



THE OTHER EUROPEAN MUSLIMS  
A Bosnian Experience

Fikret Karčić

---

THE OTHER EUROPEAN MUSLIMS  
A Bosnian Experience

Center for Advanced Studies, Sarajevo, 2015  
www.cns.ba

Copyright ©2015 Fikret Karčić,  
All rights reserved.

Proofreader:  
Hikmet Karčić

---

CIP - Katalogizacija u publikaciji  
Nacionalna i univerzitetska biblioteka  
Bosne i Hercegovine, Sarajevo

28-67(4)  
28-12-9

KARČIĆ, Fikret

The Other European Muslims : a Bosnian experience / Fikret Karčić. - Sarajevo : Centar za napredne  
studije = Center for Advanced Studies, 2015. - 216 str. : graf. prikazi ; 24 cm

Bibliografija i bilješke uz tekst.

ISBN 978-9958-022-19-7

COBISS.BH-ID 22557702

---



Fikret Karčić

# THE OTHER EUROPEAN MUSLIMS

A Bosnian Experience

Cover image: Scene from Sarajevo c. 1898; photograph by Ignatz Lederer.  
Courtesy by Archive of the Gazi Husrev-beg Library, Sarajevo.

Publication of this book has been made possible through the support of  
the International Institute of Islamic Thought (IIIT).



## PREFACE

This book includes eleven articles published in English by this author during the period between 1995- 2010. The articles were published in three journals with whom the author collaborated: *Intellectual Discourse*, of the Kulliyyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, where the author taught for almost nine years (1993-2002), *Islamic Studies*, of Islamic Research Institute, Islamabad (Pakistan), whose editor prof. Zafar Ishaq Ansari long time ago initiated fruitful cooperation with the author as well as London-based *The Islamic Quarterly*, where the author published one article. Two articles were published as chapters in books related to Islam in Europe.

The articles belong to three main areas of the author's interest: Islamic studies, Islamic revival and institutions in Bosnia and Herzegovina and historical destiny of the Balkan Muslims. Consequently, this book is divided into three sections reflecting the three areas of the author's interest.

The first section on Islamic Studies includes four articles. The article „Textual Analysis in Islamic Studies: A Short Historical and Comparative Survey“ deals with the method of textual analysis and its applicability with regard to the text of Qur'an, the text of Hadith and texts of Islamic heritage. The article „Applying the Shari'ah in Modern Societies: Main Developments and Issues “addresses the theme of the relevance of Islamic normative system for contemporary Muslim majority and minority societies. The article „The Reform of Shari'a Courts and Islamic Law in Bosnia and Herzegovina 1918-1941“explores developments in the system of administration of Shari'a in Bosnia and Herzegovina in its last phase, before the abolishment of Islamic courts in 1946. Finally, the article “Secular State and Religion(s) – Remarks on the Bosnian Experience in Regulating Religion and Relations in View of the New Law on Freedom of Religion” investigates the concept of secular state and its application in contemporary Bosnia and Herzegovina.

Four articles are included into the section on Islamic Revival and Institutions in Bosnia: "Islamic Revival in the Balkans 1970-1992" explores developments within Muslim communities of the then Yugoslavia, Albania and Bulgaria in the last decades of the 20th century. A focused study of a factor of Islamic revival in Bosnia is provided in the article „PREPOROD Newspaper: An agent of and a Witness to Islamic Revival in Bosnia“, showing the importance of print media in the dynamization of a particular Muslim community. Two other articles deal with the institutional framework of Islamic administration in contemporary Bosnia. The article "Administration of Islamic Affairs in Bosnia and Herzegovina" gives a historical background and contemporary structure of Islamic administration, while the article „The Office of Ra'is al-Ulama Among the Bosniaks (Bosnian Muslims)“ attempts to trace the origins, the legitimization and the prerogatives of the top religious leadership of Bosnian Muslims.

Finally, the section Balkan Muslims in the 20th Century comprises three articles. The article "The Eastern Question - A Paradigm for Understanding the Balkan Muslims' History in the 20th Century" interprets the whole modern history of the Balkan Muslims as a continuation of „Eastern Question“ methods and mentality. The second article "Distorted Images of Islam: The Case of Former Yugoslavia" depicts the process of vilification of Islam in former Yugoslavia as a prelude to the later genocidal policy against the Muslims. The third article "Bosnian Young Muslims: A Review Essay" shed lights on the issue of The Young Muslims Association, an Islamist organization active in Bosnia and Herzegovina during the middle of the 20th Century.

Collecting articles published in different publications and organizing them in a book gives to those articles a new life and new dimensions. Separate topics become parts of the new whole and issues separately studied could be seen in a wider perspective. With these thoughts I present this book to the public.

Transliteration and style of citation is left as originally published in different periodicals.

*Fikret Karčić*  
*Sarajevo 2015.*



ISLAMIC STUDIES







# TEXTUAL ANALYSIS IN ISLAMIC STUDIES: A SHORT HISTORICAL AND COMPARATIVE SURVEY\*

## INTRODUCTION

The two main sources of Islamic teachings are the Qur'an (the revealed Word of God), and the *Sunnah*. They are texts which, in the first instance, were orally transmitted and then reduced to writing and were preserved as such with great care by Muslims. The efforts of Muslims to understand these two main sources have also been recorded and preserved in the textual form.

Thus, study of texts (*dirasat al-nusus*) represents the approach predominant in the Islamic scholarly tradition. This approach is also common for the study of the authoritative religious texts in general (scriptures and other religious writs) as well as the works aimed at elucidating them. However, the fundamental premises and procedures in the first category differ from those in the second. Besides, even when applied to religious texts, textual studies acquire certain specific features depending on the nature of the understanding of specific religious texts and the structure of the religion under study. In this context, textual studies include study of the history of the text and its oral or written features. They also include analysis, preservation and transmission of the text as well as the text's social and cultural roles.

The present paper attempts to demarcate the salient features of textual analysis as in vogue among Muslim scholars in approaching the Islamic Revealed Texts as well as the texts pertaining Islamic heritage.

\* *Islamic Studies*, 45:2 (2006), pp. 191-220.

The Bosnian version of this paper was published as a brochure under the title *O metodu tekstualne analize u islamskim naukama; kratak historijski i uporedni prikaz* (Sarajevo: Fakultet islamskih nauka, 2004).

This paper opens with consideration of the contemporary concept of text and textual analysis followed by an attempt to compare it with the Muslim understanding of these concepts. This will be followed by a brief history of the development of the method of textual analysis among Muslim scholars and its application to the main Islamic disciplines. Since for the last two centuries Islamic texts have also drawn the attention of non-Muslim scholars who have produced a considerable amount of literature in the field, the textual analysis applied within the Orientalist discourse will also be surveyed and the salient differences between the Muslim and the Western traditions of scholarship will be identified. Finally, an attempt will be made to highlight the advantages and limitations of the method employed by Muslim scholars to be followed by a consideration of the possible improvements that can be brought about in this method.

## DEFINITION OF THE METHOD OF TEXTUAL ANALYSIS

The essential element in the definition of textual analysis is the concept of the text. In humanities, the text is traditionally defined as any written material. But there are different kinds of texts: literary, historical, sacred and profane. In contemporary times, even socio-cultural artefacts (film, music, group behaviour) are included in this category.<sup>1</sup> Can the origin of a text be simply brushed aside and ignored by the researcher? Contemporary secular scholars answer this question in the affirmative and say that every text is a text, be it divine or human, there being no difference between the two. For Muslim scholars, however, the origin of a text is of crucial importance. Its origin determines its nature and its epistemological status. Since the origin and the nature of texts vary, so do the assumptions, procedures and techniques of textual analysis.

Analysis means the breaking down of something into its component parts. Consequently, to analyse a text means to break it down into its component parts, to examine them, and to offer an interpretation of the component parts as well as of the whole. By means of interpre-

1 See for further explanation, John Mowitt, *Text: The Genealogy of an Antidisciplinary Object* (Durham, NC: Duke University Press, 1992).

tation we are able to go beyond the obvious meaning of the text and to read the implied meaning or sub-text.

Textual analysis, in its contemporary usage, deals with three main issues, namely: (1) the authenticity of the text; (2) the validity of its interpretation; and (3) the veracity of the facts embodied in the text.<sup>2</sup> These three main issues in textual analysis have been dealt with through specific procedures and techniques of certain disciplines and sub-disciplines.

The issue of the authenticity of a text belongs to a branch of scholarship conventionally known as textual criticism. This discipline attempts to determine the origin or authorship of a text, its authenticity, and its original form in case there is a multiplicity of text forms.<sup>3</sup> Muslim scholars deal with this issue in different disciplines under a topic known as *thubut al-nusus*.

The meaning of a text is determined by analysing its content. In this effort different analytical tools such as content analysis, analysis of linguistic forms, genre, text organization, rhetoric, discourse, lexicography, structure and the cultural role of the text, can be used. The Muslim technical term for this effort is called *tafsir al-nusus*.

The issue of the veracity of the facts contained in the text is addressed through a study of the sources external to the text, namely historical records. The basic question is: can historical records corroborate the truth of a textual account? The branch of scholarship which deals with these issues is known as historical criticism. However, while this is relevant only for the study of factual textual accounts, it is not relevant for normative and theological/metaphysical statements and literary or fiction works. Norms state what "ought to be" and thus they cannot be subjected to the examination of veracity. Similarly, literary fiction is, by its very nature, the result of imagination and does not have to correspond to actual facts. Likewise, theological/metaphysical statements are also beyond the scope of human experience and thus their veracity cannot be corroborated by extra-textual evidence. Their veracity is a matter of belief. Muslim scholars have discussed these issues while dealing with the epistemology and nature of reports (*khabar*).

2 Madeleine Grawitz, *Methodes des sciences sociales*, 6th edn. (Paris: Dalloz, 1984), 648.

3 J.A. Cuddon, *A Dictionary of Literary Terms and Literal Theory* (Oxford: Blackwell, 1991), 691.

## HISTORICAL BACKGROUND

The culture of pre-Islamic Arabia was an illiterate one as described in the Qur'an: "It is He Who has sent amongst the unlettered a Messenger from amongst them" (62: 2). The number of literate people in the main population centres of the then Arabia was very small. According to some sources, there were as few as 17 literate persons in Makkah and 9 in Yathrib.<sup>4</sup> By far and large oral tradition prevailed among the Arabs whose ability to memorise and retain things in their memory was simply fabulous.

The revelation of the Qur'an and the emergence of the mission of the Prophet Muhammad (peace be on him) marked a shift towards a new type of culture, the culture of letters. The Qur'anic verses were recorded, and so were the fundamental laws of the Islamic state in Madinah. Besides, written communication between the Prophet (peace be on him) and the leaders and rulers of the neighbouring territories was established.<sup>5</sup>

The Prophet (peace be on him) encouraged Muslims to learn reading and writing. He also appointed the learned ones from among his Companions to write down the Qur'anic revelation. In the beginning he discouraged people to commit his utterances to writing. Later, however, when there remained no fear of any confusion between the Qur'an and the *Hadith* he permitted some Companions to record his utterances as well. Writing, however, did not replace the old method of the preservation of text - its memorization by heart (*al-hifz fi 'l-sudur*). In fact the text of the Qur'an and the Prophet's *Sunnah* primarily continued to be retained in the memory of people and be transmitted orally. Writing was considered to be a record of what already existed in memory.

The Qur'an was committed to writing in its entirety during the lifetime of the Prophet (peace be on him) himself. Subsequently it was collected in a codex (*mushaf*) during the Caliphate of Abu Bakr (11/632-13/634). Its written text was standardized during the caliphate of 'Uthman ibn 'Affan (24/644-36/656). The Companions agreed that the text was identical to what the Prophet Muhammad (peace be on him) had received as revelation from God. The authenticity of the text was confirmed by memorization and the written records of such

4 Muhammad Zubayr Siddiqi, *Hadith Literature: Its Origin, Development and Special Features* (Cambridge: The Islamic Texts Society, 1993), 26.

5 Muhammad Hamidullah, *Six Originaux des lettres du prophete de l'Islam* (Paris: Tougui, 1985), 238

a large number of people that their agreement to perpetrate a lie was well nigh impossible. The same text was later transmitted continuously from generation to generation.<sup>6</sup>

The revelation of the Qur'an provided the foundation for the emergence and development of Islamic sciences. Among these sciences, the first were the Sciences of the Qur'an. These sciences dealt with the documentation (*tawthiq*), preservation (*hifz*), reading (*qira'at*), and interpretation (*tafsir*) of the text. With passage of time, *Tafsir* became the most prominent Qur'anic science. The number of Qur'anic sciences increased to such an extent that Imam Badr al-Din Muhammad ibn 'Abd Allah al-Zarkashi (d. 794/1391), mentioned the number of disciplines pertaining to the Qur'an to be 43.<sup>7</sup>

After the demise of the Prophet (peace be on him), the reports about the *Sunnah* were maintained partially in the form of written records (*suhuf*, sing. *sahifah*), in the memory of the Companions, and in the actual practice of the Muslims. With passage of time, the generation of the Companions disappeared and turmoil appeared in the Muslim state, and a new method of establishing the authenticity of traditions was developed: that of chain of narrators (*isnad*). If one cited a *hadith* one was instantly asked to name its initial narrator who should be from the generation of the Companions. Before the end of 1st/7th century *isnad* was considered a necessary element of a *hadith*.<sup>8</sup>

At the same time, there began a concerted effort for the collection and recording of the *Hadith*. Besides the scholars who continued to prefer transmission from memory, there were scholars like Abu 'Amr 'Amir al-Sha'bi (d. circa 110/728) who said that "the best *muhaddith* is the *daftar* (manuscript)." Another scholar, Muhammad b. Muslim Ibn Shihab al-Zuhri (d. 124/741-2), together with his students, became known as "the people of the books,"<sup>9</sup> because of their conspicuous commitment to written texts. Supporters of oral transmission, on the other hand, expressed their methodological credo in the saying: "Knowledge is in the breasts of men, not in the lines of books" (*al-'ilm fi 'l-sudur la fi 'l-sudur*).<sup>10</sup>

6 Muhammad Faruq al-Nabhan, *Muqaddimah fi al-Dirasat al-Qur'aniyyah* (al-Rabat: Wizarat al-Awqaf wa'l-Shu'un al-Islamiyyah, 1415/1995), 77.

7 Ibid., 77

8 Muhammad Zubayr Siddiqi, *Hadith Literature...*, 80.

9 Nabia Abbot, "Collection and Transmission of Hadith" in A.F.L. Beeston et al., ed. *The Cambridge History of Arabic Literature: The Arabic Literature to the End of the Umayyad Period* (Cambridge: Cambridge University Press, 1983), 291, 295.

10 Jan Just Witkam, "The Human Element Between Text and Reader, The Ijaza in Arabic Manuscripts" in Yasin Dutton, ed. *The Codicology of Islamic Manuscripts: Proceedings of the Second Conference of Al-Furqan Islamic Heritage Foundation 4-5 December 1993* (London: Al-Furqan Islamic Heritage Foundation, 1995), 125.

Recording of the *Hadith* passed through several phases. Each phase was marked by a special kind of *Hadith* collection. The *musan-naf* collections of the first/eighth and early second/ninth centuries in which *ahadith* were arranged according to juristic categories, were followed by *musnad* works, that is, works arranged according to *sanad*. Lastly, the third/ninth century saw *sahih* collections which were a result of *Hadith* criticism that enabled the classification of traditions according to their degree of authenticity.<sup>11</sup>

The emergence of authoritative collections of *Hadith* was an outcome of the emergence of the *Hadith* sciences (*'ulum al-Hadith*). These sciences dealt with issues pertaining to the authenticity of reports, the meaning of the transmitted texts and their implications. Among these disciplines were the science of *Hadith* narration (*'ilm riwayat al-Hadith*) or technical *Hadith* vocabulary (*mustalah al-Hadith*) and the science of critical appraisal of the narrators of *Hadith* (*'ilm al-jarh wa 'l-ta'dil*). These sciences in particular developed methodological rules of *Hadith* criticism.

The third century of Islamic era was “the golden age” of the *Hadith* sciences. With the end of this century the concern of the *muhaddith-un* moved toward manuscripts and the transmission of written texts.<sup>12</sup> They began to write supplementary works to great collections (*istidrakat*), commentaries (*shuruh*) and summaries (*mulakhhkas*), and to prepare special collections and indices (*atraf*). In one word, they engaged themselves with compiled written material.

However, even during this period which continued up until the introduction of the printing press in the Muslim world in the thirteenth/ eighteenth century, the method of *sanad* played a major role in preserving the written text. This method, which has proved effective in the transmission of the oral text, continued to maintain the integrity of the written text. In order to avoid forgeries, the teachers of *Hadith* and other Islamic disciplines used to provide to their students the names of their teachers from whom they had received the text. Similarly, copyists (*warraqun*) used to write, at least in the copies of *Hadith* works, the *sanad* of their copy up to the author of the original work.<sup>13</sup> Copyists

11 Muhammad Abdul Rauf, “The Development of the Sciences of *Hadith*” in A.F.L. Beeston et al., ed. *The Cambridge History of Arabic Literature*, 272-277.

12 Akram Diya' al-'Umari, *Buhut fi Ta'rikh al-Sunnah al-Musharraf* (al-Madinah al-Munawwarah: Muaktabat al-'Ulum wa'l-Hikam, 1405/1984), 239.

13 Muhammad Zubayr Siddiqi, *Hadith Literature...*, 81-82; 'A'ishah 'Abd al-Rahman, “Al-Manhaj al-'Aqli li 'Ulama' al-Hadith” *Majallat Dar al-Hadith al-Hasaniyyah*, no 3 (1402/1982), 212.

were also instructed how to copy the manuscripts of the *Hadith*, explaining the types of letters, dots, rare words, personal names, etc. and how to separate the text of two *ahadith*, how to rectify copying errors, etc. Students were also instructed to write on their copies the dates and places when certain parts were read and discussed as well as the names of other students who attended the same class, and the like.<sup>14</sup>

The methods of the *muhaddithun* regarding the establishment of the authenticity of a text and its transmission were also accepted in other disciplines such as history, literature and the like.

While the sciences of the Qur'an and the sciences of the *Hadith* dealt with the two main sources of Islam, the science of *usul al fiqh* was developed to deal with textual methodology of dealing with the texts in general. This discipline examined the methods common for both the Qur'an and the *Sunnah*. Furthermore, it also included analyses of expressions used by people in their transactions (formulas of concluding contracts, establishment of *waqf*, etc.) which paved the way for the development of a possible general Islamic methodology in dealing with texts.

Muslim scholars also showed interest in issues of legal methodology ever since the beginning of Islamic scholarship. Scholars of the second/eighth century have been credited to be the authors of the first books on *usul al fiqh*.

Their efforts provided the necessary ground for Imam Muhammad b. Idris al-Shafi'i (d. 204/819) to come up with a comprehensive and systematic exposition of the methodology of Islamic law in his *al-Risalah*.<sup>15</sup> The discipline continued to develop during the following centuries along two methodological lines: the theoretical approach of the *mutakallimun* and the practical approach of the *fuqaha'*. The first approach was concerned with the exposition of a theoretically formulated methodology, while the second approach sought to formulate a methodology that would connect it with the solution of practical issues.<sup>16</sup>

The well-known representatives of the first approach after Imam al-Shafi'i were Abu'l-Husayn al-Basri (d. 436/1044), Imam al-Haramayn 'Abd al-Malik b. Yusuf al-Juwayni (d. 487/1094), Abu Hamid Muhammad al-Ghazali (d. 505/1111), and Sayf al-Din 'Ali b. Muhammad

14 Muhammad Zubayr Siddiqi, *Hadith Literature*, 83.

15 See: Mohd. Daud Bakar, "The origins of the Islamic legal Theory (Usul al-Fiqh)," *Intellectual Discourse*, 5 (1997), 2: 121-144.

16 Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Kuala Lumpur: Ilmiah Publishers, 1999), 7-9.

al-Amidi (d. 631/1233). The well-known representatives of the second approach were Abu 'I-Hasan 'Ubayd Allah b. al-Husayn al-Karkhi (d. 340/951), Abu Bakr Ahmad b. 'Ali al-Rani al-Jassas (d. 370/980), Fakhr al-Islam 'Ali b. Muhammad al-Bazdawi (d. 483/ 1090), and Shams al-A'imah Muhammad b. Ahmad al-Sarakhsi (d. 490/1096).

Regardless of the differences in their methodological orientation, the scholars of *usul al-fiqh* dealt with substantially the same topics. Those topics were: legal rules, sources, derivation of rules, interpretation and application of rules.

Since the main sources of Islamic law are the Qur'an and the *Sunnah*, law basically depends on these two texts. Texts are accessible through the medium of language and thus the text, language, meaning and interpretation were constantly discussed by the scholars of *usul al-fiqh*. It has been observed that the lengthiest and most thorough discussions on the text-related issues in Islamic literature are to be found in the books of *usul al fiqh*.<sup>17</sup> In dealing with the texts, the scholars of *usul al-fiqh* developed two methods - linguistic-semantic (*lughah-bayan*) and logical interpretation (*istinbat*). In so doing, they relied upon the sciences of the Qur'an and the *Hadith*, Arabic language, and logic.<sup>18</sup>

Linguistic analysis constitutes the starting point of *usul al-fiqh*. The language of the text is the basis on which a *mujtahid* attempts to discover the intended meaning and to find the indicators of the Divine law. In the opinion of the *usuliyyun*, command over language makes it possible to arrive at a sound interpretation of the text. Language is an effective means for communication, it constitutes a system, it is a public instrument and is reliably transmitted from generation to generation. The knowledge of the language is tantamount to knowing the intended meaning embodied in the text.<sup>19</sup> Thus, the intended meaning of a text is objectively discoverable. In pursuing this end, the *usuliyyun* focused on linguistic-semantic analysis, discussing issues of the clarity of the text (*nass*), its categorization, the relationship between a linguistic expression and its intended meaning (*murad*), the relationship between an individual expression (*lafz*) and the structure to which it refers to belong (*murakkab*), metaphor (*majaz*), allegory (*kinayah*), and the like.

17 Bernard G. Weiss, *The Spirit of Islamic Law* (Athens: University of Georgia Press, c.1998), 52.

18 For a discussion of textual analysis within *usul-al-fiqh* see Louay Safi, *The Foundation of Knowledge. A Comparative Study in Islamic and Western Methods of Inquiry* (Petaling Jaya: International Islamic University Malaysia and International Institute of Islamic Thought, 1996), 35-67.

19 Bernard G. Weiss, *Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi* (Salt Lake City: University of Utah Press, 1992), 117-118.



In the domain of logical analysis the *usuliyun* dealt with the methods of deduction, analogy (*qiyas*), the determination of efficient cause (*'illah*) or intent (*manat*) of rules, particularization (*takhsis*) of rules, solution of conflicts (*ta'arud*) between different texts and the like. Scholars of *usul al fiqh* also developed methodological rules for the purpose of deriving rules from non-textual sources (custom, for instance).

In the post-classical period of the history of *usul al-fiqh* Abu Ishaq Ibrahim al-Shatibi (d. 790/1388) directed the attention of *usuliyun* to the philosophy of law and the objectives of legislation (*maqasid*), thus suggesting a systematic interpretation of law.

This brief survey shows that a method of textual analysis was developed in different Islamic disciplines. Basic attention was given to methods of dealing with the Revealed Texts. The Sciences of the Qur'an dealt with the Qur'anic text while the sciences of the *Hadith* dealt with the text of the *Sunnah*. The science of *usul al-fiqh* developed the methods of dealing with both kinds of text. Although Muslim scholars did not use the technical term "textual analysis" for their endeavour, they effectively used the procedures and tools which belong to textual analysis. In dealing with the revealed texts Muslim scholars confined their attention to establishing, preserving and transmitting the texts as well as their correct meaning and interpretation.

In dealing with the texts of Islamic heritage, Muslim scholars paid attention to their authenticity, meaning and veracity, wherever that was applicable. These methods were not discussed in specific disciplines, but they were appropriated from the Sciences of the *Hadith* such as the concept of *sanad*, language (grammatical-linguistic interpretation), logic (logical interpretation), and academic and professional conventions in copying the manuscripts.

The main concern of post-classical Muslim scholars with regard to books of Islamic heritage was the interpretation of authoritative works (*mutun*) in particular disciplines. These scholars have left behind a rich literature of commentaries (*shuruh*), glosses (*hawashi*, sing. *hashiyah*) and similar works. They also produced important lexicographical works which are indispensable for the understanding and interpretation of texts.<sup>20</sup> They also compiled valuable reference works for the identification of manuscripts and their authors.<sup>21</sup>

20 See: J.A. Haywood, *Arabic Lexicography: Its History, Its Place in the General History of Lexicography* (Leiden: E.J. Brill, 1965), 140.

21 See, for instance, Mustafa ibn 'Abd Allah Katib Chalabi Hajji Khalifah, *Kashf al-Zunun 'an Asami 'l-Kutub wa 'l-Funun* (Istanbul: Maarif Matbassi, 1360-1362/1941-1943).

Muslim scholars also developed a high degree of expertise in copying and transmission of the text of the Qur'an and the *Hadith*. This scribal art was applied with different levels of strictness to other texts as well. However, during the introduction of printing press in the Muslim world the old scribal tradition was transferred in a disorderly manner and it also failed to adapt to the new techniques.<sup>22</sup> Editors and printers did not come from the ranks of scribes. Thus they neither knew the old tradition nor were conversant with the modern European art of textual criticism. The result was the preponderance of printed books of questionable quality.

A solution for this situation was found in combining the old Muslim textual tradition and the European experience in studying and editing manuscripts.

## THE USE OF TEXTUAL ANALYSIS BY MUSLIM SCHOLARS

The most important characteristics of the Muslim use of textual analysis flow from the Muslim understanding of the text itself. Muslim scholars use two terms for "text": *nass* and *matn*.

The root meaning of the term *nass* (pl. *nusus*), was "to raise," "to elevate," and it was used by classical scholars of *usul al-fiqh* in two meanings. In its first meaning the term *nass* refers to the text of the Qur'an and the *Sunnah*, the foundational texts of Islamic law. In its second meaning, the term *nass* refers to a certain level of textual clarity: an expression or phrase or sentence of the Qur'an and the *Sunnah* which indicates a particular meaning, not admitting any other than that.<sup>23</sup>

In the modern Arabic language, however, the word *nass* has become a common equivalent for the English word "text". It means "the text or very word of an author, book, writing or passage."<sup>24</sup> Thus, ever since initial reference to the revealed texts, the term *nass* in its contemporary

22 Muhsin Mahdi, "From the Manuscript Age to the Age of Printed Books" in George N. Atiyeh, ed. *The Book in Islamic World: The Written Word and the Communication in the Middle East* (Albany: State University of New York Press, 1995), 4.

23 Abd al-Nabi ibn 'Abd al-Rasul Ahmad Nagari, *Jami' al-Ulum al-Mulaqqab bi Dustur al-'Ulama' fi Istilahat al-'Ulum wa'l-Funun* (Haydarabad: Matba'at Da'irat al-Ma'arif al-Nizamiyyah, 1329/1911) 1-3:53-54; E.W. Lane, *Arabic-English Lexicon* (Cambridge: The Islamic Text Society, 1984), 2798.

24 *Ibid.*

usage moved toward the general meaning of “text”.<sup>25</sup> Therefore, when used, it needs an adjective, such as in the expression *al-nass al-Qur’ani* (“the Qur’anic text”), or *al-nass al-nabawi* (“the Prophetic text”).

Another term which the classical Muslim scholars used for “text” was *matn* (pl. *mutun*) (root meaning: “back, body, firm”). This word, again, possesses two meanings. The first is “the text of a *hadith*” as distinguished from its *sanad*.<sup>26</sup> In its second meaning, the word *matn* is frequently used in Islamic heritage to denote the original works which have been commented upon by the scholars of the successive generations.<sup>27</sup> In the current Arabic literary tradition this term denotes “text”, thus being a synonym for the contemporary meaning of *nass*.

The diverse terms that the classical Muslim scholars used for “text” indicate different approaches in dealing with the revealed and non-revealed texts. In addition, for the classical Muslim scholars the term *nass* was not associated with the image of the written text, and in this respect they were quite different from the generation of scholars of the printing press era. For the classical Muslim scholars text was a communication stored in the memory of the transmitter and in writing. The history of the revelation, preservation and transmission of the Qur’an and of the recording and transmission of the *Sunnah* and Islamic knowledge in general contributed to this understanding. Consequently, books were not exclusively written texts whose reality was exhausted by the works inscribed in ink upon parchment.<sup>28</sup>

## TEXTUAL ANALYSIS IN THE STUDY OF THE QUR’AN

According to Muslim theological-juridical definition, the Qur’an consists of “the words revealed to the Prophet (peace be on him), the recitation of which constitutes an act of worship, [even] the shortest *surah* of which is a challenge to mankind to produce anything the like of it, every letter of which has been transmitted to us through an indisputably authentic

25 Muhammad Rawwas Qal’aji, et al., *Mu’jam Lughat al-Fuqaha’* (Bayrut: Dar al-Nafa’is 1996), 450.

26 See: Abu al-Fadl Jamal al-Din Muhammad ibn Mukarram ibn Manzur, *Lisan al-Arab* (Beirut: Dar Sadir, n.d.), 13:398; Hasan Muhammad Maqbuli al-Ahdal, *Mustalah al-Hadith wa Rijaluh* (San’a: Maktabat al-Jil al-Jadid, 1414/1993), 27.

27 See: Muhammad Rawwas Qal’aji, et al., *Mu’jam Lughat al-Fuqaha’*; 373.

28 Sayyed Hossein Nasr, “Oral Transmission and the Book in Islamic Education: The Spoken and the Written Word” in George N. Atiyeh, ed. *The Book in the Islamic World*, 57.

chain of authority (*tawatur*), is written between two covers of the Holy Book (*mushaf*) beginning with *Surat al-Fatihah* (“the opening chapter”) and ending with *Surat al-Nas*.<sup>29</sup> The Qur’an is thus the *verbatim* revelation, is inimitable, is in the Arabic language, is recorded in the *mushaf* and has been preserved *in toto* without any alteration.

The Qur’an is both oral and written text. It is *al-Qur’an* (“The Recitation”) and *al-Kitab* (“the Book,” “the Scripture”) Qur’an, 56: 77-80. Muslims have developed a set of sciences that deal with both the oral and written aspects of the Qur’an. The recording of the written text of the Qur’an is the concern of Qur’anic orthography (*kitabah, rasm, or naskh al-Qur’an*). The oral text of the Qur’an forms the subject of the science of the recitation (*ilm al-qira’at*). This science deals with the variant readings/recitations of the Qur’an, distinguishing the approved recitations from the disapproved ones. This discipline has unique features in dealing with the scriptures in comparative religion. Apart from this discipline, there is also the science of correct and aesthetical recitation of the Qur’an (*taghanni*) (intonation), *tartil* (chanting), *tajwid* (recitation).

The first aim of textual analysis with regard to establishing the authenticity of the text of the Qur’an is achieved by means of reporting (*ikhbar*) and transmission (*naql*). The scholars of *usul al fiqh* explain this method of establishing the authenticity of the text (*thubut al-nass*) in the following way: The Prophet (peace be on him) received revelation from Allah and communicated it (*ikhbar*) to his contemporaries. The Companions came to know of it by listening (*sam’*) to the Prophet’s reporting. The later generations received the Qur’an by means of *tawatur* transmission. Hearing and *tawatur* are of the same value for the establishment of authenticity.<sup>30</sup> The whole of the Qur’an is possessed of absolute authenticity (*qat’iyyat al-thubut*).

The Qur’anic text, which we read today is the same which was revealed to the Prophet (peace be on him). It is established and it has become a matter of belief for the Muslims.<sup>31</sup>

29 Taha Jabir al-Alwani, *Usul al-Fiqh al-Islami: Source Methodology in Islamic Jurisprudence* (Herndon, VA, USA: The International Institute of Islamic Thought, 1990), 5. Also see *Al-Mawsu’ah al-Fiqhiyyah* (al-Kuwayt: Wizarat al-Awqaf wa’l-Shu’un al-Islamiyyah, 1995), 33:30; Yusuf Oasim, *Mabadi’ al-Fiqh al-Islami* (Cairo: Dar al-Nahdah al-‘Arabiyyah, 1983), 173.

30 Muhammad Zaki ‘Abd al-Barr, *Taqnin usul al-fiqh* (Cairo: Maktabat Dar al-Turath, 1409-1989), 38; Sayf al-Din al-Amidi, *Kitab al-Ihkam fi Usul al-Ahkam* (Cairo. Dar al-Kutub al-Khidiwiyyah, 1914), 2:69

31 See: *Islamic Creeds: A Selection*, tr. William Montgomery Watt (Edinburgh: Edinburgh University Press, 1994), 49, 58, 63, 76 and passim.

Both concepts - *ikhbar* and *naql* - imply that the Qur'an is the text (*matn*) reported by the Prophet (peace be on him) from Allah after which it was transmitted from generation to generation by *tawatur*. *Tawatur* is "the successive reporting of a group that yields knowledge of the fact reported."<sup>32</sup> A *mutawatir* report is one that is known to be true without reference to any factor other than itself. This kind of report brings certain knowledge (*yaqin*) by itself and it does not need any external evidence (*qarinah*). Because of this, Muslim scholars did not search for any extra-Qur'anic evidence to prove the veracity of the Qur'anic text. Rather, the Qur'anic truth provided to the Muslims the impetus to study the universe and to discover and understand God's laws which govern it.

If one wishes to examine the veracity of the Qur'anic text by recourse to external evidence, then the following should be mentioned. The Qur'anic text, in terms of its content, includes several broad categories: *Tawhid* (God, His Attributes, His Creation), *tadhkir* ("promise and warning," information about what will happen in the Hereafter), *ahkam* (norms of behaviour) and *akhbar* (reports about events). Statements regarding these four categories differ among themselves in terms of the possibility of verification by extra-textual sources. The statements about the Unseen (*ghayb*) cannot be tested or verified by human experience. Statements about God's act of creation, however, can be verified by studying the universe. Statements regarding norms, by their very nature, are not subject to verification since norms do not contain truth or falsehood, but only lay down the rules of behaviour. Reports about events in human history can, however, be verified by human research. Consider, for instance, the statement in the Qur'an: "The Roman Empire has been defeated in a land close by: but they, after (this) defeat of theirs, will soon be victorious" (30: 2-3). A historian may find extra-textual evidence for this statement in the Byzantine records about the losses of the Eastern Roman Empire in Syria and Palestine in 614-615 followed by the Romans' victory soon after these events at the battle of Issus in 623.<sup>33</sup> However, Muslim scholars did not link the veracity of the Qur'anic reports to the external evidence provided by human knowledge which is not of absolute validity. In

32 Sayf al-Din al-Amidi, *Kitab al-Ihkam fi Usul al-Ahkam*, 2:21, Translation according Bernard G. Weiss, *Search for God's Law*, 274.

33 See: Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, new edition with revised translation and commentary (Brentwood, MD: Amana Corporation, 1412/1992), 1008, nn. 3505, 3506.

Islamic epistemology, the Qur'an is a communication from God (*khbar 'an Allah*) and by its nature provides absolute truth.

In this way the concepts of *ikhbar* and *al-naql bi 'l-tawatatur* answer two questions of textual analysis related to the Qur'an: its authenticity and veracity. The issue of understanding and interpreting the Qur'an is the subject of other disciplines. Some disciplines concerned with the interpretation of the Qur'an concentrate on the language, style, and structure of the Qur'an. Among them are grammatical analysis (*i'rab*), metaphorical meaning (*majaz*), difficult words (*ghara'ib*), style (*bayan*), rhetoric (*balaghah*), semantic lexicology (*al-wujuh wa 'l-naza'ir*), inimitability (*i'jaz*) and the structure and arrangement of the text (*nazm*), the notion of abrogation (*al-nasikh wa 'l-mansukh*), and the like.

Other disciplines related to the Qur'an study events external to the text, such as the historical context and locus of the revelation. Historical context is the subject of the science of occasions of revelation (*'ilm asbab-al-nuzul*), while the locus of revelation is studied within the science of Makki and Madani (*'ilm al-Makki wa 'l-Madani*).

Language-related disciplines as well as the study of historical context and locus of revelation are the function of correct understanding and interpretation of the text. These disciplines include a variety of exegetical references, principles and procedures.

According to the referential framework of interpretation, *Tafsir* is divided into exegesis through tradition (*tafsir bi 'l-ma'thur*) and exegesis through reason (*tafsir bi 'l-ra'y*). According to the criteria of the interpretative angle there are linguistic exegesis (*tafsir lughawi*), juristic exegesis (*tafsir fihi*), mystical exegesis (*tafsir sufi*), theological exegesis (*tafsir kalami*), and others.

Muslim scholars also developed a systematic theory and methodology of interpretation - hermeneutics (*usul al-tafsir, manahij al-tafsir*). Within this domain, exegetical references as well as sequential hermeneutical methodology (proper course of reference during interpretative process) were identified. Exegetical methodology varies, though, from author to author. However, some general principles could be derived. For illustrative purposes, we will give here examples of exegetical principles and procedures laid down by two contemporary scholars.

Amin Ahsan Islahi (1906-1999), one of the most renowned Qur'anic scholars of South Asia, has divided the exegetical principles into two

kinds: (1) those internal to the text of the Qur'an, and (2) those external to it.<sup>34</sup> Among the first kind, attention is paid to the Qur'anic language (vocabulary, idioms, structure, style), Qur'anic coherence, thematic and other parallels. Principles external to the Qur'an are: *sunnah mutawatirah* or universally known Prophetic practices, the *ahadith* or traditions related from the Prophet (peace be on him) as well as *athar* related from the Companions, *asbab al-nuzul* or historical events of revelation relevant only when the Qur'an itself refers to them, the earlier Qur'anic commentaries, previous Scriptures, and finally, ancient Arab history (since the Qur'an refers to the pre-Islamic nations). Principles internal to the Qur'an and *sunnah mutawatirah* from the second group constitute the categorical (*qat'i*) principles, while the rest of them make conjectural (*zanni*) principles.

Muhammad al-Dasuqi has summarized the common procedures of dealing with the text of the Qur'an in the following directives:<sup>35</sup>

1. Begin with the language of the text, adhere to the rules of the Qur'anic Arabic language and prefer immediate literal over allegorical meaning.
2. Concentrate on the first objective of the revelation of the Qur'an - that is, to provide guidance to mankind - and interpret particular words and verses in that light.
3. Approach the text with a consciousness of the time of revelation as well as the time of interpretation.
4. Approach the text systematically taking into consideration all verses concerning the same topic, the related *ahadith* and the circumstances of revelation, giving priority to the generality of expression over particularity of circumstances of revelation.

These and similar attempts have laid down certain criteria of sound interpretation of the Qur'anic text. Such an interpretation is possible and the eventual differences in understanding and interpretation can be solved by recourse to common or predominant opinions of scholars. The fact that interpretative works of Muslims continue to appear in every century does not justify a relativist approach to the Qur'anic text; rather, it shows that the infinite richness of the Qur'anic text cannot be exhausted by human efforts.

34 Mustansir Mir, *Coherence in the Qur'an: A Study of Islahi's Concept of Nazm in Tadabbur-i Qur'an* (Cambridge, UK: Adab Books, 1986), 25.

35 Muhammad al-Dasuqi, *Manhaj al-Bahth fi 'l-Ulum al-Islamiyyah* (Dawhah: Dar al-Awza'i, 1984), 222-225.

## TEXTUAL ANALYSIS IN THE STUDY OF THE SUNNAH

The *Sunnah* is defined by scholars of *usul al-fiqh* as “all that is narrated from the Prophet (peace be on him), except the Qur’an, including his sayings, deeds and tacit approvals.”<sup>36</sup> The *Sunnah* denotes the normative practice of the Prophet (peace be on him). Prophetic utterances (*al-sunnah al-qawliyyah*) are textual in nature in so far as they are words. Prophetic deeds (*al-sunnah al-fi’liyyah*) and tacit approvals (*al-sunnah al-taqririyah*) are not primarily textual in nature; they are, however, known through verbal reports of witnesses and these do constitute texts.<sup>37</sup> These verbal reports - *ahadith* or *akhbar* - are textual records of the Prophetic *Sunnah*. By their nature they are witness reports rather than personal opinions or inferences.

Each report, as it is known, consists of *matn* and *sanad* (chain of transmitters). A *matn* includes a clause of direct witnessing and the exact text of the Prophetic precept or practice. For instance: “I heard the Prophet say such and such” or “I saw the Prophet do such and such.” It contains an exact citation by a witness of the Prophet’s words, or the description of his deeds and tacit approvals. *Matn* is the substance of the information, whereas *sanad* traces its source. *Sanad* includes the names of the persons who have transmitted the report from the actual witness up to the time of its narration or recording.

Apart from the Prophetic *hadith* (*al-hadith al-nabawi*) there is a special kind of *hadith* known as *al-hadith al-qudsi* (“sacred speech”). It conveys the speech coming from God and thus represents a kind of extra-Qur’anic revelation. However, only the Qur’anic text possesses the miraculous characteristic of inimitability (*i’jaz*) and ritual value (*al-ta’abbud bi tilawatih*).

On the other hand, there is a difference between the Qur’an and the Prophetic *hadith*: the Qur’an is God’s revealed word in its recited form (*wahy matluww*) while the Prophetic *hadith*, even when it conveys meanings from God, does so by means of Prophetic words (*wahy ghayr matluww*).

Consequently, a quotation from the Qur’an starts with: *Qal Allah ta’ala* (“Allah the Exalted said”), but the quotation of the Prophetic *ha-*

36 Muhammad Zaki ‘Abd al-Barr, *Taqnin Usul al-Fiqh*, 39.

37 See: Bernard G. Weiss, *The Search for God’s Law*, 153.



*dith* text (except *hadith qudsi*) starts with: *Qal al-Nabi (salla 'llah 'alay wa sallam)*, whereas a quotation of *al-hadith al-qudsi* starts with: *Qala Allah ta'ala fima rawah sallallah 'alayh wa sallam* ("Allah, the Exalted, said according to what His Messenger reported").

The text of the Qur'an has been transmitted by *al-tawatur al-lafzi* (undisputed lexical accuracy), and its conceptual transmission (*al-naql bi 'l ma'na*) is not allowed. On the other hand, only a small part of *ahadith* have been transmitted by *al-tawatur al-lafzi*, while the rest have been transmitted by conceptual transmission through solitary reports (*ahad*).

Accounts of the Prophet's deeds and tacit approvals are especially given in words which belong to narrators.

The authenticity of the text of the Qur'an is categorically established (*qat'i l-thubut*). The authenticity of a particular *hadith* text could be categorical (*qat'i*), if it is transmitted by *tawatur*; but it could also be probable (*zanni*) if it transmitted by *ahad* reports. Consequently, in the case of the Qur'an, Muslim scholars disagree only with regard to its understanding and interpretation, but not with regard to its authenticity. In the case of a *hadith*, however, disagreement is possible with regard both to its authenticity as well as to its valid interpretation.

These differences between the value placed on the text of the Qur'an and the text of the *Sunnah* had a significant impact on the development of the textual methodology. The methodology of the *Hadith* sciences substantially dealt with two main issues: (1) how to determine the authenticity of a particular *hadith*; and (2) how to understand and interpret its text.

Sciences which deal with the authenticity of *ahadith* examine both the *sanad* and *matn* of a *hadith*. This approach was known as *naqd* (criticism) as early as the second century *Hijrah*, but did not gain currency among the scholars of the *Hadith*.<sup>38</sup> In dealing with *sanad*, Muslim scholars studied the continuity of the *sanad* and the character of narrators, namely, their personal integrity and *their* capacity to reproduce a report with accuracy. The importance of this method of identification of the sources of the reports and their transmission is explained in the words of Muhammad ibn Sirin (d. 110/728): "*Sanad* is a part of religion. Had it not been for *sanad* everyone would have said

38 See: Muhammad Mustafa Azami, *Studies in Hadith Methodology and Literature* (Indianapolis: American Trust Publications, 1992), 48.

whatever he wished.<sup>39</sup> Consequently, all narrators were divided into different classes in consideration of their reliability, etc., and so were their narrations.

*Muhaddithun* did not stop at the verification of *sanad*. They followed the rule that the verification of *sanad* does not also necessarily mean verification of *matn*, and *vice versa*. They moved toward the analysis of the *matn* before proclaiming the authenticity of the text of a *Sunnah*<sup>40</sup>. In doing that, the *muhaddithun* focused on the discovery of formal and material errors in the text.

Formal errors, (*shudhudh*/"irregularity," in the terminology of *muhaddithun*), could take the following features: addition to the text by narrators (*ziyadah*); reversing the order of the words in sentences (*qalb*); disarrangement (*idtirab*); misspelling or mispronunciation (*tashif*) and insertion of a narrator's own words as an explanation of the narrated text (*idraj*).

Material errors, *'illah* (weakness) according to the terminology of the *muhaddithun*, could be applied to a narrated text if it is contrary to the Qur'an, contrary to the other *sahih ahadith* in practice among Muslims, contrary to established historical facts, contrary to sound reason, contrary to common human experience, or if it promises disproportionately high rewards for insignificant deeds, or contains remarks and expressions which are clearly unbecoming of the Prophet (peace be on him).<sup>41</sup>

In dealing with *matn*, Muslim scholars, in fact, applied the tools of both formal criticism and content analysis.

After a particular report was established as authentic, the next step was to try to understand and interpret it. Muslim scholars were well aware of the importance of this phase. Sufyan al-Thawri (d. 161/777), for instance, regarded the correct interpretation of a *hadith* as even more important than its mere narration.<sup>42</sup> For providing a valid interpretation of a *hadith*, Muslim scholars refer to a number of factors such as language, circumstances of the narrated event (*asbab al-wurud*), the time-space framework (*al-zaman wa 'l-makan*), especially the issue of possible abrogation of an injunction, its relation with other *nusus*

39 Akram Diya' al-'Umari, *Buhuth-fi Tarikh al-Sunnah al-Musharrafah*, 53.

40 Muhammad Abu al-Layth al-Khayrabadi, "Al-Manhaj al-'Ilmi 'ind al-Muhaddithin fi l-Ta'amul ma' Mutun al-hadith" *Islamiyyat al-Ma'rifah*, 4: 13 (1998), 13-46; Muhammad Zubayr Siddiqi, *Hadith Literature*, 114.

41 See: Muhammad Zubayr Siddiqi, *Hadith Literature*, 201.

42 Muhammad Abu 'l-Layth al-Khayrabadi, "Al-Manhaj al-'Ilmi...", 34.

dealing with the same topic and its relation to the general objectives of the *Shari'ah*. The process of interpretation ends with making an inference from the text.

The attitude of classical Muslim scholarship to the text of the *Hadith* is well illustrated by the commentary of Abu 'I-Fadl Shihab al-Din Ahmad ibn 'Ali ibn Hajar al-'Asqalani (d. 852/1448) on *Sahib al-Bukhari*.<sup>43</sup> While interpreting a particular *hadith*, the author tried to do the following:

1. To provide information about *sanad*, narrators, evaluation of a *hadith*, and its connection with a particular chapter of the codex;
2. to highlight the circumstances of the event to which that *hadith* refers;
1. to explain the meaning of the words used in a *hadith* and the meaning of the report in general; and
3. to explain the rules which could be inferred from that *hadith*.

A contemporary scholar, Muhammad al-Dasūqī, summarizes the Muslim scholarly study of the text of the *Hadith* by dividing it into two phases: (1) study of background of the Prophetic text (*dirasah hawl al-nass al-nabawi*), and (2) study of the text itself (*dirasah-fi 'l-nass*).<sup>44</sup>

The first phase includes the study of the historical circumstances to which a *hadith* refers in order to have its correct understanding. Besides, all reports related to a single topic should be studied, preference (*tarjih*) among them should be established, and a comparison should be made between those reports and the Qur'anic verses dealing with the same topic.

The second phase comprises the study of the text of a *hadith* using linguistic interpretation and following the established rules of interpretation such as the relation between the general and the particular, the absolute and the limited, giving preference to literal over metaphorical meaning and to the *Shari'ah* implications over lexical ones. After this, a researcher will move toward the deduction of rules contained in the text of a *hadith*.

The same author found the following common elements in textual analysis applied to the text of the Qur'an and the *Hadith*. These common elements are the following:

1. The method is inductive (*manhaj istiqrā'i*).

43 Ahmad b. 'Ali Ibn Hajar al-'Asqalani, *Fath al-Bari: Sharh Sahih al-Bukhari*, ed. Muhammad Fu'ad 'Abd al-Baqi at al. (Bayrut: Dar al-Ma'rifah, 1379/1959), 1:145, 175, 229.

44 Muhammad al-Dasūqī, *Manhaj al-Bahth...*, 281-283.

2. It takes into consideration all parts of the text related to the same topic (by recourse to cross-referencing, systematic interpretation, etc.).
3. It explores the background of the text without sacrificing its general relevance for the special circumstances in which it appeared.
4. Qur'anic verses and *ahadith* related to the same topic should be studied together (the Qur'an was revealed to the Prophet (peace be on him) and the Prophetic *Sunnah* is the best interpretation of the Qur'an).
5. This method moves from analysis toward construction (*manhaj tahlili tarkibi*). It starts with the interpretation of particular expressions in accordance with the meaning which obtained in the Prophet's time, studies the specific ideas contained in them, and then constructs a general meaning of the text and infers rules from it.<sup>45</sup>

As far as the veracity of the text of the *Sunnah* is concerned, the issue has been resolved, as in the case of the Qur'an, by the establishment of its authenticity. Veracity is established by establishing authenticity. The epistemological rule is that "the report from Allah (the Qur'an) as well as the report from the Prophet (*Sunnah*) are absolute truth (*sidq mahd*) and by their very nature what is reported is established as truth."<sup>46</sup> A *mutawatir hadith*, transmitted either by lexical or conceptual *tawatur*, yields absolute knowledge which is equivalent to knowledge acquired through sense perception. A *al-hadith al-sahih*, according to the majority of Muslim scholars, yields predominantly probable knowledge, which is good enough to serve as a guiding norm for the practical conduct of Muslims.<sup>47</sup>

## TEXTUAL ANALYSIS IN THE STUDY OF ISLAMIC HERITAGE

The term *al-turath* has been introduced into the technical vocabulary of Muslim scholars during the 20th century as an equivalent for the European terms "legacy" and "heritage". In modern European usage

45 *Ibid.*, 283.

46 Muhammad Zaki 'Abd al-Barr, *Taqnin Usul al-Fiqh*, 233.

47 *Ibid.*, 39.

these two terms, initially borrowed from the legal vocabulary, refer to a body of knowledge, a cultural tradition and a set of values received from one's predecessors or from an earlier era.<sup>48</sup> In this meaning the term heritage was applied in Europe for the study of the cultural traditions of ancient peoples.

Similar developments took place in the Muslim context. As for the term *turath*, it has been used in the Qur'an in the meaning of "Inheritance".<sup>49</sup> In the Islamic law of inheritance, this term was overshadowed by its synonym, *mirath*. In modern times, however, the term has acquired a new meaning, that of cultural heritage, especially intellectual heritage embodied in writing.<sup>50</sup>

In this usage, the Islamic heritage refers to the totality of the legacy which Muslims have inherited from the previous generations as a result of the intellectual imperative derived from Islam as a revealed religion and the contributions they made to articulating, elaborating and applying its worldview in different space-time contexts. Heritage is, by its very nature, the outcome of human efforts and is thus only probable in terms of its epistemological value as compared with Revelation which is Divine and infallible.

