a in transmitting and compiling the Qur'an; hence, it serves as proof about the soundness of their general consensus, because if it were possible for their consensus to be flawed, it would be possible for the transmission of the Qur'an to be flawed and it would be possible for it to be unprotected. Therefore, since the non protection of the Qur'an is impossible, as indicated by the Verse, then it is impossible for error to creep into its transmission or its compiling or its protection. Hence, the Ijma'a of the Sahaba is a conclusive evidence.

However, what should be made absolutely clear is that the Ijma'a of the Sahaba stipulating that such and such rule is a Shari'ah rule, means that this general consensus of theirs discloses an evidence; i.e. that there exists for this rule an evidence derived either from the action, or the saying or the silence of the Messenger of Allah (saw), and that the Sahaba ® transmitted the rule but did not transmit the evidence. Hence, their transmission of the rule discloses the fact that there exists an evidence pertaining that rule. Therefore, their general consensus does not mean that their personal opinions are in agreement over a specific matter, for their personal opinions are not Revelation and each one of them is not infallible, thus a Sahabi's opinion cannot be regarded as a Shari'ah evidence, because the Shari'ah evidence must be brought by way of Revelation in order to be considered as Shari'ah evidence and the Sahaba's opinions are not as such, thus they cannot be considered as Shari'ah evidence, whether these were the opinions upon which they agreed or the opinions over which they disagreed. Therefore, the Ijma'a of the Sahaba does not mean their agreement upon one single opinion, it rather means that their general consensus about the fact that

such and such rule is a Shari'ah rule, or about the fact that the rule of such and such matter is so and so according to Shari'ah; in this case it is not their opinion but rather a general consensus that it is from Shari'ah; hence, the Ijma'a of the Sahaba discloses an evidence.

Al for Al-Qyyas, it is also a Shari'ah evidence. Linguistically, it means estimating, and in the Usul terminology *it is the carrying over of a known matter upon another known matter in order to either confirm a rule for both of them or to disaffirm it for both of them by a mutual factor between them. Thus, it is comparing the rule of a known matter to another known matter due to their association in the Illah (i.e. the reason) of the rule. In other words it is the extending of the root to the branch i.e. the joining of the branch to the root.* Carrying a known fact over a known fact means that one of them shares the same rule with the other. The fact that this carrying is undertaken in order to either confirm the rule or disaffirm it, means that the carrying over of the branch upon the root is associating both of them in the same rule; thus the rule of the root is established for the branch, thus the branch shares the rule of the root. This rule of the root could be a confirmation, as reflected in the saying of the Messenger of Allah (saw) to Al-Khutha'myyah: ***“What if your father had a debt and you paid it off, would that suffice him?” She said: “yes”. So he (saw) said: “Likewise is the debt to Allah.”*** Here the Messenger of Allah (saw) compared the debt to Allah to the debt of the human and stated that its settlement would suffice. In this instance, the rule is a confirmation that the settlement of the debt would suffice. The rule of the root that is carried upon could also be a disaffirmation, as is the case in what Ahmed reported on the authority of Omar ® who said: ***“One day I was cheerful so I kissed while I was fasting; so I went to the Messenger of Allah (saw) and said to him: “I committed a big blunder today. I kissed while I was fasting.” Upon this the Messenger of Allah (saw) said: “What if you rinsed your mouth out with water while you were fasting?” I said: “There is no harm in this.” He (saw) said: “So what is the problem.?”*** Here the Messenger of Allah (saw) compared the kiss of a fasting person to the rinsing out of one's mouth in that it does not invalidate the fast. Hence, the rule in this context is a disaffirmation, that is the non invalidation of the fast.

The meaning of this carrying being based upon a common factor between the two matters is that the Illah (Shari'ah reason) of the root is also found in the branch. It is on the basis of this Illah that the carrying over takes place and this; this Illah is the common factor between the comparable and the comparable with, i.e. between the root and the branch. An example of this is reflected in what Malik reported on the authority of Abdullah Ibnu Yazid who was informed by Zayd Abu Ayyash, ***that he had asked Saad Ibnu Aby Waqqas about the exchange of wheat for a prime quality barley known as “Al-Sult”, so Saad enquired: “Which of the two is better?” He said: “The white one (meaning the wheat).” Upon this Saad advised him against such exchange and said: “I heard the Messenger of Allah (saw) enquire about the purchase of dates with Rutab (ripe dates), so he (saw) said: “Would the Rutab become lighter if it dried?” They said: “Yes.” So he (saw) prohibited such sale.”***

Here, the Messenger of Allah (saw) asked about the Illah that exists in the usurious money, which is the increase, whether it was also found in the sale of Rutab for dates, and when he (saw) knew of its presence, he confirmed for such type of sale the rule of Riba (usury), thus he prohibited it. In other words, it is forbidden to exchange such commodity as it is because it decreases in weight once it is dried; thus the Messenger of Allah (saw) asked about the mutual factor, which is the Shari'ah Illah of Riba.

