

The Institutions of State in the Khilafah

In Ruling and Administration

(A translation of *Ajhiza Dawlat-al-Khilafah*)

Hizb ut-Tahrir

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Hizb ut-Tahrir

Hizb ut-Tahrir is a global Islamic political party that was established in 1953 under the leadership of its founder - the scholar, political thinker and judge in the Court of Appeals in al-Quds (Jerusalem), Taqiuddin an-Nabhani. Hizb ut-Tahrir global leadership is currently headed by Ata' Abu Rashta.

In the Muslim world, Hizb ut-Tahrir works at all levels of society to bring the Muslims back to living an Islamic way of life under the shade of the Khilafah (Caliphate) State following an exclusively political method.

Hizb ut-Tahrir adopts the methodology employed by the Prophet Muhammad (peace be upon him) when he established the first Islamic State in Madinah. The Prophet Muhammad limited his struggle for the establishment of the Islamic State to intellectual and political work. He established this Islamic state without resorting to violence. He worked to mobilise public opinion in favour of Islam and endeavoured to sway the political and intellectual elites of the time. Despite the persecution and boycott of the Prophet Muhammad and the early Muslims, they never resorted to violence. The party is therefore proactive in disseminating the Islamic intellectual and political thoughts widely in Muslim societies so as to challenge the existing status quo that exists there. The party presents Islam as a comprehensive way of life that is capable of managing the affairs of state and society. The party also expresses its views on political events and analyses them from an Islamic perspective.

The party disseminates its thoughts through discussion with the masses, study circles, lectures, seminars, leaflet distribution, publishing books and magazines and via the Internet. We encourage people to attend our demonstrations, marches and vigils.

In the West, Hizb ut-Tahrir works to cultivate a Muslim community that lives by Islam in thought and deed, adhering to the rules of Islam and preserving a strong Islamic identity. The party does not work in the West to change the system of government. The party also works to project a positive image of Islam to Western society and engages in dialogue with Western thinkers, policymakers and academics. Western governments, under the banner of the War on Terror, are currently working to present Islam as an 'evil ideology'. Indeed at the heart of this campaign is to malign the Islamic ideology as an alternative to Western liberal capitalism. Because of this propaganda aspect to the War on Terror, Hizb ut-Tahrir works to develop opinion about Islam in the Western countries, as a belief, ideology and alternative for the Muslim world.

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Forward

Praise be to Allah, and prayers and peace be upon the Messenger of Allah, his household, his companions and those who followed them.

Allah (سبحانه وتعالى) says:

وَعَدَ اللَّهُ الَّذِينَ آمَنُوا مِنكُمْ وَعَمِلُوا الصَّالِحَاتِ لَيَسْتَخْلِفَنَّهُمْ فِي الْأَرْضِ
كَمَا اسْتَخْلَفَ الَّذِينَ مِن قَبْلِهِمْ وَلَيُمَكِّنَنَّ لَهُمْ دِينَهُمُ الَّذِي ارْتَضَى لَهُمْ
وَلَيُبَدِّلَنَّهُم مِّن بَعْدِ خَوْفِهِمْ أَمْنًا يَعْبُدُونَنِي لَا يُشْرِكُونَ بِي شَيْئًا وَمَن كَفَرَ
بَعْدَ ذَلِكَ فَأُولَئِكَ هُمُ الْفَاسِقُونَ

(Allah has promised, to those among you who believe and work righteous deeds, that He will, of a surety, grant them in the land, inheritance (of power), as He granted it to those before them; that He will establish in authority their religion, the one which He has chosen for them; and that He will change (their state), after the fear in which they (lived), to one of security and peace: 'They will worship Me (alone) and not associate aught with Me.' If any do reject Faith after this, they are rebellious and wicked.) [TMQ 24: 55].

The Messenger of Allah (صلى الله عليه وآله وسلم) said:

"The Prophethood will last among you till Allah wishes it to last, and then Allah will raise it up. Afterwards there will be a Khilafah according to the way of the Prophethood so long as Allah wishes it to last, and then Allah will raise it up. Afterwards there will be a self supporting rule and it will last so long as Allah wishes it to last, and then Allah will raise it up. Afterwards there will be an oppressive rule, and it will last as long as Allah wishes it to last, and then Allah will raise it up. And then there will be a Khilafah according to the way of the Prophethood." [Ahmad in his *Musnad*, 4/273 (#18596) and *al-Sunnah* of ibn Abi 'Asim (#1166 & 1169).]

We, the members Hizb ut-Tahrir, believe in the promise of Allah (سبحانه وتعالى), we believe in the glad tidings that the Messenger of Allah (صلى الله عليه وآله وسلم)

conveyed to us and we work with and through the Islamic Ummah to restore the Khilafah once again. We are confident of achieving this, and ask Allah (سبحانه وتعالى) to honour us by establishing the Khilafah, making us of its soldiers, where we raise its banner in glory and take it from victory to victory. Indeed, this is not much for Allah (سبحانه وتعالى) to fulfil.

In this book we wish to present a clear understanding of the practical implementation of the ruling and administrative organisations of the Khilafah state. More importantly, through this clarity we hope to uplift the hearts of the Muslims, so that they can visualise what the Khilafah state will be and strive towards it.

Our motivation in writing this book is the fact that the present ruling systems in the world are not consistent with the ruling system of Islam in terms of their structures and their bases. It is clear to all Muslims that these ruling systems are not derived from the book of Allah, the Sunnah of His Messenger and the other sources of Islamic law that are referred to by them. There is no disagreement amongst Muslims that these systems contradict the system of Islam.

What causes confusion is whether the shape of the ruling system in Islam, in terms of its institutions, is similar to the ruling systems currently being implemented. Therefore they accept the existence of ministers and ministerial institutions that operate in a similar manner to those existent in foreign man-made ruling systems. This book concentrates on the structure and institutions of the Khilafah state, so as to make the shape of the ruling system clear in the minds of Muslims before its return, Insha' Allah.

We also included the use of the flag and banner of the Khilafah state. There are other necessary matters we did not include in detail in this book. These will be treated in due course - *Insha'Allah*. These matters are the way of electing the Khalifah; determining the wording of the bay'ah; determining the mandatory powers of the provisional Khalifah in case the [actual] Khalifah fell captive and determining the chances of his rescue; organising the police of the *wilayat* (districts); appointing policewomen in the internal security department; the way of electing the councils of the *wilayat* as well as the council of the Ummah; and agreement to an official anthem for the Islamic state. We have indicated this where these occur in the relevant places of the book.

We ask Allah (سبحانه وتعالى) to hasten us towards His victory, bestow His favour upon us, and honour us with His support and beneficence, so that the Ummah may return to being the best Ummah brought forward from mankind and the state may return in the form of the first Islamic state so that it may spread justice and righteousness in all of its regions and territories.

That will be the moment the believers will rejoice at the victory that Allah (سبحانه وتعالى) gave them, through which Allah (سبحانه وتعالى) will heal their hearts.

Our last prayer is to celebrate the praise of Allah (سبحانه وتعالى), the Lord of the worlds.

Introduction

Before elaborating on the details of the institutions of state in the Khilafah, it is necessary to mention the following points:

1. The ruling system in Islam, ordained by the Lord of the worlds, is the Khilafah system, in which a Khalifah is appointed by a *bay'ah*. This is established by the book of Allah, the Sunnah of His Messenger and the *ijma'* of the Sahabah.

Allah (سبحانه وتعالى) says:

فاحكم بينهم بما أنزل الله ولا تتبع أهواءهم

(So judge between them by that which Allah has revealed and follow not their desires away from the truth that has come to you...) [5:48]

He (سبحانه وتعالى) also says:

وأن احكم بينهم بما أنزل الله ولا تتبع أهواءهم واحذروهم أن يفتنوك
عن بعض ما أنزل الله إليك

(Judge between them by that which Allah has revealed and follow not their desires and beware of them lest they seduce you from some part of that which Allah has revealed to you...) [5:49]

This instruction from Allah (سبحانه وتعالى) to the Messenger (صلى الله عليه وآله وسلم) regarding ruling by that which Allah (سبحانه وتعالى) had revealed is also an instruction a speech to his (صلى الله عليه وآله وسلم) Ummah. It means they have to appoint a ruler following the Messenger of Allah (صلى الله عليه وآله وسلم) that governs them by that which Allah (سبحانه وتعالى) has revealed. The command contained in Allah's (سبحانه وتعالى) words indicates decisiveness because the subject-matter pertaining to His (سبحانه وتعالى) speech is that of a (*fard*). This is a definitive indication (*qarinah*) according to the science of *usul* (principles of jurisprudence).

The ruler that governs amongst Muslims after the Messenger of Allah (صلى الله عليه وآله وسلم), with that which Allah revealed, is called the Khalifah. Accordingly, the ruling system is called the Khilafah system. Further evidence can be derived

from the fact that the execution of the legal punishments (*hudud*) and the various rules (*ahkam*) are obligatory and they cannot be implemented except by a ruler. That which is necessary for implementing an obligation is itself obligatory, therefore, appointing a ruler that establishes the divine law (*shara'*) is obligatory. The ruler in this case is the Khalifah, and the system is the Khalifah system.

Regarding the Sunnah, it was narrated from Nafi' that Abdullah ibn 'Umar said:

"I heard the Messenger of Allah (صلى الله عليه وآله وسلم) say: 'Whoever withdraws his hand from obedience (to the Amir) will find no proof for himself when he meets Allah on the Day of Judgment, and whoever dies without having an oath of allegiance (Bai'ah) on his neck he would die the death of Jahiliyyah.'" [Muslim, Sahih, #1851]

The Prophet (صلى الله عليه وآله وسلم) obliged every Muslim to have a pledge of allegiance (*bay'ah*) on his neck. He describes the one that dies without having such a *bay'ah* on his neck as dying a death of *jahiliyyah*. After the Messenger of Allah (صلى الله عليه وآله وسلم), *bay'ah* is only given to the Khalifah. Since the hadith obliges the existence of a *bay'ah* on the neck of every Muslim it also obliges the appointment of a Khalifah.

Muslim narrated from Al-Araj on the authority of Abu Hurairah that the Prophet (صلى الله عليه وآله وسلم) said:

"Indeed the Imam is a shield, from behind whom one would fight, and by whom one would protect oneself." [Muslim, Sahih, #1841]

Muslim also reported on the authority of Abu Hazim that he said: "I accompanied Abu Hurairah for five years, and he informed us of the Prophet (صلى الله عليه وآله وسلم) saying:

"The Prophet ruled over the children of Israel, whenever a Prophet died another Prophet succeeded him, but there will be no Prophet after me. There will soon be *Khulafa'* and they will number many." They asked: 'what then do you order us?' He said: "Fulfil the Bay'ah to them, one after the other and give them their dues for Allah will verily account them about what he entrusted them with." [Bukhari, Sahih, #3455 and Muslim, Sahih, #4750]

In these Ahadith, there is a description of the Khalifah as being a shield, i.e. a protection. The description of the Imam as a shield implies praise for the

presence of the Imam, making it a request (*talab*). This is because when Allah (سبحانه وتعالى) or His Messenger (صلى الله عليه وآله وسلم) informs us about something that includes a rebuke, this is taken as a request to abstain from it. Similarly, when the text contains praise for an action it is taken as a request to perform it. If the commanded action is needed to implement the divine rule, or if its neglect would cause the divine law to be abandoned, then this is a decisive request. These *ahadith* also inform us that those who run the affairs of the Muslims are the *Khulafa'*, which indicates a command to appoint them. Moreover, the Messenger of Allah (صلى الله عليه وآله وسلم) ordered the Muslims to obey the *Khulafa'* and to fight those who dispute with them regarding their authority, which proves that it is an obligation to appoint a Khalifah and protect his Khalifah by fighting those who dispute his authority. Muslim reported that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“Whosoever gave a Bay’ah to an Imam, giving him the clasp of his hand, and the fruit of his heart shall obey him as long as he can, and if another comes to dispute with him, you must strike the neck of that man.” [Muslim, *Sahih*, #1844]

Therefore the command to obey the Imam is an order to appoint him (*translator: for how can he be obeyed if he does not exist?*). Furthermore the command to fight those who dispute with him is cumulative evidence for the decisive matter of maintaining the presence of one Khalifah.

As for the *Ijma'* of the Sahabah, they (may Allah be pleased with them all) agreed upon the necessity of establishing a successor (i.e. Khalifah) to Allah's Messenger (صلى الله عليه وآله وسلم) after his death. They all agreed to appoint Abu Bakr as the Khalifah and upon his death to appoint 'Umar (ra) as his successor. Similarly they appointed 'Ali (ra) as the successor to 'Uthman upon his death. The general consensus of the Sahabah on the importance of appointing a Khalifah manifested itself emphatically upon the death of the Messenger of Allah (صلى الله عليه وآله وسلم) where they prioritised the task of appointing a successor to him over his burial, even though it is known that the burial of the dead person after his death is obligatory.

The Sahabah were obliged to prepare for the burial of Allah's Messenger (صلى الله عليه وآله وسلم) but instead were preoccupied with the appointment of the first Khalifah. Some Sahabah kept silent about this delay for two nights, despite having the ability to bury the Messenger of Allah (صلى الله عليه وآله وسلم) sooner. The Messenger (صلى الله عليه وآله وسلم) passed away late on Monday morning and was not buried that day or night. Not until Tuesday night, after Abu Bakr (ra) was given the *bay'ah* and became Khalifah was Allah's

Messenger (صلى الله عليه وآله وسلم) buried. So the burial was delayed for two nights, and Abu Bakr was given the bay'ah before the burial of the Messenger (صلى الله عليه وآله وسلم).

Therefore, this action of the Sahabah is an evidence of *Ijma'* (consensus) for engaging in the appointment of the Khalifah instead of burying the dead person. This could not have been legitimate unless the appointment of a Khalifah was obligatory and of higher priority than the burial of the dead person. Furthermore, throughout the lives of the Sahabah, they consented to the obligation of appointing the Khalifah.

Although there were disagreements concerning who should be selected for the post of Khalifah, they never disputed the fact that a Khalifah must be appointed, whether after the death of the Messenger of Allah (صلى الله عليه وآله وسلم) or after the death of each of the *Khulafa' 'Rashidin.'* Accordingly, the general *Ijma'* (consensus) of the Sahabah clearly confirms that the appointment of a Khalifah is obligatory.

2. The shape of the ruling system in Islam (the Khilafah) is distinguished from other ruling systems commonly found in the world today in its foundations, thoughts, concepts, criterion, the rules by which it manages its affairs, the constitution and laws enacted for implementation and execution, and in the structure that represents the Islamic state.

The shape of the Khilafah system is not monarchical. It neither agrees with the monarchical shape of government nor resembles it. This is because in the monarchical system the son becomes a king through inheritance without the Ummah having any say in it whereas in Islam the method of appointing a Khalifah is through the enactment of the bay'ah. The monarchical system allows the monarch special privileges and he has rights exclusive to him which place him above the law. In some monarchical systems, the monarch becomes the symbol of the nation so he owns but, does not rule. In others he owns and rules, and thus runs the country and the people as he wishes. In both situations he is immune from being accounted by the people, no matter how severe his oppression and mistreatment of them. In contrast, the Khilafah system does not assign to the Khalifah any special privileges over or above those afforded to his citizens. Neither does the Khalifah have any special rights that distinguish him from the common man before the judiciary. The Khalifah is not the symbol of the Ummah as in monarchies. Rather, he is a representative of the Ummah in ruling and power, meaning that the Ummah selects him and gives him the pledge of allegiance willingly so as to

implement the Law of Allah (سبحانه وتعالى) upon her. He is restricted in all of his actions, judgments and in looking after the interests and affairs of the Ummah by the divine rules.

The shape of the Islamic Ruling System is not imperial, and is completely inconsistent with imperialism. The regions ruled under an Islamic system, which comprise various nationalities and races are indeed linked to one central place but are governed in a manner completely contradictory to that found in empires. The imperial system does not treat the regions of different races and nationalities equally. Instead it gives privileges, in ruling, finance and the economy to the centre of the empire.

The Islamic way of ruling aims to create equality between citizens in all regions of the state. Islam rejects tribalism, and grants non-Muslims who hold citizenship full rights and duties in accordance with the divine rules. Fairness afforded to non-Muslims must be equal to that afforded to Muslims and both are similarly accountable to the law. Every single citizen, regardless of his or her creed, enjoys the rights afforded by the state. Conversely a Muslim living abroad who does not hold citizenship in the Islamic state does not enjoy those rights. Due to this equality, the Islamic system is completely different from imperialism. Imperial states establish colonies and exploit sources of wealth from areas it controls to enrich the imperial power base centrally. The Islamic system does not establish colonies or funnel wealth back to its centre. , Rather it considers all parts of the state equally, no matter how far apart they are, and no matter how different their races are. It considers every single region a part of the state and its citizens enjoy the same rights as those in the central region. It also makes the ruling authority, its system and its legislation the same in all its regions.

The Khilafah system is not federal where there are autonomous regions and unity only in general ruling. It is rather a system of unity, where Marrakesh in the West is considered to be the same as Khurasan in the East and the province of Al-Fayum is considered to be the same as Cairo, even if it were the Islamic capital. The finance of all the regions will be the same, as will their budget. Budgets for all regions will be calculated fairly. For example, if the taxes raised from one Wilayah were double its expenditure, the funds spent would be those required to cover the Wilayah's requirements regardless of its tax revenue. If another Wilayah's taxes fell short of its expenditure, funds would be provided to meet that Wilayah's needs from the general budget, again irrespective of its tax revenue.

The Khilafah system is not republican. The republican system emerged as a reaction to the tyranny of monarchies, where Kings governed their countries and people as they wished. So a king would implement laws as he liked. The republican system attempted to transfer sovereignty and authority to the people through democracy. So the people began to legislate and could permit or forbid whatever they liked. Practical authority was transferred to the hands of a republican president, his cabinet and the ministers of a republican house of representatives. There are also cases where authority was handed over to a first minister and his cabinet in some monarchies in which case the King or Queen becomes a figure head only.

Islam is distinct from all of these systems. In Islam, the right of legislation is not for the people. It is rather for Allah (سبحانه وتعالى) alone, and nobody other than Allah has the right to allow or forbid anything. Giving the right of legislation to people is a great crime in Islam. Allah (سبحانه وتعالى) says in the Quran:

اتخذوا أئبارهم ورهبانهمأربابا من دون الله

(They have taken as lords beside Allah their rabbis and their monks), [TMQ 9:31]

The Messenger (صلى الله عليه وآله وسلم) explained this verse (ayah) describing that the people allowed rabbis and monks to legislate contrary to what Allah (سبحانه وتعالى) had revealed in the scripture sent to them, where they obeyed them when they allowed and forbade things and obeyed them. This is the meaning of taking them (the rabbis and monks) as Lords besides Allah (سبحانه وتعالى). In Islam, taking anyone other than Allah (سبحانه وتعالى) as Lord is called *shirk* and is the greatest of crimes.

Therefore, this indicates the great crime of following people who legislate (making their own rules) instead of following Allah (سبحانه وتعالى). Tirmidhi reported through Adi ibn Hatim who said:

“I came to the Prophet (صلى الله عليه وآله وسلم) wearing a cross of gold on my neck. He (صلى الله عليه وآله وسلم) said: “O Adi, throw away this idol.” [Tirmidhi, Sunan, #3095]. And I heard him read from surah of Bara’ah: (They took the rabbis and monks as lords beside Allah.) He (the Prophet) said: “They did not worship them, but what was forbidden for them they permitted and what was made lawful for them, they prohibited”.

In Islam is not through a cabinet of ministers with ministries that have mandatory powers and separate budgets. In such a system, there is often so

much “red-tape” preventing surplus funds from one ministry being transferred to another, that it adversely affects how the affairs of the states citizens are managed. Further complications occur due to the interference of many ministries on a single issue and these problems can be avoided by putting all the affairs of the people under one administrative system.

In the republican system ruling is divided between its ministries and ministers from each ministry combine in a cabinet that then governs in a collective way. In Islam there is not a cabinet of ministers that collectively governs. Rather, the Khalifah is given a pledge by the Ummah to govern her by the book of Allah and the Sunnah of His Messenger. The Khalifah can appoint delegated assistants that help him in carrying the burdens of the Khilafah. They are literally his assistants and aid him in those issues delegated to them.

The ruling system in Islam is not democratic, in terms of giving the right of legislation to the people, where they permit, forbid, praise and rebuke as they see fit. A democratic system is not committed to divine rules at all and instead taking freedom as its core principle. The disbelievers realise that Muslims could not accept a democracy in its true form. Therefore, the colonial powers, particularly America, try to promote it in Muslim lands, by claiming that democracy is simply a means for electing the ruler. In this way they attempt to deceive the Ummah and tempt them to accept a democratic system. Since Muslim lands are suffering under the oppression and tyranny of true monarchs or “republican” dictators in which the sentiments of the people are suppressed and silenced it has been easy to promote democracy in these lands as a means to elect a new ruler! In this way they have carefully avoided discussing the more important aspect of democracy, which is giving the right of legislation, to the people rather than to the Creator. Unfortunately even some Islamists including some scholars have fallen for this deceit, whether with good or bad intention. If you ask them about democracy they say it is a means by which the people elect the ruler. Those that intend to deceive Muslims, like the disbelievers, answer avoiding its real meaning always avoid the real meaning of democracy when they advocate it. They prefer to avoid discussing the fact that in democracies sovereignty is in the hands of the people, and legislation is according to the opinion of the majority, permitting, forbidding, praising and rebuking as they like, instead sticking to the meaning coined by its advocates that it is about having elections.

In a democracy the individual must be free to act as he wishes (*translator's note: as how else could the people hold sovereignty*) Thus, he can drink alcohol, commit adultery, apostasise and insult sacred matters (*translator's*

note: with impunity according to the opinion of the majority, irrespective of the divine rule._ All of this can be permitted under a democracy and its freedoms. This is the true reality and meaning of democracy. How is it possible for a Muslim who believes in Islam to say that democracy is allowed, or that it is from Islam after realising this?

Islam has laid out a specific mechanism for the election of the Khalifah by the Ummah. Though sovereignty in Islam is for the *shara'*, enacting the pledge to the Khalifah by the Ummah is a fundamental condition for him to become a Khalifah. The election of the Khalifah has been occurring in Islam since the early 7th century C.E., while the rest of the world lived in the darkness of dictatorships and the tyranny of kings. If one were to study the election of the rightly guided *khulafa'*, Abu Bakr, 'Umar, 'Uthman and 'Ali (ra), it is very clear that the pledge was taken from the influential people of the Ummah and from the Muslims representatives so that each one of them became a Khalifah to whom obedience became incumbent. Nearing the end of 'Umar's term, 'Abd al-Rahman ibn 'Awf (ra), was delegated to find out the opinion of the representative of the Muslims (at that time, the people of Madinah). He set out to gauge who the Muslims in Madinah thought should be nominated for the post of Khaleefah and visited many houses in that process. He asked the men and women who they would select as Khalifah until he concluded that the overall consensus was in favour of 'Uthman. 'Uthman was then given the pledge (bayah).

In conclusion, democracy is a system of *kufr*. This is not because it advocates the election of the ruler, for this is not the main issue. It is rather because the foundation of any democracy is giving the right of legislation to the people and not to the Lord of the worlds. Allah (سبحانه وتعالى) says:

إِن الْحُكْمَ إِلَّا لِلَّهِ

(Indeed, ruling belongs to Allah) [TMQ 12:40]

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحْكَمُوا بَيْنَهُمْ فِيمَا اُنْتَجَبُوا فِي
أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ

(But no, by Your Lord, they can have no (real) faith until they make you judge in all disputes between them and find in their souls no resistance against your decisions, but accept them with the fullest submission) [4:65]

There are many famous evidences that confirm that legislation is for Allah (سبحانه وتعالى) alone.

To compound matters further, democracy acknowledges personal freedom, where a man and woman can do whatever they like without observing *halal* and *haram*. In a democracy, religious liberties allow apostasy and change of religion without any restriction. Furthermore, freedom of ownership allows the strong to exploit the weak through corrupt and deceptive means thus increasing the wealth of the rich and impoverishing the poor. Freedom of expression is not advocated to express the truth, rather it is used to insult the sanctities of the Ummah, to the point that those who attack Islam under the guise of freedom of expression are considered to have a keen intellect and are rewarded for their efforts. All of this clearly demonstrates that the ruling system in Islam (the Khilafah) is not Monarchical, Imperial, Federal, Republican or Democratic.

3. The governmental institutions of the Khilafah state differ from those known in currently applied ruling systems, even though some parts may appear to be similar. The institutions of the Khilafah state are derived from the institutions of the first Islamic State established by the Messenger of Allah (صلى الله عليه وآله وسلم) in al-Madinah al-Munawwarah after his emigration from Makkah.

This ruling system was followed by the rightly guided *khulafa'* who succeeded him as heads of state.

Careful examination of the relevant Islamic texts reveals that the Khilafah state comprises the following institutions:

1. The Khalifah
2. The delegated assistants
3. The executive assistants
4. The governors (*Wulah*)
5. The *Amir* of Jihad
6. The department for internal security
7. The department of foreign affairs
8. The department for industry

9. The judiciary
10. The department for people's affairs
11. The *bayt al-mal* (state treasury)
12. The department of information (*I'lam*)
13. The Ummah's council

This book aims to describe these institutions in more detail with analysis of the Islamic evidences from which they arise. We ask Allah (سبحانه وتعالى) to honour us with His victory and help us to establish the second Khilafah *rashidah*, thus bringing back the might of Islam and the Muslims, the humiliation of *kufr* and the unbelievers, and the spreading of glad tidings and justice to the entire world.

إِنَّ اللَّهَ بَالِغُ أَمْرِهِ قَدْ جَعَلَ اللَّهُ لِكُلِّ شَيْءٍ قَدْرًا

(Indeed Allah brings His Command to pass. Allah has set a measure for all things.) [65: 3]

14th Dhul Hijjah 1425 H

24/01/2005

The Institutions of State in the Khalifah

(In ruling and administration)

The Khalifah

The Khalifah is the man who represents the Ummah in ruling, authority and in the implementation of the Divine laws (Shariah). Islam has decreed that ruling and authority belong to the Ummah. It is therefore for the Ummah to appoint an individual to administer that authority and apply the divine laws on her behalf. Allah (سبحانه وتعالى) made it obligatory upon the Ummah to execute all of the Shariah. Since the Khalifah is appointed by the Muslims, this makes him a representative of the Ummah in terms of ruling, authority and in the implementation of the Shariah rules. No-one can become a Khalifah unless the Ummah has given him the pledge of allegiance (Bayah) because ruling, authority and the implementation of the Shariah belong to the Ummah in origin. By giving Bay'ah to a man as Khalifah, the Ummah effectively appoints him as her representative. Through this Bayah the Khalifah state is delegated to him, giving him the authority (Sultan) and obliging the Ummah to obey him.

The man who rules the Muslims does not become Khalifah unless the Bay'ah is given to him by the influential people (*Ahl al-Hall Wa'l-Aqd*) from amongst the Ummah, without compulsion. He must fulfil certain obligatory conditions for a Khalifah and should proceed after that in implementing the rules of the Shariah.

The title:

His title could be the Khalifah, the "Imam" or the "*Amir al-Mu'minin*". These titles have been narrated in sound Ahadith and in the Ijma' of the Sahabah. The *Khulafa' Al-Rashidin* (first four *Khulafa'*) have held such titles.

Abu Saïd Al-Khudri reported that the Messenger of Allah (صلى الله عليه وآله وسلم) said: **"If the pledge of allegiance (Bay'ah) has been taken for two Khulafaa' kill the latter of them."** (Muslim, *Sahih*, #1842)

'Abdullah ibn Amr Ibn al-'Aas reported that he heard Allah's Messenger (صلى الله عليه وآله وسلم) say: **"Whoever pledged allegiance to an Imam giving him**

the clasp of his hand and the fruit of his heart shall obey him as long as he can ...” [Muslim, Sahih, #1844]

Auf Ibn Malik reported that he heard the Messenger of Allah (صلى الله عليه وآله وسلم) say: **“The best of your Imams are those whom you love and they love you and who pray for you and you pray for them ...” [Muslim, Sahih, #4782].**

In these *ahadith* the title of the ruler that executes the divine rules in Islam is the Khalifah or the Imam.

The most authentic reports regarding the title “Amir al-Mu’mineen,” came from the hadith of Shihab Al-Zuhri reported by Al-Hakim in *al-Mustadrak* [vol.3, p.73, #4480], which was authenticated by al-Zahabi [in the *Talkhis*]. Al-Tabarani has reported a narration regarding which Al-Haythami declared all transmitters of sound character. Al-Hakim narrates the *hadith* as follows:

“Ibn Shihab narrated that ‘Umar ibn Abdul Aziz asked Abu Bakr ibn Suleiman ibn Abi Haythma...“Who was the first to write from Amir al-Mu’minin?” He said, “Ash-Shafa’ told me, who was from the first female emigrants, that ‘Umar ibn al-Khattab (ra) wrote to the governor of Iraq to request two strong men so as to ask them about Iraq and its people. He sent to him Labeed ibn Rabeeah and Adi ibn Hatim. When they arrived to al-Madinah they halted their two camel rides in the courtyard of the masjid and entered into the masjid. They suddenly saw Amr ibn al-Aas, and said, “Ask O Amr for us the permission to see Amir ul-Mu’mineen!” Amru said, “By Allah, you called him by his right name. He is the Amir, and we are the believers (mu’mineen).” Then Amru jumped and entered before ‘Umar, Amir ul-Mu’mineen and said, “Assalamu Alayka ya Amir ul-Mu’mineen (Peace be upon you O Amir of the believers).” ‘Umar said, “What made you think of this name, O ibn al-As? Allah knows you have to justify that which you say.” He said, “Labeed ibn Rabeeah and Adi ibn Hatim arrived and they camped their two camel rides in the courtyard of the masjid and came to me and said ask O Amru for us the permission to see Amir al-Mu’minin!’ By Allah they gave you the right name; we are the believers (mu’mineen) and you are our Amir.” Since then, they started using this title in writing.” Ash-Shifa’ was the grandmother of Abu Bakr ibn Suleiman. After this the Muslims continued to call the Khulafaa’ after ‘Umar (ra) by this title.” [See also Bukhari, *Adab al-Mufrad*, #780].

Conditions for the appointment of a Khalifah:

The Khalifah must satisfy seven contractual conditions in order to qualify for the post and for the Bayah to be valid. If any one of the conditions is absent, the contract appointing the Khalifah would be nullified.

Obligatory conditions:

1. The Khalifah must be Muslim.

A disbeliever cannot be given bayah and it would not be allowed to obey him if he was. This is because Allah (سبحانه وتعالى) says:

ولن يجعل الله للكافرين على المؤمنين سبيلا

(And Allah will never (lan) give the disbelievers any way (of authority) against the believers.) [TMQ; 4: 141]

Through his position a ruler has power over those whom he rules. The term 'lan' (never), means the categorical prohibition of the disbeliever (*Kafir*) from taking a post of authority over the Muslims, whether as Khalifah or any other position in authority. This, therefore, forbids the Muslim to accept the *Kafir* to rule over them.

Allah (سبحانه وتعالى) has specified that the person in charge of the affairs of Muslims must be Muslim. Allah (سبحانه وتعالى) says in the Quran:

يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأوليا الأمر منكم

"O you who believe, obey Allah and obey the Messenger and those in authority (*Uuil-Amr*) from amongst you." - [TMQ; 4: 59]

وإذا جاءهم أمر من الأمن أو الخوف أذاعوا به ولو ردوه إلى
الرسول وإلى أولي الأمر منهم

He (سبحانه وتعالى) also says:

"When there comes to them some matter touching public safety or fear they divulge it. If they had only referred it to the Messenger or to the people of authority (*Uuil- Amr*) from among them" [TMQ; 4: 83]

The phrase “Ulil-Amr” is only used when referring to Muslims and never when referring to non-Muslims. This provides further evidence that those in authority must be Muslim. Since the Khalifah is in the highest position of authority and is responsible for appointing others to positions of authority such as his assistants, *Walis* and *'amils*, he himself, must be Muslim.

2. The Khalifah must be male.

The Khalifah must be a man, not a woman. It is narrated by Al-Bukhari that when the Messenger of Allah (صلى الله عليه وآله وسلم) heard that the people of Persia had appointed the daughter of Chosroes (Kisra) as queen, he said:

“People who appoint (*Wallau*) a woman as their leader will never succeed.”
[Bukhari, *Sahih*. #4425]

By associating failure with the appointment of a woman as ruler, the Messenger of Allah (صلى الله عليه وآله وسلم) indicates that it is forbidden for Muslims. This *hadith* is in the form of a request that admonished those who appoint a woman to run their affairs. This gives an indication (*qarinah*) that the request is decisive which means a prohibition on appointing a woman as a ruler.

The fact that this came in the form of a request, which came in the form of reproaching those who appoint a woman to run their affairs by denying them success, implies a meaning (*Qarinah*) which indicates decisiveness. Thus, the forbiddance from appointing a woman as a ruler came here linked with a connotation that indicates the decisive forbiddance. So the appointment of a woman as *wali amr* is prohibited (*haram*). This includes any post in ruling, whether it is the position of Khalifah or any other post with delegated authority in ruling. This is because the subject of the *hadith* is the appointment of the daughter of Chosroes as a Queen, and is related to the issue of ruling itself but not specifically to Chosroes's daughter or the status of a Queen. The Hadith is also not general (*'am*) to cover everything related to ruling so it does not include positions within the judiciary, the *shura* council, accounting the rulers or the election of the ruler. Rather, all of this is allowed for the woman as will be explained in the relevant sections.

3. The Khalifah must be mature.

It is forbidden to appoint a child as Khalifah before he becomes mature, which is physically marked by passing puberty. Abu Dawud narrated from 'Ali Ibn Abi Talib who said that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“Accountability is lifted off three persons: The one who is asleep until he awakes, the boy (adolescent) until he reaches maturity and the deranged until he regains his mind.” (Abu Dawud, Sunan, #4398).

It has also been narrated from ‘Ali (ra) that Prophet (صلى الله عليه وآله وسلم) said:

“The pen has been lifted off three persons: The deranged in his mind till he restores his mind, the one who sleeps till he wakes up and the adolescent till he reaches maturity.”

Therefore, the person from whom the pen is raised is not responsible for himself, and he is not accountable for his actions under the Shariah. Therefore it is prohibited for him to become Khalifah or to hold any post of authority for he is not responsible for his own actions. Evidence is also derived from what Al-Bukhari narrated from Abu Aqil Zahrah Ibn Ma’bad who reported on the authority of his grand-father Abdullah Ibn Hisham who lived during the time of the Messenger of Allah (صلى الله عليه وآله وسلم), that his mother Zainab bint Hamid took him to the Messenger of Allah (صلى الله عليه وآله وسلم) and said: “O Messenger of Allah, take a bayah from him.” Upon this the Messenger of Allah (صلى الله عليه وآله وسلم) said: **‘He is young and he (صلى الله عليه وآله وسلم) wiped over his head and prayed for him.’ [Bukhari, Sahih, #7210].**

Therefore, if the Bay’ah of the little boy is not valid, and he cannot even give Bayah to a Khalifah, he clearly cannot become Khalifah himself.

4. The Khalifah must be sane.

It is unlawful to have a Khalifah who has become insane due to the hadith from Allah’s Messenger (صلى الله عليه وآله وسلم) narrated in point 3 indicating that the **“pen has been lifted...”** from **“... the deranged in his mind until he restores his mind.”**

5. The person off whom the pen is raised is not accountable because the mind is required for a person to be responsible for his actions. The Khalifah enacts the rules and executes all the legal duties, it is therefore unlawful to have an insane Khalifah because an insane person cannot even be responsible for his own actions and hence by greater reasoning cannot be responsible to look after the affairs of the people. The Khalifah must be just (‘adl).

It would not be right for the Khalifah to be a ‘Fasiq’. Integrity is an obligatory condition for contracting the Khalifah and is important for its continuity. This is

because Allah (سبحانه وتعالى) has stipulated that the witness must be just. He (سبحانه وتعالى) says:

وأشهدوا ذوي عدل منكم

"And seek the witness of two just men from amongst you" - [TMQ; 65:2]

So if the witness must be just, then the Khalifah who holds a higher post and rules over the witness himself should, by greater reason, be just. For if justice was stipulated for the witness, its presence in the Khalifah must exist by greater reason.

6. The Khalifah must be a free man.

Any slave is under his master's authority and so he cannot run his own affairs and therefore he cannot be given the power to run other people's affairs and rule over them.

7. The Khalifah must be able to carry out the task of the Khalifah.

One who is unable to perform the job for whatever reason cannot perform the duty of running the people's affairs by the Book and the Sunnah upon which he took the pledge of allegiance (Bayah). The Court of unjust acts has mandatory powers to determine whether a Khalifah has the ability to perform his job and the types of "inability" that may exist.

Preferential Conditions

Above were the contractual conditions necessary for the Khalifah to be appointed. No other conditions are obligatory. However, some conditions are preferable, whilst not being obligatory, if confirmed by Islamic evidences relating to them, or if they are listed under a rule that has been confirmed by a sound (*Sahih*) text. For a condition to be obligatory, it should have evidence which includes a decisive command to indicate that it is obligatory. If the evidence does not include a decisive command then the condition becomes one of preference. No evidence containing a decisive command has been found except for the seven conditions mentioned above. Therefore they alone constitute the contractual conditions. As for the other conditions, whereby a rule has been confirmed as sound, these would constitute conditions of preference only. This is like the stipulation that the Khalifah

should be from Quraish, a Mujtahid or skilful in using weapons or the like, which have no decisive evidence.

The Method of Appointing the Khalifah

When *Shara* made it incumbent upon the Ummah to appoint a Khalifah, it determined for her the method by which the Khalifah is appointed. This method is proven in the Book and the Sunnah. The Muslims who must give the bayah are those that are citizens of the Khilafah at that time. In the case where there is no Khilafah the Muslims responsible for giving the bayah are those living in the region where the Khilafah should be implemented.

The method of electing the Khalifah through a bayah is proved from the example of the Bayah given by the Muslims to the Prophet (صلى الله عليه وآله وسلم), and from the order of the Messenger (صلى الله عليه وآله وسلم) to us, to pledge Bay'ah to the Imam. The Bayah of the Muslims to the Messenger (صلى الله عليه وآله وسلم) was not a Bayah on Prophethood, but a Bayah over ruling, for it was regarding action not belief. Therefore, Rasool Allah (صلى الله عليه وآله وسلم) was pledged allegiance to as a ruler, and not as a Prophet or a Messenger. This is because acknowledging the Prophethood and Messengership is linked to belief (Iman), and not a Bayah. Hence the Bayah to him (صلى الله عليه وآله وسلم) was only in his capacity as the head of the state.