The fact that the term "Islamic heritage" is new in the vocabulary of Muslim scholars does not mean that the Muslims did not have any historical experience and methodology to deal with the texts which constitute their heritage. On the contrary, that experience was long, highly developed, and was elaborated in different disciplines. The Muslim methodology in this field was a methodology that dealt with a living and developing heritage rather than with a dead, bygone past.

We have seen earlier how Muslim scholars dealt with the establishment and preservation of the authenticity of the texts of the Qur'an and the *Sunnah*. The basic features of this methodology were also adequately applied to the texts of the heritage. The existence of technical terms in Muslim classical scholarship for the different methods of verification of the authenticity of texts supports this view.<sup>51</sup>

The Muslim classical term for verifying the authenticity of the written text was *dabt*. The term was initially used for verification of

48 For a history of this term in the Muslim context see 'Abd al-Salam Muhammad Harun, *Qutuf Adabiyah: Dirasat Naqdiyyah-fi 'l-Turathh al-Arabi hawl Tahqiq al-Turath* (Cairo: Maktabat al-Sunnah, 1409/1988), 78-79.

49 Qur'an, 89:19.

50 See: Imad al-Din al-Khalil, "Mawqif iza'al-Turath" *al-Muslim al-mu'asir*, no. 9 (1977), 35-51.

51 See: Abd al-hadi al-Fuduli, *Tahqiq al-Turath* (Jeddah: Maktabat al-'Ilm, 1402/1982), 17-19.

oral *riwayah* in the *Hadith* sciences and was applied later to the verification of written texts as well. A synonym for *dabt* is *tahrir* which, in modern usage, means “editing.” Other important classical technical terms are *muqabalah* or *mu’aradah*, terms which refer to a comparison of different copies with the original copy or among themselves in order to determine the original work. Muslim classical scholars also paid attention to identification of errors in the written text, pointing out that either some dots had been missed or added (*tashif*) or alteration of letters in a word (*tahrif*). All these issues were discussed in books written on narrators (*tadrib al-ruwat*), errors (*al-tashif wa ’l-tahrif*), etiquette of scribes (*adab al-kuttab*), or etiquette of teachers and students (*adab al-’alim wa ’l-muta’allim*). Famous scholars who have written in this field were Hamzah ibn al-Hasan al-Isfahani (d. 360/970), al-Hasan ibn ‘Umar al-Daraqutni (d. 385/995), Abu Sa’id ‘Abd al-Karim ibn Muhammad ibn Mansur al-Sam’awi (d. 562/1166), Badr al-Din Muhammad ibn Abi Ishaq Ibrahim ibn Jama’ah (d. 733/1333), ‘Abd al-Basit ibn Musa ibn Muhammad al-’Almawi (d. 981/1573), and the like.<sup>52</sup>

This tradition of meticulous scholarship, which preceded European textual criticism by centuries, slowly began to decline with the general decline of Muslim civilization. The actual membership of the scribal guild also professionally deteriorated.<sup>53</sup>

A new situation emerged with the introduction of printing in the Muslim world. The first printed books looked like yet another copy of the original works written sometime in the past. They were based on a single manuscript of a book. The traditional Muslim method of *muqabalah* was not used, nor were the European methods of textual criticism.

The European methods of textual criticism were applied for the first time to the verification of the texts of Islamic heritage by European Orientalists. Their methodology influenced the procedure of *tahqiq*

52 An elaboration of the writings of Ibn Jama’ah and Al-’Almawi has been given by Franz Rosenthal in his *The Technique and Approach of Muslim Scholarship*, translated into Arabic as *Manahij al-’Ulama’ al-Muslimin fi ’l-Bahth al-’Ilmi*, tr. Anis Fariyah (Bayrut: Dar al-Thaqafah, 1403/1983), 26-49. An English translation of Ibn Jama’ah’s work has been done by Noor Muhammad Ghifari under the title *The Memoir of the Listener and the Speaker in the Training of Teacher and Student* (Islamabad: Pakistan Hijra Council, 1412/1991).

53 Deterioration of scribal arts regarding “secular sciences” and support for printing press as a means to overcome this predicament was exposed by Ibrahim Muteferrika, a Muslim credited with the introduction of printing in the Osmanli State, in his work *Vesiletu-t Tiba’a*, translated by Christopher M. Murphy as “The Usefulness of Printing” in George N. Atiyeh, ed. *The Book in the Islamic World*, 286-292.

*al-makhtutat* by contemporary Muslim scholars and the codification of these rules by the institutions of research in the Muslim world during the second half of the 20th century. In process of adoption of this methodology, the term *tahqiq* was chosen as an equivalent for the English term “criticism”. In classical Muslim usage this term had the meaning of “proving a thing with an evidence” and did not refer to dealing with texts. In the modern usage, however, it acquired the meaning of scholarly examination of literary texts with regard to their origin, authenticity, composition, characteristics and history.<sup>54</sup> As such, this concept and the methodology which it implies, were used only with regard to *turath*, and not to the revealed texts for which adequate methodology had already been developed within the *Shari ah* sciences.

According to the contemporary scholar ‘Abd al-Hadi al-Fuduli, textual criticism, as applied to Islamic heritage, includes the following steps:

1. Collection of available manuscripts of a particular work.
2. Preliminary comparison of the collected manuscripts and choosing a copy which will form a basis for verification.
3. Verification of authorship.
4. Verification of the title of the manuscript.
5. Verification of the name of the author.
6. Comparison of manuscripts and determination of the text in its original form or a form close to the original.
7. Finalizing the verification, source of identification of citations within the text, explanation of difficult words, technical terms, personal names, toponyms, vocalization of difficult words, pagination, documentation and preparing index, etc.; and
8. Writing an introduction in addition to identifying the relevant sources and references.

The meaning of the verified text and its interpretation is dealt with by different tools of content analysis. In this case the contemporary Muslim approach combines the age-old Muslim tradition of analyzing texts, writing commentaries and glosses and the modern scholarly tradition. For instance, in interpreting the texts of their heritage the Muslim scholars today ask questions about the author (his life, position in society, his other writings, general views, etc., the contexts

54 Abd al-Hadi al-Fuduli, *Tahqiq al-Turath*, 32.; Muhyi Hilal al-Sarhan, *Tahqiq Makhtutat al-'Ulum al-Shar'iyah*, 171.

in which the text was produced, its purpose of writing, audience, the means employed to convey the message and the like). These questions are already used in the textual analysis of literary works and Muslim researchers may benefit from the positive developments in this field.<sup>55</sup>

Finally, the examination of the veracity of a text pertaining to Islamic heritage depends on the theme or area to which the text belongs. In the case of works which are historiographical or factual in nature, the veracity of the text can be established by its comparison with other accounts as well as non-textual sources. For instance, if we were to study the description of the teachings of a particular heterodox group in a work of Muslim heresiology (*al-milal wa 'l-nihal*), it would be necessary to check the truthfulness or accuracy of the author's account by referring to historical records, polemical writings, writings of the members of the group concerned and so on. If we were to study the works of a doctrinal nature, their veracity can be examined by checking the sources, evidences, accuracy of citations, and the validity of their conclusions.

## USE OF TEXTUAL ANALYSIS BY ORIENTALISTS

For the most part of the history of the study of Islam by Western scholars, their attention was focused on textual studies.<sup>56</sup> Within this approach, religious, literary and historical texts were studied as the foremost means for understanding Islam as a religion and civilization. Textual studies essentially relied upon philology and analysis of sources.

Western scholars on Islam, belonging Oriental/Islamic Studies and History of Religion/ Comparative Religion backgrounds generally apply the methodology of Biblical studies developed in the 19th century Europe to the study of the Qur'an. The main characteristic of this approach is the application of the general methods of humanities to the Biblical text. Two forms of criticism were developed, namely textual ("lower") and literary-historical ("higher").<sup>57</sup> The aim of textual criticism was to restore a text in its original version. The tools of textual

55 See, for instance, instruction of textual analysis developed by the Harvard University Writing Center, <http://www.fas.harvard.edu/~wricntr/analysis.htm/>

56 Jacques Waardenburg, "Humanities, Social Sciences and Islamic Studies", *Islam and Christian-Muslim Relations*, 1 (1990), 1:67-69.

57 See: Lawrence Boadt, *Reading the Old Testament: An Introduction* (New York: Paulist Press, 1984), 70-73.



criticism included identifying internal and external evidences for the re-establishment of the lost text, for identification of errors in the text, and for the provision of the critical apparatus (a system of annotated symbols which indicate where the accepted text differs from variant versions). The aim of literary-historical criticism was to examine the authorship, date, composition and authority of the Bible or its parts. Its most frequently used tools were source criticism, form (genre) criticism, and criticism of tradition history. The basic premise of Biblical criticism is that the text of the Bible should be studied as any other piece of literature or historical document.<sup>58</sup>

The method of criticism developed in the context of the Bible was later extended to the study of other scriptures, including the Qur'an. A detailed explication of this approach is provided by William A. Graham:

"The study of scripture in the major orientalist and biblical field has, even up to present, meant to study documents and the historical context in which they arose. The chief concerns have been to establish an 'original', uncorrupted text, to reconstruct the process of composition of the text, to analyze the text for contemporaneous historical information, and to search out the key ideas of the text and trace their 'sources' or 'antecedents.' The study of religious texts in their function as scriptures has been subordinated to the critical study of their earliest forms."<sup>59</sup>

The second half of the 20th century witnessed the appropriation of new tools of literary criticism and cultural studies in the Western studies of the scriptures. Among those tools were discourse analysis (text linguistics), narrative analysis, rhetorical analysis, semantic discourse analysis, structural analysis, post-structural analysis, reader-oriented (response) criticism, de-constructive reading and the like.<sup>60</sup> These developments found their expressions in the Orientalist study of the Qur'an and the *Sunnah*.

The Orientalists of the first half of the 19th century, such as Abraham Geiger, were searching for foreign sources of, or influences on, the Qur'an. The methods of philological and historical criticism were used to prove the thesis of the alleged Jewish, Christian, Manichean or other

58 See: David F. Ford, ed. *The Modern Theologians: An Introduction to Christian Theology in the Twentieth Century* (Cambridge, MA and Oxford, UK: Blackwell, 1997), 10.

59 William A. Graham, "Qur'an as Spoken Word: An Islamic Contribution to the Understanding of Scripture" in Richard C. Martin, ed. *Approaches to Islam in Religious Studies* (Tucson: The University of Arizona Press, 1985), 25-26.

60 See: Steohen D. Moore, *Literary Criticism and the Gospels: The Theoretical Challenge* (New Haven, CT: Yale University Press, 1989).

influences.<sup>61</sup> These scholars paid special attention to the Qur'anic vocabulary, searching for non-Arabic words, studying the style of the Qur'an and its narratives and comparing them with those of other scriptures.

Towards the end of the 19th century, the attention of the Orientalists shifted toward the history of the Qur'anic text. The theoretical framework for this endeavour was found in the discipline of textual history (*textgeschichte*) developed in Germany within the field of Biblical studies. The main aim of this approach was to show that there is a genesis of the Qur'anic text, that the text is the result of historical development, and consequently that the Qur'an, which we have today, is not the original one. To this methodological orientation belong works of Gustav Weil,<sup>62</sup> Theodor Noldeke,<sup>63</sup> Richard Bell,<sup>64</sup> Arthur Jeffery<sup>65</sup> and several other scholars.

Some scholars who followed this orientation (Gotthelt Bergstrasser, Arthur Jeffery, Otto Pretzel) planned before the World War Two to prepare a "critical" edition of the Qur'an.<sup>66</sup> The project failed since the collected materials were destroyed during the war. One of the latest Orientalist attempts to establish the "genesis" of the Qur'anic text is the work of John Wansbrough.<sup>67</sup>

Wansbrough is the representative of the "revisionist approach" in Western Islamic studies, an approach which radically questions the authenticity and reliability of the Muslim sources for the study of the texts of the Qur'an and the *Sunnah*. His basic methodological premises are the following:<sup>68</sup>

1. A written source does not tell us "what really happened", but only what the author thought had happened. Only an eyewitness knows what he writes.
2. Writing distorts "what really happened" since writing imposes order, linearity and sequentiality on the real event.
3. The transmission history of an ancient document is open to great doubt.

61 See: Stefan Wild, ed. *The Qur'an as Text* (Leiden, New York and Koln: E.J. Brill, 1996), vii.

62 Gustav Weil, *Historisch-Kritische Einleitung in den Koran* (Bielefeld and Leipzig, 1878).

63 Theodor Noldeke, *Geschichte des Qorans*, 3 vols. (Leipzig: 1909-1938).

64 Richard Bell, *The Qur'an Translated with a Critical Rearrangement of the Surahs* (Edinburgh: Edinburgh University Press, 1937).

65 Arthur Jeffery, *Materials for the History of the Text of the Qur'an* (Leiden: Brill, 1937).

66 Gerd R. Puin, "Observations on Early Qur'an Manuscripts in San'a'a" in Stefan Wild, ed. *The Qur'an as Text*, 107.

67 John Wansbrough, *Qur'anic Studies: Sources and Methods of Scriptural Interpretation* (Oxford: Oxford University Press, 1977).

68 Given according to J. Koren and Y.D. Nevo, "Methodological Approaches to Islamic Studies", *Der Islam*, vol. 68 (1991), 89-93.

4. The written sources are literature and the study of these sources is not history but literary criticism.
5. External evidences are necessary to corroborate the historicity of the written sources. The lack of such corroboration is an important argument against the historicity of the phenomenon attested by literary sources (*Argumentum silentio*).
6. The Qur'an is viewed in the same way in which modern Western scholars have seen the Bible - as a literary work that should be studied by means of literary criticism. Its language has no special status.

Starting from these methodological premises, Wansbrough analyzed several aspects of the Qur'an - its thematic content, vocabulary, imagery, structure, variant traditions and language. He concluded that the text of the Qur'an was compiled at the end of the 2nd/8th century, that it originated within the Judeo-Christian sectarian communities, and that Islam is a sectarian movement within the same milieu. By imposing the methods of Biblical criticism on the Qur'an, Wansbrough, in fact, determined the results of his study.

His approach has been subjected to critical examination by another Western student of Islam, Andrew Rippin.<sup>69</sup> He criticized Wansbrough's basic promise that the Qur'an is a literary work which, together with the *Hadith*, should be seen as the Muslim "salvation history" or record of faith and thought of certain generations. Rippin also criticized another of Wansbrough's premises - not to trust the Muslim sources. He posed a counter question: Why should we not trust Muslim sources?<sup>70</sup> Another scholar put forward the following argument in support of trusting Muslim sources: Western scholarship did not discover the Qur'an. It reached us through the Muslim community, which not only preserved the Qur'an but was also continuously striving to translate it to history.<sup>71</sup>

During the last few decades there has been a new shift in the Orientalist study of the Qur'an. From the "genesis" of the text attention has now moved toward the text itself. The Qur'an is now seen as a self-referential text and thus an inter-textual approach is suggested. Topics such as interpretation of the Qur'an, its reception and its aesthetic and cultural role attract more attention. Tools for investigation are sought in general hermeneutics, semantics, semiotics, textual linguistics, theory of discourse, and the like.<sup>72</sup>

69 Richard C. Martin, *Approaches to Islam in Religious Studies*, 154-155, and passim.

70 Ibid.

71 William A. Bijefeld, "Islamic Studies Within the Perspective of the History of Religions", *The Muslim World*, 62:1 (1972), 5.

72 Stefan Wild, ed. *The Qur'an as Text*, viii-ix.

The search for the “genesis” of the text in the Orientalist study of the Qur’an was applied to the *Hadith* as well. It started with Ignaz Goldziher (1850-1921), was followed by Joseph Schacht (1902-1969) and was continued by Michael Cook in the present time. First, Goldziher and Schacht questioned the authenticity of the *Hadith*, introducing the theory of “back-projection”, that is, *ahadith* were mainly coined during the second/eighth and the third/ninth centuries and attributed to the Prophet (peace be on him). After that, Cook argued that *sanad* is not at all admissible as a proof of the historicity of the text of the *Hadith*. Admissible proofs are criteria external to *sanad*. Those criteria, in the view of scholars of the “revisionist” school, are: contemporary accounts in non-Arab literature, archeological evidences, numismatics, epigraphy and the like. The distrust of the Muslim sources for the study of Islam developed by these scholars can hardly be explained only by the influence of the European philological and historical criticism. Prejudices and biases have definitely played an important role in the development of an absurd methodological premise - that in the study of Islam Muslim sources should not be trusted. It would be interesting to see, for instance, whether a student of the history of England would build his/her methodology on the premise: Why should we trust the English sources?

The most constructive Orientalist contribution to Islamic studies, however, was in the field of Islamic heritage. Tremendous efforts were made to collect Islamic manuscripts, prepare catalogues, bring out critical editions, prepare bibliographies, indices, etc.

In dealing with the texts of Islamic heritage, the Orientalists followed the rules of textual criticism developed in Europe from the Renaissance period onward and codified during the 19th century. Through Orientalist writings and modern education, the European art of textual criticism was transmitted to the generations of modern educated Muslim intellectuals in the first part of the 20th century. For instance, the first formal university course in the Muslim world on critical edition of Islamic manuscripts was given by Gotthelt Bergstrasser (1886-1933) during the academic year 1931-1932 to post-graduate students of the Department of Arabic language in the Faculty of Arts, University of Cairo.<sup>73</sup> His lectures were published later on and contributed to the emerging Muslim literature on *tahqiq* in the second half of the 20<sup>th</sup> century. Similarly, the writings on textual criticism by

73 Abd al-Hadi al-Fuduli, *Tahqiq al-turath*, 27.

other European scholars such as Paul Maas (1880-1964), R. Blachere (d. 1973) and J. Sauvaget (d. 1950)<sup>74</sup> were translated into Arabic and were availed of by contemporary Muslim scholars in their efforts to provide a synthesis between Muslim traditional scholarship and modern European science on textual criticism.

The textual criticism applied by the Orientalists to the texts of Islamic heritage includes the following steps.<sup>75</sup>

1. Making an inventory of available manuscripts;
2. collection of sources related to the manuscripts, the authors, the topic and arranging this information chronologically;
3. comparison of variant manuscripts, separation between the primary and the secondary sources, the text of the author and the text of a commentator or copyist;
4. study of the personality of the author, commentators or copyists in order to determine possible interventions in the text;
5. study of the content of the text (expressions, ideas);
6. determination of the original text, indication of variations and their explanation; and
7. writing introduction, preparing indices and documentation (notes, etc.).

Most of these methodological rules were later appropriated by modern Muslim scholars. However, the main difference between the Orientalists and Muslim scholars with regard to this methodology is that the Muslims use it only for the study of the heritage texts while the Orientalists, or a large number of them, apply it to the study of the Islamic revealed texts as well.

## ADVANTAGES AND LIMITATIONS OF THE METHOD

Islam being a revealed religion, Muslim scholars accord a central position to textual studies focused on the revealed texts. The Qur'an is

74 *Regles pour editions et traductions de textes arabes* (Paris: Societe d'edition les belles lettres, 1953) translated as *Qawa'id Tahqiq al-Makhtutat al-'Arabiyah wa Tarjamatiha: Wijhat Nazar al-Isti'rab al-Shar'iyyah*, tr. Mahmud al-Miqdar (Bayrut: Dar al-Fikr al-Mu'asir and Dimashq: Dar al-Fikr, 1409/1988)

75 Muhammad Hamdi al-Bikri in his introduction to *Kitab Usul Naqd al-Nusus wa Nashr al-Kutub: Muhadarat al-Mustashriq al-Almani Barjistrasar* (Cairo: Markaz Tahqiq al-Turath, 1969) as cited by Muhyi Hilal al-Sarhan, *Tahqiq Makhtutat al-'Ulum al-Shar'iyyah*, 180.

embodied in a perfect and miraculous language and thus the Qur'anic Arabic language with its vocabulary, grammar, syntax, style and semantic textual composition is the main medium for approaching the text. Since the Qur'anic text often refers to specific events or persons, the meaning of the text cannot be correctly understood without studying the related historical circumstances. Hence, extra-textual studies are needed but not to the point of reducing the text merely to a historical record, to confining it to a particular time, or merely searching for a chronological history in the Book of Guidance.

The main limitation of textual analysis is that it may open to us only discursive (rational) meanings of the text, whereas the Qur'an possesses discursive as well as non-discursive meanings. Thus, the Qur'anic non-discursive meanings (aesthetic feelings, etc.), should be studied by other appropriate methods. For instance, the aesthetic dimension of the recitation of the Qur'an and its influence on human behaviour is a subject beyond the scope of textual analysis.

Another limitation of textual analysis is that this method is adequate only for the study of "normative religion", namely a system of beliefs and norms of behaviour. The study of "living religion" or of the way how groups and individuals translate their "normative religion" into practice is beyond the scope of this method. Thus the study of the gap between the ideal Islamic norm contained in the revealed texts and the reality of Muslim situation cannot be done by textual analysis but by resorting to the methods of social sciences.

Lastly, there is an important issue which is beyond the scope of textual analysis and that is the social and cultural role of the text. For instance, the role of the Qur'an and its meaning in daily Muslim life as well as its role in the changing history of mankind can be studied only with the help of different social sciences (anthropology, psychology, sociology and cultural studies).

Similarly, in the case of the *Hadith* studies the role of textual analysis is limited to determining the authenticity of particular reports and their meanings and implications. However, other extra-textual methods such as the social-historical context (*asbab al-wurud*) are indispensable for a correct and valid interpretation and identification of rules contained in the text.

Finally, in the study of Islamic heritage textual analysis helps us to determine the authenticity of a text, its meaning, motifs, development

of ideas, patterns, and so on. Other questions important for the study of a text such as the personality of the author, scene, audience, purpose of writing, are to be addressed by historical research and relevant methods of social sciences.

## IMPROVEMENT OF THE METHOD

Textual analysis always relies upon the existing level of knowledge related to a language. Internal developments in language-related disciplines naturally have a significant impact and lead to modification or improvement of textual analysis. In that sense, contemporary developments in textual linguistics, semantics and similar disciplines may improve this method.

A possible area for the improvement of this method could be the development of general Islamic theory of interpretation of the revealed texts. We have seen that Muslim scholars dealt with this issue within the boundaries of different disciplines. The science of *usul al-fiqh* deals with *nusus* in general rather than with particular *nusus*, but in the end its approach becomes interpretative in the legal sense. Relying upon the tradition of *usul al-fiqh*, it will be extremely important to develop and formulate a general theory of interpretation of revealed texts.

Another area of possible improvement is the use of electronic aids such as analytical tools. Indices, concordances, dictionaries and glossaries of the Qur'an, the *Hadith* and Islamic heritage already exist in the printed form. Storing these references in electronic forms would facilitate research. The first projects in this field have already been done, but the whole exercise needs further improvement and popularization.<sup>76</sup>

Apart from this function, computer assisted textual analysis provides textual database (database of vocabulary), tools for text retrieval and analysis, multivariate factor analysis (recognition of repeated events and statements), study of collocation (words which occur more than once near to each another), word length, frequency, context, etc. It seems that the major difficulty in introducing these tools in Islamic studies lies in the area of actual programming.

76 See: Hani M. Atiyah, *Qur'anic Text: Toward a Retrieval System* (Herndon, VA: The International Institute of Islamic Thought, 1996).

## CONCLUSION

Textual analysis is the basic method in dealing with texts. Generally it addresses three main issues: the authenticity of the text, the validity of its interpretation, and the veracity of the facts related in it.

Muslim scholars developed different procedures and, techniques for textual analysis appropriate for three kinds of text: the Qur'anic text, the Prophetic texts, and the texts of the Islamic heritage.

The authenticity of the Qur'anic text is established by the fact of its transmission by *tawatur*. The authenticity of the text of the *Hadith* is established by examining the *sanad* and *matn* of the reports. The authenticity of the text of Islamic heritage is a subject matter of textual criticism (*tahqiq*).

The methods of interpretation of the text of the Qur'an include language-related analysis, logical and systematic analysis. These are internal to the text. Among the procedures external to the text, Muslim scholars resorted to the study of the historical context of the text and its locus. Similar methods were used for the interpretation of the texts of *Hadith*. The texts of Islamic heritage are analyzed by procedures and tools common for the interpretation of all human works.

The veracity of the Revealed Texts is established by the establishment of their authenticity. The corroboration of these texts is limited by the limits of human experience, capabilities and actual development of sciences. The veracity of the reports contained in the texts of Islamic heritage could be examined by extra-textual corroboration of these reports.

Textual analysis is also used by the Orientalists in their study of Islam as a religion and a civilization. However, what distinguishes the Orientalist and Muslim uses of this method is the difference in the general methodological premises and approach. The Orientalists, especially those of the revisionist school, generally approach the Qur'an not as a Scripture but simply as a literary work and generally mistrust the Muslim sources in studying the texts of the Qur'an and the *Hadith*.

The main limitation of textual analysis is that this method may open to the reader only the discursive meanings of the text and is adequate only for the study of the "normative religion". Non-discursive meanings of the text and the study of a "living religion" can be addressed by the methods of social sciences.

Textual analysis in Islamic studies may be improved by the development of language-related disciplines, the formulation of a general theory of interpretation of the revealed texts, and the adoption of adequate computer tools of analysis.





# APPLYING THE SHARI'AH IN MODERN SOCIETIES: MAIN DEVELOPMENTS AND ISSUE\*

## INTRODUCTION

This paper deals with the place of the *shari'ah* in modern Muslim societies and communities. It attempts to identify the main developments in the relationship between Islamic law and Muslim societies in modern times, the models of application of the *shari'ah* that have been developed, and some of the issues relating to the calls for the implementation of the *shari'ah* which were articulated during the last decades of the 20th century. Discussion of these issues is preceded by a clarification of the meaning of the key concepts relevant to the subject.

## I CONCEPTUAL CLARIFICATION

### *Shari'ah, Fiqh and Qanun*

In the Islamic parlance, the term *shari'ah* refers to the totality of God's commands contained in the *Qur'an* and the *Sunnah*.<sup>1</sup> For Muslims it is *the way* [which is the etymological meaning of the word] to conduct this worldly life. It governs every aspect of life from matters pertaining to ritual purity to questions related to international affairs. It is obvious that some aspects of the *shari'ah* are unenforceable by any political authority

\* *Islamic Studies*, 40:2 (2001), pp. 207-226.

The author wishes to gratefully acknowledge the grant he received from the Research Centre, International Islamic University Malaysia to pursue research on this subject.

1 Mohammad Hashim Kamali, "Fiqh and Adaptation to Social Reality" in *The Muslim World*, 86:1 (1996), 62-63.

and therefore constitute a code of conscience, such as the rules pertaining to *'ibadah*. Other aspects are, in principle, enforceable by state, such as the rules of civil transactions, criminal punishments and the like and they constitute the legal norms in the technical meaning of the expression.<sup>2</sup>

The *shari'ah* is interpreted by qualified Muslim scholars. The totality of their interpretations constitutes *fiqh*, which is defined as "knowledge of human rights and duties" (*ma'rifat al-nafs ma laha wa ma 'alayha*).<sup>3</sup> Being a result of the historical endeavours of Muslim scholars to understand, discover and interpret the *shari'ah*, in its human dimension *fiqh* goes through a process of change.

In cases where the *shari'ah* is silent, Muslim authorities have the right to pass legislation in accordance with the *shari'ah* as the *grundnorm*.<sup>4</sup> This legislation, based upon the doctrine of *al-siyasah al-shar'iyah* (governance in accordance with the *shari'ah*) and expressed in the form of *qanuns* constitute a flexible part of Islamic law.<sup>5</sup> One out of the innumerable examples that can be cited for this kind of legislation is the traffic code made for regulation of traffic in modern times.

In pre-modern Muslim legal history, one of the most important issues was that of relationship between the *shari'ah* and *qanun*, or the Islamicity of the legislation of Muslim political authorities. In historical Muslim states, such as the Ottoman state, this issue was solved through the control of the legislative process by the supreme *mufti* of the state (*shaykh al-Islam*).<sup>6</sup>

In those contemporary Islamic states where the *shari'ah* has been proclaimed as the source of law, this issue is under the jurisdiction of the supreme bodies constituted to safeguard the constitution (Constitutional Court in Egypt, Council of Guardians of the Constitution in Iran, etc.)

In the past, legislation in historical Muslim states, even though it was in accordance with the *shari'ah*, was not named *shari'ah* law;

2 Gregory C. Kozlowski, "Islamic Law in Contemporary South Asia" in *The Muslim World*, 87:3-4 (1997), 226.

3 Muhammad ibn 'Ali ibn Muhammad al-Shawkani, *Irshad al-Fuhul ila Tahqiq al-Haqq min 'Ilm al-Usul*, ed. Ahmad 'Izzu 'Inayah, 2 vols. (Beirut: Dar al-Kitab al-Arabi 1999), 1: 18. This is the definition of Abu Hanifah.

4 Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad* (Islamabad: The International Institute of Islamic Thought and Islamic Research Institute, 1994), 38.

5 See Mohammad Hashim Kamali, "Siyasah Shar'iyah or the Policies of Islamic Government" in *The American Journal of Islamic Social Sciences*, 6 (1989), 63 and passim.

6 Ahmet Akgunduz, *Osmanli Kanunnameleri ve Hukuki Tahyililleri* (Istanbul: FEY Vakfi, 1996), 1:81-87.

it was, instead, called *qanun*. It had its separate existence in the legal systems of the Muslim states as well as in the consciousness of Muslims. In contemporary Islamic states this difference is fading and new terms such as *qanun-i islami* ("Islamic law") are meant to overcome the dichotomy between the *shari'ah* and the *qanun*. For instance, the contemporary Pakistani scholar Imran Ahsan Khan Nyazee describes Islamic law as "the growing tree".<sup>7</sup> The roots of this tree are the *usul* (sources) i.e. the Qur'an and the *Sunnah*; its trunk is the fixed part which comprises norms derived by the *fuqaha'* from specific evidences; and its branches are flexible, and consists of the norms determined by the state from the general principles. Using the traditional Islamic vocabulary, one may say that the fixed part of the tree are the norms stated explicitly in the *shari'ah* texts (the Qur'an and the *Sunnah*) or are derived from them by using the strict analogy of *fiqh*, and the branches of the tree are the *qanuns*.

Any discussion about the implementation of the *shari'ah* at a particular time should take into account the nature of the *shari'ah*, the issue of the enforceability of its set of norms as well as the nature of juristic interpretation and legislation of Muslim authorities.

## APPLICATION OF NORMS

Application of norms has at least three meanings: (1) behaviour according to given norms; (2) application of a rule or a principle to a case or a fact; and (3) application of the prescribed sanctions as a consequence of non-adherence to the norms.

Discussion on the application of the *shari'ah* should take into account these different levels of meaning of the concept of application. Thus, we may say that the application of the *shari'ah* (*tatbiq al-hukm al-shar'i*) could mean: (1) behaviour according to the *shari'ah* rules; (2) application of the *shari'ah* rules or principles to a specific case or a fact; and (3) application of prescribed sanctions (*jaza'*, *'uqubah*) as a consequence of non-adherence to the *shari'ah* rules. Ultimately, the *shari'ah* is applied through the behaviour of individuals. Compliance of their behaviour with the dispositions of the *shari'ah* norms is an ideal situation. Being human, the addressees of the *shari'ah* norms

7 Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad*, 54.

frequently contravene the norms of prescribed behaviour and thus sanctions come. If we say that human non-compliance with the *shari'ah* norms represents infringement of God's order, then sanctions are meant to return the order in place.

To follow the *shari'ah* is religiously incumbent upon Muslims. However, there are different factors involved in the process of application with their specific responsibilities as well as prescribed mechanisms of application.<sup>8</sup>

As a matter of principle we may say that all segments of a Muslim society are involved in the application of the *shari'ah*. The application of the *shari'ah* is not just a matter of state or administrative authority; it is rather a matter of the collective responsibility of Muslims. This responsibility belongs to (1) individuals; (2) society (*mujtama'*) and (3) the state (*dawlah*).

The individual is the first addressee of the *shari'ah* norms. Ultimately, the *shari'ah* is realized through the behaviour of individuals. Individuals are responsible in matters pertaining to themselves, to their families and to the society. These duties are known in Islamic terminology as 'ayn duties.

The Muslim society is the second addressee of the *shari'ah* rules. In applying certain *shari'ah* norms, it is the society at large that is involved to a greater extent than the state or government. The entire society is involved in the situations when a particular duty should be performed regardless of the fact who exactly performs it. These duties are known as *kifayah* duties and they emphasize the social dimension of Islam. Some examples of *kifayah* duties are *salat al-janazah* (Funeral prayer), 'Id prayer, building mosques, acquiring knowledge in specialized areas, etc.

State is the third factor involved in the application of the *shari'ah*. State is involved in this process through three branches namely jurisprudence (*fiqh; ifta'*), judiciary (*qada'*) and executive administration (*idarah*).

The jurisprudential branch is responsible for giving authoritative interpretation of the *shari'ah* rules and identification of the norm which applies to a case. This is done by responding to queries of individuals, social institutions, and the state. *Muftis*, by interpreting the *shari'ah*, serve as legal counsellors.<sup>9</sup> Today their duty is also connected with *da'wah*

8 Jamal al-Din 'Atiyyah, *al-Nazariyyah al-'Ammah li al-Shari'ah al-Islamiyyah* (Cairo [?]: Matba'at al-Madinah, 1988), 239-51.

9 Muhammad Khalid Masud, et al., "Muftis, Fatwas, and Islamic Legal Interpretation" in Muhammad Khalid Masud, et al., eds., *Islamic Legal Interpretation: Muftis and Their Fatwas* (Cambridge, MA and London: Harvard University Press, 1996), 3-32.

(mission) and *irshad* (guidance) and not only with stating the permissibility or impermissibility of certain actions. In this sense, the earlier practice of issuing laconic *fatawa* containing only a yes or no answer (*yajuz, la yajuz; olur, olmaz*) has given way to a more lengthy elaboration on the matters asked.<sup>10</sup>

By giving *fatwas*, the *muftis* help Muslims to behave according to the disposition of the *shari'ah* rules. It is up to one's personal conscience whether to comply with a *fatwa* or not. By its nature, however, this function is a key function for the application of the *shari'ah*. Its importance is especially emphasized in secular societies where the Islamic rules are not applied by the state.

The judiciary (*qada'*) is responsible for adjudication of disputes between interested parties, registration of legal deeds, issuing judgments in trials, and determining sanctions in cases involving infraction of the norms of the *shari'ah*. In situations where Islamic rules are sanctioned by the state, the courts are responsible for the function of *qada'*. In contemporary Muslim countries there are two types of courts responsible for the administration of the *shari'ah*: (1) state courts of general jurisdiction (for instance in Egypt) and (2) special *shari'ah* courts (for instance in Jordan). The nature and organization of the *shari'ah* courts in modern Muslim countries reflects the nature of national legal system to which they belong.

In a situation where in the Islamic norms are not sanctioned by the state, Muslim communities do not have any formal bodies to perform the function of *qada'* comparable with the ecclesiastic courts of the Christian churches or rabbinical courts of the Jewish communities in diaspora. There are just some attempts at the institutionalization of peaceful settlement of disputes and counselling functions among Muslim communities in some Western countries.

The executive branch, starting from the head of the state and ending with *shurtah* or *hisbah* (local law enforcement officers), is responsible for law enforcement. In modern times, the organs of the Muslim nation states have taken over this function. In the case of the Muslim communities in secular states, this function does not exist.

Having in mind the diversified meaning of the concept of application of the *shari'ah* norms and the different levels of responsibility for this duty, we may say that the application of the *shari'ah* cannot be

10 See Chibli Mallat, "Tantawi on Banking Operations in Egypt" in *Islamic Legal Interpretation*, 286-96.

reduced to the application of the sanctions only and the state cannot be made solely responsible for the application of the *shari'ah* norms.

The procedure of applying the norms of the *shari'ah* follows the general pattern of the application of norms. This procedure includes:

1. Study of fact/reality in which the *shari'ah* norms are going to be applied;
2. Finding an applicable norm;
3. Determining the meaning of a norm; and
4. Applying norms on facts.

All subjects which are involved in the application of the *shari'ah* norms should follow this procedure. In performing the first three steps they are assisted or guided by *muftis*. In performing the fourth step the addressees of the norms act accordingly.

An extensive clarification of the meaning of the *shari'ah* and related terms as well as the concept of the application of norms was needed in order to provide adequate methodological framework for dealing with the issue of the application of the *shari'ah* in modern societies.

## II MODERNITY AND THE APPLICATION OF THE *SHARI'AH*

European/Western modernity, understood as a new worldview, social organization and lifestyle, found its way into Muslim societies during the 19th century. This phenomenon brought radical changes into the way of life and thinking of Muslim nations. The "five pillars of modernity" - sovereign nation states, science-based technology, bureaucratic rationalization, the quest for profit maximization, and secularization - deeply affected the societies based upon the worldview of *tawhid*.<sup>11</sup> An indicator of this impact was the changed role of the *shari'ah* in the structure and function of Muslim societies.

Basically, Western modernity spread into the Muslim world by means of the modernization projects of the Muslim elite, such as *tanzimat* in the Ottoman state, and via the military conquest of Muslim territories by European colonial powers, such as the French occupation of Algeria. In some cases both these were combined. For instance, Bosnia and Herzegovina experienced the Ottoman project of *tanzimat* during

11 See: Louay M. Safi, *The Challenge of Modernity: The Quest for Authenticity in the Arab World* (Lanham, New York and London: University Press of America, 1994), 12.

the period between 1839- 1878 and the Austro-Hungarian project of military conquest between 1878- 1918.<sup>12</sup>

The spread of Western modernity in the Muslim world brought several important changes in the relations between the *shari'ah* and the Muslim societies. These changes were:

### *(i) The Scope of the Qanun was enlarged*

The list of laws passed in the Ottoman state during the *tanzimat* shows the tendency of enlarging the domain of *qanun* from areas in which the *shari'ah* was silent (such as modern banking system,<sup>13</sup> maritime trade) to areas in which the solutions of classical *fiqh* were not quite extensive (for instance, constitutional and administrative law).<sup>14</sup> The duality of the *shari'ah* and the *qanun* existed from pre-modern times, but *qanun* was always, at least theoretically, subject to the *shari'ah*. The modernizing reforms recognized the area of *qanun* as one somewhat independent of Islamic law because it covered matters which had not been extensively dealt with in Islamic law and its contents did not conflict with the norms of the *shari'ah*. This attitude led to a gradual enlargement of the scope of *qanun*. Eventually, *qanun* became dominant in the sphere of public law and the *shari'ah* was relegated to the realm of private law.

### *(ii) Qanuns of Muslim Rulers were replaced by Qanuns of non-Muslim Rulers*

In Muslim legal history *qanun* was accepted as the legislation of Muslim rulers in matters where there are no specific *shari'ah* norms. However, during the modern times the content of *qanun* legislation changed. The modernizing Muslim elite began to adopt European laws in the form of *qanun* legislation, thus replacing the Muslim historical

12 See Fikret Karčić, *The Bosniaks and the Challenges of Modernity: Late Ottoman and Hapsburg Times* (Sarajevo: El-Kalem, 1999)

13 The point made by the learned writer is well taken except for the fact that "modern banking system" is not quite apt by way of example for the obvious reason that it involves transactions which are subject to many *shar'i* objections, most of all because these transactions are based on *riba*. Ed.

14 See Niyazi Berkes, *The Development of Secularism in Turkey* (Montreal: McGill University Press, 1964), 168 and *passim*.

experience, customs and values with the foreign ones. On the other hand, the non-Muslim colonial authorities in the Muslim world took over the prerogatives of the Muslim rulers in legislation and imposed European laws in virtually all legal branches except personal status and administration of Islamic religious affairs.

In this way the European colonial powers brought their respective legal systems into the Muslim world, which in this matter became divided into countries under the influence of European continental law (for instance, in North and West Africa) and Anglo-Saxon law (for instance, in South and South East Asia).

### *(iii) Changes were introduced in the confined Domain of the Shari'ah*

The *shari'ah* was mainly confined to the area of personal status (*al-ahwal al-shakhsiyyah*). This very term was a translation of the French *statut personnel*, something which had no parallel or equivalent in the classical *fiqh* terminology. In the Ottoman and Middle Eastern practice "personal status" included the affairs pertaining to the legal capacity of persons, marriage and family relations, inheritance and endowment.<sup>15</sup>

The confinement of the *shari'ah* to personal status was an outcome of the increasing process of secularization and reduction of religion to a "private affair". On the other hand, the formulation of the concept of personal status and insistence on the application of the *shari'ah* in it was considered by Muslim scholars as the "last bastion" for the preservation of Islamic identity.

The *shari'ah* rules pertaining to personal status were further subjected to two kinds of changes: change of the form and change of the content. As far as the former is concerned, a new form - codification - was introduced into the area of Islamic personal law. Being a reflection of the 19th century codification movement in Europe, this form found its way into the Muslim world. During the 20th century most of the Muslim countries opted for an official codification of the *shari'ah* norms in the domain left to Islamic law. The first in this series was the codification of the Ottoman family law (*Hukuk-i Aile Nizamnamesi*) of 1917, followed by Egypt in 1920 and 1929, by Syria in 1953, by Tunisia in 1956, by Iraq in 1959, by Pakistan in 1961 and by several other Muslim countries.

15 See Tahir Mahmood, *Personal Law in Islamic Countries* (New Delhi: Academy of Law and Religion, 1987), 1-14.



Codified laws therefore became the sole frame of reference or the addressees of the *shari'ah* norms. Written in modern national languages they were easily accessible for lawyers who were not specialized in classical *fiqh*, for interested individuals, and the public in general.

The second kind of change - change in the material and procedural *shari'ah* norms - was introduced by means of codification in Muslim countries under the influence of the European continental law or *stare decisis* doctrine in countries under the influence of Anglo-Saxon tradition. In this way, certain institutes and provisions of Islamic personal law as administered in the pre-modern times were changed. For instance, polygamy was restricted, husband's right to unilateral repudiation of marriage was limited, mother's right to the custody of children after divorce was extended, and the notion of "obligatory testament" was introduced in the law of inheritance.<sup>16</sup>

The methods applied in introducing these changes were different: selecting the teachings of schools of law (*madhahib*) other than the school (*madhhab*) prevalent in a given country; *takhayyur*, that is, eclecticism or combination of different interpretations in constructing a single provision (*talfiq*) or new *ijtihad*. Sometimes changes were introduced by referring to the legal theory and practice of non-Muslim laws, such as in the case of "Anglo-Muhammadan law" in India.

Different methods used for introduction of changes into applied Islamic law in modern Muslim countries determined their religious validity. Codified laws and laws administrated by the state courts were evaluated and labelled as "Islamic" or "quasi-Islamic" by religious scholars, Muslim public and experts by the criteria of their conformity to the principles of the *shari'ah* or classical *fiqh*.<sup>17</sup>

### III ISLAMIC REVIVAL AND THE RETURN OF THE *SHARI'AH*

The 1970s saw the emergence of a new phenomenon in the Muslim world - the reassertion of Islamic identity and the reversal of secularization - variously designated as "Islamic revival", "Islamic resurgence",

16 *Ibid.*

17 For an expert evaluation of these changes see Aharon Layish, "The Contribution of the Modernists to the Secularization of Islamic Law" in *Middle Eastern Studies*, 14 (1978), 263-277.

“Islamic renaissance”, “Islamic fundamentalism” and the like.<sup>18</sup> These terms encompassed different manifestations ranging from the call for the introduction of the *shari‘ah* into the national legal systems of Muslim countries to increased personal religiosity. In terms of the relative importance of the particular elements of this phenomenon, we may differentiate the manifestations of Islamic revival in Muslim majority countries and in the Muslim minority situation(s).

### *(i) Islamic Revival and the Shari‘ah in Muslim-majority Countries*

Islamic revival was largely caused by the failure of modernization projects in the Muslim countries. Muslim modernist reformers mistakenly identified Europe/West with modernity and thus believed that every society that intended to become modern must become European/Western.<sup>19</sup> In addition, they were preoccupied with normative and not with infrastructural change in society. Modernists of the *tanzimat* and the other projects which followed it were mainly dealing with institutions, laws and social ethics. They failed to realize that norms and institutions cannot function properly without adequate social substrate. Thus, a wholesale adoption of European laws by Muslim countries failed to produce the legal security which exists in European states. This was because the modernized Muslim countries did not adopt the philosophical foundations, values and attitudes which enable European laws to play their role in society. Modernization was in many cases reduced to the despotic rule of military or political elite detached from its own people, institutionalized corruption, legalized exploitation of the poor, abuse of human rights, and so on. Naturally, when reaction began to set in the only rallying point for the disillusioned masses was the ideal norm of the *shari‘ah*, which had succeeded in the past in the building of “the golden age” of Muslims.

Islamic revival in Muslim majority countries has taken the form of radical demand for changes in the social reality. The keyword of Islamic revival was the *shari‘ah*.<sup>20</sup> “Return to the *shari‘ah*” was one of its

18 Ali E. Hillal Dessouki, ed., *Islamic Resurgence in the Arab World* (New York: Preager, 1982), 10-13.

19 J. Voll, “Mistaken Identification of ‘the West’ with ‘Modernity’” in *The American Journal of Islamic Social Sciences*, 13:1 (1996), 1-12.

20 Chibli Mallat, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi‘i International* (Cambridge: Cambridge University Press, 1993), 2-3.

main slogans. This appeal had two main functions: political and ideological. Politically, return to the *shari'ah* was used by the revivalist groups as a basis for the delegitimization of the ruling elite. It was also used by the ruling elite as a basis for the legitimization of its authority against the claims of revivalists.

Ideologically, the appeal to the *shari'ah* was used as a means for the mobilization of the masses as well as an Islamic evaluation of the existing political and legal institutions, social values, and norms of Muslim societies. Successful revivalist attempts were later translated into the sphere of positive law, such as in the case of Iran. In some other cases, changes in positive law were introduced under the influence of the revivalist current (constitutional clauses of the *shari'ah* as a source of law in many Middle Eastern countries, the inclusion of the *shari'ah* prohibitions in the national legislation, etc.)

In any case, Islamic revival concentrated on Islamic public law, especially constitutional law, criminal law and law related to modern economics.<sup>21</sup> Other branches of law, such as *'Ibadat*, civil law, torts, international law, have generally been left out of focus. Law of personal status, after the previous codification efforts, almost remained intact, except in some cases where the modernizing reforms were reversed (for example, Iran, Pakistan). Out of the strict legal sphere, Islamic renewal emphasized social symbols of Islamic identity such as attire (*hijab*), appearance (beard for men), and social ethics (greetings, etiquette, etc).

Emphasis on Islamic public law could be seen in the preoccupation of the proponents of Islamic revival with topics such as Islamic law and constitution,<sup>22</sup> Islamic criminal law,<sup>23</sup> and Islamic economics.<sup>24</sup>

Attempts at Islamizing public law in some cases were comprehensive (Iran, Pakistan) and in some cases limited to the introduction of certain *shari'ah* institutes into the domain of public law (Malaysia).

In Pakistan, for instance, the Council of Islamic Ideology prepared in 1978 a programme for the "Establishment of an Islamic society" whereby six spheres were identified as crucial for the realization of this

21 *Ibid.*, 4.

22 For a recent edition see Syed Abul Ala Maududi, *Islamic Law and Constitution* (Lahore: Islamic Publications, 1997).

23 For an English translation see: 'Abd al-Qadir 'Awdah, *Criminal Law of Islam* (Karachi: International Islamic Publishers, 1987).

24 For an English translation see: Muhammad Baqer as-Sadr, *Our Economics* (Tehran: World Organization for Islamic Services, 1984).

project.<sup>25</sup> These spheres were: religious tenets and worship (*'aqidah* and *'ibadah*), educational system, economic system, legal system, broadcasting and publishing and culture. Law has been seen as one of the spheres which should be Islamized. Islamization of the existing laws has been suggested together with legislation of new Islamic laws in public as well as private legal domain.<sup>26</sup> Introduction of the *shari'ah* laws under Ziaul Haq fell short of this proposal presumably due to the general nature of the regime and its move towards the application of the provisions of penal law before attempting to establish a just social order.

In Malaysia, Islam is the religion of the Federation (article 3 of the Constitution) but Islamic law has been historically confined to the personal law of Muslims. When the current of Islamic revival swept across Malaysia in the 1980s there were some demands to give to the *shari'ah* the status of law of the land in private as well as in public domain.<sup>27</sup> These views, however, were generally not accepted. In several cases the Malaysian Supreme Court took the position that Islamic law is not public law and that the status of Islam as the religion of the Federation does not mean that Islamic law acts as a general clog or fetter on the legislative power of the state. Historically confined to the personal law of Muslims, Islamic law is not imposed on non-Muslims.<sup>28</sup>

However, without changing the status of Islamic law in Malaysia certain *shari'ah* institutes were introduced into the public domain such as Islamic banking scheme (1982), Islamic insurance (*Takaful*) (1985), Islamic Accepted Bills (equivalent to Bankers Acceptance) and Islamic Expert Refinancing scheme (1990). Interest-free banking system was also made available to the conventional banks (1993). These *shari'ah* modes of transactions were not imposed upon the citizens. Rather, they were offered as an alternative. In such a situation the non-Muslim owned financial institutions are allowed to trade under the *shari'ah* principles and they do that.

25 Abdul Ghafur Muslim, "Islamization of Laws in Pakistan: Problems and Prospects" in *Islamic Studies*, 26:3 (1987), 275-75.

26 An example for project of Islamization of existing laws in this country could be found in Tanzilur Rahman's *Islamization of Pakistan Law* (Karachi: Hamdard Academy, 1978), where the author has surveyed sixty eight acts and ordinances and suggested necessary amendments to bring them into conformity with the *shari'ah*.

27 Norhashimah Mohd Yasin, *Islamisation/Malaynisation: A Study on the Role of Islamic Law in the Economic Development of Malaysia, 1969-1993* (Kuala Lumpur: A. S. Noordeen, 1996), 220-226.

28 Andrew J. Harding, "Islam and Public Law in Malaysia: Some Reflections in the Aftermath of Susie Teoh's Case" in Chibli Mallat, ed., *Islam and Public Law: Classical and Contemporary Studies* (London: Graham & Trotman, 1993), 203.

Following this approach - in focusing on economy as a vehicle of development, and acknowledging the multi-religious reality of the country - the Malaysian leadership was not in favour of the application of the *shari'ah* in the domain of criminal law. Consequently, when the opposition Islamic party, PAS, took over power in the northern state of Kelantan in 1990 and in November 1993 it passed an Enactment on *Hudud* which sought to apply Islamic criminal law on Muslims in this state, the Federal government prevented it.<sup>29</sup>

### (ii) *Islamic Revival and the Shari'ah in Muslim Minority Situations*

Islamic revival in the Muslim minority situations has focused on the preservation of Muslim identity against advancing secularization and assimilation. In the case of minorities which had a tradition of applying the *shari'ah* in personal matters there were demands for the improvement of the status of the *shari'ah* courts and codification of laws (for instance in Singapore and Philippines).<sup>30</sup> In the case of the Muslim minorities in the Balkans where the application of the *shari'ah* was discontinued after World War Two, there were no demands for the reintroduction of Islamic law. Emphasis was on the preservation of Islamic identity through adherence to Islamic religio-ethical norms. Finally, in the case of the Muslim minorities in Western countries (Australia, Canada, Great Britain) there were some calls for the recognition of the *shari'ah* as the personal law of the Muslims.<sup>31</sup> In this paper attention will be given to the last two cases.