This is the definition of Al-Qyyas according to Shari'ah. This definition has been obtained from the Ahadith of the Messenger of Allah (saw). Muslim extracted on the authority of Ibnu Abbas ® who said: ***“A woman came to the Messenger of Allah (saw) and said: “O Messenger of Allah, my other passed away before being able to fulfil a fast that she had vowed to Allah. Do I fast on her***

behalf?” He (saw) said: “What if your mother had a debt and you paid it off would that suffice her?” She said: “Yes.” He (saw) said: “Then fast on behalf of your mother.” Ahmed reported on the authority of Abdullah Ibnu Abbas or on that of Al-Fadhl Ibnu Abbas that a man asked the Messenger of Allah (saw): *“O Messenger of Allah, my father was an old man when Islam came, and could not ride an animal, do I perform Hajj on his behalf?” He (saw) said: “What if your father had a debt and you paid it off on his behalf, would that suffice him?” He said: “Yes.” So he (saw) said: “Then do perform Hajj on behalf of your father.”* In these two Ahadith, the Messenger of Allah (saw) carried over the debt to Allah (saw) in fasting and in Hajj onto the debt to the human and they both are the carrying over of a known matter upon another known matter, i.e. the association of the debt to Allah with the debt to the human in confirming that their settlement on one’s behalf would suffice. This is so because both of these matters are debts; thus the mutual factor between them is the debt and this is the Illah, and the rule that has been confirmed for both of them is the sufficing of the settlement. This is, according to Shari’ah, the reality of Al-Qyyas, which is deduced from the Shari’ah text. Therefore, this definition is a Shari’ah rule that must be implemented and it is binding the rule of Allah upon he who deduces it and upon he who imitates it, either as a Muttabi’ (i.e. a Muqallid who queries the evidence) or as a Ammi (i.e. a Muqallid who could not perceive the evidence); this rule becomes like any other Shari’ah rule, deduced from a Shari’ah evidence; because the Shari’ah definitions and principles deduced from the Shari’ah evidences are Shari’ah rules like all other Shari’ah rules. This Qyyas is based upon the Illah, i.e. upon the mutual factor between the known matter carried over and the known matter carried upon; in other words, between the root and the branch. Hence, if the Illah is found, i.e. if the mutual factor is found between the compared and the compared with; otherwise Al-Qyyas does not takes place at all. This Illah would be considered a Shari’ah evidence if it were mentioned in a Shari’ah text, or if it were compared with that which is listed by a Shari’ah text, because the Illah upon which the Al-Qyyas is based has been mentioned by Shari’ah. By contrast, if this Illah were not mentioned in a Shari’ah text, nor were it compared with that which is listed in a Shari’ah text, such a Qyyas would not be considered a Shari’ah evidence because the reason upon which it is based has not been mentioned by a Shari’ah text; thus such Qyyas could not be from Shari’ah and consequently it cannot be a Shari’ah evidence.

Evidence about this Qyyas being a Shari’ah evidence is reflected in the fact that the Shari’ah text in which the Illah is mentioned or compared with that which is mentioned in the Shari’ah text, could either come from the Book, or the Sunnah, or from the Ijma’a of the Sahaba. These three evidences have been confirmed as being Shari’ah evidences through conclusive proof; thus, the evidence of the Shari’ah Illah is conclusive, and that is the evidence of Al-Qyyas. This is so because the Shari’ah reason found in the rule that is mentioned by the text, which acts as the root, is that which makes the rule in the branch a Shari’ah rule and it is that which makes Al-Qyyas feasible, for without it, Al-Qyyas would not have existed in the first place. Therefore, its evidence will also serve as evidence for Al-Qyyas. This Shari’ah Qyyas has been demonstrated to us by the Messenger of Allah (saw) and he (saw) considered it a Shari’ah evidence. The Sahaba also proceeded according to it and adopted it as a Shari’ah evidence when they deduced the Shari’ah rules. It has been reported that the Messenger of Allah (saw) said to Mu’ath and Abu Moussa Al-Ash’ari when he was about to dispatch them to Yemen: *“What will you judge by?” They said: “If we did not find the rule in the Book nor in the Sunnah, we would make analogy between the two matters and whichever were closest to that which is right we would act upon it.”* Here, Muath and Abu Moussa stated that they would use Al-Qyyas and the Messenger of Allah (saw) approved of this, thus this serves as proof that Al-Qyyas is a Shari’ah evidence. It is reported on the authority of Ibnu Abbas ® that a woman came to the Messenger of Allah (saw) and said: *“My mother has died and she has a month’s fasting on her neck.”* So the Messenger of Allah (saw) said: *“What if your mother had a debt, would you settle it?”* She said: *“Yes.”* Upon this he (saw) said: *“Then the debt to Allah is more worthy of being settled.”* Here the Messenger of Allah (saw) wanted to teach this woman, so he

joined the debt to Allah to the debt of the human in the obligation of settling the debt and its sufficing, and this is exactly Al-Qyyas itself. Similar to this is what Ahmed reported on the authority of Omar Ibnul Khattab who said: ***“One day I was cheerful so I kissed while I was fasting; so I went to the Messenger of Allah (saw) and said to him: “I committed a big blunder today. I kissed while I was fasting.” Upon this the Messenger of Allah (saw) said: “What if you rinsed you mouth out with water while you were fasting?” I said: “There is no harm in this.” He (saw) said: “So what is the problem.?”*** Here the Messenger of Allah (saw) disaffirmed from the act of kissing while fasting the rule of invalidating the fast by comparing it with the act of rinsing out the mouth while fasting, which does not invalidate the fast; because neither of them enter the belly. Thus it was an explanation of the rule through the use of Al-Qyyas. Not only the rule was given a Illah in these three texts, as is the case in many texts, thus denoting Al-Qyyas, Al-Qyyas itself was also approved, taught and explained through these texts and this serves as a valid argument stipulating that Al-Qyyas is a Shari'ah evidence.