The Bayah is also mentioned in the Qur'an and Hadith. Allah (سبحانه وتعالى) says:

يا أيها النبي إذا جاءك المؤمنات يبایعنك على أن لا یشرکن بالله شیئاً ولا یسرقن ولا یزنین ولا یقتلن أولادهن ولا یأتین ببهتان یفتريه بين أيديهن وأرجلهن ولا یعصینک فی معروف فبایعنهن واستغفر لهن
الله إن الله غفور رحيم

"O Prophet! If the believers come to you to take the oath (Bay'ah) that they will not associate [in worship] anything with Allah, that they will not steal, that they will not commit adultery, that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and they will not disobey you in any just matter (Ma'roof), then receive their oath (Bayah)." [TMQ: 60:12]

In another verse Allah (سبحانه وتعالى) says:

إن الذين يبایعونك إنما يبایعون الله يد الله فوق أيديهم

"Verily those who pledge their allegiance to you do no less than pledge their allegiance to Allah: The Hand of Allah is over their hands." [TMQ: 48:10].

Al-Bukhari narrated on the authority of Isma'il, who reported on the authority of Malik, who reported on the authority of Yahya bin Sa'id who said: "Ubadah bin Al-walid told me, that my father told me that Ubadah bin al-Samit said:

"We have pledged allegiance to the Messenger of Allah to listen and obey in ease and in hardship and that we do not dispute the matter (authority) with its people and that we stand for and speak the truth wherever we are and that in the service of Allah we would fear the blame of no one." [Bukhari, Sahih, #7054 and Muslim, Sahih, #4748]

Muslim has reported that Abdullah ibn Amru ibn al-As narrated that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"Whosoever pledges allegiance to an Imam by giving him the clasp of his hand, let him obey him if he is able to do so, but if another comes along to dispute with him, then kill the latter." [Ahmad, Musnad, 3/10]

Also in Muslim it is narrated that Abu Saeed Al-Khudri reported that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"If two Khulafaa' were pledged allegiance, then kill the latter of them." [Muslim, Sahih, #1853]

Muslim narrated on the authority of Abi Hazim who said: "I accompanied Abu Huraira for five years and I heard him talk of the Prophet's (صلى الله عليه وآله وسلم) saying: **"Banu Israel used to be governed by Prophet, every time a Prophet died, another came after him, and there is not Prophet after me. There will be Khulafa' and they will number many". They said: "What would you order us to do?" He (صلى الله عليه وآله وسلم) said: "Fulfil the Bayah to them one after the other, and give them their due right, surely Allah will account them for that which He entrusted them with".**" [Bukhari, Sahih, #3455]

These texts from the Book and the Sunnah explicitly state that the method of appointing a Khalifah is by the Bayah. This was understood and practiced by all of the Sahabah. The bayah given to the rightly guided Khulafaa' was clear in this regard.

The practical measures used to appoint and take bayah to the Khalifah

The practical measures taken to appoint the Khalifah, before the bayah is given to him, can take different forms, which happened with the rightly guided Khulafaa' who came immediately after the death of the Messenger (صلى الله عليه وآله وسلم) namely: Abu Bakr, 'Umar, 'Uthman, and 'Ali (May Allah (سبحانه وتعالى) be pleased with them). All of the Sahabah remained silent about this and vouched for it, otherwise, they would not have accepted it if it was against the Shara. This is because it is related to a vital matter upon which rely the stature of the Muslims and the preservation of the rule of Islam. If we follow the development of the appointment of those Khulafaa, we find that some Muslims had discussions in the hall (*Saqifa*) of Banu Sa'idah. Sa'd, Abu Ubaydah, 'Umar and Abu Bakr were nominated and no-one else. However, 'Umar and Abu Ubaidah refused to challenge Abu Bakr. This meant the issue was confined to Abu Bakr and Sa'd. As a result of the debate, the Bayah was taken for Abu Bakr. The next day the Muslims were called to the Masjid and in turn they pledged their Bayah. So the Bayah in the Saqifa was a Bayah of appointment, by which he became Khalifah for the Muslims. However, the second Bayah in the Masjid, the next day was a Bayah of obedience.

When Abu Bakr felt that his illness carried with it death, and the Muslim armies were fighting the Persian and Roman superpowers of that time, he felt it necessary to invite the Muslims and consult them with regards to who could be a Khalifah for the Muslims after him. He continued to make these consultations for three months. When they were complete and he knew the opinion of the majority of the Muslims, he announced to them, i.e. nominated, 'Umar to be the Khalifah to succeed him. This delegation or nomination was not considered a contract of Khilafah to 'Umar after him. This is because it was only after the death of Abu Bakr that Muslims came to the Masjid and pledged their allegiance to 'Umar for Khilafah. It was through this Bayah that 'Umar became the Khalifah for the Muslims, and not as a consequence of the consultations or the nomination of Abu Bakr. Had the nomination of 'Umar by Abu Bakr been a contract of Khilafah to him, then he would not have needed the bayah of Muslims. Besides, the cited texts indicate explicitly that no one can become a Khalifah except with the Bayah from Muslims.

At the time when 'Umar was Khalifah and he was injured, the Muslims asked him to nominate a Khalifah, but he refused. They continued to insist and so he confined it to six people, i.e. he nominated six people. Then he appointed Suhaib to lead the prayer and to watch over those nominated by him so as to select the Khalifah from amongst them within the three days assigned to

them. 'Umar said to Suhaib: "...If five (of the six) agreed and accepted one man, while one (of the six) man rejected him, then strike his head with the sword..." This is also reported by At-Tabari in his *Ta'rikh*; by Ibn Qutaybah the author of the book *al-Imamah* and *Siyasah* known as "The history of the Khulafa'" and Ibn Sa'd in his book *al-Tabaqaat al-Kubra*. 'Umar then appointed Abu Talha Al-Ansari to protect the gathering with fifty men and he charged Al-Miqdad ibn al-Aswad with the duty of choosing the meeting place for the six candidates. After his death (ra) the nominees settled into their meeting. Abdul Rahman ibn Awf then asked the six "Who would take himself out of it (the Khilafah) and give it to the best among you?" No one answered him, so he went on saying, "I myself renounce my right to the Khilafah." Then he started to consult them one by one. He would ask them, "Apart from yourself, who do you think is worthy of this authority from among this group?" Their answer was confined to two: Ali and 'Uthman. Then Abdul-Rahman sought the opinion of the Muslims regarding the two people and which they would elect as Khalifah. He asked the men and women when investigating the opinion of the people. He (ra) worked day and night during the period of electing the Khalifah. Al-Bukhari reported from Al-Miswar ibn Makhramah that he said: "Abdul Rahman knocked at my door after a part of the night passed till I woke up. He said, 'I see you have been sleeping. By Allah, I did not enjoy much sleep in these three'", meaning the three nights. After the people had prayed the dawn prayer (*fajr*), the Bayah was concluded to 'Uthman and he became Khalifah by the bayah of the Muslims, and not due to the nomination of the six people by 'Umar.

At the time of 'Uthman's (ra) murder the Muslim masses of al-Madinah and al-Kufah gave the bayah to Ali ibn Abi Talib, so he became a Khalifah by the bayah of the Muslims.

Upon close examination regarding the method of their (ra) Bayah it is clear that the nominees to the Khilafah were announced to the people and each one of them fulfilled the contractual conditions. Then the opinion of the influential people among the Muslims, who represent the Ummah, was sought. The representatives of the Ummah were known at the time of the Khulafaa' Rashidun, for they were the Sahabah (ra), or the people of al-Madinah. Whoever was accepted by the Sahabah or their majority was given the contracting bayah, and he became a Khalifah, and obedience to him became incumbent upon the Muslims. Muslims would then give him the Bayah of obedience, and the Khalifah would become the representative of the Ummah in ruling and authority.

This is understood from the Ba'yah given to the *Khulafa' al-Rashidun* (ra). There are two issues that are understood from 'Umar's nomination of six people and from the measures followed in the Bayah of 'Uthman (ra). These two issues are the presence of a provisional amir that takes care of the period during which the new Khalifah is appointed and limiting the number of nominees to six people.

The provisional Amir

The Khalifah is entitled, once he feels death is approaching him, and a short while before the Khilafah post becomes vacant, to appoint a provisional Amir for looking after the affairs of the Muslims during the period of the election of a new Khalifah. The provisional Khalifah exercises his duty after the death of the Khalifah. His main task is to carry out the appointment of the new Khalifah within three days.

The provisional Khalifah is not entitled to adopt (new) laws. This is because this task is the mandatory power of the Khalifah that has the Bayah from the Ummah. He is not allowed to be from the nominees to the Khilafah post nor is it permitted for him to support any one of them. This is because 'Umar (ra) appointed a provisional Amir who was not from those that he nominated for the post of Khalifah.

The authority of such a provisional Amir would expire at the time that the new Khalifah is appointed, because his task is temporary and limited to this single objective.

The evidence that Suhaib was a provisional Ameer appointed by 'Umar (ra) is the saying of 'Umar (ra) to the six nominees: "Let Suhaib lead you in the prayer during these three days in which you consult". Then he said to Suhaib: "Lead the people in the prayer these three days," and then he said, "If five (of the six) agreed and accepted one man, while one (of the six) man rejected him, then strike his head with the sword". This indicates Suhaib was appointed as an Amir over them. He was appointed an Amir over prayer, where leadership over prayer indicated leadership over the people at that time. Moreover, he gave him the authority of executing the punishment (strike his head), where only the Amir can authorise such an action.

This matter was conducted before a group of Sahabah, without anyone of them objecting to this. Therefore, this constitutes consensus (*ijma'*) that the Khalifah is entitled to appoint a provisional Amir that looks after the measures of appointing the new Khalifah. Based on this, the Khalifah is allowed during

his life to adopt a clause in the constitution that stipulates that in the case the Khalifah passed away without appointing a provisional Amir, somebody must be appointed as a provisional Amir.

Accordingly we adopt here that in the case that the Khalifah did not appoint a provisional Amir nearing the end of his term, then the eldest delegate assistant would become the provisional Amir, unless he was nominated. In that case the next eldest delegate assistant would become the Ameer. If all of the delegate assistants are nominated then this goes on, if necessary, until the eldest executive assistant is appointed as Amir, and so on and so forth.

This appointment applies in the case that the Khalifah was removed from his post. The provisional Amir would be the eldest delegate assistant as long as he was not from those nominated. If he was from them, then the next eldest one would become the Amir, till the end of these assistants. After them the eldest executive assistant is appointed, and so on as before. If all of them were to nominate themselves then the youngest executive assistant would be obliged to be the provisional Amir.

This also applies in the case that the Khalifah fell captive. In this case there should be some details regarding the mandatory powers of the provisional Amir when there is or there is not a chance of rescuing him. A bill will be issued in time regarding these mandatory powers.

This provisional Amir is different to the one whom the Khalifah appoints as his deputy when he goes out for jihad or on travel. This is like what the Messenger of Allah (صلى الله عليه وآله وسلم) used to do when he went out for jihad or he went out on Hijjah al-Wada' or the like. Such a deputy would have the mandatory powers assigned to him by the Khalifah regarding looking after the affairs required by such an appointment.

Short listing of the nominees

After examining the method of the appointment of the Khulafaa' Rashidun, it is clear there was short listing of the nominees. In the hall of Bani Sa'idah, the nominees were Abu Bakr, 'Umar, Abu Ubaydah and Sa'd ibn 'Ubadah. These were enough at the time, but 'Umar and Abu Ubaidah did not consider anybody equal to Abu Bakr, so they did not challenge him. Thus competition was limited to Abu Bakr and Sa'd ibn 'Ubadah. Then the influential people present in the hall elected Abu Bakr and gave him the contracting Bayah. The next day, the Muslims gave Abu Bakr the Bayah of obedience.

Abu Bakr nominated 'Umar to the Muslims for the post of Khalifah, without having any other nominees. The Muslims gave him the contracting Bayah, and then the Bayah of obedience.

'Umar nominated six people and limited the Khilafah to them, whereby the Muslims were given the choice to choose a Khaleefah from amongst the six. After removing himself from the nominees, Abdul Rahman discussed with the remaining five, limiting the number of candidates to two; Ali and 'Uthman, after they delegated the matter to him. After investigating the opinions of the people, the opinion settled on 'Uthman as a Khaleefah.

As for the appointment of 'Ali, there was no other nominee for Khalifah beside him, so the majority of Muslims of al-Madinah and al-Kufah gave him the Bayah, and he became the fourth Khaleefah.

Since the Bayah of 'Uthman (ra) included the maximum period allowed for electing a Khaleefah, i.e. three days including their two nights, as well as the limiting of the nominees to six people, which were shortlisted to two, we are going to discuss these events in detail because of its value in understanding this subject correctly.

1- 'Umar (ra) was stabbed whilst he was standing in the mihrab praying on the dawn of Wednesday, 4 days before the end of Dhul Hijjah 23 AH. 'Umar (ra) passed away on Sunday morning, at the beginning of Muharram in 24 AH, as a result of his injury caused by Abu Lu'luah, may Allah curse him. Suhaib (ra) prayed *janazah* (funeral prayer) on him according to the will of 'Umar (ra).

2- When 'Umar was buried, Al-Miqdad gathered the six people of shura recommended by 'Umar in a house, which Abu Talha guarded. They sat down consulting with each other. Then they delegated Abdul Rahman ibn Awf from amongst themselves to choose a Khalifah from them, with their consent.

3- Abdul Rahman started discussing with them, and asked each one of them: "Apart from yourself, who do you think is worthy of this authority from among this group?" Their answer was not beyond 'Ali and 'Uthman. Finally, 'Abd al-Rahman confined the matter to those two.

4- After that Abd al-Rahman started consulting the people as was mentioned above.

5- On Wednesday night, i.e. the night of the third day after the death of 'Umar (ra) (i.e. Sunday), Abdul Rahman went to the house of his nephew, Al-Muswar ibn Makhramah, where Ibn Kathir reports the following in his book *Al-Bidayah Wan-Nihayah*:

When the night that begins the fourth day after the death of 'Umar started, he came to the house of his nephew, Al-Muswar ibn Makhramah and said, "Are you sleeping, O Muswar? By Allah! I have not enjoyed much sleep since three..." i.e. the three nights after the death of 'Umar on Sunday morning, meaning the nights of Monday, Tuesday and Wednesday. He continued to say, "Go and call 'Ali and 'Uthman for me...", then he brought them to the masjid and the people were called to attend a public prayer. This was at dawn on Wednesday. Then he held the hand of Ali (ra) and asked him about taking the Bayah over the book of Allah and the Sunnah of His Messenger and the action of Abu Bakr and 'Umar. 'Ali (ra) gave him the well known answer: Over the book and the Sunnah, yes; as for the action of Abu Bakr and 'Umar, he would make his own ijihad. So, he dropped his hand and held the hand of 'Uthman and asked him the same question. 'Uthman said, "Yes, by Allah." Thus the bayah was concluded to 'Uthman (ra).

Suhaib led the people in the fajr and zuhr prayers of that day. Then 'Uthman (ra) led the people in the 'asr prayer as the Khalifah of the Muslims. This means that despite the contracting Bayah to 'Uthman (ra) starting at the fajr prayer, the leadership of Suhaib did not expire except after the Bayah of the influential people in al-Madinah to 'Uthman. This was completed little before 'Asr, when the Sahabah summoned each other to give bayah to 'Uthman until after the middle of that day had passed and before asr. When the taking of the Bayah was completed before asr the leadership of Suhaib finished, and 'Uthman led the people in the asr prayer as their Khalifah.

The author of *al-Bidayah wa al-Nihayah* explains why Suhaib led the people in the zuhr prayer though 'Uthman took the Bayah at fajr. He says: "The people gave him the Bayah in the masjid, then he was taken to the house of shura (i.e. the house where the people of shura met), so the rest of the people gave him the Bayah. It seems he did not finish taking the Bayah until after zuhr. So, Suhaib prayed that zuhr in the Prophet's mosque, thus the first prayer in which the Khalifah, *amir ul-mu'minin*, 'Uthman led the Muslims was *salat al-asr*."

There are some reported differences about the days in which 'Umar was injured, the day of his death and the day of bayah to 'Uthman. However we have endeavoured to mention the report with the strongest evidence.

Consequently the following matters must be considered when making nominations for the post of Khilafah after it becomes vacant (through death or dismissal), which are:

1- The work to appoint a Khaleefah must be done day and night until the task is completed.

2- Nominees have to be shortlisted in terms of fulfilling the contractual conditions, a matter that is conducted by the *mahkamat al-mazalim*.

3- Nominees are short listed twice: to six, and then to two. The council of the Ummah conducts this short listing as representatives of the Ummah. This is because the Ummah delegated 'Umar (ra) to represent them, who nominated six people, and the six nominees delegated a representative from amongst themselves, Abul Rahman, who shortlisted the nominees to two after discussion. Thus, the reference in all of this is the Ummah's council, i.e. its representatives.

4- The task of the provisional amir expires after the completion of the taking of the Bayah by the Khalifah, rather than by the announcement of the results. The leadership of Suhaib did not finish by the election of 'Uthman, but rather by the completion of his Bayah.

Accordingly, a law will be issued that determines the way of electing the Khalifah during the three days including their nights. This law has already been enacted, and it will be discussed and adopted at the right time, *insha'allah*.

This is the case if there was a Khalifah and he passed away or was removed, and a Khaleefah needs to be appointed to replace him. However, if there is no Khaleefah at all, it becomes obligatory upon the Muslims to appoint a Khaleefah, to implement the rules of the Shariah and to carry the Islamic da'wah to the world, as is currently the case since the removal of the Islamic Khilafah in Istanbul, on 28th Rajab 1342 H (3rd March 1924). In such a situation, every one of the Muslim countries in the Islamic world is suitable to appoint a Khalifah, and the Khilafah would be concluded to him. So, if one of the Muslim countries gave the Bayah to a Khaleefah, and the Khilafah was concluded to him, it becomes obligatory upon the Muslims in the other countries to give him the Bayah of obedience, i.e. a bayah of submission to his authority. This is after the Khilafah has been concluded to him through the Bayah of the people of his country. However, the following conditions have to be fulfilled in that country:

1. The authority of the country must be in the hands of the Muslims and not in the hands of a non-Islamic country or under a non-Islamic influence.
2. The security of the Muslims in that country must be guaranteed by Islam, i.e. its protection at home and abroad should be in the name of Islam and by Islamic forces to the exclusion of all others.
3. The implementation of Islam should take place with immediate effect in a comprehensive and radical manner; the Khalifah must be involved in the conveying of the Islamic Message.
4. The Khalifah must fulfil all the contractual conditions, although he might not fulfil the preferred conditions, since what really matters are the conditions of the contract.

Should that country satisfy these four conditions then the Khilafah would be established by the Bayah of that country alone, and the Khilafah would be concluded by her alone. The Khalifah to whom they gave the Bay'ah would become the legitimate Khalifah, and any Bay'ah to other than him would be invalid.

Any country that might give the Bayah to another Khalifah after that, his Bayah would be invalid, due to the saying of the Messenger of Allah (صلى الله عليه وآله وسلم):

“If Bay’ah was taken to two Khaleefah, then kill the latter of them.” [Muslim, *Sahih*, #1853]

“Fulfil the Bayah of the first, then the first.” [Bukhari, *Sahih*, #3455]

“Whoever gave Bayah to an imam, giving him the clasp of his hand and the fruit of heart, let him obey him as much as he could. If anybody else came to challenge his authority, then strike the head of the latter.” [Muslim, *Sahih*, #1844]

The method of the Bay’ah

In the aforementioned we have explained the evidences for the bayah as the prescribed method of electing a Khaleefah in Islam. Regarding its practical implementation, it is through shaking the hand as well as by writing. It has been narrated by Abdullah ibn Dinar that: "I witnessed Ibn 'Umar when people agreed on Abdul Malik ibn Marwan saying: "I write herewith that I

agree to hear and obey Abdullah Abdul Malik, the Amir of the believers, according to the Book of Allah and the Sunnah of His Messenger, and to the best of my ability." The bayah can also be given by any other means.

The bayah should only be given by an adult as the bayah of the minor is not valid. Abu Aqil Zahrah Ibn Ma'bad reported on the authority of his grandfather Abdullah Ibn Hisham who lived during the time of the Messenger of Allah (صلى الله عليه وآله وسلم) that his mother Zainab Ibnatu Hamid took him to the Messenger of Allah (صلى الله عليه وآله وسلم) and said:

“O Messenger of Allah, take a bay’ah from him.” Upon this the Messenger of Allah (صلى الله عليه وآله وسلم) said: “He is young.” He (صلى الله عليه وآله وسلم) wiped over his head and prayed for him, as narrated by al-Bukhari [Sahih, #7210].

As for the wording of the Bayah, it is not restricted to any specific wording, but it should include the commitment that the Khalifah acts according to the Book of Allah and the Sunnah of His Messenger; and that the person who gives the Bayah should pledge to obey in good and bad and in ease and hardship. A law will be published that will determine this wording in accordance with the previous points.

Once the Bayah is given to the Khalifah, then the Bayah becomes a trust on the neck of the one who gave the Bayah, where he is not allowed to withdraw it. For it is his right (of the Muslim) in terms of appointing the Khalifah till he gives it. But once he gave it, he is not allowed to withdraw it. Even if he wanted to do so, he is not permitted to withdraw his bayah. Al Bukhari narrated from Jabir ibn Abdullah (may Allah be pleased with them) that a Bedouin gave the bayah to the Messenger of Allah (صلى الله عليه وآله وسلم) on Islam, but he became unwell, so he said:

“Relieve me of my bayah”, the Messenger of Allah (صلى الله عليه وآله وسلم) refused. Then he came and said the same, but the Messenger (صلى الله عليه وآله وسلم) rejected. So he left the town. The Messenger of Allah (صلى الله عليه وآله وسلم) said: “The town is like the mason’s bellow (or furnace), it gets rid of (cleans) its impurity, and its goodness (scent) manifests (shines)”. [Bukhari, Sahih, #7209]

Muslim also narrated from Nafi' on the authority of Abdullah ibn 'Umar that he heard the Messenger of Allah (صلى الله عليه وآله وسلم) say:

"Whoever withdraws a hand from obedience, he would meet Allah on the day of judgement without having proof for himself" [Muslim, *Sahih*, #1851].

Breaking the bayah to the Khalifah is a withdrawal of the hand from the obedience to Allah. However, this is the case if his bayah to the Khalifah was a bayah of contract, or a bayah of obedience to a Khalifah was accepted and pledged by the Muslims. But if he pledged himself to a Khalifah initially, and the bayah was not completed to him (by the Muslim), then he has the right to relieve himself from that bayah, in view of the fact that the contracting bayah has not been concluded to him from the Muslims. So the prohibition in the hadith is focused on withdrawing a bayah to a Khalifah, not to a man for whom the Khilafah contract was not completed.

The unity of the Khilafah

The Muslims are obliged to live in one State, and be ruled by one Khalifah. It is forbidden for the Muslims in the world to have more than one State and more than one Khalifah.

It is also necessary that the ruling system in the Khilafah State be a system of unity, and it is forbidden for it to be a federal system.

This is due to what Muslim narrated on the authority of Abdullah b. Amru b. al-Aas who reported that he heard the Messenger of Allah (صلى الله عليه وآله وسلم) say:

"Whoever pledged allegiance to an Imam giving him the clasp of his hand and the fruit of his heart, he should obey him as much as he can, and if another comes to dispute with him, you must strike the neck of the latter".

It has also been narrated by Muslim that Afrajah said: "I heard the Messenger of Allah (صلى الله عليه وآله وسلم) say:

"Whoever comes to you while your affair has been united over one man, intending to divide your power or dissolve your unity, kill him". [Muslim, *Sahih*, #1844]

It has also been reported by Muslim from Abu Said Al Khudri that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"If the Oath of Allegiance (bayah) has been taken for two Khalifahs, kill the latter of them." [Muslim, *Sahih*, #1853]

Muslim also reported that Abu Hazim said, "I accompanied Abu Huraira for five years and heard him talking about the Prophet's (صلى الله عليه وآله وسلم) saying:

"The children of Israel have been governed by Prophet; whenever a Prophet died another Prophet succeeded him; but there will be no Prophet after me. There will soon be Khulafaa and they will number many; they asked: What then do you order us?

He (صلى الله عليه وآله وسلم) said: Fulfil allegiance to them one after the other, and give them their dues; for verily Allah will ask them about what he entrusted them with".[Bukhari, *Sahih*, #3455]

The first hadith demonstrates that if the *Imamah* (Khilafah) has been given to someone he should be obeyed, and if another man comes to dispute his authority, he should be fought and killed if he did not renounce the dispute.

The second hadith demonstrates that when the Muslims are united under the leadership of one Amir, and a person comes along with the intent to divide their power and dissolve their unity, his killing becomes compulsory. The two hadiths clearly indicate prohibition of dismembering the State, the strong warning against its division, and preventing any breakaway attempt even if it means raising the sword (force).

The third hadith indicates that in the case of the absence of a Khalifah, due to death, removal or resignation, and the contracting of the bayah to two Khulafaa, the latter of them should be killed. This means the Khalifah is he who was given the first bayah, whilst the one that who was given the bayah after the first must be killed if he does not withdraw himself from Khilafah post. If the bayah was taken to more than two, then all those, except the first person given the bayah must be fought and killed unless they withdrew from the bayah. This clearly demonstrates that the dismembering of the State is forbidden, which means that turning it into small Statelets is forbidden; it must remain one single State.

The fourth hadith indicates that the Khulafaa would number many after the Messenger of Allah (صلى الله عليه وآله وسلم) and that the Sahabah asked him about what he ordered them to do when the Khulafaa numbered many, and he replied that they should fulfil their allegiance to the Khulafaa one after the other, starting by the first one they gave their bayah to, for he would be the legitimate one and he alone should be obeyed. As for the others, they are not to be obeyed for their bayah is void and null and unlawful, for it is forbidden for another Khalifah to be given a bayah while there exists a

Khalifah already in office. This hadith also indicates that obedience to a single Khalifah is obligatory. Therefore it is forbidden for the Muslims to have more than one Khalifah and more than one single State.

The mandatory powers of the Khalifah:

The Khalifah possesses the following mandatory powers:

A – It is he who adopts the divine rules (Ahkam Shar'i ya) necessary for managing the affairs of the Ummah, which are deduced through viable ijihad from the Book of Allah and the Sunnah of His Messenger. Thus they become a binding law that must be obeyed and not rejected.

B - He is responsible for the domestic and foreign policies of the State; he is the supreme commander in chief of all the armed forces and he has full powers to declare war, conclude peace treaties, truces and all other treaties.

C - He has the powers to accept (foreign) ambassadors and to refuse them, as well as the powers to appoint Muslim ambassadors and to remove them.

D - It is the Khalifah who appoints and removes the assistants and Walis; they are all responsible before him and before the Council of the Ummah.

E - It is he who appoints and removes the supreme judge (*Qadi al-Qudah*), as well as the other judges excluding the judge of *mahkamat al-Mazalim*, where he appoints him, but he is restricted regarding his dismissal as it is explained in the chapter of the judiciary. He also appoints the managers of the administration departments, army commanders, chiefs of staff, and the commanders in chief. They are all answerable to him and not to the Council of the Ummah.

F - It is he who adopts the divine rules, in light of which the State's budget is drafted, and it is he who decides the details of the budget and the funds allocated to each department, whether concerning revenues or expenses.

As for the detailed evidences of the six sections mentioned above, the evidence about section "A" is the general consensus of the Sahabah. *Qanun* (law) is a technical term which means the order that the ruler (Sultan) issues so that people abide by it. Scholars of *Qanun* (law) define it as "the host of principles that the Sultan (ruler) compels people to follow in their relations". In other words if the Sultan issues certain rules, then these rules become laws and people have to abide by them; and if the Sultan does not issue them,

then they do not become law and people are not obliged to abide by them. The Muslims follow the rules of Shara', so they abide by Allah's (سبحانه وتعالى) commands and prohibitions. What they abide by are the commands and prohibitions of Allah, not those of the Sultan, so what they follow are divine rules and not the orders of the Sultan. However the Sahabah have differed regarding the Shariah rules. Some of them understood matters from the divine texts different to one another's' understanding. Each one of them abided by what he understood and that represented the rule of Allah (سبحانه وتعالى) on his behalf. However, there are some divine rules related to managing the affairs of the Ummah that all the Muslims should abide by according to one single opinion, and not each proceeding according to his own *ijtihad*. This indeed took place in the past. Abu Bakr, for instance, considered it fit to distribute the funds equally among all Muslims for it was their equal right. However 'Umar deemed it wrong to give to those who had fought against the Messenger of Allah (صلى الله عليه وآله وسلم) and those who fought alongside him, or to give to the needy equal to that which was given to the wealthy. However when Abu Bakr was the Khalifah, he enforced his opinion upon the people, the judges and Walis executed his opinion and 'Umar also submitted to Abu Bakr's opinion and executed it. And when 'Umar became Khalifah he enforced his own opinion which differed from that of Abu Bakr, i.e. he ordered the funds to be distributed preferentially and not equally, whereby the funds were distributed according to the length of time they had been Muslims and according to their needs. The Muslims abided by this rule, and the judges and Walis executed it. Therefore, a general consensus of the Sahabah was established stating that the Imam has the right to adopt specific rules and enforce their implementation, and

Muslims have to abide by such rules even if they contradict with their own *ijtihad*, and they must also abandon their own opinions and *ijtihads*. These adopted rules are in fact laws (or canons); thus the enactment of laws belongs to the Khalifah alone and no one else has such a right.

As for section "B", its evidence is derived from the actions of the Messenger of Allah (صلى الله عليه وآله وسلم). He (صلى الله عليه وآله وسلم) used to appoint the Walis and judges and hold them accountable to him. He (صلى الله عليه وآله وسلم) used to control trading and prohibit fraud and cheating. He (صلى الله عليه وآله وسلم) used to distribute the funds among the people, and help the unemployed find work. He (صلى الله عليه وآله وسلم) used to run all the State's internal affairs.

He (صلى الله عليه وآله وسلم) also used to write to the kings and meet with the envoys and receive the delegates. He (صلى الله عليه وآله وسلم) carried out all the foreign affairs of the State.

He (صلى الله عليه وآله وسلم) effectively used to take command of the armed forces during the raids and he (صلى الله عليه وآله وسلم) used to lead the battles, and he (صلى الله عليه وآله وسلم) used to send out all the expeditions and appoint their leaders. In one instance he (صلى الله عليه وآله وسلم) appointed Usama b. Zayd at the head of an expedition to Al-Sham; the Sahabah were not pleased with this due to Usama's young age, but the Messenger of Allah (صلى الله عليه وآله وسلم) forced them to accept his leadership, which proves that he was effectively the commander of the armed forces and not just its supreme commander in chief.

It was he (صلى الله عليه وآله وسلم) who declared war on Quraish, and on Banu Qurayzah, Banu Nadir, Banu Qaynuqa', Khaybar and the Romans. All the wars that took place were declared by him (صلى الله عليه وآله وسلم). This proves that only the Khalifah has the right to declare war. It was also the Messenger of Allah (صلى الله عليه وآله وسلم) who signed the treaties with Banu Madlij and their allies of Banu Dhumra. He (صلى الله عليه وآله وسلم) signed a treaty with Yuhanna (Jonathan) b. Ru'ba, the leader of Ayla, and he (صلى الله عليه وآله وسلم) also signed the treaty of Al-Hudaybiyah. The Muslims on that occasion were outraged but he (صلى الله عليه وآله وسلم) ignored their opinion and dismissed their pleas, went ahead and signed the treaty. This proves that only the Khalifah has the mandatory powers to sign treaties, whether these are peace treaties or any other.

As for section "C", its evidence is that it was the Messenger of Allah (صلى الله عليه وآله وسلم) himself who received the two envoys of Musaylama, and it was he (صلى الله عليه وآله وسلم) who received Abu Rafi'i, an envoy from Quraish. It was also he (صلى الله عليه وآله وسلم) who sent envoys to Heraclius, Chosroes, Al Muqawqis, Al-Harith Al-Ghassani, King of Al-Heera, Al Harith Al-Himyari, King of Yemen, the Negus of Abyssinia (Al-Habashi), and Uthman Ibn Affan to Quraish during the Hudaybiyah affair. This proves that the Khalifah is the one who receives and declines the ambassadors (envoys) and it is he who appoints the ambassadors.

As for section "D", its evidence is that it was the Messenger of Allah (صلى الله عليه وآله وسلم) himself who used to appoint the Walis; for he appointed Muadh as Wali over Yemen. And he (صلى الله عليه وآله وسلم) used to remove them; he

removed Al-A'la' b. Al-Hadrami from his post as *Wali* of Bahrain after its people complained about him. This indicates that the *Walīs* are responsible before the people of the *wilayah* (region-district), before the Khalifah, as well as the Council of the Ummah, as it represents all the *wilayahs*. This is regarding the *Walīs*.

As for the assistants, the Messenger of Allah (صلى الله عليه وآله وسلم) had two assistants, Abu Bakr and 'Umar. He did not remove them nor appoint others to replace them during his lifetime. However the assistant derives his authority from the Khalifah, and since he acts in the capacity of his deputy, the Khalifah then has the right to remove him. This is analogous with the representative (agent), where a person has the right to dismiss his representative (agent).

As for section "E", its evidence is derived from the fact that Allah's Rasool (صلى الله عليه وآله وسلم) appointed 'Ali as judge over Yemen.

Ahmad narrated that Amru b. al-'Aas said: "Two men disputing with each other came to the Messenger of Allah (صلى الله عليه وآله وسلم) (seeking justice), so he (صلى الله عليه وآله وسلم) said to me: "Judge between them, O Amru." I said: "You are better and more worthy of that." He (صلى الله عليه وآله وسلم) said: "Even though!" So I said: "What shall I have if I judged?" He (صلى الله عليه وآله وسلم) said: "If you judged and you were right, you would get ten rewards and if you get it wrong you would get one reward."'" [Also from 'Uqbah b. 'Amir. See al-Haythami, *Majma' al-Zawa'id*, vol.4, p.198]

‘‘Umar (may Allah be pleased with him) used to appoint and remove judges. He appointed Shurayh as a judge over Kufa and Abu Musa as a judge over Basra. He also removed Shurahbeel b. Hasna from his post as *Wali* over Al-Sham and appointed Muawiya instead. Shurahbeel said to him: "Is it because of an act of disobedience or treason that you removed me?" ‘‘Umar replied: "Neither, but I wanted to appoint a man who is stronger." 'Ali, on one occasion appointed Abu al-Aswad and then he removed him. Abu al-Aswad asked him: "Why did you remove me? I never cheated or committed a crime" 'Ali said: "I noticed that your voice rose above the disputing men." 'Umar and Ali did this in front of the Sahabah, and yet none of the Sahabah disapproved or censured their actions. This proves that the Khalifah reserves the right to appoint the judges in principle, and he can also delegate someone to appoint the judges on his behalf. This is analogous with representation (*wakalah*), where he reserves the right to assign a deputy for himself in any of

his mandatory powers as he is allowed to appoint someone to represent him in any of his dispositions.

As for the exclusion of the powers to remove the Judge of the *al-mazalim* court, this would be in case the judge is litigating a lawsuit raised against the Khalifah, his assistants or the chief judge. This is according to the Shariah rule that states: "the means that leads to haram is itself haram." If the Khalifah is given power to dismiss the judge of the *mazalim* court in this case, then this would influence the verdict of the judge, and accordingly obstruct the divine rule, a matter which is haram. Giving the Khalifah the power of dismissing the judge of *mazalim* in this case is thus a means to haram, (particularly it is enough for his rule to apply if the influence on the verdict was most likely rather than certainly to take place) All this does not make sense. Therefore, the task of dismissing the judge of *mazalim* in this case is left to the mahkamat al-mazalim. In other than this case the rule remains as usual, i.e. the right of appointing and dismissing the judge of *mazalim* is for the Khalifah.

As for the directors of the State departments, the Messenger of Allah (صلى الله عليه وآله وسلم) appointed secretaries for the various departments of the State. They were considered to be directors of those departments. He (صلى الله عليه وآله وسلم) appointed Al-Muayqeeb b. Abi Fatimah Al-Dusi in charge of his official seal and the booty. He (صلى الله عليه وآله وسلم) appointed Hudhayfah b. Al Yaman to assess the harvest of Al-Hijaz, and Zubayr b. Al-awwam to record the funds of the "Sadaqah".

He (صلى الله عليه وآله وسلم) appointed Al-Mughira b. Shu'ba in charge of registering the debts and various transactions, and so on.

As for the army commanders and chief commanders, the Messenger of Allah (صلى الله عليه وآله وسلم) appointed Hamza b. 'Abd al-Muttalib as commander of an army of thirty riders to confront Quraish on the seashore; and he appointed Muhummad b. 'Ubayda b. Al-Harith at the head of sixty fighters and instructed him to confront Quraish in the Wadi of Rabigh. He (صلى الله عليه وآله وسلم) also appointed Sa'd b. Abi Waqqas at the head of an expedition numbering twenty riders and dispatched him towards Makkah.

Therefore it can be seen that he (صلى الله عليه وآله وسلم) used to appoint the army commanders, and this proves that it is the Khalifah who appoints the commanders and the army chiefs of staff.

All those occupying these posts were answerable to Allah's Messenger (صلى الله عليه وآله وسلم) and to nobody else, and this indicates that the judges,

directors of departments, army commanders, chiefs of staff and various senior officials are answerable to none but the Khalifah, and that they are not answerable to the Council of the Ummah. Only the delegated assistants, the Walis and the amils are responsible before the Council of the Ummah because they are rulers. None other than these are responsible before the Council; rather everyone else is obliged to report back to the Khalifah alone.

As for section "F", the State budget in terms of the revenues and the expenditures is controlled by the Shariah rules. Not a single penny is levied except according to a divine rule, nor is any single penny spent except according to a divine rule. However the details of the expenditure or what is known as the budget sections is left to the Khalifah according to his *ijtihad*, as are the details of the revenues. It is the Khalifah, for instance, who decides the amount of the Kharaj of land, and the Jizya as well as any other levies and revenues.

It is the Khalifah who decides the expenditures allotted for the roadwork, hospitals and other types of expenditure. All such matters are left to the Khalifah, and he decides them according to his own *ijtihad* and opinion.

This is because the Messenger of Allah (صلى الله عليه وآله وسلم) used to receive the revenues from the amils, and spend them. It was he (صلى الله عليه وآله وسلم) who authorized the *Walis* on some occasions to receive funds and spend them; this was the case when he (صلى الله عليه وآله وسلم) appointed Muadh over Yemen. Subsequently the *Khulafaa'* Rashideen continued to do the same. Each one of them collected the revenues and spent them according to his opinion and *ijtihad* in his capacity as Khalifah. None of the *Sahabah* ever disapproved, and nobody ever spent a single penny without the Khalifah's consent. When 'Umar appointed Muawiya as *Wali*, he gave him a general *wilayah* whereby he had powers to collect and spend the funds. All this proves that the different sections of the budget are decided by the Khalifah or anyone acting on his behalf.