Muslim communities in the Balkans have a centuries long tradition of the application of the *shari'ah* within the Ottoman state as well as in the Balkan nation states in the post-Ottoman times. Application of the *shari'ah* in these states in matters of Muslim personal status was guaranteed by the relevant international treaties (Congress of Berlin of

29 Ibid., 223.

30 See: S. Siddique, "The Administration of Islam in Singapore" in T. Abdullah and S. Siddique, eds., *Islam in Southeast Asian Studies* (Singapore: Institute of Southeast Asian Studies, 1986), 317 and passim; Hamid Aminoddin Barra, *The Code of Muslim Personal Law: A Study of Islamic Law in the Philippines* (Marawi City: Mindanao State University, 1988).

31 See: P. A. Buttar, "Muslim Personal Law in Western Countries: The Case of Australia" in *Journal of the Institute of Muslim Minority Affairs* (JIMMA), 6:2 (1985), 271-81; Syed Mumtaz Ali and Enab Whitehouse, "The Reconstruction of the Constitution and the Case for Muslim Personal Law in Canada" in *JIMMA*, 13:1 (1992), 156-72.

1875, Congress of Versailles of 1918, etc.). This practice, however, was discontinued in Albania in 1928 and in Yugoslavia after the World War Two to be preserved only in Greece for the Muslims of Western Thrace up to the present time.<sup>32</sup>

Since the abolition of the *shari'ah* in the Balkan states there has been no demand for its reinstatement even during the Islamic revival in the Balkans (1970-1990). The primary demand of the Muslims was for larger civil and political rights and freedoms, citizenship according to European standards, and not for special personal status which is historically connected with the minority status.<sup>33</sup> In Bosnia and Herzegovina only in the autumn of 1998, during the discussion on the regulation of relations between the state and religious communities, there were some indications that the Islamic Community might ask for the civil recognition of marriages (*nikah*) solemnized by Muslim parties before an *imam*. Under the present conditions, Muslims are required first to solemnize marriage before the civil authorities and after that, if they wish, to go to some *imam* and have *'aqd al-nikah*. News about this was interpreted in the media as the introduction of the *shari'ah*, even though the recognition of civil consequences of the religious form of marriage is found in many Western countries. The public reaction of prominent Bosniak intellectuals toward any kind of recognition or application of the *shari'ah* in the sphere of positive law was negative.<sup>34</sup> After that, the whole matter was put aside.

In such a situation, is the *shari'ah* relevant for Muslims in the Balkans? The case of Muslims in Bosnia may be taken up as an example. In Bosnia and Herzegovina, the *shari'ah* courts were abolished in 1946 and with them the application of Islamic law in personal matters of the Muslims. Bosnian Muslims, historically known as Bosniaks (*Bushnaq*), in all legal matters came under the jurisdiction of secular legislation, mainly derived from Austrian jurisprudence and South-Slav historical experience in post-Ottoman times.

The Bosniaks have autonomous administration of Islamic affairs, known as The Islamic Community, separated from the state. The structure of The Islamic Community includes communal administration

32 See: Fikret Karčić, *Šerijatski sudovi u Jugoslaviji 1918-1941* [The *shari'ah* Courts in Yugoslavia 1918-1941] (Sarajevo: Islamski Teološki Fakultet, 1986), 49-53.

33 Fikret Karčić, "Islamic Revival in the Balkans, 1970-1992" in *Islamic Studies*, 36: 2,3 (1997), 565-81.

34 See Sarajevo daily *Oslobođenje*, 30 October 1998, 4; weekly magazine *Dani*, 24 October 1998.

and learned hierarchy (*imams*, chief *imams*, *muftis* and *ra'is al-'ulama'* as a grand *mufti*). In this structure there are no courts for application of the *shari'ah*, similar to the ecclesiastical courts of Catholic and Orthodox churches in the region. The constitutional court, introduced in 1997, is meant to oversee the legality of the work of the organs and institutions of the Community, rather than to implement the *shari'ah*.<sup>35</sup>

The main theoretical position of the Bosnian '*ulama'*, exemplified in the personality of Husein Efendi Đozo (1912-1982), *fetva-i emin* of the Community for decades, was that for Muslims in Bosnia the *shari'ah* norms continue to be relevant as religious and ethical rules even though they ceased to be enforceable by positive law.<sup>36</sup> This position was mainly based on the distinction of the Hanafi scholars between the religious aspect of the *shari'ah* norms (*diyanatan*) and their positive legal effects (*qada'an*).<sup>37</sup>

This theoretical position can be identified in the present Constitution of the Islamic Community adopted in 1997. It has few references to Islamic norms and their sources, which is synonymous with the *shari'ah* in its original meaning.<sup>38</sup> Generally speaking, it has been stated that "the organization of the organs and institutions of the Islamic Community in Bosnia-Herzegovina and its activity are derived from the Holy Qur'an and the *Sunnah* (Practice) of the prophet Muhammad (peace be upon him), on the Islamic traditions of the Bosniaks, and on the requirements of the time" (article IV). The article VII proclaims that "the aim (of the Islamic Community) is being achieved by promoting good and preventing evil". Article VII describes the duty of the Islamic Community to "protect authenticity of Islamic ethical norms and assures their interpretation and application. In the interpretation and performance of the Islamic religious rituals in the Islamic Community, the *Hanafi madhhab* (the law school) is to be applied". Explicit reference to the *shari'ah* law is to be found only in article XXXI which stipulates a right of each person to establish *waqf* (property) in accordance with the law of the *shari'ah*.

35 Fikret Karčić, "Administration of Islamic Affairs in Bosnia and Herzegovina" in *Islamic Studies*, 38:4 (1999), 535-61.

36 On the contribution of this scholar to the contemporary development of Islamic legal thought see Velid Draganović, "Mura'at Masalih al-Muslimin fi Fatawa al-Shaykh Husayn Juzu al-Busnawi", unpublished Master's thesis, International Islamic University Malaysia, 1999.

37 This distinction could be found in Muhammad Amin ibn 'Umar b. 'Abd al-'Aziz 'Abidin al-Dimishqi, *Radd al-Mukhtar 'ala al-Durr al-Mukhtar al-ma'ruf bi Hashiyat Ibn 'Abidin* (Beirut: Dar al-Ihya al-Turath al-'Arabi, 1419/1998), 9:213-259; al-Shaykh Ahmad ibn al-Shaykh Muhammad al-Zarqa', *Sharh Qawa'id al-fiqhiyyah* (Damascus: Dar al-Qalam, 1414/1993), 464.

38 *Constitution of the Islamic Community in Bosnia and Herzegovina* (Sarajevo: Riyasat of the Islamic Community in Bosnia and Herzegovina, 1997).

A glance through the basic document of the Islamic Community in Bosnia and Herzegovina shows that for Muslims in Bosnia the *shari'ah* has a significance of religio-ethical code enforced by the conscience of the individuals. For the Islamic Community it is a source of reference for organizational forms and conduct of affairs and not a law enforceable by state authorities.

In the case of Muslims in Bosnia, the application of the *shari'ah* means practical behaviour according to the *shari'ah* norms. Its application is the responsibility of the individuals and the society without the involvement of state authorities.

To take another case, the Muslims of Great Britain in the 1970s pleaded for the application of the *shari'ah* as their personal law. During this period the Union of the Muslim Organizations of UK and Eire (UMO) asked for a separate system of Islamic family law applicable to all British Muslims.<sup>39</sup> The plea was justified by highlighting the importance of family relations for the preservation of Islamic identity and the inadequacy of current English law for Muslims. Additionally, a historical precedent was quoted that the British Empire allowed legal pluralism in its colonies and thus it was expected also to allow it in the United Kingdom.

The Muslim claim was rejected outright by the British government as inappropriate. Sebastian Poulter has identified three possible reasons for the rejection. They are: (1) the Muslim claim for a separate family law goes against the unified system of family law in the country; (2) it is difficult to work out a standardized system of Islamic law acceptable to different Muslim groups living in the United Kingdom; (3) it is difficult to identify the organs that would apply Islamic family law: English civil courts or special Muslim courts. If the first solution is accepted there would be many differences in interpretation between English judges and Muslim scholars. If the second solution is accepted there would be practical problems in stuffing religious courts since the Muslims in the United Kingdom do not have a unified religious administration.

It has been shown in the relevant literature on the subject that the first reason was not accurate since the English law had already given privileges to Quakers and Jews with regard to the marriage formalities. The other two reasons refer to the state of affairs of the Mus-

39 See: Sebastian Poulter, "The Claim to a Separate Islamic System of Personal Law for British Muslims" in Chibli Mallat and Jane Connors, eds., *Islamic Family Law* (London: Graham & Trotman, 1990), 147-65.



lim community in the United Kingdom and not to legal principles. The most substantial difficulty with this claim, as it has been mentioned in the literature, was the conflict between certain provisions of Islamic law and international conventions on human rights to which the United Kingdom is a party.<sup>40</sup>

Thus, these reasons as well as the general trend of negative portrayal of Islam and the Muslims in the 1970s and 1980s excluded any possibility for the Muslims in the United Kingdom to have legal autonomy. Options which are left to the Muslims are: to use the flexibility of the existing English law in order to secure their own values and objectives, to have their family disputes settled outside the courts (in which case Muslim families and community should act as mediators), and to seek changes in the existing English law in order to reflect the Muslim presence in the religious mosaic of the United Kingdom. In this sense, privileges given to Quakers, Jews and Sikhs should be given to the Muslims as well, or else differential legal treatment will inevitably undermine the respect for the lawmakers in the eyes of the Muslim community in Britain.

Available studies show that a large number of Muslims in Britain consider the *shari'ah* norms as binding rules of behaviour and refer their matters to the organisations of their community instead of having recourse to the official legal system. For instance, the Muslim Law (*shari'ah*) Council in London deals with more than 350 cases of matrimonial disputes every year.<sup>41</sup> In this way, the *shari'ah* plays the role of unofficial law for Muslims, with all consequences that this kind of normative system implies for the treatment of rights and interests of citizens as well as to the government in a particular country.

The options left to the Muslims of the United Kingdom are in fact the same as available to other Muslims living in the West, or in secular societies in general. For them the *shari'ah* could only be a religio-ethical code of behaviour resting upon the conscience of individuals, and the family and the community can play an effective role in persuading people to follow that code. The *shari'ah* norms will have legal force in secular societies to the extent that they are incorporated into their respective legal systems either in the form of positive laws which reflect religious pluralism or the free-chosen option provided by positive

40 Sebastian Poulter, "The Claim to a Separate Islamic System of Personal Law", 159-64.

41 Ihsan Yilmaz, "Muslim Law in Britain: Reflections in the Socio-legal Sphere and Differential Legal Treatment" in *JIMMA*, 10:2 (2000), 357-360.

laws. An example for the latter is the working of Islamic banks and other financial institutions which operate according to the *shari'ah* rules and have their branches not only in the Muslim majority countries but also in countries where Muslims are living as minorities. These banks are allowed by the positive laws of these countries to operate according to the rules of the *shari'ah* in the environment of a non-Islamic legal system. In such a case, the *shari'ah* is applied as a free-chosen option available to Muslims as well as non-Muslims living in non-Muslim states.<sup>42</sup>

#### IV THE FORM OF ISLAMIC LAW AND THE METHODOLOGY OF ITS APPLICATION

Renewed calls for the application of the *shari'ah* have raised two important questions: what is the most appropriate form in which the *shari'ah* norms should be expressed, and how should they be applied in modern times? Answers to these questions were determined by the prevailing legal traditions in different countries and according to the ideological orientations of the groups that pleaded for the application of the *shari'ah*.

The contemporary Muslim states mostly favour codified Islamic law because of all the known advantages of codification - uniformity, systematization and accessibility. Codification is also an adequate means for the introduction of changes in Islamic laws, both substantive and procedural. However, in the practice of modern Muslim countries codification was not necessarily connected with change in the norms subject to this procedure. In some cases codification was confined to giving the form of modern code to norms developed within the classical *fiqh*. In other cases, change was introduced in contravention of the accepted methodology of Islamic jurisprudence which made the Islamicity of codified laws questionable in the eyes of many Muslim scholars. Codification was rarely accompanied with the genuine process of *ijtihad*.

Muslim countries which attempt to execute the comprehensive project of Islamization regularly use codification as an adequate means. In the case of Pakistan, for instance, the renowned scholar Tanzilur Rahman suggested "codification and re-statement of Islamic law" giving

42 Samir Abid Shaikh, "Islamic Banks and Institutions" in *JIMMA*, 17:1 (1997), 117-27.

three main reasons for the preference of this form over the books of *fiqh*.<sup>43</sup> These reasons were: (1) the law as embodied in the classical books of *fiqh* does not contain all the provisions of law relevant to the needs of our present-day society which are full of complexities of diverse nature; (2) exclusive recourse to classical literature accompanied with literal adherence to a particular school of *fiqh* will cast the whole body of law into a rigid mould with no further growth; and (3) Pakistani courts have been trained to interpret and enforce the "positive law" on the Western pattern and thus codification and state-legislation will meet the practical needs of judges who will continue to refer to classical literature as well while interpreting the codified laws.<sup>44</sup>

On the other hand, there were circles that opposed the idea of codification, holding that the classical texts were sufficient for the application of the *shari'ah* in modern times. This view was especially held by the traditional '*ulama*' who, not only criticize codification, but also subjected the content of codified laws to minute scrutiny. A majority of the '*Ulama*' of Pakistan, for instance, criticized certain provisions of the codified criminal law adopted during the Ziaul Haq regime as contrary to the traditional *fiqh*, such as the stipulation on the *hadd* of 100 lashes for adultery instead of stoning.<sup>45</sup>

In the Muslim countries which did not encounter challenges of Western modernity until recently, Islamic law in non-codified form is applied. This is the case with Saudi Arabia. However, even in countries like this, new areas of modern life (labour law, industrial law etc) are regulated by state legislation (*nizam; marsum*) issued upon the doctrine of *al-siyasah al-shar'iyah*.

Proponents of Islamic revival linked the application of the *shari'ah* with the renewal of Islamic legal thought (*tajdid*) and the establishment of the Islamic social system. Since the term "Islamic revival" is applied to the whole spectrum of different positions and strategies in achieving the renaissance of Muslim civilization, it is very difficult to reduce this position to a single representative. In any case, the revivalists see law as a means for social change in the Muslim world. They are critical of the existing legal practice of the courts in charge of administering Islamic laws, as well as interpretation of the *shari'ah* by the traditional *fuqaha'*. They advocate the building of a system of renewed Islamic law. So far,

43 Tanzilur Rahman, *Islamization of Pakistan Law* (Karachi: Hamdard Academy, 1978), 7.

44 Ibid.

45 Gregory C. Kozlowski, "Islamic Law in Contemporary South Asia", 225.

the proponents of this orientation have been concerned mainly with the identification of permanent and changeable parts of the Islamic law, its objectives (*maqasid*) and their role in legislation. They have also been concerned with the modes of *ijtihad*, with the development of concepts and institutes of the neglected parts of Islamic law (constitution, citizenship, human rights, representative bodies, law-making process etc.), and with the necessary groundwork and steps needed for the implementation of such a project. A prototype of the system of renewed Islamic law is still far from completion.<sup>46</sup>

The second question was addressed by a number of Muslim scholars who are critical of the practice of applying the *shari'ah* in modern times. In the opinion of these scholars, such as Fathi Osman, the application of the *shari'ah* is seen as a dynamic process based upon the conscience of individuals and the society and is achieved through using the proper methods aimed at realizing a set of goals and priorities.<sup>47</sup>

The application of the *shari'ah* is considered a major manifestation of one's obedience to God which is deeply rooted in the conscience of the individuals and has a wide acceptance of the public in the Muslim society. It need not be simply the outcome of imposition by force. Consequently, the application of the *shari'ah* by autocratic regimes and police states betrays the whole *raison d'être* of the *shari'ah* and adversely affects its acceptance, at least among a section of people. The application of the *shari'ah* is meant to guard the moral values of Islam and, in turn, the *shari'ah* is guarded by faith and morality. This application is indeed a dynamic process in the sense that all parts of the *shari'ah* are not required to be implemented at once. There is a hierarchy of goals and priorities.<sup>48</sup> Priorities must be set according to the *shari'ah* and the circumstances facing a particular society.

However, the implementation of the *shari'ah* in modern Muslim societies has raised the concerns of some scholars. Fathi Osman is one of them. He remarks:

*Disputes and troubles about women's code of dress in Iran, or among the women personnel of the international agencies that work among the refugees of Afghanistan, or about political alliances in Malaysia, or*

46 See: Nyazee, *Theories of Islamic Law*, 293-301.

47 Fathi Osman, *Shari'ah in Contemporary Society* (Los Angeles: Multimedia Vera International, 1994), 18-33; 53-60.

48 This topic has been discussed by a number of contemporary Muslim scholars who have even coined a new term for this type of intellectual enterprise. See Yusuf al-Qaradawi, *Fiqh al-Awlawiyyat: Dirasah Jadidah fi Daw' al-Qur'an wa al-Sunnah* (Cairo: Maktabat Wahbah, 1995)

about allowing the production and distribution of liquor in certain Muslim countries, or about allowing interest, banking, insurance and mortgage in many countries - all such disputes and troubles not only show a weakness in understanding contemporary problems and responding to them according to the principles of the shari'ah and matters of *ijtihad*, but also expose our failure in establishing priorities for a productive Islamic reform in contemporary Muslim societies.<sup>49</sup>

## V CONCLUSION

The position of the *shari'ah* in Muslim societies and the attitude of Muslims toward it is a main indicator of the depth of their religious commitment. This position, however, also shows changes through which Muslim societies and communities pass in history.

Two radically opposite developments have taken place in modern Muslim societies. The first was the spread of European/Western modernity from the beginning of the 19th century up to the middle of the 20th century which resulted in the confinement of the *shari'ah* to the personal matters of the Muslims. The second development consisted of the reversal of the process of modernization since the 1970s which found its expression in the return of the *shari'ah* to the public domain of the Muslim societies.

Renewed calls for the application of the *shari'ah* have raised two major questions: which law to apply and how to apply it? Muslim responses to these questions have varied from the identification of the *shari'ah* with its classical interpretation in the books of *fiqh* to modernist codifications to calls for the reconstruction of Islamic law and implementation of such a renewed ensemble of Islamic laws. As for the second question, the application of the *shari'ah* was usually reduced to the application of the *shari'ah* norms by the state authorities or, sometimes to the application of little else than penal sanction. The present paper emphasizes the position that the application of the *shari'ah* should be based primarily upon faith, morality and public acceptance. In the highly changed conditions of life to-day, it is our considered view that it would be essential to take this approach. Too much reliance on state acting as the enforcer of Islamic legal provisions and an exaggerated emphasis on penal laws, as though

49 Fathi Osman, *Shari'ah in Contemporary Society*, 60.

they constitute the core of Islamic law, neither seem sound and healthy nor pragmatically wise. All this looks even more unwholesome when the Islamic emphasis on social and economic justice and its concern for the have-nots and the downtrodden are disregarded or de-prioritized. The impression that is thus created is that Islam is not seriously interested in the betterment of the lot of human beings that its overriding concern is to mechanically carry out its enterprise of enforcing a set of penalties. It would be worth asking ourselves: is this an accurate image of Islam? The state, in our view, should step in where its interference is really needed, and its interference should be limited to the extent needed. As for penal provisions, their enforcement should be the last in applying the *shari'ah* rather than its starting-point.



# THE REFORM OF SHARI'A COURTS AND ISLAMIC LAW IN BOSNIA AND HERZEGOVINA 1918-1941\*

This paper attempts to highlight the reform of *Shari'a* courts in Bosnia and Herzegovina and substantive and procedural laws which they applied during the period between the two world wars. The discussion of this question is preceded by some introductory remarks on the application of *Shari'a* law in this province.

## THE APPLICATION OF THE SHARI'A IN BOSNIA AND HERZEGOVINA

### *The Shari'a in Bosnia and Herzegovina under Habsburg rule (1878-1918)*

In Bosnia and Herzegovina together with other parts of interwar Yugoslavia with a considerable Muslim population, Islamic law continued to be administered by state *Shari'a* courts after the end of Ottoman rule. The Habsburg Empire, which occupied Bosnia and Herzegovina on the basis of article 25 of the Berlin Treaty of 1878, preserved the *Shari'a* courts as state courts with the same jurisdiction that they had exercised during the late Ottoman period. This was done by Austria-Hungary confirming the validity of the Ottoman Law on *Shari'a* courts of 16 *safar* 1276 (10 September 1859) in Bosnia and Herzegovina.<sup>50</sup> In this way, during the period 1878- 1918, the *Shari'a* courts in Bosnia and Herzegovina continued to have jurisdiction over matters of Muslim personal status, family, inher-

\* This is a chapter from the book *Islam in Interwar Europe*, edited by Nathalie Clayer and Eric Germain (New York: Columbia University Press; London: Hurst, 2008), pp. 253-270.

50 "Gesetz Wirkungskreis der Scheriatgerichte", in *Sammlung der für Bosnien und der Herzegovina erlassenen Gesetze, Verordnungen und Normalweisungen, 11*, Wien, 1880, pp. 476-81.

itance and *waqf* affairs. It was during this period that the first steps toward the modernization of the *Shari'a* courts took place.

The basic legal act of the Habsburg administration in Bosnia and Herzegovina pertaining to the *Shari'a* courts was the Ordinance on the Organization and Jurisdiction of the *Shari'a* Courts n°7220/III issued by the Provincial government on 30 October 1883.<sup>1</sup> This ordinance was followed by a number of similar acts which further elaborated the organization and jurisdiction of the *Shari'a* courts. Extensive Habsburg normative intervention in this domain is illustrated by some 387 administrative acts published between 1878 and 1918 and related to the Muslim judiciary.<sup>2</sup>

The most important innovations introduced into the *Shari'a* judiciary during this period were:<sup>3</sup>

- firstly, Muslim acceptance that *Shari'a* courts could be a part of the judicial system of a non-Muslim state. There was no Muslim resistance to this solution since Muslim '*ulama*' as well as political leaders insisted on keeping the *Shari'a* courts as state agencies. Muslim history and jurisprudence provided a sufficient number of precedents for the acceptance and validity of the appointment of *qadis* by a non-Muslim ruler. For instance, Hanafi scholars such as Ibn al-Humam (d. 681 h./1282-83), Ibn Nujam (d. 970 h./1562-63), and Ibn Abidin (d.1253 h./1837-38) took this position. Faced with the reality of the loss of Muslim territories in Spain and the Mongol conquest of the Abbasid Caliphate, Muslim jurists were ready to accept non-Muslim authority provided that Muslims in those territories continued to be under the jurisdiction of the *Shari'a*. That decision led the jurists to accept the appointment of *qadis* by non-Muslim rulers. In the eyes of Muslim jurists what mattered was the law that was administered, not the appointing authority. In elaborating this view, Ibn al-Humam specifically mentioned places like Cordoba and Valencia, which Muslims lost - a fact which put Muslims in the position of a minority.<sup>4</sup> These developments forced Muslim jurists to take into consideration the

1 *Zbornik zakona i naredaba za BiH, Sarajevo: Zemaljska štamparija, 1883, pp. 538-42.*

2 Eugen Sladović, *Priručnik zakona i naredaba za upravnu službu u BiH, Sarajevo, 1915, pp. 329-33.*

3 Fikret Karčić, *Šerijatski sudovi u Jugoslaviji 1918-1941, Sarajevo: Islamski teološki fakultet, 1986, pp. 22-26.*

4 Ibn al-Humam, *Fath al-qadir*, VII, Beirut: Dar al-fikr, n.d., p. 294.



- lives of Muslims who stayed in lost territories and slowly to develop what is today known as *fiqh al-aqalliyat* (jurisprudence of Muslim minorities). Mustafa Hilmi Hadžiomerović, the *mufti* of Sarajevo and the first Reis ul-Ulema (head of the '*ulama*') of Bosnia and Herzegovina, expressed this position in a *fatwa* given to the Habsburg government in order to legitimise the appointment of the Reis ul-Ulema by the Emperor of Austria-Hungary.<sup>5</sup>
- secondly, the introduction of appellate jurisdiction into the *Shari'a* judiciary and the establishment of the Supreme *Shari'a* court in Sarajevo consisting of four judges, two of whom were *qadis* and two civil judges (in 1913 civil judges were excluded from *Shari'a* courts, but the collegial structure of the Supreme *Shari'a* courts was preserved.) The Supreme *Shari'a* court was authorized to issue circulars to subordinate *Shari'a* courts providing them with compulsory interpretation of particular *Shari'a* rules. In this way, the Supreme *Shari'a* court became an agent of reform of *Shari'a* law administered in Bosnia and Herzegovina. Similar developments were recorded in Turkey during the *Tanzimat* and in a number of Middle Eastern countries as well as in British India.<sup>6</sup>
  - thirdly, adoption of the Austrian-introduced Code of Civil Procedure for Bosnia and Herzegovina of 1883 for the *Shari'a* courts. This acceptance opened the way for an interesting combination of *Shari'a* substantive regulations and Austrian procedural rules.
  - and finally, the introduction of the Bosnian language (in Habsburg terminology "*zemaljski jezik*" (the language of the land) into the *Shari'a* courts. The use of Arabic and Turkish was limited to citations from Islamic law manuals.

### *Debates concerning the Shari'a in the Yugoslav monarchy (1918-1941)*

During the period of the Yugoslav monarchy, *Shari'a* law continued to be applied to Muslims in Bosnia and Herzegovina. The application of Islamic personal law was the result of an international obligation, i.e., the

5 Fikret Karčić, "The Office of Rais al-Ulama among the Bosniaks (Bosnian Muslims)", in *Intellectual Discourse* (Petaling Jaya, Malaysia), V, 2 (1997), pp. 114-17. For the text of this *fatwa* see *Istorijski razvoj institucije Rijaset*, compiled by Omer Nakičević, Sarajevo: Rijaset Islamske zajednice u Republici Bosni i Hercegovini, 1996, pp. 90-91, 160-61.

6 Noel J. Coulson, *A History of Islamic Law*, Edinburgh: Edinburgh University Press, 1978, p. 163.

St. Germain Agreement on the Protection of Minorities of September 10, 1919, under which the Yugoslav government accepted the obligation to allow Muslims to regulate their personal and family affairs according to “Muslim customs”. According to some Bosnian historians (Muhammed Hadžijahić and Atif Purivatra), this clause was included in the Agreement on the Protection of Minorities on the initiative of the French government. According to this version, some Muslim dignitaries from Sarajevo using as intermediary a journalist working for *Le Temps*, Charles Rivet, submitted a request to the French government to help them obtain protection for mosques, *waqfs* and other Muslim institutions, the appointment of a *Reis ul-ulema* (head of the ‘*ulama*’) as a religious leader and the preservation of the *Shari’a* courts.<sup>7</sup> Consequently, the French government supported the inclusion of a special clause on Muslims in the Agreement on the Protection of Minorities. Thus, keeping the *Shari’a* courts as special courts for Muslims became an international obligation for the Yugoslav Royal government, and consequently, a provision was included in the first Yugoslav constitution of June 28, 1921.

Debates held in the Constitutional Assembly of the Kingdom of Serbs, Croats and Slovenes in 1921 indicate attitudes of Muslim and non-Muslim political representatives towards the *Shari’a* and its application for Muslims in the newly established state. Thus, for instance, Fehim Kurbegović, a delegate of the Yugoslav Muslim Organization<sup>8</sup> in the Constitutional Assembly said:

“...Besides, a very important question for us is that of the *Shari’a* courts. These courts are at present (in Bosnia) state courts and we ask that they remain as such. Mainly they are competent to deal with-family matters, inheritance and public record of marriages. These matters are constituent parts of the *Shari’a* law and we cannot make any concession against the *Shari’a* law, since such an act will be an act against our own institutions. Therefore, we ask that these courts remain as

7 Atif Purivatra, *Jugoslovenska muslimanska organizacija u političkom životu Kraljevine Srba, Hrvata i Slovenaca*, Sarajevo: Sjetlost, 1977, p. 66, n.14. The author has relied on Muhamed Hadžijahić’s private documents in giving this interpretation.

8 *Jugoslovenska muslimanska organizacija (JMO) or the Yugoslav Muslim Organization was the main political party of Muslims of Bosnia and Herzegovina and Sanjak in the period between the two world wars. Under the leadership of Dr Mehmed Spaho, it participated in most of the governments of the Kingdom of Serbs, Croats and Slovenes and later the Kingdom of Yugoslavia. Its leadership included members of the Bosniak middle class, some ‘ulama’ and nobility (begs). With regard to religion, JMO stood for the preservation of Islam as a recognized religion and the application of the Shari’a for Muslims.*

state courts and that their competence remain within the area elaborated in our proposal..."<sup>9</sup>

Similar views were expressed by Mehmedalija Mahmutović, a mufti from Sanjak. He was not a member of the Yugoslav Muslim Organization, the main Muslim-based political party from Bosnia and Herzegovina, but, with regard to the *Shari'a* courts, he agreed with his Bosnian co-religionists. He proposed that the following article should be included in the Constitution:

"Muslim marital, family and inheritance matters are under the jurisdiction of state *Shari'a* spiritual courts which judge according to the rules of the Hanafi *madhhab*. These courts independently take care of the guardianship of Muslim orphans and keep records of births and deaths of Muslims, solemnization and dissolution of their marriages. These books enjoy the status of public records."<sup>10</sup>

However, among non-Muslim representatives, there were voices against the constitutional guarantee for the existence of the *Shari'a* courts. Milosav Rajčević, from Montenegro, agreed with the proposal to keep the *Shari'a* courts with jurisdiction similar to that of Christian ecclesiastical courts (marital and family matters) but was against their proposed jurisdiction in inheritance matters. Delegate Vojislav Marinković was generally against the constitutional guarantee for the *Shari'a* courts and was of the opinion that this issue should be dealt by the introduction of new laws.

However, Muslim political parties - the Yugoslav Muslim Organization from Bosnia and Herzegovina and *Jemiyet (Yugoslavya'da Islam Muhafazayi Hukuk Jemiyyeti)* from Kosovo and Macedonia - had a tacit agreement to ask for the constitutional guarantee for the existence and jurisdiction of the *Shari'a* courts. They wished these institutions to be preserved and, in their view, this objective would be best served by constitutional guaranties, since the state constitution was difficult to change and only by following a special procedure. Laws could be easily changed and, thus, the *Shari'a* courts could be abolished at any time.

Therefore, Muslim political parties asked that family and inheritance affairs of Muslims should be dealt with by the state *Shari'a* judges and made the inclusion of a "*Shari'a* clause" one of their conditions for voting for the Constitution. The government was in need of Muslim

9 See: *Stenografske beleške. Rad ustavnog odbora Ustavotvorne skupštine Kraljevine SHS, I*, Beograd, 1921, p. 124.

10 *Ibid*, III, pp. 4-5.

votes and finally in April 1921 an agreement was reached. The mutually accepted formulation of the relevant clause was: "Muslim family and inheritance matters are judged by state *Shari'a* judges." This clause was included in the state constitution as clause n°109.

Non-Muslim delegates who supported the government offered a number of reasons as justification for the inclusion of the "*Shari'a* clause" in the Constitution. They included: it was a Muslim request and as such should be accepted; nonacceptance of the Muslim demand would mean that the Yugoslav state was more intolerant than the Ottoman which allowed Christians to retain their respective ecclesiastical courts; and the *Shari'a* courts should be accepted in order to keep the peace in the country and the need to take into consideration Muslim attitudes and the like. Opposition delegates in the Constitutional Assembly did not share such views. Socialist delegate Milan Korun said that "the *Shari'a* clause" was "medieval currency for buying Muslim votes for the Constitution." Minister of Justice Marko Đuričić was categorical responding: "Gentlemen, I cannot say I am happy with the *Shari'a* courts, but they must stay ... The *Shari'a* courts should be left to evolution."<sup>11</sup>

Apart from this debate in the Assembly, it is interesting to note that prior to the establishment of Socialist (Communist) rule in Bosnia and Herzegovina no significant Muslim intellectual or political group called for the abolition of the *Shari'a*. For instance, the Congress of Muslim intellectuals held in Sarajevo in 1928 to discuss the causes of Muslim backwardness, called only for the elimination of misuse of *Shari'a* law at the expense of women's rights.<sup>12</sup> The journal *Reforma*, a short-lived organ of Muslim secular reformers in Bosnia and Herzegovina - The Organization of Progressive Muslims - expressed views that the *Shari'a* was the most adequate family law for Muslims and that only the possibility of misuse of some of its institutions should be prevented.<sup>13</sup>

Non-Muslim authors regularly criticised the application of the *Shari'a* for Muslims in Bosnia and Herzegovina and called for the abolition of the *Shari'a* courts. For instance, Maksim Svava, a Sarajevo-based Serbian publicist, criticised Muslim intellectuals meeting at a Congress

11 *Ibid*, 1/44, p. 8.

12 Ibrahim Kemura, "Kongres Muslimana intelektualaca u Sarajevu 1928", in *Prilozi Instituta za istoriju (Sarajevo)*, XVII (1980), pp. 182-83.

13 Hamid H. Efendić, "Šerijatsko bračno pravo", *Reforma* (30 March 1928).

in Sarajevo for not demanding the abolition of "un-modern and un-civilized norms of the *Shari'a*" pointing primarily to polygamy and juvenile marriages.<sup>14</sup>

Muslim intellectuals regularly responded to this kind of criticism. The most probable reason for the pro-*Shari'a* stance of Bosnian Muslim intellectuals was that they were aware of the traditionalism of the Muslim population and believed that keeping the *Shari'a* as a regulator of Muslim personal affairs was the last line of defence of Muslim identity under constant threat from turbulent changes of regimes, modernization policies and an uncertain future. Thus, the issue of *Shari'a* law and *Shari'a* courts was left to Marxist revolutionaries to solve, in a radical way, as with many other issues.

## THE REFORM OF THE SHARI'A COURTS

### *The functioning of the Shari'a courts*

In terms of judicial organization and procedure, the *Shari'a* courts in Yugoslavia were modernized following the model applied in Bosnia during Habsburg rule. Procedural law was considerably influenced by Austrian law through the Bosnian and Herzegovinian Civil Code of 1883. This project was carried out on the initiative of the Austro-Hungarian administration in Bosnia and Herzegovina, which was generally preoccupied with the idea of bringing order to Islamic institutions in this province. Since, the new government preserved the *Shari'a* courts as a part of the state judicial system, the Habsburg project of modernization was, therefore, accepted by Muslims. Its acceptance was helped by the fact that Muslim legal scholars were of the opinion that the sovereign ruler of a particular Muslim country, even a non-Muslim, had the right to determine the jurisdiction and the organization of the *Shari'a* courts there.<sup>15</sup> European influence on the procedure of the *Shari'a* courts in Bosnia and Herzegovina proved that it was possible to mix different substantive and procedural laws in order to create a more efficient system.

14 Maksim Svava, *Emancipacija muslimanke u svijetu i kod nas*, Sarajevo, 1932, p. 49.

15 Fikret Karčić, *Društveno-pravni aspekt islamskog reformizma*, Sarajevo: Islamski teološki fakultet, 1990, p. 26.

During the period 1918-1929 the administration of Islamic law in those Yugoslav regions inhabited by Muslims other than Bosnia and Herzegovina (i.e., Sanjak, Kosovo and Macedonia) continued according to the model inherited from earlier times. Islamic law was applied to Muslim family, inheritance and *waqf* matters through the jurisdiction of Muslim religious officials-muftis<sup>16</sup>, a model which exists today in Greece.

The provision embodied in article n°109 of the 1921 Constitution had significant consequences: the jurisdiction of the *Shari'a* courts was compulsory for all Muslims, *Shari'a* judges continued to be state officials, verdicts of the *Shari'a* courts were enforced by state authority, and the state was responsible for the organization of *Shari'a* courts, their foundation and maintenance, the training of personnel etc. On the other hand, *qadis* were appointed by the King and issued verdicts in his name. The head of the Muslim community (the *Reis ul-Ulema*) had the right to issue a letter of authority (*murasela*) to the *Shari'a* judges.<sup>17</sup>

During the period between 1918-1929 *Shari'a* courts in Yugoslavia continued to function in the way inherited from earlier states, Austria-Hungary in the case Bosnia and the Kingdom of Serbia for Sanjak, Kosovo and Macedonia.<sup>18</sup> However, on 21 March 1929 the Kingdom of Yugoslavia passed a new law - The Law on the Organization of the *Shari'a* Courts and on the *Shari'a* Judges - bringing uniformity to the organization and functioning of these courts.<sup>19</sup> This was in line with the policy of the King Aleksander Karađorđević, who on 6 January 1929 dissolved Parliament and proclaimed his personal rule. In order to strengthen the concept of a common Yugoslav identity, his dictatorial regime banned all political parties and associations bearing ethnic

16 Mehmed Begović, *De R'Evolution du Droit Musulman en Yougoslavie*, Ph.D. Thesis, Alger University, 1930.

17 F. Karčić, "The Office of Rais al-Ulama", pp. 109-20.

18 In Serbia before the Balkan wars, Islam was given the status of "recognized religion" by virtue of article 77 of the Law on the Organization of Liberated Territories of 3 January 1878. The mufti of Niš had jurisdiction in personal matters of Muslims living there. After the Balkan wars, Administrative Order on the Organization of Courts and on Courts' Procedure in Reunited Territories of the Old Serbia of 7 June 1914, muftis became responsible for the administration of Islamic law in personal matters for Muslims living in Sanjak, Kosovo and Macedonia. A similar situation prevailed in Montenegro. The basic difference between this system and that in Bosnia and Herzegovina was that the office of *qadi* was preserved only in Bosnia, while other regions, *muftis*, essentially jurisconsults, became Muslim judges. As far as substantial law is concerned, the same interpretation of Islamic law - that of the Hanafi *madhhab* - was administered.

19 On the organization and competence of the *Shari'a* courts according to this law see, F. Karčić, *Šerijatski sudovi*, pp. 66-74.

or religious attributes and began to bring uniformity to the regulation of different aspects of life in Yugoslavia. For instance, the legal status of religious communities was regulated by state laws for the whole territory of the Kingdom. As a part of this policy, the two different systems for the application of Islamic law were abolished and uniformity, reflecting the model from Bosnia and Herzegovina, was introduced into the *Shari'a* judiciary.

After the passing of the Law on the Organization of the *Shari'a* courts and on the *Shari'a* Judges in 1929, the Bosnian model for the organization and jurisdiction of the *Shari'a* courts was extended to other parts of Yugoslavia. The very process of the establishment of *Shari'a* courts outside Bosnia and Herzegovina was subject to administrative decisions and was sometimes slow. However, this was one of the most important changes introduced in the administration of Islamic law under the Kingdom of Yugoslavia.

Courts were established at two levels: district *Shari'a* courts in areas in which at least 5,000 Muslims lived and the Supreme *Shari'a* Courts in Sarajevo and Skopje. Administratively, the *Shari'a* courts were departments of their respective regular civil courts. In the district *Shari'a* courts, judicial power was exercised by individual judges, while the Supreme *Shari'a* courts consisted of at least three judges.

The *Shari'a* courts were authorized to deal with the following issues:

- Matters of family law, where both spouses were of the Islamic faith or where the marriage was solemnized before the *Shari'a* court;
- Matters pertaining the relations between parents and their children;
- Matters pertaining to inheritance;
- Matters pertaining the custody and guardianship of Muslim persons;
- Declaration of the death of Muslim persons;
- Legalization of the signature of Muslim persons;
- Matters pertaining to Muslim endowments (*waqf*), provided that their status was not uncertain;
- and some religious-administrative questions such as proclamation of the beginning of a new month under the Muslim lunar calendar.

*Shari'a* judges had the status of civil servants, and were educated in state educational institutions: the Sharia Law School in Sarajevo, established by the Habsburg authorities in 1887, which was elevated by the Yugoslav Royal authorities to the rank of a faculty in 1937 and known as the High School of Islamic Theology and the *Shari'a*. In addition, from 1931, there was a department for Islamic law at Belgrade Law Faculty. This situation continued until the abolition of the *Shari'a* courts by a law adopted by the Assembly of the People's Republic of Bosnia and Herzegovina on 5 March 1946.<sup>20</sup>

### *A project for a reform of procedure*

The law on the *Shari'a* Courts of 1929 paved the way for a move towards the further reform of procedure followed by the *Shari'a* courts. In the same year, the Minister of Justice received a draft of a Code for the Procedure before the *Shari'a* Courts from the Association of the *Shari'a* Judges<sup>21</sup> but the government hesitated to enact it. Attempts at the codification of Islamic procedural laws continued through the following decade and both Supreme *Shari'a* Courts - in Sarajevo and Skopje - supported this idea. However, the draft code was not promulgated as a law until the Kingdom of Yugoslavia collapsed in 1941. A possible reason why the Yugoslav government hesitated to codify Islamic procedural law was the strong tendency during the 1930s towards the unification of civil law across the whole country. Within that framework the very existence of the *Shari'a* courts was questioned by many civil lawyers. With such a tendency in legal circles, state-sponsored codification of Islamic procedural laws was highly unlikely.

Even without practical results, the very project of the reform of the procedure of the *Shari'a* courts was important as an indicator of the understanding of *Shari'a* among Bosnian Muslim scholars and legal practitioners. It illustrated the idea of the compatibility between Islamic law and the non-Islamic state and the possibility of combining different features of Islamic and European continental legal cultures. It is equally important that the idea of codification was supported by

20 *Službeni list NR BiH*, 10 (6 March 1946)

21 Abdulah Škaljić, "Osvrt na rad staleške organizacije šeriatskih sudaca", *El-Hidaje* (Sarajevo), 10-11 (1943), pp. 315-16.



leading *Shari'a* judges and scholars in inter-war Bosnia and Herzegovina such as Abdulah Škaljić, Abdulah Bušatlić, Fehim Spaho, Mehmed Begović and others. The French scholar Georges-Henri Bousquet praised this draft.<sup>22</sup>

The most important changes proposed by this draft were:

- The Shari'a judge must examine the case and make a verdict on the first hearing;
- The Shari'a court may delegate inheritance cases to a civil court on the basis of the petition of an heir;
- The procedure for the appointment of a guardian was elaborated. The natural father of a child was among the persons authorized to initiate this procedure. Traditionally an illegitimate child was legally bound only to his/her mother;
- The pronouncement of talaq was defined as an initiative to start divorce before the qadi and not a final termination of marriage.

However, these reforms of the *Shari'a* court procedure, described by G. H. Bousquet as a better solution than the introduction of the Swiss Civil Code in Turkey, were not enforced in Yugoslavia.

## THE REFORM OF ISLAMIC LAW

### *Codification*

The law administered by the *Shari'a* courts underwent reform comparable in content and methodology with the reform carried out in modernized Muslim countries at that time. Thus, traditional *fiqh* works were abandoned in favour of modern Egyptian and Turkish codifications of Islamic law. From Ottoman times, the *Shari'a* courts adhered to the *Majalla* (*Mejcelle-i ahkjami adliyye*), a codification of Hanafi *fiqh* in the area of civil affairs (*mu'amalat*). Subsequently, the *Majalla* was translated into the Bosnian language and published in Sarajevo in 1906.<sup>23</sup> In addition, another codification of Islamic law - the Ottoman Family Law of 1917 (*Hukuk-i aile nizamnamesi*) - was referred to by

22 Georges-Henri Bousquet, "Nouvelles observations sur quelques reformes apportees au droit musulman en Yugoslavi", *Revue algerienne, tunisienne et marocaine de legislation et de jurisprudence* (Paris), XLVIII (1932), pp. 202-4.

23 *Medžellei ahkjami šerijje* (Otomanski gradjanski zakonik), Sarajevo: Nakladna knjižara Antona Kajona, 1906.

the *Shari'a* courts, cited in their judgements, translated into the Bosnian language and published.<sup>24</sup>

The *Shari'a* courts also referred to compilations of Islamic law by the Egyptian scholar Muhammad Qadri Pasha (1821-1886), namely *al-Ahkam al-shari'iyya fi al-ahwal al-shakhsiyya* and *Ahkam al-awqaf*. The first compilation was later translated into Bosnian by Hasib Muradbegović and prepared for publication in 1944. Due to the war it was never published.<sup>25</sup>

*Changes in Islamic family law and the failure of its codification*

Apart from the change in the form of Islamic legal rules and the move towards codification, Islamic substantive laws were also subject to reform in Bosnia and Herzegovina and Yugoslavia in general. Changes in Islamic family law included:<sup>26</sup>

- Obligatory registration of Muslim marriages solemnized by the Shari'a judges or imams delegated by them.
- Obligatory presence of the bride during the ceremony of solemnization of marriage before the Shari'a court.
- Restriction of polygamy by a circular of the Supreme Shari'a Court in Sarajevo in 1916, whereby a Muslim man wishing to marry a second wife was asked to prove that he was financially capable of supporting a polygamous marriage.
- Granting a wife the right to initiate divorce proceeding in cases where the husband was a lunatic, ill of a contagious disease, or unable financially to maintain the family.

These changes in Islamic family law were introduced by the *Shari'a* Supreme Courts through circulars issued to subordinate courts instructing them how to adjudicate particular cases. Since these reforms were introduced by authoritative Muslim judges and often by referring to similar practices in Egypt and Turkey before the abolition of the *Shari'a* in 1924, there was no resistance towards them. The main method of reform was (1) selection (*takhayyur*) i.e. the choice of one of several possible interpretations within the four Sunni schools of law and (2) "policy in accordance with the *Shari'a*" (*al-siyasa al-shar'iyya*)

24 Abdullah Škaljić, *Ženitbeni zakon "Hukuki aile kararnamesi"*, Sarajevo: El-Hidaje, 1945.

25 Hasib Muradbegović, *Tumač šeriatskih propisa hanefijskog mezheba o ženitbi, obitelji i nasljedstvu s važnijim okružnicama Vrhovnog šeriatskog suda, Ulema međžlisa i Šireg savjeta reis-ul-uleme i s osvrtnom na građansku i kanonsku ženitbu i obiteljske odnose*, Zagreb: Naklada Ministarstva pravosuđa i bogostovlja, 1944, p. 561,

26 Fikret Karčić, *Društveno-pravni aspekt islamskog reformizma*, pp. 233-37; Ibrahim Džananović, *Primjena šerijatskog porodičnog prava kroz praksu Vrhovnog šerijatskog suda 1914-1946*, Sarajevo: Fakultet islamskih nauka, 2004.

i.e. the right of higher authorities to determine the jurisdiction and procedure for the administration of Islamic law. The other two methods of reform known in Middle Eastern countries - eclecticism (*talfiq*) and the new *ijtihad* (rational interpretation) - were not practised in Bosnia.

Apart from these partial interventions in the area of family law, the idea of a comprehensive codification of *Shari'a* substantive law of personal status was suggested. In 1928 Hafiz Abdulah Busatlić proposed the preparation of the Code of Muslim Family and Inheritance Law which "will fit the spirit of the time and be within the framework of the fundamental precepts of the *Shari'a*, regardless of a particular *madhhab* and the divergent opinions of individual scholars..."<sup>27</sup> Among Yugoslav civil legal scholars, Bertold Eisner enthusiastically supported the idea of the codification of the *Shari'a* family and inheritance law. He offered three reasons for this: (1) It was the right of the government to oversee the *Shari'a* courts as a part of the state judiciary and that could be done efficiently if an official codification of relevant *Shari'a* laws existed; (2) It was in the interest of Muslims themselves, who very often did not know relevant *Shari'a* rules, because codification would make the *Shari'a* law more accessible to them; (3) It was necessary to ensure uniformity of the *Shari'a* courts' practice. As a model, he suggested that relevant Egyptian and Turkish codifications should be followed.<sup>28</sup>

However, this idea, even though very popular among prominent *Shari'a* judges and civil lawyers, was not realized for the same reason that the codification of *Shari'a* procedural laws was not carried out (i.e. the strong will among lawyers to unify the civil law for all citizens).

### *The impossibility of reforming the management of waqfs*

In addition to family affairs, management of *waqfs* (inalienable Islamic charitable endowments) considerably improved in Bosnia and Herzegovina. In 1931 in Sarajevo, centralization of ninety-two independent public *waqfs* (*waqf khayri*) - endowments from which the income was allocated to the benefit of the general public - was carried out.

27 Abdulah Bušatlić, "Šerijatski sudovi", *Gajret* (1928), p. 157

28 Bertold Eisner, "Nadležnost u porodičnim i nasljednim stvarima muslimana i primjena šerijatskog prava", *Arhiv za pravne i društvene nauke* (Beograd), XXII, 3 (1922), pp. 235-36.

However, this move provoked resistance of traditional '*ulama*' and was revoked. Instead, the '*ulama*' were in favour of preserving each *waqf* endowment as an independent unit administered by a manager (*mutawalli*) appointed by the founder, operating according to conditions prescribed by him/her (*shart al-waqif*) and not subject to any centralized authority. In contrast, reformist scholars, such as Mehmed Džemaludin Čaušević, were of the opinion that individual *waqfs* should be put under the centralized supervision of the Waqf administration, and that in certain situations the Waqf administration could depart from the expressed will of the founders if *waqf* property could be better used in changed social conditions. Thus, in Bosnian Muslim circles there was a clash between two conceptions of the institution of *waqf* - one individualistic, supported by traditional '*ulama*', and the other centralistic, shared by reformist scholars and the *Waqf* administration. Those who supported the individualistic conception adhered to Islamic traditional law and were against the intervention of any modern organization - state or institutionalised Muslim community - in the area of Muslim endowments.

Similarly, there was no change in the area of family *waqfs* (*waqf ahli*). These were *waqfs* for which the income of the endowed property was allocated, partially or in total, to the family members of the founder. In some Muslim countries, such as Egypt, these *waqfs* occupied large portions of arable land and their beneficiaries had no interest in improving the state of *waqf* property since their income was guaranteed. Therefore, modern Muslim states usually intervened in this area and subject family *waqfs* to reform during the 20th century.<sup>29</sup> Family *waqfs* were either abolished or, after some time, turned into public *waqfs* (*waqf khayri*). In Bosnia and Herzegovina, the opposition of the traditional '*ulama*' to any institutional intervention in the area of *waqf* resulted in family endowments being left intact.

### *Debates on reforms in the area of social ethics*

Apart from the area of positive Islamic law, reformist endeavours in Bosnia and Herzegovina focussed on the area of social ethics as well.

29 Fikret Karčić, "Glavne tendencije u pravnom uređenju vakufa u nekim muslimanskim zemljama 1850-1950", *Zbornik radova Islamskog teološkog fakulteta u Sarajevu*, (Sarajevo), 2 (1987), pp. 113-16.

The most debated issue in this area was the "issue of Muslim women" (*muslimansko žensko pitanje*). The debate centred on the question of veiling, education and the public role of Muslim women. Muslim public opinion became deeply polarized over these questions. Three positions were taken during the debate which lasted until the Kingdom of Yugoslavia collapsed in 1941. First, a group of "secular reformers" whose main representatives were Dževad-beg Sulejmanpašić and Edhem N. Bulbulović (1892-1953) called for the introduction of new attire for Muslims, including a hat (*šešir*) for men, unveiling of women and the active role of women in economic and social life.<sup>30</sup> They argued that the *fez* and the veil represented the main obstacle to the adaptation of Muslims to "new times" and a barrier to the advancement of the Muslims. The reforms of Mustafa Kemal were cited as a model to be emulated.

Second was the group of "religious reformers", including *Reis ul-Ulema* Mehmed Džemaludin Čaušević (1870-1938), Šukrija Alagić (1881-1936), Abdulah Bušatlić (1871-1946) and others. Referring to Islamic sources, they supported unveiling of Muslim women, their education and their participation in public life in accordance with the principles of Islamic social ethics.