This is as far as the Messenger of Allah (saw) is concerned. As for the Sahaba, it is reported that they used Al-Qyyas in several matters. Abu Bakr ® endorsed the inheritance of the mother's mother to the exclusion of the father's mother. Some of the Ansar said to him: “You gave the inheritance of a dead man to a woman who if she had died, the same man would not have inherited her; and you excluded the woman whom the man would have inherited all her legacy had she been the one who died. Upon this he retracted and devised the sixth of the inheritance to be shared between both of them. Here the Sahaba compared the inheritance of the living from the dead with the legacy of the dead to the living, by assuming that the dead was living and the living was dead, thus concluding that the mutual factor, i.e. the kinship between the two person is the same in both instances. When Abu Bakr ® heard this Qyyas, he submitted to it, implemented it and retracted from his own opinion. Similar to this is what was reported that Omar ® wrote to Abu Moussa Al-Ash'ari saying: ***“Get acquainted with the similar and the identical matters and then make analogy between the matters according to your opinion.”*** Muslim extracted on the authority of Ibnu Abbas who said that ***“Omar had heard of Samra having sold wine. It was said that Samra had taken wine from Jewish traders as tithe, so he turned it into vinegar and sold it. Upon hearing this Omar said: May Allah damn Samra, did he not know that the Messenger of Allah (saw) say: “May Allah curse the Jews; fats have been made unlawful to them, so they embellished them and sold them.”*** Here Omar ® compared wine with fat and concluded that its prohibition stipulates the prohibition of its sale. Another example is that Omar ® was not sure about the penalty of the seven who took part in the killing of one man; so Ali ® said to him: ***“O Amir of the believers! What if a group of people were to take part in a theft, would you cut their hands?” He said: “Yes.” So Ali said to him: “Likewise.”*** This is a Qyyas between the killing and the theft, and all this indicates that Al-Qyyas is Shari'ah evidence deduced from the Sunnah and the Ijma'a of the Sahaba. Hence, that which has been confirmed through the Messenger of Allah (saw) is the Sunnah and that which has been confirmed through the Sahaba is considered a ***“Ijma'a Sukuti”*** i.e. ***“Silent General Consensus”*** because the Sahaba who utilised Al-Qyyas, did so in the presence and the full knowledge of the rest of the Sahaba, and none of them condemned it; thus it was a general consensus.

However, the Sunnah and the Ijma'a of the Sahaba have both been reported by way of individual report, thus they are considered as doubtful evidence. Therefore, the conclusive evidence about the fact that Al-Qyyas is a Shari'ah evidence is reflected in what we mentioned with regard to the Illah being mentioned in the Shari'ah text, i.e. the Book and the Sunnah or in the Ijma'a of the Sahaba. These three evidences have been confirmed as being Shari'ah evidences by way of a conclusive evidence; thus they act as the evidence for Al-Qyyas, because they are the evidence for the Illah.

It has been conclusively established that these four evidences, the Book, the Sunnah, the Ijma'a of the Sahaba and Al-Qyyas have come by way of Revelation from Allah (swt). Apart from these four, no other evidence has been established through a conclusive evidence. Therefore, it becomes clear that the Shari'ah evidences are these four and nothing else.

However, it should be made clear that the rules deduced from evidences other than these four, from among those evidences recognised by a certain Imam, these rules are Shari'ah rules in the eyes of those who advocate them and those who oppose them, because there exists a vague evidence denoting that they are considered as evidences. Hence, he who considers the general consensus of the Ummah as being a Shari'ah evidence, he then goes on to deduce from this a rule, this rule becomes a Shari'ah rule in his eyes and a binding Shari'ah rule upon him; he will be forbidden from taking another rule instead. The same rule becomes also a Shari'ah rule in the eyes of those who oppose it but it does not become a binding Shari'ah rule upon them. Examples of these are *“The Shari'ah of those before us is a Shari'ah for us.”*, *“Al-Masalih Al-Mursalah”* i.e. *“The Public Interests.”*, *“Al-Istihsaan.”* i.e. *“The Approbation.”* and *“Rationale”*.

Hence, every rule deduced from any of these evidences is considered a Shari'ah rule in the eyes of those who advocate that what the rule has been deduced from is part of the Shari'ah evidences, and in the eyes of those who oppose it as well. However, it is only a binding Shari'ah rule upon he who deduces it, and not binding upon he who holds a different understanding. Thus, it is a Shari'ah rule in the eyes of all the Muslims as long as the possibility of reaching such understanding from the text is existent; i.e. as long as the vague evidence is existent; however, it is not considered a binding rule upon all the Muslims, but only binding upon he who has deduced it and he who has emulated it, and not binding upon he who has opposed it. Nonetheless, it is a Shari'ah rule. Likewise, the rule deduced from an evidence is exactly like the rule deduced from the text; it is considered a Shari'ah rule in the eyes of all the Muslims, whether for those who considered a Shari'ah evidence or for those who did not consider it a Shari'ah evidence, provided the vague evidence is existent.

Article No 13

In essence, one is innocent. No one should be punished without a court ruling. It is absolutely forbidden to torture anyone and whoever does this will be punished.