These are the detailed evidences regarding the Khalifah's mandatory powers, and these are confirmed by the Hadith narrated by Ahmad and Al-Bukhari from Abdullah b "Umar who reported that he heard the Messenger of Allah (صلى الله عليه وآله وسلم) say:

"The Imam is a guardian, and he is responsible for his subjects." [Bukhari, Sahih, #893]

This means that all the matters related to the management of the subject's affairs is the responsibility of the Khalifah, and he reserves the right to delegate anyone with whatever task, however he deems fit, with analogy to *wakala* (representation).

The Khalifah is restricted in adoption (enacting of laws) by the divine rules

The Khalifah is restricted by the divine rules in his powers of adoption. He is thus forbidden from adopting a rule that has not been extracted from the divine evidences. He is also obliged to restrict himself to the rules he has adopted, and to the method of *ijtihad* (extracting rules) he has committed himself to. Therefore he is forbidden from adopting a rule that has been extracted by a method that is contrary to the one he had adopted, or from issuing an order that contradicts the rules which he has adopted. The Khalifah is thus restricted with two matters:

The evidences for the first matter, i.e. the Khalifah is restricted regarding the adoption of the divine rules, are:

1. Allah (سبحانه وتعالى) has obliged every Muslim, including the Khalifah to conduct his actions according to the divine rules. Allah (سبحانه وتعالى) says:

فلا وربك لا يؤمنون حتى يحكموك فيما شجر بينهم ثم لا يجدوا في
أنفسهم حرجا مما قضيت

"But no, by your lord, they will not believe (in the truth) until they make you judge of what is in dispute between them." [TMQ 4-65]

Conducting actions according to the divine rules obliges the Muslim to adopt a specific rule when understanding of the Legislator's speech varies, i.e. when understanding the meaning of the Legislator's speech varies. So adopting a specific rule from amongst various rules becomes obligatory upon the Muslim when he wants to carry out an action, i.e. when he wants to implement the rule. This is also obligatory upon the Khalifah, when he performs his duty, which is the ruling.

2. The content of the text of the bayah which the Khalifah is given obliges him to abide by the Islamic Shariah, as it is a bayah on the Book and the Sunnah. He therefore is forbidden from violating it and may even commit an act of disbelief if he did so with conviction. If he violated the Shariah without conviction he would be considered disobedient, a wrongdoer and a rebel.

3. The Khalifah is appointed to implement the Sharia, therefore he is forbidden to refer to anything other than Sharia in ruling the Muslims. This is because Sharia has made this decisively unlawful, to the point where belief is compromised for anyone who rules by other than Islam, and this is a matter which carries decisive connotations. This means that the Khalifah is restricted in his adoption of the rules, i.e. in his enacting of laws, solely by the divine rules. If he enacts any law from other than Sharia, he would be committing an act of disbelief if he did so with conviction, and an act of disobedience, wrongdoing and rebellion if he did not believe in it.

As for the second matter, the Khalifah is restricted to the rules that he adopts, and to the method of deduction he commits himself to. The evidence for this is that the divine rule that the Khalifah executes is the divine rule that is upon his neck and not on anybody else. In other words it is the divine (Shariah) rule that he adopted to conduct his affairs and not just any divine rule. This means that if the Khalifah extracted a rule or imitated in a rule, this divine rule would become Allah's rule on his neck. He would be restricted also in adopting this rule for all the Muslims, and forbidden from adopting any other rule, for another rule would not be Allah's rule upon his neck, and therefore it would not be a divine (Shariah) rule for him, and accordingly it would not be a divine (Shariah) rule for the Muslims. Therefore he is restricted in the orders which he decrees for the subjects by the divine (Shariah) rules that he has adopted. He is forbidden from issuing an order that conflicts with what he has adopted in terms of divine (Shariah) rules. In the case he did so, it would be as if he issued an order contrary to the divine (Shariah) rule, hence he is forbidden from issuing an order conflicting with what he adopts in terms of divine (Shariah) rules.

The understanding of the divine (Shariah) rule also varies according to the method of "Istinbat" (extraction). If the Khalifah considers that the '*Illah* (effective legal cause) of the ruling is considered a divine cause if taken from a divine (Shariah) text, and he does not consider the interest (*maslaha*) as a divine cause, nor consider the *Masalih mursala* (unrestricted interests) as being a divine (Shariah) evidence, then he would have defined the method of *istinbat* for himself. Accordingly, he must restrict himself to it, and it would be wrong for him to adopt a rule that had its evidence as "Masalih Mursala", or to use an analogy (*qiyas*) based on an '*illah* (cause) that was not extracted from a divine (Shariah) text. For such a rule would not be considered a divine Shariah rule upon his neck, because he does not consider its source as a divine (Shariah) evidence, therefore it would not be a divine Shariah rule in his view. And since such a rule is not considered a divine

rule for the Khalifah, it would also not be a divine rule for the Muslims. This would be as if the Khalifah adopted a rule alien to the Shariah and this is forbidden. If the Khalifah is a "Muqallid" (imitator) or a *Mujtahid fi'l-Mas'ala* (Jurisprudent in a single matter), and has no specific method of *Istinbat*, in this case, he is allowed to adopt any divine (Shariah) rule whatever its evidence, as long as he has a probable evidence, and he would not be restricted by any method in adopting the rules. He is only restricted when he issues orders, not to issue them except in accordance with the rules he has adopted.

The Khilafah State is a human State not a theological State

The Islamic State is the Khilafah. It is the supreme leadership over all the Muslims worldwide, so if a Khalifah was given a legitimate bayah in any Muslim country, and Khilafah was established, then it is forbidden upon Muslims worldwide to establish another Khilafah. This is due to the saying of the Messenger (صلى الله عليه وآله وسلم):

"If bayah was taken to two Khalifahs, then kill the latter of them." [Muslim, Sahih, #1853]

Khilafah is established for implementing the rules of the Islamic Sharia using the concepts that Islam has brought and the rules that it has legislated; and also to convey the Islamic Message to the world. The message is conveyed by introducing Islam to the people and calling on them to embrace it and performing Jihad in the way of Allah. Khilafah is also known as Imamah or Imaratul-Mu'mineen (leadership of the believers). It is a temporal post and not a post related to the hereafter. The Khilafah exists to implement Islam on people and to spread it among them. It is definitely different to the Prophethood.

The Prophethood is a theological position, which Allah (سبحانه وتعالى) gives to whomever He wishes. The Khilafah on the other hand is a human post whereby the Muslims give their bayah to whomever they wish, and appoint whomever they like over them as Khalifah from among the Muslims. Our Messenger Muhammad (صلى الله عليه وآله وسلم) was a ruler who implemented the Shariah which he received from Allah (سبحانه وتعالى).

So he (صلى الله عليه وآله وسلم) held the Prophethood and the Messengership and at the same time assuming the post of presiding over the Muslims in implementing the rules of Islam. Allah (سبحانه وتعالى) thus commanded him to rule as well as to convey the Message.

He (سبحانه وتعالى) ordered him (صلى الله عليه وآله وسلم): "And judge between them by that which Allah has revealed" [TMQ 5:49]

He (سبحانه وتعالى) also says:

إنا أنزلنا إليك الكتاب بالحق لتحكم بين الناس بما أراك الله

"We have sent down to you the Book in truth so that you judge between people by that which Allah has shown you" [TMQ 4:105]

Allah (سبحانه وتعالى) also says:

يا أيها الرسول بلغ ما أنزل إليك من ربك

"O Messenger! Proclaim the (message) which has been sent to you from your Lord" [TMQ 5:67]

وأوحى إلي هذا القرآن لأنذركم به ومن بلغ إنكم لتشهدون أن مع الله آلهة أخرى قل لا أشهد قل إنما هو إله واحد وإنني بريء مما تشركون

"This Qur'an has been revealed to me by inspiration so that I may warn you and all whom it reaches." [TMQ 6:19]

يا أيها ال قم فأندر مدثر

"O you wrapped up. Arise and deliver warning." [TMQ 74:1, 2]

Thus, the Messenger (صلى الله عليه وآله وسلم) held two posts: the post of Prophethood and conveyor of the Message, and the post of the leader of the Muslims in the worldly life for implementing the Shariah of Allah revealed to him.

However, the Khilafah after the Messenger of Allah (صلى الله عليه وآله وسلم) was held by humans, who were not Messengers. It is thus possible for the *khulafa'* as humans to make mistakes, being absent minded, being forgetful as well as committing a sin and other things. This is because they are humans, so they are not infallible, for they are not Prophet or messengers. The Messenger of Allah (صلى الله عليه وآله وسلم) has informed us that the Imam may make a mistake and he informed us that the Imam may do things which people hate and

curse him for, like oppression, disobedience and other things. He also informed us that open Kufr might appear from the Imam. Muslim reported on the authority of Abu Huraira that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“Verily the Imam is but a shield from behind which the people fight and with which they protect themselves. So if he ordered us to observe the taqwa of Allah and he was just he would have equal to these (actions) in reward and if he ordered other than that it would be against him equal to that.” [Bukhari, Sahih, #2957]

This means that it is possible that the Imam may command with other than the fear of Allah. Muslim also narrated from 'Abdullah (ibn Mas'ud) who said the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“There would be after me selfishness and matters which you hate.” They said: ‘O Messenger of Allah, how do you order the one from us who would witness that?’ He (صلى الله عليه وآله وسلم) said: “You should offer the right due upon you, and you ask from Allah the thing which is due to you.” [Bukhari, Sahih, #7052]

Bukhari narrated on the authority of Junada b. Abi Umayyah who said: “We went to ‘Ubadah b. al-Samit when he was sick and we said may Allah (سبحانه وتعالى) guide you. Inform us of a Hadith from the Messenger of Allah (صلى الله عليه وآله وسلم) so Allah may benefit you from it. He said:

“The Messenger of Allah (صلى الله عليه وآله وسلم) called upon us and we gave him the bayah, and he said of that which he had taken from us that we should give him the pledge to listen and obey, in what we like and dislike, in our hardship and ease, and that we should not dispute his authority over the people unless we saw open Kufr upon which we had a proof from Allah.” [Bukhari, Sahih, #7055]

Aisha narrates that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“Avert the punishments from the Muslims as much as you can, so if the accused has any way out let him go free, because it is better for the Imam to make a mistake in forgiving than to make a mistake in imposing the punishment.” Narrated [Tirmidhi, Sunan, #1424]

These Ahadith clearly make the point that it is possible for the Imam to make a mistake, forget or disobey. Despite this, the Messenger of Allah (صلى الله عليه وآله وسلم) has ordered obedience to him as long as he governs by Islam and no

open Kufr occurs from him and he does not command with sin. Therefore, the *Khulafa'* who came after the Messenger of Allah (صلى الله عليه وآله وسلم) are humans, who do both right and wrong, and they are not infallible, i.e. they are not Prophet. Therefore it is incorrect to say that the Khilafah is a theological state. It is rather a human State, in which Muslims give bayah to a Khalifah for implementing the rules of Islamic Shariah.

The time term of the Khalifah:

The time term of the Khalifah in office is not determined by a certain period. As long as the Khalifah abides by the Sharia, executes its laws and is able to perform the duties of the State and the responsibilities of the Khilafah, he remains in office. This is because the texts concerning the bayah came as undefined (*mutlaq*) and were not restricted to any specific period of time. Anas b. Malik reported that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"Do hear and obey, even if you were ruled by an Abyssinian slave, whose hair is like the raisin". [Bukhari, *Sahih*, #7142]

In another narration He (صلى الله عليه وآله وسلم) said:

"...as long as he leads you by the Book of Allah".

Furthermore, all the *Khulafa Rashideen* were given an undefined (*mutlaq*) bayah which is the one mentioned in the *Ahadiith*. They were not of a limited period (in office). Each one of them assumed the post of Khilafah until he died; and this represents a general consensus from the *Sahabah (ra)*, confirming that the Khilafah is not of a limited term of office but is unrestricted. Thus if a Khalifah is given a bayah, he remains in office until he dies.

However, if the Khalifah underwent a change that made him unfit for the post, or necessitated his removal, his term would be terminated and he would be removed. However, this cannot be interpreted as a limitation to his Khilafah term, but merely to indicate that a breach of the Khilafah's conditions had occurred. For the wording of the bayah, confirmed in the Shariah texts and the general consensus of the *Sahabah* makes the Khilafah of an unlimited term of office. The term of office of the Khalifah is rather restricted in terms of the Khalifah's undertaking of what he was given the bayah for, i.e. to rule by the Book and the Sunnah and execute their Laws. Thus if it were that he did not uphold the Sharia or did not implement it, then he must be removed.

The removal of the Khalifah:

If the Khalifah lost any of the seven contractual conditions, then he is not legally allowed to continue as a Khalifah, he must be removed.

The decision of his removal is solely in the hand of the *Mahkamat al-Mazalim*, for it is the one that decides whether the Khalifah has lost any of the contracting conditions or not. This is because any matter for which the Khalifah has to be removed, or for which his removal becomes necessary, is known as a 'Mazlimah' (an act of injustice) and it should be removed. The matter, however, should be investigated and evidence provided as the 'mazlima must be proved before a judge. The court of unjust acts (*mahkamat al-Mazalim*) is the body which rules over any complaints (*mudhalim*) received, and its judge is the person entitled to prove its occurrence and to decide upon it. Therefore, *mahkamat ul-mazalim* is the body that decides whether or not the Khalifah lost the contracting conditions, and it is the one who decides the removal of the Khalifah. However, if such a situation did arise and, as a result, the Khalifah stepped down, this would be the end of the matter. If, however, the Muslims thought that he should be removed and the Khalifah disputed with them, the matter would be referred to the judiciary to be settled, for Allah (سبحانه وتعالى) says:

"If you dispute about any matter, refer it to Allah and His Messenger" [TMQ 4: 59]

In other words, if the Ummah disputed with those in authority, this dispute would be between the ruler and the Ummah. Referring the dispute to Allah and the Messenger, means referring it to the judiciary, in other words to the court of unjust acts.

The time limit given to the Muslims to appoint a Khalifah

The time limit allowed for the Muslims to appoint a Khalifah is three days including their nights. It is forbidden for a Muslim to spend more than three nights without having a bayah on his neck. As for allowing a maximum of three nights, this is because appointing of a Khalifah becomes compulsory from the very moment the former Khalifah dies or is removed. However, it is allowed to delay the appointment as long as the Muslims are involved with the task at hand for three days including their nights. If the limit exceeds three nights and a Khalifah is not appointed by that time the matter should be examined: If the Muslims were involved in the appointment of a Khalifah and failed to do so within three nights for compelling reasons beyond their control

and ability, then the sin would fall from their necks, for they were endeavouring in their task to perform this duty and were compelled against their will to delay the implementation of that duty. Ibn Hibban and Ibn Majah narrated from Ibn Abbas who reported that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"Allah had forgiven my Ummah for the mistake and forgetfulness and that which they were compelled of". [al-Nawawi, *al-Majmu' Sharh al-Muhadhdhab*, vol.8, p.450]

But if they were not involved in the task they would all be sinful until such time that a Khalifah was appointed, and only then would the sin fall from their necks. As for the sin they had committed by neglecting the duty of appointing a Khalifah, this would not fall from them, rather it remains, and Allah (سبحانه وتعالى) would punish them as he would punish any sin committed by a Muslim for not performing a duty.

As for the obligation of the immediate involvement in the bayah of the Khalifah once the Khilafah post becomes vacant, this is because the Sahabah addressed this matter in the hall of Bani Sai'dah after the death of the Messenger (صلى الله عليه وآله وسلم), on the same day of his death and before his burial. The contracting bayah of Abu Bakr was concluded on the same day of his death. On the second day, the people were gathered in the masjid to give the bayah of obedience to Abu Bakr.

As for the fact that the maximum time limit allowed for the Muslims to appoint a Khalifah is three days including their nights, its evidence is that when 'Umar felt that his death was imminent he delegated the people of the Shura to appoint a Khalifah giving them a time limit of three days and instructing them to kill anyone who disagreed with the group once the three days had lapsed. He assigned the execution of such instruction, i.e. killing the one who might disagree, to fifty people from the Muslims despite the fact that the group was formed of the Shura people and the senior Sahabah. This took place in the presence of the Sahabah and no one objected or condemned such instruction. This became a general consensus of the Sahabah stating that it is forbidden for Muslims to remain without a Khalifah for more than three days including their nights and the consensus of the Sahabah is Sharia evidence just like the Qur'an and the Sunnah.

Al-Bukhari reported from Al-Miswar ibn Makhramah that he said: "Abd al-Rahman knocked at my door after a part of the night passed till I woke up. He

said, "I see you have been sleeping. By Allah, I did not enjoy much sleep in these three..." (i.e. the three nights)." [Bukhari, *Sahih*, #7207].

Once the people prayed fajr, the bayah was concluded to 'Uthman.

So, it is obliged upon Muslims once the post of the Khalifah becomes vacant, to engage in preparing the bayah for the next Khalifah, and to complete it within three days. If they however did not engage in the bayah of the Khalifah, the Khilafah was removed and they remained silent about it, then they are sinful from the moment the Khilafah was removed and for the period they remained silent about it. This is the case today, where Muslims are sinful because they did not establish the Khilafah from the moment it was eliminated on 28 Rajab 1342 H until they establish it. No one would be free of that sin except those who were engaged in the serious work for establishing it within a sincere truthful group. In that case he would relieve himself of the sin. This sin is great as explained in the hadith of the Messenger of Allah (صلى الله عليه وآله وسلم) :

"Whoever passed away without having a bayah on his neck he would have died the death of jahiliyyah." [Bukhari, *Sahih*, #7054 and Muslim, *Sahih*, #4767]

This indicates the greatness of the sin.

The delegated assistant (Mu'awin at-Tafwid)

The assistants are the *wazirs* whom the Khalifah appoints to assist him in discharging the tasks and responsibilities of the Khilafah. There are numerous tasks in the Khilafah, especially when the State is growing and expanding, and these would be a heavy burden for the Khalifah alone. Hence he needs people to help him in carrying this burden and discharging his responsibilities.

It is invalid to call them *wazirs* without restriction, otherwise the meaning of *wazir* in Islam will be confused with its meaning in the current man made systems based on the secular, capitalist democratic basis, or other systems we observe today.

The delegate assistant or *mu'awin at-tafwid* is the *wazir* appointed by the Khalifah to carry with him the responsibility of ruling and authority. So, the Khalifah delegates to him the discharge of the affairs according to his own opinion and to execute them according to his own *ijtihad*, in accordance with the divine rules. Thus the Khalifah delegates to him general examination of the affairs and general deputyship.

Al-Hakim and at-Tirmidhi reported from Abi Sa'id al-Khudri that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“My two ministers (*wazirs*) from the heavens are Jibra'il and Mika'il and my two ministers on the earth are Abu Bakr and 'Umar.” [Al-Hakim, *al-Mustadrak*, vol.1, p.10, #3046 and Tirmidhi, *Sunan*, #3680]

The word 'wazir' in the Hadith means the helper and the assistant, which is the linguistic meaning. It has been used in the Qur'an with such a meaning when Allah (سبحانه وتعالى) says:

واجعل لي وزيراً

'Give me a minister from my family.' [TMQ 20:29].

It also means a helper and assistant. The word *wazir* in the Hadith is unrestricted (*mutlaq*) which includes any help or assistance in any matter. Therefore he can assist the Khalifah in the functions and the tasks of the

Khilafah. The Hadith of Abi Sa'id al-Khudri is not specific to assistance in the matter of ruling, because Jibra'il and Mika'il, the two wazirs of the Messenger of Allah (صلى الله عليه وآله وسلم) from heaven, have no relationship in helping him in the responsibilities and functions of ruling. Therefore the word wazirai (my two wazirs) in the *hadith* does not indicate other than the linguistic meaning, which is my two assistants. It is also understood from the hadith that it is allowed to have more than one assistant.

Though Abu Bakr and 'Umar did not appear to have carried the task of ruling along with the Messenger of Allah (صلى الله عليه وآله وسلم), appointing them as two wazirs to himself gives them the mandatory powers of assisting him in every matter without restriction, including the matters and tasks of ruling. After Abu Bakr became the Khalifah, he appointed 'Umar b. al-Khattab as an assistant to him and his assistance was very evident. Once 'Umar held the post of the Khalifah, 'Uthman and 'Ali were 'Umar's assistants, but they did not appear to carry out any role of assistance to 'Umar in the matters of ruling. Their situation was similar to that of Abu Bakr and 'Umar with the Messenger of Allah (صلى الله عليه وآله وسلم). At the time of 'Uthman, 'Ali and Marwan b. al-Hakam were his two assistants.

However 'Ali was unhappy about some affairs, so he remained distant. However, Marwan ibn Al-Hakam quite evidently assisted 'Uthman in the tasks of ruling.

If the delegate assistant was honest, he would be of great advantage to the Khalifah. He would remind him of everything good and help him in its execution. It was narrated from Aisha (ra) that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“If Allah wished something good to the *amir* he would make for him an honest wazir. When he forgets something, he would remind him, and if he remembered it he would help him in it. If Allah wished to him something else, he would make for him a bad wazir. When he forgets something, he would not remind him, and if he remembered it he would not help him in it.” [Abu Dawud, *Sunan*, #2932] It was narrated by Ahmad [in the *Musnad*]. Al-Nawawi said its *isnad* is good (*jayyid*) and Al-Bazzar narrated through his *isnad* regarding which Al-Haythami said: “its transmitters are all *sahih*”.

By examining the work of the assistant at the time of the Messenger (صلى الله عليه وآله وسلم) and the time of the *khulafa' al-rashidun*, we find the assistant might be assigned to specific issues, where he is entitled of their

general examination. He might also be appointed to have general examination in all the issues. He can also be appointed in a (certain) place and has the task of general examination, as well as in various places with a task of general examination. It has been narrated by al-Bukhari and Muslim through Abu Hurayrah, he said:

“The Messenger of Allah (صلى الله عليه وآله وسلم) sent ‘Umar as responsible for sadaqah.” [Bukhari, Sahih, #1468 and Muslim, Sahih, #2274]

Ibn Khuzaymah and Ibn Hibban reported:

“When the Messenger of Allah (صلى الله عليه وآله وسلم) returned back from the umrah of Ji’ranah, he sent Abu Bakr responsible for hajj.” [Al-Nasa’i, Sunan, #2993]

This means Abu Bakr and ‘Umar (ra), the two assistants of the Messenger of Allah (صلى الله عليه وآله وسلم), were charged with general examination in specific tasks at the time of the Messenger of Allah (صلى الله عليه وآله وسلم), though they were two assistants (wazirs) that were appointed with general examination and deputyship, as is required by the ministry of deputyship. This was the case of ‘Ali and ‘Uthman at the time of ‘Umar. Even at the time of Abu Bakr, the assistance of ‘Umar to Abu Bakr was evident in the general examination and deputyship, to the point that some of the Sahabah said to Abu Bakr, “We do not know who the Khalifah is? Is it ‘Umar or you?” Yet, Abu Bakr appointed ‘Umar in a post of judiciary in some periods, as it is reported by al-Bayhaqi through a narration which was corroborated by al-Hafiz [Ibn Hajar al-‘Asqalani].

Thereupon, it is understood from the Seerah of the Messenger (صلى الله عليه وآله وسلم) and the *khulafa’ Rashidun* after him that the assistant is entrusted with the general examination and deputyship. However, it is allowed that the assistant is designated to a specific place or task, as the Prophet (صلى الله عليه وآله وسلم) did with Abu Bakr and ‘Umar, and as Abu Bakr did with ‘Umar. This is like appointing an assistant to follow up the northern regions whilst appointing another to follow up the southern regions of the Khalifah state. The Khalifah is allowed also to put the first assistant in the position of the second and the second in the position of the first. He can direct one assistant to a specific task, and another to a different task, anyway he deems fit to help the Khalifah. In such cases an assistant does not require a new designation; he needs only to be transferred from one task to another. This is because he is entrusted originally with the general examination and deputyship, and all of

these tasks are within his appointment as an assistant. The assistant differs in this regard from the governor (*wali*), where the governor is entrusted with the general examination in one place without being transferred from it. In case he is transferred he would rather need new appointment, because the new place is not included in the first appointment. However, the assistant is entrusted with the general examination and deputyship, so he is allowed to be transferred from one place to another without the need of new deputyship, since he is in origin entrusted with the general examination and deputyship in all the tasks.

It is understood from all of this that the Khalifah appoints his assistant deputyship in all the regions of the state, with the general examination of all the tasks. However, he is allowed to charge him with a specific task, such as responsibility for the eastern districts, and another for the western districts, and so on. The importance of such an arrangement is evident in the case of having more than one delegated assistant, so their tasks would not conflict.

Since, the Khalifah will need more than one deputy assistant, particularly because of the vast size of the state, allowing each one of them to conduct tasks all over the state would create problems in discharging their tasks. This is due to the possibility of interference that results from the general examination and deputyship, which each one of them has.

Therefore, we adopt:

- In terms of appointment: the assistant is entrusted with the general examination and deputyship, all over the state.
- In terms of action: he is charged with a task in a part of the state. This means the Khilafah is divided into states (*wilayaat*) among the delegated assistants. One assistant would help in the east, while the other in the west, a third in the north, and so on.
- In terms of transference: the assistant is transferred from one place to another and from one task to another without the need of new deputyship. He is rather transferred based on his first deputyship, for the origin of his deputyship is being a delegated assistant that covers all tasks.

The conditions of the delegated assistant:

The delegated assistant should meet the conditions as those required for the Khalifah's post, i.e. to be male, free, Muslim, mature, sane and just. In addition

to this, the assistant should be from the people of competence in what is assigned to him in terms of duties delegated to him.

Evidences of these conditions are the same as those of the conditions of the Khalifah post because the work of the delegated assistant is part of ruling; therefore he should be male, for the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“People who appoint a woman to run their affairs shall never succeed,” narrated by al-Bukhari on the authority of Abu Bakr. [Bukhari, *Sahih*. #4425].

He must also be free, for the slave does not have authority over his own affairs, thus he cannot run other people's affairs. He should also be mature, for the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“Three types of people are exempted from accountability, the one who sleeps until he wakes up, a child until he reaches the age of puberty and the insane until he is cured,” narrated by Abu Dawud [*Sunan*, #4358].

He also should be sane; for in the same Hadith, the Messenger of Allah (صلى الله عليه وآله وسلم) said: **“And the insane until he is cured.”**

And in another narration the Hadith States: **‘...about the one whose mind is overpowered until he regains his mind.’**

The Mu'awin should also be just, for Allah (سبحانه وتعالى) has made it a condition in a testimony.

He (سبحانه وتعالى) says: *“And seek the witness of two just men from amongst you”* - [TMQ; 65:2]

By greater reasoning the quality of being just is required from the assistant of the Khalifah. The Mu'awin should also be from the competent people in the duties of ruling. This is so as to enable him to assist the Khalifah in shouldering the tasks of the Khilafah and the responsibility of rule and authority.

The task of the delegated assistant

The task of the delegated assistant is to submit to the Khalifah all the work he intends to perform. He then reports to the Khalifah what he has executed in terms of decisions and what he has discharged in terms of management and appointment, so that the assistant would not become like the Khalifah in his

powers. Therefore, his job is to submit his review and then execute it, unless the Khalifah stops him from doing so.

The evidence for this is the nature of the Mu'awin who is s a deputy of the Khalifah in the issue designated to him. A deputy acts on behalf of the person who appointed him as his deputy. Thus he does not become independent from the Khalifah, but rather reviews with him every action just as 'Umar (ra) used to do when he was a wazir to Abu Bakr, whereby he would review with Abu Bakr what he intended to perform, then executed it accordingly. Reviewing with the Khalifah does not necessarily mean that he needs to ask his permission in every single detail, for this contradicts the nature of the Mu'awin. It rather means discussing the matter with him. These matters may be regarding the need of appointing a capable *wali* to one of the provinces, dealing with the complaints of the people regarding food shortage in the market, or any other affair of the state. He may also submit a matter to him, in the form of a presentation, which in the future may make it legitimate for the Mu'awin to carry out the matter with all its details, without the need for permission to act. However, if the Khalifah issues orders to stop the implementation of any matter, then it should not be executed. Hence, the presentation is simply the putting forward of a proposal and the consultation with the Khalifah about it; and it does not mean seeking permission to carry out the task. The Mu'awin can execute the task in question as long as the Khalifah does not stop him from doing so.

The Khalifah should review the actions of the Mu'awin and his management of affairs, in order to approve what is right and redress what is wrong. This is so because the management of the Ummah's affairs is commissioned to the Khalifah and discharged according to his own *ijtihad*. The evidence for this is the Hadith of responsibility over the subjects where the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“The Imam is a guardian and he is responsible over his subjects.” [Bukhari, *Sahih*. #893]

Therefore, the Khalifah is entitled to the task of government and he is responsible over his subjects, whereas the delegated Mu'awin is not responsible over the subjects, but he is merely responsible for his own actions. The responsibility over the subjects is confined to the Khalifah alone. Therefore, the Khalifah is obliged to review the actions of the Mu'awin and his performance in order to fulfil his duty towards his subjects. Aside from this, the delegated assistant can sometimes make errors, and the Khalifah has to

redress such errors, so he has to review all the assistant's actions. Therefore, it is for these two reasons: fulfilling responsibility towards his subjects and redressing potential errors made by the delegated assistant, that the Khalifah is obliged to review all of the Mu'awin's actions.

If the delegated assistant decided a matter and the Khalifah approved of it, the Mu'awin could then execute it without any alterations. If the Khalifah objected to what the Mu'awin executed, then in this case the matter would be examined. If the Mu'awin correctly carried out a verdict or if he spent some funds in the correct areas or in certain projects then the Mu'awin's opinion comes into force, for in principle, it is the Khalifah's opinion, and the Khalifah has no right to redress what the Mu'awin executed in terms of rules or funds he spent. However, if the Mu'awin had performed other types of actions, such as the appointment of a Wali or the preparation of an army, the Khalifah has the right to reverse the Mu'awin's decision and enforce his own opinion, thus nullifying the Mu'awin's actions. This is because the Khalifah has the right to redress his own actions so he has the right to redress the actions of his assistants.

This is the description of the way in which the Mu'awin performs his duties and the way in which the Khalifah reviews the Mu'awin's actions. It is derived from the actions the Khalifah is allowed to redress and the actions he is not allowed to redress, because the actions of the delegated Mu'awin are considered as actions of the Khalifah. As an explanation for this, it is allowed for the delegated assistant to rule by himself and to appoint rulers as it is allowed for the Khalifah. This is so, because the conditions of ruling have been conferred to him. He is also entitled to investigate the complaints or to deputize someone to do so, because the conditions of complaints have been verified for him.

He is also entitled to take charge of Jihad by himself, or appoint someone to do so, for the conditions of war have been verified for him. He is entitled to execute matters he has decided or to deputize someone to execute them on his behalf, for the conditions of voicing an opinion and management are conferred to him. However, this does not mean that whatever the Mu'awin performed can't be reversed by the Khalifah, as long as he had been briefed about it. It rather means that he possesses the same powers as the Khalifah, but he acts on his behalf and not independent of him. Therefore, the Khalifah is entitled to disagree with the Mu'awin and redress what has been executed or reverse any of his actions, bearing in mind that this applies only to the sort of actions which the Khalifah can redress of his own actions.

If the Mu'awin executed a rule correctly or spent funds in the right areas then the Khalifah's objections would be illegitimate and the Mu'awin's decision would be executed. This is because in principle, it is the Khalifah's own decision and in such cases he himself cannot reverse his decision or nullify what he himself had executed. Hence, he could not reverse his Mu'awin's action. However, if the Mu'awin had appointed a Wali, an administrator, an army commander or any other appointee or if he had laid down an economic strategy, a military plan or an industrial program or any similar undertaking, then the Khalifah is allowed to nullify it. This is because, although they are considered as being the Khalifah's opinions they fall under the category of decisions which the Khalifah is entitled to redress even when done by himself. Accordingly he could redress the Mu'awin's decisions. In conclusion it is allowed for the Khalifah to nullify the actions of the Mu'awin. The basic rule concerning this would be as follows: the Khalifah can redress any action undertaken by the Mu'awin as long as the action is from those which he can redress when undertaken by himself; whereas any action the Khalifah cannot redress of himself, he is not permitted to redress the same action if performed by his Mu'awin.

The delegated Mu'awin is not designated to any particular department of the administration system, like the education department, because those who take charge of the administration matters are civil servants and not rulers; whilst, the delegated assistant is a ruler, rather than a civil servant. His task is to take charge of the affairs and not to occupy the role of civil servants.

This is the reason why he does not run the administrative matters. However, it does not mean that he is prevented from carrying out any administrative action. Rather he is given general responsibility and is not confined to the administrative functions.

The appointment and dismissal of the delegate assistants:

The delegate assistant is appointed and dismissed by the command of the Khalifah. At the death of the Khalifah, the term of the delegate assistants expire, and they do not continue in their post except during the term of the provisional amir. After this period they require renewal of their appointment to this role by the new Khalifah so as continue in their task. They do not need a decision of dismissal because their authority ceases with the death of the Khalifah that took them as his assistants.

Executive assistants (mu'awin ut-tanfidih)

A Mu'awin-un-Tanfidih is the wazir whom the Khalifah appoints to be his assistant in the execution of matters, the following up and implementation of his orders. He is the intermediary between the Khalifah and the various State departments, the subjects and the foreign office. He conveys messages to and fro to the Khalifah. He is an assistant in executing orders and is not authorized over them or entrusted with them i.e. his role is one of execution and administrative and not ruling. His department is a tool used to execute what the Khalifah issues to the internal and foreign offices, ensuring submission to the Khalifah in all that comes to him through these offices. His department acts as an intermediary between the Khalifah and others, where it conveys to them on his behalf and conveys to him from them.

The executive assistant used to be called a secretary (al-Katib) at the time of the Messenger of Allah (صلى الله عليه وآله وسلم) and the Khulafaa' Rashidun. Then he became known as the keeper of the divan of letters or correspondence. Later it was decided that he be called the secretary of composition or the keeper of the divan of composition. Finally the jurists called him the executive assistant (*wazir al-tanfidih*).

The Khalifah is a ruler, whose duties include ruling, execution, and looking after people's affairs. The carrying out of ruling, execution and guardianship requires administrative actions. This necessitates the setting up of a special department that works closely with the Khalifah to manage tasks that help him carry out the Khalifah's duties. Thus an executive assistant is required, to be appointed by the Khalifah to run the administrative affairs but not the affairs of ruling. He does not perform any ruling duties like the delegated assistant. He is not allowed, for example, to appoint a Wali or an amil, nor to manage people's affairs. His duties are merely administrative, i.e. to execute the ruling orders and the administrative tasks issued by the Khalifah or the delegated assistant. This is why he is known as the executive assistant. Jurists used to call him 'wazir tanfidih' which simply means *Mu'awin al-Tanfidih*, on the basis that the word wazir is linguistically used to mean 'the assistant'. They said that this wazir is an intermediary between the Khalifah, the subjects and the Walis, who conveys the orders issued to him, executes his rules, informs the

Khalifah about the appointment of Walis, and about the preparation of task forces and armies stationed at the frontiers. He also conveys to the Khalifah whatever comes from these offices and informs him of all new matters that may arise so that he can implement the Khalifah's orders regarding them. This makes him an assistant in executing commands, not in taking charge over them, or entrusting him with them. He is similar to the head of the divan of the head of the state at the present time.

Since the executive assistant is linked directly to the Khalifah just like the delegated assistant, he is part of the Khalifah's entourage. His task requires contact with the ruler (Khalifah) and requires pursuance with the Khalifah and meeting with him in isolation at any time, day or night, a matter that disagrees with the conditions for a woman according to the divine rules. Therefore, the executive assistant has to be a man. In addition the executive assistant cannot be a disbeliever; he must be a Muslim, for he is part of the Khalifah's entourage. This is because Allah (سبحانه وتعالى) says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا بَطَانَةً مِّن دُونِكُمْ لَا يَأْلُونَكُمْ خَبَالًا وَدُّوا مَا
عَنِتُّمْ قَدْ بَدَتِ الْبَغْضَاءُ مِنْ أَفْوَاهِهِمْ وَمَا تُخْفِي صُدُورُهُمْ أَكْبَرُ قَدْ بَيَّنَّا
لَكُمُ الْآيَاتِ إِن كُنْتُمْ تَعْقِلُونَ

'O you who believe; do not take for intimates other than your own folk, who would spare no pains to ruin you; they love to hamper you. Hatred is revealed by (the utterance of) their mouths, but that which their breasts hide is greater.' [TMQ 3: 118]

The prohibition of taking a non-Muslim as part of the Khalifah's entourage is very clear in the verse. Therefore the executive assistant cannot be a Kafir but must be Muslim for he is directly connected to the Khalifah and not separate from him, just like the delegated assistant. The executive assistants can also number more than one according to the need and according to the work he communicates between the Khalifah and others.

As for the areas in which the *Mu'awin al-Tanfidh* acts as an intermediary between the Khalifah and others, these are four:

- 1) The international affairs, whether the Khalifah discharges them directly, or he appoints a foreign department that takes charge of them.
- 2) The army.

3) The state organizations other than the army.

4) Relations with the citizens.

These are the types of duties, which the executive assistant carries out. Since he is an intermediary between the Khalifah and others, he would be considered as a liaison that reports to and from the Khalifah. By acting as such, he follows up what is required of the State departments' action.

The Khalifah is the actual ruler. He is the one who deals with ruling, execution and the management of people's affairs by himself. Therefore he is in constant contact with the ruling apparatus, international affairs and the Ummah. He enacts laws, takes decisions, and carries out actions of caring, looks at the performance of the ruling apparatus, the obstacles it may face and its requirements. He is also informed of any demands, complaints and matters that come from the Ummah, and he follows up the international activities as well. Therefore, based on the nature of these actions, the Mu'awin at-tanfidih acts as an intermediary relating to them, i.e. he conveys messages to the Khalifah and in turn the Khalifah's orders to the Ummah. What is issued by the Khalifah to the different departments and what comes to him from them, needs following up and implementation, which is undertaken by the executive assistants who ensure its satisfactory execution. He would preside over the execution of the Khalifah's orders and the State departments and would not stop, unless the Khalifah specifically demanded so. In this case he is obliged to obey his orders because the Khalifah is the ruler and his order has to be implemented.

In regards to the matters related to the army and international relations, these are generally confidential and are specific to the Khalifah. Therefore the executive assistant does not follow up the execution of these matters nor does he pursue their execution, unless the Khalifah requests him to do so, in which case he will follow up only the matters which the Khalifah demanded and not any others.

In regards to the Ummah, matters of looking after her affairs, fulfilling her demands and removing unjust actions from her, are matters for the Khalifah to deal with and the one who is appointed as a deputy to him. They are not a mandate for the executive assistant, so he does not follow them up except for those issues which the Khalifah requests him to do so. His action in this regard is simply execution and not following up. All this depends on the

nature of the actions which the Khalifah carries out and accordingly the nature of the Mu'awin at-tanfidh actions.