Both groups called for a change in the existing social situation of the Bosnian Muslims. The first group referred to modern times and Kemalistic reforms as their frame of reference, while the second group, also sympathetic to Kemalistic reforms, tried to justify reforms by emphasizing more Islamic sources and the need for a new interpretation of Islam (*ijtihād*).

Third was the group of traditional Muslim '*ulama*', which included Ali Riza Karabeg (1873-1944), Ibrahim Hakki Čokić (?-1948), and Ali Riza Prohić (1867-1942). Voices of this group were the journals *El-Hidaja*, the organ of the Association of '*ulama*' in the Kingdom of Yugoslavia, and *Hikmet*, a journal published in Tuzla.<sup>31</sup> An example of the position of this group is provided by a treatise on *hijab* by Ali Riza Karabeg (1873-1944) published in 1928.<sup>32</sup> The main points made by the author were: (1) traditional attire for Muslim women (*čaršaf, feredža*) was the basic symbol of Islam, (2) no one could expect a new interpre-

30 They were centred around a short-lived paper *Reforma*, which appeared in Sarajevo between 23 March 1928 and 6 July 1928.

31 For information about this journal see Adnan Jahić, *Hikmet- riječ tradicionalne uleme u Bosni i Hercegovini*, Tuzla; BZK "Preporod", 2004, p. 206.

32 Ali Riza Karabeg, *Rasprava o hidžabu (krivenju muslimanki)*, Sarajevo, 1928.

tation of Islam in Bosnia when such a thing was hard to find even in the Arab world, (3) the movement toward a new interpretation of Islam (the reformist views of the *Reis ul-Ulema* Čaušević) was an attempt to establish a “fifth - Kemalist - *madhhab* in Bosnia”.

Hafiz Abdulah Busatlić, a representative of the group of religious reformers, responded with a brochure entitled “About ‘tasattur’ and ‘hijab’/ covering of Muslim women...”.<sup>33</sup> In this treatise, he defended modernist views on the role of Muslim women in contemporary society taken by *Reis ul-Ulema* Džemaluddin Čaušević and pleaded for a departure from traditional Muslim views if demanded by “the spirit of the time”.

In a such polarized situation in Muslim public life in Bosnia there was no possibility for a negotiated solution of the “Muslim women’s question.” This question was radically solved by the Socialist government in 1950 which banned the practice of veiling of Muslim women, introduced compulsory elementary education for both girls and boys and opened job opportunities for women.

## CONCLUSION

Ideas for reform of Islamic law, common in the modernizing Muslim countries during the first half of the 20th century, were echoed in Bosnia and Herzegovina in the inter-war period. Modernization of the *Shari’a* courts and Islamic law followed the model applied in Bosnia during the Habsburg era and the path followed by Muslim Middle Eastern countries. They were conducted by reformist-minded *Shari’a* judges, supported by the state authorities and met no resistance among the Muslim population. Changes in social ethics, especially external symbols of Islamic identity, however, were limited due to resistance from traditional circles and a large portion of the Muslim population.

It is interesting to note that during the debate on the reform of Islamic law and the *Shari’a* courts in Bosnia and Herzegovina, no participant made reference to the notion of “European Islam” or “Bosnian Islam.” They were aware that the Bosnian Muslims (Bosniaks) were a

33 Abdulah Bušatlić, “O ‘teseturu’ u ‘hidžabu’/pokrivanju/kod muslimanki-osvrt na brošuru g. Čokića i g. Karabega i potkrepa tvrdnji iznešenih u mojoj brošuri”, *Novi behar* (Sarajevo), II, from n°1(15 May 1928) to n°7 (1 August 1928).

European Muslim nation, but they did not envisage any form of "European" or "Bosnian" Islam normatively different from Islam in general. Specific characteristics of Bosnian Muslim practices were described as "customs" (*običaji*) and the totality of those practices subsumed by non-Muslim authors under the expression of "our Muslims" (*naši muslimani*). All Bosnian Muslim groups engaged in the debate about reform in Bosnia referred to the practice of a preferred foreign Muslim scholar, movement or state outside of Bosnia in order to strengthen their own position - a practice not unusual for Muslim minorities. Secular reformers referred to Mustafa Kemal's reforms in Turkey, religious modernists to Muhammad Abduh in Egypt and traditionalists to the traditional authorities of the Ottoman-Islamic cultural zone. According to our research, the only instance when, the expression "Bosnian Islam" was used in the inter-war period in Bosnia and Herzegovina was the translation of an article written by German historian Georg Stadtmüller "Bosnian Islam-a bridge of Europe toward the Islamic world" published in *Glasnik Vrhovnog islamskog stajništva* - an official journal of the Islamic Community in the Kingdom of Yugoslavia - in 1943.<sup>34</sup> It seems that the notion of "Bosnian Islam" did not attract the attention of Bosnian Muslim authors during that time. It was only after the war of 1992-1995 that some Bosniak authors, reacting to *salafi* influences brought to their homeland by foreign humanitarian workers and local graduates of mainly Saudi universities, began to use the expression "Bosnian Islam" in order to describe the totality of interpretation and practice of Islam in Bosnia. At the same time, the expression "European Islam" found its way into Muslim discourse in this country.

However, even if the expression "European Islam" was not used in the inter-war period in Bosnia and Herzegovina, reforms in interpretation of Islamic norms and institutions, described in this article, indicate that they were carried out in order to help the Muslim community in Bosnia and Herzegovina preserve its Islamic identity in a European environment.

34 *Glasnik Islamske vjerske zajednice*, XI, 7 (1943), pp. 174-79.







## SECULAR STATE AND RELIGION(S) – REMARKS ON THE BOSNIAN EXPERIENCE IN REGULATING RELIGION AND STATE RELATIONS IN VIEW OF THE NEW LAW ON FREEDOM OF RELIGION\*

The Secular State is one of the possible models that can be used to regulate the relationship between religious and political authorities. In recent world history, we have witnessed its appearance in the follow up to civil revolutions. It manifests itself in various forms (USA, France, Belgium, Turkey, etc.) and is reflected in diverse theoretical definitions. The emergence of the Secular State has posed a challenge for the great religious traditions, which have felt the need to determine their position towards it, both in a theoretical sense as well as in a pragmatic one. After having rejected the idea of the Secular State for some time, Muslim authors have started to pay greater attention to it, discovering in it potential and possibilities which had previously been overlooked.<sup>1</sup> This has, at the same time, opened up the question as to the expression of Islam within the Secular State.

Bosnia and Herzegovina has now amassed almost five decades of experience of life in a socialist version of the Secular State; and for more than a decade they have been searching for a suitable model of a liberal democratic secular state. This experience has left a significant mark on the understanding and interpretation of Islam within Bosnia and Herzegovina, on the form taken by the institution of Islam within the country, and on its role in society. In our opinion, this experience has formed an important element of the „Islamic tradition of Bosniak

\* *Religion and Secular State: Role and Meaning of Religion in a Secular Society from Jewish, Christian and Muslim Perspectives*, Zurich and Sarajevo: EAF, MRI and Konrad Adenauer Stiftung, 2008, pp.15-25

1 See e. g.: Louay Safi, "Islam and the Secular State", [http://theamericanmuslim.org/tam/php/features/print/islam\\_and\\_the\\_secular\\_state/](http://theamericanmuslim.org/tam/php/features/print/islam_and_the_secular_state/) (found: 18/08/2007).

people”, and not those that have been “assigned”, but “constructed” and, thus, liable to critical assessment.<sup>2</sup>

This paper aims, firstly, to explain in detail the conceptual definition of a secular state within a liberal democratic tradition; secondly, to dwell somewhat on the type of secular state which has been accepted in modern day Bosnia and Herzegovina, and lastly, to outline the consequences of this model for the expression of Islam and for the institutionalization of Islam within our country.

## 1. AN UNDERSTANDING OF THE SECULAR STATE WITHIN A LIBERAL DEMOCRATIC TRADITION

If we take a look at recent history, we can observe that secular or worldly states have come into being in two quite diverse geographical and cultural circumstances - on the one hand, in Catholic France, and on the other, in countries with a Protestant culture, such as the United States of America. Different versions of the Secular State have been developed in these two situations; this has been for a number of reasons, but mainly because religion played a different role for each of them in the emergence of modernity. After the French Revolution in 1789, modernity developed there in opposition to religion. In Protestant countries, however, religion was seen as an integral part of modernity.<sup>3</sup> In France the term used for the relationship between religion and State is *laïcité*, meaning that the country is *laïc* (worldly) and not confessional, but that freedom of religion or belief is respected. In France, this concept acquired legal status in the law of December 9th 1905, concerning the separation of the Church from the State, as well as in other laws which followed, and in judicial practice. The main principles of this law are: (1) The Republic guarantees freedom of conscience and freedom of religious practice; (2) The Republic does not recognize or support any religion, apart from covering the costs for the chaplain service (in hospitals, prisons, army, and schools); (3) Churches, that is, religious communities, may be organized as institutions of Private Law. According to these principles, there is no official

2 Fikret Karčić, „Šta je to ‘islamska tradicija Bošnjaka’“, in: *Preporod*, December 7th, 2006.

3 Jean Bauberot, „The Place of Religion in Public Life: The Lay Approach“, in: Tore Lindholm et. al. (eds.), *Facilitating Freedom of Religion or Belief: A Deskbook*, Leiden: Martinus Nijhoff Publishers 2004, p. 441.

religion in a *laïc* state, nor is there official atheism. Religious leaders offer their opinion on public issues, but the French public tends to be more critically oriented towards them than the public in other European countries.

In the English language, the term *secular state* is used, and the word secular having been coined from the Latin *saeculum*, meaning “here and now”. In the USA, this concept attained legal weight in the First Amendment to the Constitution of the United States of America, which was added to their fundamental legal constitution in 1791. This amendment states the following: “*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof*”. According to the opinions of American experts on these issues, the following principles may be derived from this amendment: (1) the separation of the Church from the State, which means that they are distinct institutions which do not interfere in one another’s internal administration; (2) equal treatment, that is, non-discrimination towards citizens, regardless of their religion or beliefs; (3) non-infliction and freedom of religious choice; in other words, the State cannot force anyone to practice or not practice any religion or creed.<sup>4</sup>

According to these principles, which are contained both within the French and the American version of a secular state, those states that accord preferential treatment to atheism as a type of belief, or conduct exile or discrimination on the basis of religion or creed, cannot be considered as being secular states.

Numerous authors have made attempts to develop a general concept of a secular state which relies on the liberal democratic tradition and which goes over and above geographic or cultural determination. One of these authors is Donald Eugene Smith, who made such an attempt in his study on India as a secular state.<sup>5</sup> On account of its significance here, I would like to give an extensive overview of his detailed definition of the concept of the Secular State.

Smith defines a secular state as being “a state that guarantees individual and collective freedom of religion, treats individuals as citizens, regardless of their religion, is not constitutionally linked to any religion, and does not attempt to promote or interfere in religion”.<sup>6</sup>

4 See: Thomas C. Berg, *The State and Religion*, St. Paul, Minn: West Group, 1998, pp. 4-21.

5 Donald Eugene Smith, *India as a Secular State*, Princeton, N.J.: Princeton University Press, 1963, pp. 4-8.

6 *Ibid*, p. 4.

According to this author, the concept of a secular state within a liberal democratic tradition is made up of three different types of relationship between the individual, the State, and religion. These three types of relationship are as follows:

- 1) Religion and individual, where the principle of freedom of religion is in effect;
- 2) State and individual, where the principle of citizenship is in effect;
- 3) State and religion, where the principle of separation is in effect.

In the case of the first relationship - religion and individual - the third factor, that is the State, should ideally be excluded from the relationship. In this relationship the principle of freedom of religion is in effect, which means that the individual is free to choose whether to believe or not to believe in any given religious teachings. If he/she selects to abide by a certain religion, he/she is free to follow its teachings, to practice it, to propagate it, to join a religious organization, and, ultimately, if he or she so chooses, to abandon the religion adhered to up until that point. The State is excluded from this relationship on principle. However, the State has the right to regulate the expression of religion and to bring this in line with the preservation of public health, safety, and moral code.

Individuals have the right to associate in groups and it is here that certain collective rights are developed. These rights include the right of association for the achievement of religious goals; the management of one's own affairs, the possession of property, the establishment of education and charity institutions, etc.

In the second relationship - between the State and the individual - the exclusion of the third factor (religion) is essential. In a secular model, religion becomes completely irrelevant for the definition of civic status.<sup>7</sup> Civic status comprises a set of rights and obligations which result from the relationship between an individual and the State. This status is egalitarian and comprehensive. It serves to involve the individual in full political membership of the State and to integrate him/her into the political system. Equality of citizens is possible because it stems from the circumstance in which the citizens are a factor of sovereignty; their will shapes the Law and the fact that loyalty is owed to

7 See: Fikret Karčić, „Koncept građanstva u savremenoj islamskoj pravnoj misli“, in: *Godišnjak Pravnog fakulteta u Sarajevu (The Almanac of the Faculty of Law in Sarajevo)* 46 (2003), pp. 313-329.

the Law. In such a situation, the religious beliefs of an individual must not affect his/her rights or obligations.

The laws in a secular state should be neutral. "Neutrality of law" is commonly understood as the situation of the Law being in harmony with the values that are dominant in a given society. There are, however, various difficulties which may arise in the process. For example, what if a secular state adopts laws that are not in accordance with the dominant values of the society? Or, supposing a law is adopted which is in conflict with the values of minority groups; should exceptions to the general rules be allowed? Theory and practice do not always provide satisfactory answers to these questions. However, it is clear that a secular state which has emerged in an endeavour to avoid religious intolerance - defined as the turning of religious dogma into the Law of the State - may be in danger of falling into the trap of secular intolerance, if State Law becomes converted into religious dogma.<sup>8</sup>

In the third relationship - between the State and religion - there is a fundamental assumption that these two represent different areas of human activity, with their own respective goals and methods. A democratic state derives its legitimacy from a worldly source ("the consent of the ruled"), and not from religious sources. The separation of the State from religion is a functional differentiation. All religions are separated from the State, but are also, to a certain extent, subordinate to the State.

For example, general State regulations are applied to religious groups. Religious groups are autonomous entities; this means they are responsible for their own organization, they formulate their own beliefs and discipline, establish their own institutions, finance their own activities, etc. The State is under no obligation to finance religious communities.

It is often the case that the entire concept of a secular state is reduced down to the "separation of religion from the State", neglecting the other two dimensions which are of importance for the liberal democratic tradition - freedom of religion, and civic status irrespective of religion and creed.

8 Javier Martinez - Torron & Rafael Navarro - Valls, „The Protection of Religious Freedom in the System of the Council of Europe“, in: *Facilitating Freedom of Religion or Belief: A Deskbook*, p. 237.

## 2. THE SECULAR STATE IN PRESENT DAY BOSNIA AND HERZEGOVINA

When considering the Secular State in the case of modern day Bosnia and Herzegovina, the following legal sources are of relevance:

- (1) The European Convention for the Protection of Human Rights and Basic Freedoms, and its protocols;
- (2) The Constitution of Bosnia and Herzegovina, that is, Annex 4 of the Dayton Peace Accord;
- (3) The Law on the Freedom of Religion and the Legal Status of Churches and Religious Communities, dating from January 28th, 2004 (Official Gazette of Bosnia and Herzegovina, no. 5/2004).

If we take the above conceptual determination of the Secular State as our starting point, then the following principles can be established:

### *(1) The Principle of Religious Freedom*

This principle is visible in the very title of the law on this matter, whose full title is *the Law on Religious Freedom and the Legal Status of Churches and Religious Communities*. For the purposes of comparison, the previous law regulating this matter during the era of socialist rule was called *the Law on the Legal Position of Religious Communities of the Socialist Republic of Bosnia and Herzegovina* (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, no 36/76).

Part II of this law (articles 4, 5, 6, and 7) addresses freedom of religion or belief. It in fact guarantees freedom of religion or belief (article 4, paragraph 1). This appearance of this last term "belief" is a novelty in comparison with the previous legislation; it refers to non-religious forms of faith. Freedom of religion and belief encompasses freedom of the *public* confession of one's faith, acceptance or change of faith, and the freedom to express one's faith or belief through ceremonies, either individually or in community with others, privately or publicly. It also includes the conducting of, or abiding by of religious regulations, and the adherence to traditions and other religious activities. In addition citizens have the right to religious education, both in religious primary schools, as well as in public and private institutions at pre-school level, and in higher levels of education.

Limits to the expression of one's religion or belief are given very broadly and in accordance with relevant international Law and practice. In comparison with previous socialist legislation, we come across frequent use of the determinant "public", as being the area for the expression of one's religion, thus abandoning both the earlier understanding of religion as being "a private matter" and the restriction of worship to an individual's private sphere and to the facilities of religious structures.

The law also determines what are considered to be legitimate restrictions to religious freedom, including the following: detrimental effect on legal order, public safety, moral code; endangering life or health, or the rights and liberties of others (articles 3 and 4).

It may then be concluded that the first principle of a secular state - freedom of religion - is legally and to a sufficient extent guaranteed in the relevant legal code of Bosnia and Herzegovina. In addition to this law, the Constitution of Bosnia and Herzegovina guarantees freedom of *thought, conscience, and religion*, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and its protocols (Annex 4 article II, paragraph 3), are directly implemented in Bosnia and Herzegovina and have priority over any other law.

## *(2) The Principle of Citizenship Unrelated to Religion or Belief*

The Constitution of Bosnia and Herzegovina guarantees that no person can be deprived of the citizenship of Bosnia and Herzegovina or its entities on any of the following grounds: "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or any other status" (Annex IV, article I).

Civil status in Bosnia and Herzegovina is, therefore, not related to religion. The scope of an individual's rights and obligations is not dependent on his/her religion or beliefs. All forms of discrimination are prohibited, including discrimination on the basis of religion (Annex 4, article II, paragraph 4).

### *(3) The Principle of the Separation of Religious Communities from the State*

This principle is confirmed in article 14 of the Law on Religious Freedom and the Legal Status of Churches and Religious Communities in Bosnia and Herzegovina. Article 14 declares that the “churches and religious communities are separated from the State”, meaning:

- (a) The State cannot award the status of a national religion to any particular religion, nor can it make any church or religious community into a State Church or religious community;
- (b) The State does not have the right to interfere in the internal organization or the affairs of churches or religious communities;
- (c) No church or religious community may receive special privileges from the State, nor are its officials allowed to participate formally in the work of political institutions;
- (d) Provided it is on the basis of equality towards all, the State may provide financial support to churches and their communities for the preservation of cultural and historical heritage, health activities, education, charitable and social services, but only on condition that these services are conducted without any form of discrimination, in particular discrimination on the basis of religion or belief;
- (e) In the areas of family, parental issues and the rights of children, churches and religious communities may carry out functions of humanitarian and social assistance, health aid, and upbringing and education;
- (f) Public authorities are forbidden from interfering in any way during the selection, appointment or replacement of religious dignitaries, likewise in the establishment of the structure of churches and religious communities.

Bosnia and Herzegovina has, thus, also accepted the third principle of a secular state - that of separation. The European Convention for the Protection of Human Rights and Fundamental Freedoms, and its protocols, does not oblige signatory countries to carry out the separation of religion from the State. Only freedom of religion and equality of citizens are required. Bosnia and Herzegovina has, however, also accepted separation; and this for three reasons: (1) that such a system had been in existence since 1946; (2) that there is a tendency in Eu-



ropean legal practice to lay emphasis on the obligation of states to act in an impartial and neutral way, and (3) that the Secular State is a particularly desirable concept for a multi-religious society.

Thus, we may conclude that all three elements comprising the above concept of the Secular State have been accepted in Bosnia Herzegovina - that is, freedom of religion, civil status unrelated to religion and the separation of State from religion. If we make a comparison with the state of affairs at the time of socialist rule, we can see that the most significant distinction lies in the scope which an individual possesses to express his/her religion. The scope of expression of one's religion now also includes the public and not only the private domain. On the political side, we also need to mention that those policies which had led to the marginalization of religion and of believers have now been abandoned. There are, however, some individuals, who had been accustomed to the previous state of affairs, who have misinterpreted the return of religion into the public sphere as meaning that religion is now playing too dominant a role.

### 3. THE EXPRESSION AND INSTITUTION OF ISLAM WITHIN THE SECULAR STATE

When a secular state is in place - that is, one based on the principles of freedom of religion, civil status unrelated to religion and the separation of State from religious authority - this has a significant effect on the scope and modality of the expression of religion, and on the establishment of an institution of Islam within its framework. Here we have primarily in mind the fact that the large monotheistic religions, Islam in particular, address man in his totality and affect all areas of his life. A secular state, on the other hand, requires a functional differentiation between the religious and the political spheres. Individuals are regarded as citizens, and their status is not affected by their religious affiliation. The State commands the loyalty of the citizens to the right which is the result of the consensus or majority decision of the citizens. It is obvious that, within such a framework, religions which address all areas of an individual's life will have to renounce their all-encompassing demands, in order to allow for the achievement of an "overlapping consensus" in society.

With regard to the scope of expression of religion in a secular state such as Bosnia and Herzegovina, it should be said that this includes two areas, traditionally defined as *Aka'id* (belief) and *Shari'a* (Islamic normative system). As far as belief is concerned, no restrictions are applied in a secular state, or in any other state which recognizes that freedom of belief is absolute and that no external authority may control what goes on in the internal being of a man. As far as the Islamic normative system (*Shari'a*) is concerned, we can only arrive at a valid response by conducting an analysis of the content and addressees of its norms. Before doing so, it must be emphasized that it is impossible to be a Muslim without the acceptance of *Shari'a* as the divinely determined way of life, an ideal norm that a Muslim is obliged to follow.

In terms of its content, *Shari'a* consists of religious, moral, and legal norms. Religious norms concern the relationship between man and God (*'ibadat*) and they fall into the category of what is often called the "expression of religion". The *'ibadat* regulations are, therefore, relevant for Muslims in any situation. In a secular state, there can be no restrictions with reference to these regulations, for any such restriction would violate freedom of religion. (Here, I have to note that the expression of religion within a democratic state may only be conducted by Law, and only then if it is necessary for the preservation of certain values, such as legal order, public safety, moral code, life, health, and the rights and freedoms of others.)

As far as *Shari'a* moral norms are concerned, these are also relevant and unrestricted within a secular state. Moral code relates to the determination of a certain value system and the judging of human actions from that perspective. The domain of morals is that of the human conscience and this also ensures sanctions in the case of the violation of a moral norm. In addition to the afore-mentioned, sanctions are also conferred by the judgment of the group which shares the same value system.

Finally, the question is posed as to the relevance and scope of the validity of *Shari'a* legal norms within a secular state. Here, "legal" means that the State's intervention is needed for the implementation of such a norm, or for the execution of sanctions in the case of its violation. A secular state, however, has its own legal system, which is a result of the will of its citizens; it is, thus, unlikely to sanction the Islamic normative system. In principle, this means that all *Shari'a* norms

whose addressee is the State (as in the case of constitutional, administrative, criminal and international Law, etc.) cannot be implemented in a secular state. What then is the relevance of these norms for Muslims? All things which have been ordered or forbidden by these norms remain in effect for them, but the sanctions for the violation of such norms are not implemented. In other words, the religious aspect of the norm (*diyanatan*) is legitimate, but the judicial aspect (*qada'an*) is not implemented. In this respect it is important to indicate that that the term *diyanat* (religious aspect) is used, in contrast to the term *qada'* (judicial aspect).<sup>9</sup> The first denotes the spiritual and moral aspect of life, and the latter the regulation of interpersonal relations through the institutions and sanctions of the Secular State. When it is stated, therefore, that the religious aspect of the norm is valid but that the judicial aspect is not implemented, this means that such a norm has been converted from a legal code of behaviour into a religious and moral code. For example, extramarital sexual relations (*zina*) are still forbidden for Muslims, but the sanctions intended to be implemented, should this act be committed, are not implemented. For Muslims in a secular state, *zina* is a great sin (*kabair*) and is considered to be morally unacceptable behaviour, but it is not a criminal offence (*jarima*), because the appropriate sanction (*hadd*) is not followed through.

As far as the norms of Family and Property Law are concerned, those values in these areas which are protected by *Shari'a* regulations remain relevant for Muslims living in a secular state. The conversion of legal norms into religious and moral norms has also taken place here.

In brief, it could be said that *Shari'a* regulations protect Muslim values and that the religious and moral content of these regulations is binding for Muslims living in a secular state. However, the legal consequences, should these regulations not be adhered to, may not be implemented, unless the two forms of regulation - both *Shari'a* and civil - are in place for the same act. For example, the establishment of *waqfs* (Muslim endowments for charitable purposes) or the entering into marriage is possible both with the use of the civil, as well as the *Shari'a* form. It can also be said that, in general, those *Shari'a* regulations whose addressees are the individual and the Muslim community may be implemented within a secular state, but not those whose addressee is the State.

9 See: Ali Bardakoglu, „The Structure, Mission and Social Function of the Presidency of Religious Affairs“, in: Ali Bardakoglu, *Religion and Society: New perspectives from Turkey*, Ankara: Presidency of religious Affairs, 2006, pp. 10-11.

The second issue which we are tackling here is that of the form that the institution of Islam should take within a secular state. Up until modern times, the authentic and historical model used by Muslims for the regulation of the relationship between religious and political authority had been a kind of organic unity of these two elements - *din ve devlet* ("religion and state"). A secular state, however, requires their separation. In order to achieve this, it is necessary to have an Islamic institutional framework distinct from the State. It first became necessary for such a framework to be constructed when Muslim minorities found themselves living within non-Muslim states. Such a framework was gradually built up by Bosnian Muslims during the post-Ottoman period.<sup>10</sup> At the time when the system of recognized religious communities (Austro-Hungarian and Yugoslavian monarchical period) was in place in Bosnia and Herzegovina, the institutional framework in this case was made up of the following elements: (1) organization of the *ulama*; (2) *waqf*; (3) education (*me'arif*), and (4) *Shari'a* judiciary. After the forced closure of the *Shari'a* courts in 1946, only the first three of these elements remained in place, and the *waqf* was weakened through the coercive measures of nationalization and expropriation which were brought in by the socialist state.

Within the framework of the socialist secular state, and during the transition period, there have been further developments in the Islamic institutional framework. It now includes (1) Muslim representative bodies; (2) executive administrative branches; (3) the constitutional court; (4) *ulama*; (5) *waqf*; (6) educational institutions; (7) other institutions. The basis of this institutional framework is made up of a combination of representative and hierarchical principles. It is to be noted that there are no *Shari'a* courts within this institutional framework. After the closure of the State *Shari'a* court system, which had had competence for the family and inheritance affairs of Muslims, it could, theoretically, have been possible to transform this institution into one bearing similarities to the spiritual, church, or rabbi courts which exist in other religious communities. However, the Islamic community decided against making such a move because the concept of a "spiritual court" is unknown in the history of Islam. Throughout Islamic history, the *Shari'a* courts have either been State courts or they have not existed at all. If we look at the example of the Christian courts which are in

10 See: Fikret Karčić, *Bošnjaci i izazovi modernosti - kasni osmanlijski i habsburški period*, Sarajevo: El-Kalem, 2004, pp. 122-138.

place in the Republic of Turkey, we can observe that their competence extends only as far as the contracting and annulling of marriage, and to dealing with issues of Church discipline. The *Shari'a* courts, on the other hand, were competent for the personal Law of Muslims, and dealt with the religious, administrative and property aspects of Muslims' status, marriage, family, and *waqfs*. The termination of this institution through external intervention has proved to have been more easily accepted than its uncertain transformation.<sup>11</sup> The absence of *Shari'a* State courts is an indication of the way that *Shari'a* norms have been transformed from the status of legal norms into religious and moral ones.

In a situation where *Shari'a* norms have been transformed into religious and moral norms, the question is then raised as to the institutional mechanism for the interpretation and application of these norms. Experience up to the present day has seen the following in use as potential institutional mechanisms for the actualization of Islamic norms: the interpretation of regulations (*ifta*), education and upbringing (*adab*), advice/consultation (*nasiha*), etc. Further, in cases where the legal system in effect provides for the possibility of disposition, believers may use *Shari'a* regulations as an alternative, on the basis of their own conscience and freedom of choice. This would indicate that Islamic advisory councils, which offer an alternative facility for conflict resolution amongst Muslims, may be developed as a potential institutional mechanism to deal with, for example, reconciliation (*sulh*) and arbitration (*tahkim*), and Islamic banks.

It could be the case that certain minority Muslim groups within Bosnia and Herzegovina might request permission to apply *Shari'a* regulations through *Shari'a* courts in the areas of family, inheritance, and *waqf* law, implying a return to the state of affairs prior to 1946. This would be an illusory situation, however, for a number of reasons. Firstly, this would bring us back to the position of Muslims being perceived of as being a religious minority enjoying its own personal autonomy. This model has historically been outgrown and, today, the Muslims of Europe need a new paradigm for their status, that of full citizenship. Secondly, the possession of personal autonomy is not sufficient guarantee for the preservation of Islamic identity. Today identity cannot be preserved through legal means. Thirdly, a request for the personal autonomy of a particular religious community would only

11 Concerning this institution, see: Fikret Karčić, *Šerijatski sudovi u Jugoslaviji 1918-1941*, Sarajevo: Islamski teološki fakultet (Faculty of Islamic studies), 1986.

further contribute to the dissipation of the public law system of the Muslims' homeland.

Ultimately, we can conclude that the implementation of the Secular State gives rise to the fact that, in the practice of Islam, not only belief (*aqida*) but also religious ceremonies (*'ibadat*) and, to a certain extent, social affairs (*mu'amalat*) are seen as legitimate areas of consideration.

## CONCLUSION

In this paper we have accepted the definition of a secular state as being a state that guarantees individual and collective religious freedom, treats individuals as citizens regardless of their religion, is not linked constitutionally to any religion, and does not attempt to promote or interfere in religion; a state, therefore, that practices "neutrality with respect". Through an analysis of the relevant laws of Bosnia and Herzegovina, we have established that our country has legally accepted all three elements of the definition of the Secular State - the principle of religious freedom, the principle of citizenship unrelated to religion or belief, and the principle of the separation of religious communities from the State.

Finally, we find that the acceptance of the Secular State has had a significant effect on both the expression of Islam and the form taken by the institution of Islam in our country. In terms of the scope of expression of Islam in a secular state such as Bosnia and Herzegovina, this includes belief without restriction, as well as the areas covered by the Islamic normative system, but limited to the sphere of religious ceremonies and social affairs. In this latter area, the *Shari'a* norms bear rather the characteristics of religious and moral norms. This means that the religious aspect of these norms is legitimate, and not their legal or judicial character. As regards the institution of Islam, there does exist in society a position for *Shari'a*, expressed in the mechanisms for the interpretation and implementation of regulations, for example in the areas of education, upbringing, advice, alternative conflict resolution, advisory bodies, and alternative Islamic institutions, such as the Islamic banks.



ISLAMIC REVIVAL AND  
INSTITUTIONS IN BOSNIA







# ISLAMIC REVIVAL IN THE BALKANS 1970-1992\*

## INTRODUCTION

Islamic revival is a blanket term used to denote an increasing interest in Islam among the Muslims especially since the 1970s. This term encompasses different manifestations ranging from the call for introduction of the *Shari'ah* into national legal systems of Muslim nations to increased personal religiosity. Revival in Muslim majority countries has taken the form of more or less radical demand for changes in the social reality of the Muslims while Muslim minority nations focused on the preservation of Muslim identity against advancing secularization and assimilation.

Most researches on Islamic revivalism deal with Muslim majority countries. Even the elements of a definition of this term have been distracted from that experience.<sup>1</sup> As far as Muslim minorities are concerned, there are several case studies without attempts for identification of the distinctive features of the revival among those communities.

The study of Islamic revival in the Balkans is important for several reasons. It tells us how Islam survived a century-long rule of hostile regimes and ideologies, what revival means for Muslims who live on the periphery of the Muslim world, and how non-Muslims perceive that process and react to it. In the present paper investigation will concentrate on three major Muslim groups in the region - the former Yugoslavia, Albania and Bulgaria - between 1970 and 1992.

\* *Islamic Studies*, 36:2, 3 (1997), pp. 565-581.  
Ali E. Hillal Dessouki (ed.), *Islamic Resurgence in the Arab World* (New York: Preager, 1982), pp. 10-13.

## HISTORICAL BACKGROUND

Muslim communities in Europe belong to two broad groups:

- (a) Muslim communities in the south-eastern part of the continent, mainly the Balkans, which trace their origin, at least continuously, from the Ottoman times, and
- (b) Muslim communities in other parts of Europe which are mainly composed of Muslim immigrants in quest of better economic opportunities from 1950s and 1960s and political immigrants from most recent times.<sup>2</sup>

These two groups differ significantly in terms of group structure, history, and political and legal status. The Muslims of the Balkans represent a conglomerate of different ethnic groups ranging from the Illyric-origin Albanians, Slavic Bosniaks and Pomaks, the descendants of Turkish settlers from Anatolia, Circassians, Tatars, etc. They all belong to *Ahl al-Sunnah wa 'l-jama'ah* (except the Bektashis in Albania) and adhere to the Hanafi school of *Fiqh*.<sup>3</sup>

The historical encounters between the Muslims in the Balkans and European Christian peoples and states have been also different from that of the Muslim communities in Western Europe. To the immigrant Muslim labourers or political refugees, Western Europe has been perceived as a land of better opportunities, and a safe haven from oppression obtaining in their own homelands. On the other hand, the Muslims of the Balkans have been learning about Europe through the acts of insufficiently "Europeanized" states such as Greece, Serbia, Montenegro, Bulgaria and Romania. Those nation states see the Muslims either as former occupiers (Turks) or as 'renegades' (local Islamicized population) and Islam as an alien religion and an obstacle to national unity.

It was on these grounds that Muslims were massacred during the Russian-Ottoman war of 1877-1878, the Balkan wars of 1912-1913, the First World War (1914-1918), and the Second World War (1941-1945). In fact, in all the conflicts of the modern Balkan history, Muslims were victimized, killed, expelled from their homes, and forced to

2 Gerholm Tomas (ed.), *The New Islamic Presence in Western Europe* (London: Mansell, 1988), p.1.

3 For the most systematic survey of these Muslim groups see Alexandre Popovic in *L'Islam Balkanique: Les Musulmans du Sud-Est Européen dans la période Post-Ottomane* (Berline: Osteuropa Institut an der Frein Universität Berlin, 1986). See also its review by M. Ali Kettani, "Islam in Post-Ottoman Balkans: A Review Essay", *Journal Institute of Muslim Minority Affairs (JIMMA)*, vol. 9, no. 2, (1988), pp. 381-403.

migrate to Turkey or other countries.<sup>4</sup> While West Europe opened its doors for the Muslim immigrants from Asia and Africa, some Balkan countries continued their policy of expelling local Muslims under the slogan "Go back to Asia".

The tragic aspect of the historic experience of Muslims in the Balkans was that they, from the second half of the 19th century, had to face extremely nationalistic, exclusivist and anti-Islamic Orthodox-Christian regimes. Additionally, after the Second World War Communist regimes were established in most of those states, thus replacing one dictatorship with another. Under the Communist rule, the Muslims were victimized on two grounds: as believers (because all religious people were persecuted) and as Muslims (adherents of "an alien religion"). Even the movements for independence in the former Communist countries did not bring peace and freedom for the Muslims. More than 300,000 Turks of Bulgaria were forcibly expelled from their homes in summer 1989.<sup>5</sup> Bosniaks, who, compared with the other Balkan states enjoyed relatively greater religious freedom, were subject to all forms of genocide between 1992-1995. Albanians in Kosovo have continued to live under the Serbian imposed police regime since 1981.<sup>6</sup> Post-Communist history of the Balkans has been stained with Muslim blood and suffering.

The political and legal status of the Muslim groups in the Balkans during the period of 1970-1992 was also different. Muslims constituted an absolute majority in Albania, a large minority in the then Yugoslav Federation and Bulgaria, and a considerable minority in Greece and Romania.

The course of post-Ottoman history, the different legal and political status of Muslims under the Communist rule in each of these three Balkan states as well as different developments in the post-Communist era, have influenced the manifestation and dynamism of the process called Islamic revival.

- 4 There is ample documentation and literature on these sad events. Among those published in English the following could be referred: Alp Ilker, *Bulgarian Atrocities: Documentation and Photographs* (Nicosia: K. Rustem and Brother, 1988); George Kennan, *The Other Balkan Wars: A 1913 Carnegie Endowment Inquiry in Retrospect with a New Introduction and Reflections on the Present Conflict* (Washington D.C.: Carnegie, 1993); Mustafa Imamović, "A Survey of the History of Genocide Against the Muslims in the Yugoslav Lands", *Glasnik/The Herald* (Sarajevo), no. 6, 1991, pp. 637-698; Roy Gutman, *A Witness to Genocide: the First Inside Account of the Horrors of Ethnic Cleaning in Bosnia* (Shaftesbury: Element, 1993).
- 5 Thomas F. Michel, "The Turkish Minority in Bulgaria", *Islam and Christian-Muslim Relationship*, vol. 1, no. 2 (1990), pp. 269-279.
- 6 Branka Magas, *The Destruction of Yugoslavia: Tracking the Break-up, 1980-92* (London: Verso, 1993), pp. 179-217; 291-296.

## THE DYNAMICS OF ISLAMIC REVIVAL

Islamic revival in the different countries of the region did not start simultaneously. Among the Communist countries in the Balkans, Yugoslavia has had the most liberal political atmosphere especially ever since the fall of the state Vice-president and the head of Internal Security Service (UDBA), Aleksandar Ranković, in July 1966. Since that time, all religious communities in Yugoslavia have recorded some revival, euphemistically called in the official usage as “normalization of relationship between state and church”.<sup>7</sup>

Belgrade and the Vatican signed a protocol in June 1966 and that was followed by the launching of a number of religious periodicals. After the fall of Aleksandar Ranković, the Orthodox Macedonians were able to get autocephaly in ecclesiastical affairs in 1967. The situation of Muslims was complex. Certainly, they benefited from the decentralization of political and administrative system which ended with the adoption of the confederal constitution of 1974. The Bosniaks were recognized as a separate ethnic group (nation) under the name *Muslimani*, a move which positively influenced their further affirmation and which, at the same time, also gave rise to new controversies. The Albanians were given the status of a separate ethnic group (*nacionalnost*) with a large set of cultural rights and political autonomy in Kosovo.

That process of “national affirmation” of both Muslim groups necessarily opened the issue of the place of Islam in the cultural identity of Bosniaks and Albanians. In both cases, the Marxists attempted to direct and control the process of “national affirmation”. In Bosnia it took the shape of an attempt to create a Muslim nation without Islam. In that regard it was possible for the protagonists of that orientation to construct expressions such as “Muslim atheists”, i.e. members of the ethnic group *Muslimani* but atheists by conviction. In addition, the Marxist-sponsored project of “national affirmation” of Bosniaks took place under the very dogmatic regime in Bosnia in 1970s and 1980s. In that way the Bosniaks were relieved from the pressures from Belgrade but not from their own Marxists.

Similarly, among the Albanians in Kosovo and western Macedonia the secular intellectuals became the most influential figures. In their

7 Sabrina Petra Ramet, *Balkan Babel: Politics, Culture and Religion in Yugoslavia* (Boulder-San Francisco-Oxford: Westview Press, 1992), pp. 133, 157, 170.

case the situation was worse than in Bosnia because the Albanian intellectuals were formed under the strong influence of dogmatic Marxism and nationalism from Albania. Therefore, when the revival of interest in Islam began in the 1970s among the Bosniaks and later among the Albanians, Muslim activists were faced with two sets of obstacles: the prejudices and hostility of non-Muslim circles and opposition from the Muslim secularized (officially Marxist) elites. The non-Muslim political elements, the ruling political elite embodied in the League of Communists of Yugoslavia (LCY), were uneasy about the process of increasing growth of political self-consciousness among Bosniaks and Albanians. On the other hand, the Muslim Marxists, in need to protect their project of "national affirmation", very often attacked the Islamic circles. By doing so, they were trying to eliminate the concurrent ideological trend within the Muslim corpus and to prove their loyalty to LCY.<sup>8</sup>

Apart from the liberalization of the political regime and the political emancipation of Bosniaks and Albanians, several other factors have contributed to the Islamic revival in the former Yugoslavia. Among them one should mention the increased economic power of all Yugoslav citizens, including Muslims, due to the loans they received from abroad and the remittances of the "guest workers" in Western Europe. This factor, rather than foreign aid, has brought about massive (re)construction of mosques throughout Yugoslavia. Besides, the 1970s also saw the emergence of a new generation of young Muslim graduates, not only from the Middle-Eastern universities but also from the state universities of Yugoslavia, including - paradoxically enough - the Marxist-controlled Faculty of Political Sciences in Sarajevo. At the same time, the first M.A. and Ph.D. graduates in Islamic Studies returned to Bosnia from al-Azhar, the University of Baghdad, the University of Kuwait and other Muslim institutions of higher learning abroad. This new generation brought new impulses in the petrified structure of the Islamic Religious Community (IVZ), an official administration of Islamic affairs in Yugoslavia, formally separated from the state but never allowed to be out of control.

Lastly, global trends in the Muslim world and the new wave of religious fervour approximately since the turn of the 15th century *Hijrah*

8 The most illustrative cases are: political attack on Islamic paper "Preporod" after publishing pro-Arab articles in conjunction with the 1973 October War, the harsh attack on the same paper by Hamdija Pozderac, a member of LCY Central Committee, and Fuad Muhic, a LCY ideologue in Bosnia, in the late 1979s for alleged "pan Islamism". (S. P. Ramet, "Primordial Ethnicity of Modern Nationalism: The Case of Yugoslavia's Muslims Reconsidered", *The South Slav Journal*, vol.13, no. 1-2 (1990), pp. 12-13.

in November 1979 have contributed to the new self-perception of the Muslims in Yugoslavia. Strangely, perhaps, they learned more about Islamic revival, a new development in the Muslim world, through the secular liberal media from Belgrade and Zagreb than through the publications of "The Islamic Community" which were still being carefully scrutinized by the state prosecutors and internal censorship.

Islamic revival among two other big Muslim communities in the Balkans - Bulgaria and Albania - began after the easing of the Communist dictatorship in autumn 1989 and winter 1991 respectively. In both the instances, Islamic revival took the form of revitalization of the elementary functions of religious communities.

In Bulgaria, a joint statement of the State Council and the Council of Ministers adopted on December 29, 1989 denoted an end of several decades long policy of restriction and abuse of religious, civil, political and cultural rights of the Muslims by the Communist regime.<sup>9</sup> That policy, which was a continuation of the previous Bulgarian nationalist attitudes toward Muslims since 1958, included the following: constant ideological attacks on Islam as an alien religion, the banning of Muslim attire, circumcision, religious sacrifices (*qurban*), observance of other Islamic practices and the use of Turkish language. The radicalization of that policy after 1971 added a striking change of policy in so far as pressure was brought on Muslims to change Muslim names and adopt Slavic (Orthodox Christian) names. Muslim resistance to these violations of fundamental human rights and freedoms was met by death penalties, long-term imprisonments and deportations. The most notorious episode of the Bulgarian anti-Muslim policy was the deportation and emigration of over 310,000 Muslims to Turkey in summer 1989.<sup>10</sup>

The change of Bulgarian leadership in the fall of 1989 and the prospects for further democratization of the country enabled the Muslims to stay in their homeland without losing identity. The basic functions of the Islamic religious administration were revived and traumatic experience of long persecutions have brought emergence of Muslim-based "Movement for the Freedoms and Liberties".

The non-violent Muslim struggle for equal rights is far away from its end in a country where a symbiosis between the Orthodox Church and the state is an established tradition. It should be remembered that

9 Thomas F. Michel, *op. cit.*, p. 277.

10 *Loc. cit.*

at the same time when an anti-Muslim policy was launched in 1953, the Bulgarian Patriarchate was restored and that even the democratically adopted constitution recognized a special role for the Bulgarian Orthodox Church.<sup>11</sup>

Islamic revival in Albania symbolically began in November 1990 with the popular demand for a public prayer in the main mosque of Tirana - *Xhamia e Plumbit*.<sup>12</sup> That event has been followed by the official opening of the remaining mosques in the main Albanian cities. Revival of popular interest in Islam was a part of the mass movement against one of the most oppressive Communist regimes and its denial of fundamental rights and liberties. That movement, led by secular intellectuals and activists, demanded democracy and thereby acknowledged religious liberties as an integral part of the emancipation of the Albanians. As a natural consequence, Albanians of different religious backgrounds began to show increasing interest in the roots of their cultural identity. Therefore, Islamic revival in Albania, which overthrew the Communist dictatorship in a country with nearly 75% Muslim population, did not have an ideological orientation. Rather, it was an outcome of a larger pro-democracy movement.

The challenges which faced the Albanian Muslims were considerable. Living in "the first atheistic country in the world", as proclaimed in the Albanian Constitution of 1967, the Muslims found themselves in 1991 virtually without any religious structure. They only had a small number of mosques which survived aggressive secularization, about sixty surviving members of the last batch graduated from the *madrasah (Medreseja e Pergjithshme)* in Tirana, expropriated *waqf* property and secularized post-war generations.

During the first two years of the post-Communist era, the Albanian Muslims concentrated on the basic groundwork of building the religious institutions. On February 14, 1991, the Islamic Community of Albania was restored; the mosques in the bigger cities were constructed or renovated; about 10 Islamic schools were opened, Islamic newspapers began to be published and young Albanians were sent to different Muslim universities to pursue their studies.

That was just the beginning of the revitalization of the Islamic community aimed to provide the basic religious services to the

11 Petya Nitzova, "Islam in Bulgaria: a Historical Reappraisal", *Religion, State and Society*, vol. 22, no. 1 (1994), p.10

12 Gyorgy Lederer, "Islam in Albania", *Central Asian Survey*, vol. 13, no. 3 (1994), p. 346.

Muslims in an atmosphere of severe competition between concurrent ideologies and intensive Christian missionary activities.

## MANIFESTATIONS OF ISLAMIC REVIVAL

Renewed interest of the Balkan Muslims in their religion has found its expression, with different degrees of intensity, in some of the following areas:

- (1) (re)construction of mosques,
- (2) education,
- (3) publishing,
- (4) use of Islamic social symbols,
- (5) political culture and organizations, and
- (6) emergence of the Muslim solidarity institutions.

On the basis of the available data we shall try to examine these manifestations.

### (RE)CONSTRUCTION OF MOSQUES

The Yugoslavia of 1970s and 1980s saw construction activities on a relatively large scale. A total of 2060 mosques (mosques with *minaret* where Friday prayers are performed) was recorded in 1991. In addition, there were 740 *masjids* (smaller places of worship, in local terminology), 1210 *maktabs* (places for religious instruction) and 44 *tekiyes* (places for Sufi *dhikr*).<sup>13</sup> In April 1992 in Bosnia and Herzegovina, the centre of Islam in Yugoslavia, there were 1144 *mosques*, 557 *masjids*, 954 *maktabs*, 15 *tekiyes*.<sup>14</sup> Out of the total number of mosques in Bosnia and Herzegovina, some 400 mosques were built during the period 1945-1985 and about 380 were renovated. When we interpret these facts we should keep in mind that a large number of mosques was destroyed during the Second World War, especially by the units of Yugoslav Royal Army (*Chetniks*). Thus renovation refers to those mosques

13 Fikret Karčić, "Beginning and Formation of the Contemporary Muslim Religious Administration in Yugoslav Lands", *Glasnik/ The Herald*, no. 4 (1991), p. 384.

14 *Information on Activities of the Islamic Community of the Republic of Bosnia and Herzegovina* (Sarajevo: The Office of the Supreme Islamic Authority, 1995), p. 4.



destroyed during the war or those which needed it due to passage of time.

Newly-built mosques were mainly the result of the increasing economic power of the Muslims and the improvement of the standards of living in the villages. During the last few decades, hundreds of villages in Bosnia and Herzegovina and in other parts of Yugoslavia came to have elementary schools, roads, clinics, post offices and, naturally, in the case of Muslims, mosques. It goes without saying that mosques were built by the donations of the local Muslims. The aid given by foreign Muslim organizations was only symbolical and related to the big construction projects such as the Zagreb Islamic Centre and the reconstruction of Gazi Husrevbeg mosque in Sarajevo.

In Albania in 1945 there were 1,127 mosques and they were either closed or had been destroyed together with other places of worship in 1967. In July 1993 there were 25 main working mosques in the bigger cities and 23 were under construction or renovation.<sup>15</sup> Therefore, in the case of this country, the Muslims need several decades to reach the number of mosques necessary for the religious life of their population.

In Bulgaria all mosques (data are not available) except those preserved for propaganda purposes, were gradually closed down after the 1946. That policy drastically changed the landscape of the traditional Muslim regions in this country.<sup>16</sup> Therefore, reconstruction of certain mosques after 1991 was an attempt to provide the necessary places of worship and focal points of activity to the Muslim community.

## ISLAMIC EDUCATION

In the case of Yugoslavia there were two types of Islamic education:

- (a) institutionalized education provided by the Islamic high schools (*madrasahs*) and the Faculty of Islamic Theology in Sarajevo meant to produce religious officials, and
- (b) religious instruction for the common believers provided in the form of weekend classes in specially designated places (*maktabs*). Out of hundred *madrasahs* in Yugoslavia only two survived after 1945:

15 Gyorgy Lederer, *op. cit.*, p. 351.

16 Ali Eminov, "There are no Turks in Bulgaria: Rewriting History by Administrative Fiat" in *The Turks of Bulgaria: The History, Culture and Political Fate of Minority* (Istanbul: the Isis Press, 1990), p. 219.

Gazi Husrevbeg in Sarajevo (established in 1537) and Alauddin in Prishtine (Kosovo). In 1984 Isabeg *madrasah* was opened in Skopje. Additionally, in 1977 the Faculty of Islamic Theology was opened in Sarajevo and this faculty could be considered as a continuation of the Higher School of *Shari'ah* and Theology which had been closed down by the Communists in 1946. In the same year a Girls' division of Gazi Husrevbeg *madrasah* was opened, again continuing the tradition of the girls' *madrasah* which had been closed down after the Second World War. In all these schools a total of 820 students were receiving formal Islamic education in 1991.<sup>17</sup> Precise data on non-formal Islamic education provided in the *maktabs* are not available but the number of those children in 1980 was estimated at 120,000.<sup>18</sup>

In Albania there were 17 *madrasahs* in 1945. The *madrasah* in Tirana was closed down in 1965. In 1993 there were 10 *madrasahs* with 1058 pupils. Some of those schools are without appropriate equipment. Albania continues to remain without any institution of higher Islamic learning.<sup>19</sup>

In Bulgaria the Islamic courses were included in the curricula of the "minority schools" of the Turkish community. The Communist regime, continuing the practice of its fascist predecessors, first nationalized "minority schools" in September 1946 and later in June 1960 abolished separate education.<sup>20</sup> *Medrese-i Nuvvab* in Shumen, a school for training *muftis*, opened in 1923, was first put under the influence of modernists and transformed into "Nazim Hikmet Turkish Gymnasium" (1947) and finally closed down after a short time.<sup>21</sup>

The Muslims of Bulgaria were not only left without proper Islamic educational institutions but their very existence was imperilled. Changes in the political atmosphere in 1989 led to the (re)opening of the Islamic College in Sofia and the revitalization of elementary Islamic instruction.

17 Fikret Karčić, *op. cit.*, p. 385.

18 Ahmed Smajlović, "Muslims in Yugoslavia", *JIMMA*, Vol. 1, No. 2 (1979), p. 136.

19 Gyorgy Lederer, *op. cit.*, p. 351.

20 Bilal N. Simsir, *The Turks of Bulgaria (1878-1985)*, (London: K. Rustem and Brother, 1988), pp. 198-206.

21 *Ibid.*, p. 45.