Explanation and evidences:

This article covers three issues: The principle of innocence, the prohibition of imposing a penalty without a judge's sentence and the prohibition of torture.

As for the first issue, its evidence is derived from what Abu Dawood reported on the authority of Simak on that of Alqama Ibnu Wa'il Ibnu Hajr Al-Hadhrami on that of his father who said: *“A man from Hadhramout and a man from Kindah came to the Messenger of Allah (saw) and the Hadhrami said: “O Messenger of Allah, this man has taken from a land which belonged to my father.” The Kindi said: “It is my land, it is in my possession and I am farming it. He has no claim over it.” the Messenger of Allah (saw) said to the Hadhrami: “Do you have any proof?” He said: “No.” Upon this the Messenger of Allah (saw) said: “In this case you have his oath.” He said: “O Messenger of Allah! He is a rebel, he does not care what he swears and he does not fear of anything.” He (saw) said: “You have no other rights over him but this.”* Al-Tirmithi also reported on the authority of Ibnu Abbas who said: *“The Messenger of Allah (saw) has decreed that the onus of the oath lies with the defendant.”* Abu Issa said that this Hadith is *Hassan and Sahih*; the learned scholars, from among the Sahaba of the Messenger of Allah (saw) and others, have been acting upon it; notably that the onus of providing the proof lies with the

plaintiff and that of the oath lies with the defendant.” In the first Hadith, the Messenger of Allah (saw) commissioned the plaintiff with the proof, and this means that the defendant is innocent until proven guilty; and in the second Hadith, the Messenger of Allah (saw) explained that in essence, the proof should be provided by the plaintiff. This serves as evidence that the defendant is innocent until proven guilty.

As for the second matter, its evidence is derived from the saying of the Messenger of Allah (saw): **“He whose wealth I have taken, here is my wealth, let him take from it, and he whose back I have lashed, here is my back, let him lash it.”** The Messenger of Allah (saw) said this in his quality as ruler; it means that he who has been wrongly punished, let him retaliate against me; this serves as evidence prohibiting the ruler from punishing any of the subjects without establishing the charge for which he deserves such punishment. Also, Ibnu Maja reported in his Sunan on the authority of Ibnu Abbas who said: **“The Messenger of Allah (saw) said: “If I were to stone anyone without proof I would stone such and such woman. For doubts have been raised over the way she speaks, the way she dresses and over the people who go to her.”** This means that the Messenger of Allah (saw) did not stone her because there was a lack of proof despite the doubts raised over her behaviour. This understanding is confirmed by what Imam Ahmed reported in his Masnad on the authority of Abu-z-Zinad on that of Al-Qassim Ibnu Mohammed who heard Ibnu Abbas say: **“The Messenger of Allah (saw) ordered a “Mula’ana” i.e. a sworn allegation of adultery between Al-Ajlani and his wife. He said: “and she was pregnant. Al-Ajlani said: “By Allah I did not approach her since we made Afr (i.e. sprinkle the soil with dust), an Afr means that the palm trees are watered two months after pollination. He said that her husband had thin legs and arms and had red hair; the one she was accused to have committed adultery with was Ibnul Samha’. She gave birth to a black boy who had frizzy hair and chubby arms. So Ibnu Shaddad said to Ibnu Abbas: “Is she the woman about whom the Messenger of Allah (saw) said: “If I were to stone anyone without proof I would stone such and such woman?” He said: “No, that was a woman who used to display vice after Islam.”** Meaning that she used to be indiscreet but it was not proven neither through evidence, nor through admission. This means that the suspicion of adultery was there, and despite this, the Messenger of Allah (saw) did not stone her, for this has not been confirmed. He (saw) said: **“If I were to stone anyone, I would stone such and such woman.”** The conjunction “if” in the Arabic language denotes abstention due to the absence of something; thus the stoning was not carried out due to the absence of evidence. This serves as evidence that the ruler is forbidden from imposing a penalty on anyone from among the subjects, unless he or she perpetrates a crime which Shari’ah deems it to be a crime, and once his or her perpetration of the crime has been proven before a competent judge and in a judiciary court; because the evidence could not be admissible unless it is established before a competent judge and in a judiciary court.

However, the ruler reserves the right to take someone accused of a crime into custody before the charge is established, pending a court appearance to look into the charge brought against him. However, the detention should be for a limited period of time and it would be wrong to detain the accused for an indefinite period. This period must be short. Evidence about the permissibility of detaining the accused is derived from what Al-Tirmithi reported on the authority of Bahzi Ibnu Hakim on that of his father on that of his grandfather who said: **“The Messenger of Allah (saw) did detain a person accused of a crime and then he released him.”** It has also been reported on the authority of Bahzi Ibnu Hakim that **“The Messenger of Allah (saw) detained someone accused of a crime for a day and a night.”** Evidence about the obligation of specifying the period of detention is that the Messenger of Allah (saw) detained him and then released him and that he detained him for a day and a night. Besides, this detention is not a penalty; it is rather a detention aimed at helping with the enquiries.