Examples of the actions of the executive assistant at the time of the Messenger of Allah (صلى الله عليه وآله وسلم) and *khulafa' rashidun* (where this assistant was called secretary at that time) are as follows:

1. Examples of dealing with International relations:

- Al-Bukhari narrated the following from al-Muswar and Marwan regarding the Hodaybiyah treaty:

“So the Prophet (صلى الله عليه وآله وسلم) called the secretary (writer)...”

Abu Yusuf also narrated in the book of *Kharaj* saying:

“Muhammad ibn Ishaq and al-Kalbi informed me, some others added in the hadith saying: He said: Write (in the plural)...” without mentioning the name of the writer.

Ibn Kathir narrated:

“Ibn Ishaq said al-Zuhri said...then the Messenger of Allah (صلى الله عليه وآله وسلم) called upon 'Ali ibn Talib and said: **Write (singular)...**”

Abu 'Ubayd narrated it in the book of *al-Amwal* from ibn Abbas, where he said:

“....and he said to 'Ali: 'O 'Ali, write...”

Al-Hakim narrated from ibn 'Abbas and al-Zahabi authenticated and approved it, saying:

“.....O 'Ali, write...”

The text of this peace treaty is well known, and does not need mentioning here.

- The letter of the Messenger (صلى الله عليه وآله وسلم) to Heraclius, narrated by the jama'ah (of muhaddithin) excluding ibn Majah. The wording of the hadith as narrated by Al-Bukhari from ibn Abbas from Abu Sufyan:

“Bismillah ir-Rahman ir-Rahim, from Mohammad, the slave and Messenger of Allah (صلى الله عليه وآله وسلم) to Heraculus the leader of the Romans, peace is upon whoever follows the guidance. After which, I invite you to Islam. If you embrace Islam Allah will give you double the reward. If you turn away then you are responsible about the sin of the Arisiyeen (meaning the Romans). O you, people of the book, come forward to a fair word between us and you, so that we do not worship save Allah, we do not associate partners with Him, nor do we take each other as lords besides Allah. If they turned away say bear witness that we are Muslims.” [Bukhari, *Sahih*. #7]

- The letter of response from Hercules to the Messenger of Allah (صلى الله عليه وآله وسلم) has been narrated by Abu ‘Ubayd in the book *al-Amwal* from Bakr ibn Abdullah ibn Abdullah al-Muzni: “...And he wrote to the Messenger of Allah (صلى الله عليه وآله وسلم) that he is Muslim, and sent him some dinars (money). The Messenger of Allah (صلى الله عليه وآله وسلم) said when he read the letter: **‘He lies, the enemy of Allah, he is not Muslim, rather he is on Christianity.’**”

Al-Hafiz said in *al-Fath*, the hadith is an authentic narration but is disconnected (*mursal*) from Bakr.

- The letter written by the people of Minbaj to ‘Umar and his reply to them, where Abu Yusuf said in the book of *al-Kharaj*: “Abdul Malik ibn Jurayj told us from Amr ibn Shua’yb that the people of Minbaj – some people of war behind the sea – wrote to ‘Umar ibn al-Khattab (ra) saying: “Allow us to enter your country as traders and impose upon us the tenth of a tax.” He said, ‘Umar consulted with the companions regarding this, and they advised him to agree. Thus, they were the first people of war that paid the tenth.”

2. The army and some of its correspondence are:

- The letter of Abu Bakr to Khalid, in which he commands him to travel to Al-Sham. Abu Yusuf said in the book of *Al-Kharaj*: “Khalid wanted to take Al-Heerah as his centre. However the letter of Abu Bakr came to him in which he commanded him to travel to Al-Sham as a reinforcement for Abu Ubaydah and the Muslims...”

- The armies in Al-Sham wrote to ‘Umar asking him for support, and he wrote back to them. Ahmad has reported from narrators considered as sound narrators that Abu Hatim ibn Habban heard Sammak saying: “I heard Iyad al-Ash’ari say, “I attended al-Yarmuk when we were under five amirs: Abu ‘Ubaydah ibn al-Jarrah, Yazid ibn Abi Sufyan, Ibn Hasanag, Khalid ibn Al-

Waleed and Iyadh who was different to the narrator that spoke to Sammak. He said that 'Umar said, "If there is a matter of conflict, then seek the help of Abu Ubaydah." Sammak said: "So we wrote to him that death raged against us and we sought his support. He wrote to us replying, "I received your letter in which you seek my support. I direct you to the one who is of stronger support and whose soldiers are more ready. He is Allah ('azza wa jall), so seek His help, because Muhammad (صلى الله عليه وآله وسلم) was given victory at Badr with less than your army. Once my letter has reached you, fight against them and do not consult with me. So we fought against them and thus defeated them. We killed them for four farsakh."

- The army of Al-Sham wrote to 'Umar ibn Al-Khattab "When we meet the enemy and see them cover their weapons with silk we find terror in our hearts." 'Umar replied to them, "You do the same, so cover your weapons with silk", narrated by Ibn Taymiyyah in *Al-Fatawa*.

3. Some correspondence of the state's organizations other than the army.

- The letter of the Messenger (صلى الله عليه وآله وسلم) to Muadh regarding the tenth: Yahya ibn Adam narrated in the book of *Al-Kharaj* about ruling, he said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) wrote to Muadh in Yemen:

- "The tenth is due in whatever was irrigated with rain or with sizable water; and half of a tenth is due in whatever is irrigated with a bucket." Ash-Shi' has also narrated the like of it.

- The letter of the Messenger of Allah (صلى الله عليه وآله وسلم) to Al-Mundir ibn Sawa regarding the head tax (*jizyah*). Abi Yusuf mentioned in the book of *Al-Kharaj* from Abu 'Ubaydah, he said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) wrote to Al-Mundir ibn Sawa and stated: 'Whoever prayed our prayer, turned to our qiblah, ate our slaughtered meat, then he is a Muslim, and he is entitled to the protection of Allah and His Messenger. Whoever of the Magus accepts, then he is safe, and whoever rejects has to pay the *jizyah*'".

- The letter of Abu Bakr to Anas regarding the duty of *Sadaqah*, when he sent him to Bahrain. Al-Bukhari narrated from Anas "that Abu Bakr (ra) wrote to him regarding the duty of *Sadaqah* which Allah and His Messenger commanded..."

- The letter of 'Umar to Amr in the year of Ramada (famine), and the reply of Amr to him. Ibn Khuzaymah narrated in his *Sahih*, and Al-Hakim said it is sound according to the conditions of Muslim, and is by al-Bayhaqi in the *Sunan*, and Ibn Sa'd in the *Tabaqaat* from Zayd ibn Aslam from his father who said: "When the year of Ramadat took place, and the land of the Arabs suffered from drought, 'Umar ibn Al-Khattab wrote to Amr ibn Al-As. 'From Abdullah, *amir al-Mu'minin* to Amr ibn Al-As. By Allah you do not bother if you and the people on your side became fat at the time I and the people on my side became slim. Help us!' Amr replied, 'Peace is upon you. I am at your service; I am at your service. Camels are coming to you, where its first is with you and its last is with me; though I hope to find a way to carry the supplies by sea.'"

- The letter of Muhammad ibn Abu Bakr to 'Ali regarding the apostates, and his reply to him. Ibn Abi Sheba reported from Qabus ibn al-Mukhariq from his father that he said: "'Ali sent Mohammad ibn Abu Bakr as an amir to Egypt, and he wrote to him regarding some zendik (apostates). Some of them worshipped the sun and moon, and some of them worship other things whilst claiming that they are Muslim. Hence Ali ordered him to kill the one that claimed to be Muslim whilst worshipping other things and leave others to worship whatever they like."

4. Letters addressed directly to the citizens, some of which are as follows:

- The letter of the Messenger (صلى الله عليه وآله وسلم) to the people of Najran. It is narrated by Abu Dawud from Al-Suddi from ibn 'Abbas - where al-Mundhiry comments that al-Suddi directly hearing from al-'Abbas has some discussion regarding it – that Abu 'Ubayd narrated it in *Al-Amwal* from Abu Al-Malih Al-Hadhaly, which says at its end: "'Uthman ibn 'Affan and Mu'ayyib testified to that, and wrote". Abu Yusuf has narrated this in *Al-Kharaj*, and he mentions the scribe was Al-Mughirah ibn Abi Shu'bah. Then Abu Yusuf mentioned the letter of Abu Bakr to them, whose scripiter was Al-Mughirah, the letter of 'Umar and the scripiter who was Muayyib, the letter of 'Uthman to them and the scripiter who was his associate (mawla) Humran, and the letter of 'Ali and the scribe, Abdullah ibn Rafi'.

- The letter of the Messenger (صلى الله عليه وآله وسلم) to Tamim Al-Dari. Abu Yusuf narrated the following in *al-Kharaj*: "Tamim Al-Dary, who is Tamim ibn Aws, a man from Lakhm, said: 'O Messenger of Allah; I have neighbours from the Romans in Palestine. They have a village called Habra, and another one called aynoon. If Allah conquered Al-Sham for you, please grant those (two

villages) to me.' He (صلى الله عليه وآله وسلم) said: 'They are yours.' Tamim said: 'So write confirming this for me.'

He (صلى الله عليه وآله وسلم) wrote to him:

'*Bismillah al-Rahman al-Rahim*. This is a letter from Mohammad, the Messenger of Allah, to Tamim ibn Aws Al-Dari, that he has the village of Habra and the village of Bayt 'Aynun, all of its plains, mountains, water, arable land, Nabateans and cows, and to his offspring after him. No one would challenge him regarding his right over them, and nor would any one deviate from their right unjustly. Whoever did so and took anything from them he deserves the curse of Allah, the Angels and all mankind.' Ali wrote this."

When Abu Bakr took authority he wrote to them a letter regarding this matter that said:

"Bismillah ir Rahman ir Raheem. This is a letter from Abu Bakr, the trustee of the Messenger of Allah (صلى الله عليه وآله وسلم) that has been given authority in the land. He writes it to the Darys, that no one would undermine what they possess of the village of Habra and 'Aynoon. Whoever listens to and obeys Allah, must not undermine them in anything. My chief must set up two doors for them, and protect them from the corrupters."

The Khalifah has the right to appoint as many secretaries as he needs to carry out his correspondence. This even becomes obligatory if the duty cannot be performed without their appointment.

The authors of the seerah mentioned that the Messenger of Allah (صلى الله عليه) had about twenty scribes.

Al-Bukhari mentioned in his *Saheeh* that the Messenger of Allah (صلى الله عليه وآله وسلم) ordered Zayd ibn Thabit to learn the language of the Jews so as to read to the Messenger of Allah (صلى الله عليه وآله وسلم) when they wrote to him. So Zayd ibn Thabit learnt Hebrew in fifteen days. Ibn Ishaq narrated from Abdullah ibn Al-Zubayr that:

"The Messenger of Allah (صلى الله عليه وآله وسلم) dictated to Abdullah ibn Al-Arqam ibn Abd Yaghuth, and he used to reply to the kings on his behalf..." Al-Bayhaqi narrated from Abdullah ibn 'Umar (ra) that he said:

“A letter from a man came to the Prophet (صلى الله عليه وآله وسلم), so he said to Abdullah ibn Al-Arqam, “Reply on my behalf.” He wrote his reply and then read it to the Prophet (صلى الله عليه وآله وسلم).

He (صلى الله عليه وآله وسلم) said “You did what is right and proficient.” (May Allah give him success).

Muhammad ibn Sa'd reported from Ali ibn Muhammad Al-Mada'ini through his *isnads* that Muhammad ibn Maslamah was the one who once wrote a letter to a delegate, based on an order from the Messenger of Allah (صلى الله عليه وآله وسلم) and that Ali ibn Abi Talib was the one that used to write the treaties when the Messenger (صلى الله عليه وآله وسلم) made treaties, and write the terms of peace when he made peace. Muayqib ibn Abi Fatimah was responsible for his stamp. Al-Bukhari reported in the history through Muhammad ibn Bashari from his grandfather Muayqib that he said:

“The seal ring of the Messenger of Allah (صلى الله عليه وآله وسلم) was made of coloured iron, with silver on it, and it was with me; and Mu'ayqib was responsible for the stamp of the Messenger of Allah (صلى الله عليه وآله وسلم) ”.

The Governors (wulah)

The Wali (governor) is the person whom the Khalifah appoints as ruler and Amir over a Wilayah (province) in the Khilafah State.

The territories which the Islamic State rules over would be divided into provinces and each province would be known as a Wilayah. The Wilayah would in turn be divided into districts and each district would be known as Imalah. The person appointed over the Wilayah would be known as the Wali, or an amir, and the person appointed for the Imalah would be known as the amil or the *hakim* (ruler).

The 'Imalah is divided into administrative units, of which each is known as a metropolis (Qasabah), and the Qasabah is divided into smaller administrative units, each known as a quarter (Hayy). The leader of the Qasabah as well as the Hayy is known as a manager; and his work is administrative.

The Wali is therefore a ruler, for the Wilayah means the ruling. In *Al-Muhit* dictionary, it has been defined as being the "Imara" (leadership) and the "authority". Since they are rulers, then it is required that they fulfil the same conditions of the ruler. Thus the Wali must be male, free, Muslim, mature, sane and just, as well as competent in his task. He requires an appointment by the Khalifah or by whoever is appointed on the Khalifah's behalf. Therefore the Wali can only be appointed by the Khalifah. The origin of the Wilayah or the Imara, i.e. the Walis or the Amirs goes back to the actions of the Messenger of Allah (صلى الله عليه وآله وسلم). It has been confirmed that he (صلى الله عليه وآله وسلم) appointed Walis over the countries and that he gave them the right to rule over the provinces. He (صلى الله عليه وآله وسلم) appointed Muadh Ibn Jabal over Al-Janad, Ziyad Ibn Labid over Hadramawt and Abu Musa Al-Ash'ari over Zabeed and Aden.

The Messenger of Allah (صلى الله عليه وآله وسلم) used to select his Walis from among those who were fit to rule, and those who had knowledge and were known for their piety. He used to select them from among those who were experts in their job, and who would fill people's hearts with Iman and respect for the State. Suleiman IbnBurayda reported on the authority of his father that he said:

'Whenever the Messenger of Allah (صلى الله عليه وآله وسلم) appointed an Amir over an army or an expedition, he used to advise him to fear Allah and to be good to the Muslims who accompany him', as narrated by Muslim. Since the Wali is in fact an Amir over his Wilayah, the hadith would then apply to him as well. [Al-Bayhaqi, Sunan al-Kubra, vol.9, p.41]

As for the dismissal of the Wali, this would be up to the Khalifah, or if the majority of people in his Wilayah or their representatives showed discontent towards him. Therefore, we adopt that a wilayah council be elected from the people of the wilayah for two purposes. Firstly, to help the wali by conveying to him the reality of their wilayah for they are of its inhabitants and know better than him. So, he uses their information to perform his task properly. The second is to take if necessary the opinion of the council regarding the work of the wali. If the majority of the council complained of his performance the Khalifah would remove him. This is because the Messenger (صلى الله عليه وآله وسلم) removed Al-Alaa ibn Al-Hadrami, the amir of Bahrain, because the delegate of Abs Qays complained of him. The Khalifah also has the right to dismiss the wali without any reason. The Messenger of Allah (صلى الله عليه وآله وسلم) dismissed Muadh b. Jabal from Yemen without any reason.

He (صلى الله عليه وآله وسلم) removed Al-Ala' Ibn al-Hadrami, his *amil* over Bahrain, because the delegation of Abdu Qays complained about him. 'Umar b. Al-Khattab used to dismiss the Walis with or without reason. He dismissed Ziyad Ibnu Abi Sufyan without giving a reason, and he dismissed Saad Ibnu Abi Waqqas because people complained about him, and then said, 'I did not remove him because of incompetence or betrayal.' This proves that the Khalifah reserves the right to remove the Wali whenever he wishes whether or not the people living in his Wilayah filed a complaint against him.

There used to be two types of *Wilayah* in the early times: The *Wilayah* of *Salah* and the *Wilayah* of *Kharaj*. Therefore we find that history books use two terms in their reference to the *Wilayah* of Amirs: The first is the *Imara* over the *Salah* or the *kharaj* and the other is the *Imara* over the *Salah* and the *Kharaj*. In other words the Amir could either be appointed over both the *Salah* and the *Kharaj*, or over the *Salah* only or over the *kharaj* only. The word *Salah*, in the context of the *Wilayah* or the *Imara*, does not mean leading the people in their prayer only, but it means governing all their affairs except the funds. This is because the word *Salah* is used to mean ruling except for the levy of funds. Therefore, if the Wali had combined both the *Salah* and the *Kharaj*, his

Wilayah would then be general (Wilayah amma). If his Wilayah had been restricted to the Salah or the Kharaj, his Wilayah would then be specific (Wilayah Khassa). Either way, this would be left to the Khalifah's discretion as he reserves the right to restrict the Wilayah to the Kharaj, or to the judiciary, or to confine the Wilayah to other than the Kharaj, the judiciary and the army. He can decide what he deems fit for the running of the State or the Wilayah. This is because Shariah has not determined certain duties for the Wali, and it is not obligatory that he performs all the duties of ruling. However, it has determined that the Wali's or the Amir's duties be from that pertaining to ruling and authority, that he is the deputy of the Khalifah, and that he should be an Amir over a specific region.

All this is derived from the actions of the Messenger of Allah (صلى الله عليه وآله وسلم).

However, the Shariah obliges the Khalifah to appoint a Wali as either a general (amma) or a specific (Khassa) Wilayah according to his discretion. This is reflected in the actions of the Messenger of Allah (صلى الله عليه وآله وسلم). The Messenger of Allah (صلى الله عليه وآله وسلم) appointed Walis with general responsibilities (Wilayah 'ammah), such as when he appointed Amru b. Hazm over Yemen, and he appointed Walis with specific functions (Wilayah Khassah), such as the appointment of Ali b. Abi Talib over the judiciary in Yemen. It was mentioned in the Seerah of ibn Hisham that the Messenger of Allah (صلى الله عليه وآله وسلم) appointed Farwa b. Musayk over the tribes of Murad, Zubair and Midhaj. And he sent Khalid b. Sa'id b. Al-ass with him as Wali over the Sadaqah. It also mentioned that the Messenger of Allah (صلى الله عليه وآله وسلم) sent Ziyad b. Labeed al-Ansari as a Wali over Hadramawt and its Sadaqah. He also sent 'Ali b. Abi Talib to Najran to collect their Sadaqah and their Jizya. He also sent him, as a judge over Yemen, as reported by Al-Hakim. In the book of *al-Isti'ab* it is mentioned that the Messenger of Allah (صلى الله عليه وآله وسلم) sent Mu'adh b. Jabal to al-Janad to teach the people about the Qur'an, the laws of Islam and to judge between them. He authorised him as well to collect the Sadaqah from the amils in Yemen.

Though the Khalifah is allowed to appoint a wali with a general or specific wilayah, it is proved that at the time of weakness of the Abbasid Khulafaa, the general wilayah helped in the wilayaat ruling independently of the Khalifah, where the Khalifah became a mere symbol whose name was mentioned in the congregational duas and in whose name money was symbolically minted. Thus, granting general wilayah caused harm to the Islamic state.

Since it is allowed to appoint the wali with a general or a specific authority; and since the general authority of the wali might lead to harm and great danger to the state, we accordingly adopt giving the wali specific authority in areas that would make it difficult for the wali to separate from the state if his taqwa declines. From examination we find the areas that strengthen the wali are the army, judiciary and the funds. Thus, these areas must be separated from the wali's authority and be kept connected to the Khalifah like any other organisation in the Khalifah state i.e. these areas must remain under the jurisdiction of the Khalifah.

The Wali should not be transferred from one Wilayah to another; rather he should be relieved from one Wilayah and then reappointed in another. This was clear from the actions of the Messenger of Allah (صلى الله عليه وآله وسلم) where he used to remove the Walis. It has not been reported that he used to transfer a Wali from one place to another. Besides, the Wilayah is one of the types of contracts that are convened with explicit words. So within the contract of a Wilayah over a province or a country, the area over which the Wali is to govern must be determined, and he would have the mandate of ruling as long as he is not removed by the Khaleefah. If he were not removed from that area he would remain a Wali over it. However if he were transferred to another place this would not remove him from his first position and nor would it make him a Wali over the new place. This is because his removal from the first place requires clear words stating that he is relieved from the Wilayah there; and similarly his appointment over another region requires a new contract of appointment as a Wali specific to that place. This is why the Wali is not transferred from one place to another, but is relieved of his duties from one place and then given a new Wilayah over the new place.

The Khalifah should make inquiries about the actions of the Walis'

The Khalifah should inquire about the actions of the Wali and should monitor them closely. He should do this directly or appoint someone who would check their state of affairs and carry out inspections. The Mu'awin is also allowed to monitor the actions of the wulah in the wilayat that he helps the Khalifah in, and he should review his findings and decisions he took regarding them with the Khalifah, as has been explained in the task of the delegated assistant. Thus, the Khalifah would be aware of the states of the wulah, and following their situation. He should also meet with all of them or some of them from time to time and listen to the complaints of the subjects against them.

It has been confirmed that the Messenger of Allah (صلى الله عليه وآله وسلم) used to examine the Walis when appointing them, as he did with Muadh and Abu Musa. He used to explain to them how they should conduct their duties, as he did with amr b. Hazm. He also drew their attention to some important matters as he did with Aban b. Sa'id when he appointed him Wali over Bahrain and said to him:

"Look after 'Abd Qays and honour their leaders".

Likewise it has also been confirmed that he (صلى الله عليه وآله وسلم) used to hold the Walis accountable, inspect their situation and listen to news brought to him about them.

He (صلى الله عليه وآله وسلم) used to ask the Walis to account for the revenues and expenses used.

Al-Bukhari and Muslim narrated on the authority of Abu Humaid Al-Sa'idi who said: **The Messenger of Allah (صلى الله عليه وآله وسلم) appointed Ibn al-Utbiyya as 'amil in charge of Sadaqah of Banu Salim. When he returned back to the Prophet (صلى الله عليه وآله وسلم), he said: "This is for you and (this is a gift) that was presented to me." So the Messenger of Allah (صلى الله عليه وآله وسلم) said: "Why did you not remain in your father's and mother's home so that your gift comes to you if you said the truth." 'Umar (ra) used to closely monitor the Walis, and he appointed Muhammad Ibnu Maslamah to examine their state of affairs and inspect them. 'Umar used to gather the Walis during the Hajj season to review their performance and to listen to the complaints of the subjects about them, and he also used to discuss with them the affairs of the Wilayah's and ask about their own conditions. It has been reported that 'Umar once said to people around him: "Would you say that my duty would be fulfilled if I appointed over you the best from amongst you, and ordered him to be just?" They said, "Yes". He replied, "No. Not until I had checked his performance, and seen whether or not he did what I had ordered him to do." 'Umar was known to be strict when accounting the Walis and the amils. He would even remove some of them on a suspicion without conclusive evidence, and he even used to remove a Wali on the slightest doubt that did not even reach the level of suspicion. He was asked about this one day and he said, "It is easy to swap an Amir for another so as to amend the people's affairs." [Bukhari, Sahih. #6979]**

However, despite his strictness with them he gave them a free hand to undertake their duties and safeguarded their reputation in ruling. He used to

listen to them and consider their arguments. If he liked an argument he was not shy of showing his approval and conviction of it and of showering the amil with praise afterwards. One day news reached him about his amil over Homs Umayr Ibnu Saad who had said while over the pulpit of Homs, "Islam will remain strong as long as the authority is strong. And the strength of the authority does not come about with the killing by the sword or the lashing by the whip, but by judging with the truth and the upholding of justice." Upon hearing this 'Umar said, "I wish I had a man like Umayr Ibnu Saad to help me with the Muslims' affairs."

Jihad

Jihad is the peak of Islam and the fundamental method defined by Islam to convey the message of Islam to the world. Conveying the Islamic da'wah is considered the main function of the Islamic State after implementing the rules of Islam internally.

Jihad is the war undertaken for the sake of Allah (سبحانه وتعالى) to raise high His (سبحانه وتعالى) word. The undertaking of jihad requires an army, preparing and forming of its leaders, chiefs of staff, officers and soldiers. It also requires training programmes, supplies and ammunitions. The army also needs weapons, which needs industry. Therefore, industry is one of the necessities of the army and the necessities of jihad. This fact dictates that industry in all factories of the state must be built on the basis of the military industry.

Moreover, the stability of the internal situation strengthens the army in fighting. However, if the internal situation is not secure and stable, then this should preoccupy the army by preparing the ground before turning to jihad. Even if the army engaged jihad, and the internal situation behind it became unsettled, then this would weaken the power of the army which would affect it in continuing its fight.

The foreign affairs with other states are also linked to conveying the Islamic da'wah.

Therefore, these four departments, namely the army, the internal security, the industry and the foreign affairs can constitute one department headed by an amir appointed by the Khalifah, because it is linked to jihad.

However, it is allowed to make these departments separate from each other. Thus, the Khalifah appoints a manager for each one, and an amir to the army.

The Messenger of Allah (صلى الله عليه وآله وسلم) used to appoint leaders over the army during the expeditions without them having any relation to the industry, which the Messenger (صلى الله عليه وآله وسلم) used to commission to others. This also applies to the internal security in terms of police, patrols and dealing with the highway robbers and thieves. This is the case regarding the foreign affairs,

where the letters of the Messenger (صلى الله عليه وآله وسلم) to the kings and rulers at his time give this indication.

The disconnection between these departments through a manager for each one of them is proved by the following:

Firstly: The army

- The Messenger (صلى الله عليه وآله وسلم) sent Zayd ibn Haritha as an amir in Mu'tah, and he appointed the amirs that were to follow him if he was martyred.

Ibn Sa'd narrated that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“The amir of the people is Zayd ibn Haritha; if he was killed then the amir is Ja'far ibn Abi Talib; and if he was killed the amir is Abdullah ibn Ruwahah; and if he was killed let the Muslims choose one man from among them and make him their amir.”

Al-Bukhari narrated that Abdullah ibn 'Umar (ra) said:

“The Messenger of Allah (صلى الله عليه وآله وسلم) appointed in the expedition of Mu'tah Zayd ibn Haritha as amir...”

Al-Bukhari narrated from the hadith of Salamah ibn Al-Akwa': “I went to fight with Zayd; he was appointed amir over us”. Al-Bukhari and Muslim narrated that Abdullah ibn 'Umar (ra) said:

“The Prophet (صلى الله عليه وآله وسلم) sent an army and appointed Usama ibn Zayd as an amir over them. Some people defamed his leadership, so the Prophet (صلى الله عليه وآله وسلم) said: ‘If you defame his leadership you defamed the leadership of his father before. By Allah! He is worthy of leadership...’”
[Bukhari, Sahih, #4250 and Muslim, Sahih, #2436].

The Sahabah used to call the army of Mu'tah the army of amirs. Muslim narrated from Ibn Buraydah, he said: “The Messenger of Allah (صلى الله عليه وآله وسلم) used to advise him when appointing an amir over an army or an expedition...”

- Abu Bakr appointed Khalid as a leader in the fight against the apostates and in the battle of Al-Yarmuk. Khalifah said, “He gave Khalid ibn Al-Walid leadership over the people, and appointed upon the ansar specifically Thabit ibn Qays ibn Shammas, whilst Khalid managed all of them”. Abu Bakr gathered the armies of Al-Sham under the leadership of Khalid in Al-Yarmuk.

Ibn Jarir said: "And he sent for him while he was in Iraq to come to Al-Sham and be the amir over the armies in it". 'Umar gathered the armies of Al-Sham under the leadership of Abu 'Ubaidah, Ibn 'Asakir said: "And he was the first to name the amir of the amirs in Al-sham".

Secondly: Internal security

Al-Bukhari narrated from Anas:

"That Qays ibn Sa'd used to be in front of the Prophet (صلى الله عليه وآله وسلم) in the position of the policeman towards the amir". Who is meant here is Qays ibn Sa'd ibn 'Ubadah al-Ansari al-Khazraji. [Bukhari, Sahih, #7155]

Al-Tirmidhi narrated:

"Qays ibn Sa'd used to be in front of the Prophet (صلى الله عليه وآله وسلم) in the position of the policeman towards the amir. Al-Ansari said: It means he was one of the people that discharged his issues". Ibn Hibban explained this hadith saying: "To be in the prophet's guard against the mushriks in his meeting when they entered".

It is narrated by Al-Bukhari that the Messenger of Allah (صلى الله عليه وآله وسلم) sent 'Ali ibn Abi Talib, who said: **"The Messenger of Allah (صلى الله عليه وآله وسلم) sent me, Al-Zubair and Abu Marthad, and each one of us is a knight. He (صلى الله عليه وآله وسلم) said 'Set out till you reach Rawdat Hajj'. Abu 'Awanah said it is Hajj, and in another narration Khakh. 'There is a woman there that has a letter from Hatib ibn Abi Baltaah to the mushriks, so bring it to me.'** So we set out on top of our horses till we reached her at the place mentioned to us by the Messenger of Allah (صلى الله عليه وآله وسلم). She was travelling on top of her camel. Hatib had written to the people of Makkah informing them of the march of the Messenger of Allah (صلى الله عليه وآله وسلم) to them. We said, 'Where is the letter which you have?' She replied, 'I have no letter.' We made her camel kneel, and sought it from the saddle but found nothing. I said, 'My two friends, we see no letters with her. We know the Messenger of Allah (صلى الله عليه وآله وسلم) would not lie.' Then Ali (ra) swore, 'By the one in whose name oath is given! You have to get out the letter otherwise I will strip you.' She lent down over the middle knot of her belt, where she had seized her garment, and pulled out the letter. They took it to the Messenger of Allah (صلى الله عليه وآله وسلم)"

Thirdly: Industry

The Messenger (صلى الله عليه وآله وسلم) ordered the manufacture of the catapult and the armored car. Al-Bayhaqi mentioned in the *Sunan* that Abu 'Ubaydah (ra) said: "Then the Messenger of Allah put siege around Tai'f, and erected the catapult against them for seventeen days". Abu Dawud reported in the *al-Marasil* from Makhul "That the Prophet (صلى الله عليه وآله وسلم) erected the catapult against the people of Ta'if". Al-San'ani said in *Subul al-Salam* that its narrators are reliable. The author of the *Sirah Halabiyyah* said: "It is Salman al-Farsi (ra) that directed him to do this. He said, 'In Persia we used to erect the catapults on top of the castles and hit our enemy.' It is said that Salman (ra) made it with his own hands". Ibn Al-Qayyim reported from Sa'd ibn Al-Mu'adh and Ibn Hisham in Ibn Ishaq's *Sirah*:

"Till the day of shatter took place near the wall of Ta'if, few people of the companions of the Messenger of Allah (صلى الله عليه وآله وسلم) moved under an armored car and entered the wall of Ta'if so as to burn it. Thaqeef sent against them rods of iron heated with fire, so they got out of it. Thaqeef then hit them with arrows and killed some of them".

Thus, Salman was the one that advised them about the use of the catapult, and it is said that he made it with his own hands.

This must have been done by the command of the Messenger (صلى الله عليه وآله وسلم). You can find in the seerah, the saying of al-Halabiyyah: "he directed him to it". This means he advised the Messenger (صلى الله عليه وآله وسلم) of that. It is understood from these reports that military industries are of the responsibility of the Khalifah, and he seeks the help of whomever he likes to undertake them and organise them. The industry does need an amir, rather than a manager. Salman was not an amir to the military industries, rather a manager to the catapult industry; and he may have worked with his own hands. Establishing the military industries is compulsory, because of His (سبحانه وتعالى) saying:

وأعدوا لهم ما استطعتم من قوة هي الرمي ومن رباط ترهبون به
عدو الله وعدوكم وآخرين من دونهم لا تعلمونهم الله يعلمهم وما
تنتفخوا من شيء في سبيل الله يوف وأنتم لا تظلمون

"Make ready for them all you can of (armed) force and of horses tethered, that thereby you may dismay (place terror in) the enemy of Allah and your

enemy, and others beside them whom you know not. Allah knows them."
[TMQ 8:60]

This terror cannot take place without preparation, and preparation requires the presence of factories. Thus the verse indicates the obligation of establishing the military factories through the meaning of necessity (*dalalat al-iltizam*), or based on the rule that states (whatever is necessary to fulfil an obligation is itself obligatory). This is besides the evidences that oblige jihad, which indicate by necessity the obligation of establishing factories.

The establishment of factories by the State are not confined to only military factories. There are rather other factories that the state must establish, which came in the book of 'the funds in the Khilafah State' and are as follows:

The factories: The state must establish two types of factories based on the obligation upon the State to look after the interests of the citizens:

The first type: The factories that are related to the assets of the public property such as the factories used in extracting, purifying and melting the minerals, and the factories of extracting and refinery of oil. These types of factories are of public property because of the material they produce. Since the assets of the public property are public property to all Muslims, then their factories are publicly owned by all Muslims, and the State establishes them on behalf of the Muslims.

The second type: The factories that are related to the heavy industry and the weapons industry. These types of factories are allowed to be owned by individuals because it is of the individual property. However, such types of factories and industries need huge funds, which individuals can not often finance, and the heavy industry nowadays does not cater for weapons owned by individuals, as was the case in the time of the Messenger (صلى الله عليه وآله وسلم) and the time of the Khulafaa' Rashidun. They rather became owned by the State, and the State works on providing them, because the duty of caring obliges it to do so. This is particularly true considering the vast development of weapons, and the expense in running the required manufacturing facilities... Therefore, it is obligatory that the State establishes factories for manufacturing weapons, and factories for the heavy industries. However, this would not mean preventing the individuals from establishing these industries.

These factories are obliged upon the State to establish, i.e. they are the duty of the Khalifah. He appoints to them a general manager linked directly to him, or to his deputy, choosing the one he prefers.

Fourthly: International relations

It has been mentioned before that one of the tasks of the executive assistant is to be an intermediary between the Khalifah and the states concerning the international relations.

The Messenger (صلى الله عليه وآله وسلم) and the *khulafa' rashidun* used to address these relations directly through their secretary, i.e. the executive assistant.

The Messenger (صلى الله عليه وآله وسلم) is the one that carried the correspondence regarding the Hodaybiyah treaty and concluding the peace agreement. It was also reported from 'Umar (ra) that when the delegate from Kisra came to him he found him sleeping at one of the gates of al-Madin al-Munawwarah.

However, the Khalifah is allowed to address the international relations directly through his executive assistant as well as through appointing a manager in charge of international relations, the same as any other organisation in the State.

Therefore, these four departments can be assembled under one department, called the department of the amir of jihad, because their subject is linked together.

They can also be separate from one another as dealt by the Messenger (صلى الله عليه وآله وسلم), as mentioned before.

The work these four departments cover is vast, particularly as witnessed today where there are numerous fields. These include those of the armies, internal problems, and art of intrigues devised by the states, agents, classes of the mercenary politicians, various crimes, and complications in the international relations. In addition to this, there are various fields of industry and advanced technical means in use. Hence, in order that the mandatory powers of the amir of jihad do not expand, which may lead to him holding the centre of the State's power that might cause harm to the State if his taqwa declined; Due to all these points we adopt keeping these departments separate from each other, and linked to the Khalifah as departments independent from the State's organisations, as follows:

- Amir of jihad- war department (army)
- Department of internal security
- Department of industry
- Foreign department.

Fifthly - Amir of jihad – war department (army)

The war department is one of the State's organisations, and its head is called the amir of jihad, rather than the manager of jihad. This is because the Messenger (صلى الله عليه وآله وسلم) used to give to the leaders of the army the names of amirs.

Ibn Sa'd narrated that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

The amir of the people is Zayd ibn Haritha; if he was killed then the amir is Ja'far ibn Abi Talib; and if was killed the amir is Abdullah ibn Ruwahah; and if was killed let the Muslims choose one man from among them and make him their amir."

Al-Bukhari narrated that Abdullah ibn 'Umar (ra) said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) appointed Zayd ibn Haritha as amir in the expedition of Mu'tah..." Al-Bukhari narrated has from the hadith of Salamah ibn Al-Akwa': "I went on an expedition with Zayd; he was appointed amir over us".

Al-Bukhari and Muslim narrated that Abdullah ibn 'Umar (ra) said:

The Prophet (صلى الله عليه وآله وسلم) sent an army and appointed Usama ibn Zayd as an amir over them. So some people defamed his leadership, so the Prophet (صلى الله عليه وآله وسلم) said:

'If you defame his leadership you defamed the leadership of his father before. By Allah! He is worthy of leadership...' [Bukhari, *Sahih*, #4250 and Muslim, *Sahih*, #2436].

The Sahabah used to call the army of Mu'tah the army of amirs. Muslim narrated from Ibn Buraydah, he said: "The Messenger of Allah (صلى الله عليه وآله وسلم) used to advise the person whom he appointed as amir over an army or an expedition ..."

The war department takes charge of all the issues connected to the armed forces, in terms of the army, equipment, weapons, facilities, ammunition and the like. This is in addition to military academies, military missions and whatever is necessary of Islamic and general culture for the army and everything related to war and planning of it. The task of sending spies against the belligerent disbelievers is also the role of the war department and there should be a special section for this purpose. The evidences for this are well known in the seerah of the Messenger (صلى الله عليه وآله وسلم).

All of this is undertaken and supervised by the war department as its name indicates it is related to war and fighting. War needs an army, and the army needs formation and preparation in terms of its leadership, chiefs of staff, officers and soldiers.

The formation of the army needs preparation and training, physical as well as technical. Such training addresses the art of fighting, the use of various weapons, and training in the use and developing of modern weapons. Therefore, the technical and military study, training in the art of fighting and learning the use of various weapons is an essential requirement for the army.

Allah (سبحانه وتعالى) has honoured the Muslims by making them the propagators of the message of Islam to the entire world. He defined for them the method of conveying Islam by *da'wah* and jihad. He made jihad obligatory upon them and training in the military service a duty.

Henceforth, every Muslim male that reaches the age of fifteen years is obliged to have training in military service to prepare for jihad. In regards to military conscription, this is a duty of sufficiency (collective duty).

The evidence for military service is His (سبحانه وتعالى) saying:

وقاتلوهم حتى لا تكون فتنة ويكون الدين كله لله فإن انتهوا فإن الله
بما يعملون بصير

"And fight them on until there is no persecution and the submission is to Allah in its entirety." [TMQ 8:39]

It is also mentioned in the following Hadith of the Prophet of Allah (صلى الله عليه وآله وسلم):

“Do perform Jihad against the Mushriks with your wealth, hands and tongues” narrated by Abu Dawud on the authority of Anas [Sunan, #2504].

In order for fighting to be carried out according to the way determined by Shariah, with the aim of defeating the enemy and conquering the land, military training is necessary, which is compulsory like Jihad, in accordance with the Shariah principle that States: ‘That which is necessary to accomplish a duty is itself a duty’. The soliciting of fighting falls within the order to fight. When Allah (سبحانه وتعالى) says, “And fight them”, this is an order to fight and an order to perform any task that makes the fighting possible. In addition Allah (سبحانه وتعالى) says:

وأعدوا لهم ما استطعتم من قوة هي الرمي ومن رباط ترهبون به
عدو الله وعدوكم وآخرين من دونهم لا تعلمونهم الله يعلمهم وما
تنفقوا من شيء في سبيل الله يوف وأنتم لا تظلمون

“Make ready for them all that (of armed force) you can “. [8:60]

Training and high military expertise form part of the preparation of fighting power, for they have to be available in order to make the fighting possible. Thus training forms part of the force that must be obtained such as military hardware and military missions etc.