## ISLAMIC PUBLISHING

Since 1970 Islamic publication activities in Yugoslavia were rapidly intensified. The centre of those activities was Sarajevo. Apart from the publication of the translation of the *Qur'an*, of *Sahih al-Bukhari* and a number of books written by classical and contemporary Muslim authors, a number of periodical publications also emerged. *Glasnik Vrhovnog islamskog starješinstva/Rijaseta* (*The Herald of the Supreme Islamic Authorities/Riyasat in Yugoslavia*) was an official journal of the Islamic Community published as a bimonthly since 1933. *Zemzem*, a paper of the Society of the Students of Gazi Husrevbeg Medresa has been in publication since 1968. The most important promoter of the revitalization of Islam was the biweekly *Preporod* (Renaissance), which first appeared in Sarajevo on 15 September 1970. In September 1995 this paper celebrated the 25th anniversary and it has been recorded that during that time some 2100 contributors published their works in this paper.<sup>22</sup>

During the same decade a monthly magazine *Islamska misao* (Islamic Thought) was started in Sarajevo. Around the same time the Association of 'Ulama' in Sarajevo was regularly publishing an almanac *Takvim* whose circulation reached 50,000 copies. 1980s saw the appearance of *Educata Islame* (Islamic Education), published in Albanian in Prishtine; *Elif*, published in Bosnian in Titograd/Podgorica; *El-Hilal*, published in the Macedonian, Turkish and Albanian languages in Skopje.

After the decades of suppression, this mushrooming of Islamic news/views papers was perceived as a "revivalist boom" by the regime's ideologically staunch and anti-Islamic circles.

In Albania *Drita Islame* ("Light of Islam"), the organ of the Islamic Community, has appeared as a monthly since 1991. Besides, there is *Shkelqimi Islam* ("Splendour of Islam"), a paper of the Islamic Youth Federation of Albania (*Bashkimi to Rinise Islamike Shqiptare*) was founded towards the end of 1990.<sup>23</sup>

In Bulgaria Muslim publications have had a long history since the Ottoman times. The most flourishing period was the period of monar

22 *Preporod, Islamske Informativne Novine* (Sarajevo), Vol. 26, No. 9 (1995), p. 4.

23 Gyorgy Ledered, *op. cit.*, p. 348.

chy (1909-1941) when 67 Turkish papers and 13 magazines were published.<sup>24</sup> Under the Communist rule that number was, first, radically reduced (only 5 papers and 1 magazine) and all publications were put under firm ideological control. Finally, even the publication of the Central Committee of the Communist Party in the Turkish language (*Yeni Işık*—"New Light") was stopped in January 1985. Therefore, Muslim publications which emerged after 1990 were a modest effort to cater for the needs of the Muslim Community in Bulgaria.

## USE OF ISLAMIC SOCIAL SYMBOLS

The period of Islamic revival under study witnessed the reappearance of the Islamic social symbols in public life such as attire (scarfs and long skirts for girls and women), appearance (e.g. beard for men) and characteristically Islamic social etiquette. Those symbols expressed the increasing consciousness of the Muslims concerning their identity, emphasizing what distinguished them from others. In all the three Balkan countries mentioned above, viz. Bosnia-Herzegovina, Albania, and Bulgaria, those symbols had been forbidden by the Communist regimes and had virtually disappeared from Muslim practice. In that sense their reappearance was not only an indicator of the widening of the horizons of freedom but also of the new Muslim consciousness, and of their conviction that faith demands certain social behaviour and their readiness to show to the public their distinctiveness.

In Yugoslavia, the traditional Islamic attire for Muslim women (*zar* and *feredja*) were prohibited by a law passed by People's Assembly of the Republic of Bosnia and Herzegovina on September 27, 1950.<sup>25</sup> In the following decades Muslim women and girls in urban areas adopted European attire and fashion. In the rural areas of Bosnia, Sandjak, Kosovo and Western Macedonia as well as in devoted Muslim families in towns, the traditional attire was preserved. But, the general trend until 1970s was toward Europeanization.

24 Bilal N. Simsir, *The Turkish Minority Press in Bulgaria: Its History and Tragedy 1865-1985* (Ankara: 1986), p. 6.

25 Fikret Karčić, *Društveno-pravni aspekt islamskog reformizma* (The Social and Legal Aspect of Islamic Reformism) (Sarajevo: Islamski Teološki Fakultet, 1990), p. 240.

In the 1980s some observers noticed smaller groups of young educated men and women in Bosnian urban centres, especially in Sarajevo, who, through their appearance, manifested adherence to Islam. After the collapse of the Communist rule this group enlarged and became much more visible.<sup>26</sup>

The reappearance of Islamic attire in public by convinced, young, urban, educated Muslims was completely different from the preservation of the traditional Muslim costumes by womenfolk in the rural areas of Bosnia or among Albanian Muslims in Kosovo and Western Macedonia. Because of its different nature this phenomenon drew the attention of observers in other parts of Yugoslavia and abroad.<sup>27</sup>

In Albania during the Communist drive for the creation of the “new Albanian man”, especially after 1967, all Islamic social symbols were condemned as “reactionary”. The traditional Muslim attire was preserved only in the rural areas as a part of the national folklore. Young women and girls were prohibited to wear scarves. It was only after winter 1990/91 that in big cities such as Tirana, Shkodra and Berat some women began to wear *hijab*. That practice was limited to a few individuals, mainly from devoted Muslim families, or those married to Arabs, or Albanians from Kosova, or graduates from the Islamic universities. But that trend is increasing and the local people respect those who opt for the Islamic attire.<sup>28</sup>

Likewise, in Bulgaria the Communist regime prohibited traditional Muslim attire for women as well as for men in public places, offices and schools as a part of its assimilation policy guided by the concept of “one compact Bulgarian nation”. Muslim attire was considered as a manifestation of “the overall backwardness of the Turkish population”.<sup>29</sup> Liberalization of the policy toward the Muslims in Bulgaria contributed to encouraging some Muslim women and girls to return to traditional attire.

26 Cornelia Sorabji, “Mixed Motives: Islam, Nationalism and Mevluds in an Unstable Yugoslavia”, in *Muslim Women's Choices. Religious Belief and Social Reality*, ed. Camilla Fawzi El-Solh and Judy Malro (Providence-Oxford: Berg, 1994), pp. 110-111.

27 For an anthropological study of those changes in a rural environment in late 1980s see: Tone Bringa, *Being Muslim The Bosnian Way. Identity and Community in a Central Bosnian Village* (Princeton: Princeton University Press, 1995), pp. 197-231.

28 Information given to the author by Albanian students at the International Islamic University Malaysia in August 1996.

29 Ali Eminov, *op. cit.*, p. 207.

## POLITICAL CULTURE AND ORGANIZATIONS

One of the main characteristics of the Islamic revival is the increasing use of Islamic vocabulary in political life and the emergence of political organizations inspired by Islam. Of the three Balkan countries under discussion, Muslim-based political organizations emerged in Yugoslavia and Bulgaria.

In Albania, political change was brought about by the pro-Western political forces rather than by Islamists. The most influential newly established party in Albania, the Democratic Party (DPA) led by Sali Berisha and Gramoz Pashko, proclaimed the Helsinki Final Act as the basis for the building of the new Albanian society.<sup>30</sup> The term revival (*rilindja*) has been frequently used in Albanian political life but with the prefix “democratic” rather than “Islamic”.

In Yugoslavia, the Party of Democratic Action (*Stranka demokratske akcije-SDA*) under the leadership of Alija Izetbegović was formed in May 1990. That party defined itself as a “political union of citizens of Yugoslavia who belong to Muslim cultural and historical circle”.<sup>31</sup> The party attracted the major proportion of Bosniaks in Bosnia, Sandjak, Croatia and Macedonia and attempted to articulate their specific political interests. The party used certain Muslim symbols such as the green coloured flag with the crescent and introduced into public discourse almost forgotten Muslim greetings. Islam is referred, in the party’s usage, as an element of Bosnian identity and religious liberties as a part of general human rights and freedoms. There were no demands for the establishment of the state on the basis of an Islamic ideology nor any call for the implementation of the *Shari’ah*. The best illustration of the attitude of SDA toward political system is a statement by its president, Alija Izetbegović: “To be quite clear, I don’t want an Islamic Republic, but I want Islam to survive in this part of the world, whether somebody likes it or not”.<sup>32</sup>

The emergence of SDA was basically the result of the introduction of political pluralism in Yugoslavia, on the one hand and increased political self-consciousness of Bosniaks on the other. Islamic revival

30 Miranda Vickers, *The Albanians: A Modern History* (London-New York: I.B. Tauris, 1995), p.214.

31 Program Declaration of the Party of Democratic Action (Sarajevo: SDA, 1990), article I.

32 Alija Izetbegović, *Odabrani govori, pisma, izjave, intervjui* [Selected Speeches, Letters, Statements and Interviews] (Zagreb: Prvo muslimansko dioničko društvo Zagreb, 1995), p. 57.

certainly influenced that process and led it toward a positive acknowledgement of the role of Islam in the creation of a separate Bosniak identity.

In Bulgaria the political organization of Muslims, mainly of Turkish ethnic origin, began through the Movement for Rights and Freedoms (MFRF) led by the former political prisoner, Ahmed Dogan. This was a grassroots movement for the protection of human rights of the Muslims. The very name of this movement indicates the need of the Muslims in the Balkans to protect their rights. Similar organization were established among the Turks and Albanians in Yugoslavia in 1918 under the name 'Organization for the Protection of Rights of Yugoslav Muslims' (*Yugoslavya'da Islam Muhafazayi Hukuk Cemiyyeti*). The movement in Bulgaria became a political party in 1990 and won 7.5 percent votes of the total electoral body in the first free elections and 20 seats in the National Parliament. In spite of being the third largest group in the parliament, MFRF was prevented from participating in the government only because of its Muslim bases. Political observers agree that MFRF has a predominantly secular outlook and appeals to Turkish national feelings.<sup>33</sup> Nevertheless, MFRF continued to be looked upon by most of the Bulgarian Orthodox as an undesirable element.

## EMERGENCE OF MUSLIM SOLIDARITY INSTITUTIONS

One of the distinctive characteristics of Islamic revival in the 1970s was its stress on Muslim solidarity and the development of Islamic international organization and institutions.<sup>34</sup> The emergence of the Organization of Islamic Conference in September 1969 was a very significant expression of such a trend.

A certain attempt for the institutionalization of the link between Muslims in the Balkans, or rather East Europe, was initiated in 1989. It was aimed to overcome the isolation of individual Muslim communities in this region where Muslims did not have a unifying institution like the universal church of their Catholic fellow citizens or the unifying links between Orthodox national churches.

33 *Central Asia Brief*, no. 2, 1992, p. 8.

34 Ali E. Hilal Dessouki, *op. cit.*, pp. 25-28.

The collapse of Communism provided an opportunity for the institutionalization of Muslim solidarity in South-East Europe. After the cessation of the Ottoman rule the religious institutions of the Balkan Muslims had been built within the framework of nation states. Before the Second World War most of the Balkan states had accepted the legal obligation to allow the Muslims to have links with the Office of *Shaykh al-Islam* in Istanbul. But the mutual relationship between the Balkan Muslims were not developed nor put into any institutional form. The lack of the sense of belonging to a regional Muslim community and strategy of the Balkan national states to deal with the Muslims separately were the main causes of that situation. Until the collapse of Communism, the Balkan Muslims were interlinked only by their religious feelings.

From 1989 to 1991 there were some encouraging signs such as the trend toward the institutionalization of the links between Balkan Muslims. This became evident at the time when the expulsion of Turks from Bulgaria took place. The representatives of some East European Muslim communities (Romania, Hungary, Poland, Czechoslovakia, Greece) and the international Islamic organizations met at the Islamic Centre in Vienna between 30 June and 4 July 1989 to discuss, among other matters, the possibility of the establishment of an umbrella organization for the Muslims of that region.<sup>35</sup> A special committee was entrusted with the responsibility of preparing the Basic Act of that organization.

The second meeting in this connection was held in the middle of March 1990 where a draft version of the Basic Act was discussed. Unfortunately, the representatives of three major Muslim communities (Albania, Bulgaria, Yugoslavia) were absent at this meeting. Finally, in August 1991 the third meeting was held with full participation of all Muslim communities of South East Europe: Muslims of Yugoslavia (23 delegates), Muslims of Bulgaria (26 delegates), Muslims of Romania (9 delegates), Muslims of Greece (3 delegates), Muslims of Albania (15 delegates), Muslims of Poland (8 delegates), Muslims of Hungary (23 delegates), and Muslims of Czechoslovakia (5 delegates). The delegates adopted the proposed Basic Act of the future institutional link between them which paved the way for the beginning of the Islamic Council of Eastern Europe (*al-Majlis al-Islami li Sharq Urubba*).

35 A brief history of this attempt is given on the basis of a ten page document written in Arabic under the title *Al-Majlis al-Islami li Sharq Urubba* in possession of the author.



The objectives of the Council, defined in the Article 3 of its Basic Act were, among others, to deal with the strengthening of belief among the Muslims of the region; to improve the Islamic work (*da'wah*); to facilitate the distribution of Islamic books; to provide scholarship to Muslim students; to encourage the memorizing of the Qur'an among young Muslims; to secure separate graveyards for Muslims in places where there are no such graveyards and to encourage Muslims to develop strong cultural and social links with the societies in which they live. In addition, the Council was supposed to work on an adequate presentation of Islam to non-Muslims; to develop mutual administrative cooperation among the Muslim communities; to assist the development of Islamic educational institutions in the region and to follow the problems of the Muslims in this region and to present them to the Muslim international institutions as well as to the relevant bodies of the international community.

These aims, in fact, indicate the nature of the Islamic revival in the Balkans. Obviously, the Balkan Muslims wished to forge some kind of cooperation in matters which fall under the category of universally recognized religious liberty. The means for the realization of these aims were generally described as "all means permitted by legal systems of countries where the respective minority lives" (Art. 4 of the Basic Act mentioned above).

The organizational structure of the Islamic Council for Eastern Europe includes a Board of Trustees consisting of representatives of the official Islamic organizations from Eastern Europe, representatives of Islamic organizations and institutions from the Islamic world, the director of the Islamic Centre of Vienna, and chairpersons of specific committees recommended by the Board of Trustees. It was decided that the Board should meet once a year and should convene an urgent meeting whenever necessary. Apart from the Board of Trustees, among the organs of the Council were also General Secretary, Executive Committee and Treasury.

The headquarters of the Council was to be located in the city where the President-elect of the Council happened to be living. Since the first President of the Council elected on 11 August 1991 was Haji Jakub Selimoski, the then *Ra'is al-'Ulama'* of the Islamic Community of Yugoslavia, the site of the Council *de jure* was Sarajevo.

At the same time when the Islamic Council for Eastern Europe was established, war broke out in Croatia and several months later in Bosnia. In regard to these events, the most tragic in the modern history of the Muslims in the Balkans, no voices were raised by the Islamic Council of Eastern Europe. Even the urgent meeting of the Board of Trustees envisaged in the Article 5 of the Basic Act was not convened.

The *Ra'is al-'Ulama'* of the Islamic Community of Yugoslavia was removed from that post in April 1995 following the structural changes in the Community. The disintegration of the Yugoslav federation brought about the disintegration of the Islamic Community of Yugoslavia, which followed a federal pattern. The Muslim leadership focused its attention on the consolidation of the Islamic institutions within the borders of the newly independent states (Bosnia and Herzegovina, Croatia, Macedonia). The Islamic Council of Eastern Europe ceased to function.

Much more research needs to be conducted in order to highlight causes of the failure of this institution of Muslim solidarity. In the light of available information, it seems that lack of sufficient time for the consolidation of a new institution has significantly contributed to bringing about its end.

## THE NATURE OF ISLAMIC REVIVAL

The manifestations of Islamic revival in the Balkans (1970-1992) show that this process was mainly related to the religious and cultural sphere, that it was a part of the greater social change in the former Communist countries, and that it was the outcome of internal developments within the respective Muslim communities.

The main reason for the religious and cultural character of the Islamic revival in the Balkans is the apolitical nature of Islam in this region in the post-Ottoman period. The Balkan Muslims, in spite of being exposed to the hostile policy of their Orthodox-Christian neighbours, failed to organize themselves as Muslims until they were uprooted in most parts of the region.<sup>36</sup> Besides, most of the Balkan Muslims born

36 Kemal Karpat, "The Hijra from Russia and the Balkans: the Process of Self-Definition in the Late Ottoman State", in *Muslim Travellers: Pilgrimage, Migration and Religious Imagination*, eds., Dale F. Eickelman and James Piscatori (London: Routledge, 1990), p. 136.

after 1945 were deprived of Islamic education and the possibility to live according to Islamic tradition, and for all practical purposes were hardly no more than “nominal Muslims”. For them the fall of Communism gave a chance to express interest in their cultural and religious roots. That process has become the substance of Islamic revival. The highest demand of the Muslims was to be free to profess and practice Islam as the Muslims did in Western Europe.

The religious and cultural character of Islamic revival in the Balkans has been noticed by certain European scholars who had been following the whole process with their field work. Cornelia Sorabji (UK), while doing research on Islamic revival and marriages in Bosnia before 1988, concluded that Islamic revival in that country was not a political movement. There were no calls for the reinstatement of *Shari'ah*, but rather a return to certain *Shari'ah* prescriptions such as the head covering of women.<sup>37</sup> Likewise, Gyorgy Lederer (Hungary), researching on Islam in post-Communist Albania, concluded: “At the moment (1994) Islam in Albania is as the West would like it to be: non-political, moderate, loyal to the government and fully respecting the rules of European democracy”.<sup>38</sup>

On the other hand, some authors because of their ethnic or ideological connections, have portrayed Islamic revival particularly in some Balkan countries as a radical or militant movement which is spread from the Middle East towards Europe. Darko Tanasković (Serbia), analysing the revival of Islam in the Balkans after the demise of Communism, expressed doubt in the possibility of the existence of a “moderate Islam” acceptable to Europe. He qualifies the beginning of cooperation among the Balkan Muslim communities (like in the case of the Islamic Council for Eastern Europe) as a part of the larger strategic plan for the reconquest of the region.<sup>39</sup> Similarly, Zachary T. Irwin's judgement on Islamic revival in Bosnia was quite negative. He said: “The objectives of the Bosnian Muslims were similar to those of militant Islam elsewhere”.<sup>40</sup>

37 Cornelia Sorabji, “Islamic Revival and Marriage in Bosnia”, *JIMMA*, Vol. 9, No. 2 (1988), p. 331.

38 Gyorgy Lederer, *op. cit.*, p. 332.

39 Darko Tanasković, *U dijalogu s islamom* [In a dialogue with Islam] (Gornji Milanovac: Dečje novine, 1992), pp. 155-160.

40 Zachary T. Irwin, “The Islamic Revival and the Muslims of Bosnia and Herzegovina”, *East European Quarterly*, vol. 17, no. 4 (1984), p. 453.

These dissonant tones in analysing Islamic revival in the Balkans at times inclines one to suspect that a number of analysts and experts were interested from the very beginning not only to explain this phenomenon but also to influence its direction.

Islamic revival in the Balkans was in fact part of the greater social change which took place in all the former Communist countries after 1989-90. In all these countries the Marxist model of modernization failed. The demise of the Marxist ideology and of aggressive secularism was an integral part of the change brought about by the revival of religion.<sup>41</sup> In the case of Muslims in Yugoslavia and Bulgaria it was also the failure of the concept of the "ruling nation" (Serbs and Bulgarians respectively) which necessarily implied some degree of alienation of the Muslims. In those cases, the revival of Islamic cultural identity was a Muslim reaction to an existing threat to their vital rights and interests.

The Communist attempt to create a Muslim nation in Bosnia without Islam and the Bulgarian attempt to bring Pomaks back into the religion of the "forefathers" and the Bulgarian Orthodox Christian nation have failed. Both Bosniaks and Pomaks eventually realized that without Islam they cannot keep their identities nor exist as nations.

The main protagonists of Islamic revival in the Balkans were the local Muslims educated mainly in the Balkan institutions of higher learning or in the Middle East. Those Muslim intellectuals were not necessarily part of the official Islamic administration, nor did they always belong to the circle of the '*ulama*'. Besides, the external Muslim factors also played a certain role in the revival. That role was sometimes exaggerated. We have found that the Muslims from abroad influenced Islamic revival in two ways: through the presence of the Muslim students and through the work of humanitarian organizations.

Foreign Muslim students brought into sharp focus the new trends in the Muslim world and served as a link between the Islamic heartland and periphery. The influence of these students was through marriages or small circles of their local friends.<sup>42</sup> That influence was limited due to two reasons: first, their unfamiliarity with the local Muslim tradition and customs and, second, the general uneasiness of official

41 See the issues 1990-1996 of *Religion, State and Society*, a specialized journal on religion in ex-Communist countries.

42 On this influence in the case of Albania see, Gyorgy Lederer, *op. cit.*, 448; in the case of Yugoslavia see, Munir Gavrankapetanović, *Mladi će mjesec opet blistati* [The Young Crescent Will Shine Again] (Sarajevo: Ljiljan, 1996).

Islamic workers to contact foreigners and thus provoke the state. As it is known, the Communists were obsessed with the foreign threat and the influence of the centres abroad.

Muslim humanitarian organizations appeared on the Balkan soil together with a number of Western organizations of the same kind after the humanitarian crises in Albania in 1990 caused by isolationist policy and in Yugoslavia in 1992 caused by the deliberate devastation of economic bases of the Muslims.

In Albania in 1993, the number of Muslim humanitarian organizations reached 14.<sup>43</sup> These organizations supported publication activities and Islamic education which positively influenced Islamic revival. In Yugoslavia these organizations appeared after the break-up of the federation and influenced only more recent developments which are beyond the scope of this work.

## CONCLUSION

The Balkan Muslims have been trying to preserve their existence, especially as a distinct religio-cultural entity, in their homeland since the end of the Ottoman rule in the region. The consecutive hostile regimes did not allow the Balkan Muslims to consolidate and to develop their theoretical and institutional responses to the challenges of life in the European southeast.

During the period 1970-1992 the Muslims in the then Yugoslavia, Bulgaria and Albania experienced a revival. It first began in Yugoslavia, the most liberal Communist state in the region, and spread subsequently to the other two countries after the fall of Communism. That process was influenced by different socio-political status of the Muslims, the strength of the Islamic institutions and intellectual potentials of respective Muslim communities.

Islamic revival was expressed in increased personal religiosity, (re)construction of mosques, development of Islamic education and publications, increased use of Islamic social symbols and the attempts to building regional Muslim solidarity institutions. The Islamic influence on the political culture and organization was not substantial. Muslim-based parties in the region addressed Islam in their programmes

43 Gyorgy Lederer, *op. cit.*, p. 350.

as an element of national identity and its manifestation as a part of the general religious freedom.

The dissolution of Yugoslav Federation in 1991 and the subsequent genocide of Bosnian Muslims marked an end of one period of Islamic revival in the Balkans. The repetition of the century-long pattern of the solution of "Eastern question" in the Balkan introduced new impulses and orientation in the self-understanding of the Balkan Muslims and their attitudes toward others. The coming years will show the real consequences of that change.



## PREPOROD NEWSPAPER: AN AGENT OF AND A WITNESS TO ISLAMIC REVIVAL IN BOSNIA\*

*Abstract: Bosnian biweekly paper Preporod (Renaissance) has been, since its first appearance in September 1970, an agent of, and a witness to Islamic revival in this Balkan country. This paper has significantly contributed to the creation of a new self-conscious and dynamic Islamic identity of the Bosniaks. It has also recorded main issues debated within Bosniak Muslim community, internal intellectual and ideological developments as well as obstacles to Islamic renaissance there.*

Islamic revival in Bosnia symbolically began with the appearance of the first issue of biweekly paper *Preporod* (Renaissance) in Sarajevo on September 15, 1970.<sup>1</sup> That paper celebrated its 25th anniversary in September 1995 in the besieged capital of Bosnia. It has been recorded that during a quarter of century of its continuous appearance, *Preporod* has been edited by 11 successive editors. News, essays and articles written in Bosnian and submitted by more than 1,100 contributors were published and the paper reached a circulation of circa 30,000 copies.<sup>2</sup>

The founder of *Preporod* was Husein Đozo (1912-1982), a leading Bosnian Muslim thinker during the period after the Second World War. In 1970 he was the president of the Association of 'Ulama' (*Udruženje ilmijje*) in Bosnia. Trying to reach out to Bosnian youth and to overcome the predominant concern of 'ulama' with themselves and their economic and social status, Husein Đozo decided to publish an Islamic paper. In the then Bosnia, a paper could be published only by a recognised institution. Religious communities were allowed only to publish papers devoted to the exposition of religious teachings and dissemination of news on confessional matters. The leadership of the Islamic Religious Community (*Islamska vjerska zajednica*), the Administration of Islamic

\* *Intellectual Discourse*, 7:1 (1999), pp. 91-97

1 For a recent discussion of Islamic revival in Bosnia and other Balkan countries see: Fikret Karčić, "Islamic Revival in the Balkans 1970-1992", *Islamic Studies* 36 (1997) 2-3:565-581.

2 *Preporod*, XXVI, no. 9/580 (September 1995), p. 4.

affairs virtually under the control of Socialist state, did not feel any need to start a paper which would come out of sphere of narrowly defined devotional matters. Among the ranks of the Association of 'Ulama' there were people who realised that Islam should become relevant for the social reality of Bosnian Muslims (Bosniaks) and that such a move should be taken up in a way understandable to a younger generation growing up in an increasingly modernised society. *Preporod*, from its very first issue, began to address a number of topics which were out of the narrowly defined "profession" of 'ulama' in a socialist country: observance of Islamic regulations in a secular state, social engagement of Muslims, religion and education, Islam and ethnicity, contemporary trends in the Muslim world, development of Islamic institutions in the then Bosnia and Yugoslavia and the like. Husein Đozo, as the founding editor of *Preporod*, was assisted by a group of young Bosniak students coming mainly from state universities but conscious that something should be done for the preservation of the Bosniaks' Islamic identity.

*Preporod* was followed by the appearance of several more Islamic papers and magazines in different parts of Yugoslavia: *Islamska misao* (Islamic Thought) in Sarajevo, *El-Hilal* (The Crescent) in Skopje and *Edukata Islame* (Islamic Education) in Pristina. Before 1970, Muslims in Bosnia and Yugoslavia had three periodicals: *Glasnik* (The Herald), an official bimonthly journal published by The Supreme Islamic Authorities in Sarajevo, *Zemzem* (Zam-zam), a paper of the students of *Gazi Husrev-begova medresa* (Madrasa al-Ghazi Khusraw Bey, established in 1537) and *Takvim* (Taqwim), an almanac with *Hijri* calendar, published by the Association of 'Ulama'.<sup>3</sup>

Newpapers provided the Muslims with new channels of internal communal communication: reports on rejuvenated religious life within the community and proper information about the teaching of Islam now reached the most distant Bosnian villages. Occasionally, *Preporod* cautiously mentioned demands for broader religious freedom, criticised the rigidity of local bureaucrats toward Muslim requests for building new mosques or defended Islam and Muslims from attacks in state-sponsored media. Doing all that, *Preporod* kept a low profile in comparison to the Catholic *Glas Koncila* (The Voice of the Council), or Serbian Orthodox papers.<sup>4</sup>

3 Ahmed Smajlović, "Muslims in Yugoslavia", *Journal of the Institute of Muslim Minority Affairs* 1(1979) 2:141-142.

4 S. P. Ramet, "Islam in Yugoslavia Today", *Religion in Communist Lands* 18 (1990) 3:232.



The circle around *Preporod* began to organise promotion of the new issues of the paper in different Muslim local communities (*jam'ats*), lectures on Islam, Arabic classes, special programmes on the celebration of famous events of Islamic history, and the like. The premises of the Association of 'Ulama' in Sarajevo became a focal point of renewed interest of Bosniak youth. Soon, a number of Bosniak intellectuals began to publish in *Preporod*, mainly using pseudonyms.

The Islamic activism expressed in the circle around *Preporod* drew the attention of the Yugoslav socialist regime. In the winter of 1972 the students of Madrasa Ghazi Khusraw Bey went on strike asking for changes in curriculum and improvement of teaching. The state and the pro-regime leadership of the Islamic Religious Community indicted *Preporod* as the main source of the new ideological and activist trend among young Bosniaks. In April 1972, Husein Đozo was forced, by continued pressure of government agencies and official leadership of Islamic Community, to step down.<sup>5</sup>

The pro-government figures took control of *Preporod*, but at the same time *Zemzem*, the paper of the students of Madrasa Ghazi Khusraw Bey, continued to publish articles written in the spirit of the *Preporod* circle. A more dynamic approach to Islam became evident among young Bosniaks. That trend made possible for the ousted first team of the *Preporod* to return to the public scene after several years of silence.

On April 15, 1977 after the elections in the Association of 'Ulama', Hilmo Neimarlija, a lecturer at the Faculty of Islamic Theology in Sarajevo and one of the figures of the former *Preporod* circle, was appointed as editor-in-chief of the paper. That appointment coincided and, in fact, reflected the increasing trend of the revitalisation of Islamic institutions in Bosnia. *Preporod* regained its position among Bosniaks and virtually became the only paper of this religious and ethnic group. The Yugoslav Socialist regime recognised the Bosniaks under the name *Muslimani* (Muslims) as a separate ethnic group (*nacija*), but did not allow them to have separate cultural institutions.<sup>6</sup> Therefore, the Islamic Religious Community acquired the role of a "national" institution.

Revivalist Islamic orientation of *Preporod* and its circle was soon stopped by secularist Muslim intellectuals who enjoyed high ranks in the Marxist hierarchy in Bosnia, such as Hamdija Pozderac and Fuad

5 *Preporod*, XXVI, no. 9/580 (September 1995), p. 2.

6 Sabrina P. Ramet, "Primordial Ethnicity or Modern Nationalism: The Case of Yugoslavia's Muslims Reconsidered", *The South Slav Journal* 13 (1990) 1-2:14.

Muhić. In summer 1979, pro-regime writer Derviš Sušić published a part of his book *Parergon* attacking Bosnian Muslim leaders in the pre-war period and during War World II for their pan-Islamism, collaboration with Nazis, betrayal of the Muslim masses and the like. The editor of the *Preporod* reacted, openly contradicting what was considered to be an “official truth”. At that point the Socialist state decided to crack down on the *Preporod* circle. Husein Đozo and Hilmo Nemarklija were attacked in state-controlled media as “pan-Islamists”, “Muslim nationalists”, “clerics”, etc. A public attack on a person in Communist countries could mean only two things: criminal prosecution or removal from office. In this case, it ended with removal: in November 1979 Husein Đozo was removed from the Presidency of the Association of ‘*Ulama*’ and Hilmo Nemarklija quit his post as the editor of the paper.<sup>7</sup>

*Preporod* came under the jurisdiction of the Supreme Islamic Council of Bosnia and Herzegovina, Croatia and Slovenia (*Starješinstvo Islamske zajednice u Bosni i Hercegovini, Hrvatskoj i Sloveniji*) and returned to a conformist position of non-involvement in disputes. That was justified by a new editor as “a programme based on reality and not utopia and dreams”.<sup>8</sup> That orientation generally continued for a decade.

During the period 1989-1991 *Preporod* again became actively involved in public debates of Muslim issues in Bosnia, but now with a new editorial team, mainly consisting of the young generation of the graduates of Madrasa Ghazi Khusraw Bey, the Faculty of Islamic Theology in Sarajevo and University of Sarajevo. Previous editors and contributors also continued sporadically to publish in *Preporod*. In the new editorial team the focal figure was Džemal Latić, a poet jailed for his Islamic activism by the Socialist regime after the infamous trial in 1983.

A good example of the *Preporod* involvement in public debates at that time was a forum on “Islamic fundamentalism: what is that?” organised in winter 1990. It was the first opportunity for Bosniak intellectuals to critically discuss this confusing term and its mainly arbitrary use.<sup>9</sup>

The activism of the *Preporod* circle coincided with the revival of political life in Bosnia and the introduction of political pluralism. In 1990 new political parties were formed. Among the Bosniaks, the only, and later on the biggest, party was the Democratic Action Party (*Stranka demokrat-*

7 Zachary T. Irwin, “The Islamic Revival and the Muslims of Bosnia-Herzegovina”, *East European Quarterly* 17 (1984) 4:451.

8 Ibid.

9 *Islamski fundamentalizam: šta je to?*, ed. Nusret Čančar and Enes Karić (Sarajevo: Preporod, 1991).

ske akcije) led by Alija Izetbegović. That development opened the question of the relationship between the Islamic Religious Community and a Muslim political party: possible overlapping of activities, loyalties and representation of Muslim Bosniaks as an ethnic and a religious group. About the same time changes took place in the leadership of the Islamic Religious Community in Bosnia. It was a result of internal upheavals within the community. The breakdown of the monolith political system was followed by the eruption of dissatisfaction with similar structures in every aspect of life. In that context the Islamic Religious Community was shocked by the wave of the protest of *imams*. That phenomenon has still not been properly studied. Its evaluation varies from the description as a pro-democracy movement within the Islamic religious administration to its branding as a manipulation by the state security service in order to undermine the position of the section of religious leadership favourable towards a Muslim role in the solution of the Yugoslav drama.

Tensions between the *Preporod* circle, which obviously became close to the Democratic Action Party, and the new leadership of the Islamic Religious Community in Bosnia and Herzegovina led by Salih Čolaković of Mostar, who was involved in "the movement of *imams*" became visible. Consequently, in March 1991, editorial staff of the paper was sacked. Editors and journalists who left *Preporod* very soon started *Muslimanski glas* (The Muslim Voice), a political weekly paper close to Democratic Action Party. That paper continued to express political views of the majority of the Bosniaks on the eve of war. After several months of publication in besieged Sarajevo in 1992 the paper stopped to be replaced by the *Ljiljan* (The Lily), published by some journalists of former *Muslimanski glas* who went to Croatia when the war broke out. Toward the end of war in Bosnia, the editorial office of *Liljan* moved to Bosnia.<sup>10</sup> Today *Ljiljan* is a weekly magazine mainly dealing with Bosniak national issues with a manifest Islamic dimension.

In the meantime, the new leadership of the Islamic Religious Community, after the sacking of the old editorial board of *Preporod*, appointed a new team. That team published *Preporod* from March 1991 until the first month of war in 1992.<sup>11</sup>

10 For an analyses of the *Ljiljan* coverage of pre-war and war events in Bosnia see, Mark Thompson, *Forging War: The Media in Serbia, Croatia and Bosnia-Herzegovina* (London: International Centre Against Censorship, 1994).

11 For the illustration of different approaches of *Preporod* and *Muslimanski glas* to certain issues during 1992 see, Xaver Bougarel, "Ramadam During a Civil War (As Reflected in a Series of Sermons)", *Islam and Christian-Muslim Relations* 6 (1995) 1:79-103.

The disintegration of Yugoslavia brought about the collapse of all institutions formed on the federal principle. The Islamic Religious Community of Yugoslavia resembled the federal organisation: almost in each republic there was an Islamic Council (*Starješinstvo*) and at federal level there was a Supreme Islamic Council (*Rijaset*) as a religious administrative body.<sup>12</sup> As a consequence, when the Yugoslav federation was dissolved, the federal structure of the Islamic Religious Community collapsed too. In April 1993, the Muslims of Bosnia decided to reconstruct their own religious administration within the borders of the independent state of Bosnia. That move marked an end to the legitimacy of the previous Muslim religious leadership. New leadership headed by Dr. Mustafa Cerić was elected. In the beginning he had the title *na'ib al-ra'is* (deputy religious head), which indicates the temporary and transitory nature of the function, and later on *ra'is al-'Ulama'*, which is a customary title of the supreme religious leader of the Bosniaks.<sup>13</sup>

In June 1993 the Council of the Na'ib of the Islamic Community of Bosnia appointed Aziz Kadribegović as the new editor-in-chief in charge to revive *Preporod*.<sup>14</sup> Aziz Kadribegović, a publicist, was one of the close aides of Husein Đozo from the first years of the history of this paper. In the autumn of 1993, the *Preporod* appeared in the broken windows of bookshops and courtyards of the mosques in war-torn Bosnia. The circle of the personal and ideological changes in the orientation of this paper has been completed.

Today *Preporod* is regularly published by *Rijaset Islamske zajednice u Bosni i Hercegovini* (Riyasat of the Islamic Community in Bosnia and Hercegovina).<sup>15</sup>

The story of the paper *Preporod* is a story of Islamic revival in Bosnia from 1970s until present times. It is a story of the significant role of a newspaper in the process of revival (*tajdid*) and reform (*islah*), and of relationship between Islamic activism, Islamic establishment and the intellectuals and politicians, within a Muslim community involved in an ideological struggle.

12 The Constitution of the Islamic Community in the Socialist Federative Republic of Yugoslavia, *Glasnik Rijaset Islamske zajednice* 53 (1990) 2:99-121.

13 Fikret Karčić, "The Office of Ra'is al-'Ulama' Among the Bosniaks (Bosnian Muslims)" *Intellectual Discourse* 5 (1997) 2:109-120.

14 *Glasnik Rijaset Islamske Zajednice u Republici Bosni i Hercegovini*, 56 (1994) 1-3:114.

15 Its address is: *Preporod*, Zelenih beretki 17, 71000 Sarajevo, Bosnia and Hercegovina. Email <elkalem@bih.net.ba>



# ADMINISTRATION OF ISLAMIC AFFAIRS IN BOSNIA AND HERCEGOVINA\*

## INTRODUCTION

The twentieth century was a very turbulent period in the history of Bosnia and Hercegovina (henceforth, Bosnia). In 1908 the Hapsburg monarchy annexed this former Ottoman province which had been occupied by it four decades earlier. In 1918 the Hapsburg monarchy collapsed and Bosnia was incorporated into a South-Slav state, later known as Yugoslavia. The brief Nazi and Fascist occupation during the Second World War was followed by the socialist revolution and the establishment of Communist ruled Yugoslav Federation in 1945. The Yugoslav dream vanished in 1991 and in the following year Bosnia was recognized as an independent state. Bosnian Serbs opposed the independence of Bosnia and, with the direct involvement of Serbia and Montenegro, embarked on aggression against the legally elected government and launched a genocidal war against the non-Serb population. All this was possible mainly because the international community did not react to it adequately. As a result, the Muslim Bosniaks suffered great demographic and territorial loss. The country's economy and infrastructure were ruined and Muslim religious and cultural symbols were subjected to wanton destruction. The war which had started soon after Bosnia assumed the status of an independent state ended in 1995 and the efforts for the reconstruction of all segments of life in Bosnia were started. These efforts require considerable time for fruition.

All these events had a deep impact on the position, development and future of the Bosniaks. Until 1970s the Bosniaks were not recognized as a nation, as a political entity who deserved to have a state of their own. They were simply considered a religious community. In

\* *Islamic Studies*, 38:4 (1999), pp. 531-561

such a situation, the administration of Islamic affairs provided the necessary institutional framework for the preservation and development of their group identity. Even after the recognition of their status as a nation within the Yugoslav Federation, the Bosniaks were denied the opportunity to separate national institutions. In these circumstances, again, the only established institution that the Bosniaks had was the Islamic administration known as the Islamic Community (IC). Thus, it is not surprising that every change in the legal or political status of Bosnia and Bosniaks has been followed by corresponding changes in the position, structure and function of the Islamic Community.

A study of the Islamic administration in Bosnia is therefore much more than just a study of a religious hierarchy. It is the study of a search for adequate Islamic institutions in a non-Islamic environment, more or less successive responses to the challenge of witnessing Islam in South-East Europe and inner intellectual and ideological trends within the Bosniak community.

The present paper focuses on the legal status, organization and functions of the Islamic administration in Bosnia today (i.e. in the year 1999). Since the present state of Bosnia is the outcome of a century long development, an adequate historical background was deemed necessary in order to ascertain the sources and factors which have shaped today's Islamic administration in that country.

## Historical Background

The administration of Islamic affairs in Bosnia during more than five centuries has been arranged in modes which reflect different positions of Islam *vis-a-vis* state, internal development within the Muslim community, and external challenges and influences.

The largest portion of the history of Islam in Bosnia belongs to the Ottoman times: from the beginning of the fifteenth century to 1878. This period saw the spread of Islam on a mass scale among the Bosnian population, the establishment of the Islamic institutions and the rise of local Muslim scholars. During this period the Bosniaks also entered into the global Muslim community (ummah) via the Ottoman state. Together with other Muslim peoples from the Balkans, Anatolia, Caucasus, northern Iraq and Syria, they constituted the Ottoman Islamic cultural

zone.<sup>1</sup> The main features of the Muslim identity in this zone were the adherence to Ahl al-Sunnah wa'l-Jama'ah, to the Maturidi school in creed and to the Hanafi school in Fiqh. The influence of the Turkish language, Ottoman customs and 'adat found expression in a relatively uniform attire, cuisine, housing and habits, and the Ottoman political culture (nations of state, society, rights and obligations).<sup>2</sup>

The Ottoman state (Devlet-i 'Aliyye-i 'Otmaniyye) was built on the principle of the organic unity of religious and political authority (din wa dawlah). Within this framework, religious and political functions were performed by a united institutional structure.<sup>3</sup> Islamic institutions ('ulama', madaris, awqaf) were a part of that united structure. The administration of Islamic affairs was a responsibility of Muslim scholars, who in the Ottoman state possessed a firmly established hierarchy ('ilmiyye) that had no precedent in early Muslim history.<sup>4</sup> In this hierarchy several categories could be identified, namely ritual '*Ulama*' (those working as *imams*, *khatibs*), educational '*ulama*' (*mudarrises*), jurisprudential '*ulama*' (*muftis*, *qadis*), etc. At the top of the whole organization of '*ilmiyye* stood *Shaykh al-Islam*, the *Mufti* of Istanbul, seen later on as the highest religious functionary among the Sunni Muslims.<sup>5</sup>

Under the Ottoman rule, Bosnia was a province (*eyalet*, later on *vilayet*) of a highly centralized Empire. In that sense, the administration of Islamic affairs in Bosnia was a part of the administration of Islamic affairs in the Ottoman state.

*Muftis* in Bosnia enjoyed the rank of provincial *muftis* (*kenar muftileri*) and were appointed by the *Shaykh al-Islam*, most often from among local Bosniak scholars. They were authorized to give interpretation (*fatawa*) of the *Shari'ah* according to the Hanafi school. They regularly lectured in local *madrasahs*. Their appointment was for an indefinite period of time. *Muftis* constituted a high layer of local elite (*ashraf*).

1 See Seyed Hossein Nasr, "A Typological Study of Islamic Culture" in his *Islamic Life Thoughts* (London: George Allen and Unwin, 1981), 49.

2 See Kemal H. Karpat, "The Hijra from Russia and the Balkans: the Process of Self-definition in the Late Ottoman State" in Dale F. Erekelman and James Piscatori eds., *Muslim Travellers: Pilgrimage, Migration and Religious Imagination* (London: Routledge, 1990), 136-137.

3 See Niyazi Berkes, *The Development of Secularism in Turkey* (Montreal: McGill University Press, 1964), 9-10.

4 See Imail Hakki Uzuncarsili, *Osmanli Devletinin Ilmiye Teskilati* (Ankara: Turk Tarih Kurumu, 1988).

5 See R. Repp, *The Mufti of Istanbul: A Study of the Ottoman Learned Hierarchy* (London: Ithaca Press for the Board of Faculty of Oriental Studies, Oxford University, 1986).

*Qadis* were in charge of the administration of *Shari'ah* and *Qanun* (the Ottoman secular laws). They were appointed by the Sultan on the advice of *Qadi 'askar* (military judge) for the European part of the Empire (Rumeli). Candidates for judicial functions were chosen from among the learned class of the Ottoman state, the names of whom were recorded in the lists kept in the office of *Qadi 'askar*. Their term of office was usually for two years.

Imams, khatibs and mudarrises in Bosnia were under the jurisdiction of Rumeli *Qadi 'askar*. They were selected mostly from among the native Bosnian scholars and discharged their usual duties of leading prayers, delivering Friday sermon (*khutbah*), and teaching in local madrasahs respectively.

Members of the Ottoman administration of Islamic affairs were paid in different ways: *qadis* by means of fixed salaries and other officials by means of the usufruct of a piece of state land or allocations of a certain part of the income of *waqf*, established for the support of a specific masjid or madrasah.

*Waqfs* in Bosnia during the Ottoman rule were foundations established according to the Hanafi school of *Fiqh* by individual benefactors (*waqifs*) and managed by administrators (*mutawallis*).<sup>6</sup> The administrators were appointed by founders according to their will expressed in endowment charter (*waqfiyya*). This document also laid down details of the use of *waqfs* property and the distribution of its income. *Waqfs* acted as autonomous foundations supporting religious, educational, social and charitable purposes. The Ottoman state only exercised an overall supervision of their functions.

This state of affairs lasted until the end of the Ottoman rule in Bosnia and deeply influenced further developments.

In July 1878 the Congress of European powers held in Berlin, gave Hapsburg monarchy the right to occupy and administer Bosnia. This decision was an outcome of the European involvement in the settlement of affairs in the Balkans following the Serb uprising in Hercegovina (1875-76), following the Serbian-Ottoman war of 1876 and the Russian-Ottoman war 1876-1878. The Bosniaks resisted the occupying Hapsburg forces but their three-month-long resistance was eventually crushed in October 1878.

6 See Mehmed Begović, *Vakufi u Jugoslaviji* (Beograd: Srpska akademija nauka i umetnosti, 1963), 101.



The Hapsburg rule in Bosnia lasted for over forty years and left a significant impact on society, economy, politics and culture. The Hapsburg monarchy was a conglomerate of different territories united by a common ruler and ruling institutions. These institutions were German in character. Their legal system was based on Roman and German concepts and their administration was highly organized and effective. The historic mission of the Hapsburg monarchy was to protect Central and Eastern Europe from the Ottoman penetration and to keep Catholic nations of the Danube region together.<sup>7</sup>

THE RELATIONS BETWEEN RELIGION AND STATE IN THE HAPSBURG monarchy were based upon the concept of “recognized religious communities” which was adopted in 1874. According to this concept, the state guarantees freedom of conscience, belief and private manifestations of religious belief and practice, and does so only to the followers of “recognized religions”, i.e. religions recognized by the state. Recognized religious communities are corporations of public law.<sup>8</sup>

The Hapsburg government introduced this concept into Bosnia. Six religious communities were given the status of “recognized religions”: Islamic, Serbian Orthodox, Roman Catholic, Greek Catholic, Evangelic and Judaic.<sup>9</sup> The status of Islam dramatically changed. Instead of being the basic principle of social cohesion as it was in the Ottoman times, it now became one of several “recognized religions” within a non-Muslim state. The Bosniaks became a religious minority instead of being a part of the ruling elite.

This change brought about a new challenge to the Bosniaks: to build up a system of the administration of Islamic affairs which would not be identical with the organization of the state. Christians and Jews in Bosnia were in a comparative advantage. Under the Ottomans they already had a separate communal organization (*millet*), which enabled them to easily adapt to the Hapsburg regime. Relying upon Ottoman heritage and responding to new challenges during the first two decades of Hapsburg rule, the Bosniaks built a new administration of Islamic affairs. This system included religious hierarchy (*'ilmiyye*), religious education (*ma'arif*), endowments (*waqf*) and *Shari'ah* courts. The system was gradually built through the struggle over the prerogatives for the

7 M. S. Anderson, *The Ascendancy of Europe 1815-1914* (London: Longman, 1985), 107-117.

8 See: *The Catholic Encyclopedia* (1917), English translation posted on the Internet (<http://www.newadvent.org/cathen>), s.v. “The Austro-Hungarian Monarchy”.

9 Fikret Karčić, “Pitanje javnopravnog priznavanja Islama u jugoslavenskim krajevima nakon prestanka osmanlijske vlasti”, *Anali Gazi Husrevbegove Biblioteke*, XI-XII (1985), p. 116.

appointment of key officials, allocation of funding and the running of institutions. The struggle ended on 15 April, 1909 when the Habsburg monarch approved the Statute for autonomous administration of Islamic religious *waqf* and educational affairs (*Štatut za autonomnu upravu islamskih vjerskih i vakufsko-mearifskih poslova*). The Statute was in force in Bosnia until the Yugoslav monarch Aleksandar Karađorđević abolished the autonomy of the Islamic Religious Community in 1930.

The basic features of the administration of Islamic affairs envisaged in the Statute of 1909 were the creation of a council of '*ulama*' headed by *Ra'is* and the introduction of autonomy and elections into the administration of endowments and religious schools.<sup>10</sup>

The administration (governance, supervision and direction) of Islamic religious affairs was within the competence of *Majlis al-'Ulama*'. This body was composed of four '*alims* nominated by the '*ulama*' and appointed by Habsburg authorities. *Majlis al-'Ulama*' was headed by *Ra'is al-'Ulama*', the highest official of the Islamic administration in Bosnia.<sup>11</sup> This institutional solution was specific in two aspects. Firstly, the very title given to the religious head (*Ra'is al-'Ulama*') was without parallel among the Muslims in the Balkans in the post-Ottoman period. The Bosniaks adopted it from the Ottoman learned hierarchy in which *Ra'is al-'Ulama*' was an honorific title given originally to the *mufti* of Istanbul and later on to *Qadi 'askar* of the Rumeli. Among all other Muslims, only the Muslims of Palestine used this title for their religious heads during the British mandate (1920-1948).<sup>12</sup>

Secondly, a council of '*ulama*' was created to assist the *Ra'is* in governing Muslim affairs. In other Balkan states in post-Ottoman times, Muslim religious leadership was usually given to an official with the title Grand *Mufti* (*Bash Mufti*). The other elements of '*ilmijye* hierarchy - *imams* and *khatibs* - were the same as in the Ottoman times.

10 See Mustafa Imamović, "Pregled razvitka Islamske zajednice u Bosni i Hercegovini", *Glasnik Rijaseta Islamske Zajednice u Republici Bosni i Hercegovini*, 56: 1-3 (1994), pp. 53-63; E. J. Brill's *First Encyclopaedia of Islam* (1913-1936) vol. 2 of reprint edition (1993), s. v. "Bosnia and Herzegovina"

11 See Fikret Karčić, "The Office of *Ra'is al-'ulama*' Among the Bosniaks (Bosnian Muslims)", *Intellectual Discourse*, 5:2 (1997), pp. 109-120.

12 Robert H. Eisenman, *Islamic Law in Palestine and Israel* (Leiden: E.J. Brill, 1978), pp. 77-79; 95-96. This similarity was, most probably, a result of exchange of information between Habsburg and British authorities about the best way to arrange the administration of religious affairs of Muslims under the respective rule. Such correspondence between Lord Cromer and Austro-Hungarian envoy in Egypt, Baron Heidler, has been highlighted by Bosnian historian Tomislav Kraljačić, "Vjerska politika Kalajevog režima", *Godišnjak Društva istoričara Bosne i Hercegovine*, XXXIV (1983), pp. 17-77.

The administration of *waqfs* and religious educational institutions (*ma'arif*) was unified and given to the boards elected by Muslims. The electoral process was direct at the level of local communities and indirect at the district and provincial level.

Each community with at least 100 Muslims constituted a *jamat* (*jama'ah*). All eligible Muslim male members of *jamat* formed a *jamat* assembly (*džematska skupština*), which elected its executive body - *jamat majlis* (*džematski medžlis*). They administered religious and *waqf-ma'arif* affairs at local level.