As for the third matter, it denotes the prohibition of imposing a penalty upon the accused before the charge against him has been established; it also denotes the prohibition of imposing a penalty which Allah (swt) had made a punishment in the hereafter, that is Hell fire; i.e. the prohibition of punishing by burning with fire. As for the prohibition of inflicting a punishment before establishing the charge, its evidence is derived from the Hadith of the Messenger of Allah (saw) in which he (saw) was reported to have said: ***“If I were to stone anyone, I would stone her..”*** Despite the fact that she was known to be an adulteress according to what Ibnu Abbas reported. If it were fitting to inflict punishment upon the accused in order to confess, the Messenger of Allah (saw) would have punished that woman to make her confess, knowing that she was indiscreet about her illicit behaviour. It is absolutely forbidden to punish the accused and it is absolutely forbidden to beat the accused before the charge has been established. It is also forbidden to insult him or to inflict upon him any punishment as long as his guilt has not been confirmed. This is backed by what Ahmed reported on the authority of Ibnu Abbas that the Messenger of Allah (saw) did not in one occasion impose a penalty for drunkenness. ***“Ibnu Abbas said that a man consumed alcohol and got intoxicated; he was spotted staggering in a mountain pass so he was taken to the Messenger of Allah (saw). As he neared the house of Abbas, he gave his escort the slip and entered Abbas’s house and hid behind him. They mentioned this to the Messenger of Allah (saw), so he laughed and said: “He did it.” Then he (saw) did not order them with anything regarding him.”*** The Messenger of Allah (saw) did not punish that man because he did not confess, nor were the charges against him established in his presence. This means that he was accused of drunkenness but this was not confirmed, thus he was not punished in order to make him confess, and no penalty was imposed upon him just for the mere accusation. Therefore, it would be wrong to inflict any punishment on the accused prior to the establishment of the charge before a competent judge and in a court of law. As for the reports of ***“Al-Ifk”*** (the lie) incident, stipulating that Ali ® did beat the slave-girl before the Messenger of Allah (saw), that slave-girl was not accused, thus it cannot be used as evidence denoting the permissibility of beating the accused. Besides the Hadith of Ali’s beating of Burayrah, the Messenger of Allah’s (saw) slave-girl, was reported by Bukhari and he said ***that Ali said the Messenger of Allah (saw): “Ask the slave-girl.” And it was the Messenger of Allah (saw) who did the asking. Bukhari did not mention that Ali had beaten the slave-girl. To quote from the Hadith: “O Messenger of Allah, Allah has not made it hard upon you and there are plenty of other women apart from her, and if you asked the slave-girl she would tell you the truth.” So the Messenger of Allah (saw) summoned the slave-girl and said: “O Burayrah!...”*** In another narration of Bukhari, it was reported: ***“The Messenger of Allah (saw) came to my house and asked about my slave-girl, so she said: “No by Allah, I do not know of any blemish, apart from the fact that she would sleep until the ewe would enter and eat her dough. One of his Sahaba did rebuke her and said: “Tell the truth to the Messenger of Allah...”*** Bukhari did not mention that Ali had beaten the slave-girl. However, in other reports, it was mentioned that Ali ® had beaten the slave-girl. Ibnu Hisham mentioned that he did beat her. In the Sirah of Ibnu Hisham it was reported: ***“As for Ali, he said: “O Messenger of Allah (saw) Women are plentiful and you can easily change one for another. Ask the slave-girl, for she will tell you the truth.” So the Messenger of Allah (saw) called Burayrah to ask her, and Ali got up and gave her a violent beating, saying: “Tell the Messenger of Allah the truth.” To which She replied: “I know only good of her.”*** Assuming that this report is sound, it however does not stipulate the permissibility of beating the accused, because the slave-girl Burayrah, was not accused in this case and it cannot be said that she was a witness. She was not beaten for being a witness because the Messenger of Allah (saw) did ask other people but did not beat them. He (saw) asked Zaynab Bintu Jahsh nad he did not beat her, despite the fact that her sister Hamna Bintu Jahsh used to spread rumours about Aysha; Bukahri reported in the Hadith of Al-Ifk: ***“..And her sister Hamna set about fighting her battle, so she perished alongside those who perished.”*** Hence, Zaynab was suspected of knowing something and she was quizzed, but she was never beaten. Therefore, it would be wrong to say that Burayrah was beaten in her quality as a witness; she was rather beaten in her quality as the slave-girl of the Messenger of Allah

(saw). The Messenger of Allah (saw) is entitled to beat his slave-girl and to order her beating. The Messenger of Allah (saw) did ask his slave-girl and he asked others as well, at the same time, he kept silent over Ali's beating of the slave-girl and over the reprimand of the Sahaba; but he (saw) did not beat any other person, nor did he keep silent over the beating of any other person, which indicates that he (saw) permitted her beating because she was his slave-girl; and one is entitled to beat his slave-girl in order to discipline her or to investigate a matter. Therefore, this Hadith cannot be used as evidence about the permissibility of beating the accused and the evidence pertaining the prohibition of his beating stands; this is reflected in the saying of the Messenger of Allah (saw): ***"If I were to stone anyone I would stone so and so.."*** Therefore, it is absolutely forbidden to beat, insult, reprimand, or torture the accused. It is however permitted to detain him because there exists an evidence about this.