As for the Military conscription, which is the assignment of people to be part of the armed forces permanently, i.e. to have Mujahidin performing effective Jihad and whatever the duty of Jihad entails, this is compulsory, for the performing of Jihad is a continuous duty whether the enemy attacked us or not, which is why military conscription is a collective duty that is included in the hukm of jihad.

In regards to the rule of conscription which is only for men above the age of fifteen years, this is due to the hadith reported by Al-Bukhari through Nafi' when he stated:

Ibn 'Umar (ra) told me that the Messenger of Allah (صلى الله عليه وآله وسلم) turned to him on the day of Uhud when he was fourteen years old, but did not allow me. Then he turned to me on the day of the trench when I was fifteen years old and he allowed me to fight." [Bukhari, Sahih, #2664]

Nafi' said, "I visited 'Umar ibn 'Abd al-Aziz when he was a Khalifah. I told him of this hadith and he said, 'This is indeed a limit between the young and the mature.' So, he wrote to his governors to make duty for whoever reached fifteen years." It means to assign *rizq* (funds) to them in the divan of the army.

Therefore we adopt that the one that reaches the age of fifteen has to be trained in the military service.

Divisions of the army:

The army is divided into two parts: The "Reserves", which consists of all the Muslims who are able to perform the military tasks; and the "regulars" that are permanent conscripts in the armed forces and receive salaries from the State's funds just like any other employee.

This is derived from the obligation of Jihad, for verily every Muslim is commanded to perform the duty of Jihad, and hence is obliged to train for it. As for the need to have a regular army, this is based on the Shariah principle which States, 'That which is necessary to accomplish a duty is itself a duty.' Since the duty of Jihad cannot be carried out continuously, and Islam and Muslims cannot be protected from the kuffar, except through the presence of a permanent army, the Imam is therefore obliged to have a regular army at his disposal.

As for the allocation of salaries for the armed forces, it is obvious that they are to be treated like any other employee. A non-Muslim is not required to perform Jihad, but if he did it would be acceptable from him, and it would be permitted to pay him for it and to allocate funds for him. This is due to what Al-Tirmidhi narrated from Al-Zuhri that:

"The Messenger of Allah (صلى الله عليه وآله وسلم) sought the services of some of the Jews and he allocated a share to them." Also Ibn Hisham narrated that:

"Safwan b. Umayyah went on an expedition with the Messenger of Allah (صلى الله عليه وآله وسلم) to Hunain whilst still a mushrik, and the Prophet (صلى الله عليه وآله وسلم) allocated some money for him from the spoils of Hunain from *Mu'allafati Qulubihim's* (new converts) share." [al-Nasa'i, *Sunan*, #4723].

Thereupon, it is allowed for the disbeliever to fight for the Islamic army, and be given funds because of his presence with them. Moreover, the definition of 'Imara' or hiring as being a contract concluded over benefit in return for compensation means that hiring is allowed for every benefit which the

employer can receive from the hired person. So hiring a person for the army and fighting is included in such a contract because it is a benefit. Thus, the general evidence of hiring over any benefit is a valid evidence for allowing the hiring of the kuffar for the Army, military service and fighting.

This is with regards to non-Muslims. As for the Muslims, even though jihad is an act of worship, it is allowed to hire Muslims for military service and fighting because of the general evidence of hiring. Hiring is allowed to accomplish an act of *Ibadah* if its benefit extends to more than the one who carries it out.

This is due to the saying of the Prophet (صلى الله عليه وآله وسلم): **“The most worthy thing to take a wage on is teaching the Book of Allah”**, as narrated by Bukhari [*Sahih*, #5737] on the authority of Ibn ‘Abbas.

Teaching the book of Allah is worship, and since it is allowed to hire a Muslim to teach the Quran, lead the prayer, or give the Azan, which are all acts of worship, it is also allowed to hire a Muslim to do jihad and partake in military service, as all of these are acts of worship whose benefit extends beyond the one that performs them. Moreover, there is evidence of hiring Muslims for jihad even though it is a duty upon them which has been mentioned explicitly in a hadith. Abu Dawud [*Sunan*, #2526] narrated from Abdullah b. Amru, he said that the Prophet (صلى الله عليه وآله وسلم) said:

“Al –Ghazi has his own wage and al Ja’il has his own wage and the wage of the Al Ghazi”.

A ‘Ghazi’ is a person who fights for himself. A ‘Ja’il’ is the one who has someone else to fight on his behalf in return for a wage he pays to him. It is indicated in the dictionary of *Al-Muhit* that “Al-ja’ala is the amount given to someone doing an action; and what is assigned to a *Mujahid* (Ghazi) if he made jihad on your behalf is also ju’l.”

Thus, the hadith indicates that it is allowed for a person to pay a wage for somebody else to fight on his behalf, i.e. it is allowed for a person to be hired for fighting.

Al –Bayhaqi narrated on the authority of Jubair b. Nufayr who said:

The Messenger (صلى الله عليه وآله وسلم) said:

“Those of my Ummah who fight and take wages, and strengthen themselves against their enemy are like the mother of Moses who breastfed her son and

got her reward (ajr).” Ajr here means the wage. Thus, soldiers are given salaries like other civil servants.

Muslim soldiers would have their reward with Allah in their jihad even if they received salaries. This is due to the hadith of Al-Bukhari, which allows taking wage for teaching the book of Allah, which is an act of worship. This means such a teacher has the reward with Allah (سبحانه وتعالى) in accordance with his intention.

The Islamic army is one army, consisting of many contingents which can be given numbers such as the first, second etc, or they can be named after the provinces or the districts, for example the army of al-Sham, the army of Egypt or the army of Sana.

The Islamic army is stationed in special camps, and in every camp there is placed a group of soldiers in one complete unit or part of a unit, or many units. These camps have to be put in all provinces and some of them have to be put in military bases. Some of them will be mobile camps which will be in constant movement and will be massive forces. A name is given to each of these camps, like the camp of Habbaniyah, and for each camp there is a special banner.

Some arrangements may be of the Mubah, such as, naming the armies after the names of the Wilayaat or giving them special numbers, a matter left to the opinion of the Khalifah and his ijthihad. Other arrangements are matters without which an obligation cannot be performed, such as the necessity to protect the country and to strengthen the army, like placing the armies at the frontiers, and putting some of these camps in all the Wilayaat and in strategic places to protect the country.

'Umar b. al-Khattab (ra) distributed the camps of the army over all the Wilayaat. So he positioned one unit in Palestine and one unit in Al-Mosul etc. He used to keep one army unit in the centre of the State and he used to keep one army unit ready to fight at a moment's notice.

The Khalifah is the leader of the army

The Khalifah is the leader of the army and he is the one who appoints the Chief of Staff and an Amir to every brigade, and a commander to every division. In regards to the other posts in the army they are appointed by the commanders of the brigades. In regards to appointing a person to the staff, it

has to be according to his military culture and he is appointed by the Chief of Staff.

This is because the Khalifah is the general leadership of all the Muslims in the world, for establishing the Shariah rules and conveying the message to the world. The way of conveying the message to the world is through Jihad. Therefore, the Khalifah should take charge of the Jihad because the Khilafah contract has been convened to him alone, so it is not allowed for any other person to carry it out other than himself. Thus the Khalifah takes responsibility for Jihad himself. It is not allowed for anyone other than him to undertake it, although every Muslim carries out Jihad. Hence carrying out Jihad is one matter and holding the responsibility for it is another. Jihad is a duty upon every Muslim, but holding the responsibility for the Jihad is only for the Khalifah.

However the Khalifah may appoint another person on his behalf to carry out this duty, which is allowed under his own observation and supervision but it is not allowed for it to be done in an independent way without his observation and supervision. This type of delegation is not the same as the work of an assistant to the Khalifah. Reporting to the Khalifah in this context means that the one who carries out Jihad on his behalf should be under his supervision. Leadership of the army with this restriction i.e. under the Khalifah's observation and supervision, is allowed to be given to whomever he wishes. But to take charge of the army without his observation and supervision leaving the Khalifah only as a figurehead, is not allowed. This is because the Khilafah contract has been convened upon him, so he has to take the responsibility for the matters of Jihad. Therefore, what is usually said in the non-Islamic systems is that the head of State is the supreme leader of the army, meaning he is a formal leader only, while another leader runs the army independently, an opinion which is considered invalid in the view of Islam. It is a matter which is not approved by the Shariah, rather, shara obliges the Khalifah to be the actual leader of the army. However for other types of leadership issues like the administrative and technical matters, the Khalifah is allowed to appoint someone on his behalf to carry them out independently, and it is necessary that they be under his actual observation like the leadership.

Also the Messenger (صلى الله عليه وآله وسلم) used to undertake the leadership of the army himself, undertake the leadership of the battles and he also appointed leaders of the divisions of the army which went out for fighting without him, namely the expeditions. For every expedition he used to appoint a commander and in some cases he used to take the precaution of naming

who should succeed the commander in case he was killed as happened in the expedition of Mu'ta. Al Bukhari narrated on the authority of Abdullah b. 'Umar who said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) appointed Zayd bin Harith as an Amir in the battle of Mu'ta. The Messenger of Allah (صلى الله عليه وآله وسلم) said: "If Zayd is killed, then it will be Ja'far (as the Amir) and if Ja'far is killed then it will be Abdullah b. Ruwahah (as the Amir)." So the Khalifah is the one who appoints the leaders of the armies, its commanders, ties for them the flags and appoints the leaders of the divisions.

So the army which was sent to Syria like the Army of Mu'ta and the army of Usama, was one brigade because the evidence for this is that the Prophet (صلى الله عليه وآله وسلم) had tied the flag to Usama. Also the expeditions which fought in the Arabian Peninsula and would return back to Madinah such as the expedition of Sa'd bin Waqqas which he sent towards Makkah were in the form of divisions. This indicates that the Amirs of the brigades and the commanders of the divisions are appointed by the Khalifah. However, other than the amirs of the army and brigades of the divisions, it was not proved that the Messenger (صلى الله عليه وآله وسلم) appointed them. This means he left their appointment in the expedition to their leaders. In regards to the Chief of Staff who is responsible for the technical matters, he is like the army leader in terms of being appointed by the Khalifah and he can be made independent and carry out his duties without being directly supervised by the Khalifah, although he has to be under his command.

Sixthly - Internal Security

The Department of Internal security is responsible for anything pertaining to internal security and headed by the manager of internal security. This department would have a branch in each *wilayah* called the internal security section, which will be headed by sahib al-shurtah in the *wilayah*, who will be under the responsibility of the wali in terms of execution. He would follow the department of internal security pertaining to administration; a matter that would be organised by a special law.

The internal security department is the department responsible for administering everything linked to security. It takes charge of maintaining security within the country through use of the police force (shurtah). This is the main means to maintaining security. Hence it is permissible for the internal security department to use the police at any time, in any way it likes, and its

orders must be implemented immediately. However, if the police require the help of the armed forces a request is submitted to the Khalifah. He can order the army to help the internal security department or to provide it with a military force to help it in maintaining the security, or he can issue any order he sees fit. He is also entitled to refuse such requests and demand that the police carry out the task themselves.

The police force consists of the mature male that carries the citizenship. Women are allowed to join the police so as to provide the needs for women that are related to the tasks of the internal security department. A special law will be issued related to this according to the divine rules.

Police forces are divided into two parts: The police of the army, and the police that work under the command of the ruler, who must have a special uniform and special signs specific for keeping security.

Al-Azhari said: "shurtah of anything is its best. This includes shurat because they are the best soldiers. It is also said that shurtah are the first group that come ahead of the army. It is also mentioned that they are called shurat because they have signs that characterise them, in terms of uniform and status". This is chosen by Al-Asma'i. It is also mentioned in *Al-Qamus*: "Shurtah, where the individual is called shurat, would mean the first battalion that attend the war and is ready for death, it is also the helper of the walis; and they were called so because they announced themselves through signs that characterise them."

In regards to the police of the army (military police), (which is one of the divisions of the army that has its sign, comes in front of the army to control its matter) Please review this sentence!. The police of the army is a part of the army and follows the amir of jihad, i.e. it follows the war department. Regarding the shurtah that are put under the service of the rulers, they follow the department of internal security. Al-Bukhari narrated from Anas:

"That Qays ibn Sa'd used to be in front of the Prophet (صلى الله عليه وآله وسلم) in the position of the policeman towards the amir". Bukhari, *Sahih*, #7155]. What is meant here is Qays ibn Sa'd ibn 'Ubadah al-Ansari al-Khazraji. Al-Tirmidhi narrated it:

"Qays ibn Sa'd used to be in front of the Prophet (صلى الله عليه وآله وسلم) in the position of the policeman for the amir. Al-Ansari said: It means he was one of the people that discharged his issues".

The Khalifah is allowed to make all the police that are responsible for internal security part of the army, i.e. they are placed within the war department. He is also permitted to make an independent department i.e. an internal security department.

However, we adopt the independence of this force, i.e. the shurtah that are placed under the service of the rulers to protect their security must follow the internal security department as an independent organisation that answer directly to the Khalifah, like other State organisations. This is due to the mentioned hadith narrated from Qays ibn Sa'd, and due to the threat of independence of the four departments related to jihad as mentioned before; each one of them would follow the Khalifah, rather than be left as one organisation.

Thus the shurtah would follow the department of internal security.

The tasks of the internal security department:

The task of the Internal security Department is maintaining the security of the State. The actions that could lead to a breach of internal security are many which include:

Apostasy from Islam, rebellion against the State manifested in destructive activities and actions of sabotage e.g. strike or the occupation of vital centres of the State, and aggression against private, public, or State property. It might also be through rebellion against the State by use of arms.

Other actions which undermine internal security include the attack on the property of people by theft, looting, robbery, misappropriation, as well as attacks on people through assault, injuring, and killing in addition to attacks on their honour through lying, slandering and raping.

One of the other tasks of the internal security department is to deal with suspects and protecting the Ummah and the State of their danger and harm.

These are the most important actions that could threaten the internal security. The department of internal security protects the State and the people from all these actions. Therefore whoever is declared an apostate, and is sentenced to death if he did not repent, this department executes the death sentence. If those who declare apostasy are a group, then they have to communicate with them and ask them to return to Islam, and the State should not punish them if they repent, return to Islam and abided by the shar' rules. If however,

they insist on apostasy then they are fought against. If they are small in number and the police force alone is able to fight against them then they must proceed to do so, but if they are large in number and the police force is unable to overpower them then they have to request the Khalifah to provide them with additional military force to help them. If this military force is not sufficient, then they must ask the Khalifah to order the army to provide them with assistance.

This is concerning apostates. However in regards to people who rebel against the State, if they do not use arms and limit themselves to destruction and sabotage by strikes, demonstrations, occupation of vital centres of the State, or aggression against private, public and State properties through demolition, then the internal security department restricts itself to using the police force in order to prevent such destructive actions. If it is not able to prevent the aggression, it requests the Khalifah to provide it with a military force in order to stop the destruction and sabotage.

However if the people who rebel against the State use weapons and were able to establish themselves in an area and became a force that the department of internal security is unable to subdue and it was unable to eliminate through the use of the police force alone, then it requests the Khalifah to provide it with a military force or an army force, depending on its need in eliminating the rebellion. Before it fights against them, the department should communicate with them to see what complaints they may have. It should ask them to return to obedience and the Jama'ah and to surrender their arms. If they respond favourably and return back, then the State should hold back from fighting them. If they reject and insist on rebelling, then it would fight against them in order to discipline them and not to annihilate and destroy them. It fights against them so that they turn back to obedience and give up rebellion and surrender their arms.

An example of this is the way Imam 'Ali b. Abi Talib fought against the Khawarij. He called them to surrender first and if they left the rebellion he would not fight against them but if they insisted on rebelling he fought against them, in order to discipline them so that they return to obedience, stop the rebellion and surrender their arms.

In regards to those that use violence, such as the highway robbers, who attack people, forcibly obstruct the highways, steal property and kill, the department of internal security will despatch a police force to pursue them and impose the relevant punishment upon them, which may be killing and

crucifying, amputating their opposite limbs, or deporting them to another place, according to the ayah:

إنما جزاء الذين يحاربون الله ورسوله ويسعون في الأرض فسادا أن
يقتلوا أو يصلبوا أو تقطع أيديهم وأرجلهم من خلاف أو ينفوا من
الأرض

"The punishment of those who fight against Allah's Messenger and who walk in the land with corruption is that they should be killed or crucified, or their opposite hands and legs should be amputated, or they should be deported from the land" [TMQ Ma'idah:33]

The fighting against these people is not like fighting against rebels who fight against the State. Fighting against the rebels is to discipline them, while fighting against the highway robbers is to kill and crucify, so they are fought against when they fight and when they turn back. They are treated as outlined in the Ayah. Whoever killed and took property, he is killed and crucified; and whoever killed and did not take property, he is killed but not crucified; and whoever took property without killing, his hand and leg will be amputated from opposite sides without killing; and whoever raised arms and scared the people and did not kill or take property he is only exiled from his area to another place or country.

The department of internal security restricts itself to using the police force in maintaining security. It does not use other than the police force except when the police force is unable to maintain internal security. In that case it requests the Khalifah to provide it with a military force or an army, according to what is required.

With regards to aggression against property by stealing, misappropriation, robbing or looting; or aggression against lives by use of force, wounding or killing; or aggression against honour by lying, slandering, or raping. The department of internal security prevents these things by its vigilance, guards and patrols, and also by implementing the verdicts of the judges against those who perform aggression against the property, lives and honour. All this requires the use of the police force alone.

The *shurtah* is entrusted with keeping the public order, supervision over the internal security and carrying out the executing aspects. This is due to the mentioned Hadith from Anas who reported that the Messenger (صلى الله عليه وآله)

(وسلم) used to keep Qays ibn Sa'd before him like *sahib al-shurtah* (head of police). This indicates that shurtah are stationed before the rulers, which means they undertake whatever the rulers want of the execution force for implementing the *shar'a*, keeping order and protecting security. This is in addition to conducting patrols, which involves patrolling during the night to pursue thieves and arrest wrongdoers and the wicked. Abdullah ibn Mas'ud was amir over the night patrols at the time of Abu Bakr.

'Umar ibn Al-Khattab used to take charge of night patrols by himself, taking his servant in his company and sometimes Abdul Rahman ibn Awf. Therefore, it is wrong that some Islamic countries make the owners of the shops appoint guards at night to guard their houses, or appoint guards given by the state at the cost of the owners of the shops. This is because this work is part of the night patrolling which is the duty of the state, and of the functions of the shurtah. So, people are not charged with it and nor charged with its costs.

With regards to dealing with the suspects who are the people that pose harm and danger to the state entity, to the community or to the individuals; these types of suspects must be pursued by the state. Whoever, from the Ummah, has knowledge of any of these must report it. The evidence for this is what Al-Bukhari and Muslim narrated from Zayd ibn Arqam when he said:

"I was in an expedition, and heard Abdullah ibn Ubayy say: Do not spend upon those with the Messenger of Allah so as to disperse away from him; and if we return my uncle or to 'Umar, who mentioned it to the Prophet (صلى الله عليه وآله وسلم). He called upon me and I told him...hadith" [Bukhari, *Sahih*, #4901 and Muslim, *Sahih*, #2772]

In the narration by Muslim, I came to the Prophet (صلى الله عليه وآله وسلم) and informed him of Ibn Ubayy who used to conduct frequent visits to the belligerent disbelievers and I informed him of his relations with them, such as with the Jews around Al-Madinah and the enemies of Islam. We need to expand further upon the context of this example to deal properly with this subject and so as not to mix it with espionage on the citizens, which is prohibited due to His (سبحانه وتعالى) saying:

يا أيها الذين آمنوا اجتنبوا كثيرا من الظن إن بعض الظن إثم ولا تجسسوا

"And do not spy". [TMQ 49:12]

Therefore spying is only limited to the suspects.

The suspects are those who visit the disbelievers frequently who are actual or potential warriors. This is because spying is allowed on the belligerent disbelievers as part of the war policy, and for preventing harm from falling upon Muslims; additionally the shar'i evidences in this subject include all the belligerent people. This is because if they were actual belligerents then the obligation of spying on them is quite clear. If they were potential belligerents then spying on them is allowed for war is expected with them at any time.

Thus any citizen that frequently visits the warring disbelievers would be under suspicion due to his contact with those we are permitted to spy on, i.e. the belligerent disbelievers.

The details of this issue will be as follows:

1. Spying on the actual belligerent disbelievers is obliged upon the state; a matter which, besides the above mentioned evidences, is emphasised by the rule: "that which is necessary to perform an obligation is itself obligation." This is because the knowledge of the force of the enemy, its plans, its objectives and its strategic locations and the like are necessary to defeat the enemy. This is undertaken by the war department, and it includes the citizens that make contact with the actual belligerent disbelievers, since in origin there is not usually contact between the citizens and the belligerents, as the relation between them is a relation of war.

2. Spying on the potential belligerent disbelievers is allowed; and it is obligatory upon the state to prevent any harm, such as, when it is feared they would help the actual belligerents or join them. The potential belligerent disbelievers are of two types:

The first: The potential belligerent disbelievers in their country whom the war department would spy on.

The second: The potential belligerent disbelievers that enter our country, such as the ambassadors, the covenants and their like. These have to be put under observation and spying by the internal security department.

The department of internal security takes charge of surveillance and spying on the citizens who frequently visit the officials amongst the potential belligerent disbelievers or their representatives in our country. The war department also takes charge of the citizens who frequently visit the officials

amongst the actual belligerent disbelievers or their representatives in their own country. This however requires two conditions:

The first: There should appear through surveillance, carried out by the war department and internal security, of the officials amongst the potential belligerent disbelievers or their representatives' clear evidence that the frequent visits to these disbelievers or their representatives, inside or outside the state, are not natural and attract attention.

The second: Whatever is discovered by the two departments has to be presented to the judge of hisbah; and then the judge of hisbah rules upon the matter.

If such a case arises then it is allowed for the department of internal security to spy on those citizens that make such frequent visits to the officials amongst the potential belligerent disbelievers or their representatives in our country. It is also permitted for the war department to spy on the citizens that make frequent visits to the officials amongst the potential belligerent disbelievers and their representatives in their own country. These are the evidences related to all of this:

1. Spying on Muslims is *haram* as stipulated in this verse. Allah (سبحانه وتعالى) says:

يا أيها الذين آمنوا اجتنبوا كثيرا من الظن إن بعض الظن إثم ولا
تجسسوا

"And do not spy on each other". .. [49:12]

This is general prohibition of spying; and it remains general unless there is an evidence to specify it. This is confirmed by the *hadith* reported by Ahmad and Abu Dawud in their narration from Al-Muqdad and Abu Umamah when they said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) said: **If the amir sought for suspicion amongst the people he would undermine them.**" [Abu Dawud, *Sunan*, #4889 and al-Haythami, *Majma' al-Zawa'id*, vol.5, p.218].

Therefore spying on a Muslim is *haram*. This rule also applies on the people of the dhimmah from the citizens of the state. Thus spying is *haram* upon the citizens, Muslims and non-Muslims.

2. Spying on actual belligerent disbelievers, such as those who are at war with us; and on the potential belligerent disbelievers, such as those who enter our country with covenant or under our protection like ambassadors and others, or the actual belligerent disbelievers in their own country; is allowed. It is in fact obligatory to spy on the actual belligerent, and on the potential belligerent in case of harm.

- The evidences are clear in the seerah of the Messenger of Allah (صلى الله عليه) (وآله وسلم), which are as follows:

- It was reported in the *Sirah* of Ibn Hisham about the expedition of Abdullah ibn Jahsh, where he ordered him to travel for two days. After Abdullah ibn Jahsh travelled for two days he opened the letter of the Messenger of Allah (صلى الله عليه وآله وسلم) and read it. He found in it:

"If you read this letter of mine travel till you reach Nakhlah that comes between Makkah and Ta'if, where you camp and monitor Quraish from there and collect for us their news".

It was reported in the *Sirah* of Ibn Hisham regarding the events of the ghazwah of Badr, that Ibn Ishaq said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) and Abu Bakr rode till they met a sheikh from the Arabs. He asked him about Quraish and about Mohammad and his companions and any information he got about them. The sheikh said I will not inform you till you tell me from where are you? The Messenger of Allah (صلى الله عليه وآله وسلم) said, if you tell us we would tell you. He said, is this for that? He said: yes. The Sheikh said: such day. If the one that informed me said the truth, then they would be in such and such place, naming the place where Quraish is. When he finished his news he said: From where are you? The Messenger of Allah (صلى الله عليه وآله وسلم) said: water, and he then turned away from them. He said, the sheikh was saying: From water, or from the water of Iraq?"

Then the Messenger of Allah (صلى الله عليه وآله وسلم) returned back to his companions. When night fell, he sent Ali ibn Abi Talib, Zubair ibn Al-Awwam and Sa'd ibn Abi Waqqas together with some of his companions (ra) to the water of Badr to seek the news from there, i.e. to look for spies upon Quraish."

• Ibn Ishaq also reported that Ibn Hisham mentioned under the title: "Basbas ibn Amru and Adiy ibn Abu Al-Zaghba' spy for news", till he said, "Adiy and Basbas heard that (i.e. that which the two maids said at the water regarding

the news of Quraish). So, they jumped onto their two riding camels and went to the Messenger of Allah (صلى الله عليه وآله وسلم) where they informed him of that which they heard.

Though these evidences were regarding Quraish, which was an actual belligerent, the rule applies to the potential belligerent since war is expected with them. The only difference is that spying is obligatory in the case of the actual belligerent because the war policy for defeating the enemy requires that. It is however allowed regarding the potential belligerent because war is expected with them. If there is possible harm from them however, i.e. it is expected they might help the belligerent or actually join them, then spying on them becomes obligatory as well.

Thus, spying on the belligerent disbelievers is allowed for Muslims, and obligatory upon the state to provide. This is due to the order of the Messenger of Allah (صلى الله عليه وآله وسلم) to do so as mentioned above. It also comes under the rule: "That which is necessary for performing an obligation is itself obligatory".

If some citizens, whether Muslim or non Muslim, frequently visited the belligerent disbelievers, whether they were actual or potential belligerent, in our country or in their country, then these are suspects, and hence it is allowed to spy on them and follow their news. This is because they frequently visit those who are allowed to spy on them, and because harm is expected from them on the state if they spied for the advantage of the disbelievers.

However, to allow spying on such citizens the above mentioned two conditions must be verified.

The war department takes charge of spying on the citizens that frequently visit the actual belligerent, as well as on the citizens that frequently visit the officials amongst the potential belligerent and their representatives in their own country. The department of internal security takes charge of spying on the citizens that frequently visit the officials amongst the potential belligerent disbelievers and their representatives in our country.

Seventh: The foreign affairs department

The foreign affairs department undertakes the responsibility of all foreign affairs, pertaining to the relation of the Khilafah State with the foreign States, whatever these affairs and relations may be. Whether they are related to the political aspect and what it entails in the forming of pacts, peace treaties,

cease-fires, negotiations, appointing ambassadors, sending messengers and delegates, and establishing embassies and consulates. It also includes relations, which are related to matters that are economical, agricultural, and are to do with trade as well as postal communications or wire and wireless communications etc. All of these matters are run by the foreign affairs department, because they are concerned with the relations of the Khilafah State with other States.

The Messenger (صلى الله عليه وآله وسلم) used to establish foreign relations with other States and entities. He sent 'Uthman b. Affan to negotiate with Quraish just as he negotiated with the delegates of Quraish. He sent delegates to the kings and he received the delegates of kings and Amirs. He also concluded pacts and peace treaties. Similarly after him, his *Khulafa'* used to establish political relations with other States and entities. They used to appoint people to carry these actions out on their behalf, on the basis that whatever action a person can perform by himself, he can delegate it to some other person to carry out it on his behalf.

Due to the complications of international life, besides the expanse and variety of international political relations, we adopt that the Khalifah should delegate an organisation in the state specific to the international relations on his behalf, where the Khalifah pursues its work as he does with any other ruling and administrative organisation in the state, whether directly or through the executive assistant, in accordance with the related divine rules.

Eighth: Industry

The department of industry is the department that takes charge of all the affairs related to industry, whether they pertain to heavy industry like manufacturing of motors, engines, vehicles, materials, electrical equipment, or light industry. All factories public or private property, which have a relationship with the military industries, must be based on the war policy. This is because Jihad and fighting require an army, which requires weapons. In order that these weapons be of the highest level and fully available, it is necessary to have an industry within the State, particularly the military industry due to its strong relationship with jihad.

In order that the State becomes independent of other countries and does not become influenced by any of them, it should manufacture and develop its own weapons by itself. This makes it independent and in continuous possession of the most advanced and strongest weaponry, regardless of the

level of development and advancement of weapons. It would also have at its disposal, all that it needs of weapons to intimidate, both the evident and potential enemies, as Allah (سبحانه وتعالى) says:

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهَبُونَ بِهِ عَدُوَّ اللَّهِ
وَعَدُوَّكُمْ وَأَخْرِينَ مَنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ وَمَا تُنْفِقُوا مِنْ
شَيْءٍ فِي سَبِيلِ اللَّهِ يُوَفَّ إِلَيْكُمْ وَأَنْتُمْ لَا تُظْلَمُونَ

“Make ready for them all you can of (armed) force and of horses tethered, that thereby you may dismay the enemy of Allah and your enemy, and others beside them whom you know not. Allah knows them.” [TMQ 8:60]

As such the State would have its own will, produce the weapons that it needs and develop them continuously so that it owns the strongest and most developed weapons in order to terrify all the evident and potential enemies. Therefore it is a duty upon the State to manufacture weapons by itself and it is not allowed to depend upon other States, because this allows other States to control it, its will, its weapons and its fighting.

It is quite clear in the world today that the States which sell weapons to other States do not usually sell every weapon, particularly the most developed weapons. They do not even sell weapons except with certain conditions that cover their utilisation. They will not sell them except in quantities that they, rather than the purchasing countries, decide. This gives the State which sells arms, authority and influence over the State which buys the arms enabling it to enforce its own will upon the purchasing State, particularly if it was involved in a war. In that case it would need more arms, spare parts, and ammunition, which would increase its dependence on the State which exports its arms and increases its submission to other states demands. This allows the State which exports arms to control it and its will, especially in times of war and in times of great need for arms and spare parts. Hence such a State would make itself, its will and its entity hostage to the State that exports arms to it.

Therefore, for all these reasons, the State has to independently manufacture its own arms and everything it requires for its war machine and spare parts. This can't be achieved unless the State possesses heavy industry and started to build factories which produce heavy industry, both military and non-military alike. Thus it is necessary that the State has factories for producing all types of atomic weapons, rockets, satellites, aeroplanes, tanks, spaceships, mortars,

naval ships, armoured vehicles, and all types of heavy and light weapons. It is necessary that it has factories which produce machines, motors, materials, electronics and factories which have a relation with public property and light factories which have relation with the military or war industries. All this is required by the duty of preparation which is obliged upon the Muslims by the saying of Allah (سبحانه وتعالى):

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ
وَعَدُوَّكُمْ وَأَخْرَيْنَ مِنْ دُونِهِمْ لَأَتَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ وَمَا تُنْفِقُوا مِنْ
شَيْءٍ فِي سَبِيلِ اللَّهِ يُوَفَّ إِلَيْكُمْ وَأَنْتُمْ لَا تُظْلَمُونَ

“Make ready for them all that you can of (armed) force.” [TMQ 8:60]

Since the Islamic State conveys the message of Islam by da'wah and Jihad, it should be a State which should be continually ready to carry out Jihad. This requires the existence of heavy and light industry built upon the basis of its war policy. Thus in case it wanted at any time to transform these factories for military purposes, it would easily do so at any time. Therefore all the industry in the Khilafah State should be based on the war policy, and all the factories, which produce the light and heavy industries, should be based on this policy, so that it becomes easy to transform their production to military production at any time the State requires.

The Judiciary

The Judiciary is responsible for delivering the verdict for the purpose of enforcing it. It settles disputes between people, prevents whatever may harm the rights of the community and also settles the disputes between people and any person who is part of the ruling system, whether they are rulers or civil servants, the Khalifah or any other person.

The origins of the judicial system and its validity are the Book and the Sunnah. As for the Book, Allah (سبحانه وتعالى) says:

وَأَنْ أَحْكَمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ

"And judge between them by that which Allah has revealed." [5:49].

And He (سبحانه وتعالى) also says:

وَإِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ لِيَحْكُمَ بَيْنَهُمْ إِذَا فَرِيقٌ مِنْهُمْ مُعْرَضُونَ

"And if they were invited to Allah and His Messenger to judge between them." [24:48].

As for the Sunnah, the Messenger of Allah (صلى الله عليه وآله وسلم) was himself in charge of the Judiciary and he judged between people.

The Messenger of Allah (صلى الله عليه وآله وسلم) used to appoint the judges. He appointed 'Ali as judge over Yemen and he gave him instructions about how to judge by saying:

"If two men come to you do not give a judgement for one of them until you have heard what the other has had to say, then you will be able to judge" as narrated by Tirmidhi [Sunan, #1331] and Ahmad [Musnad, 2/165]. In another narration by Ahmad:

"If the two disputing men sat before you do not speak until you hear from the other as you heard from the first." [Musnad, 2/165]

He (صلى الله عليه وآله وسلم) also appointed Muadh as a judge over al-Janad. Each of these is evidences point to the validity of the judiciary.

The definition of judiciary includes the judgement between people as mentioned above. It also includes the *Hisbah* (public order) which means: "Informing of the divine rule for the purpose of enforcing it regarding that which causes harm to the rights of the community." This is highlighted in the Hadith of the heap of food. It has been reported in *Sahih Muslim* on the authority of Abu Hurairah that:

"The Messenger of Allah (صلى الله عليه وآله وسلم) passed by a heap of food. As he put his hand inside it his fingers got wet, so he said to the vendor: "What is this?" He said: "It was dampened by the rain O Messenger of Allah." He (صلى الله عليه وآله وسلم) said: "Why don't you put it on the top so that people can see it? He who cheats us is not one of us." [Muslim, *Sahih*, #102]

It also includes the *Mazalim* (unjust acts), because they are part of the judiciary and not part of the ruling, because they are complaints against the ruler. The *Muzalims* would be defined as: "Delivering of the divine rule by way of compulsion in regarding any dispute there may be between the citizens and the Khalifah or any of his Walis or employees, or any difference between the Muslims about the interpretation of any of the Shariah texts to be used in order to judge by them and to rule according to them." The *Mazalim* (unjust acts) were mentioned in the Hadith of the Messenger of Allah (صلى الله عليه وآله وسلم) regarding the fixing of prices where he said:

"And verily I hope that I will meet Allah 'azza wa jall without having anyone claiming against me a *Mazlama*, that I inflicted on him, be it of blood or funds." [Ahmad narrated on the authority of Anas. See al-Haythami, *Majma' al-Zawa'id*, vol.4, p.102]. This indicates that complaints against the ruler, or the Wali or the civil servant should be submitted to the judge of *Mazalim*, and the Judge of *Mazalim* would deliver the divine rule by way of enforcement. Therefore the definition would include the three areas of judiciary reflected in the Ahadith and actions of the Messenger of Allah (صلى الله عليه وآله وسلم) and these are: settling disputes between people, preventing whatever may harm the interests of the community and the settling of the disputes between the citizens and the rulers or between the citizens and the civil servants within their duties.

THE TYPES OF JUDGES:

There are three types of judges: One is the Qadi, and he is in charge of settling the disputes between people over transactions and penal codes. The second is the Muhtasib, who is in charge of settling any breach of law that

may harm the interests of the community or property. And the third is the judge of Mazalim, who is in charge of settling disputes between the people and the State.

These are the three types of judges. As for the evidence about the judge who settles disputes between people, this is derived from the actions of the Messenger of Allah (صلى الله عليه وآله وسلم), and from his appointment of Muadh Ibnu Jabal over an area of Yemen. As for the evidence of the judiciary regarding the settling of disputes which endanger the interests of the community, where the judge is known as the Muhtasib, this is confirmed by the action and saying of the Messenger of Allah (صلى الله عليه وآله وسلم), for he said:

"He who cheats us is not one of us". [This is a part of a hadith narrated by Ahmad on the authority of Abu Huraira.] Thus, he (صلى الله عليه وآله وسلم) used to challenge the cheaters and punish them.

He (صلى الله عليه وآله وسلم) used also to order the traders to speak the truth in trading and give charity. Ahmad narrated from Qays Ibnu Abi Gharza Al Kinani, he said, "We used to buy cargo in Madinah and we would call ourselves brokers, so the Messenger of Allah (صلى الله عليه وآله وسلم) came out to us and called us with a better name, he (صلى الله عليه وآله وسلم) said:

"O traders, verily the selling entails talking and the taking of oaths, so do mix it with Sadaqah".

Ahmad also narrated from Abu Al-Minhal:

"That Zayd ibn Arqam and Al-Bara' Ibn 'Azib were partners, so they both bought some silver with cash on the spot and by credit. This news reached the Messenger of Allah (صلى الله عليه وآله وسلم) so he ordered: 'Where the payment is made on the spot there is no harm, and where it is sold on loan it must be rejected.'"

Thus the Messenger (صلى الله عليه وآله وسلم) prevented them from the riba of credit. All this is the judicial remit of the Hisbah. Calling the judiciary that settles the disputes that may harm the interests of the community as the Hisbah is in fact a technical term referring to a specific task carried out in the Islamic State, i.e. To control the traders and skilled workers lest they cheat in their trade, their work, their products, lest they wrongly use the weights and measures, or any other type of action that may affect the interests of the community.

And this is the very action that the Messenger of Allah (صلى الله عليه وآله وسلم) demonstrated and ordered to be observed, and personally applied judgement upon, as mentioned in the Hadith of Al-Bara' Ibn Azib, where he ordered both parties to abstain from selling silver by credit.

The Messenger of Allah (صلى الله عليه وآله وسلم) has also appointed Sa'id ibn Al-As as a *muhtasib* in the markets of Makkah after its conquest as reported in the *Tabaqaat* of ibn Sa'd and in *Al-Istiab* of Ibn 'Abd al-Barr. Therefore, the evidence of *hisbah* is the Sunnah. 'Umar b. Al-Khattab had also appointed Al-Shifa, a woman from his clan, who is Umm Suleiman ibn Abi Haythma, as a market judge (inspector) i.e. a judge of *Hisbah*; and he also appointed Abdullah ibn Utbah a judge on the market of Al-Madinah, as Malik mentioned in *Al-Muatta'* and Al-Shafi'i in his *Musnad*. He also himself used to deal with the judiciary of the *Hisbah*, and walk around in the markets just like the Messenger of Allah (صلى الله عليه وآله وسلم). The Khalifah went on dealing with the *Hisbah* until the days of Al-Mahdi who set a special organisation to the *Hisbah* which became one of the organisations of Judiciary. At the time of Al-Rasheed, *Muhtasib* (judge of *Hisbah*) used to go around in the markets, checking the weights and measures and to look into the traders' transactions.