Representatives of all the *jamats* in a district constituted district *waqf-ma'arif* committee (*kotarsko vakufsko-mearifsko povjerenstvo*). This body supervised *waqf* property in districts, checked whether the curriculum of Muslim educational institutions was properly carried out and supervised the work of *mutawallis*.

District *waqf-ma'arif* committees delegated their representatives to *waqf-ma'arif* provincial assembly (*Vakufsko-mearifski sabor*), the highest body of this segment of the Islamic administration. *Ex officio* members of this Assembly were *Ra'is al-'Ulama'* and *muftis* from six districts of Bosnia (Sarajevo, Mostar, Bihać, Banja Luka, Travnik, Tuzla). In this way two segments of the administration of Islamic affairs, the spiritual and the financial, were connected. The Assembly supervised subordinate *waqf-ma'arif* bodies, decided on the construction and renovation of *masjids*, *madrasahs* and *maktabs* and management of *waqf* properties. The Assembly had its executive body headed by a director.

*Waqf-ma'arif* authorities discharged all business within their jurisdiction autonomously and were bound only by the provisions of the Statute and law of the land. Appeal to the civil courts against the decision of these authorities was not allowed.

In 1909 religious education was provided in more than 1,000 old *maktabs* (elementary schools), 92 new *mekteb-i ibtida'i* (modernized elementary schools) and 42 *madrasahs* (high schools) with 1,613 students.<sup>13</sup> At the same time, immovable and movable property of *waqf* in Bosnia was estimated at 9,931.061 Kr (413,793 pounds). Thus *waqf* was considered the biggest private owner in the country. In Bosnia there were 1,050 individual *waqfs* at that time.<sup>14</sup>

The *Shari'ah* courts were the third segment of the Islamic administration in Bosnia. At the same time they also were a part of the

13 "Bosnia and Herzegovina", 762.

14 *Ibid.*, 762.

Hapsburg state machinery in the province.<sup>15</sup> Namely, in the very beginning of their rule, the Hapsburg authorities adopted the Ottoman Law on *Shari'ah* courts of 16 Safer 1276/15 September 1859. In this way, the jurisdiction of *Shari'ah* courts in Bosnia remained the same as in the Ottoman times: personal status of Muslims (*al-ahwal al-shakhsiyyah*) and *waqfs*. *Shari'ah* courts thus became a part of the judicial system of the Hapsburg monarchy and Islamic law a part of the legal system of a Christian state. The appointment of *qadis* was an exclusive prerogative of the Hapsburg provincial government in Sarajevo. At the same time, the Hapsburg government undertook the burden of financing the *Shariah* courts as well as the education of the future *qadis*. During the four decades of rule in Bosnia, the Hapsburg Monarchy modernized *Shariah* courts encouraging the unification of their substantial and procedural laws, introducing an appellate body within *Shari'ah* judiciary (High *Shari'ah* Court in Sarajevo) and providing *qadis* with modern legal education. The links between *qadis* and *Majlis al-'Ulama'* were preserved by dint of the right conferred on *Ra'is al-'Ulama'* to issue *murasalah* (a letter of authorization) to *qadis* appointed by the government and to supervise the *Shari'ah* College in Sarajevo (*Mekteb-i nuwwab*).

In 1918 the Hapsburg monarchy disintegrated and Bosnia was incorporated in a new South Slav state, initially called the Kingdom of Serbs, Croat and Slovenes and later renamed as the Kingdom of Yugoslavia. The administration of Islamic affairs in Bosnia, as developed in the Hapsburg times, continued to function. The Muslims in other parts of Yugoslavia had a separate religious administration. This state of affairs lasted until 1930, when the new regime of the Yugoslav king Aleksandar Karađorđević decided to introduce a unified administration of religious affairs for all Muslims in the country and to virtually take over the control of that administration. King Aleksander Karađorđević was a promoter of the ideology of "Yugoslavist unitarism", which viewed different South-Slav ethnic groups as one nation and attempted to eliminate any organization alongside ethnic criteria. As an outcome of this policy, all Muslims in Yugoslavia were put under a unified religious administration.

15 See Fikret Kačić, *Šerijatski sudovi u Jugoslaviji 1918-1941* (Sarajevo: Islamski teološki fakultet, 1985), 21-26.

To that effect, Law on the Islamic Religious Community of the Kingdom of Yugoslavia was passed on 31 January 1930.<sup>16</sup> From this time onward, the official name for the administration of Islamic affairs in Yugoslavia was “the Islamic Religious Community” (*Islamska vjerska zajednica*, henceforth IRC). Islam was considered a recognized religion and the internal organization of the IRC was regulated by its constitution passed by the state authorities.

The constitution of the new Islamic religious administration was passed on 9 July 1930.<sup>17</sup> This constitution abolished the autonomy of the Islamic administration and the principle of the election of its officials. The whole IRC was put under the control of the Ministry of Justice, which was also made in charge of religious matters. Instead of being elected, all religious officials were appointed by the higher political authorities.

Islamic affairs continued to be composed of four segments, i. e. religious hierarchy, education, endowment and *Shari'ah* courts. Religious hierarchy included *imams*, *muftis*, *Majlis al-'Ulama'* (in Sarajevo and Skopje) and the Supreme Islamic Council (*Vrhovno vjersko starješinstvo*) headed by *Ra'is al-'Ulama'*. Previously in Bosnia *Ra'is al-'Ulama'* used to be the head of *Majlis al-'Ulama'*. Now, because of the expansion of territorial jurisdiction of the Islamic administration, *Majlis al-'Ulama'* became a body for “the administration and supervision of the whole Islamic religious, educational and cultural life” in just one part of the state territory. The office of the *Ra'is al-'Ulama'* and the newly created Supreme Islamic Council were the highest bodies of the Islamic administration at the state level. The office of the *Ra'is* was moved from Sarajevo to Belgrade.

Education and endowments continued to be administered by *waqf-ma'arif* bodies: *waqf-ma'arif* councils in Sarajevo and Skopje at state level, district *waqf-ma'arif* committees and *jamat majlis* at local level. Only the local *majlis* was elected. Members of other bodies were appointed by the state or by higher *waqf-ma'arif* bodies. In 1930s,

16 *Službene novine Kraljevine Jugoslavije*, no. 29-X, 7 February, 1930; See Mustafa Imamović, “Opšte karakteristike vjerskog zakonodavstva šestojanuarske diktature”, *Glasnik Rijaseta Islamske Zajednice u SFRJ*, 54: 2 (1991), pp. 150-160.

17 *Službene novine Kraljevine Jugoslavije*, no. 167-LXIII, 25 July, 1930; See Mehmed Begović, “Organizacija Islamke verske zajednice u Kraljevini Jugoslaviji”, *Arhiv za pravne i društvene nauke*, no. 5 (1995), pp. 375-387 and “Legislation relative a l'organisation des affaires religieuses des Muslimans en Yugoslavie”, *Annuaire de l'Association Yugoslave de droit international*, Paris 1934, II, pp. 265-270.

*waqf-ma'arif* administration exercised jurisdiction over 1,647 individual *waqfs* in Bosnia and 18 *madrasahs*.<sup>18</sup>

*Shari'ah courts* continued to function as a part of the state judiciary, competent to administer Islamic law on Muslim personal matters and *waqf* affairs. The organization of *Shari'ah courts* developed in Bosnia when the Hapsburg rule was extended to the whole Yugoslav territory by means of the Law on *Shariah Courts* and *Shariah judges* of 21 March 1929.<sup>19</sup>

The establishment of control over the administration of Islamic affairs by the Serbian dominated Yugoslav state apparatus led to the abuse of *waqf* property and removal of Muslim leaders of high moral integrity from influential posts. The state control over the IRC was, to some extent, relaxed in 1936, when a Bosniak based political party - Yugoslav Muslim Organization (*Jugoslovenska muslimanska organizacija*) - joined a coalition government in Belgrade. The relaxation of state control over IRC did not mean the return of autonomy from 1909. Rather, a new type of influence was introduced, that of a Muslim political party.

The organization of the IRC was changed by the new constitution of the Community passed on 24 October 1936.<sup>20</sup> This constitution mainly preserved the previous organizational structure but introduced the selection of governing bodies and officials. The seat of *Ra'is al-'Ulama'* was returned to Sarajevo as the religious and cultural centre of the Muslims in that part of the Balkans. The Constitution of 1936, however, abolished the office of *mufti* and was strongly criticized by Muslim scholars for that. The authority for issuing *fatawa* was given to a member of *Majlis al-'Ulama'* called *fetwa-e emini*, a title borrowed from the internal organization of the office of *Shaykh al-Islam* of the Ottoman state. *Fetwa-e emini* was responsible for giving the "usual *fatwa*", meaning *fatawa taqlidiyyah*. For the interpretation of difficult and contradictory issues, a special body, the Council of *Ra'is al-'Ulama'* (*širi savjet Reis-ul-uleme*), was formed. This body issued several interpretations of Islamic law and published them in *Glasnik*, the official publication of the IRC since 1933.

The World War Two broke out in 1939 and Bosnia, together with other parts of Yugoslavia, was occupied by the Nazis and their collabo-

18 See: M. Ali Kettani, "Post-Ottoman Educational Institutions in the Balkans", *Islamic Studies*, 36:2, 3 (1997), p. 466; Fikret Karčić, "Vakufi i reprivatizacija", *Glasnik Rijaseta Islamske Zajednice*, 54:3 (1991), p. 268.

19 *Službene novine Kraljevine Jugoslavije*, no. 23-XXIX, 28. March, 1929.

20 *Ibid.*, no. 256-LXIV, 5 November, 1936.

rationists. The leadership of the IRC stuck to the policy of keeping the existing administration of Islamic affairs intact until the war ends.

The end of the war in 1945 was accompanied by the change of state organization and political regime in the country. The unitarian concept of Yugoslavia was replaced by that of federation, kingdom by republic, and parliamentary democracy by socialist "people's democracy". These changes greatly affected the position of Islam (as well as other religions) and the organization of the IRC.

The new socialist regime proclaimed "the separation of church from state" and the principle that "religion is a private affair of the citizens". These principles of secular state, borrowed from Western European contexts, were interpreted in socialist practice as subjugation of religious communities to state, their treatment as "allies of the capitalists" and the persecution of those known to be believers.

The change in the social, political and legal position of religion in Bosnia affected all segments of the administration of Islamic affairs. First, *Shari'ah* courts were abolished on 5 March 1946 and the Islamic law lost its binding legal force for the Muslims. Its place was taken by the civil law derived from the European sources.

Second, in 1952 the government closed all elementary religious educational institutions - *mektebs* - and left only one secondary school - Gazi Husrevbeg *Madrasah* in Sarajevo - to prepare future *imams* and *khatibs*. Religious instructions to the ordinary believers could be given only during weekends in *masjids* and even that legal possibility was restricted by the policy of local authorities.

Third, *waqf* property was largely expropriated and nationalized between 1945 and 1958.<sup>21</sup> In the beginning, the socialist government nationalized the arable lands endowed to *waqfs*. Later on, the companies, hotels and spas belonging to *waqfs* were taken over. The final blow was the nationalization of residential and business premises. In urban areas, Muslim graveyards were regularly expropriated and turned into parks, parking places or developing areas.

These measures led to the extinction of three segments of the administration of Islamic affairs in Bosnia: *Shari'ah* courts, *ma'arif* and *waqf*. What remained was the religious hierarchy and some rudiments of education (informal religious instruction and one *madrasah*) and *waqf* (whose jurisdiction was now reduced to *masjids*, their vicinities, adjacent lands and housing for religious officials).

21 See Fikret Karčić, "Vakufi i reprivatizacija", 268-269.

The Constitution of 26 August 1949, which was amended in 1950 and 1955 led to the curtailment of the functions of the IRC.<sup>22</sup> In terms of organizational structure, the Constitution included the concept of federation into the IRC, reflecting in that way the structure of Yugoslavia. In all republics with considerable Muslim population, separate *Majlis al-'Ulama'* and *waqf* assemblies were formed. At the federal level, there was Supreme *Waqf* Assembly (*Vrhovni vakufski sabor*), as the highest representative body, and Supreme Islamic Council (*Vrhovno islamsko starješinstvo*), as the collective leadership of the community. In this way, Muslim religious leadership resembled that of the Federal Assembly and Federal presidency of the then Yugoslavia.

At the lower level, within each territory under the jurisdiction of *Majlis al-'Ulama'*, *waqf* boards dealt with the management of properties that remained with them, collection of donations and arranging for the emoluments of imams. Imams performed the usual ritual duties, weekend religious instructions and other routine functions relating to the Islamic identity.

During the late 1960s, the socialist regime in Yugoslavia became more liberal. Consequently, more space for activities was given to religious communities. At the same time, the Federal Constitution of Yugoslavia of 1968 gave more power to the federal units. These developments found their reflection in the Constitution of the Islamic Community of 5 November, 1969.<sup>23</sup>

This Constitution omitted the attribute "religious" from the official name of the community. This move was interpreted in different ways. Muslim leaders offered explanation that the attribute "religious" is implied in the attribute "Islamic", others held that the Muslim leadership wished to secure for itself more space for influence, beyond the narrowly defined "religious" sphere. Anyhow, a new name for the Islamic administration came into being: the Islamic Community (IC).

The other important feature of this constitution is the abolition of duality in the administration of religious and financial matters by assigning the former to *Majlis al-'Ulama'* and the latter to the *Waqf* Assembly. The constitution introduced an integrated system of administration: it was laid down that only one body would be competent to deal with all issues. The new administration included boards of the IC at the local level, offices of *mufti* at the district level, assembly at the state level and the

22 *Glasnik Vrhovnog islamskog starješinstva u FNRJ*, 1 (13): 1-3 (1950), pp. 59-67.

23 *Glasnik Vrhovnog islamskog starješinstva u SFRJ*, 33: 1-2 (1970), pp. 105-112.



Islamic council (*Starješinstvo*) as its executive body. At the federal level, there was the Supreme Islamic Assembly (*Vrhovni sabor*), consisting of delegates of state assemblies, and Supreme Islamic Council (*Vrhovno islamsko starješinstvo*). The latter was headed by *Ra'is al-'Ulama'*.

After more than 30 years of dormancy, the Constitution returned the *muftis* back to the Islamic administration.<sup>24</sup> However, the *muftis* were given administrative duties in the religious hierarchy (supervision of *imams*). They were, however, not entrusted with the traditional *ifta'* function. They only had the right to suggest to the Supreme Islamic Council to issue *fatwa* on certain issues. This development was possibly an outcome of the abolition of Islamic law, a development which confined the relevance of *Shari'ah*. Moreover, the top leadership of the IC constantly displayed the tendency to the area of *'ibadat* to reserve the interpretation of *Shariah* for itself.

During the 1970s and 1980s, Bosnia and other parts of Yugoslavia witnessed Islamic revival which manifested itself in the reconstruction of mosques, increased religious education, Islamic publication, the use of Islamic social symbols and, finally, the emergence of Muslim political parties.<sup>25</sup>

Hundreds of new or renovated masjids, funded by local Muslims, provided sufficient infrastructure for the renewed interest of people in Islam. The Gazi Husrev-beg Madrasah in Sarajevo opened its Girls' division. In the same year, the Faculty of Islamic Studies in Sarajevo was opened to continue the tradition of higher Islamic education in the Bosnian capital which had been stopped in 1946. Islamic publishing house El-Kalem was established and very soon came up with a large circulation of Islamic classical texts and the works of contemporary Muslim authors.

For all these activities the existing Constitution of the IC was too narrow. Also, in 1974 Yugoslavia adopted a new constitution which moved the state organization toward confederacy. As in the past, changes in the political system found their reflection in the organization of the IC.

On 12 April 1990, the Supreme Islamic Assembly in Sarajevo passed a new Constitution of the IC.<sup>26</sup> This Constitution divided the institutional

24 See Fikret Karčić, "Opšti pogled na istorijat muftijske službe kod nas", *Takvim*, 1987, pp. 124-125.

25 Fikret Karčić, "Islamic Revival in the Balkans 1970-1992", *Islamic Studies*, 36: 2, 3 (1997), pp. 570-574.

26 For the text of Constitution and its official translation into Albanian, Arabic, English, Macedonian and Turkish language, see, *Glasnik Rijasetu Islamske Zajednice u SFRJ*, 53:2 (1990).

structure of the IC into organs, institutions and officials. The organs of the IC were local *jama'ats*, boards (*odbori*) formed mostly on the level of boroughs, *mufti* offices (*muftijstva*) which were mostly at the level of districts, the IC assemblies and their executive organs - *mashikhats* - the jurisdiction of which coincides with the borders of the Yugoslav states (*republike*), and finally, the Supreme Assembly of the IC as the highest representative body of the Muslims in Yugoslavia. The executive body of this assembly was the *Riyasat*, at the head of which stands *Ra'is al- 'Ulama'* as a religious leader of the Muslims in Yugoslavia. The seat of *Riyasat* is in Sarajevo. Members of all these bodies were to be elected and their term of office was limited. There was also the Islamic Council - a body of scholars in charge of keeping constitutionality within the IC and providing interpretation of Islamic teachings - an institution, perhaps, similar to the Council of Islamic Ideology in Pakistan.

The institutions of the IC were *madrasahs*, faculties, institutes, libraries and a museum (opened in Sarajevo). The Constitution also provided for the establishment of charitable, humanitarian and other institutions, something that was unimaginable in Bosnia during the previous decades. Preparations for the establishment of *Waqf* Bank in Sarajevo began together with demands for the return of nationalized *waqf* properties. The Muslim Informative Agency (MINA) was among the new institutions that were formed.

Imams, khatibs, mu'allims, wa'izes, muftis, lecturers in *madrasahs* and faculty staff were officials of the IC. A characteristic feature of this Constitution was the use of Islamic references in the Preamble and Islamic terms for the governing bodies of the IC, in the normative part, which seems to be aimed at providing them with traditional source of legitimacy (such as *mashikhata*, *Riyasat*, etc.). Previous constitutions had used plain language of government bureaucrats and had avoided the traditional terminology.

The institutional structure of the IC, as laid down in this Constitution, looked developed and the election process was democratized. The functions of the community were diversified and beyond the restrictive socialist legislation on religious communities still in force. The Constitution of 1990 gave almost full prerogatives for the organization of religious life to *mashikhats* - state level bodies - thus enabling the IC to function in the case of confederalization of Yugoslavia and even in the case of its dissolution. In that sense *mashikhats* of the IC were comparable with state governments in former Yugoslavia and *Riyasat* with the Federal presidency.

In 1992 the Yugoslav Federation broke down and its “domino effect” brought an end to all organizations, associations and institutions built on the same principle. In that wave the Bosniaks became victims of the Serbian genocidal war. For one year, from April 1992 to April 1993, the old structure of the IC theoretically continued to work. “Theoretically” in the sense that the members of the IC together with their *imams* were being killed, sent to concentration camps, tortured, humiliated and expelled, nearly 1000 *masjids* deliberately destroyed, libraries burnt and governing bodies in besieged towns and cities became paralyzed.

On 1 April 1993 the representatives of different bodies of the IC, Muslim organizations and institutions, met in Sarajevo and proclaimed themselves as the Constituent Assembly of the IC (*Obnoviteljski Sabor*). This body issued a declaration calling for the reconstruction of the autonomous IC in Bosnia.<sup>27</sup> The Constituent Assembly proclaimed itself as the highest authority in the IC and passed on the same day an interim Basic Regulation (*Ustavna odluka*), which will serve as a legal basis for the organization and function of the IC in Bosnia until the war ends.

This move was justified by the statement that with the dissolution of the Yugoslav federation all legal acts which had regulated the status and organization of the IC had lost their validity. The IC needed a new basis for its legitimization and found it in a revolutionary move aimed to revive the Islamic administration which had been introduced in Bosnia in 1909.

However, the interim Basic Regulation for all practical purposes relied mainly on the Constitution of the IC of 1990, which had been adjusted in certain aspects to meet demands of the new situation. The new organizational structure again was composed of organs, institutions and officials. Basic organs were the same: jama'ats, boards, and mufti offices. Others were adjusted: Na'ib al-Ra'is (Deputy Ra'is) replaced the president of the Mashikhat, the Riyasat replaced Mashikhat and Constituent Assembly replaced the Assembly of the IC. Institutions and officials remained the same.

The organization of the IC from the time of Yugoslav Federation was slightly modified to fit to the circumstances of independent Republic of Bosnia and Hercegovina.

The interim character of this arrangement found its expression in the title of the religious leader - *Na'ib al-Ra'is* - and in the name of the highest legislative body — Constituent Assembly (*Obnoviteljski labor*).

27 For this period of the reconstruction of the IC in Bosnia, see documents published in *Glasnik Rijaseta Islamske zajednice u Republici Bosni I Hercegovini*, 56: 1-3 (1994).

The new Islamic administration was registered in the Municipality of Sarajevo Centar on 5 May, 1993 under the name Islamic Community of the Republic of Bosnia and Hercegovina (*Islamska zajednica Republike Bosne i Hercegovine*).<sup>28</sup> The registration was done according to the Law on legal status of religious communities of 1976, passed by the socialist authorities, which had been adopted by new Republic of Bosnia and Herzegovina. This law required registration of each religious community, similar to other societies, which after the registration enjoyed the status of a private corporation. (It is a paradox that a century-long institution of a Bosniak nation needed registration with municipal authorities as a new society.)

A new leadership of the IC was elected by the Constituent Assembly in its first session on 28 April 1993. Professor Dr. Mustafa Cerić, a Ph.D. holder from Chicago University and Professor of Aqida at ISTAC (Malaysia), was elected as *Na'ib al-Ra'is* and Hafiz Ismet ef. Spahić, an *imam* of Gazi Husrev-beg Mosque, as his deputy. On 22 May 1993 the Constituent Assembly elected the interim *Riyasat* named as *Na'ib's* council, a body which included *muftis* and prominent members of the Community.

The Basic regulation of 1993, provided in the Article 57 that the Constituent Assembly will call for elections after the cessation of the state of war in Bosnia and thus replace emergency administration with a permanent one. The elections were conducted in the spring of 1995 and permanent Assembly of the IC was constituted on 28 April 1995. On 26 November 1997 this Assembly adopted a new Constitution, which is a legal basis for the present administration of Islamic Affairs in Bosnia.

## CONSTITUTION OF THE ISLAMIC COMMUNITY OF 1997 AND THE PRESENT ADMINISTRATION OF ISLAMIC AFFAIRS IN BOSNIA

The Constitution comprises 87 articles divided into ten chapters. These are the Character and Principles of the IC, General Regulations, Obligations and Rights of Members of the IC, the Property of the IC, the Organization of the IC, the Institutions of the IC, the Electoral System,

<sup>28</sup> *Ibid.*, 83.

the Functions of the Organs and Institutions of the IC During the State of War, Adoption of and Amendments to the Constitution, Transitional and Final Regulations.<sup>29</sup>

The Constitution in its Preamble refers to the Holy Qur'an (3:103 and 200) and the *hadith*: "I have left you with two things with which, if you keep to them, you will not go astray: Allah's Book and my *Sunnah*" - as a source of inspiration.

The Constitution defines in detail the character and principles of the IC in Bosnia and Hercegovina. Since these principles underline the philosophy of the IC and the scope of its activities, they will be dealt with *in extenso*. The IC is the sole and united community of Muslims in Bosnia and Hercegovina, of Bosniaks outside their homeland, and of other Muslims who accept it as their own (Article I). The autonomy of IC is based on the religious and legal institutions of Bosnian Muslims from the time of Ottoman administration in Bosnia (Article II). The IC in Bosnia and Hercegovina is an inseparable part of the *Umma* (Article III). The organization of the IC and its activities are derived from the Holy Qur'an and the *Sunnah*, Islamic traditions of the Bosniaks and the requirement of the time (Article IV). The IC is independent in regulation of its activities and in the management of its property (Article VI).

The aim of the IC is that all of its members should live in conformity with Islamic norms. The aim is being achieved by promoting good and preventing evil (Article V). The IC protects the authenticity of the Islamic norms and assures their interpretation and application. In the interpretation and performance of the Islamic religious rituals the Hanafi *madh-hab is* to be applied (Article VIII). The IC dedicates itself to the preservation of the values of marriage and family life and takes care of the Islamic education and upbringing of its members (Article IX).

The IC is taking care of the religious rights of Muslims (Article X) and provides the necessary conditions for its members so that they may perform their Islamic religious obligations (Article XI). The IC also organizes and supports activities which improve social and financial living conditions of Muslims (Article XII).

The IC establishes and maintains contact and cooperation with Islamic communities, institutions and organizations worldwide (Article XIV) and cooperates with other religious communities and organizations promoting peace, justice and good will among all people (Article XV).

29 For the official English translation of this document, see *Constitution of the Islamic Community in Bosnia and Herzegovina* (Sarajevo: Rijaset Islamske zajednice u Bosni i Hercegovini, 1418/1997), 34.

Internally, all activities within the IC are subject to the principle of legality, community welfare and responsibility. Governing posts are subject to the principles of election and term limitations (Article XVI). Posts may be entrusted only to those who have appropriate competence and who have acquired a good reputation in the *jama'a* where they live and the environment where they work (Article XVII).

In comparison with previous basic acts of the IC, the Constitution of 1997 deals in the most comprehensive way with the philosophy and character of the Islamic administration. Belonging to Bosnia and Bosniak ethnic group is stated side by side with adherence to the Muslim world community. For the first time this document acknowledges derivation of modern Islamic institutions in Bosnia from the Muslim practice in this country during the Ottoman rule, a fact which is historically true but which was not "politically correct" to say during the Yugoslav times. Other influences are subsumed under the constitutional expression "Islamic tradition of the Bosniaks and the requirements of the time" (Article IV).

It is also significant that the Constitution emphasizes rituals ('ibadat) and ethics (akhlaq) as of its primary interest. Consequently, the family and local Muslim community (jama'ah) is the environment in which most of the activities of the IC will take place. Additionally, the Constitution also recognizes the importance of social and economic development of Muslims and provides for the involvement of the IC in this segment of life. This way of defining the scope of activities of the IC corresponds to the conditions which exist in secular states, where the main areas of the manifestation of Islam are 'ibadat, akhlaq, and mu'amalat.

Chapter I, on general regulations, mainly restates the nature and symbols of the IC. The IC is a legal person (Article XVII), its headquarters are in Sarajevo (Article XX), it has its own flag (green with a white crescent and five pointed star - actually the flag of the Ottoman *Khilafah*) and logo (Article XXII and XXIII). The official language of the IC is Bosnian and the official calendars are *Hijri* and Gregorian (Article XXV and XXVI).

Chapter IV, on the financial resources of the IC, enumerates that the property of the IC consist of waqfs, membership fees, the zakat, sadaqat al-fitr and qurban, revenue of the profit-generating agencies, funds, gifts, testaments (wasiyyah), and other incomes (Article XXX).

Waqfs are mentioned in the first place, as in the Constitution of 1990, indicating the long-standing expectation of the IC for the return of nationalized Muslim endowments. (However, up-till now, waqfs have not been returned to their original owner - the IC). In that sense, the Constitution also reintroduces a special body for the management of waqf - Waqf head office (Vakufska direkcija), which had been abolished after the nationalization of endowments by the socialist regime.

Chapter V of the Constitution deals with the organization of the IC. The organizational structure of the IC consists of *jama'ats*, *majlises*, *mufti* offices, the *Riyasat*, *Ra'is al-'Ulama'*, the Council of the IC and the Constitutional Court. This organizational structure is a combination of organs envisaged by the Statute of 1909 and the Constitution of 1990, with certain innovations.

The basic organizational unit of the IC is *the jamat*, which is formed in an area where at least 100 Muslim households exist. Islamic affairs at this level are conducted by the *jamat* assembly, which consists of all Muslims of that area who have reached the age of 18 years, and the *jamat* board as its executive body (Articles XXXIV-XXXVIII). The religious life of the *jama'at* is a responsibility of an *imam*, while the *jama'at* board deals with administrative and financial matters.

A higher organization unit is the *majlis*, which normally consists of at least seven united *jamats*. The decision-making body of the *majlis* is Assembly, consisting of elected members of *jamats*. The Executive Board of the *majlis* is the executive body (Articles XXXIV-XL). These bodies deal with administrative and financial matters. The religious leader in a designed territory of the *majlis* is the chief *imam* (*glavni imam*), a title which is a Bosnian translation of Ottoman *bash imam*.

The Constitution does not explicitly mention that the next higher organizational unit is *muftuluk* (Tur. *muftuluk*), but it could be interred from the order of exposition. (Articles XLIII-XLVIII). The jurisdiction of *mufti* includes several *majlises* and is determined by the Council of the IC. The *mufti* is appointed by the Council upon the proposal of the *Ra'is al-'Ulama'*. Within *muftuluk* there are no specific decision-making and executive bodies which correspond to those at the lower level. The *mufti* deals with religious matters that include issuing *fatawa*, supervision of *imams*, *khatibs*, *mua'llims* and *mudarrises*, watching over the protection of the Muslims religious rights, etc. In discharging his duties, the *mufti* is assisted by a council made up of all chief imams

from the territory of his jurisdiction and the principals of Islamic high schools (*madrasahs*). At present, there are eight *muftiluks*: Sarajevo, Zenica, Mostar, Travnik, Banja Luka, Bihać, Tuzla and Goražde.

The highest religious and administrative organ of the IC is the *Riyasat*, headed by *Ra'is al-'Ulama'* (Articles XLIX-LIV). This fifteen members' body is elected by the highest representative and the legislative body of the IC - the Council. Thus, the position of the *Riyasat* corresponds to the position of collective presidency in state organization. The competence of *Riyasat* comprises, *inter alia*, supervision of the executive organs and institutions of the IC; the appointment, transfer, and dismissal of the chief *imams*, the *imams*, the *khatibs*, and the *mu'allims* as well as deans and principals of Islamic educational institutions; approving the curricula for Islamic education; care to oversee the protection of Muslim religious rights; supervision of the collection of *zakat* and *sadaqat al-fitr*; approving the establishment of new *waqfs*; registration of Islamic educational institutions; confirmation of the appointment of teaching staff in Islamic institutions of higher learning, and the establishment and maintenance of the relations of the Muslims of Bosnia with Islamic communities around the world.

The *Ra'is al-'Ulama'* heads the *Riyasat* and is the Grand *Mufti* of the IC and its supreme authority (Articles LV-LXI). He symbolizes the unity of the *din* and *ummah* (this expression has replaced the Ottoman *din wa dawlah*) and represents the IC within the country and abroad. The *Ra'is* is assisted by his deputy. His term of office is seven years with the possibility of re-election for an additional term. (Terms of office for other officials and bodies are usually four years.) Candidates for this post are nominated among the high-ranking '*ulama'* and election is done by a special electoral body which represents all organizational units of the IC.

The highest representative and legislative body of the IC is the Council (Bos. *Sabor*) (Articles LXII-LXIV). This is a parliament of the IC responsible for the legislation (adoption of constitution, passing of regulations), formulating policies, approval of budget, appointment, transfer and dismissal of *muftis*, selection of the members of the *Riyasat*, and appointment of the members of the Constitutional Court, among others.

The Council consists of 83 members and holds the sessions at least twice per annum. Apart from representatives of *muftiluks* from Bosnia, Bosniak communities from other countries are also represented in this



body. These are the Bosniaks living in Sandžak (a part of Serbia), those in Croatia and Slovenia who have their own religious administration (*mashikhat*) arranged mainly according to the mashikhat model adopted by the Constitution of 1990. In the same way, Bosniak jama'ats from Western Europe, North America and Australia have their representatives in the Council.

The Constitution provides for the establishment of the Constitutional Court as the highest body for the control of the legality within the IC (Articles LXV-LXVIII). A similar body, under the name *Islamski savjet* (Islamic Council), had been, for the first time in the history of the IC, envisaged in the Constitution of 1990, but was never established. Now it has been introduced under the name Constitutional Court which resembles the concepts of European continental law. Five members of this court, appointed from among outstanding experts in religious, social and legal sciences, will supervise the application of the rule of law within the IC and resolve conflicts of competence which may arise between different bodies. The decisions of this Court are binding on all organs and institutions of the IC.

Chapter VI deals with the institutions of the IC (Articles LXIX-LXXVIII). The Constitution provides a ground for the establishment of educational, social, humanitarian and financial institutions. In 1999, the following higher educational institutions functioned in Bosnia: the Faculty of Islamic Studies in Sarajevo (circa 300 students), Islamic Teachers' Academy in Zenica (circa 200 students) and Islamic Teachers' Academy in Bihać. At the same time, there are six *madrasahs* (secondary schools). They are Gazi Husrev-beg in Sarajevo (established in 1537; the only one which continuously worked since Ottoman times), Osman efendi Redžović in Gračanica (reopened in 1992), Džemaludin ef. Čausević in Cazin (established in 1993), Behram-beg in Tuzla (reopened in 1993), Elči Ibrahim-Pasha in Travnik (reopened in 1994) and Karađoz-beg in Mostar (reopened in 1995).

It is evident that five *madrasahs* were reopened in Bosnia during the war time and that they represent the revival of the most important regional centres of Islamic learning forcibly closed down after the Second World War.<sup>30</sup> In 1995, the IC opened a new type of high school named The First Bosniak Gymnasium (*Prva bošnjačka gimnazija*). This type of school existed in Bosnia during the Hapsburg rule and was

30 See *Islamska zajednica Bošnjaka*, Sarajevo: MINA, 1996, 31-35.

revived in order to prepare a new generation of Bosniak intellectuals with an Islamic and national orientation.

Other institutions include Gazi Husrev-beg Library (established in 1537), Waqf Gazi Husrev-beg (established in 1513), El-Kalem publishing house (established in 1974), Centre for Islamic Architecture (established in 1993) and the like.

Finally, among the institutions of the IC, the Constitution includes the Sufi orders, which are to be established in accordance with the Shari'a and Tariqat. (Article LXXI). A similar provision existed in the Constitution of the IC of 1990. Previously, Sufi orders were not considered as a part of the official structure of the IC because of the antagonism that had developed between some leading 'ulama' and Sufi shuyukh.

Chapter VII of the Constitution regulates the electoral process in the IC (Articles LXXIII-LXXVI). The election is based on the democratic criteria in force in the present political system of Bosnia. These are common and equal voting rights, minimum age of 18 years for both active and passive voting rights, elections by secret ballot from among more than one candidate, etc.

Chapter VIII deals with the functions of the organs and institutions of the IC during the state of war (Articles LXXVII-LXXVIII). Even though the Constitution was adopted after the end of the state of war, the legislators regulated this issue in order to avoid possible recurrence of confusion which arose in 1992, when representative bodies were paralyzed and a large network of the IC was destroyed. During the state of war the Constitution obliges all organs and institutions to continue to function and makes their heads responsible for that. In the case of incapacitation of the Council and the *Riyasat*, a special body consisting of top leaders will govern the IC.

The last two chapters of the Constitution regulate adoption of and amendments to the Constitution (Article LXXIX) and transitional regulations (Articles LXXX-LXXXVII). The Constitution required that new elections for all elected bodies of the IC be scheduled within two months after the promulgation of the Constitution and installation of newly elected officials and bodies within six months from the date the election were scheduled. These requirements had been met and newly elected leadership of the IC led by Professor Dr Mustafa Cerić as *Ra'is al-'Ulama'* has been inaugurated with full legitimacy.

## RELATIONS BETWEEN THE ISLAMIC ADMINISTRATION AND STATE IN TODAY'S BOSNIA

During a century long history of modern Islamic administration in Bosnia, the internal arrangement of the IC has been regularly preceded by the state regulation of the status of religious communities. All changes in the internal structure of the Islamic administration has usually reflected certain changes in the state organization or in the social role of religion.

The Constitution of 1997 is an exception to this practice. Namely, this document was adopted before the final regulation of the position of religious communities in post-Dayton Bosnia. This development however, was a historical necessity - a very important segment of the life of the Muslims in Bosnia could not have been left without proper organization just because of the slow transformation of state legal system.

The legal system of today's Bosnia, with regard to the positions of the religious communities, contains different and conflicting provisions. This situation is an outcome of the previous legal heritage, new circumstances, and unfinished transformation of the legal system of Bosnia after the Dayton peace accord.<sup>31</sup>

The General Framework Agreement for Peace in Bosnia and Hercegovina, initialled in Dayton (USA) on 21 November 1995 and signed in Paris on 14 December 1995, included the Constitution of Bosnia and Hercegovina in its Annex 4. According to this Constitution, post-war Bosnia is made up of two entities: the Federation of Bosnia and Hercegovina (usually referred to as Bosniak-Croat federation) and the Republic of Srpska. The former is established on 51 % of the pre-war Bosnian territory and the latter on 49% of the state territory, previously cleansed from non-Serb population (mainly Muslim Bosniaks) and deprived of its historical identity. Both the entities possess the attributes of state: territory, government, constitution, military, symbols (flag, anthem, national holidays) and the like.

Within this framework, human rights and freedoms, including religious freedoms, are regulated by the Constitution of Bosnia and Hercegovina, the Constitution of the Federation of Bosnia and Hercegovina

31 The author thanks Mr Muhamed Salkić, the Secretary General of the *Riyasat* of the IC in Sarajevo, for relevant information regarding the present position of religious communities in Bosnia.

and the Constitution of the Republic of Srpska.<sup>32</sup> The position of the religious communities should be further regulated by relevant laws.

The treatment of the position of religion in these constitutions is as follows. The Constitution of Bosnia and Hercegovina in its Article II (3) only mentions “freedom of thought, conscience and religion” while enumerating human rights and fundamental freedoms.

The Constitution of the Federation of Bosnia and Hercegovina (henceforth, the Federation), adopted on 18 March 1994, contains more detailed provisions on this matter. Among the enumerated human rights and fundamental freedoms (Article 2b) the Constitution includes: “freedom of thought, conscience and belief, freedom of religion, including private and public worship”.

The Constitution does not contain any provision on the relations between state and religious communities in the Federation, nor how they are going to be regulated.

In this situation, the position of religious communities in the Federation is still formally regulated by the Law on legal status of religious communities of the Socialist Republic of Bosnia and Hercegovina from 1976, which was adopted together with other laws by the independent Republic of Bosnia and Hercegovina. However, this law is very restrictive towards activities of religious communities and as such is contrary to the Constitution of the Federation and the Constitution of Bosnia and Hercegovina. Namely, these documents stipulate that if an existing law contradicts international standards on human rights and freedoms, then the enumerated international instruments have priority. Among these instruments, the Constitution of the Federation mentions 1981 (UN) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief. The General Framework Agreement (Annex 4) in Article II (2) stipulates: “The rights and freedoms set for in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Hercegovina. These shall have priority over all other laws.”

In any case, the scope of the activities of all religious communities in the Federation, including the IC, is wider than the present formal legislation allows it. Also, it could be inferred that the Federation would continue to adhere to the model of secular state - without any

32 For English version of these documents, see <http://www.bihfedmb.org> and <http://www.ohr.int-gfa-htm>

official religion and with large religious freedoms. The concept of secular state as presently understood in the Federation has moved closer to the USA model (which consists of the state's non-involvement in religious questions without adopting, in any way, a hostile position toward religion). The present concept is a clear break from the previous restricted, socialist concept.

The situation is different in the territory of the Republic of Srpska. This entity from the very beginning was meant to be an exclusive state of the Serbian (Orthodox) people. Consequently, in today's composition of this entity non-Serbs (the Muslim Bosniaks and Catholic Croats) constitute only 5% of the total population.<sup>33</sup> After persecutions of "others", unprecedented in contemporary Balkan history, the Constitution of the Republic of Srpska in its Article 28 proclaims:

Religious freedom is guaranteed. Religious communities are equal before law; they are free in conducting their religious affairs and rituals; they may establish religious schools and give religious instructions in all schools of all level of education; they may organize business and other activities, receive gifts, establish endowments and administer them in accordance with law.

The Serbian Orthodox Church is the church of the Serbian people and other peoples of the Orthodox faith.

*The state financially supports the Orthodox Church, cooperate with it in all areas and specially with regard to preservation, cherishing and development of cultural, traditional and other spiritual values (unofficial translation).*

This Constitutional provision gives the Orthodox Church in Republic of Srpska the status of state religion. The authorities of the Republic of Srpska have initiated work on the legislation on religious communities, a result of which is the draft of the law on religions, churches and religious communities. This draft stipulates:

*The Serbian Orthodox Church, the Roman Catholic Church, the Islamic and Jews communities, as historically rooted spiritual communities on the soil of the Republic of Srpska, are completely equal before law (Article 3).*

*In the Republic of Srpska as a state of Serbian people, the Serbian Orthodox Church is an eternal custodian and an unquestionable countenance of spiritual, cultural, historical identity of the Serbian nation.*

33 See official homepage of the Republic of Srpska, <http://www.srpska.org>

*The state financially supports the Serbian Orthodox Church and specially fosters those church affairs and activities which are meant to cherish, develop and defend national, cultural, historical and spiritual values of the Serbian nation (Article 4) (unofficial translation).*

According to this draft, the Republic of Srpska intends to identify four religious communities as “recognized religious communities” and continue to consider the Serbian Orthodox Church as the “national church”. This approach is very similar to the Constitution of Greece, which differentiates between the “dominant religion” (Orthodox Church) and the “known religions” (Catholic Church, Judaism and Islam).<sup>34</sup>

It is very interesting that the Republic of Srpska did not follow the example of its protector, the Federal Republic of Yugoslavia, which opted for the separation of church and state and proclaimed that all churches are free and equal in conducting their religious affairs and in performing religious rites (Article 18 of the Constitution of the Federal Republic of Yugoslavia, adopted on 27 April 1992).<sup>35</sup> It seems that the Republic of Srpska did not feel any need to limit or hide its ethnic and religious exclusivity not even by resorting to “cosmetic” legal provisions.

In the two entities in today’s Bosnia, there are two different systems of the arrangement of the state-religion relations. In order to bring uniformity in this important aspect of life, the World Conference of Religions for Peace (WCRP), which is helping the reconstruction of inter-confessional relations in Bosnia, initiated work on a new law on religious communities. This work started in summer 1999 by setting up a committee of experts from each religious community. Hopefully, their work will result in an advanced and uniform regulation of state-religion relations on the whole territory of Bosnia and Hercegovina.

Meantime, the Islamic administration, as exposed earlier, fully exists and functions only on the territory of the Federation. On the territory of the Republic of Srpska, the main administrative centre of the remainder of Muslims is *muftiluk* of Banja Luka.

34 See: W. A. R. Shadid and P. S. Van Koningsveld, *Religious Freedom and the Position of Islam in Western Europe* (Kok Pharos Publishing House, 1995), 14.

35 <http://www.uni.wuerzburg.de/law/>

## CONCLUSION

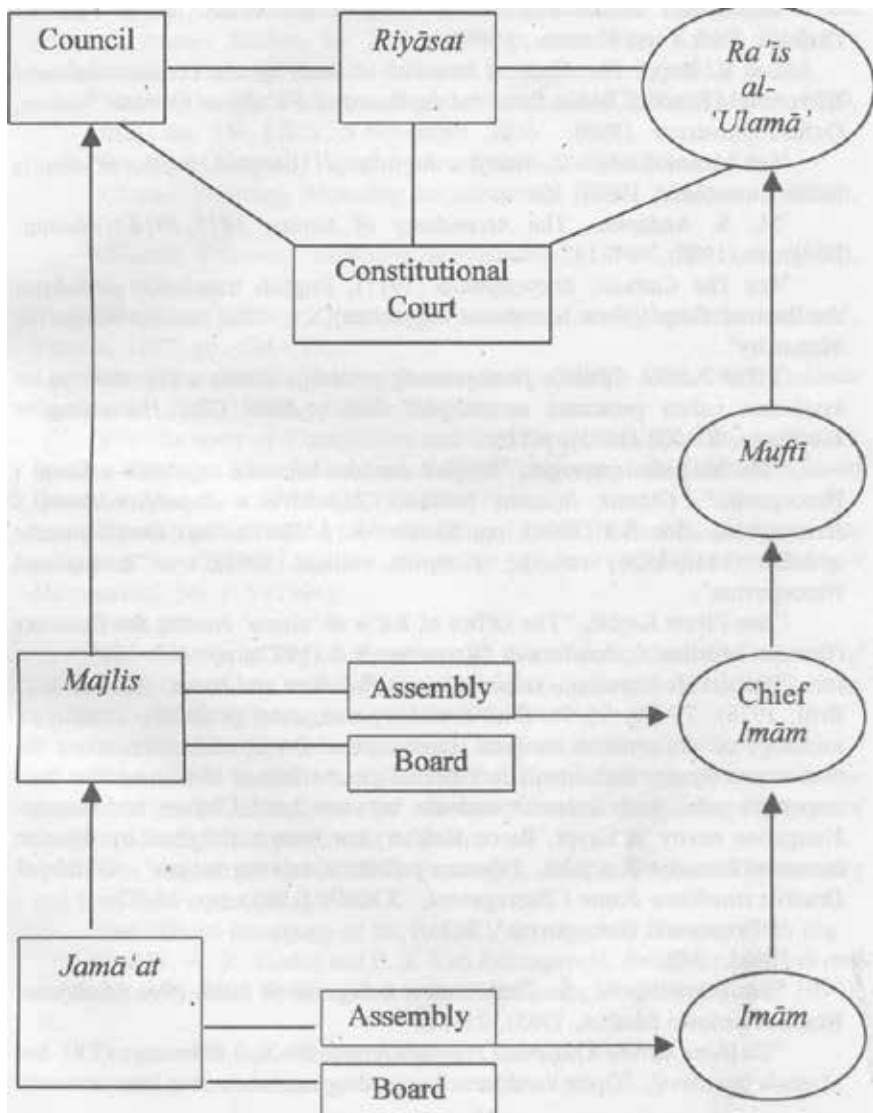
The present administration of Islamic affairs in Bosnia (The Islamic Community) witnesses and reflects five century long presence of Islam in this Balkan country. The modern period of the history of the Islamic Community began in 1878, with the Hapsburg occupation of Bosnia. The end of the Ottoman rule marked the beginning of the life of the Bosniaks as a Muslim minority. Living under such status, the Bosniaks managed to develop their own administration of Islamic affairs based on Islamic institutions from the Ottoman times, modern challenges and influences. This administration has undergone significant changes throughout history following very frequent and dramatic turnouts in the political status of Bosnia and its system of governance.

Today's administration of Islamic affairs in Bosnia is based on the 1997 Constitution of the Islamic Community. The Community is autonomous with regard to the state and possesses a very diversified system of religious administrative bodies and Muslim learned hierarchy. The scope of activities of the Islamic Community comprises, among other things, rituals (*'ibadat*), Islamic education (*ma'arif*), *waqf*, publishing, charity and income-generating projects.

The Islamic Community in today's Bosnia exists and functions in two different legal and political settings. In the Bosniak-Croat federation, the Islamic Community functions within the concept of secular state. In the Serb administered part, the Islamic Community rudimentarily acts within the model of state religion, a status which belongs to the Serbian Orthodox Church.

This paradox, which reflects the reality of a divided country, is now addressed by the efforts of the World Conference of Religions for Peace to introduce a uniform legislation on state-religion relations.

## APPENDIX THE ORGANIZATIONAL STRUCTURE OF THE ISLAMIC COMMUNITY







## THE OFFICE OF RA'IS AL-ULAMA' AMONG THE BOSNIAKS (BOSNIAN MUSLIMS)\*

**Abstract:** This paper investigates the origins, the legitimacy and the procedure of the appointment of a Ra'is al-'Ulama', the religious leader of Bosniaks (Bosnian Muslims). The answers have been sought in the tradition of the Osmanli learned hierarchy, Muslim documents of that period, and the post-Osmanli history of Bosnia. It has been found that the title of Ra'is al-'Ulama', today only used by Bosniaks to denote their religious leader, has been borrowed from the Osmanli organization of 'ulama', that the legality of his office had been provided by referring to Hanafi texts on the appointment of governors and judges for Muslims under non-Muslim rule, and that a formal letter of appointment, called manshur, continues to be issued for newly elected Ra'is al-'Ulama'.

The issue of origins, formation and development of Islamic religious administration in Bosnia and Hercegovina (henceforth, Bosnia) has been the subject of several works published in Bosnian.<sup>36</sup> Yet, this issue warrants the writing of a detailed monographic treatise which would include a study of the interaction of the different factors that have kept the structure of the Islamic community in Bosnia in a relatively stable state.

One of the issues in the history of Islamic institutions in Bosnia which has not been satisfactorily discussed in the existing literature is that of the office of *Ra'is al-'Ulama'* - its origins, legitimacy and the procedure for appointment. This article tries to highlight this issue and fill that gap in the literature.

\* *Intellectual Discourse*, 5:2 (1997), pp. 109-120

1 See: Mustafa Imamović, "Pravni položaj verskih zajednica u vreme šestojanuarske diktature" (The Legal Status of the Religious Communities in the Time of The Sixth January Dictatorship), (MA thesis, Belgrade University, 1967); Mahmud Traljić, "Islamska zajednica u Bosni i Hercegovini do oslobođenja" (*The Islamic Community in Bosnia and Herzegovina Until the Liberation*), in *Islam i muslimani u Bosni i Hercegovini (Islam and the Muslims in Bosnia and Herzegovina)*, (Sarajevo: Starješinstvo Islamske Zajednice u SRBiH, 1977), 142-152; Nijaz Šukrić, "Islamska zajednica nakon oslobođenja" (*The Islamic Community After the Liberation*), in *Islam i muslimani u Bosni i Hercegovini* - 153-168.

## RA'IS AL-'ULAMA': FROM A HONORIFIC TITLE TO AN OFFICE

The term *Ra'is al-'Ulama'* appeared in the Bosnian context for the first time in 1881 at the request of Bosniak dignitaries to the Austro-Hungarian (henceforth, Austrian) government, to allow them to have their own leader (*Ra'is al-'Ulama'*) who would govern their religious affairs.<sup>37</sup> The following year the Austrian government responded positively to this request, which in fact it had initiated. A council of scholars (*majlis al-'Ulama'*) was established, composed out of four '*ulama'*, with a *Ra'is al-'Ulama'* as its head. In this way, a national religious leadership of Bosniaks, separate from the office of *Shaikh al-Islam* in Istanbul, was established.

In the Osmanli state, Muslims did not have a religious administration separate from the state structure. The state was built on the principle of organic unity of religious and political authority. However, the Osmanli state possessed a firmly established hierarchy of '*ulama'* (*ilmiye*), without precedent in early Muslim history. In this hierarchy several categories of '*ulama'* could be identified, such as ritual '*ulama'* (those working as *imam*, *khatib*), educational '*ulama'* (*mudarris*), judicial '*ulama'* (working as *qadi*) etc.<sup>38</sup> Within each category different ranks existed. At the top of the whole organization of *ilmiye* stood *Shaikh al-Islam*. Originally, he was the *mufti* of Istanbul but, later on, this post acquired greater significance. During the 19th century this office was seen as the highest religious post among the Sunni Muslims.<sup>39</sup>

In contrast to the Muslims, non-Muslims of the Osmanli state possessed, within the framework of confessional autonomy (*millet*), a separate communal organization. This fact enabled them to adapt more easily to the new regime in territories from which the Osmanli were forced to retreat. The new regimes in such territories were most often based on the principle of organic and functional differentiation of religious and political authorities. Therefore, the Muslims left in those territories were also required to find an institutional solution for the organization of their affairs on the basis of the same principle. In the

37 *E. J. Brill's First Encyclopedia of Islam* (1913-1936), vol. 2 of reprint edition (1993), s.v. "Bosnia and Herzegovina"

38 See: Ismail Hakki Uzuncarsili, *Osmanli Devletinin Ilmiye Teskilati* (Ankara: Turk Tarih Kurumu Basimevi, 1988)

39 *E. J. Brill's First Encyclopedia of Islam* (1913-1936), vol. 7 of reprint edition (1993), s.v. "Shaikh al-Islam".

case of Muslims from the former Osmanli state a solution was sought in the views of *Hanafi* jurists regarding the position of Muslims under non-Muslim rule, the Osmanli hierarchy of '*ulama'*, practical demands and the interests of new rulers. This is what happened in Bosnia.