This is as far as the prohibition of inflicting a penalty upon the accused prior to establishing the charge is concerned. As for the prohibition of inflicting a punishment which Allah (swt) has made a punishment in the Hereafter, its evidence is reflected in what Bukhari reported on the authority of Ikrimah who said: ***"A group of apostates were brought to the Amir of the believers Ali ® so he burnt them; Ibnu Abbas heard of this and said: If I had been him, I would not have burnt them because the Messenger of Allah (saw) has prohibited this by saying: "Do not punish with the punishment of Allah." I would have killed them because the Messenger of Allah (saw) said: "He who changes his Deen must be killed."*** Bukhari also extracted on the authority of Abu Hurayrah ® who said: ***"the Messenger of Allah (saw) sent us in an expedition and said: "If you find so and so, burn them with fire." As we were about to set off the Messenger of Allah (saw) said to us: "I had ordered you to burn so and so, and only Allah punishes with fire, so if you find them kill them."*** Abu Dawood extracted from the Hadith of Abdul-Rahamn Ibnu Abdullah on that of his father who said: ***"We were with the Messenger of Allah (saw) on a journey, and while he (saw) went to the privy we came across a hen with two chicks; we its two chicks so it came and started spreading out its wing. Then the Messenger of Allah (saw) came and asked: "Who grieved this hen with its offspring? Give it back its offspring." He (saw) also saw a colony of ants which we had burnt, so he asked: "Who burnt this?" We said: "Us." He said: "No one should punish with fire except the Creator of fire."*** Therefore, if the accused were proven to be guilty before a competent judge and before a court of law, he should not be punished by fire, nor by that which is similar, such as electricity, nor by anything which Allah (swt) punishes with. Furthermore, it is forbidden to inflict any punishment from among those not decreed by the Legislator. This is so because the Legislator has determined the penalties to be imposed upon the guilty parties. These are killing, lashing, stoning, banishment, cutting, imprisonment, destruction of property, imposing a fine, vilification and branding any part of the body. Apart from these, it is forbidden to inflict upon anyone any other type of punishment. Hence, no one should be punished by burning with fire, though it is permitted to burn his property, nor should anyone be punished by pulling his nails, nor by pulling his eyebrows, nor by electrocution, nor by drowning, nor by pouring cold water over him nor by starving him, nor by letting him go cold, nor by anything similar. Punishing the accused should be confined to the penalties decreed by Shari'ah and apart from these, the ruler is forbidden from applying any other form of punishment. Therefore, it is absolutely forbidden to torture anyone, and who does so will be violating Shari'ah. If it is established that someone has tortured anyone else, he will be punished. These are the evidences of this article.

Article No 14

The principle in actions is the abidance by the Shari'ah rule. Hence, no action should be undertaken unless its rule is known. The principle in things is Ibaha (permissibility) as long as there is no evidence stipulating prohibition.

Explanation and evidences:

The Muslim is commanded to conduct his actions according to the Shari'ah rules. Allah (swt) says: [4-65] *"No by your God, they shall not have true belief until they make you judge in all disputes between them, and find in their souls no resistance against your decision, but accept it with the fullest conviction."* T.M.Q.

He (swt) also says: [59-7] *"Whatever the Messenger brought you take it and whatever he forbids you abstain from it and fear Allah."* T.M.Q.

Therefore, the Muslim should in principle abide by the Shari'ah rules. Besides the Shari'ah principle states: *"No rule before the advent of Shari'ah."* In other words, no matter should be given any rule whatsoever before the advent of the rule of Allah pertaining this matter. Hence, before the advent of Allah's rule, no matter should be given any rule. This means that it should not be given the rule of Ibaha, for the Ibaha is a Shari'ah rule that must be established through the address of the Legislator; otherwise it cannot be considered a Shari'ah rule. This is so because the Shari'ah rule is: *"The address of the Legislator related to the actions of the servants."* Therefore, anything that has not been mentioned in the address of the Legislator cannot be considered a Shari'ah rule. Therefore, Ibaha is not the non advent of a prohibition, it is rather the advent of a Shari'ah evidence stipulating the Mubah; i.e. the advent of the choice to either undertake or abstain from the Legislator. Therefore, the origin is the abidance by the address of the Legislator, not the Ibaha; because the rule of Ibaha itself requires a confirmation from the address of the Legislator. This principle is general, it includes the actions and the things. If a Muslim wanted to perform any action, it would be incumbent upon him to abide by the rule of Allah (swt) pertaining that action; thus, he must search for that rule until he recognises it and abides by it. This is what the verses and the Ahadith have indicated in letter and in spirit. Therefore, it is forbidden for a Muslim to undertake any action or to act towards anything in contradiction to the Shari'ah rule; he should rather abide by the Shari'ah rule in every action he undertakes and in every matter. After Allah (swt) revealed: [5-3] *"Today, I have perfected your Deen for you, completed my favour upon you and have chosen for you Islam as your Deen."* T.M.Q.

and after He (swt) revealed: [16-89] *"And We have sent down to you the Book explaining everything."* T.M.Q., not one single action, nor one single thing has been left with no outlining of the evidence for its rule by Allah (swt); and it is forbidden for anyone, having perceived these two verses, to claim that some actions and some things or some situations are devoid of the Shari'ah rule, meaning that Shari'ah has completely ignored it, thus it failed to designate an evidence or a sign to draw the attention of the obligated to the presence of this Shari'ah rule, i.e. the presence of a Illah that leads the obligated to the rule; is it Wajib, or Mandub, or Haram, or Makruh or Mubah? Such a claim is considered a slander against Shari'ah. Therefore, it is forbidden for anyone to claim that such and such action is Mubah because no Shari'ah rule related to it has been mentioned; consequently the principle is Ibaha if no Shari'ah rule has been mentioned. It is forbidden to claim this because every action and every thing has its evidence in Shari'ah; thus one must search for the rule of Allah pertaining the action or the thing to take it and apply it as oppose to making it Mubah under the pretext that there is no evidence for it.