As for the evidence for the judge of *Mazalim* (unjust acts), this is derived from Allah (سبحانه وتعالى) saying:

فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

"If you dispute about something refer it to Allah and the Messenger." [4:59].

This came immediately after Allah's (سبحانه وتعالى) saying:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

"O you who believe obey Allah and obey the Messenger and those in authority from among you." [4:59].

Therefore, any dispute between the citizens and the people in authority should be referred to Allah and His Messenger i.e. to the rule of Allah. This necessitates the presence of a judge to give judgement on this dispute, and this is the judge of *Mazalim*. Evidence is also derived from the action and saying of the Messenger of Allah (صلى الله عليه وآله وسلم). However, the Messenger of Allah (صلى الله عليه وآله وسلم) did not appoint a specific judge for the *Mazalim* over the whole State, nor did the *Khulafa' Rashidun* after him, for they used to

take charge of the Mazalim themselves as was the case with Ali Ibnu Abi Talib. He did not however assign a specific time or a special style for the Mazalim; he simply dealt with a *Mazlima* (a case of an unjust act) as it happened, so it was just part of his general duties. This approach remained the same until the days of Abdul Malik Ibn Marwan; he was the first Khalifah to introduce a specific time for the Mazalim; and when one of these Mathalim was ambiguous to him, he used to refer it to his judge to deal with it. Then the Khalifah began to appoint deputies to look into people's complaints, and a special system was then introduced for the Mazalim, which was known as the "House of Justice" (Dar-ul-Adl). This is permissible in terms of having a special judge for Mazalim, because for anything that falls under the mandatory powers of the Khalifah, he is allowed to appoint deputies to perform that on his behalf. It is also permissible to have a specific time and a specific style because all this falls under the *mubah* (permissible acts).

THE CONDITIONS REQUIRED FOR THE POST OF JUDGE

Anyone taking up the post of judge must be a Muslim, free, mature, sane, just, a *Faqih* (learned scholar), and aware of how to apply the Islamic rulings to the reality (*li-tanzil al-ahkam 'ala 'l-waqi'*). As for the person who takes up the judiciary of *Mazalim*, in addition to the conditions mentioned, he must also be male and a *Mujtahid* (legist), just like the supreme judge (*Qadi al-Qudah*), because this post is in fact judiciary and ruling, for he judges over the ruler and executes the Shariah upon him. Therefore he must be male in addition to the other conditions of the post of judge; one of which is to be a *Faqih*. Furthermore, he has to be a *Mujtahid*, because part of the Mazalim which he may be required to look into is whether the ruler has ruled by other than that which Allah has revealed, i.e. ruled by a law that has no Shariah evidence to back it, or in case the evidence he used does not relate to the event, and only the *Mujtahid* can deal with such *Madhlima*. Therefore if he were not a *Mujtahid*, he would be judging without having knowledge; and that is forbidden. Therefore, in addition to the conditions of the ruler and those of the judge, he should also be a *Mujtahid*.

THE APPOINTMENT OF JUDGES

It is permitted to appoint the judge, the *Muhtasib* (judge of public rights) and the *Mudhalim* on a general capacity, to judge on all matters all over the State. It is also permitted to appoint them in a specific capacity, whether geographic or according to a certain type of judiciary. This would be in accordance with the action of the Messenger of Allah (صلى الله عليه وآله وسلم), for

he appointed Ali Ibnu Abi Talib as judge over Yemen, and Muadh Ibnu Jabal as judge over an area of Yemen, and he also appointed Amr Ibnu-^l- Aas as judge in one specific matter.

Provisions of the judges:

Al-Hafiz mentioned in *Al-Fath*: provision (rizq) is that which the imam appoints from *bait al-mal* to whoever discharges Muslims interests. Judiciary is one of the tasks which is allowed to obligate provision to it from *bait ul-mal*, which is a function the State employed them for of the interests of Muslims. Anyone who is employed to undertake in accordance with the shara any work relating to the interests of the Muslims, is entitled to a wage, whether this work was worship or otherwise. The evidence to this is that Allah (سبحانه وتعالى) assigned a share to those who collect the sadaqah.

So He (سبحانه وتعالى) says:

إنما الصدقات للفقراء والمساكين والعاملين عليها

"And those who collect them." [TMQ 9:60]

Abu Dawud, Ibn Khuzaymah in his *Sahih* as well as Al-Bayhaqi and Al-Hakim, declare sound on the conditions of the two sheikhs, and agreed by Al-Dhahabi, a narration from Buraydah that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"Any employee we used and assigned to him provision, any provision he takes more than that is deception (ghulul)." [Abu Dawud, Sunan, #2943].

Al-Mawardi said in *Al-Hawi*: "Judiciary is allowed to take provision for it from *bait ul-mal*, because Allah (سبحانه وتعالى) has assigned to the collectors of Sadaqah a share from it. 'Umar has also appointed Shurayh and assigned to him provision made of one hundred dirham monthly. When Khilafah reached Ali he assigned to him five hundred dirham every month, additionally Zayd ibn Thabit took a wage for judiciary". Al-Bukhari commented on this saying: "Shurayh used to take a wage over judiciary".

Al-Hafiz said commenting on this comment: "As regarding the report of Shurayh, Sa'id ibn Mansur told us that Sufyan informed us from Mujahid from Ash-Sha'bi, he said, "Masruq did not use to take a wage on judiciary, and Shurayh used to take." Al-hafiz mentioned in *Al-Fath*: "Ibn al-Mundir mentioned that Zayd ibn Thabit used to take a wage on Judiciary". Ibn Sa'd narrated

from Nafi', he said: "'Umar ibn Al-Khattab employed Zayd ibn Thabit on judiciary and he assigned provision to him." The Sahabah made ijmaa', as well as those that came after them on the permissibility of taking provision for judiciary. Al-Hafiz said in *Al-Fath*: "Abu Ali Al-Karabisi said,"It is not wrong that the judge takes provision for making judiciary as conceived by all the scholars, including the Sahabah and those that followed them. This is the opinion of the jurists of the various provinces, without knowing a difference between them. Masruq however disliked that, but no one prohibited it." Ibn Qudamah mentioned in *Al-Mughni*, "'Umar wrote to Muadh ibn Jabal and Abu Ubaydah when he sent them to Al-Sham, to find out some good people amongst them and use them on judiciary, he said, "do your utmost for them, provide for them and satisfy them with the wealth of Allah."

The forming of tribunals:

It is not allowed for a tribunal to be formed of more than one judge that has the power to render judgement; it is however permitted for one or more judges to be present with him but they would not have the right to judge, but merely to be consulted or to voice an opinion, and their opinion would not be binding.

This is because the Messenger of Allah (صلى الله عليه وآله وسلم) never appointed two judges to deal with one matter, rather he (صلى الله عليه وآله وسلم) appointed one judge for each matter. Besides, the judiciary is the conveying of the Shariah rule by way of enforcement, and the Shariah rule concerning the one Muslim cannot vary, for it is the rule of Allah, and the rule of Allah is one. It is true that its interpretation may vary, but concerning the Muslim from the practical side it remains one and it never varies. When the judge conveys the rule of Allah in the matter at hand by way of enforcement, this conveyance must be one, for it is the conveying of the rule of Allah by way of compulsion. Thus it would be acting upon the rule of Allah, and the rule of Allah from a practical point of view does not vary, even if the understanding does vary. Therefore, it is forbidden to have more than one judge for the same case, i.e. in the same court. As for the country, it is permitted to have two separate courts dealing in all types of cases in one area, because the judiciary is delegated by the Khalifah, so it is like the deputyship where plurality is permitted, thus it would be permitted to have several judges in one area. If the disputing parties could not agree on which tribunal they should take their case to or which judge should look into their case, the choice of the plaintiff would outweigh that of the defendant and the case would be given to the judge of his choice, as he would be seeking his right and this outweighs the defendant.

The judge can only rule in a judicial court; and the evidence and the oath can only be considered in the judicial court. This is because it has been reported on the authority of Abdullah Ibn al-Zubayr who said:

“The Messenger of Allah has ordered that the two disputing parties should sit before the judge.” This hadith is narrated by Abu Dawud [*Sunan*, #3588], and it demonstrates the form in which the judicial process should be conducted, and it is a lawful form in itself, i.e. there must be a specific form in which the judicial process is to be conducted, which is for the two disputing parties to sit before the judge, and this would be the judicial court. Therefore this is a condition for the validity of the judicial procedure, i.e. that there ought to be a special place where the judgement is to be conducted for it to qualify as a legitimate judgement, and this would be for the two disputing parties to sit before a judge.

This is supported by the hadith of ‘Ali (ra) when the Messenger of Allah (صلى الله عليه وآله وسلم) said to him:

“O ‘Ali, if two disputing parties sat before you, do not judge (in favour) for either of them until you hear what the other party has to say as you have heard the first one.”

It also indicates a special form where he (صلى الله عليه وآله وسلم) said:

“If two disputing parties sat before you”.

Therefore the judicial court is a must if the judgement is to be valid, and is also a must for the oath to be considered, for the Messenger of Allah (صلى الله عليه وآله وسلم) said:

The oath must be given by the defendant,” as narrated by Al-Bukhari on the authority of Ibn Abbas [*Sahih*, #2668].

He would not be considered as a defendant except in a judicial court. The same applies for the evidence, it cannot be considered except before a judicial court, for the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“It is the plaintiff who should provide the evidence, and the oath is obliged on the one that contests.” As narrated by Al-Bayhaqi.

Additionally he cannot be considered a plaintiff except before a judicial court.

It is permitted to have various levels of court according to the type of cases. Thus it would be permitted to have some judges confined to dealing with specific cases to a certain extent, and to refer other cases to other courts.

This is because, the judiciary is delegated by the Khalifah and it is just like the deputyship, with no difference at all. In fact, the judiciary is one form of deputyship, which can be general and can also be specific. Therefore, it would be permitted to have a judge appointed to deal in specific cases only, in which case he would not be allowed to deal with other than those cases specified. It is also permitted to appoint another judge to look into all sorts of cases including those mentioned, even in the same location, or to look into cases other than those mentioned. Therefore it is permitted to have various levels of tribunal, and Muslims had this in the past.

Al-Mawardi wrote in his book entitled *Al Ahkam Al Sultaniyya*: "Abu Abdullah Al-Zubayr said: For some time, the Amirs here in Basra used to appoint a judge at the central mosque (*Al-Masjid Al-Jami*"), they called him the judge of the mosque. He used to judge in disputes involving sums not exceeding twenty Dinars and two hundred Dirhams, and he used to impose the maintenances. He would not go beyond the place assigned to him and the limits given to him."

The Messenger of Allah (صلى الله عليه وآله وسلم) delegated others on his behalf in the judiciary; he appointed Amr Ibnul Aas to look into one case, and he appointed Ali Ibnu Abi Talib over the judiciary in Yemen with powers to look into any case. This indicates that it is permitted to have a specific and general judiciary.

There are no courts of appeal and there are no courts of cessation, so the judiciary, as far as the method by which the cases are treated, is one and the same. If the judge pronounced a sentence, it would become binding, and the sentence of another judge would not under any circumstances reverse it. The divine principle states: "ijtihad is not annulled by similar ijtihad." So, a mujtahid is not proof against another mujtahid; so it is invalid to have courts that nullify the verdicts of other courts.

However, if the judge abandons ruling by the Shariah and judged according to a rule of disbelief, or if he judged by a rule that contradicts a Shariah text from the Book, Sunnah or the Ijmaa of the Sahabah, or he issued a verdict that contradicts with the reality, such as if he judged on somebody as a

deliberate killer, then the real killer appeared. In such cases, the verdict of the judge is reversed.

This is because the Messenger of Allah (صلى الله عليه وآله وسلم) said:

“Anyone who invented something in our matter (deen) that which is not from it, it would be rejected”, as narrated by Al-Bukhari [Sahih, #2697] and Muslim [Sahih, #1798] on the authority of ‘A’ishah.

It is also narrated by Jabir b. Abdullah: “That a man committed adultery with a woman, so the Prophet (صلى الله عليه وآله وسلم) ordered that he be lashed. Later on he was informed that he was married, so he ordered that he be stoned”. Malik b. Anas also narrated, that he said: “I got knowledge about ‘Uthman (ra), that a woman was brought to him where she gave delivery after six months so he ordered her to be stoned, Ali (ra) said to him: ‘It is not valid to be stoned, because

Allah (سبحانه وتعالى) says:

ووصينا الإنسان بوالديه حسنا حملته أمه كرها ووضعته كرها
وحمله وفصاله ثلاثون شهرا حتى إذا بلغ أشده

The carrying of the (child) to his weaning is period of thirty months” [46:15]

And He (سبحانه وتعالى) says:

والوالدات يرضعن أولادهن حولين كاملين لمن أراد أن يتم الرضاعة
وعلى المولود له رزقهن وكسوتهن بالمعروف

“The mother shall give suckle to their children for two whole years, for them who desire to complete the term.” [2:233]

Thus, the pregnancy period is six months, so she should not be stoned.’ Accordingly ‘Uthman (ra) ordered that she be returned back, but he found that she had already been stoned.” ‘Abd al-Razzaq narrated from Al-Imam Al-Thawri that he said “If a judge gave a verdict opposite to the Book of Allah or the Sunnah of the Messenger (صلى الله عليه وآله وسلم) or anything where there is an Ijmaa over it, then another judge after him may reverse it”.

However, the responsibility of reversing these verdicts is to the Judge of *Mazalim*.

The Muhtasib

The Muhtasib is the judge that deals in all the cases that concerns the common rights and which do not have a plaintiff, as long as these cases do not fall under the penal code (Hudud) and the criminal laws (Jinayat).

This is the definition of the judge of Hisbah, which is a definition deduced from the hadith relating to the heap of food. The Messenger of Allah (صلى الله عليه وآله وسلم) discovered dampness in the heap of food so he ordered that the damp food be displayed on the top so that people could see it. So this was a public right on which the Messenger of Allah looked into, and judged that the wet food should be displayed at the top to prevent cheating. This applies to all the public rights or interests that are of this nature. It does not include the penal code or the criminal law, for they are not of the same sort, for they are disputes between people in the first place.

The mandatory powers of the Muhtasib

The Muhtasib has the power to judge on the offence as soon as he learns about it, and this could take place on the spot and at any location; he does not need to be in a judicial court. He will have at his disposal a number of police staff to execute his orders and to apply the sentence on the spot.

A judicial court would not be required for the Muhtasib to look into the case at hand. He passes the judgement the moment he is sure that the offence took place, and he has the power to judge at any place and at anytime, whether in the market, in the house, whilst riding or in the car during the day or night. This is because the evidence that confirms the need to have a judicial court in order to deal with a case does not apply to the Muhtasib, because the hadith which confirmed this condition states:

"The two disputant parties sat down before the judge/ruler."

And he (صلى الله عليه وآله وسلم) said:

"If the two disputing parties sat before you." This is not applicable to the judge of Hisbah, as there is no plaintiff and no defendant; there is rather a public right that has been violated, or a violation of the Shariah. Besides, when the Messenger of Allah (صلى الله عليه وآله وسلم) looked into the case of the heap of

food, he was walking in the market at the time and the food was displayed for sale.

He (صلى الله عليه وآله وسلم) did not summon the vendor to him, but as soon as he detected the offence he dealt with it on the spot. This indicates that the cases of Hisbah do not require a judicial court.

The Muhtasib has the right to select deputies for himself. They should fulfil the requirements of the Muhtasib, and he is allowed to assign them to different places. Those deputies would have the power to carry out the duties of the Hisbah in the areas to which they have been assigned, and in the cases for which they have been delegated.

This depends on whether the appointment of the Muhtasib includes a clause that gives him powers to appoint deputies for himself, i.e. to assign deputyship by delegating deputies who would act on his behalf. In case he was not given such right of deputyship, i.e. the right to appoint deputies to him, then he has no such right of appointment.

The Judge of Mazalim

The judge of Mazalim is a judge appointed to remove every Madhlima (unjust act) perpetrated by the State against any person, whether this person were a citizen of the State or a person living under its authority, and whether this Madhlima were perpetrated by the Khalifah or those working under him, be they rulers or civil servants.

This is the definition of the judge of Mazalim. The origin of the judiciary of Mazalim is derived from reports referred to the Messenger of Allah (صلى الله عليه وآله وسلم), where he described the unjust acts perpetrated by the ruler while ruling over the subjects as being a Mazluma. Anas reported:

“Prices soared during the time of the Messenger of Allah (صلى الله عليه وآله وسلم) so they said to him: ‘O Messenger of Allah why don't you introduce pricing?’ he said: ‘Verily Allah is the Creator, the Recipient, the Extender of wealth, the Provider, and the Pricer, and I hope that I will meet Allah (سبحانه وتعالى) without having anyone accusing me of having perpetrated a *Mazluma* against him be it in blood or in money.’” This is narrated by Ahmad [See *Musnad*, 3/286]. He (صلى الله عليه وآله وسلم), therefore judged pricing as being a *Mazlama*, for if he had done it, i.e. introduced pricing, he would have acted without authority.

He (صلى الله عليه وآله وسلم) also made the issues that affect the common rights which the State organises for the people as part of the Mazalim. If an administrative system was set up to regulate one of the interests of the citizens, and a citizen considered that the system is unjust for him, then his case is examined by the Mathalim. This is because it is a complaint against an administrative system of one of the interests of the citizens set up by the State. This is like the irrigation of farming lands by common water according to a schedule regulated by the State.

The evidence to this is the complaint presented by the Ansari against the regulation set up by the State for irrigating by water the first, then the next, i.e. allowing the first to be through whose land water passed first. The Ansari wanted Al-Zubayr to let the water flow to him before Al-Zubayr watered his land (since the water passed first in the land of Al-Zubayr). However, Al-Zubayr refused and the case was raised to Allah's Messenger (صلى الله عليه وآله وسلم). He judged between them letting Al-Zubayr water lightly and then sends the water to his Ansari neighbour (i.e. without letting Al-Zubayr taking his full turn, as a sign of help to the Ansari). The Ansari did not accept that; he rather wanted the water to reach his land first before Al-Zubayr watered his land. Then he said to the Messenger of Allah (صلى الله عليه وآله وسلم) that his judgement was as such because Al-Zubayr was his cousin (which was a serious word against the Messenger of Allah (صلى الله عليه وآله وسلم) for which he was forgiven for he witnessed Badr as reported by Al-Bukhari).

At that point the Messenger (صلى الله عليه وآله وسلم) judged that Al-Zubayr should take his full right in irrigation, which is to irrigate his land till water reaches to the root of the wall or the root of the tree, which was explained by the scholars that the water has to rise in the land till it covers the leg of the person. The whole hadith is narrated by Muslim [Sahih, #2357] through 'Urwah ibn Al-Zubayr that:

"Abdullah ibn Al-Zubayr told him that a man from the Ansar quarrelled with Al-Zubayr to the Messenger of Allah (صلى الله عليه وآله وسلم) regarding Shiraj Al-Harrah with which they irrigate the palm trees. The Ansari said (to Al-Zubayr) let the water flow, but he refused. They quarrelled to the Messenger of Allah (صلى الله عليه وآله وسلم). The Messenger of Allah (صلى الله عليه وآله وسلم) said to Al-Zubayr: **"You irrigate first O Zubayr and then let the water go to your neighbour."** The Ansari became angry and said, 'O Messenger of Allah, it is because he is your cousin.'

The face of the Prophet of Allah (صلى الله عليه وآله وسلم) changed colour and he said: **"O Zubayr! Irrigate and then hold the water till it reaches the root of the wall"**. Al-Zubayr said: 'By Allah, I think this verse has been revealed regarding that matter.' *"By your Lord, they will not be true believers until they make you judge in their disputes, and they do not find discontent towards your judgement"*. (Shiraj Al-Harrah is the water river at Al-Harrah. Abu Ubayd said there were two rivers in Al-Madinah that flowed with the rain water and people would compete with each other regarding it. The Messenger of Allah (صلى الله عليه وآله وسلم) decided regarding it that the first would irrigate first, which means the landlord at the beginning of the river would irrigate first and then let the water flow to the next and so on).

Therefore, any Madhlima that occurs against any person, whether perpetrated by the ruler, or as a result of the State's organisations or orders, would be considered as a Madhlima, as gathered from the two hadith. The matter would be referred to the Khalifah to deal with or to whoever the Khalifah appoints as judge of Mazalim to deal with such matters on his behalf.

The Appointment and the Removal of the Judges of Mazalim

The judge of Mazalim is appointed by the Khalifah, or by the supreme judge. This is because the Mazalim is part of the judiciary, for they are the conveying of the Shariah rule by way of enforcement, and all the types of judges must be appointed by the Khalifah. This is confirmed by the Messenger of Allah's (صلى الله عليه وآله وسلم) actions, for he (صلى الله عليه وآله وسلم) used to appoint the judges. All this serves as evidence that it is the Khalifah who appoints the judge of Mazalim, yet the supreme judge could appoint the judge of Mazalim if the Khalifah made provisions for this in his appointment clause. It is allowed for the main court of unjust acts (mahkamat ul-Mathalim) in the centre of the State to examine only the Mazalim that occurred from the Khalifah, his assistants and the supreme judge; whilst the branches of the court of unjust acts in the wilayat examine the Mazalim occurring from the walis and the other State employees. The Khalifah has the right to give the central court of unjust acts the authority of appointment and removal of the Mazalim judges in the branch Mazalim courts that follow it in the wilayat.

The Khalifah is the one that appoints and removes the members of the main mahkamat ul-mathalim in the centre of the State. As for the removal of the head of the central mahkamat ul-Mazalim, i.e. the Mazalim judge responsible in examining the removal of the Khalifah, it should in principle be the right of the Khalifah to remove him, as it is he who has the right to appoint him like all

the judges. However, it is possible, if the power of removing the judge were left to the Khalifah during a case, then this power would lead to haram. In such a situation the principle of "the means that leads to haram is haram" would apply. The strong likelihood of such a scenario arising is enough for applying this principle.

This case means when a case is raised against the Khalifah or his assistants or his supreme judge (in case the Khalifah was given the mandatory power of appointing and removing the Mazalim judge). This is because keeping the mandatory power of removing the Mazalim judge in the hands of the Khalifah in this case would influence the verdict by the judge; and accordingly it would limit the capability of the judge to remove the Khalifah or his assistants if deemed necessary. This mandatory power of removing the judge in this case is a means for haram, i.e. keeping it in the hand of the Khalifah in this case is haram.

As for the remaining cases, the rule remains as it is, i.e. the power of removing the Mazalim judge is left to the Khalifah just like his appointment.

The Mandatory Powers of the Judge of Mazalim

The court of Mazalim has the mandatory power to look into any Madhlima, whether the Madhlima were perpetrated by government civil servants, or related to a contradiction of the Shariah by the Khalifah, the meaning of a legislative text in the constitution, the canon or the various Shariah rules adopted by the Khalifah, the imposing of a tax, or any other matter.

Judiciary of Mazalim regarding any madhlima connected to some civil servants, the Khalifah's violation of the Shariah rules, the meaning of any legislative text, the constitution or the canons within the adoption of the Khalifah, the imposing of any tax; or related to the State's oppression of its citizens in terms of the seizure of their properties by force, or its transgression in terms of the collected properties (from them) or reducing the salaries of the employees and the army or delaying their payment: In all of these types of madhlima there is no necessity of a judicial sitting to look into the case, to summon the defendant, or to have a plaintiff. It rather has the right to look into the madhlima even if there was no complaint by anybody.

This is because the evidence that proves the stipulation of the presence of judiciary sitting to examine the case does not apply to the judiciary of the Mazalim. This is because it has no plaintiff, as the presence of a plaintiff is not necessary. The court of Mazalim has the right to look into a Madhlima even if

nobody filed a claim because it not necessary for the plaintiff to attend, since it examines the case without the need of the attendance of the defendant, as it studies the case. Therefore, the evidence regarding the necessity of a judicial court does not apply to that. This is due to what Abu Dawud and Ahmed narrated from Abdullah bin Al-Zubair, he said: "The Messenger of Allah (صلى الله عليه وآله وسلم) ordered that **"the two disputing parties sit before the judge."**" And his (صلى الله عليه وآله وسلم) saying to 'Ali (ra): **"If the two disputing parties sat before you."**

Therefore, the court of Mazalim reserves the right to look into the Madhlima as it occurs without any restrictions such as time, place or court sitting. However, due to the standing of this court as far as its mandatory powers are concerned, it has always been surrounded by the elements of prestige and grandeur. At the time of the Sultans in Egypt and Al-Sham, the Council of the Sultan where the Mazalim used to be dealt with used to be known as the "House of Justice", where the Sultan used to appoint deputies to act on his behalf, and the judges and the Faqihs also used to attend. Al-Maqrizi mentioned in his book entitled *al-Suluk Ila Ma'rifat Duwal Al-Muluk* (The way to know the States of the kings), that the Sultan Al-Malik Al-Salih Ayub appointed deputies to act on his behalf in the house of justice, where they sat to remove the Mazalim, and to gather with the witnesses, judges and the Faqihs. Therefore, there is no harm if the court of Mazalim had a splendid house, for this would be Mubah, especially if this reflected the might of justice.

Contracts, transactions and courts' verdicts before the establishment of the Khilafah

The contracts and transactions that were concluded, together with the courts' verdicts that were confirmed and executed before the establishment of the Khilafah are considered valid between their parties till the end of their execution before the Khilafah. Judiciary in the Khilafah would not repeal them and nor start them again. No new lawsuits would be accepted regarding them after the establishment of the Khilafah.

Two cases would be excluded of that:

1. If the case that was confirmed and its execution was finished still have a continuous effect that contradicts Islam.
2. If the case relates to somebody that hurt Islam and Muslims.

The evidence for not repealing the contracts, transactions and lawsuits that were confirmed and whose implementation finished before the establishment of the Khilafah, and nor raising them again in other than the above mentioned two cases is that the Messenger (صلى الله عليه وآله وسلم) did not return back after the conquest of Makkah to his house from which he emigrated. Uqayl ibn Abi Talib had, according to the laws of Quraish, inherited the houses of his relatives that embraced Islam and emigrated.

He had disposed of them and sold them, including the house of the Messenger of Allah (صلى الله عليه وآله وسلم). It was said at that time to the Messenger (صلى الله عليه وآله وسلم): "In which house are you going to stay?" He (صلى الله عليه وآله وسلم) said: "**Has Uqayl left any of our houses?**" [Bukhari, *Sahih*, #3058] In another narration, he said: "**Did Uqayl leave to us any house?**" He had then sold the houses of the Messenger of Allah (صلى الله عليه وآله وسلم), but the Messenger (صلى الله عليه وآله وسلم) did not repeal them. The hadith is reported by Al-Bukhari through Usama ibn Zayd, he said: "That he said on the day of the conquest, 'O Messenger of Allah, where do you want to stay tomorrow?' The Prophet (صلى الله عليه وآله وسلم) said, '**Did Uqayl leave us any house?**'" [Bukhari, *Sahih*, #3058].

It was also narrated that when Abu Al-'As ibn Al-Rabi' embraced Islam and emigrated to Al-Madinah, his wife Zainab had then embraced Islam and emigrated after Badr, while he remained Mushrik in Makkah, the Messenger of Allah (صلى الله عليه وآله وسلم) returned to him his wife, without renewing her marriage contract to him. This was recognition of the marriage contract concluded at Jahiliyyah time. Ibn Majah reported through Ibn Abbas (ra): "That the Messenger of Allah (صلى الله عليه وآله وسلم) sent back his daughter, i.e. Zainab to Abu Al-'As ibn Al-Rabi' after two years based on her first marriage contract". [Tirmidhi, *Sunan*, #1142]

With regard to raising the lawsuits that have continuous effect contradictory to Islam, the Messenger (صلى الله عليه وآله وسلم) had cancelled the usury left to Abbas on the people after they came to the Islamic State, and only gave their actual capital. This means after dar ul-Islam, the usury left upon them would become cancelled usury. Abu Dawud narrated through Suleiman ibn Amru from his father, he said:

"I heard the Messenger of Allah (صلى الله عليه وآله وسلم) say in the farewell pilgrimage:

"Behold! Any usury from the days of Jahiliyyah is cancelled. You are only entitled of your capitals, where you do not wrong (others) and nor are you wronged."

Moreover, those who were married to more than four wives according to the laws of Jahiliyyah were obliged after dar ul-Islam to hold to four only. Al-Tirmidhi reported through Abdullah ibn 'Umar that Ghaylan ibn Salamah Al-Thaqafi embraced Islam while having ten wives in Jahiliyyah, and they embraced Islam together with him.

"The Prophet (صلى الله عليه وآله وسلم) commanded him to choose four of them."

Therefore, the contracts that have continuous effect contradictory to Islam, such effects are removed after the establishment of the Khilafah. This removal is obligatory.

If for example a Muslim woman was married to a Christian before Islam, then after the establishment of the Khilafah this contract is cancelled in accordance with the rules of shara.

In regards to starting lawsuits related to those who harmed Islam and the Muslims, this is permitted because the Messenger (صلى الله عليه وآله وسلم), when he conquered Makkah declared the blood of some people to be shed with impunity as they used to harm Islam and Muslims in Jahiliyyah. He asked that their blood be shed even if they hung themselves to the curtains of the Ka'bah. This is despite the Messenger of Allah (صلى الله عليه وآله وسلم) saying: **"Islam removes that which comes before it"**, as narrated by Ahmad and Tabarani from Amr ibn Al-As. This means the one that harmed Islam and Muslims are excluded from this hadith.

Since the Messenger (صلى الله عليه وآله وسلم) forgave some of them later on, such as his forgiving to Ikrimah ibn Abu Jahl, therefore the Khalifah is allowed to start a lawsuit against these or forgive them. This applies to those who used to torture Muslims for saying the truth or those who defamed Islam. The hadith: **"Islam removes that which comes before it"**, [Ahmad, *Musnad*, 4/199] does not apply to them, for they are excluded of it, and a case is started against them according to the view of the Khalifah.

In other than these two cases the contracts concluded before the establishment of the Khilafah, together with the transactions and lawsuits are not cancelled and nor started as long as they were confirmed and their implementation finished before the establishment of the Khilafah.

Thus, if a man for example was sentenced with two years of imprisonment for a charge of breaking the doors of a school, and he finished the two years before the establishment of the Khilafah and he left the prison. Then after the establishment of the Khilafah he wanted to start a case against the one that imprisoned him for that charge because he views that he did not deserve imprisonment. Such a case is not accepted, because it happened, and a sentence was given for it and its implementation finished before the establishment of the Khilafah. He has to refer this matter to Allah (سبحانه وتعالى), anticipating reward from Him (سبحانه وتعالى).

If however, this man was sentenced for ten years, of which two had finished, and the Khilafah was established; in this case the Khalifah is allowed to examine the case, either by cancelling the sentence of punishment from its origin, thus letting him come out of the prison as free of the charge, or to be satisfied with the period he already spent, and he comes out of the prison. It is also possible to study the remaining time of the sentence taking into consideration the relevant divine rules and the interest of the citizens, particularly the issues related to the rights of the people, such that it removes the discord.

Administrative system (people's welfare)

Running of the government's and the people's affairs is carried out by offices, departments and administrations, whose task is to ensure the management of the State's business and the discharging of the people's interests. Each office (Maslaha) would be headed by a general manager, and each department (Da'ira) and administration (Idara) would be headed by a director who would run its affairs and be directly responsible for it. Those directors would be answerable to the general director in charge of their offices, departments or administrations from a professional side, and answerable to the Wali and the amil with regards to abiding by the rules and general regulations.

The Messenger of Allah (صلى الله عليه وآله وسلم) used to run and discharge the affairs and appoint secretaries for their administration. Thus, the Messenger (صلى الله عليه وآله وسلم) used to discharge the affairs of the people in Al-Madinah, solve their problems, organise their relations, secure their needs and direct them to that which suits them. All of these matters are of the administration issues that ease their life from problems or complications:

In matters of education, The Messenger of Allah (صلى الله عليه وآله وسلم) made the ransom of the disbelieving prisoners of war the teaching of ten Muslim children, where the ransom was in return for the spoils, which became property of the Muslims. Thus, securing education was one of the Muslims affairs.

In healthcare, the Messenger of Allah (صلى الله عليه وآله وسلم) was given a giff, but he assigned him to Muslims. The fact that the Messenger of Allah (صلى الله عليه وآله وسلم) received a giff and he did not use it, nor take it, rather he assigned it to the Muslims is evidence that healthcare is one of the interests of Muslims.

In regards to employment, the Messenger of Allah (صلى الله عليه وآله وسلم) directed a man to buy a robe and then an axe and collect firewood and sell to the people instead of begging from them, where somebody might give him while another would resist. Thus, solving the problems of work was also one of the Muslims' interests. Ahmad reported a hadith and Al-Tirmidhi approved it stating that:

"A man from Al-Ansar came to the Prophet (صلى الله عليه وآله وسلم) and asked from him (sadaqah). The Messenger (صلى الله عليه وآله وسلم) said 'Don't you have anything in your house?' He said, 'Yes.' The Prophet (صلى الله عليه وآله وسلم) said, 'Bring them to me.' He brought them to him. The Messenger of Allah (صلى الله عليه وآله وسلم) took them in his hand, and said, 'Who would buy these two?' A man said, 'I would take them for two dirhams.' He gave them to him and took the two dirhams. He gave them to the Ansari and said, 'Buy with one of them and give it to your family and buy with the other an axe and bring it to me.' He brought it to him. Then he tied with his hand a rod to it and said, 'Go and collect firwood and sell, and do not let me see you for fifteen days.' He did that, and came back having ten dirhams". [Abu Dawud, *Sunan*, #1641].

Al-Bukhari reported that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"It is better for any one of you to take a rope and bring a bundle of firewood on his back, and sell it, and thus protect with it his face (of begging) than to beg the people, who might give him or reject."[Bukhari, *Sahih*, #2075]

In the issue of roads, the Messenger of Allah (صلى الله عليه وآله وسلم) organised the roads at his time by making the road of seven arms in case of dispute. Al-Bukhari narrated from Abu Hurairah:

"The Prophet (صلى الله عليه وآله وسلم) decided in case there was a dispute the road would be of seven arms." [Bukhari, *Sahih*, #2473].

The narration by Muslim says:

"If you had dispute over the road make its width seven arms".

This was from the administrative organisation of that time, and if there is need for wider than that it is allowed according to the opinion of Shafi'i.

The Messenger of Allah (صلى الله عليه وآله وسلم) has also prevented transgression against the road. Tabarani reported in [*al-Jami'*] *Al-Saghir*:

"Whoever took of the road of Muslims a handspan, Allah would encircle him from seven earths on the Day of Judgement."

In matters of irrigation, Al-Zubayr disputed with a man from Al-Ansar regarding irrigating from a stream of water flowing in their lands. The Messenger of Allah (صلى الله عليه وآله وسلم) said:

"O Zubayr, irrigate and then send the water to your neighbour".

There is agreement over the hadith, and the words are from Muslim.

Thus, the Messenger of Allah (صلى الله عليه وآله وسلم) used to run the affairs of the Muslims and solve their problems easily and simply, without complication. He used to seek the help of some Sahabah in conducting that, thus making the affairs of the people an organisation entrusted to the Khalifah or he appointed over it a competent manager that took charge of it. This is what we adopt so as to reduce the burden of the Khalifah, particularly since the affairs of the people have increased and branched out. Accordingly, there would be an organisation for the people's affairs entrusted with a competent manager, and run by styles and means that facilitate the citizens living there, that provides for them the necessary services without complication and rather provides ease and simplicity.

This system consists of administrations, departments and directorates. The administration is the overall management of any government affair, such as citizenship, transportations, money coinage, education, health, agriculture, employment, roads and others. This administration would undertake the management of its own affairs and all the departments and directorates under its control. The department would run its own affairs and those of the directorates under its control. The directorate would also run its own affairs and the affairs of all the sections and divisions under its control.

The purpose of establishing these administrations, departments and directorates is to manage the State's affairs and to discharge the people's interests.

In order to guarantee the smooth running of these administrations, departments and directorates, directors must be appointed to take charge of them. For each administration, a general director would be appointed to take direct charge of it and to supervise all the departments and directorates that come under it. For each department and for each directorate a manager is appointed to be directly in charge of his department or directorate and to be responsible for the sections and divisions affiliated to it.

The Administrative System is a Style of Administration, Not Ruling.

The administrative system is a style used to perform a task, and is also one of the means used for that, so it does not require specific evidence. It is sufficient for it to have general evidence that indicates to its origin. It would be wrong

to say that these styles are human actions, which should therefore be conducted according to the divine rules. This is because the evidence for these actions has come in regards to their origin in a general form, thus it includes all actions that branch out from that origin, unless there is divine evidence that relates to a subsidiary action, in which case the action must follow that evidence. For instance Allah (سبحانه وتعالى) says,

وَأْتُوا الزَّكَاةَ

"And pay out the Zakat" [73:20].

Which is a general evidence. Then the evidences came regarding the subsidiary actions which branched out from it, such as the amount of Nisab, the Zakat collectors and the categories of people from whom Zakat is to be taken. All these are actions derived from the ayah, "And pay out the Zakat".

There are no evidences to be found about the manner by which the Zakat collectors have to collect the Zakah. For example do they go riding or walking? Do they hire other employees to help them or not? Do they collect it according to records? Do they have to establish headquarters where they would all meet? Would they have warehouses where they would store everything they had collected? Would these houses be underground or built like grain houses? Would the cash Zakat be collected in bags or coffers? All these actions and the like are, in fact, subsidiary actions originating from "And pay out the Zakat."

They are all covered by the general evidence as there are no specific evidences for them; and this is the case with all the styles. Thus, the style is an action subsidiary to an action i.e. the origin that has general evidence. Therefore, the style does not require evidence, because the evidence of its origin serves as evidence for it as well.

Therefore, the administrative styles can be taken from any system unless there is a specific text that prevents taking a particular administrative style. Otherwise, it is allowed to take the administrative styles if they were suitable to run the work of the administrative organisations and to discharge the affairs of the people. This is because the administrative style is not a divine rule that requires divine evidence. This is the reason that 'Umar (ra) took the style of the diwan for recording the names of the army and the citizens for the sake of distributing the funds to them, which came from the public or state properties, in the form of grants or salaries.

'Abid Ibn Yahya reported on the authority of Al-Harith Ibn Nufayl that 'Umar consulted the Muslims about the recording of *Dawawin*, and Ali Ibn Abi Talib suggested, 'Divide all the funds you collect each year and do not keep any of them.' 'Uthman Ibn Affan said, 'I see that there are a lot of funds being distributed amongst people, and if they are not counted in order to know who has taken and who has not, I fear that the matter could get out of hand.' Upon this Al-Waleed Ibn Hisham Ibn ul-Mughira said, 'I was in Al-Sham and I noticed that its kings had introduced a Diwan and recruited soldiers, so why don't you do the same?' 'Umar took his advice and summoned 'Aqil Ibn Abi Talib and Makhramah Ibn Nufayl and Jubair Ibn Matam who were young men from Quraish and said, 'Prepare a house to house a census.'