Politically, Austria was interested in separating Bosniaks from the influence of Istanbul in every aspect. Due to the significance of the role of Islam among Bosniaks, religious administrative dimension of that influence was very important. The Bosniak dignitaries were faced with the departure of the Osmanli officials from Bosnia and the breakdown of all connections with the office of *Shaikh al-Islam* and the ministry of *awqaf* in Istanbul. They wished to consolidate their position within the new situation and to secure prospects of survival in changed circumstances. A possible step towards the goal could be the establishment of national Islamic religious administration.

Several charges fell within the purview of this administration: the hierarchy of '*ulama'* headed by *Ra'is al-'Ulama'*, the administration of *awqaf* and Muslim education. The *shari'ah* courts were considered as a part of the state judiciary and, therefore, only loosely connected to the religious administration. These different segments were gradually developed, adapted, regulated and attained relatively stable form in 1909 by the promulgation of the Statute for Autonomous Administration of Islamic Religion, *Waqf* and Educational Affairs (henceforth referred to as the Autonomous Statute). This statute, which was a result of a long political struggle, provided the Bosniaks with the legal grounds to administer their religious affairs autonomously.

In this study we are especially interested in the use of the term *Ra'is al-'Ulama'* in the Islamic religious administration in Bosnia. Today, in the whole Muslim world only the Bosniaks call their religious leader by this title. During the British mandate in Palestine (1920-1948) the head of the Muslim community there had the same title. The question is: what is the origin of the title and how did it come to be that the Bosniaks and the Palestinians adopted the same title?

Since both the Bosniaks and the Palestinians lived for centuries under the Osmanli rule, it is advisable to seek an answer in Osmanli institutions. In Osmanli practice *Ra'is al-'Ulama'* was an honorific title (*'unwan*), not an office. In the *Kanun-name* of Sultan Mehmed-II (1451-1481), which dates to the end of the 15th century and deals with the organization of *Ilmiye*, it has been said that: "*Shaikh al-Islam* is the

head of 'ulama (*Sehyu l'-Islam ulemanin reisidir...*).<sup>40</sup> According to this legal text the title *Ra'is al-'Ulama'* belongs to the *mufti* of Istanbul, who from the 17th century onwards has been commonly known as *Shaikh al-Islam*.<sup>41</sup> This meaning of the title *Ra'is al-'Ulama'* may be found in the treatise entitled *Risale*, written by Haydar Celebi between 1526/7 and 1534. While mentioning Shaikh al-Islam Kemalpasazade (Molla Shams al-Din Ahmad b. Sulayman b. Kamal Pasha, 1468/9- 1534), the author remarks that he "is now the *mufti* of the God-protected lands and the chief of the 'ulama' of Islam" (...*ulema-i Islam- in reisi*).<sup>42</sup>

It seems that from the 17th century onwards, the significance of this title began to change for it was given to the military judge of the European part of the Osmanli state (Rumeli *kazasker*). Two *kazaskers*, one for Rumeli and another for Anadolu, were members of the Sultan's Council (*Divan-i Humayun*) and had the right to appoint *qadis* whose salary was less than 150 akce, as well as *muderrises*, *imams* and *khatibs* in their respective territories.<sup>43</sup> From the end of the 17th century *kazaskers* were appointed by *Shaikh al-Islam* with the approval of the Grand Wazir.

The title of *Ra'is al-'Ulama'* belonged to the post of Rumeli *kazasker* and did not necessarily reflect the scholarly capabilities of the actual title holder of the post. Because of this it was possible, as Turkish historian Ismail Hakki Unzarsili notes, that some incompetent persons got the title, especially during the period of decadence of the Osmanli state.<sup>44</sup>

The fact that the title *Ra'is al-'Ulama'* gradually passed from the *mufti* of Istanbul to Rumeli *kazasker* could help explain its later emergence among the Bosniaks at the end of the 19th century. First, the title of *Ra'is al-'Ulama'* became lower in rank than the title *Shaikh al-Islam*. Second, the title became associated with Rumeli, a part of the Osmanli state to which Bosnia belonged. When the Bosniak dignitaries and the Austrian government agreed, in 1882, upon the establishment of an Islamic Religious administration for Bosnia, it is possible that the title *Rais al-'Ulama'* was chosen because of these reasons.

From 1882 onwards the post of *Ra'is al-'Ulama'* was developed and its prerogatives fixed. Finally, once the title of high dignitaries of

40 Uzuncarsili, *Osmanli Devletinin Ilmiye Teskilati*, 175.

41 R. Repp, *The Mufti of Istanbul: A Study of the Ottoman Learned Hierarchy*, (London: Ithaca Press for the Board of Faculty of Oriental Studies Oxford University, 1986), 195.

42 *Ibid.*

43 Uzuncarsili, *Osmanli Devletinin Ilmiye Teskilati*, 175.

44 *Ibid.*, 159.

the Osmanli state has become the highest religious post among the Bosniaks.

The alternative to the term *Ra'is al-'Ulama'* in Bosnia could be Grand or Chief Mufti (*Bas Mufti*), as it was among other Muslim communities in the Balkans. After the withdrawal of the Osmanlis from the Balkans, a religious administration, headed by the Grand or Chief Mufti, was established for these Muslim communities. In fact, the general trend in the Muslim world in modern times, especially among Muslim minorities, has been that the office of *mufti* has acquired a significance beyond its usual jurisprudential function (*ifta'*).<sup>45</sup> Thus, in most of the Balkan countries with Muslim minorities (Bulgaria, Greece, Serbia, Romania) peace agreements after the war of 1912-1913 stipulated the establishment of a national religious administration for Muslims headed by Grand or Chief Muftis.<sup>46</sup>

The uniformity of these solutions was a consequence of the fact that they were reached through agreements between the Osmanli and Balkan nation-states. Because of that the same institutional patterns were adopted. On the other hand, the Bosniaks, under pressure from Austrian government and through the struggle for autonomy, built a unique system of religious administration in which some solutions that were adopted has no parallel in other Balkan Muslim communities.

The Bosnian experience in institution building was taken by some Albanian intellectuals as a possible model for their own struggle for autonomy. But, the difference between the two orientations is significant. The Bosniaks under Austrian rule strived to preserve connections with the office of *Shaikh al-Islam* in Istanbul. Albanian intellectual circles, at the beginning of the 20th century, tried to cut every connection with the Osmanlis hoping that such a policy would prevent them from being identified with the Turks in the eyes of the Europeans and would protect them from the possibility of attacks by neighbouring Orthodox countries, possible massacres and the threat of expulsion to Asia.

In the same vein, Albanian writer Faik Konica published an article, in 1909, entitled "A Short Notice to the Mohammedans" in which he suggested to his fellow countrymen "try to gradually reach the point

45 On that process in South-East Asia, see, Michael O. Mastura, "The Status of Muslim Personal Law in Selected Non-Muslim Countries", *Journal of the Institute of Muslim Minority Affairs* 6 (1985) 1:123.

46 M. Ali Kettani, "Islam in Post-Ottoman Balkans", *Journal of the Institute of Muslim Minority Affairs* 9 (1988), 2:381-403.

when they would not recognize the *Shaikh al-Islam* and would, instead, create for their religion a Moslem synod, called Council of Ulemas of Albania, having as the head a Director of 'Ulemas (*Ra'is al-'Ulema*').<sup>47</sup> This article was published in the same year in which the Statute of Autonomy was promulgated in Bosnia, and the author was most probably influenced by it. However, the differences between the Bosnian and the Albanian understanding of autonomy is obvious. The Bosniak struggle was directed against Vienna, not against Istanbul. The Albanian struggle was directed against Istanbul.

The Bosnian Statute of Autonomy has preserved a link between the Islamic community of Bosnia and the office of the *Shaikh al-Islam* by means of the *manshur* (a letter of formal authorization of a new *Ra'is al-'Ulama*') and possibility given to Bosniaks to officially ask for *fatawa* from the office of *Shaikh al-Islam* to resolve controversial issues. The Statute of the Muslim community of Albania of September 24, 1929 broke all links with Istanbul. The Albanian Muslim community was headed by the Grand Mufti residing in Tirana, elected by the Assembly of the Community and approved by the Albanian monarch.<sup>48</sup>

Far away from the Balkans, the title of *Ra'is al-'Ulama*' appeared in Palestine during the British mandate. The situation was similar to that in Bosnia after 1878; the British, at the beginning of their rule in 1920, called Muslim dignitaries to form a communal organization following the pattern of the millet system of the Osmanlis.<sup>49</sup> An agreement was soon reached in 1922. Palestinian Muslims were given a separate religious administration of which the top body was the Supreme Islamic Council (*al-Majlis al-Islami al-A'la*) composed of four members headed by a *Ra'is al-'Ulama*'. The members of this council were elected by an electoral body the composition of which was similar to the body that had chosen representatives for the Osmanli Parliament. *Ra'is al-'Ulama*' was the Mufti of Jerusalem.<sup>50</sup>

The similarity of the institutional solutions adopted in Bosnia and Palestine is fascinating: the same title for the Muslim religious leader, almost the same name for the highest body in the Islamic administration and similar jurisdiction. At this juncture, the only available

47 Gyorgy Lederer "Islam in Albania" *Central Asian Survey* 8 (1994)3:337.

48 G.H. Bosquet, "Note sur les reformes de l'Islam Albanians", *Revue des Etudes Islamiques* 9 (1935):401.

49 Robert H. Eisenman, *Islamic Law in Palestine and Israel* (Leiden: E.J. Brill, 1978), 77.

50 Zvi Elepeleg, *Haj Amin al-Hussaini: Founder of the Palestinian National Movement* (London: Frank Cass, 1993), 12.

explanation for this similarity is the fact of the existence of contacts between British authorities in the Middle East and the Austrian diplomatic mission in the region. Due to the existence of such contacts, the British authorities were informed of Austria's experience in the regulation of Muslim affairs in the former Osmanli state of Bosnia.<sup>51</sup> According to this explanation, the Bosnian experience was transplanted into Palestine.

## THE LEGITIMACY OF THE OFFICE OF RA'IS AL-'ULAMA'

The question of the legitimacy of the office of *Ra'is al-'Ulama'* belongs to the wider problem of the position of Muslims under non-Muslim rule. In principle, classical Islamic legal thought discusses the issue of Muslim leadership within the framework of an Islamic state, that is, the state in which Muslims constitute a majority and political authority derives its legitimacy from Islamic teaching.<sup>52</sup> In the personality of the head of Islamic state three functions were concentrated: leadership (*imamah*), interpretation of Islamic regulations (*futya*) and dispensation of justice (*qada*). Throughout history, Muslim rulers have kept for themselves political and, at least symbolically, religious leadership while delegating the functions of interpretation and implementation of *shari'ah* to *muftis* and *qadis*. The basis of the authority of these officials was the delegated power of the ruler. In their function they were considered as agents of the *imam*. This notion is significant for the identification of the basis of the authority of Muslim minorities' religious leaders.

In Bosnia as well as in other Balkan countries, Muslims belong to the Hanafi school of jurisprudence (*madhhab*). Therefore, to investigate how Muslim scholars from this region dealt with the issue of the leadership of Muslim minorities we should refer to their source of reference - the standard books of Hanafi *madhhab*.

In the Hanafi school a certain territory is considered as an "abode of Islam" (*Dar al-Islam*) so long as certain Islamic observances are freely practised there. Among the observances which Hanafi scholars mention are: the performance of prayer in congregation, especially

51 These contacts have been highlighted in the work of Bosnian historian Tomislav Kraljačić.

52 See: Ali b. Muhammad b. Habib al-Basri al-Mawardi, *al-Ahkam al-sultaniyya* (Cairo: Mustafa al-Babi al-Halabi 1960), 264.

Friday prayer (*salat al-Jum'ah*) and the jurisdiction of a Muslim governor (*wali*) and judge (*qadi*).<sup>53</sup>

This position of the Hanafi school has been developed in pre-modern times and represents Muslim historical responses to the loss of territories, especially during the 6/12 century.<sup>54</sup> Islamic jurists of that time generally held that a condition for the stay of Muslims under non-Muslim rule is to be allowed to manage their personal matters according to the *shari'ah*, that is, to have a kind of legal autonomy. At that time, this condition was mainly acceptable to non-Muslim countries because of the rule of the personality of family laws in the medieval times. Hence, the juristic works from pre-modern period did not discuss the issue of the religious leadership of Muslim minorities but their religious and legal autonomy. The views of pre-modern scholars on the appointment of governors and judges for Muslims under non-Muslim rule were taken by the '*ulama*' of Muslim minorities in modern times as precedent for the appointment of their religious leaders. As an illustration of such views, the following Hanafi jurists could be quoted.

Ibn Nujaym (d. 970 H) believes that "in the territories under the infidels' rule it is allowed to the Muslims to perform *Jum'a* and '*Id* prayers. A *qadi* will be appointed by their consent and they are obliged to ask for appointment of a Muslim as governor."<sup>55</sup>

Ibn al Humam (d. 681 H) writes that "if there is no Sultan, nor someone else authorized to appoint officials, as it is happening in some Muslim countries taken over by infidels, such as Cordoba, Valencia and Ethiopia ... the Muslims should agree to select one among them and appoint him as a governor, and he will further appoint judges or dispense justice himself, and appoint an *imam* to lead *Jum'a* prayers."<sup>56</sup>

Both opinions were used in Bosnia for theoretical justification of the validity of Islamic administration after 1878. The famous Bosnian scholar Mehmed Efendi Handžić (1906-1944) has referred to them in his work *Šerijatsko javno pravo* (Islamic Public Law).<sup>57</sup>

53 *al-Fatawa al-hindiyyah*, (Quetta, Pakistan: al-Maktaba al-Majidiyyah, 1982), 7:311; Ibn Abidin, *al-Radd al-mukhtar* (Beirut: Dar al-Fikr, 1979), 3:253.

54 A detailed analysis of the development of legal thinking on this issue has been given by Khaled Abou al-Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eight to Eleventh/Seventeenth Centuries", *Islamic Law and Society* (1994) 1:141-187.

55 Ibn Nujaym al-Misri, *al-Bahr al-raiq* (Quetta: al-Maktaba al-Majidiyya, n.d.), 6:274.

56 Ibn Humam, *Fath al-qadir* (Beirut: Dar al-Fikr, n.d.)7:294.

57 Mehmed Handžić, *Šerijatsko javno pravo* (Islamic Public Law), Unpublished textbook for the High School of Islamic Theology and Law, Sarajevo, (n.d.), 11.



In reference to the legitimacy of Islamic institutions in Bosnia after 1878, two issues could be identified: the legitimacy of *shari'ah* courts and the legitimacy of the office of *Ra'is al-'Ulama'*.

The *shari'ah* courts in Bosnia after 1878 became a part of the judicial system of a non-Muslim state. Yet, the issue of their legitimacy was solved easily. Pre-modern Hanafi jurists such as Ibn Nujaym and Ibn 'Abidin (d. 1253 H) considered the appointment of a *qadi* by a non-Muslim ruler as valid. The additional condition, laid down by some scholars, i.e., the consent of Muslims, has been met by means of *murasala*, a special authorization which *qadis* in Bosnia received from *Ra'is al-'Ulama'*.

More complex was the issue of the legitimacy of the office of *Ra'is al-'Ulama'*. Such an office did not exist in Bosnia before 1878. The highest Muslim religious officials in Bosnia of that time were *muftis*, who enjoyed the rank of "provincial *muftis*" (*kenar muftileri*) in the Osmanli learned hierarchy. They were appointed by the *Shaikh al-Islam* who issued them a letter of appointment known as *manshur*. Provincial *muftis* acted as delegates of the *mufti* of Istanbul. During the period of the existence of the office of *Shaikh al-Islam* in Istanbul (abolished in 1924) the Bosniaks insisted that their *Ra'is al-'Ulama'* receive *manshur* from Istanbul. After the annexation of Bosnia by Austria in 1908, and the severance of political connections with the former metropole, the Bosniaks wished to preserve at least religious connections.

At the same time, Austria and all subsequent regimes that ruled Bosnia could not be indifferent to the election of Bosniak religious leaders of the Bosniaks. The solution to this problem, adopted in the Statute of Autonomy of 1909, evinced a certain division of influence in the electoral process. A special electoral body (Curia) composed of Bosnian '*ulama'* nominated three candidates for the vacant post. The Austrian monarch selected one from among them and appointed him as *Ra'is al-'Ulama'*. After that, the electoral body, through diplomatic channels, requested from the *Shaikh al-Islam* that a *manshur* be issued to the appointed *Ra'is al-'Ulama'*.<sup>58</sup> The same or a similar procedure was adopted by the Muslims of other Balkan states after the War of 1912-1913.

A new situation emerged after the abolition of the office of *Shaikh al-Islam* in Turkey in 1924. The Bosniaks united with other Muslims of what constituted Yugoslavia at that time and found, in 1930,

58 E.J.Brill's first *Encyclopedia of Islam* (1913-1936), vol. 2 of reprint edition (1993), s.v. Bosnia and Herzegovina

a new solution for the legitimacy problem regarding the post of *Ra'is al-'Ulama'*. The Constitution of the Islamic Religious Community of the Kingdom of Yugoslavia of July 9, 1930 provided that a special body, composed of Muslim national dignitaries, will issue a letter of appointment to the newly elected *Ra'is al-'Ulama'* "until the reestablishment of a legal Caliphate."<sup>59</sup> This "deferment of the Caliphate" (*fasile-i hilafet*) is still going on.

The practice of issuing a *manshur* to the religious leader of the Bosniaks after the abolition of the office of *Shaikh al-Islam* in Istanbul is a unique case among the Muslims in the Balkans, and perhaps, wider. The other Muslim minorities, even when they did have commonly accepted religious leaders, did not insist that the latter be provided *shari'ah-based* legitimacy, even if symbolic.

## MANSHUR

A *manshur* is a formal document confirming that a certain person is legally appointed or elected *Ra'is al-'Ulama'* and, as such, is authorized to issue, according to the *shari'ah*, similar letters of appointment to subordinate religious officials in Bosnia. This term has come into the parlance of Bosnian Islamic administration via Osmanli institutions and the Osmanlis, in turn, had inherited it from previous Muslim states.

The term *manshur* (from the Arabic *nashara*) in Muslim diplomatic history means "a certificate, an edict, a diploma of appointment."<sup>60</sup> In different Muslim states throughout history, documents under this name may be found to refer to diverse activities and professions. During the Fatimids, for instance, lecturers were appointed by *manshur*. In the time of Ayyubids the heads of the nobles (*naqib al-ashraf*) and provincial governors received a *manshur*.<sup>61</sup> A Hanafi jurist, Ibn al-Mansur al-Farghani (d.592 H), has mentioned the *manshur* as a document certifying the appointment of a *qadi*.<sup>62</sup>

59 Fikret Karčić, *Šerijatski sudovi u Jugoslaviji 1918-1941* (The Shari'ah Courts in Yugoslavia 1918-1941), (Sarajevo: Vrhovno starješinstvo Islamske zajednice u SFRJ, 1986), 83.

60 *E.J.Brill's first Encyclopedia of Islam* (1913-1936), vol 5 of reprint edition (1993), s.v. "Manshur", 246-248.

61 *Ibid.*

62 al-Hasan b. Mansur Usjandi al-Farghani, *Fatawa Qadi Khan* (Quetta: al-Maktaba al-Majdiyyah, n.d.), 3:36.

In Osmanli administrative practice the term *manshur* (in Turkish, *mensur*) was used side by side with *berat* and *misal*.<sup>63</sup> The provincial *muftis*, including those in Bosnia, were appointed by the issuing of a *manshur*. In international conventions on the status of Muslims in the Balkans after 1912-1913, the term *manshur* was used to denote a letter of appointment issued by the *Shaikh al-Islam* to national Muslim leaders (Grand or Chief Muftis) after their appointment or election at nation level.<sup>64</sup> The term was used with the same denotation in the Statute of Autonomy and, later, in practice in Bosnia.

The text of the *manshur*, in Bosnia, has undergone changes during the last century. Generally speaking, the texts of earlier *manshur* are much closer to their Osmanli model. The text of later *manshur*, especially those from the communist period, have been modified significantly, in a way that reflects the marginalization of the role of Islam in the social life of the Bosniaks.

Newly elected *Ra'is al-'Ulama'* traditionally received a *manshur* at the ceremony of investiture held at Ghazi Khusraw Bey mosque (built in 1530-31) in Sarajevo, in the presence of Bosnian *'ulama'*, believers, state officials and dignitaries of other confessions. A special place among the invited guests belonged to the high representatives of the Islamic institutions from abroad. The presence of such a number of "witnesses to the act" (*shuhud al-hal*), in a manner of speaking, is understood among the Bosniaks as a recognition of the legitimacy of their religious leader, and of the belonging of the Bosnian Islamic Community to the global Muslim Ummah.

## CONCLUSION

The religious leadership of Bosnian Muslims is centred in the office of *Ra'is al-'Ulama'*. This office was gradually developed after the establishment of Austro-Hungarian rule over Bosnia at the end of the 19th century, and today represents a very important part of a relatively stable religious administration there.

The very title of the office is without parallel among Balkan Muslims, as well as Muslims from other regions. The Bosnian Muslims have taken

63 Uzuncarsili, *Osmanli Devletinin Teskilati*, 78.

64 *E.J.Brill's First Encyclopedia of Islam* (1913-1936), vol. 5 of reprint edition (1993), s.v. "Man-shur", 248.

it from the Osmanli learned hierarchy in which *Ra'is al-'Ulama'* was an honorific title given, first, to the mufti of Istanbul and, later on, to the *qadi* of the European part of the Osmanli state. Of all other Muslim communities, only the Muslims of Palestine used this title for their religious heads during the British mandate.

The legitimacy of the office of *Ra'is al-'Ulama'* was derived from analogy with the appointment of governors and judges for Muslims under non-Muslim rule. Since Muslim *fuqaha*, especially Hanafis, have accepted the appointment of these officials by non-Muslim rulers or Muslim communities, the same rule was extended to the appointment of the head of the religious administration.

Bosnian Muslims continue to adhere to the practice of issuing a formal letter of appointment (*manshur*) to a newly elected *Ra'is al-'Ulama'*. This practice, also inherited from the Osmanlis, has been partially modified after the office of *Shaikh al-Islam* was abolished in Istanbul in 1924. Now, the electoral body in Sarajevo is authorised to issue a formal letter of appointment to the Head of the Islamic Community of Bosnia and Hercegovina. This practice serves the function of maintaining historical continuity and the legality of Islamic administration in Bosnia, in view of the changes that are attendant upon witnessing Islam at the periphery of the Muslim world.



BALKAN MUSLIMS IN THE 20<sup>TH</sup> CENTURY





# THE EASTERN QUESTION - A PARADIGM FOR UNDERSTANDING THE BALKAN MUSLIMS' HISTORY IN THE 20<sup>TH</sup> CENTURY\*<sup>1</sup>

Ever since the disintegration of the Ottoman State and its reduction to the present day borders of the Republic of Turkey, the history of Balkan Muslims has been to a series of migrations, subjection to minority status within the newly established Balkan states, encountering with different forms of discrimination, forced expulsions and genocidal wars. Periods of relative peace have only been a prelude to new and more intense sufferings.

When searching for a paradigm - a frame of reference by which all these events can be summarized and understood - there are sufficient reasons for choosing the Eastern Question. The choice might sound unusual in view of the fact that the Eastern Question, regardless of the way it is defined, is usually considered to span the period between 1774 (Kuchuk Kainarji Treaty, which marked the beginning of disintegration of the Ottoman State) and 1923 (Laussane Treaty, which marked the end of the Ottoman State). However, the fate of Balkan Muslims after 1923 provides justification for using the Eastern Question as a paradigm for understanding the history of Balkan Muslims until the end of the 20th century.

A number of studies, documents and testimonies describe the survival of the mentality of the Eastern Question epoch among contemporary Balkan Christian national elites. That was reflected in their portrayal of Islam as an alien religion on European soil which in turn affected the treatment of Muslim population as the Ottoman cultural heirs and in the contemporary search for alliances forged during wars for succession to the Ottoman State.

\* *Islamic Studies*, 41:4 (2002) pp. 635-650.

1 The author wishes to gratefully acknowledge the grant he received from the Research Centre, International Islamic University Malaysia to pursue research on this subject.

In this article we shall try to trace the genesis of the Eastern Question paradigm, analyse its elements and examine the justification for its use as an interpretative tool for the history of Balkan Muslims after 1923.

## THE EASTERN QUESTION AND ITS SETTLEMENT

A glance at the many works written about the Eastern Question reveals that historians are agreed neither on its definition nor its chronology.<sup>2</sup> The term was, most probably, first used after the battle of Lepanto in 1571. After that it became part of the vocabulary of diplomats and politicians. During the 19th century we encounter first academic analyses and definitions of this term. In the first half of the 20th century the term was placed in a historical perspective as the events to which it referred had ended. The meaning of the expression, the "Eastern Question", followed the dynamics of the historical process to which the term referred.

An anonymous author wrote in 1849 that the Eastern Question deals with the problem of what ought to be of the Ottoman Empire, by then weak and ruined. The French historian Max Choublier in his work *La Question d'Orient depuis le Traite de Berlin* (1899)<sup>3</sup> was of the opinion that the Eastern Question arose during the Ottoman withdrawal from the Black sea area in the 18th century and comprises many issues like the fate of the remaining Ottoman possessions in Europe, Asia Minor, North Africa, and the possible resurgence of "Muslim fanaticism" in Asia and North Africa.<sup>4</sup>

Another French author, Edouard Driault, wrote in a book entitled *La Question d'Orient* (1909) that this question is the result of withdrawal of Islam from Europe and Asia and it is concerned with the renewal of Balkan Christian states and the progress of the Ottoman neighbours.<sup>5</sup>

A British author J. A. R. Marriot in his book *The Eastern Question: An Historical Study in European Diplomacy* (1917) placed the East-

2 See: A. L. Macfie, *The Eastern Question 1774-1923* (London and New York: Longman, 1989), 2-3.

3 Max Choublier, *La Question d'Orient depuis le Traite de Berlin* (Paris: A. Rousseau, 1899).

4 See: A. L. Macfie, *The Eastern Question 1774-1923*, 2-3.

5 *Ibid.*



ern Question in a wider context and offered an elaborate analysis of the issues which it comprises. In a wider sense, Marriot considers that the Eastern Question came into being as a result of clash between habits, ideas and preconceptions of the West and the East in the countries of South Eastern Europe.<sup>6</sup> In ancient times this clash manifested itself as the contest between the Greeks and the Persians; later in ancient time it was manifested through the duel between the Romans and Hellenistic rulers; finally, in the Middle Ages, this clash was represented as the struggle between Islam and Christianity. According to this author, the Eastern Question in the 19th century consisted of six issues:

First and primarily, the part played by the Ottoman Turks in the history of Europe since they first crossed the Hellespont in the middle of the fourteenth century;

Secondly, the position of the loosely designated Balkan States, which, like Greece, Serbia, Bulgaria and Romania, having gradually re-emerged as the waters of the Ottoman flood have subsided; or, like Montenegro, were never really submerged; or, like Bosnia the Herzegovina, Transylvania, and the Bukovina, have been annexed by the Habsburgs;

Thirdly, the problem of the Black Sea; egress therefrom, ingress thereto; the command of the Bosphorus and the Dardanelles, and, above all, the capital problem as to the possession of Constantinople;

Fourthly, the position of Russia in Europe; her natural impulse towards the Mediterranean; her repeated attempts to secure permanent access to that sea by the narrow straits; her relation to her co-religionists under the sway of the Sultan, more particularly to those of her own Slavonic nationality;

Fifthly, the position of the Habsburg Empire, and in particular its anxiety for access to the Aegean, and its relations, on the one hand, with the Southern Slavs in the annexed provinces of Dalmatia, Bosnia, and the Herzegovina, as well as in the adjacent kingdoms of Serbia and Montenegro; and, on the other hand, with the Romans of Transylvania and the Bukovina; and

Finally, the attitude of the European Powers in general and of England in particular, towards all or any of the questions enumerated above.<sup>7</sup>

6 J. A. R. Marriot, *The Eastern Question: An Historical Study in European Diplomacy* (Oxford: Clarendon Press, 1969), 1.

7 *Ibid.*, 2-3.

The wider context of the Eastern Question as defined by Marriot, is in fact similar to the paradigm of the “clash of civilizations”. This term was used first by Bernard Lewis<sup>8</sup> and was later adopted, developed and popularised by the American political scientist Samuel P. Huntington.<sup>9</sup> Bernard Lewis in his well-known *Atlantic Monthly* article “The Roots of Muslim Rage” described the phenomenon of Islamic revivalism in the following words:

“We are facing a mood and a movement far transcending the level of issues and policies and the governments that pursue them. This is no less than a clash of civilizations - perhaps irrational but surely historic reaction of an ancient rival against our Judeo-Christian heritage, our secular present, and the worldwide expansion of both.”<sup>10</sup>

Samuel P. Huntington in his article “The Clash of Civilizations?” forwarded the thesis that:

“...the fundamental sources of conflict in the new world will not be primarily ideological or primarily economic. The grate divisions among human kind and the dominating source of conflict will be cultural. Nation states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and the groups of different civilizations. The clash of civilizations will dominate global politics. The fault lines between civilizations will be battle lines of the future.”<sup>11</sup>

Three important elements could be identified in Huntington’s thesis. First, the main actors in history are civilizations, not nation states, neither communities, nor individuals.<sup>12\*</sup> Second, there is a sharp difference between Western and other civilizations, especially Islamic. Western civilization, based on Western Christianity (Catholicism and Protestantism) is unique with its secularism, rule of law, social pluralism, representative institutions and individualism. Third, differences between civilizations will lead to conflict.

8 Bernard Lewis, “The Roots of Muslim Rage” in *Atlantic Monthly*, vol. 266 (September 1990), 60.

9 Samuel Huntington, “The Clash of Civilizations?” in *Foreign Affairs*, 72: 3 (Summer 1993), 22-49. The author later developed this thesis and elaborated it in the book under the title *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

10 Bernard Lewis, “The Roots of Muslim Rage”, 60.

11 Samul P. Huntington, “The Clash of Civilizations?”, 22.

12 \* Editor's Note: It seems to me that Huntington's essential point is not necessarily that civilizations have always clashed or that civilizations have been the main actors in history. A major point of article is that in the post-Cold War world, the critical distinctions between people are not primarily ideological or economic; they are cultural. World politics, he emphasised, was being reconfigured along cultural lines, evident by the fact that the hot spots in world politics are on the “fault lines” between civilizations.

The most important conflicts of the future will occur along lines separating eight major civilizations from one another. This fault line in Europe coincides with the 1500 year boundary between Western Christianity, from one side, and Orthodox Christianity and Islam, from another side. In the Balkans this line, Huntington says, "of course, coincides with the historic boundary between the Hapsburg and Ottoman Empire".<sup>13</sup> Now we see how the two paradigms - the Eastern Question and the Clash of civilizations - meet in the Balkans.

Finally, M. S. Anderson, a contemporary British historian and author of *The Eastern Question 1774-1923 (1966)*, defines the Eastern Question as an effort by great powers to deal with the consequences of the disintegration of the Ottoman Empire, and competing ambitions which surrounded this process.<sup>14</sup>

From this brief survey of the understanding of the Eastern Question by a few of the most important European authors, it can be concluded that this paradigm refers to the filling of the political vacuum that arose after the decline and disintegration of the Ottoman Empire and to the solution of the question of the Ottoman succession. In spatial terms, the Eastern Question referred to events which occurred in a wide geographical region, stretching from Bosnia to the Black Sea and from the Arabian Gulf to Algeria. In the internal dynamism of the Eastern Question an important part of 19th century and the first decade of 20th century belong to the Balkans.

The political vacuum that occurred with the cessation of the Ottoman rule in the Balkans was filled by the renewal or establishment of several Balkan Christian nation states. The Balkans, which had once been a united geographic region of Rumeli or Ottoman Europe, was divided into a conglomerate of small, mutually suspicious and confronted states. It was at this time that the term "Balkan" entered the European geopolitical vocabulary and replaced terms such as "Orient", "Middle East" or "Near East" which had been used to denote the Bal-

13 Ibid., 30.

14 M. S. Anderson, *The Eastern Question 1774-1923: A Study in International Relations* (London: Macmillan, 1991) 388.

kan countries under the Ottoman rule.<sup>15</sup> At the same time, English language was enriched by the term “balkanization” meaning “to divide (a country, territory, etc.) into small quarrelsome, ineffectual states”.<sup>16</sup>

One of the main characteristics of the process of the establishment of Balkan nation states was the definition of nation by the religious criteria and the understanding of state as a political tool in the hands of nations defined in such manner. In those circumstances, little room was left for the “others”, especially the Muslims. Throughout the period of settlement of the Eastern Question, Balkan nation states identified, with different nuances, the Muslim population with the Ottoman political structures or considered it heirs to the Ottomans. Because of this, the establishment of every Balkan Christian nation state was followed by pogrom of Muslims, forced expulsions, change of the character and name of settlements, columns of refugees moving along muddy roads and unbeatable mountain passes, Muslim dreams of returning home, unfulfilled international obligations of Balkan Christian states agreements regarding indemnities for expropriated Muslim property and the like. This picture can be reconstructed regardless of whether one reads documents about Belgrade in 1807, Morea in 1821, Užice in 1862, Sofia in 1877, Strumitsa, Kukes, Serez and Dedeagac during 1912-13, valley of river Lim in 1943, Bulgarian-Turkish border in 1989, Višegrad and Foča in 1992, Srebrenica and Žepa in 1995 or Peć in 1999.<sup>17</sup>

15 The Berlin Congress of 1878 brought about a “Near Eastern settlement” (W. N. Medlicott, *The Congress of Berlin and After: A Diplomatic History of the Near Eastern Settlement 1878-1880*, London: Frank Cass, 1838). The British diplomat Sir Robert Windham Graves gave to his memoirs from the Balkans 1879-1929 the title *Storm Centres of the Near East* (London: Hutchinson & Co., 1933). The official name of the Berlin Treaty is “Treaty between Great Britain, Germany, Austria, France, Italy, Russia and Turkey, for the settlement of Affairs in the East”. (See Thomas Erskine Holland, *The European Concert in the Eastern Question* (N.p.: Scientia Verlag Aalen, 1979, 277). The British author William Miller in his book *The Ottoman Empire and Its Successors 1801-1827*, first edition 1913 (London: Frank Cass & Co, 1966) discussed about Dalmatia, Montenegro, Istanbul, Yonian islands and other places in South and Southeastern Europe. In the chapter titled “Napoleon in the Near East (1801-1815)”.

16 *Webster’s Encyclopedic Unabridged Dictionary of the English Language* (New York/ Avenel, New Jersey: Gramercy Books, 1989), 13.

17 See: Fikret Karčić, ed., *Muslimani Balkana: istočno pitanje u 20 vijeku* (Tuzla: Behram-begova medresa, 2001), 175-248.

## SURVIVAL OF THE EASTERN QUESTION MENTALITY

The Balkan nation states developed their methodology of dealing with the Muslim populations during the period of the classical settlement of the Eastern Question (until 1923). This methodology continues to prevail till the present. The geopolitical situation in and around the Balkans has changed but hardly the mentality of the Balkan nationalist elite. (Periods of relative peace and prosperity for Balkan Muslims can be attributed to the few regimes based on liberal and supra-national ideologies.)

The survival of the Eastern Question mentality among the Balkan nationalist elite became manifest, among others, in portraying Islam as an alien religion on the European soil and Muslims as “foreigners” who had to be “cleansed” from the territory. This manifestation of the Eastern Question mentality was documented in many studies dealing with both the sources and the actual process of genocidal policy against the Bosniaks during 1992-1995.<sup>18</sup>

The American scholar Norman Cigar has shed light on the important role of the Serbian intellectual elite in articulating an ideological justification of genocide against the Bosniaks, an act which gave to common thugs and killers the aura of heroes for “national cause”.<sup>19</sup> In that endeavour, Serbian orientalists, quasi-orientalists and historians made the genocide “intellectually respectable” and the Serbian Orthodox Church offered moral exculpation for its perpetrators.<sup>20</sup>

The view that Islam is an alien religion on European soil can be identified in the writings of Alexander Popović, Darko Tanasković, Miroljub Jevtić and, in an extremely fascist form, in the works of Dragoš Kalajić. In one of the articles written by the latter writer titled “Quasi Arabs versus Europeans”<sup>21</sup> it is stated that Muslims in Yugoslavia are quasi-Arabs and have inherited genes from desert thugs and

18 See, for example, Smail Čekić, *The Agression on Bosnia and Genocide Against Bosniaks 1991-1995* (Sarajevo: Institute for the Research of Crimes Against Humanity and International Law, 1995); Michael A. Sells, *The Bridge Betrayed: Religion and Genocide in Bosnia* (Berkley, Los Angeles and London: University of California Press, 1998).

19 See: Norman Cigar, *Genocide in Bosnia: The Policy of Ethnic Cleaning* (College Station, TX: Texas: A & M University Press, 1995). It has been translated into Bosnian: *Genocid u Bosni. Politika “etničkog čišćenja”*, tr. Radomir Marinković (Sarajevo: Bosanski kulturni centar i Institut za istraživanje zločina protiv čovječnosti i međunarodnog prava, 1998).

20 Smail Balić, “A Nation with a Most Irritating Name” in *Journal Institute of Muslim Minority Affairs*, 13: 2 (July 1992), 397.

21 *Duga* (13-19 September 1987), 14-15.

the Ottoman soldiers, with a long list of inherited deficiencies. As such, they do not belong to Europe and cannot comprehend the characteristic cultural features of Europeans. In dealing with this foreign threat to Europe it is necessary to have “supra-national, supra-religious, supra-ideological unity of Europeans” and, in the case of former Yugoslavia, alertness of the state security service and Yugoslav national army.<sup>22</sup> For another Serbian author, Orthodox bishop Anastasije, one of the manifestations of the foreign character of Islam is that walls are erected around Muslims houses and this is visible from “Bagdad to Bihać” (in north-west Bosnia). In his own words, this reflects not only “ordinary primitivism” but also something much deeper.<sup>23</sup>

Behind the often repeated claim that by neutralizing the Muslim threat in the Balkans, Europe is in fact defended, lies the Eastern Question mentality which equates Europe with *Pax Christiana*. The underlying assumption is that in Ottoman times, Islamic presence in Europe was restricted to the Balkans or the south-eastern part of European continent. All interactions between the two civilizations, including conflicts, occurred in this region. However, during the second half of the 20th century Western Europe opened its doors to many Muslim students, workers, and immigrants who gradually formed relatively stable and dynamic communities.<sup>24</sup> These communities are becoming an integral part of a new multi-cultural Europe, which does not need its defenders in the form of Balkan nationalists whose intellectual horizons are shaped by the 19th century categories. To the same framework of reference belongs the term *Antemurale christianitatis* (“the bulwark of Christianity”) used by some Croatian authors, who described Catholic Croatia as the first line of defence of Europe against the Islamic threat. During 1993 these circles exploited the thesis about “Islamic threat” and “clash between Islam and Catholic world”<sup>25</sup> in order to justify Croatian attacks on the Bosniaks. Looking at the Muslim population of central Balkans as “Easterners” with characteristic features such as laziness, corruption, authoritarianism, treachery, degeneration and the like is an integral part of the Orientalism discourse developed in order to justify the conquest

22 Norman Cigar, *Genocid u Bosni*, 37.

23 *Ibid.*, 41.

24 See: Jorgen S. Nielsen, *Muslims in Western Europe* (Edinburgh: Edinburgh University Press, 1995) and W. A. R. Shadid and P. S. Wan Koningsveld, *Religious Freedom and the Position of Islam in Western Europe* (Kampen: Kok Pharos, 1995).

25 See: N. Cigar, *Genocid u Bosni*, 154-155.

and subjection of people of Muslim East during the time of the Eastern Question settlement.<sup>26</sup>

It is not just an irony but an important part of the Eastern Question mentality that some Western authors apply the constructed characteristics of “Easterners” to all Balkan nations including Christian South Slavs. Huntington has excluded Orthodox Christians from the Western civilization, claiming that they form a separate Slavic-Orthodox civilization. They are, together with Muslims, on the eastern side of the line which “runs along what are now the boundaries between Finland and Russia, and between the Baltic states and Russia, cuts through Belarus and Ukraine separating the more Catholic western Ukraine from Orthodox eastern Ukraine, swings westward separating Transylvania from the rest of Romania and then goes through Yugoslavia almost exactly along the line now separating Croatia and Slovenia from the rest of Yugoslavia”.<sup>27</sup>

Huntington further says: “The peoples to the east and south of this line are Orthodox or Muslim; they historically belonged to the Ottoman or Tsarist empires and were only lightly touched by the shaping events in the rest of Europe; they are generally less advanced economically, they seem much less likely to develop stable democratic political systems”.<sup>28</sup>

Orthodox Christianity in this perspective is seen as “a subspecies of Oriental despotism and thus as inherently non-European or non-Western”.<sup>29</sup>

Starting from this premise, European/Western policy makers of the 19th and the 20th centuries tended to put Orthodox Christians, regardless of their ethnic background, into the category of “Easterners” and to consider Russia (Tsarist and/or Soviet) as their international patron.

26 Milica Bakic-Hayden and Robert M. Hayden, “Orientalist Variations on the Theme ‘Balkans’: Symbolic Geography in Recent Yugoslav Cultural Politics” in *Slavic Review*, 51: 11(Spring 1992), 2-4.

27 Samuel P. Huntington, “The Clash of Civilizations?”, 30.

28 Recent empirical testing of Huntington’s thesis by Pippa Norris and Ronald Inglehart from Harvard University and the University of Michigan respectively has shown that Huntington was wrong in assuming that the core clash between the West and Islamic worlds concern democracy. The evidences presented by the two scholars suggest striking similarities in the political values held in Western and Islamic societies. The basic difference was found to be related to the issues of gender equality and sexual liberalization - to Erod not to Demos. See Pippa Norris and Ronald Inglehart, “Islam and West: Testing the ‘Clash of Civilizations’ Thesis”, 4 : 2002, Harvard University, John F. Kennedy School of Government, <http://ksghome.harvard.edu/~pnorris.shorenstaein.ksg/articles.htm>

29 Maria Todorova, *Imaging the Balkans* (New York and Oxford: Oxford University Press, 1997), 20.

The modern history of Orthodox Slavs in the Balkans is full of such examples. At the end of the war in Bosnia and before the NATO intervention in Kosovo, for instance, Western powers assigned to Russia the task of putting pressure on Orthodox Serbs to accept ceasefire and negotiate a settlement. At the other side, Catholic Slovenians and Croats developed a position in power politics that was different from the Orthodox. Slovenia and Croatia, as predominantly Catholic countries with centuries-long historical experience of life under the Habsburg Empire, were immediately recognized as independent states in 1991-1992 after the dissolution of the Yugoslav Federation. Furthermore, Slovenia was speedily accepted into the process of becoming a European Union member. Bosnia and Herzegovina was also a part of the Habsburg Empire during the period 1878-1918, but because of its population structure and cultural identity (Muslim-Orthodox-Catholic-other) was left to wait for recognition until the eve of the aggression in spring 1992.

The different destiny of the Slav Christian ethnic groups in the Balkans shows that the particular identity of each group was constructed in opposition to an "Eastern" other. A particular group is considered more European if it is less Oriental. That is the reason why the Christian Slav Balkan elites spend a lot of time and energy trying to prove to the West that they are not "Eastern". Because of that they do not like to be considered as a part of the Balkans, a designation which echoes Ottoman Islamic legacy. They also build their group identity, in the words of Maria Todorova, against Oriental portions of their own historical past (the Ottoman times) and their different geographical neighbours (Muslims), trying to prove that Muslims are "real" foreigners on (south-eastern) European soil.<sup>30</sup>

Since Islam is an alien religion and culture and Muslims are foreigners on the European soil, it was considered justifiable from that point of view, to eliminate them from South East Europe. Methods of elimination included all acts which are internationally defined as acts of genocide. In order to prevent the application of relevant legal instruments on the perpetrators of these crimes and their allies, opportunistic Western circles coined during 1992 an euphemism - "ethnic cleansing".<sup>31</sup> This new

30 Maria Todorova, *Imaging the Balkans*, 20.

31 Fikret Karčić, "Bosnia-Images of Crime" in *Kulliyah of Islamic Revealed Knowledge and Human Sciences Research Bulletin* (International Islamic University, Malaysia), 2: 8 (1995), 4-8.



term in its substance describes the treatment of Muslims in the Balkans which the 19th century Montenegrin bishop Petar Petrović Njegoš called “the extermination of Turks” (*istraga poturica*) and Serbian historian Stojan Novaković described as “general cleansing of Turks from the people” (*opšte trebljenje Turaka iz naroda*).<sup>32</sup>

The concept of cleansing of Balkan territories of the remaining Muslims continued to exist in the ideology of the Balkan nationalist elite and in the consciousness of their followers even after the definite withdrawal of the Ottomans from this region in 1912 and the reduction of Muslims to the status of a minority. The nationalist press in Serbia during the period between the two world wars regularly counselled the Muslims to stop “being Turks”, or else to immigrate to Asia.<sup>33</sup> Strategic documents of the Chetnik movement led by the Serbian general Draža Mihajlović during World War Two included the project of cleansing of the region of Sandjak from Muslim population and Bosnia from the Muslims and the Croats as a means of creating “the Greater Serbia”.<sup>34</sup> In 1989, while expelling Muslims to Turkey, a Bulgarian police officer told them: “Your language is different. Your religion is different. You always wanted to go to Turkey. Now you can go.”<sup>35</sup> In the parts of Bosnia and Herzegovina occupied by the Serb forces during the years 1992-1995, the total cleansing of Muslim population was carried out or Muslims were reduced to an insignificant minority as in the case of Banja Luka. The Serb forces also carried out forced expulsion of Albanians from Kosova [Kosovo] in 1999, an exodus which can be compared to that after the First Balkan War, and which was reversed only after the intervention of NATO troops. These events which occurred in different parts of the Balkans in the post-Ottoman period represent a continuity of events from the time of the Russian-Ottoman War of 1876-77 and the First Balkan war of 1912.

Even a glance at the theoretical framework and political vocabulary of the ruling elite of the Balkan nation states testifies to the continuity of the Eastern Question mentality. At the intellectual level, non-Muslim Balkan scholars were mostly unable to give an objective

32 Mustafa Imamović, “Pregled istorije genocida nad muslimanima u jugoslovenskim zemljama” in *Glasnik Rijaseta Islamske zajednice*, 54. 6 (1991), 678-679.

33 See, for example, “Pobiti Turke” in *Obrana*, 1:15 (1920), 1.

34 Vladimir Dedijer - Antun Miletić, *Genocid nad muslimanima 1941-1945: zbornik dokumenata i svjedočenja* (Sarajevo: Svetlost, 1990), 26.

35 *Destroying Ethnic Identity: The Expulsion of the Bulgarian Turks: A Helsinki Watch Report*, October 1989 (Washington DC: US Helsinki Watch Committee, 1989).

and critical historical account of their countries or regions under the Ottoman rule. Their works follow a national-romanticist approach and they speak of “Turkish yoke”, “life outside of history”, “separation from Europe” and the like.<sup>36</sup> For a comprehensive and balanced history of Islam in the Balkans a reader must refer to Western-European and especially American authors.

At the political level, it was common for the Balkan nationalist elites to refer to the Slav Muslims as “those who turned to Turks”, “outcasts”, “renegades” and to plead for their return to their former “flock”. The frame of reference and vocabulary of Serb ideologues, politicians and intellectuals during the 1990s, when they ignited wars in Bosnia and Herzegovina and Kosova, are especially illustrative. This frame comprises ideas of revenge for Kosova defeat in 1389, continuation of the Serb uprising against the Ottomans from the early 19th century and of the Balkan war of 1912.

The Kosova battle is a part of Serb mythology and as such was the subject of analysis and deconstruction by critical Serbian historians like Miodrag Popović.<sup>37</sup> The last two ideas belong to the classical period of the Eastern Question but they surfaced in Bosnia during 1990s. For instance, in January 1992, Radovan Karadžić, president of the Serbian Democratic Party and an indicted war criminal, told a journalist the following about the Serb strategy in post-Communist: “To fight until we achieve Karadjordje’s aim<sup>38</sup> - to unite all Serbs - and until we finish the fight”.<sup>39</sup> Ratko Mladić, the commander of the Army of the Republika Srpska and also an indicted war criminal, upon entering the UN-designated “safe area” of Srebrenica declared: “Here we are on 11 July 1995 in Serb Srebrenica on the eve of another big Serbian holiday. I present this town as a gift to Serb people and finally comes the moment of revenge against the Turks after the uprising against *dahiyas*<sup>40</sup> in this region”.<sup>41</sup> These two examples illustrate that the Serbian political and military leadership in Bosnia and Herzegovina during 1992-95

36 See “Bibliographic Essay” in Peter F. Sugar, *Southeastern Europe under Ottoman Rule, 1354-1804* (Seattle and London: Washington University Press, 1993), 289. For an insight into the manifestation of these views in Serbian historiography see Radovan Samardžić, *Ideje za srpsku istoriju* (Beograd: Jugoslavijapublik, 1989), 219-259.

37 Miodrag Popović, *Vidovdan i časni krst* (Beograd: Slovo ljubve, 1976).

38 Karadjordje Petrović - the leader of First Serbian uprising against the Ottomans.

39 N. Cigar, *Genocid u Bosni*, 52.

40 *Dahiyas* - rebellious Janissaries who had usurped the powers of the Ottoman central authority in the region of Belgrade in the beginning of the 19th century.

41 Report of Serbian Radio-Television, 11 July 1995

considered the war as a continuation of the 19th century Serbian anti-Ottoman uprisings.

The symbolism used by the Serbs during the war in Bosnia further confirms this thesis. In this context four symbols are especially important. First, the Serbian leadership used *hayduk*<sup>42</sup> tradition for the purpose of political mobilization of the Serb population. This includes the use of caves for various ceremonies like initiation into the Chetnik movement, naming units and institutions after *hayduk* leaders and the like. In Greece these outlaws were called *klepht*. They carried out their activities within the borders of the Ottoman Empire, which differentiated them from *uskoks* who made incursions into the Ottoman territory from neighbouring areas and looted and robbed the local population. *Hayduks* had a relatively established inner organization with *harambasha*<sup>43</sup> as their heads. Balkan nationalist and Marxist historians regularly portrayed *hayduks* as heroes of national liberation struggle of the Balkan Christian nations against the Ottoman government. However, new studies, based on primary historical sources, show that *hayduks* were indifferent towards the religious, ethnic and social identity of their victims.<sup>44</sup>

Epics can serve as an important source for the study of *hayduk* ethical values. Although thorough research on this topic has not yet been done, a careful reading of Serb epic songs can enable us to identify some basic elements of the *hayduk* system of values.<sup>45</sup> Looting was considered a legitimate means of acquisition of property. *Hayduks* even used to take the clothes of their dead victims. Rules of knighthood were disregarded and *hayduks* regularly made ambushes in forests and shot their targets at the backs. They dealt mercilessly with their victims: burned them alive, cut off their hands, took out their eyes and sarcastically mocked them.<sup>46</sup>

These values and ways of waging war were revived on the eve of Bosnian war. Reports of war crimes against the Muslims in Bosnia and

42 *Hayduk* (Turkish: *haydut*, "mountainian robber") referred to the outlaws in the Balkans during the Ottoman rule. Ferit Devellioglu, *Osmanlica – Turkce Ansiklopedik Lugat* (Ankara: Aydin Kitabevi Yayinlari, 1993), 347.