However, since the Shari'ah rule is the address of the Legislator related to the actions of the servants, the address has therefore come to deal with the action of the servant not to deal with the thing; this address has also come to deal with the thing in relation to the action of the servant; thus the address is originally directed at the action of the servant and the thing has come as an appendant to the action of the servant, whether the address has come to the action without any mention of the thing whatsoever, such as Allah (swt) saying: [2-60] *"Eat and drink"* T.M.Q., or it has come to the thing without any mention of the action whatsoever, such as Allah (swt) saying: [5-3] *"Dead meat,*

blood and the flesh of the swine has been made forbidden to you." T.M.Q. The rule of prohibition in these three things is in fact in relation to the action of the servant in terms of eating, buying, selling and hiring and other. Therefore, the Shari'ah rule deals with the action of the servant, whether this were a rule for the action or a rule for the thing. This is why one should in principle abide by the rule, because the address is related to the action of the servant.

However, by scrutinising the elaborate evidences of the Shari'ah rules, it becomes clear that within the texts which have come as evidences of the rules, the state of the text that acts as an evidence for the action is different to the state of the text that act as evidence for the thing, in terms of the manner in which the address is directed. In the text related to the action, the address is directed to the action alone, regardless of whether the thing is mentioned or not. For instance, Allah (swt) says [5-3] ***"Dead meat, blood and the flesh of the swine has been made forbidden to you."*** T.M.Q.

Allah (swt) says: [2-275] ***"And Allah has made trade lawful and He has forbidden usury."*** T.M.Q.

Allah (swt) says: [9-123] ***"Fight the Kuffar who gird you about and let them find firmness and know that Allah is with those who fear Him."*** T.M.Q.

Allah (swt) says: [65-7] ***"Let the man of means spend according to his means."*** T.M.Q.

Allah (swt) says: [2-283] ***"Let the trustee discharge his trust and let him fear Allah his God ."***
Allah (swt) says: [2-60] ***"Eat and drink."*** T.M.Q.

Also, Bukhari extracted on the authority of Hakim Ibnu Hizam ® who said: ***"The Messenger of Allah (saw) said: "The buyer and the vendor reserve the right to change their minds provided they do not separate."*** Ibnu Maja reported on the authority of Abdullah Ibnu Omar who said: ***"The Messenger of Allah (saw) said: "Do give the employee his wage before his sweat dries."*** Abu Dawood also reported on the authority of Abu Hurayrah who said: ***"The Messenger of Allah (saw) said: "Jihad is obligatory upon you with every Amir, whether he were just or tyrant."*** In all of these texts, the address has been directed at the action, and the thing has not been mentioned. For instance also, Allah (swt) says: [35-12] ***"Yet from each kind you eat tender flesh."*** T.M.Q.

Allah (swt) says: [16-14] ***"It is He Who has made the sea so that you may eat thereof tender flesh."*** T.M.Q.

Allah (swt) says: [36-35] ***"So that they may enjoy its fruits."*** T.M.Q.

The address in here is also directed at the action, although the thing has been mentioned. Similar to this is the address related directly to the action of the servant. This state is different to the state of the text related to the thing, where the address is directed exclusively towards the thing, regardless of whether the action was mentioned alongside it or not. For instance Allah (swt) says: [5- 3] ***"Dead meat has been made forbidden to you."*** T.M.Q.

Allah (swt) also says: [2-173] ***"He has forbidden to you dead meat, blood and the flesh of the swine."*** T.M.Q.

Allah (swt) also says: [23-18] ***"And We have sent down water from the sky."*** T.M.Q.

Allah (swt) also says: [21-30] ***"And We have made from water everything that is living."*** T.M.Q.

Also, the saying of the Messenger of Allah (saw) pertaining the sea water: ***"Its water is pure and its dead flesh is Halal."*** Here the address is directed at the thing without the mention of the action.

For instance, Allah (swt) says: [5-90] ***"O you who have believed, truly intoxicants, gambling, dedication of stones and divination of arrows are an abomination of Satan's handiwork. Avoid such things that you may prosper." T.M.Q.***

Allah (swt) says: [56-68] ***"Did you see the water that you drink." T.M.Q.***

Allah (swt) says: [56-71] ***"Did you see the fire that you kindle." T.M.Q.***

Allah (swt) says: [16-67] ***"And from the fruit of the date palm and the vine you get out wholesome drink and food." T.M.Q.***

Allah (swt) says: [16-66] ***"And truly in cattle will you find an instructive sign from what is within their bodies between excretions and blood We produce for your drink milk pure and agreeable to those who drink it." T.M.Q.***

The address in all of these texts is directed at the thing, though the action has been mentioned. Such an address is related to the thing; thus it is an outlining of a rule pertaining a thing. However, the rule's relation to the thing is reflected in the fact that it outlines the rule of the thing vis-à-vis the action of the servant, not vis-à-vis the thing detached from the action of the servant, for it is inconceivable for a thing to have a rule unless it is related to the servant. Therefore, the difference in the state of the text becomes clear with regard to the manner in which the address is targeted.