When Islam reached Iraq, the Diwan of payments and funds collection continued as before. The Diwan of Al-Sham was in Latin for it had been part of the Roman Empires, and the Diwan of Iraq was in Persian for it had been part of the Persian Empire. At the time of Abdul Malik Ibn Marwan the *Diwan* of Al-Sham was transferred to Arabic (in the year 81 AH). Several *Dawawin* were then set up according to necessity and depending on the need for them in running the people's interests. *Dawawin* for the armed forces were introduced for registration and grant purposes, and others were introduced to record the fees and claims of all transactions. Another Diwan was introduced for the Amils and Walis to record each appointment and each removal and other *Dawawin* were used in the treasury (Bayt-ul-Mal) to record revenues and expenses and so on. The introduction of a Diwan was according to the need for it, and its style varied over the years due to the difference in styles and means.

A chief was appointed for each Diwan along with other employees, and in some cases the chief was allowed to appoint the employees himself, and they were sometimes appointed to him.

A Diwan would thus be set up according to need, along with the styles and means that would help discharging that need. It is permitted to have different styles and means according to the area, or Wilayah or country.

With regards to the responsibility of such civil servants, they are hired employees and at the same time citizens. At a professional level they are answerable to their own directorate manager, and as citizens they are answerable to the rulers whether these are Walis, the assistants or the Khalifah. They have to abide by the Sharia rules and the administrative systems.

The Policy of Administration of the Interests

The policy of administration of the interests is based on the simplicity of the system, speed in processing the tasks and the competence of the administrators. This is taken from the nature of processing the interest, for the person who requires a service needs to have it quickly and efficiently processed. The Messenger of Allah (صلى الله عليه وآله وسلم) said:

"Verily Allah has enjoined the perfection to everything; so when you kill, do so in a good way and when you slaughter, slaughter in a good way" narrated by Muslim from Shaddad b. Aws [*Sahih*, #1955].

Therefore, the perfection in executing the actions is ordered by the Sharia. To achieve this, the administration should observe three qualities.

- Firstly, the simplicity of the system which would lead to the ease of processing, whereas complication would lead to hardship.
- Secondly, the speed in processing the transactions which would spare people of unnecessary delay.
- Thirdly, the ability and competence of the employees. This is required to perfect the performance and result of the task.

Those who are Eligible to work in the State's Department

Anyone who holds citizenship and is competent, man or woman, Muslim or non-Muslim is eligible to be appointed as a director of any administration or to be an employee in it.

This is taken from the rules of hiring (*Ijara*) where it is permitted to hire any person whether Muslim or non-Muslim. This is because the evidences for hiring are in general form. Allah (سبحانه وتعالى) says:

"And if they suckled for you, do give them their wage". [65:6] this is general evidence. Bukhari narrated from Abu Hurairah from the Messenger of Allah (صلى الله عليه وآله وسلم), who said:

"Allah (سبحانه وتعالى) said, "I will challenge three people on the day of Judgement... and a man who employed a labourer, he received from him (the work) but did not give him his wage"." [Bukhari, *Sahih*, #227].

This evidence is also general.

The Messenger of Allah (صلى الله عليه وآله وسلم) did himself once hire a man from Banu Al-Dil who was a non-Muslim, which indicates that it is permitted to hire a non-Muslim just as it is to hire a Muslim. It is also permitted to hire a woman just as it is to hire a man, following the generality of the evidences. Therefore, it is permitted for a woman to be a director of a government department or to be one of its employees, and it is permitted for a non-Muslim to be a director of a government department or an employee in that department, for they are all hired staff, and the evidences about hiring are general.

Bayt al-Mal

Bayt al-Mal is a compound phrase construction, and indicates the place where the State's revenues are kept till they are spent. It could also mean the authority responsible for receiving and spending the funds entitled for the Muslims.

We have already adopted that the wali is given a special authority that excludes the army, judiciary and funds. Thus, the whole army will be a central department (presided over by Amir al-Jihad). The judiciary will be a central department (known as judiciary), and the entire funds form a central department (known as bayt al-mal), which is separate from any other organisation in the State, and follows the Khalifah as do the other organisations.

There are abundant evidences that the bayt al-mal was under the direct authority of the Messenger (صلى الله عليه وآله وسلم) or the Khalifah, or whoever he appointed to preside over it. The Messenger of Allah (صلى الله عليه وآله وسلم) used to on occasions deal directly with the funds, where they had a safe. He used to receive the funds, distribute them and spend them in their due place. On other occasions he (صلى الله عليه وآله وسلم) used to appoint somebody to take care of that. This is what the Khulafaa' Rashidun used to do after him, where they either they took charge of the Bayt al-mal by themselves or they delegated others to do that on their behalf.

The Messenger of Allah (صلى الله عليه وآله وسلم) used to place the funds in the mosque, as Al-Bukhari narrated from Anas, he said:

"Some funds were brought to the Prophet (صلى الله عليه وآله وسلم) from Bahrain. He said: **'Spread it in the mosque'** [Bukhari, *Sahih*, #421].

He would sometimes put it in one of the rooms of his wives, as it was narrated by Al-Bukhari from Uqabah, he said:

"I prayed the asr behind the Prophet (صلى الله عليه وآله وسلم) in Madinah. He gave *salam* at the end of the prayer and stood up quickly. He crossed the lines of the Muslims behind him going to some of his wives' rooms. The people were amazed of his speed. He came back to them, and saw they were surprised of his speed. He said, 'I remembered some gold dust with us, so I hated it would

hold me back, and I ordered it should be divided'". He otherwise kept them in his safe as Muslim narrated from 'Umar that he said:

"So I said to her, 'Where is the Messenger of Allah (صلى الله عليه وآله وسلم)?' She said 'He is in his safe in the wooden oriel.' I gazed in the safe of the Messenger of Allah (صلى الله عليه وآله وسلم), and I suddenly saw an amount of barley of about one sa' (a small cubic measure) and equal to that of tree fruits used for juice on one side of the room. I saw as well an untanned skin hanging in the room. My eyes wept. The Prophet said 'What does make you weep, son of Al-Khattab?' I said 'O Prophet of Allah! Why I should not weep when this mat has influenced your side and this is your safe in which I do not see except that which I see'."

At the time of the *khulafa' al-rashidun*, the place in which funds were kept came to be known as *bayt al-mal*. Sa'd mentioned in *Al-Tabaqaat* from Shall ibn Abi Haythma and others: "Abu Bakr used to have a house in Al-Sanh not guarded by anybody. So it was said to him, 'Why do you not put somebody to guard it?' He said, 'It has a lock.' He used to give out that which was in it till it became empty. When he moved to Madinah, he moved it and placed it in his house."

Hinad narrated in *Al-Zuhd* through a good narration from Anas, he said: "A person came to 'Umar and said, 'O *Amir ul-Mu'minin!* Support me for I want to go in Jihad. 'Umar replied, 'Hold his hand and take him to bayt al-malso he can take the funds he wants." Al-Shafi'i narrated in *Al-Umm*, which was authenticated by Ibn Hajar from 'Abdullah ibn Wadi'ah, he said: "Salim, the servant of Abu Hudhayfah was a servant to a woman from us called Salma bint Yeaar, she freed him in her days of Jahiliyyah. When he was killed in Al-Yamamah, his heritage was brought to 'Umar ibn Al-Khattab. So he called upon Wadeeah ibn Khidham and said, 'This is the heritage of your servant, and you deserve it more.' He said, 'O *Amir ul-Mu'minin*. Allah has made us of no need to him. Our woman has freed him unrestricted; so we do not want to bring disgrace to ourselves, (or to bring loss upon us) from his matter.' So, 'Umar put his heritage wealth in the Bayt al-Mal." Al-Bayhaqi and Al-Darimi narrated, and Ibn Hazim corrected that "Sufyan ibn Abdullah ibn Rabeeah Al-Thaqafy found a leather bag and brought it to 'Umar ibn Al-Khattab. He said, announce it for one year; and if it was recognised then give it, otherwise it is yours.'

Nobody recognised it, so he met him the next year and mentioned it to him. 'Umar said, 'It is yours, for the Messenger of Allah (صلى الله عليه وآله وسلم) ordered us

to do that.' He said, 'I do not want it.' 'Umar took it and put it in the Bayt al-mal." Al-Darimi narrated from Abdullah ibn Amru, he said: "A servant passed away at the time of 'Uthman without having a relative. So, he ordered that his wealth be put in Bayt al-mal." Ibn Abd al-Barr narrated in *Al-Istidhkar* from Anas ibn Sirin "Ali used to divide the funds until the bayt al-mal became empty. It would then be cleaned and he would sit in it."

This is in regards to the first meaning of *Bayt al-mal*, which is the place. With regards to the second meaning, which is the responsible authority, this is necessitated by the fact that the funds are sometimes not kept in a place, such as like the lands, oil wells, gas wells, mines, and the charity funds that are taken from the wealth and paid to its deserved people without being kept in a place. The Bayt al-malis sometimes used to mean the responsible authority as narrated by Al-Bayhaqi, Ahmad in *Al-Musnad*, and 'Abd al-Razzaq in His *Musannaf*, from Lahiqa ibn Humayd "Ibn Mas'ud was sent to preside over the judiciary and bayt al-mal." It would not mean that 'Umar sent him as a doorman to the bayt al-mal, rather with responsible authority of collecting and spending the funds. This is the same meaning as narrated by Ibn Al-Mubarak in *Al-Zuhd* from Al-Hasan, when the amirs of Al-Basrah came with Abu Musa Al-Ash'ari and requested from him to assign food for them. He said in concluding his words to them: "O folk of amirs! I have assigned to you from the Bayt al-mal two sheep and two gareeb (a patch of arable land)", thus it can mean the responsible authority.

The one that disposes of the revenues and deals with the expenses of bayt al-mal is the Khalifah.

The Messenger of Allah (صلى الله عليه وآله وسلم) was the one that received the donations of 'Uthman to the army of hardship ('usrah) in his lap. Ahmad narrated and Al-Tirmidhi narrated from *hasan* and *gharib*, and Al-Hakim narrated it and corrected it, Al-Dhahabi agreed with him, from Abdul Rahman ibn Samrah that he said:

"'Uthman came to the Prophet (صلى الله عليه وآله وسلم) with one thousand dinar when he prepared the army of the hardship (ghazwah of Tabuk) and he emptied it in the lap of the Prophet (صلى الله عليه وآله وسلم). He said the Prophet (صلى الله عليه وآله وسلم) started to turn them around and say: 'Uthman will not be harmed by any work he does after today, and he said that many times". He used sometimes to divide them by himself. Al-Bukhari narrated from Anas:

"Funds from Bahrain were brought to the Prophet (صلى الله عليه وآله وسلم). He said spread them in the mosque. When he finished the prayer, he sat down close to them and left nobody he saw without giving him. So, when the Messenger of Allah (صلى الله عليه وآله وسلم) stood up there was no single dirham left with them."

Abu Bakr took responsibility of dividing by himself the funds coming from Bahrain. Al-Bukhari narrated from Jabir, he said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) said: 'If funds came from Bahrain, I would give you thus and thus and thus, i.e. three times. When the Messenger of Allah (صلى الله عليه وآله وسلم) passed away and the funds came from Bahrain, Abu Bakr ordered somebody to call: Whoever has some debt or something with the Messenger of Allah (صلى الله عليه وآله وسلم) let him come to us. So I went to him and said the Messenger of Allah (صلى الله عليه وآله وسلم) said: **'for me is thus and thus, so he gave me three times.'**"

In a hadith mentioned above of Sufyan Al-Thaqafy regarding the leather bag which he found and announced to 'Umar: "'Umar took it and put it in the Bayt al-mal". Al-Shafi'i narrated in *Al-Umm*, he said: "More than one of the scholars told us that when the spoils of Iraq reached 'Umar ibn Al-Khattab, the trustee of Bayt al-mal told him, 'let me put them in the Bayt al-mal.' He said: 'No! By the Lord of the Ka'bah, it will not be kept in any house till it is divided.' So he ordered it should be put in the masjid, and leather mats were put on top of it and men from Al-Muhajirin and Al-Ansar guarded it. In the morning, Al-'Abbas ibn Abdul Muttalib and Abdul Rahman ibn Awf went out with him, he was either holding the hand of one of them, or one of them was holding his hand. When they saw him, they removed the leather mats away from the funds. So, he saw a scene he never saw before. He saw the gold, sapphire, chrysolite and pearl sparkling and he cried. One of them said to him, 'By Allah! This is not a day of crying, rather a day of praising and delight.' He said 'By Allah! I did not think of it your way. Rather, such funds will not increase in any people except their harm falls between them.' Then he turned to the Qiblah, rose up his hands and said, 'O my Lord! I seek protection with you from being allured, for I hear You (سبحانه وتعالى) saying:

وأملني إن كيدي متين

"We lead them on from whence they do not know". [TMQ 7:183]

Then he said, 'Where is Suraqah ibn Ja'sham?' He was brought to him while his arms were hairy and slim. He gave him the two bracelets of Kisra. He said,

'Wear them' and he did. He then said, 'Say Allahu akbar.' He said allahu Akbar.' He said, 'Say Alhamdulillah who wrested them from Kisra ibn Hirmiz and dressed them to Suraqah ibn Ja'sham, a Bedouin from Bani Midlij.' He started to turn over the funds with a stick and said, 'Indeed the one that rendered that is honest.' A man said to him, 'Let me tell you, you are the trustee of Allah (ameen ullah), and they render to you that which you rendered to Allah. So, if you revelled they would revel.' He said, 'You said the truth.' then he distributed it". We mentioned before also the hadith of Abdullah ibn Amru as reported by Al-Darimy "A servant passed away at the time of 'Uthman without having a relative. So, he ordered that his wealth be put in bayt al-mal." This is besides the hadith of Anas ibn Seereen in Al-Istidhkar that "Ali used to divide the funds till bayt al-mal became empty. (It was cleaned and he sat in it."

The Messenger of Allah (صلى الله عليه وآله وسلم) used to sometimes appoint one of his companions to preside over the division of the funds, or he used to appoint him over some of the issues of the funds. Al-Bukhari narrated a hadith from Uqbah that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"I remembered some gold dust with us, so I hated it would hold me back, and I ordered it should be divided". The hadith of ibn Shihab, as reported by Ibn Abi Shaybah through a narration authenticated by Al-Hafiz ibn Hajar Al-Asqalani, Al-Mundhiri and Al-Haythami says: "The messenger of Allah (صلى الله عليه وآله وسلم) entered the safe of Bilal in which he put the sadaqah and found in it a heap of dates, so he said, 'What are these dates, O Bilal?' He said 'O Messenger of Allah, I took it for your misfortunes.' He said, 'Do you feel safe from waking up and finding it to fume in Jahanam? Spend and do not feel fear of reduction or stinginess from the Owner of the Throne.'"

This hadith states: "Abdul Rahman ibn Awf (ra) used to take charge of the sadaqah of camels and sheep at the time of the Messenger of Allah (صلى الله عليه وآله وسلم), and Bilal (ra) used to take charge of the sadaqah of fruits; while Mahmiyyah ibn Juz' used to take charge of the fifth (of the Messenger of Allah and his household)". And Khalifah said: "And Bilal was responsible for his expenses".

Ibn Hibban narrated in the *Sahih* from Abdullah ibn Lahy Al-Huzany, he said: "I met with Bilal, the mu'azzin of the Messenger of Allah (صلى الله عليه وآله وسلم) and said, 'O Bilal! How much were the expenses of the Messenger of Allah (صلى الله عليه وآله وسلم)?' He replied, 'He did not have anything. I was the one that took care of that since he was sent as a messenger till the day he (صلى الله عليه وآله وسلم)

passed away. If a Muslim came to him and he (صلى الله عليه وآله وسلم) saw him not dressed, he ordered me to rush and borrow some money so as to buy him a cloak to dress him and also feed him". Muslim narrated from Abi Rafi' the servant of the Messenger of Allah (صلى الله عليه وآله وسلم), he said:

"The Messenger of Allah (صلى الله عليه وآله وسلم) borrowed a young camel. Camels of the sadaqah reached him, Abu Rafi' said the Messenger of Allah (صلى الله عليه وآله وسلم) ordered me to repay the man his young camel. I said I did not find in the camels except a four year old good camel. The Messenger of Allah (صلى الله عليه وآله وسلم) said give it to him, for the best people are those who are best in repayment".

It is also mentioned in the hadith of Ibn Abbas, which is agreed upon by the four books:

"That when the Messenger of Allah (صلى الله عليه وآله وسلم) sent Muadh to Yemen, he said: If they obeyed you then inform them that Allah has obliged upon them a sadaqah which is taken from their wealth people and given to their poor. If they accepted that from you, then avoid taking the best of their wealth, and protect yourself of the imprecation of the oppressed, for there is no curtain between it and Allah".

It is also reported in the two *Saheeh* from Abu Hurayrah "that the Messenger of Allah (صلى الله عليه وآله وسلم) sent 'Umar (ra) to collect the sadaqah".

The *khalafa' rashidun* followed him in his method, so they used to appoint some other people to run the affairs of funds. Ibn Ishaq and Khalifah narrated: "Abu Bakr appointed Abu Ubaydah ibn Al-Jarrah in charge of Bayt al-mal, and then he sent him to Al-Sham".

Al-Dhahabi said commenting on the life of Muayqeeb that Abu Bakr and 'Umar appointed him in charge of Bayt al-mal. Ibn Ishaq mentioned in a narration praised by Al-Hakim as the author of *Al-Taratib Al-Idariyyah* (the administrative arrangements) from Abdullah ibn Al-Zubayr that he said: "He wrote to Abu Bakr, and he assigned Bayt al-mal to him, and 'Umar ibn Al-Khattab consented to that", meaning Abdullah ibn Al-Arqam. Ibn Sa'd narrated in *Al-Tabaqaat* and Ibn Hajar in *Al-Isabah* that the treasurer of 'Umar was his servant Yasser ibn Numayr. Ahmad narrated in his *Musnad* and Abd al-Razzaq in *Al-Musannaf*, from Lahiqa ibn Hamid, he said, "And he sent Ibn Mas'ud in charge of Judiciary and Bayt al-mal", meaning to Al-Kufah. Khalifah narrated from Malik ibn Anas from Zayd ibn Aslam that "'Umar appointed Abdullah ibn Arqam in charge of the Bayt al-mal".

Ibn Khuzymah reported in his saheeh from Urwah ibn Al-Zubayr that "Abd al-Rahman ibn 'Abd al-Qari said, 'I was in charge of the Bayt al-mal at the time of 'Umar ibn Al-Khattab". Ibn Hajar narrated in *Al-Fath* in the context of speaking about the virtues of Abdullah ibn Mas'ud: "And he was appointed by 'Umar and 'Uthman to be in charge of the Bayt al-mal in Kufah". Al-Jahshayari mentioned in *Al-Wuzara' wa l-Kuttab*: "Abdullah ibn Arqam ibn Abd Yaghuth, one of the scribes of the Prophet, used to assume authority over the Bayt al-mal for him", meaning 'Uthman. Al-Hakim mentioned in *Al-Mustadrak* from Al-Zubayr ibn Bakkar that, "Abdullah ibn Al-Arqam ibn Abd Yaghuth was in charge of Bayt al-mal at the time of 'Umar and the beginning of the authority of 'Uthman till he passed away; and he had some companionship (with the Messenger)".

Ibn Abd al-Barr said in *Al-Isti'ab*: "Zayd ibn Thabit was in charge of the Bayt al-mal during the Khilafah of 'Uthman; Zayd used to have a slave called Waheeb, 'Uthman saw him helping them in bayt al-mal, so he said: 'Who is this?' Zayd replied, a slave to me.' 'Uthman said, 'I see that he helps the Muslims, and he is entitled for a right, and I allocate it to him.' So he allocated to him two thousand. Zayd said, 'By Allah, you cannot allocate two thousand to a slave', so he allocated to him one thousand".

Al-Safadi mentioned in the book about the scholars of Egypt and the companions of the Messenger of Allah (صلى الله عليه وآله وسلم) who entered it: "Abu Rafi' was referred after that to Ali ibn Abu Talib, so he put him in charge of Bayt al-mal in Al-Kufah". Ibn 'Abd al-Barr said in *Al-Isti'ab*: "Ubaydullah ibn Abu Rafi' was a treasurer and secretary to Ali". Al-Ainee mentioned in *Umdat ul-Qaari*: "Abdullah ibn Wahb Al-Suwa'i, Ali used to honour him, love him and trust him, so he was put in charge of Bayt al-mal in Al-Kufah". Ali appointed Ziyad in charge of Al-Basrah. Al-Jahshiyari said: "When he left Al-Basrah, he placed him in charge of Al-Kharaj and diwan".

Bayt al-mal can be divided into two parts:

Revenues: It includes three diwans:

- Diwan of spoils and kharaj: This includes the spoils, kharaj, lands, jzyah, booties and taxes.
- Diwan of public property: This includes the oil, gas, electricity, minerals, seas, rivers, lakes, springs, forests, pastures and hima (protected lands).

- Diwan of Sadaqah: This includes Zakah of money, merchandise, harvest and fruits, camels, cows and sheep.

Expenditure: This includes eight diwans:

- Diwan of the Khilafah house.
- Diwan of the State's services.
- Diwan of grants.
- Diwan of jihad.
- Diwan of expenses of sadaqah.
- Diwan of expenses of public property.
- Diwan of emergency.
- Diwan of general budget, general accounting and general inspection.

Information (Al-I'lam)

Information is one of the most important matters for the da'wah and State. It is not one of the interests (*masalih*) of the people that follow the department of people's affairs. It is rather directly connected with the Khalifah as an independent organisation, just like any one of the State's organisations.

The presence of a distinguished information policy that presents Islam strongly and effectively would provoke the minds of the people to turn toward Islam, and to study and think of it. It also facilitates the annexation of Muslim lands to the Khalifah State. Furthermore, there are many issues of information which are closely related to the State, and they cannot be published without the Khalifah's instruction. This is manifested in the military matters and related issues, such as the movement of the armies, and the news of victory and defeat and the military industries. This type of news must be linked directly to the Imam so as to decide which news has to be concealed and which news must be announced and advertised.

The evidence to this is the Book and the Sunnah.

As regarding the Book, His (سبحانه وتعالى) saying:

وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوْ الْخَوْفِ أَدَّعَوْا بِهٖ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ
وَإِلَىٰ أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنبِطُونَهُ مِنْهُمْ وَلَوْ لَا فَضْلُ اللَّهِ
عَلَيْكُمْ وَرَحْمَتُهُ لَاتَّبَعْتُمُ الشَّيْطَانَ إِلَّا قَلِيلًا

"And if any tidings, whether of safety or fear, come to them, they announce it, whereas if they had referred it to the Messenger and those in authority, then those among them who are able to think out of the matter would have known it." [TMQ 4:83]

The subject of the verse is the news.

As regarding the Sunnah it is the hadith of Ibn Abbas about the conquest of Makkah as is reported by Al-Hakim in *Al-Mustadrak*, described as *sahih* based on the condition of Muslim, and Al-Dhahabi confirmed that. The hadith mentions: "The news were obscured to Quraish; so the news of the Messenger

of Allah (صلى الله عليه وآله وسلم) would not reach them, and nor they know what he is planning regarding them."

There is also the *mursal* (hadith not directly connected to the Messenger (صلى الله عليه وآله وسلم), rather the name of a sahabi is missing) of Abu Salamah as reported by Ibn Abu Shaybah, which mentions:

"Then the Prophet (صلى الله عليه وآله وسلم) said to Ayesha: Prepare (things to) me and do not tell anybody of that. Then he ordered that roads be shut off, so people of Makkah were obstructed, and thus no news would reach them."

There is also the hadith of Ka'b which is agreed upon regarding the ghazwah of 'usrah (Tabuk), which says:

"The Messenger of Allah (صلى الله عليه وآله وسلم) never wanted a ghazwah without alluding to something else except in that ghazwah, which he made during a very hot weather, a distant place, a desert and a huge enemy. So, he explained to the Muslims their matter to be ready for their raid, and he thus informed them of the destination he wants."

There is also the hadith of Anas as reported by Al-Bukhari:

"The Prophet (صلى الله عليه وآله وسلم) announced the death of Zayd, Ja'far and Ibn Ruwahah before the news of their death reached him. He said: Zayd took the flag but he was killed, then Ja'far took it and he was killed, then Ibn Ruwahah took it and he was killed; he said that while he was crying. Lastly one of the swords of Allah took it till Allah granted them victory." [Bukhari, *Sahih*, #3757].

Some of the applications of this rule at the time of the Rashidun is that which is narrated by Ibn Al-Mubarak in the subject of jihad, Al-Hakim reported in *Al-Mustadrak* and he described it as *sahih* based on the condition of Muslim, which Al-Dhahabi agreed to, from Zayd ibn Aslam from his father from 'Umar ibn Al-Khattab "that he was informed that Abu Ubaydah was surrounded and the enemy rallied against him. So, 'Umar wrote to him, 'Peace is upon you. After that, there is not any difficulty that befalls a believer except Allah made for him a way out of it; and never a hardship would defeat two eases.'"

يا أيها الذين آمنوا اصبروا وصابروا ورابطوا واتقوا الله لعلكم
تفلحون

'O you who believe! Endure, out do all others endurance, be ready and observe your duty to Allah, in order that you may succeed.' (3:200)

He said: Abu 'Ubaydah wrote to him, "Peace is upon you, after that Allah says in His Book:

'Know that the life of this world is only play, and idle talk, and pageantry, and boasting among you, and rivalry in respect of wealth and children.' (57: 20).

He said, then 'Umar went out holding his book, sat on the mimbar and read it to the people of Al-Madinah and said, "O people of Al-Madinah! Abu Ubaydah alludes to you that you should show interest in jihad."

The issues that are connected with the military news are the news of the negotiations, peace treaties and debates that take place between the Khalifah or his deputy and the representatives of the kufr states. As an example to the negotiations is that which took place between him (صلى الله عليه) (وآله وسلم) and the representatives of Quraish in Al-Hudaybiyah till agreement was reached over the clauses of the peace. The example of his direct debates is his (صلى الله عليه وآله وسلم) debate with the delegate of Jajran and calling them to curse each other in case we did not say the truth. This is also alongside the debate of Thabit ibn Qays and Hassan to the delegate of Tamim based on the order of the Prophet (صلى الله عليه وآله وسلم).

All of this was open without any secret clause in it. Though other types of news have no direct connection with the State, and they do not need the direct opinion of the Khalifah regarding them, such as the daily news, the political, cultural and scientific programs and the international events, they however interfere with some details of the viewpoint in life, and with the view of the State towards international relations. Therefore, the supervision of the State over these types of news differs from it over the first type of news.

Thereupon, the organisation of information must contain two main departments:

The first: Its task is related to news that has connection with the State, such as the military matters, the military industry and international relations, etc.

The task of this department is the direct supervision of such news. So, such news is not broadcasted in the state media or the special sources of media except after their presentation to the information organisation.

The second: is related to other news; and its supervision of them is not direct. The State's source of media and the special sources of media do not need any permission for presenting such news.

Granting of permission for sources of media;

Sources of media do not require any permission for work. Rather, every citizen in the Islamic State is allowed to set up a source of media, whether through text, audio or visual. He must only inform the information organisation about the source of media he wishes to establish.

He also needs, as mentioned before, permission for publishing the news connected with the State, as mentioned above. As regarding the other news he can publish it without previous permission.

In all cases, the owner of the source of media is responsible for the information he publishes, and he will be accounted for any violation to the shara like any other citizen.

The information policy of the State:

A law will be published that demonstrates the general guidelines of the information policy of the State, in accordance with the divine rules. The State would follow such policy for serving the interest of Islam and Muslims, and for building a cohesive and strong Islamic society, which adheres to the rope of Allah and from which goodness shines from within. There will be no place in it for vicious and depraving thoughts, and nor for false and misleading cultures. It would be an Islamic society that dismisses its wickedness and shines its goodness, and celebrates the praises of Allah, the Lord of the worlds.

Majlis al-Ummah (The Council of the Ummah, Shura and accounting)

This is a Council formed by individuals representing the opinion of the Muslims at large, to which the Khalifah can refer to in regards to consulting them on various issues. They in turn are the representatives of the Ummah in holding the rulers accountable. This is deduced from the Messenger of Allah's (صلى الله عليه وآله وسلم) consultation with some men from the Ansar and the Muhajireen who represent their people. It is also derived from the Messenger's (صلى الله عليه وآله وسلم) assigning some of his Sahabah for shura, he used to refer to them more than to others for seeking an opinion, such as Abu Bakr, 'Umar, Hamza, Ali, Salman Al-Farsi, Hudhayfah,

It is also deduced from the fact that Abu Bakr (ra) designated some men from the Muhajireen and the Ansar to refer to them seeking their opinion when something happened. The people of the Shura at the time of Abu Bakr (ra) were the Ulama and the people of Fatwa. Ibn Saad reported from Al-Qasim that when something happened and Abu Bakr wanted to consult the people of opinion and the people of Fiqh, he called from the Muhajireen and the Ansar. 'Umar, 'Uthman, Ali, Abdur Rahman b. Awf, Muadh b. Jabal, Ubai bin Kaab and Zayd b. Thabit. They all used to give their opinion during the Khilafah of Abu Bakr. People would also take their Fatwa. When 'Umar became Khalifah he would also call these people. There are also evidences that call upon the Muslims to account the rulers. Muslims exercised such accounting as happened at the time of Khulafaa' Rashidun. As the Ummah is allowed to be represented in shura she is allowed to be represented in accounting. All of this indicates that it is allowed to have a special council that represents the Ummah in accounting and in the shura which is established by the text of the Quran and Sunnah. It is called the 'Council of the Ummah' because it represents the Ummah in *shura* and accounting.

It is permitted for non-Muslim citizens to be members of the Council, in order to file complaints against any injustice perpetrated against them by the rulers or against any mis-implementation of Islam upon them or the lack of services to them or the like.

THE RIGHT OF THE SHURA

Shura is a right of all the Muslims which the Khalifah should fulfil. They are entitled to be consulted and the Khalifah should refer to them and consult them. Allah (سبحانه وتعالى) says:

وشاورهم في الأمر فإذا عزمت فتوكل على الله إن الله يحب المتوكلين

"And do consult them in the matter, and if you decide (on an action/on an opinion) put your trust in Allah" [3:159]

Allah (سبحانه وتعالى) says also

وَأْمُرُهُمْ شُورَىٰ بَيْنَهُمْ

"And their matter is in consultation between them". [TMQ 42: 38]

The Messenger of Allah (صلى الله عليه وآله وسلم) used to refer to people and consult with them.

He (صلى الله عليه وآله وسلم) consulted them on the day of Badr about the location of the battlefield, and he consulted them on the day of Uhud about whether to fight inside or outside Medina. On the day of Badr he took the advice of Al-Habab Ibnu-l-Mundhir regarding a technical opinion voiced by an expert which he accepted. On the day of Uhud he accepted the opinion of the majority, despite the fact that his personal opinion was different.

'Umar IbnAl-Khattab consulted the Muslims regarding the land of Iraq, whether to divide it among the Muslims because it was booty or to leave it in the hands of its people with the condition that they paid it's Kharaj with the land remaining the property of the Treasury. He then acted according to his own ijihad and the majority of the Sahabah approved of it, so he left the land in the hands of its people and ordered them to pay the Kharaj.

The right of accounting:

The Muslims have the right to be consulted by the Khalifah and they must also account the rulers regarding their actions and practices. Allah (سبحانه وتعالى) obliged the Muslims to account the rulers, and He commanded them in a decisive way to account them and change them if they transgressed against the rights of the citizens, failed in their duties towards them or neglected any

of her affairs, or violated the rules of Islam, or governed by other than the rules of Allah. It was narrated by Muslim from Umm Salamah (ra) that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"There will be amirs, you would agree on some of what they do and reject some. So, whoever acknowledged (the truth of what they do) he would be free (of sin), and whoever rejected (the wrong) he would be safe (of responsibility), but what about the one that accepted and followed? (He would not be safe). They said: Should not we fight against them? He said: No, as long as they pray."

Prayer here is indication of ruling by Islam.

Muslims, led by 'Umar, denied the decision of Abu Bakr regarding the fight against the apostates when the issue first arose.

Al-Bukhari and Muslim narrated from Abu Hurairah, he said:

"When the Messenger of Allah (صلى الله عليه وآله وسلم) passed away, and Abu Bakr (ra) became Khalifah and some Arabs apostasised, 'Umar (ra) said: How do you fight against the people when the Messenger of Allah (صلى الله عليه وآله وسلم) said:

'I have been commanded to fight against the people till they say *la ilaha illa Allah*. Whoever said it he would have protected from me his wealth and blood except for its due right, and his account will be with Allah.' [Bukhari, *Sahih*, #2946].

Abu Bakr replied, "By Allah, I will fight against the one that differentiated between the prayer and the Zakah, for the *Zakah* is a right due on the wealth. By Allah, if they refused to pay me the young she-goat they used to pay to the Messenger of Allah (صلى الله عليه وآله وسلم); I would fight against them for refusing to pay it." 'Umar (ra) said, "By Allah, it was Allah that soon opened the heart of Abu Bakr, so I knew it was the truth."

Bilal ibn Rabah and Al-Zubayr and others have also rejected that 'Umar should not divide the land of Iraq among the fighters. A Bedouin also denied that 'Umar should protect some land. Abu 'Ubayd narrated in *Al-Amwal* from 'Aamir ibn Abdullah ibn Al-Zubayr, from his father that he said: "A Bedouin came to 'Umar and said, 'O *amir ul-mu'minin*. It is our land in jahiliyyah which we fought for, and we embraced Islam while we were owed it; so why do you protect it?" 'Umar bowed his head, and started to blow and twist his

moustache. He used to twist his moustache and blow when something worried him. When the Bedouin saw that of him, he started to repeat the question to him. 'Umar said, "The wealth belongs to Allah, and the people are the servants of Allah. By Allah, if I do not assume the burden of something *fi sabi lillah* I would not have protected an inch of land". 'Umar had then protected some of the public property lands for the horses of Muslims (used in jihad). A woman also challenged his forbiddance to the people of taking more than four hundred dirhams as mahr. She said to him, "You have no right in that, O 'Umar. Have you not heard the saying of Allah (سبحانه وتعالى)?"

فلا تأخذوا منه شيئاً أتأخذونه بهتاناً

"And you have given one of them a sum of money (however great), take nothing from it". [TMQ 4: 20]

He responded by saying, "A woman said the right and 'Umar made a mistake."

'Ali (ra) also contested 'Uthman (ra) when he was amir al-mu'mineen in his view of completing the hajj and umrah. Ahmad narrated through sound *isnads* from Abdullah ibn Al-Zubayr that he said: "We were with 'Uthman in Al-Juhfah, while some people from Al-Sham were with him including Habib ibn Maslamah Al-Fahree. 'Uthman said when it was mentioned to him content with (tamattu') umrah till hajj, "The best for hajj and umrah not to be both in months of hajj. It would be better to delay this umrah till you visit this house twice, for Allah (سبحانه وتعالى) made it spacious for goodness." Ali ibn Abu Talib was in the valley feeding his camels. He got knowledge of the view of 'Uthman, so he came till he stopped before 'Uthman and said: "Do you turn to a Sunnah recommended by the Messenger of Allah (صلى الله عليه وآله وسلم) and a permission (rukhsah) Allah (سبحانه وتعالى) allowed to the servants in His Book, you restrict it to them and you forbid it, when it was permitted to a person of a need and to a person of distant home?" 'Uthman turned to the people and said, "Did I forbid it? I did not forbid it. It was only a view I advised; so whoever willed he can take it, and whoever willed he can leave it"."

Therefore, the council of the Ummah has the right of *shura* and is obliged to account.

The difference between the *shura* and accounting is thus clear. *Shura* is seeking an opinion or listening to it before taking the decision; whilst accounting is objection after taking the decision or execution of the work.

ELECTING THE MEMBERS OF THE COUNCIL OF THE UMMAH

The members of the Ummah's Council are elected and not appointed. They are representatives of the people in the voicing of opinions, and the representative should be chosen by the person whom he represents and should never be imposed upon him. Since also the members of the Ummah's Council are representatives of the people's opinions, whether they are individuals or groups; so to know the representative of people in a large area and the uncounted folk does not come about unless this representative is chosen by them.

Moreover, the Messenger of Allah (صلى الله عليه وآله وسلم) did not choose those whom he consulted based on their ability, competence and personalities; rather he chose them based on two points: Firstly, because they were chiefs among their folks, regardless of their ability and competence; secondly, because they represented the Muhajireen and the Ansar. The reason for the presence of the people of the Shura is to represent the people. Therefore the tenet upon which the Ummah's Council members are chosen should be: the representation of people, as was the case in the deliberate selection from the chiefs, and the representation of the groups as was the case in the deliberate selection from the Muhajireen and the Ansar. This representation of the individuals and groups who are uncounted cannot be achieved except by election. The members of the Ummah's Council have to therefore be elected.

As for the fact that it was the Messenger of Allah (صلى الله عليه وآله وسلم), himself, who chose whom he consulted, this was because the area in question, Medina, was small and because the Muslims were known to him. In contrast, in the second Bayah of Al-Aqaba, the Muslims who gave him the Bayah were not known to him and this is why he left the matter of choosing the chiefs to them, by saying:

"Choose from among you twelve leaders who will be responsible for themselves and their people." As reported in the Seerah of Ibn Hisham from Kaab b. Malik.

We can thus conclude from the fact that the members of the Ummah's Council represent the opinion of the Muslims at large, and since the reason ('illah) for which the Council is founded is to represent the individuals and groups in voicing their opinions and in holding the rulers accountable, and since this cannot be achieved if the persons were not known, unless there was

a general election. All of this proves that the members of the Ummah's Council should be elected and not appointed.

The council of the Ummah method of election:

1. We mentioned during the discussion of the wulah that we adopt election of a council to the wilayah that represents its people for two reasons: The first is to provide necessary information to the wali about the situation and needs of the wilayah. The purpose of that is helping the wali in conducting his task in a way that provides a comfortable and secured life for the people of the wilayah, and facilitates the discharge of their needs and the provision of their services. The second is to express content with or complaint of the governance of the wali to them. This is because the complaint of the majority of the council of the wilayah against the wali obliges his disposal. This means the reality of the council of the wilayah is administrative for helping the wali by informing him of the reality of the wilayah and for expressing the content with or complaint of him. All of this motivates him to improve his work. This council has other mandatory powers such as those of the council of the Ummah, as explained below.

2. We adopt here setting up a council of the Ummah (for shura and accounting), which must be elected by the Ummah and representative of her. Its mandatory powers will be as shown later on.