This difference indicates that although the Shari'ah rule is the address of the Legislator related to the actions of the servants, some rules specific to things have however come to outline the rule of these things in an unrestricted manner, even though their rule was in relation to the servant as oppose to being isolated from the servant. This indication outlines to us through scrutiny that the rules of things have come by way of general evidence, which in turn has come to outline the evidence of the actions, and that whatever came specifically to things is in fact an exception from the general rule which had come as evidence for them through the evidence of the actions. This is so because scrutiny has revealed that the Shari'ah text, in which the address was directly targeted at the action, has come in general terms; thus all the things related to it would be Mubah because the request to perform or the option was general, encompassing all that which is Mubah vis-à-vis this request and the prohibition of something requires a text. For instance, Allah (swt) says: [2-29] ***"It is He Who created for you everything that is on Earth." T.M.Q.*** This means that the things which Allah (swt) created for us on earth are Mubah.

Allah (swt) also says: [2-275] ***"And Allah has permitted trade and forbidden usury." T.M.Q.*** This means that Allah (swt) has made the buying and selling of all things Mubah; thus the Ibaha of selling any of these things does not require an evidence, because the general evidence comprises everything; hence, the prohibition of selling something, such as alcohol for instance requires an evidence. Also, Allah (swt) says: [2 -168] ***"Eat of what is on Earth lawful and good." T.M.Q.*** This means that eating everything is Halal; thus the eating of a specific thing does not require an evidence to make it Halal, because the general evidence has made it Halal. As for the prohibition of eating something, such as dead meat for instance, this requires an evidence.

Allah (swt) says: [7-31] ***"Eat and drink but do not waste by excess." T.M.Q.*** This means that the drinking of everything is Mubah; thus the drinking of a specific thing does not require an evidence to make it Mubah, because the general evidence has made it Mubah. However, the prohibition of drinking a specific thing, such as intoxicants for instance, this requires an evidence. Similar to this,

actions such as talking, walking, playing, smelling, inhaling, looking and other actions which man performs, the general evidences permitted everything related to them; thus the Ibaha of anything does not require an evidence, but the prohibition of anything related to these actions does require an evidence to make it forbidden.

Therefore, the evidences brought by the texts and targeted at the actions, have outlined the rule of things in a general and unrestricted manner; thus they do not require other texts to outline their rules. Therefore, the advent of specific texts related to things, once the general rule of these things had been outlined, serves as evidence stipulating that these specific rules have come to exclude the rule of these things from the general rule. Hence, the Shari'ah texts have come to outline the Shari'ah rule pertaining things, denoting that they are Mubah; hence, they are Mubah unless there exists a text to prohibit them. Hence the Shari'ah principle *“The things are in principle Mubah.”* These are the evidences of this article.

Article No 15

The means to Haram is forbidden if it were established with the least amount of doubt that it would lead to Haram. If it were merely feared that it would lead to Haram, it would not be Haram.

Explanation and evidences:

The evidence of this article is reflected in Allah (swt)'s saying: [6 -108] *“Do nor revile those who call upon other than Allah lest they out of spite revile Allah in their ignorance.” T.M.Q.* insulting the Kuffar is Mubah, and Allah (swt) has insulted them in the Qur'an. However, if this insult were to lead to the Kuffar insulting Allah (swt), it would become Haram. This is so because insulting Allah (swt) is forbidden. This is how the Shari'ah principle has been deduced, that is: *“The means to Haram is forbidden.”* However, this means becomes Haram if it led inevitably to Haram. In other words, if such a means were to lead, with the least amount of doubt, to Haram, and if this Haram has been established by Shari'ah, it would become Haram. Therefore, if the means did not lead to Haram, i.e. if it were only feared that it might lead to Haram, such as the outing of a woman without a face cover, where it is feared that it might cause Fitna, the means in this case would not be Haram, because the mere fear that it might lead to Haram is not sufficient to warrant a prohibition. This is the evidence of this article.

Another similar principle to this one is the following principle: *“If one specific item of a Mubah thing leads to harm, that particular item becomes Haram and the thing remains Mubah.”* This is reflected in what Bukhari reported on the authority of Nafi' who said that Abdullah Ibnu Omar informed him: *“People came with the Messenger of Allah (saw) to the land of Thamud Al-Hijr; so they took water from its well and made dough with it. The Messenger of Allah (saw) ordered them to spill the water and to give the dough to the animals; he then ordered them to take water from the well which the she camel used to drink from.”* In another narration, the Messenger of Allah (saw) said: *“Do not drink anything from its water and do not used that water to make ablution for Salat, whatever dough that you prepared, give to the animals and do not eat anything from it. None of you should go out at night unless he has a companion with him.”* Drinking water is Mubah, but that particular water, that is the water of Thamud, has been made prohibited by the Messenger of Allah (saw) because it led to harm; however, water in general remained Mubah. Also, it is Mubah for a person to go out at night without a companion, but the Messenger of Allah (saw) prohibited anyone from among that army, in that particular night and at that particular place, from going out because it led to harm; apart from this, going out at night

without a companion remained Mubah. This serves as evidence that a particular item of the Mubah thing becomes Haram if it led to harm, and the thing in general remains Mubah.