3. This means there will be election for selecting the members of the councils of wilayah, and another election for the members of the council of the Ummah.

4. To facilitate the election process and save the citizens from repeated elections, we adopt the election of the councils of the wilayah first, then those who won in the councils of the wilayah would gather and elect from among themselves the council of the Ummah. This means the councils of the wilayah would be directly elected by the Ummah, while the council of the Ummah would be elected by the councils of the wilayah. Hence the beginning and end of the term of the council of the Ummah is the same as the beginning and end of the term of the councils of the wilayah.

5. The one that is elected from the councils of the wilayah to the council of the Ummah is replaced by the one with the highest votes among those who failed in the elections of the councils of the wilayah. A lot is cast between those who got the same votes.

6. The people of the dhimmah elect their representatives in the councils of the wilayat; and these representatives elect their representatives in the council of the Ummah. All of this takes place at the same time of the election of the councils of the wilayat and the council of the Ummah in the State.

Consequently, a law has been prepared that takes into consideration the matters mentioned, and explains the measures used for the election of the councils of the wilayat and the council of the Ummah. This law will be discussed and adopted in the right time insha Allah.

MEMBERSHIP OF THE COUNCIL OF THE UMMAH

Any person who holds the citizenship of the State, provided he is mature and sane has the right to be a member of the Council of the Ummah and the right to elect the members of the Council, whether the person is a man or a woman. This is because the Council of the Ummah has no mandate to rule, and it does not come under the noble hadith that prevents the woman from becoming a ruler. It is rather within the subject of shura and accounting, which is right for both, the man and the woman. In the thirteenth year of the Messenger of Allah's (صلى الله عليه وآله وسلم) Prophethood, the year he emigrated, there came to him (صلى الله عليه وآله وسلم) seventy-five Muslims, among whom were two women, and they all gave him the second Bayah of Al-Aqaba, which was a Bayah of war and fighting and a political Bayah. Once they had all given their Bayah, he said to all of them:

"Bring me twelve Chiefs (*Naqibs*) from among you who would be responsible for themselves and their folk." This is part of a long hadith reported by Ahmad through Ka'b ibn Malik; and it is an order from him addressed to everyone, to elect from all who were present.

He (صلى الله عليه وآله وسلم) did not specify the men and nor exclude the women, neither in regard to who would select nor to who should be selected. The Mutlaq (unrestricted) rule should be taken as such, unless there is evidence that restricts it; and the Aam (general) rule should also be taken as such, unless there is evidence that specifies it. In this case the speech was unrestricted and general. No evidence of specification or restriction has been reported, which indicates that the Messenger of Allah (صلى الله عليه وآله وسلم) ordered the two women to elect the Naqibs, and gave them the right to be chosen as Naqibs from among the Muslims.

The Messenger of Allah (صلى الله عليه وآله وسلم) sat once to take the Bay'ah from the people, with Abu Bakr and 'Umar sitting with him, and both men and

women gave him the Bayah. This Bayah was one on ruling and not on Islam, for the women were already Muslims. After the Bayah of the Ridhwan in Hudaibiyah the women gave him their Bayah too.

Allah (سبحانه وتعالى) says: "O Prophet! When believing women come to you to take the oath that they will not associate in worshipping any other thing whatsoever with Allah, that they will not steal, that they will not commit adultery (or fornication) that they will not kill their children, that they will not utter slander intentionally or in falsehood, and that they will not disobey you in any just matter, then do receive their oath, and pray to Allah for the forgiveness of their sins, for Allah is off-forgiving, most merciful". .. [60:12]

This Bayah was also a Bayah on ruling, as the Qur'an states that the women were believers, and the Bayah was that they would not disobey him in any good thing.

Besides, the woman has the right to represent and be represented in voicing an opinion. This is because she has the right to voice her opinion, so she can choose her representative; and moreover since the deputyship does not necessitate manhood, she has the right to represent those who elect her.

It was also proved that our master 'Umar used to seek the opinion of the Muslims when a problem faces him, whether it related to the ahkam Shariah or the ruling or any of the actions of the State. When a problem faced him he used to call the Muslims to the masjid, and he used to call the men and women, and seek the opinion of all of them. He withdrew his opinion when a woman opposed him regarding limitation of the mahr.

Non-Muslims have the right like the Muslims to be represented in the council of the Ummah, and to be representatives of their electorate in it, so as to express the opinion on their behalf regarding the misapplication of the rules of Islam upon them, and the oppression of the ruler that might fall upon them.

However, non-Muslims would not be allowed to voice their opinion in matters related to legislation, because the Islamic legislation emanates from the Islamic aqeedah. It is a host of practical divine rules deduced from their elaborate evidences, which treat human problems according to a specific viewpoint outlined by the Islamic Aqeedah. The non-Muslim embraces a doctrine that is alien and contradictory to the Islamic Aqeedah, and his viewpoint about life contradicts the Islamic viewpoint, so his opinion is not sought in matters of legislation.

The non-Muslim also does not have the right to elect the Khalifah, nor to participate in the short listing of the candidates from whom the Khalifah is to be elected, for he has no right in the ruling. As for other matters that form part of the Ummah's Council mandatory powers, he is just like the Muslim in these matters and in voicing an opinion regarding them.

THE LENGTH OF TERM OF THE MEMBERSHIP TO THE UMMAH'S COUNCIL

The term of membership to the Council of the Ummah is limited. This is because Abu Bakr was not restricted to consult those to whom the Messenger of Allah (صلى الله عليه وآله وسلم) used to refer. 'Umar Ibnul Khattab was also not under obligation to consult those whom Abu Bakr used to consult in the latter years of his rule. 'Umar sought the opinions of people other than those he had consulted in the first years of his ruling. This indicates that the membership to the Council of the Ummah has to be for a specific period. We adopt here the period to be five years.

THE MANDATORY POWERS OF THE COUNCIL OF THE UMMAH

1. The Council of the Ummah has the following mandatory powers and they are:

(a): The Khalifah has to consult the Council and the Council has the right to advise him in the practical matters and actions related to discharging the affairs of the domestic policy that do not require profound thought and scrutiny such as provision of the necessary services so as to enjoy the tranquillity in life in terms of the matters of ruling, education, health, economy, trading, industry, farming and the like. In addition, strengthening the defences of their cities, saving their security and driving the danger of their enemy. The opinion of the Council in these matters is binding to the Khalifah, i.e. the opinion of the majority is executed.

(b): In the intellectual matters that require profound thought and scrutiny, such as revealing the facts or taking the decision of war, the matters that require experience, information and knowledge, like putting military plans and all the technical and practical matters. All of such matters are taken from the specialists and not by majority. Similar to that are the finance, the army and foreign policy, which the Khalifah has the right to decide in accordance with his opinion and ijthad, based on the ahkam shariah, and they are not within the mandatory powers of the council. The Khalifah has the right to refer to the Council for consultation and to acquaint himself with its opinion; however the opinion of the Council is not binding in these matters.

2. The opinion of the council is not sought regarding legislation; the legislation is rather taken from the Book of Allah, the Sunnah of His Messenger and from what they alluded to in terms of ijmaa'us-sahabah and the divine qiyas, through valid ijtiihad. The adoption of the ahkam shariah and enacting of laws would take place in this way. The Khalifah has the right to refer to the Council the laws and rules which he wants to adopt. The Muslim members of the Council have the right to debate them and voice their opinions regarding those rules. However, if they disagreed with the Khalifah regarding the validity of their deduction or their evidence, in terms of their disagreement with the method of adoption from the divine foundations (usool) adopted in the State, then the decision will refer to mahkamah ul-mathalim, and its verdict in this matter is binding.

3. The Council of the Ummah reserves the right to hold the Khalifah accountable on all matters that take place effectively within the State, whether these were related to home affairs, foreign affairs, financial affairs or military matters. The opinion of the Council is binding if the majority's opinion in such matters is binding, and it is not binding if the majority's opinion in such matters is not binding.

If the Council and the Khalifah differed about the legitimacy of an action that had been already executed the matter should be referred to the court of Mazalim to settle the question. Its verdict on the matter is binding.

4. The Council of the Ummah reserves the right to express discontent towards the assistants, Walis or the amils. Its opinion in such a case would be binding and the Khalifah should dismiss them at once. If the opinion of the council of the Ummah differed from the opinion of the council of the concerned wilayah regarding content and discontent of the walis and amils, the opinion of the council of the wilayah has the priority.

5. The Muslim members of the Council have the right to restrict the nomination of candidates for the Khalifah from amongst those decided by mahkamah ul-Mazalim to fulfilling the contractual conditions, whether they were restricted to two or six nominees, as it is explained under the subject of the Khalifah's election. Their opinion in such a matter is binding, and candidates other than those shortlisted by the Council should accordingly not be considered.

These are the mandatory powers of the Council of the Ummah. The evidences to these mandatory powers are as follows:

The first point, (a): The evidence to the fact that the opinion of the council of the Ummah regarding the practical actions and matters, which do not require study and scrutiny is binding, is deduced from the Messenger of Allah's (صلى الله عليه وآله وسلم) compliance with the opinion of the majority in going out of Madinah to meet the army of the mushriks in the battle of Uhud. This is despite the opinion of the Messenger of Allah (صلى الله عليه وآله وسلم) and the Sahabah to stay in Madinah and not to go out of it.

It is also taken from His (صلى الله عليه وآله وسلم) saying to Abu Bakr and 'Umar (ra):

"Had you agreed together on a consulted matter I would not have disagreed with you."

Therefore, the practical matters related to the opinion leading to an action, in terms of providing the services to the citizens for reassuring their life, and in terms of maintaining their security, strengthening their defences and driving danger away from them; the majority opinion of the council in all of these issues is binding upon the Khalifah even if it disagreed with his wish, which happened with the Messenger of Allah (صلى الله عليه وآله وسلم) going out to Uhud in compliance with the opinion of the majority.

The first point (b): In principle, the Khalifah takes the opinion of the scholars and the experts and the specialists regarding the matters of this section. This is in accordance with what happened with the Messenger of Allah (صلى الله عليه وآله وسلم) when he took the opinion of Al-Habab b. Al-Mundhir in selecting the location of the battle of Badr. It was reported in the *Sirah* of ibn Hisham:

“When the Messenger (صلى الله عليه وآله وسلم) camped at the nearest side of the water of Badr, Al-Habbab ibn Al-Mundhir was not content with that site. He said to the Messenger: “O Messenger of Allah! Did Allah make you camp in this place where we can't depart from it, or is it the opinion, war and strategy?” He (صلى الله عليه وآله وسلم) said: “It is rather the opinion, war and strategy”. Al-Habbab b. Al-Mundhir said: “O Messenger of Allah, this is not the (right) place. Move the people till we come to the side of the water near to the people (enemy), we camp there, then we seep away the water from the other part, we build a basin on top of it, we fill it with water. Then we fight against the people where we drink and they do not”. The Messenger of Allah (صلى الله عليه وآله وسلم) said: “You gave the (right) opinion”. So the Messenger of Allah (صلى الله عليه وآله وسلم) and the Muslims stood up and walked till they reached the near side of the water from the enemy and camped there.

Then he (صلى الله عليه وآله وسلم) ordered that the water be seeped away which was done.

He (صلى الله عليه وآله وسلم) built a basin on top of the seeped wells, filled it with water and threw in their (water) pots." So the Messenger of Allah (صلى الله عليه وآله وسلم) agreed with the opinion of al-Habab and followed it.

In this incident, which has to do with the opinion, war and strategy, the views of the people have no weight in taking the decision. Rather the view of the expert is what is considered. Similar to this are the technical matters and the thoughts which require study and scrutiny, together with the definitions. In all such matters, reference is made to the experts and specialists, rather than to the ordinary people's opinion. There is no weight in such matters to the majority, but rather to the knowledge, experience and specialisation.

This also applies to the financial matters, because the Sharia has determined the types of funds which must be collected, and the areas over which they need to be allocated (spent). The Sharia has also determined the cases when taxes are imposed; therefore there is no point in seeking the opinion of the people in the collection and allocation of the funds. Similar to this is the army, the Sharia has left to the Khalifah the right of managing the army's affairs, and it determined the rules of Jihad. There is no validity in the opinion of the people over matters decided by the Sharia. This also applies to the relationship of the State with other States, because this is of the thought that requires study and deep insight and is related to Jihad. Furthermore it is a part of the opinion, war and strategy. Therefore, there is no point in the opinion of the people in this matter whether it is the majority or minority. However the Khalifah is allowed to present these matters to the Council of the Ummah for its consultation and opinion, because such presentation is of the Mubah, and the opinion of the Council in these matters is not binding as in the incident of Badr. Rather the decision is entrusted with the concerned person.

To distinguish the difference between points (a) and (b), we say:

For deciding the building of a bridge over a river to serve the interests of the people in a village, almost isolated in terms of communications and the like, then the majority opinion of the council on this matter is binding to the Khalifah in building the bridge to solve the communications problem of the village. As for deciding the right technical location for building the bridge, and the best engineering design of the bridge, whether it should be a suspension bridge or standing over pillars in the river etc; the experts and

specialized people are consulted in such matters, rather than the majority opinion of the council.

Likewise, building a school for the children of a village, where its children find great difficulty in reaching the schools in the towns, the majority opinion of the council of the Ummah on this matter is binding to the Khalifah. In regards to the choice of the location of the school in the village in terms of the soil strength suitable for design, as well as the style of its building, whether is possessed by the State, i.e. it is built, bought or leased, in such matters the experts and specialised people are consulted; and the majority opinion of the council is not sought, though the Khalifah is allowed to consult with them over the matter, but their opinion is not binding.

As regarding a country at the frontiers, defying the danger of an enemy, then the majority opinion of the council of the Ummah is binding in terms of the village's fortification and driving the danger of the enemy away from it, and preventing its exposure to killing and expulsion after any aggression from the enemy. However, the method of building such fortifications and any fighting means used to drive the danger away from it; such things need the consultation of the experts and specialized people, rather than the majority opinion of the council.

The second point: Legislation belongs to Allah alone. Allah (سبحانه وتعالى) says:

إِن الْحُكْمُ إِلَّا لِلَّهِ

"Verily, the decision rests with Allah only." [TMQ 12: 40]

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي
أَنْفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا

"But nay, by your Lord, they will not be true believers until they make you judge of what is in dispute between them, and find within themselves no dislike of that which you decided and submit with full submission." [TMQ 4: 65]

In the explanation of the Messenger (صلى الله عليه وآله وسلم) to His (سبحانه وتعالى) saying:

اتَّخَذُوا أَحْبَارَهُمْ وَرُهَبَانَهُمْ أَرْبَابًا مِّن دُونِ اللَّهِ

"They have taken as lords beside Allah their rabbis and their monks", [TMQ 9:31]

Al-Tirmidhi reported through 'Adi ibn Hatim, he said:

"I came to the Prophet (صلى الله عليه وآله وسلم) while wearing a cross of gold in my neck. He said: O Adiy! Throw out this idol. And I heard him reading in surah of Bara'ah: 'They have taken as lords beside Allah their rabbis and their monks' (9: 31). He said: they did not worship them; but when they were permitted something they took it as *halal* and when they were prohibited something they forbade it". [Tirmidhi, *Sunan*, #3095]

Therefore, legislation is not taken from the opinion of the council, neither by consensus or majority. It is rather taken from the Book of Allah and the Sunnah of His Messenger, and from that which is indicated by them through valid *ijtihad*.

Thus, the Messenger (صلى الله عليه وآله وسلم) refused the opinion of many Muslims regarding the Hodaybiyah peace treaty, and said:

"I am the servant of Allah and His Messenger, and will never disobey his order."

This is because the peace was a revelation from Allah (سبحانه وتعالى); therefore the opinion of the people is not sought regarding legislation. Based on that, the adoption of the *ahkam shariah*, enacting of laws and the adoption of the rules and cannons are of the mandatory powers of the Khalifah alone as explained before. However, it is allowed for the Khalifah to submit to the council of the Ummah whatever he wants to adopt of *ahkam shariah* and cannons so as to find out its opinion regarding it. This is like what 'Umar b. Al-Khattab (ra) did when he referred to the Muslims over the divine rules, which the Sahabah did not object to, as in the incident of the conquered lands of Iraq, when the Muslims asked him to divide the lands amongst the fighters who opened them. So 'Umar asked the people, but his opinion settled on keeping the land with its landlords on condition that they pay a known *Kharaj* over it in addition to paying the *Jizya* over their persons. The reference of 'Umar and Abu Bakr before him to the Sahabah for their opinion over the divine rules without an objection from the Sahabah to this indicates their *Ijma'*. This serves as evidence that the Khalifah has the right to do that.

With regard to reference to the *mahkamat al-Mazalim* in case the Khalifah differed with the council of the Ummah regarding the validity of the deduction of these cannons, or regarding their evidences or terms of the

adoption from the sources (usool) adopted by the State. In this case the authority of Mathalim judge is to examine the hukm adopted by the Khalifah, whether it has divine evidence and whether the evidence applies to the incident. Therefore, if the Khalifah differed with the council (i.e. the majority of the council) over the hukm which the Khalifah adopted in terms of being a valid hukm shar'i or not, then this dispute is settled by the judge of Mazalim, because it is of his speciality; and the opinion of mahkamat ul-mathalim is binding.

Non-Muslim members of the council have no right in examining the ahkam and cannons which the Khalifah wants to adopt. This is because they do not believe in Islam, and because their right is restricted to voicing their concerns regarding any oppression that might fall upon them from the rulers, rather than expressing their view regarding the divine *ahkam* and canons.

With regards to the third point, its evidence is the general meaning of the texts related to bringing the rulers to task. Ahmad narrated from Ibn 'Umar, who said: "The Messenger of Allah (صلى الله عليه وآله وسلم) said: **"There will be Amirs over you who order you of things they do not do. Whoever believed them in their lies and helped them in their injustice he would not belong to me nor I belong to him, and he will not join me on the Hawd (basin)".** [al-Mundhiry, *al-Tarhib wa'l-Tarhib*, vol.3, p.2203]. Ahmad narrated from Abu Sa'id al-Khudri, who said: "The Messenger of Allah (صلى الله عليه وآله وسلم) said: **"...The best of Jihad is (to say) a word of truth before an oppressor ruler".**" [Abu Dawud, *Sunan*, #4344]. Al-Hakim narrated from Jabir from the Prophet (صلى الله عليه وآله وسلم) who said: **"The master of martyrs is Hamza b. 'Abd al-Muttalib and a man who stood to an oppressor ruler where he ordered him and forbade him so he (the ruler) killed him."** [Al-Mundhiry, *al-Tarhib wa'l-Tarhib*, vol.3, p.229].

Muslim narrated from Umm Salamah that the Messenger of Allah (صلى الله عليه وآله وسلم) said:

"There will be Amirs you recognise some of what they do and deny some. Whoever recognised he would be free of responsibility, and whoever denied he will be safe; but whoever accepted and follows (he will be not)"

These texts are in general form and indicate accounting of the ruler in accordance with the rules of the *shara'*. Furthermore accounting can be over any action. This accounting by the Council to the Khalifah and other assistants, governors and 'Amils would be over any action which has been actually executed whether this action disagreed with the divine rule, was

wrong or harmful to Muslims, or was unjust or complacent toward the citizens in looking after their affairs. The Khalifah must respond to this accounting and the objections by showing his view and evidence regarding his words, actions and tasks he undertook, so that the Council can be assured of the good performance, the sincerity and honesty of the Khalifah. If however the Council does not accept the view of the Khalifah and rejects his argument, this must be examined. If this matter was of the issues over which the majority opinion is binding then the opinion of the Council is binding like the issues in (a), otherwise it would not be like the issues in (a). If the accounting for example was regarding not providing the school in the previous example then the accounting is binding. If the accounting was however regarding the design he chose for the school then his accounting is not binding.

If those who account differed with the rulers over any matter from the legal point of view, the matter is referred to the court of unjust acts (Al-Mazalim) by a request from the Council, due to what Allah (سبحانه وتعالى) says:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

“O you who believe obey Allah and obey the Messenger and those in authority from amongst you. If you disputed over a matter refer it to Allah and the Messenger.” [4:59]

This means that if the Muslims dispute with the people of authority over a matter, they should refer it to Allah and to the Messenger, that is arbitrate to the Sharia. This means to refer to Judiciary, that is to the court of unjust acts and its opinion is binding, because it has the mandatory power in this case.

In regards to the fourth point, its evidence is that the Messenger of Allah (صلى الله عليه وآله وسلم) removed al-'Ala' ibn al-Hadrami, his Amil over Bahrain, because the delegate of `Abd Qays complained about him to the Messenger (صلى الله عليه وآله وسلم). Ibn Sa'd narrated on the authority of Muhammad b. 'Umar:

“That the Messenger of Allah wrote to al-'Ala' b. Al-Hadrami to come to him with twenty men from 'Abd Qays. He reached him with twenty men headed by Abdullah ibn Awf al-Ashajj, and appointed after him al-Mundhir b. Sawa. The delegate complained of al-'Ala' b. Al-Hadrami so the Messenger of Allah

(صلى الله عليه وآله وسلم) removed him and appointed Iban b. Said b. Al-Aass and said to him: "Take care of 'Abd Al-Qays and respect their chiefs."

Also 'Umar b. Al-Khattab removed Sa'd b. Abi Waqqas from the Wilayah just because of the complaint of the people against him, and he said: "I did not remove him because of deficiency or treason". This indicates that the people of the Wilayah have the right to express their anger and discontent of their Walis and Amirs, and the Khalifah thus has to remove them. Likewise, the Council of the Ummah is allowed, as a representative of all Muslims in the State, to express its anger and discontent of the Walis and Amils and the Khalifah has to remove them immediately if the complaint came from the majority of the council of the wilayah or the majority of the council of the Ummah. In the case of conflict between the views of these two councils, then the priority is given to the council of the wilayah, for it is more aware and more acquainted than the council of the Ummah of the condition of the wali.

With regards to the fifth point, this point has two issues: The first one is the short listing of the nominees, and the second is reducing the shortlist to six people and then to two.

As for the first issue, from following the manner of appointing the guided Khulafaa' it appears there was short listing of nominees made by the representatives of the Muslims directly, or through requesting the Khalifah to shortlist the nominees on their behalf.

In the hall of Bani Sa'idah the nominees were Abu Bakr, 'Umar, Abu Ubayda and Sa'd ibn Ubadah, who were seen enough and to whom the nominations were restricted. This took place before the people of the hall, and then by the consent of the Sahabah later on, where they gave the bayah to Abu Bakr.

Towards the end of Abu Bakr's (ra) authority, he consulted with Muslims for about three months, discussing with them the post of Khilafah after him. After they discussed this with him they agreed to his nomination of 'Umar, i.e. restricting the nomination to one candidate.

Restricting of nominees was more clear and obvious after the stabbing of 'Umar, for they requested him (ra) to nominate to them candidates; so he confined it to six (nominees), depriving others of it, where he emphasised that matter as it is known.

At the time of nominating 'Ali (ra), he was the only nominee, without having any one else with him; so there was no need for short listing.

Short listing of nominees used to take place before a gathering of Muslims; a matter which is opposed and not executed had it been not allowed, for this prevents the right of others in nomination. Therefore, short listing the nominees for Khalifah post is allowed due to the ijmaa' us-Sahabah. Thus, the Ummah, i.e. her representatives are allowed to shortlist the nominees, whether this short listing was conducted directly by the Ummah, or through authorizing the outgoing Khalifah to do that on their behalf.

This is in regards to short listing. In regards to evidence for the short listing of the nominees to six people at first, this is taken from the action of 'Umar (ra); whilst shortening the list to two after that is taken from the action of Abdul Rahman ibn Awf (ra). Additionally this verifies the meaning of the bayah by the majority of the Muslim electorate; for if the nominees were more than two, then the winner amongst them might get for example thirty percent of the electorate, i.e. less than their majority. The winner would get the majority in case the nominees were not more than two.

In regards to short listing of the six and two nominees by the council of the Ummah, this must be by the mahkamat ul-mathalim to ensure that the nominees fulfil the contractual conditions; this is because the short listing conducted by the council of the Ummah is for electing a Khalifah from amongst them. It means in other words that they must fulfil the contractual conditions. Therefore, mahkamat ul-mathalim would exclude from the nominees to the Khalifah anyone who does not fulfil the contractual conditions. After that the council of the Ummah would make the shortlist from the nominees decided by mahkamat ul-mathalim to have fulfilled the contractual conditions.

THE RIGHT OF EXPRESSION AND VOICING AN OPINION WITHOUT IMPEDIMENT

Every member of the Council of the Ummah has the right to speak and voice an opinion as he wishes without any pressure as long as it is within the limits allowed by Shara. The member would be a representative of the Muslims in terms of voicing opinions and in accounting. His job would be to study closely the activities of the Khalifah or any ruler in the State or any civil servant in any of the State's departments and offices and hold all them accountable, giving them advice, voicing opinions, presenting suggestions, entering with them into debates, and with objecting to all of the wrong actions performed by the State. He would do all this on behalf of the Muslims who are obliged to enjoin what is good and forbid what is evil, and to hold the rulers accountable,

giving them advice and suggestions, because this is their duty upon the Muslims. Allah (سبحانه وتعالى) says:

كنتم خير أمة أخرجت للناس تأمرون بالمعروف وتنهون عن المنكر
وتؤمنون بالله

"You are the best of peoples, evolved for mankind, enjoining what is right and forbidding what is wrong". .. [3:110]

And He (سبحانه وتعالى) says:

الذين إن مكناهم في الأرض أقاموا الصلاة وآتوا الزكاة وأمروا
بالمعروف ونهوا عن المنكر

"They are those who, if we establish them in the land, establish regular prayers and give zakat, enjoin the right and forbid the wrong". .. [22:41]

Allah (سبحانه وتعالى) also says:

وَلَتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ
الْمُنْكَرِ

"And let there arise from amongst you a band of people inviting to all that is good, enjoins what is right and forbidding what is wrong". .. [3:104]

Many Ahadith have been reported that indicate the obligation of enjoining the Maaruf and forbidding the Munkar, such as Prophet Muhammad's (صلى الله عليه وآله وسلم) saying:

"By He Who owns my soul, you must enjoin the Ma'roof and forbid the Munkar, or Allah may inflict upon you a punishment from Him, you would then supplicate Him and your supplication would go unanswered", as narrated by Ahmad on the authority of Hudhayfah. [Abu Dawud, Sunan, #4336] He (صلى الله عليه وآله وسلم) also said:

"If anyone among you sees a Munkar, let him change it with his hand; if he could not, let him then change it with his tongue; and if he could not, then with his heart., And that is the least of Iman", narrated by Muslim on the authority of Abu Sa'id [Sahih, #175].

These verses and Ahadith command the Muslims to enjoin the Maarooḥ and forbid the Munkar. Holding the rulers accountable is part of enjoining the Maarooḥ and forbidding the Munkar. Some Ahadith in fact specifically order the holding of the rulers accountable, this highlights the importance of such a duty. Umm Atyya reported on the authority of Abu Sa'id that the Messenger of Allah (صلى الله عليه وآله وسلم) said: **"The best of Jihad is a word of truth before a tyrant ruler."** [Abu Dawud, *Sunan*, #4344] This is a text regarding the censure of the ruler and the obligation of uttering the word of truth in his face, considering it as the best form of Jihad. Allah's Messenger (صلى الله عليه وآله وسلم) exhorted this type of Jihad and made it very desirable even if it led to the loss of life, as mentioned in the sound (Sahih) hadith, he (صلى الله عليه وآله وسلم) said: **"The master of martyrs is Hamza, and a man who stood up to a tyrant ruler to advise him, and was killed."** [Al-Mundhiry, *al-Tarhib wa'l-Tarhib*, vol.3, p.229].

When the Sahabah, May Allah be pleased with them, strongly opposed the Messenger of Allah (صلى الله عليه وآله وسلم) regarding the Hudaybiyah peace treaty, he did not censure them over their opposition; he rather rejected their view and concluded the peace treaty. This is because his action was revelation from Allah (سبحانه وتعالى); where there is no weight to the view of the people in such case. His rebuke to them was because they did not obey him when he ordered them to slaughter the consecrated camels, and to shave their heads, and break off their consecration. Also the Messenger of Allah (صلى الله عليه وآله وسلم) did not rebuke al-Habab b. Mundhir in the battle of Badr when he disagreed with the location he camped in, rather he followed his opinion.

The Messenger (صلى الله عليه وآله وسلم) also went along with the opinion of the majority who suggested that they should confront Quraish outside Medina, despite the fact that he (صلى الله عليه وآله وسلم) saw otherwise. In all such events, the Messenger (صلى الله عليه وآله وسلم) used to listen to their objection and answer them back.

The Sahabah (ra) had also taken their Khulafaa' Rashidun (ra) after the Messenger (صلى الله عليه وآله وسلم) to task; and they did not rebuke them. They had held 'Umar accountable while he was standing on the pulpit because of the way he divided the Yemeni cloaks. A woman challenged him because he forbade the increase of the dowries; and the Sahabah also objected to his refusal to divide the lands of 'Iraq after its conquest and took him to task. Bilal and Al-Zubayr were harsh in their objection to him. He used to debate with them and consult other Sahabah until he convinced them of his opinion.

Therefore, any member of the Council of the Ummah, as a representative of the Muslims at large, has the right to speak in the Council as he pleases, and to voice his opinion as he wishes, without any hindrance or pressure. He has the right to hold the Khalifah accountable, as well as the Mu'awin, the Wali and any civil servant. They are obliged to answer him as long as he is abiding by the rules of shara in the process of accounting and voicing his opinion.

The non-Muslim members of the council of the Ummah also have the right in voicing their opinion regarding any oppression that might fall upon them from the rulers, without being prevented or feeling impeded as long as they remained within the bounds of shara in voicing their opinions.

The flags and banners of the State

The State has flags (*Alwiyah*) and banners (*Rayat*) as deduced from the flags and banners of the first Islamic State, which the Messenger of Allah (صلى الله عليه وآله وسلم) established in al-Medina al-Munawwarah. These will be as follows:

1- Flag and banner, are linguistically called *alam*. *Al-Qamus al-Muhit* mentions under the root (r/w/y) that *al-rama* is '*al-alam*, plural being *rayaat*. It mentions under the root (l/w/y) that *al-liwa'* is *al-'alam*, plural *alwiyah*

Besides; The Law designated each one of these terms a *shar'i* meaning as follows:

- The flag (*liwaa'*) is white, on which it is written 'la ilaha illa Allah, Muhammad Rasul Allah' with black script. It is tied to the amir of the army or the leader of the army. It is used as a sign of his location, and it goes along with this location. The evidence to tying the flag to the amir of the army is (that the Prophet (صلى الله عليه وآله وسلم) entered Makkah on the day of its conquest while raising a white flag). This was narrated by Ibn Majah through Jabir. An-Nasa'i also narrated through Anas that when the Prophet (صلى الله عليه وآله وسلم) appointed Usama ibn Zayd as amir to the army for invading the Romans, he tied his flag with his own hands.

- The banner (*rayah*) is black, on which it is written 'la ilaha illa Allah, Muhammad Rasul Allah' with white script. It is carried by the leaders of the army divisions (regiments, detachments, and other army units). The evidence is that the Messenger (صلى الله عليه وآله وسلم), while being the leader of the army in Khaybar, he said: **"I will give the Raya tomorrow to a man who loves Allah and His Messenger, and Allah and His messenger love him; and he gave it to 'Ali". This hadith is agreed upon. 'Ali (ra) was considered then the leader of a division or a regiment in the army. Al-Harith b. Hassan b. Al-Bakri also said in the hadith, "We came to Medina and we saw the Prophet (صلى الله عليه وآله وسلم) on the Mimbar, with Bilal standing in front of him wearing his sword. There were black banners in front of the Messenger (صلى الله عليه وآله وسلم). I asked 'what are these banners?' They said: 'it is Amr b. al-'As who has just arrived from an expedition'". "And there were black banners (rayaat)"** this means there were many banners carried by the army though its amir was one, which was Amru ibn Al-Ass. This indicates there is one flag (*liwaa'*) in the same army, but the banners (*rayaat*) are many in each army.

Thus, the flag (*liwaa'*) is a sign (*'alam*) to the amir of the army only, while the banners (*rayaat*) are signs (*a'lam*) carried by the soldiers.

2. The flag (*liwaa'*) is tied to the amir of the army, and it is a sign indicating the headquarters of the amir of the army. However, in the battle field, the leader of the battle, whether he is the amir of the army or appointed by him, is given the banner (*rayah*) to carry during the fight in the battle field. Therefore, the banner is called the mother of the war because it is carried by the battle leader in the battle field.

Therefore, at the time of actual war there will be one banner with every leader of a battle, a matter that was familiar at that time. Keeping the banner flying up was evidence to the might of the leader of the battle. This is an administrative order that is followed in accordance with the traditions of fighting in the armies.

The Messenger of Allah (صلى الله عليه وآله وسلم) said announcing to the people the death of Zayd, Ja'far and Ibn Ruwahah before the soldiers brought the news:

"Zayd took the banner (raya) but he was hit; and then Ja'far took it and he was hit; and then Ibn Ruwahah took it and he was hit" [Bukhari, *Sahih*, #3757].

At the time of actual war, if the leader of the army in the battle field was the Khalifah, both the flag (*liwaa'*) and the banner (*raya*) can be lifted. It was reported in the seerah of Ibn Hisham during the talk about the ghazwah of great Badr that the flag and banner were present in the battle.

However, at time of peace or after the end of the battle the banners are usually spread amongst the army and lifted by its divisions, regiments, units and battalions, as narrated in the hadith of Al-Harith ibn Hassan Al-Bakri that talked about the army of Amru ibn Al-'As.

3. The Khalifah is the leader of the army in Islam; therefore the flag is legally lifted on top of his headquarters, i.e. on top of the Khalifah's house. This is because the flag is tied to the amir of the army. The banner is allowed to be lifted on top of the Khalifah's house from an administrative point of view, taking into account the fact that the Khalifah is the head of the organisations of the State. In regards to the remaining organisations, departments and establishments of the State, the banner alone is lifted on top of them, because the flag is specific to the leader of the army as a mark to his location.

4. The flag is tied at the end of the spear and twisted around it. It is given to the leader of the army in accordance to the number of armies. Thus it is tied to the leader of the first army, the second army, or the leader of Al-Sham army, and Iraq army, or the leader of Aleppo army, or the leader of Beitut army, and so on.

In origin it is twisted at the end of the spear and not spread out except at the time of need. It is for example spread out on top of the Khalifah's house because of its importance. This applies also to the sites of the leaders of the armies at time of peace so that the Ummah can see the greatness of the flags of their armies. However, if this need conflicts with security issues, such as the enemy recognising the sites of the leaders of the armies, then the flag will be treated as in origin, i.e. it is not spread out but rather remains twisted/rounded.

In regards to the banner it is left for the wind to flap it, like the flags used today. Therefore it is placed on top of the departments of the State.

In Summary:

Firstly: Regarding the army

1- In case of actual war, the flag remains attached to the site of the leader of the army. In origin it must not be spread out, rather kept rounded/twisted around the spear. It can be spread out after studying the security issue. There will be a banner carried by the leader of the battle in the battle field. In case the Khalifah was in the battle field the flag is also allowed to be carried.

2- In case of peace the flag is tied to the leaders of the armies, and it is rounded at the spear; but it can be spread out on top of the sites of the leaders of the armies. Banners are usually spread out amongst the army carried by its divisions, units, regiments and battalions. It is possible for each division, a regiment, or a battalion to have a specific banner that distinguishes it administratively and which is lifted with the banner.

Secondly: Regarding the security organisations, departments, and establishments of the State, only the banner is lifted on top of each of them except the house of the Khalifah, where the flag is lifted on top of it as the Khalifah is the leader of the army. The banner is allowed to be lifted administratively together with it, because the house of the Khalifah is the head of the organisations of the State. The private establishments and ordinary people can also carry and lift the banner on top of their

establishments, offices and houses, particularly on the occasions of eid, victories and the like.

The Anthem of the Khilafah state

Adopting a slogan/anthem that can be acclaimed to distinguish a certain group of people from others, or a certain state from others is one of the permissible matters. The Muslims in the past had a slogan which they used when they met their enemies on the battle field. This was used at the time of the Messenger of Allah (صلى الله عليه وآله وسلم) and by his agreement. They took the slogan of (Ha Mim, they are not helped) in the battle of the trench and Qurayzah, and the slogan of (You, the helped, bring death, bring death) in Banu Al-Mustaliq, and so on.

This is besides the favours bestowed by Allah (سبحانه وتعالى) upon man of the characteristics created in him such as hearing, sight and speaking, all of these are included in the evidences of ibaha. So, man sees, speaks and applauds whatever he wants unless there is specific evidence related to any of them, which then he must observe.

Therefore, it is allowed for the Islamic State to adopt a slogan with which it applauds and by which it distinguishes itself from other states, where it uses it in its relations with other states, and it accompanies the Khalifah in his visits to other heads of states or during their visits to him. It can also be used by the public in their occasions, where they applaud with it in their assemblies, public gatherings, schools and broadcasts, and the like.

In regards to the method of applauding, i.e. the intensity of the voice, the lowering, or speaking with or without a nasal sound etc, all of this is allowed, because the Muslims used to declaim their poems with an exciting voice in accordance with the occasion they were applauding.

The state has adopted that it should have an anthem, which it uses when necessary, and it accompanies the Khalifah in his official meetings with the heads of states. Additionally the Ummah would use it on certain occasions. The following has been noted for the anthem of the second rightly guided Khilafah after its establishment by the permission of Allah (سبحانه وتعالى):

1-It should mention the fulfilment of the glad tidings of the Messenger of Allah (صلى الله عليه وآله وسلم) regarding the return of the second guided Khilafah, and the rise again of the banner of the Uqab, the banner of the Messenger of Allah (صلى الله عليه وآله وسلم).

2-It should mention the glad tidings of the Messenger of Allah (صلى الله عليه وآله) when the Khilafah is established and the earth will bring out its treasures and the heaven will send down its blessings, and the earth will be filled with justice after being filled with tyranny.

3-It should mention the conquests and spreading of goodness in all of the worlds regions with the Khilafah ruling over all, particularly the lands of the three mosques to which journeys are made: al-Masjid ul Haram, the prophetic masjid, and al-Masjid ul-Aqsa after uprooting the entity of the Jews.

4-It would be concluded by the return of the Ummah as Allah wanted her to be: The best Ummah brought to mankind, where its main goal is to attain the good pleasure of Allah (سبحانه وتعالى), Who would honour her with His favour, Mercy and the High Garden of Al-Firdaws.

5-Takbeer has to be repeated in it. This is because takbeer has a special impact in Islam and in a Muslim's life. It is takbeer that reiterates in their victories, and in their holidays, and on their tongues and is mentioned on every effective occasion.

In light of the mentioned points, the appendix of this book will contain the targeted anthem and its method; it will be announced at the right time by the will of Allah (سبحانه وتعالى),

وَأَخِرُ دَعْوَانَا أَنْ الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

Our last prayer is to celebrate the praise of Allah, the Lord of the worlds.