43 Turkish: *harambasha*, "head of criminals".

44 Catherina Wendy Bracewell, *The Uskoks of Senj: Piracy, Banditry and the Holy War in the Sixteenth Century Adriatic* (Ithaca and London: Cornell University Press, 1992), 11; Fikret Adanir, "Heidukentum und osmanische Herrschaft" in *Sudost – Forschungen* (Vienna), 41 (1982), 43-116.

45 See Dr Smail Balić, *Etičko naličje bosansko-hercegovačkih muslimana* (Beč: 1952), 27-57.

46 *Ibid.*, 45-46.

Kosova leaves no doubt as to who were the sources of inspiration for the perpetrators of unspeakable war crimes. The worldview of these militants was shaped by the mythology they had inherited and their historical consciousness was built on epic songs. Their behaviour can be explained by referring to the German Slavic scholar Maximilian Braun who wrote in 1937:

“He who from his childhood has grown up listening to epic songs, he who used to accept the content of these songs as his ideal, that one in a given moment will be ready to carry out the same deeds as done by the heroes of his songs. For that, Balkan living experience up to the most recent time gave us enough evidence”<sup>47</sup>

The second symbol is the Serbian image of the Bosniaks. The Bosniaks were symbolically represented as the Ottomans. The Bosniak practice was identified with real or alleged Ottoman practices. For example, a local police chief of the town of Prijedor told an American journalist in 1992 that the Muslims of Prijedor were planning, upon seizing power, to circumcise all Serbian boys and to “kill all males above the age of three years and to send females between 15 -25 years to *harems* where they will bear Janissaries”.<sup>48</sup> It was because of this that the Serbs felt that pre-emptive measures were necessary, he said. This explanation is the same as the justification of the pogroms of Jews in medieval Europe, when it was alleged that the Jews drank the blood of Christian children and thus the former should be exterminated. The identification of Bosniaks with Ottomans was done through epics and not through historical consciousness and went against sound reason and simple facts: *harems* did not exist in Bosnia and Janissaries were abolished in 1826. The Serbian media reporting about the war in Bosnia very frequently used terms possessing epic connotations like *zulum* (“injustice”), *srpska nejač* (“Serbian orphans”) and the like. The obvious aim of this discourse was to stir up the feeling among the public that the war against the Bosniaks (1992-95) be identified with the anti-Ottoman struggle.<sup>49</sup>

The third symbol is the use the military insignia from the Balkan wars or World War One period by the Serbian units. The Army of the Republika Srpska still uses officer’s head gear from that period.

47 Cited in *ibid.*, 16.

48 Roy Gutman, *A Witness to Genocide*, 133.

49 Mark Thompson, *Forging War: The Media in Serbia, Croatia and Bosnia-Herzegovina* (London: International Centre Against Censorship, 1994), 81-82.

Serbian attacks on Bosnian towns, like Zvornik, were conducted while the military band played old marches like "March to the Drina", as was the election campaign of Slobodan Milošević's Socialist Party of Serbia in 1992.<sup>50</sup> "March to the Drina" encouraged the Serb soldiers to advance towards Bosnia during World War One and fulfil Karadjordje's dream of uniting the Serbian lands.

The fourth symbol is the use of the concept of "the exchange of population" by Serbian and some Croat officials in Bosnia and Herzegovina during 1992-1995. This concept was developed and applied by the Balkan nation states during the 19th century, and was made a part of the Lausanne Convention of 1923 and the protocols between Turkey and Greece which followed. In the practice of the Republika Srpska and Croatian mini-state Herceg-Bosna, "the exchange of population" was an euphemism for forced expulsions of the Muslims.

Finally, during the conflict in the Balkans in the 1990s efforts were made at reviving alliances built during the period of classical Eastern Question.<sup>51</sup> Appeals by the Balkan religious and national groups were directed towards their former protectors and kin-states. That was an outcome of the fact that conflicts were initiated by the nationalistic ruling elite, whose ideological horizons belonged to the Eastern Question paradigm. This was especially evident in the case of Bosnia and Kosova. The events were later led by the logic of self-fulfilling prophecy.

During the aggression against Bosnia (1992-1995) and war against the Albanian population in Kosova (1999), the Serbian national leadership appealed to the Orthodox Christian solidarity among the neighbouring Balkan states (especially Greece) and Russia, one time protector of the Orthodox *millet* of the Ottoman Empire. Russia became involved in the Balkan affairs despite the historical fact that its similar policies in the Balkans in the 19th century did not yield adequate territorial gains or lasting influence and, when, according to the British historian M.S. Anderson, Russia "was exploited and allowed to be exploited, by states fighting for existence on peninsula".<sup>52</sup>

The second main actor in the classical Eastern Question - Great Britain - also played a significant role in the Balkans towards the end of

50 *Ibid.*, 82.

51 This phenomenon has been described by Samuel P. Huntington as reliance on "kin-states". See Samuel P. Huntington, *The Clash of Civilizations*, 272-91.

52 M. S. Anderson, *The Eastern Question*, 393.

20th century. In the case of Bosnia, she delayed military intervention to stop the genocide against the Bosniaks and thus risked being sued as an accomplice for the crime of genocide. After the change of government, the Great Britain led a military intervention in Kosova putting thus an end to violence of the Serbian state against Kosova's Albanian population.

The successor states of Austria-Hungary continued to have interests in the western part of the Balkans and to breed antagonism towards their enemies from World War One. Lastly, the Republic of Turkey, the successor of the Ottoman Empire, responded cautiously to the pleas for help from the Balkan Muslim communities, especially those of non-Turkish ethnic backgrounds.<sup>53</sup> Those communities, faced with European indifference towards the plight of the Muslims, directed their hopes toward other Muslim countries (Saudi Arabia, Iran, Pakistan, and Malaysia among others). These countries, shocked by the fact that the genocide against Muslims could have occurred in 20th century Europe, began to support the Muslims and by doing so pressed the leading Western countries to intervene. During the classical time of the Eastern Question the Ottoman Empire was the only protector of the Balkan Muslims. By the last decade of the 20th century this situation had changed. Balkan Muslims' pleas were heard outside the Ottoman-Islamic cultural zone: in the Middle East, South Asia and South East Asia. This development caused internal inconsistency in the Serb propaganda discourse which was essentially loyal to the 19th century ideas. Accustomed to use terms like "Turks" and "Janissaries", Serbian propagandists now began to use up-dated labels such as "Islamic fundamentalists", "Jihad-warriors", side by side with the traditional epithets mentioned above. The first category of terms referred to the period of the Ottoman rule which ended in the Balkans in 1912, while the second category referred to the phenomena in the Muslim world during the second half of the 20th century.

This short analysis shows that the Eastern Question paradigm can be used as an aid to understand the mentality of the contemporary Balkan national leaders and their behaviour towards the Muslim population. Their nationalism is in essence the nationalism of the 19th century and should be interpreted by using the paradigms of that peri-

53 See: Hugh Poulton, "Turkey as Kin-State: Turkish Foreign Policy towards Turkish and Muslim Communities in the Balkans" in Hugh Poulton and Suha Taji-Farouki, eds., *Muslim Identity and the Balkan State* (London: Hurst & Company, 1997), 194-213.

od. In a sense the same paradigm can be used for interpreting the behaviour of other parties in Balkan conflict, especially those who had a role in the settlement of the Eastern Question 1774-1923 and became hostages of incorrect historical parallels.

It has been also shown that there is similarity continuity and between the Eastern Question paradigm and the Clash of Civilizations paradigm. Shared elements in both paradigms are: (1) the notion that abstract entities, such as civilizations, whose most fundamental element is religion, are the majors actors of history; (2) the notion that there is opposition or even a basic rivalry between these entities; (3) the continuation of the bellicose mentality, whereby cultural differences are seen as the ultimate source of conflict rather than cooperation; and (4) the notion that separation between civilizations and “correction” of fault lines as potential loci of clashes is, by extension, justified, or at least, understandable.

The continued presence of these elements at the level of paradigmatic thinking among political actors and scholars is a manifestation of the continuity of that bellicose mentality. The first step to eliminate such mentality is to recognize that such a mentality is the biggest threat to peace. An alternative paradigm could be inter-civilization “peaceful engagement”, as proposed by Robert D. Crane on behalf of American Muslim Council.<sup>54</sup> This alternative accepts that civilizations, as the highest form of human self-identity, are important, but calls for the shift from the “bellicose mentality” to “opportunity mentality”. Such a shift can help us all, and especially the policy-makers in the West, to overcome Manichaeian psychology and to offer new horizons of hope for individuals, communities and civilizations. Such a shift could finally relegate the Eastern Question paradigm to the dust-bin of the past where it rightly belongs.

54 Robert D. Crane, “Civilizations in Crisis: Confrontation or Peaceful Engagement” in *The American Muslim* (Winter 1994), 13-28.







## DISTORTED IMAGES OF ISLAM: THE CASE OF FORMER YUGOSLAVIA\*

*Abstract: Since the 1980s, the former Yugoslavia has witnessed increasing distortion of images of Islam in academic publications, media, and public life. This process has been connected with the changes in power structure in Serbia, and with the new ideological orientation of the Serbian leadership which opted for national exclusivism (ethnofascism). The Muslims have been portrayed as a threat to the realization of the Serbian hegemonic project. In order to mobilize domestic public opinion against the Muslims and to justify future acts against them in the eyes of the West, the Serbian leadership needed an image of Islam as a totalitarian, inherently violent, and culturally alien system on European soil. Such a distorted image has been provided by some influential Serbian orientalists, the Orthodox Church, and some historians. Due to these distortions, these Serbian intellectual circles have become accomplices in the crimes committed against the Muslims in former Yugoslavia during 1992-1995.*

The history of European-Muslim relations could be seen as a history of different images of Islam in European eyes, or of Europe in Muslim eyes. These images are indicators of the political, economic, and cultural relations between two civilizations. They were created by specific people at specific times, and sometimes reveal more about their creators than their objects. They have contributed to the improvement or worsening of inter-civilizational relations.

### WHY FORMER YUGOSLAVIA?

During the last two decades, an image of Islam as a violent and militant religion has gained considerable acceptance in Europe. In this regard,

\* *Intellectual Discourse*, 3:2 (1995), pp. 139-152

the case of former Yugoslavia is particularly illustrative. In the past, that country was considered a champion of the nonaligned movement. During that period very close relations with many Muslim countries were established. Indeed some non-Muslim authors even saw Islam as an “anti-imperialist religion.” Some of today’s most vocal supporters of Serbian ethnofascism<sup>1</sup> were delighted at that time by the Islamic revolution in Iran and the “Islamic rebellion against the West.”

A merciless struggle for the political heritage of Josip Broz Tito (1892-1980) marked the beginning of the new ideological orientation of the Serbian leadership. The new *vožd*<sup>2</sup> Slobodan Milošević opted for open reliance on Serbian nationalism. New ideological use of the past, disseminated through state-controlled media, opened the Pandora’s Box of suppressed myths, prejudices, and hatred.

Since Serbian history is one of struggle against Osmanli domination in this area, Serbian nationalism has inevitably revived anti-Muslim feelings. The distortion of the image of Islam became an integral part of that orientation. In practice, the trend was towards Serbian mass mobilization; first, against the Albanians in the southern province of Kosovo; and second, against the Bosnian Muslims (in Bosnian, *Bošnjak*).

The distortion of the image of Islam shows us that terrorizing truth inevitably leads to terrorizing the people and that genocide is regularly preceded by the dehumanization of its victims.

## THE DISTORTION: CONTINUATION OF WAR BY OTHER MEANS

In the history of the Serbian intellectual tradition dealing with Islam, there are periods during which that business was understood as “the continuation of war by other means”, and other periods characterized by more objective and tolerant atmosphere. In the latter atmosphere, some Serbian writers and poets (Jova Jovanović Zmaj, Bora Stanković, Aleksa Šantić, for instance) wrote very impressive novels and songs on Muslim life in the former Yugoslav lands.

- 1 A term coined by the the Serbain sociologist Slobodan Inić to denote the ideological orientation of the present regime in Belgrade which was responsible for the breakup of former Yugoslavia and wars in Slovenia, Croatia and Bosnia and Herzegovina.
- 2 Arhaic Serbian, “leader”.

It is also true that in very influential segments of Serbian society there existed latent prejudices against “the Turks” and their religion. Those prejudices regularly erupted in open hostilities and brutal persecution during crises when “aliens” were accused of “conspiracy” against national interests, supranational projects abandoned, and solutions sought in national exclusivism and ethnic purity.

A recent case of such campaign is the diabolization of Islam and the Muslims from the 1980s in Serbian public life. The undemocratic atmosphere, a kind of “created mass madness” in all strata of Serbian society, and the existence of *advocati diaboli* among educated elite were sufficient conditions for such a phenomenon.

The distorted image of Islam was created by a number of clergymen of the Serbian Orthodox Church, historians, and orientalists. Among them, only the role of orientalists has received proper scientific attention. This was done by Norman Cigar of the Marine Corps Command and Staff College, Virginia, who undertook research on the role of the Serbian orientalists in the genocide of Bosnian Muslims.<sup>3</sup> The role of Serbian historians and the Orthodox dignitaries is yet to be fully researched, documented, and analyzed. In this article we shall try to highlight some aspects of their involvement in the distortion of the image of Islam and of its followers.

## ORIENTALISTS AND ISLAMOLOGISTS

The main conclusion of Norman Cigar in the above-mentioned study is that Serbian orientalists have been at the forefront of the anti-Islamic movement since the 1980s, contributing “significantly to genocide against Muslims by making this process intellectually respectable among all the strata of Serbian community.”<sup>4</sup> These scholars have “consistently misinterpreted and intentionally distorted Islam and the Muslim community’s conditions and objectives.”<sup>5</sup> The author has analysed the works of a large number of scholars who were dealing with Islam. Notable among these are the most influential “professional orientalists” such as Alexandre Popović (Ecole de Hautes Etudes en

3 Norman Cigar, “Serbia’s Orientalists and Islam: Making Genocide Intellectually Respectable”, *The Islamic Quarterly*, 38 (1994) 3: 147-170.

4 *Ibid.*, 148.

5 *Ibid.*, 150.

Science Sociales, Paris), Darko Tanasković (Department of Oriental Languages, Belgrade University), and Miroljub Jevtić (Faculty of Political Sciences, Belgrade University, who is unremarkable for his scholarship, but much more known for his interviews to nationalistic papers).

Norman Cigar found that these scholars had projected Islam as a totalitarian system, inherently violent, a remnant of the past in the Balkans, and preparing for a new invasion of Europe and the destruction of Western civilization. The Muslims are portrayed as cultural aliens on European soil, traitors to the religion of their forefathers, the fifth column, a bridgehead for re-Islamization of Serbia or the Balkans, and so on.

Each of these three authors - who were linked by ideological, professional, and personal connections - had a specific area of influence and audience, and made his personal contribution to the development of appropriate conceptual and terminological tools for the given task.

Alexandar Popović, known in European learned circles as a specialist in Islam in post-Osmanli Balkans, has undertaken a mission to warn Europe and the world of increasing Islamic radicalism in former Yugoslavia and Bosnia in the 1980s. His article on Islamic radicalism was praised later by his younger colleagues as an example of early warning.<sup>6</sup>

In that article and in later work on Yugoslav Muslims, he expounded the thesis that since the 1970s, Islamic radicalism has been on the scene in Bosnia either in the form of "secular radicalism" (Muslim Marxist intelligentsia) or "religious radicalism" ('ulama').<sup>7</sup> These two groups, according to him, worked together as the promoters of the radicalization of the Bosnian Muslims. The very concept of "radicalism" in Popović's use was vague enough to cover any kind of conscious Muslim activity. What was viewed in the case of other religious communities as taking over of new horizons of freedom at the end of the Communist regime, has become "radicalism" in the case of the Muslims. He was of the opinion that Muslims were favoured by Josip Broz Tito, and it is quite fair that they lose those privileges after his demise. In order to resolve the apparent contradiction in the thesis that the Bosnian Muslim 'ulema' and Marxists worked together for the promotion of

6 Darko Tanasković, *U dijalogu s Islamom* (In a Dialogue with Islam) (Gornji Milanovač: Dečje novine, 1992) 8.

7 Alexandar Popović, *Jugoslovenski muslimani* (Yugoslav Muslims) (Belgrade: Akvarius, 1990).

Islam, A. Popović and Darko Tanasković resorted to the Shi'ah concept of katman (dissimulation). Their explanation was that Sunni Bosnian Marxists used Shi'ah tactics: they just pretended to be Marxists while in fact they were real Muslim radicals. The fact that those Marxists sent Muslim activists to jail, as they did in 1983, did not disturb these experts on "peripheral Islam".

Darko Tanasković considered it his duty to "cautiously and constructively warn about the tendency of (miss)use of Islam for political purposes," at a time when Islam had "already begun to (miss)use politics, secular as well as religious and cultural, for its own purposes."<sup>8</sup> By then the author had lost his sense of cautiousness and constructiveness, and he began to object to the Muslims' demand not to be forced to eat pork in the Yugoslav People's Army (in 1989); the intention of the Republic of Bosnia and Hercegovina to establish connection with the Organization of Islamic Conference (in 1991); the growth of Islamic consciousness among the Muslim communities in the Balkans (in 1992); and so on.

Close to the leadership of the ruling Serbian Socialist Party led by Slobodan Milošević, D. Tanasković continued to act as a top advisor on Muslim policy. On 23 September 1993, at the peak of the genocide against the Bošnjaks, and the strangulation of Sarajevo (where at one time he used to be warmly received by Muslim intellectuals), Tanasković gave an interview to *Vojska*, an official paper of the Yugoslav (Serbian) Army under the title "Europe will not avoid the demographic jihad." The term "demographic jihad" could be considered one of his personal contributions to the Serbian vocabulary of distorted images of Islam. His views in this regard were completely in line with those of the indicted war criminal General Ratko Mladić, commander-in-chief of the Bosnian Serbs' army:

The Islamic world does not have the atomic bomb, but it does have a demographic bomb. Atomic bombs are under some kind of control. Their enormous reproduction is not under any kind of control.<sup>9</sup>

British historian Mark Almond described this concern about Muslim population growth as "the fascistic obsession with fertility, or rather the lack of it."<sup>10</sup>

8 Tanasković, *U dijalogu s Islamom*, 198.

9 Mark Almond, *Europe's Backyard War: The War in the Balkans* (London: Mandarin, 1994) 203.

10 *Ibid.*, 198.

Miroljub Jevtić was promoted as an “Islamologist” by the Serbian media in late 1980s after he published his doctoral dissertation on jihad.<sup>11</sup> He tried, without even an elementary knowledge of Arabic and Islamic studies, to give an exposition of the complex meanings of jihad, types of armed jihad throughout history, interstate conflicts, jihad in the ideologies of Muslim liberation movements and Islamic fundamentalism, and finally jihad in the Yugoslav context. The book was lauded by Tanasković. It was, however, sharply criticized as being devoid of any scientific value by the Bosnian author Tarik Haverić.

In subsequent years, Jevtić became a self-proclaimed expert on militant Islam in Yugoslavia, ever ready to “disclose” to the Serbian nationalist papers the secret plans of disguised *mujahidin* to retake territories in the Balkans lost in the 19th century, to “discover” that the Muslim demand for a separate cemetery in the Serbian capital is a preparation for attack on Serbia, to give a final *fatwa* on the proper meaning of Islamic laws which allow extermination of non-Muslims, and to disclose that Muslim sacrifice on the *‘Id al-Adha* is, in fact, preparation of young Muslims to slaughter their non-Muslim neighbors.<sup>12</sup> In one of his rare interviews<sup>13</sup> translated into English, a summary of his and his teachers’ distortion of Islam can be found.

There is a rational explanation for the fact that from the 1980s influential Serbian intellectuals began an undeclared war against Islam and the Muslims in Yugoslavia, whom Jevtić called “the reservists of Allah’s army.” That explanation should be looked for in the changing social situation and political power struggle in post-Tito Yugoslavia.

The Serbian orientalists set themselves on a collision course with Islam in the wake of the eruption of the Albanian revolt in Kosovo in 1981, when some orientalists started talking about “Islamic fundamentalism” and the “jihad” of Albanians against Serbs. In fact, all documents published at that time indicated that the forces behind the Albanian revolt were clandestine cells of “Marxist-Leninist” orientation, officially described by Yugoslav authorities as “counter-revolutionaries” and *irredentists*. However the Serbian leadership realized

11 Miroljub Jevtić, *Savremeni džihad kao rat* (Modern Jihad as War) (Belgrade: Nova Knjiga, 1989).

12 Extensive quotations where he has elaborated these views are given by Norman Cigar in cited work.

13 For an Arabic translation of this interview, see: Muhammad Mufaku, *al-Islam fiu Yughuslafi-ja, min Bilghrad ila Sarayawu* (Amman: Dar al-Bashir Press, 1413/1993) 294-197; for an English translation see, H. T. Norris, *Islam in the Balkans: Religion and Society between Europe and the Arab World* (London: Hurst & Company, 1993) 295-298.

that these Bolshevik terms cannot appeal to the European public in the 1980s. Therefore they opted for labels which had already been introduced in dealings with the Muslims. Overnight, “counter-revolutionaries” became *mujahidins* and “Islamic fundamentalism” replaced “dogmatic Marxism.”

After the abolition of the autonomous status of Kosovo in 1989, the Serbian leadership turned toward Bosnia. In this case, some orientalists (for example, Popović and Tanasković) tried to emphasize the “militancy” of the Islamic revival in the republic which was evident from the 1970s. Again, the labels “Islamic fundamentalism” or “Islamic radicalism” were used. These terms replaced the earlier label “pan-Islamism,” which were being used by the Communists in Bosnia after World War II, for different kinds of Islamic activities. In fact, the Communists, as preachers of proletarian internationalism, were especially afraid of other internationalist ideas, hence they severely persecuted Muslims.

It seems that in the late 1980s “Islamic fundamentalism” (in domestic use) and “Islamic radicalism” (in international use) were gradually accepted as new weapons which could be arbitrarily used against any kind of undesirable Muslim activity in the former Yugoslavia. The role of orientalists was to provide party ideologues, state security officials, and regime journalists with updated concepts and terms.

With the breakdown of Yugoslavia (1991-1992) and the beginning of the aggression against Bosnia and its people, Serbian distortion of Islam became massive. Almond observed:

“In practice in the 1990s Serb policies were likely to revive the very kind of Islamic fundamentalism which they were supposed to combat. The psychological need to create one’s ideal enemy to justify one’s own savagery is again apparent. Albanians and other Muslims are hated as much for not living up to their stereotype as for conforming to it.”<sup>14</sup>

## THE SERBIAN ORTHODOX CHURCH

Throughout history, the Serbian Orthodox Church has presented Islam as a religion connected with “the Ottoman yoke”. Ironically, the Church

14 Almond, *Europe’s Backyard War*, 196.

owes its rebirth to the Osmanlis (in the restoration of the autocephalous Peć patriarchate in 1557 by the Bosnian-born Grand Vizier Sokollu Mehmed Pasha), but it has never overcome its medieval hatred and animosity towards the Turks and their religion. Furthermore, even after the withdrawal of the Osmanli armies from Serbia in 1862 and the Balkans in 1912, the Orthodox clergy continued to wage periodic wars for “holy cross and golden freedom” against the remaining Muslims, and to seek revenge for battles lost centuries ago.

In the context of the obsession of the Serbian Orthodox Church with the medieval past, myth became a prevailing mode of the apprehension of reality. Dobrica Ćosić, the intellectual founder of today’s Serbian ethnofascism, often pointed out that the Serbs communicate with God and the universe through myth, not the Bible.<sup>15</sup> In that mythology, the Kosovo myth occupies the most dominant place and continues to shape the pseudo-historical consciousness of today’s Serbs and their attitudes toward the Muslims.

The Kosovo myth is a Serbian popular account of the battle fought in the “Field of Blackbirds” (Kosovo Polje) in the summer of 1389 between the multinational forces of the Serbian prince Lazar Hrebljanović (1329- 1389) and the Osmanli army led by Sultan Murad I (1326-1389).<sup>16</sup> In that battle the outnumbered Osmanli army managed to defeat the Serbs and their allies. The commanders on both sides were killed. Sultan Murad was stabbed by a Serbian knight who became a symbol of revenge. Prince Lazar was captured and executed with other Serb noblemen in revenge for the murder of the sultan and breach of promises. The Serbs saw the Battle of Kosovo as the end of their medieval state and the beginning of the five century-long Osmanli rule or “the life out of history.” The Osmanlis saw that battle as merely one of their successful campaigns in the Balkans in the last decades of the 14th century, never as the most decisive event for Balkan or Serbian history.<sup>17</sup>

The Kosovo myth was created in the period between 15th and 19th centuries by the Orthodox clergy and folk singers.<sup>18</sup> The earlier version

15 Hadžem Hajdarević, “Zlikovdan” (Day of Crimes), *Ljiljan*, 5 July 1995, 4. *Ljiljan* is a Bosnian national weekly paper.

16 See, H. T. Norris, *Islam in the Balkans* (London: Hrust & Company, 1993) 257-263.

17 *Ibid.*

18 For a critical account of the emergence, symbolic structure and social function of the Kosovo myth, see: Miodrag Popović, *Vidovdan i časni krst* (The Day of Vid and Holly Cross) (Beograd: Slovo ljubve, 1976).



was more religious in expression than the present one. In the early version, Prince Lazar was portrayed as a righteous and pious ruler, a Christian martyr who chose “the Kingdom of Heaven” over the “Kingdom of Earth,” and fought against the rule of “the Turks,” “the Agarjani,” “the Ishmaelites,” or simply “the infidels.” The Serbian Orthodox Church has canonized Prince Lazar and cherished his cult as one of the most important elements of its teaching and practice. As should be expected, St. Lazar’s enemies are eternal enemies of the whole Serbdom.

Why has the Serbian Orthodox Church given such significance to Prince Lazar and the Battle of Kosovo? Most probably there are two main reasons: conceptual and historical. First, it is known that the Orthodox churches are organized on ethnic and national bases. Following the Byzantine tradition, they accept the supremacy of the state over the church, and consider themselves the custodians of national traditions and interests. In that context, it is natural that some political figures and events acquire the aura of religious significance and sanctity in Orthodox Christianity. Second, historical records showed that a special relationship existed between the Church and Prince Lazar, who built churches, donated land to monasteries, and sponsored the work of Orthodox missionaries. In the power struggle in Serbia after 1389, the Church supported Lazar’s widow and son and created the image of a martyr in order to justify the secular interests of his heirs.<sup>19</sup>

Since the end of the 18th century, significant changes have taken place in the structure of the Kosovo myth. The emphasis has moved from Prince Lazar to the figure of Miloš Obilić, the sultan’s assassin, who gave the myth a “warrior-pagan character” and broke from the Christian traditions.<sup>20</sup> The notion of vengeance has become the central element of the myth, and violence has become one of the highest values in personal code of honour. The-national romantics used the myth for the intensification of anti-Osmanli feelings and national liberation during the 19th century. However, ideological and political use of the Kosovo myth continued after the cessation of Osmanli rule in Serbia. In 1913, the alleged day of the Battle of Kosovo - Vidovdan (June 28th) - was proclaimed a public holiday and the coming decades witnessed its new affirmation. At that time, there were no Turks in the Balkans and it became obvious that the celebration of Vidovdan, where the

19 John V. A. Fine Jr., *Dictionary of the Middle Ages*, s.v. “Serbia” and “Lazar Hrebljanović” (New York: Charles Scribner’s Sons, 1986).

20 M. Popović, *Vidovdan i Časni krst*, 78-96.

Orthodox Church played the central role, was directed against their cultural successors, the Muslims. In his study of the Kosovo myth, Miodrag Popović, a Serbian historian of literature, writes:

“According to the myth, Vidovdan was the day of heroic competition, and the triumph of good over evil. In the new cult, developed under the pressure of political and economic demands of the Serbian bourgeoisie, penetration to southern lands and the conquest of Kosovo, Vidovdan has become a symbol of bloody, merciless revenge against everything that is Turkish and Muslim in general.”<sup>21</sup>

In spite of the tendency toward dialogue and ecumenism among the religious communities in former Yugoslavia, the Serbian Orthodox Church has failed to critically examine its own history and doctrine, and has continued to build the religious, ideological and political consciousness of its members on such ahistorical and irrational bases. From that perspective, the Serbian writer Matija Bečković described Kosovo as “the Serbian Gospel”,<sup>22</sup> and the poet Isidora Sekulić wrote the following:

Serbia is not a state, it is Kosovo, and Kosovo is a tomb, the tomb in which everything is buried, and the resurrection can only spring from the tomb, because there is no resurrection without death.<sup>23</sup>

The executors of the ethnofascist project of Greater Serbia have exactly followed the ideas expressed in these verses. Celebrating the 600th anniversary of the Battle of Kosovo on 28 June 1989, the Serbian president Slobodan Milšević vowed:

“There is no time for sorrow. It is time for struggle... We shall win the battle for Kosovo regardless of the obstacles facing us inside and outside the country.”<sup>24</sup>

In the same year, the Serbian Orthodox Church dug up the bones of Prince Lazar from his church at Kosovo and carried them throughout “the Serbian historical lands” and future “killing fields” (including Croatia and Bosnia and Hercegovina) in order to bring “national homogenization” of the whole Serbdom. Such obsession with death and cemeteries could only bring disaster to the peoples in the central part of the Balkans.

The historical responsibility of the Serbian Orthodox Church lies in the fact that its dignitaries allowed tribal paganism to overshadow

21 *Ibid.*, 129-130.

22 Almond, *Europe's Backyard War*, 198-199.

23 *Ibid.*, 190.

24 *Ibid.*, 197.

Christianity in its doctrine and practice, that it could not see Abraham's sons in Muslim neighbours, and that it continued to portray Islam reproducing images and vocabulary from the time of the Ottoman-Serbian confrontation. In doing that, it gave *de facto* dispensation to common criminals to conduct genocide against the Muslims.

The role of the Serbian Orthodox Church has been acknowledged by some dissenting Serbian intellectuals, like Bogdan Bogdanović, a university professor and former mayor of Belgrade; and Mirko Kovač, a novelist, who highlighted the church's involvement in the preparation of genocidal policy against non-Serbs.<sup>25</sup> That church has been described as the "spirit behind the Yugoslav People's Army" - the ideologically Communist army of former Yugoslavia which became the "fighting fist" of the Serbian hegemonist project.

## THE HISTORIANS

A number of Serbian historians contributed to the distortion of the image of Islam. Their general orientation was to see the Turks as arch-enemies responsible for "the life of the Serbs out of history." A good example of such orientation could be found in the works of historian Radovan Samardžić.<sup>26</sup> With mixed feeling of self-pity and self-glorification, he describes the Serbs as a nation which for a long time resisted the Osmanlis, trying to prevent their invasion of Europe. In return, the Osmanlis punished the Serbs in different ways: taking away their ethnic name, deporting them to regions where they would perish, interfering with Serbian traditions, taking their children and converting them to Islam (child levy), and carrying out mass conversions to Islam. Samardžić argues that the Osmanlis developed a system for the suppression of whole nations. He maintains that this system included a genocidal policy. He further argues that since the Ottoman system was built on Islam, in *ultima linea* Islam is responsible for the plight of the Serbs.

25 Interview with Bogdan Bogdanović by Selena Seferović, "Ne vraćam se u Zemlju Budaliju, a kad stane rat, rado bih živio u Sarajevu ili Mostaru" (I am not coming back to a country of madness and, when the war stops, I would like to live in Sarajevo or Mostar) *Ljiljan*, 16 August 1995, 5-6; Interview with Mirko Kovač by Gavriilo Grahovac, "Bošnjaci će odbraniti Bosnu zato što nisu isti kao njihovi neprijatelji" (The Bošnjaks will defend Bosnia because they are not the same as their enemies) *Ljiljan*, 29 March 1995, 5-6.

26 Radovan Samardžić, *Ideje za srpsku istoriju* (The Ideas for the Serbian History), (Belograd: Jugoslavijapublik, 1989) 9-10, 229-233.

The claim that the spread of Islam in the Balkans was part of the “genocidal policy” of a foreign, Asiatic state against the Serbian people implies that today’s Muslims are descendants of apostates and renegades (in the case of Bošnjaks) or surviving elements of occupiers (in the case of the Turkish ethnic minority), and therefore various actions for their “return into the religion of their forefathers” or punishment for betrayal, are legitimate.

Similar views could be found in the doctoral dissertation of the celebrated Yugoslav novelist Ivo Andrić (1892-1975), who was awarded the Nobel Prize for literature for his novel *The Bridge on the Drina*. That, along with a number of his other novels dealing with life in Bosnia under the Osmanlis, was accepted almost as a historical fact by a large public in former Yugoslavia. Due to this, his views on Islam and the Muslims appeared very significant. These views were systematically expressed in his dissertation *The Development of Spiritual Life in Bosnia under the Influence of Turkish Rule* (1924) published posthumously in the Serbian language in 1982 and translated into English in 1990.<sup>27</sup>

In Andrić’s interpretation, the spread of Islam in Bosnia is a direct result of the conquest by “an Asiatic military people whose social institutions and customs spelled the negation of the Christian culture, and whose religion - begotten under other skies and social circumstances and quite incapable of adaptation - shackled the life of the spirit and the mind in Bosnia, disfiguring it and molding it into an exceptional case.”<sup>28</sup> According to him, “... Islamization went ahead ruthlessly and quickly.... Whoever wished to retain his property for good along with the political ascendancy and privileges vested in it had finally to convert to Islam.”<sup>29</sup> Andrić quotes the Montenegrin bishop and poet Petar Petrović Njegoš (1830-1851), known for his anti-Islamic feelings: “the cowardly and the covetous turned into Turks.”<sup>30</sup>

Islamic social and administrative institutions are seen in a similarly negative manner. Using historically doubtful documents, the provisions of Islamic law are interpreted as providing the legal basis for discrimination against and neglect of non-Muslims, a ground for the ob-

27 See: Ivo Andrić, *The Development of Spiritual Life in Bosnia under the Influence of Turkish Rule*. Edited by Želimir B. Jurčić and John F. Loud, (London-Durham: Duke University Press, 1990).

28 *Ibid.*, 16.

29 *Ibid.*, 18.

30 *Ibid.*, 20.

stacles to Church life, and a major cause of “Bosnian backwardness”.<sup>31</sup> Bosnian Muslim literature in oriental, as well as the Bosnian language written in the Arabic alphabet (*aljamiado*), was underestimated; “they [Muslim poems] are meager in quantity as well as low in quality.”<sup>32</sup>

The disrespect of facts and anti-Muslim biases were translated into literary fictions by writers like Andrić. The tortures invented by the Wallachian prince Vlad Tepes (1430-1477), known as Dracula, and used against the Osmanlis, were in Andrić’s novels attributed to Bosnian Muslims, who allegedly used them against the Serbs.<sup>33</sup> A cruel play between fiction and reality continued with the Serbian slaughter of Bosnian Muslims on *‘Id al-Adha* in 1992 on the bridge of River Drina in the south-eastern Bosnian town of Višegrad, the scene of Andrić’s fiction.<sup>34</sup> The killers tried to justify their heinous actions by asserting that they just had to take their revenge on “Turks” for their old crimes.

The distortion of Islamic teaching and history is especially noticeable in the works of those Serbian historians who played, or are still playing, an active role in politics. They believe that the role of historians is not just to find out what really happened in the past, but also to reshape history. Two examples are very illustrative: Vasa Čubrilović and Milorad Ekmečić. Vasa Čubrilović (d. 1990) was a surviving member of the terrorist organization that assassinated Archduke Franz Ferdinand and his wife in Sarajevo on 28 June 1914. In 1937 he proposed to the Serbian-dominated Yugoslav government a “final solution” for the question of Muslim Albanians in Kosovo in a paper *Iseļjavanje Arnavuta* (The Expulsion of Albanians).<sup>35</sup>

He listed a number of brutal measures which were a combination of state terror and “the creation of suitable psychosis” that must force the Albanian Muslim population to leave their homes so that a secure “ethnically clean” region of Kosovo might be delivered in the hands of the Serbs. Among the proposed measures are: abuse of Islam and

31 *Ibid.*, 23-34.

32 *Ibid.*, 67-68.

33 Smail Balić, “Dilema između Istoka i Zapada u djelima Bašagića, Mulabdića i Handžića” (The dilemma East or West in the works of Bašagić, Mulabdić and Handžić), *Zbornik radova četvrtog simpozijuma* (Proceedings of the Forth Symposium) (Zagreb: Zagrebačka Džamija, 1994), 28.

34 For an eyewitness account of such crimes, see: State Commission for Gathering Facts on War Crimes in the Republic of Bosnia and Herzegovina, Bulletin, (October 1992)1: 50-53; (March 1993)3: 22-23.

35 Almond, *Europe’s Backyard War*, 194-196.

Muslim '*ulema*' and forcing Muslim girls to go to schools with boys.<sup>36</sup> The justification of these measures is even worse. Pleading that Serbia must learn from the Turks, he wrote:

"Turkey brought to the Balkans the customs of the Sheriat, even the Balkan Christians learned from the Turks that not only the state power and domination, but also home and property are won and lost by the sword."<sup>37</sup>

His disciples learned the lesson: depriving the Bošnjaks of life, home and property, and (if possible) state, by the usurped sword of the former Yugoslav People's Army, and the world's indifference, is legitimate.

After the Second World War, Čubrilović became a prominent member of the Serbian Academy of Sciences and Arts (SANU), one of the promoters of Serbian nationalism after Tito's death. Milorad Ekmečić, one of the leading Serbian historians and the most influential Serbian intellectuals in Bosnia and Hercegovina before 1992, devoted his life to the study of Serbian and Yugoslav history. He is especially concerned with human geography in the Balkans, the role of religion in the process of nation formation, securing of vital space for Serbian people, the German rise, and the re-emergence of Turkey as a regional power in the Balkans. He regrets that Russia today has no great leaders, but believes that this is temporary, and that the greatness of the Russian land is eternal.<sup>38</sup> In 1992 he asserted that the war in Bosnia is just a continuation of the Serbian liberation struggle that began in 1804 against the Osmanlis, and that for this struggle Serbs should be ready to sacrifice hundreds of thousands of their own people. The learned professor, now in Belgrade, is obviously not concerned with the Muslim casualties. Relying upon his knowledge of history, he warned in 1995 the Serbian politicians engaged in peace negotiations: "Wherever the Muslims settle down, due to their high population growth, that territory has been already lost after a decade."<sup>39</sup>

36 *Ibid.*, 195.

37 *Ibid.*

38 Fahrudin Djapo, "Četnike nema ko da briše" (There is no one who could erase the Chetniks) *Ljiljan*, 15 November 1995, 34.

39 "Ekmečićev niski pad" (Ekmečić's low fall) *Ljiljan*, 25 October 1995, 38.

## THE DESTINY OF THE DISTORTIONS

These three groups of intellectuals have become the main creators of the distorted images of Islam. Their views were popularized by a large number of *apparatchiks*, unscrupulous media, and institutionalized education. At the same time, those Serbian scholars who refused to participate in the hegemonistic project were marginalized and condemned to silence. The distorted image of Islam has provided ideological support and justification for the anti-Muslim policy in former Yugoslavia. That trend was a result of a specific political atmosphere, but it is also true that it has brought further radicalization of Serbian opinion of Muslims.

In our view, the only effective way for the correction of the distorted image of Islam is the defeat of the Serbian hegemonistic project, which should include an end to the authoritarian regime and the democratization of public life. Only the abandonment of the idea of political dominance may lead to the abandonment of its advocates and their distortions. However, those people can not be forgiven because they knew what they were doing.







## BOSNIAN YOUNG MUSLIMS: A REVIEW ESSAY

Sead Trhulj: *Mladi Muslimani* (Zagreb: Globus 1992., p.390)\*

The study of the Young Muslim Association (*Mladi Muslimani*), a revivalist Islamic organisation active between 1939 and 1949, was a taboo topic in Bosnia during the Communist rule. Documents related to this organisation were kept in the State Security Service (SDB) and only pro-regime publicists were occasionally given information needed for ideological attacks on Islamic circles allegedly connected with the former Young Muslim Association (henceforth: YMA). The authors of histories of modern Bosnia mainly repeated the official version of the history of the YMA or in rare cases cautiously made more objective evaluation.

Only with the collapse of the Communist regime in 1990 and the democratisation of public life was it possible to tell another side of the story. Documents from the state archives and private possession become accessible and surviving members of the YMA acquired an opportunity to give their account of the events. Finally, available documents and eye-witness accounts have been gathered and published by Sead Trhulj (b.1935), a Bosnian writer, in a book entitled *Mladi Muslimani* and published by Globus, a renowned Croatian publisher, in 1992, on the eve of a new war in Bosnia.

The book *Mladi Muslimani* is divided into six parts. The first part is an introduction written by the editor whereby a brief history of YMA has been given. The second part includes interviews with six former members of YMA, namely: Ismet Serdarević, Alija Izetbegović, Smail Velagić, Mahmud Cvijetić, Ejub Hadžić and Edah Bećirbegović. The third part consists of documents issued by YMA during the last years of their activities including texts published in a clandestine paper *Mudžahid (al-Mujahid)*. The fourth part includes records of the investigation of arrested members of YMA conducted by the State Security Service

\* *Islamic Quarterly*, 45:1 (2001), pp. 67-78.

during 1949. The fifth part contains court documentation on the Sarajevo trial of nine Young Muslims in summer 1949. The final, sixth, part includes the coverage of the Sarajevo trial in 1949 in state-controlled papers and the reaction of the official Islamic religious administration. The index of personal names makes reference to particular persons easier.

With this book, researchers of modern history of Islam in Bosnia have been provided with a compilation of documents and personal accounts sufficient for an analysis of the history, ideology and the role of the YMA in Bosnian history. Brief accounts of these issues will be provided in the following lines.

## HISTORY

The beginning of the Association could be traced back to 1939 when several Bosniak students from Belgrade University formed a kind of discussion group where they began to debate issues related to Islam and Muslims. In that group were students Esad Karadžozović, Tarik Muftić, Emin Granov and Husref Bašagić. This student group established contact with some students from *Prva muška gimnazija* (The First Gymnasium for Boys), an elite college of Sarajevo. Among the college students were: Alija Izetbegović, Nedžib Šaćirbegović and Ešref Čampara.

In this discussion group young Bosniaks reflected upon issues such as relations between Islam and Europe, decadence of Muslim peoples and how to overcome it, the position of the Bosniaks in Yugoslavia, especially after the virtual division of Bosnia between Serbia and Croatia in 1939 and the like. These young Bosniaks built their ideological consciousness reading books such as: *Islam u svijetlosti istine* (Islam in the Light of Truth) (Tuzla: Štamparija Riste Sekulić, 1934), by Bosnian author Mehmedalija Metiljević (d.1934), *Muhamed i Kur'an* (Muhammad and Qur'an) (Beograd, 1931) by Bosnian modernist author Osman Nuri Hadžić (1869-1937), and *Borba polumjeseca i krsta* (Mostar, 1913), a Bosnian translation of the work of Ottoman reformist author Halil Halid Bey (1869-1931). *The Crescent Versus the Cross* (London, 1907).<sup>1</sup>

1 See Mustafa Uzun, "Halil Halid Bey", *Turkiye Diyanet Vakfi Islam Ansiklopedisi* (Istanbul, 1997), 15:313-16.

Discussions were held mainly in the premises of Bosniak society "Trezenost" (The Sobriety) in Sarajevo.

At the end of March 1931 Young Muslims decided to formally constitute their society. A constitutive assembly was held in the same premises under the chairmanship of Tarik Muftić with the attendance of 40-50 people and a representative of police which was in accordance with regulations of that time.

The Statute of Society named as *Društvo "Mladi Muslimani"* (Young Muslim Association) was adopted but the Nazi attack on Yugoslavia prevented its registration.

Why did young Bosniaks opt for the name "Young Muslims"? Several explanations were offered. According to one explanation, that name was adopted under the influence of two Bosnian *'alims* Mehmed Handžić (1906-1944) and Kasim Dobrača (1979) who studied at Al-Azhar and were aware of the existence and activity of Egyptian *al-Shubban al-Muslimun*. Members of the YMA usually denied this explanation (p.39). They identified themselves as Muslimani (Muslims), a term mainly in use in the then Yugoslavia to denote Bosniaks and with prefix *Mladi* ("Young"), they wished to emphasize a new *elan* similar to other "young" movements. However, from 1943 onwards, they used the title *Mladi Muslimani* along with its Arabic equivalent *al-Shubban al-Muslimun*.<sup>2</sup>

In the first part of the 20<sup>th</sup> century at least in two countries there were organisations which used the name "Young Muslims". In Egypt, *Jami'yya al-Shubban al-Muslimin* (Young Men's Muslim Association) was founded in 1927. In terms of nature and objectives, this society was similar to Young Men's Christian Association and Young Men's Hebrew Association.<sup>3</sup> The activities of *al-Shubban al-Muslimun* included adult education, sports, public lectures, cultural work, educational travel and the like.<sup>4</sup> The Association was not involved in political struggle.

2 See *El-Hidaje*, the paper of the association of '*Ulama*', (Sarajevo 1943-1945), where the YMA was given a special section.

3 The Young men's Christian Association (YMCA) is an organisation which was established in London in 1844. Initially it aimed to combat idleness among young workers through Bible study and prayers. Later on a wide range of activities has been developed including physical, educational and social development of members in the spirit of Christianity. Today the YMCA comprises about 26 million members in 92 countries (*Funk and Wagnalls New Encyclopedia*, 28:95-6, s.v. "Young Men's Christian Association"). The Young Men's Hebrew Association (YMHA) was founded in Baltimore in 1854. Its programmes are aimed to strengthen Jewish family life, provide community services and develop competent leadership (*Funk and Wagnalls New Encyclopedia*, 15:52-3, s.v. "Jewish Community Centres").

4 P J Vatikiotis, *The Modern History of Egypt* (London: Weidenfeld and Nicolson, 1969), 326.

The year 1925 saw the establishment of a society of young Muslim intellectuals in Indonesia. The name of the society was *Jong Islamieten Bond* (Young Muslim Association).<sup>5</sup> The Association included Muslim students from secondary and vocational schools and higher institutions. During the period 1925-1942 *Jong Islamieten Bond* become very active in counteracting Christian missionary activities from a position of Muslim modernism. The Association was not politically active. In both cases Young Muslim Associations, similarly to Bosnian, were founded to serve religious-educational and cultural purposes.

After 12 days of war in April 1941 the Kingdom of Yugoslavia capitulated and was divided between Germany, Italy and their satellite-states. Bosnia was included into the territory of fascist "Independent State of Croatia". The YMA was constantly in conflict with the new Croat *Ustasha* regime. But open conflict did not occur because the YMA was considered as an anticommunist organisation.

With the passage of time YMA leadership felt a need to legalise its status in order to protect its membership in a new state and secure opportunities for its activity. A solution was found within the Association of 'Ulama' (*Organizacija ilmije "El-Hidaje"*). The Central Board of *El-Hidaje* approved the statute of YMA on April 27, 1943 and accepted it as its youth wing.<sup>6</sup> Not all the members of YMA were in favour of this solution. The Association from the very beginning considered traditional 'ulama' as an obstacle for Islamic revival and some members, including Alija Izetbegović, understood this more as a kind of imposition of the control of 'ulama' over Young Muslim activists. A part of YMA members continued to work with 'ulama' and others become more active in Muslim charitable organizations helping Bosnian refugees and the needy during the Second World War.

With the coming of the Communist power in 1945 activities of different religious, political or ethnic organization and associations were stopped. In order to channel the work of pre-war cultural organizations, the Communist authorities decided to organize Serbs in Serbian cultural society "Prosvjeta" (Enlightenment), Croats in Croat cultural society "Napredak" (Progress) and the Bosniaks in Muslim cultural society "Preporod" (Renaissance).

5 Karel Steenbrink, *Dutch Colonialism and Indonesian Islam. Contacts and Conflicts, 1596-1950*, tr. Jan Steenbrink and Henry Jansen (Amsterdam-Atlanta: Rodopi, 1993), III-39.

6 Fikret Karčić, *Društveno-pravni aspekt islamskog reformizma* (Social and Legal Aspect of Islamic Reformism (Sarajevo: Islamski teološki fakultet, 1990), 224.

The YMA tried to take control over the “Preporod” society. In autumn 1945, during the constitutive assembly of the society in old Moorish-style building of Sarajevo City Hall, Young Muslims raised their voices against the plan of Communists to put their men in the leadership of the Muslim cultural society. Some Young Muslims were elected into the leadership of “Preporod” and worked for several months until the Communists decided to crush their ideological opponents by severe measures.

On March 1, 1946, first group of the YMA leaders including Alija Izetbegović, Nedžib Šaćirbegović, Ešref Čampara and ten more were arrested. They were tried by a Military Tribunal and sentenced to jail ranging from several months to four years. These measures did not deter YMA members from continuing their work. In April 1946 several Young Muslims, who were dismissed from the Yugoslav Army, decided to revive the organization. They organized mass clandestine branches throughout Bosnia.

The main groups were in Sarajevo, Mostar and Zagreb. The Sarajevo group included: Hasan Biber (b.1919), Halid Kajtaž (b.1925), Ismet Serdarević (b.1925), Vahid Kozarić, Kemal Kurtbegović (b.1925) and Mahmut Jerebica (b. 1927). The second group, organized in Mostar, included the following members: Omer Stupac (b.1927), Nusret Fazlibegović (b.1927), Salih Behmen, Omer Behmen, Teufik Velagić (b.1925), Rušid Prguda, Smail Velagić and Mustafa Purić. The Zagreb group mainly consisted of Bosniaks students. Among them were: Tarik Muftić (b.1920), Ejub Hadžić (b.1925) and Mahmud Cvijetić.

Apart from these three centres clandestine branches of the YMA were formed in more than thirty towns and villages throughout Bosnia. Surviving members of the association estimate that alone in Hercegovina there were 1,000 members (p.15).

The work of the YMA was regulated by *Pravilnik* (Regulations) adopted by the leadership in 1947 (text is not available). The Association worked in small groups whose members did not know members of other groups. The groups communicated with the leadership through group leaders. YMA members used pseudonyms in their communication. In May 1947 the Association started publishing its paper *Mudžahid* (*Mujahid*) of which eight issues appeared and *Kolo* (The circle).

The main content of the clandestine activity of the YMA was education and personal development of its members in accordance with

Islamic worldview. In a totalitarian state, such as the then Yugoslavia, building ideology on a basis other than Marxism was considered as one of the greatest crimes. The YMA tried to prevent the state-sponsored process of secularisation among the Bosniaks and denationalisation of their people. They were not allowed to exercise their religious and political rights in a legal way through institutions meant for that purpose. Therefore they opted for clandestine work. That decision was fatal: no secret organisation can threaten Communist regimes, as Alija Izetbegović admitted in 1991 (p.65). The Communist regimes, with their long experience of clandestine work and highly developed system of control of individuals, could only disintegrate after internal wearing-out and mass dissatisfaction. It should be assumed that the Communist secret police-State Security Service-infiltrated the Association or engaged some members to work as confidants. In that way, the regime closely followed internal developments. From 1946 to 1949, during the period of YMA clandestine work, each year leaders and members were arrested, tried and sentenced.

The intensification of state pressure on YMA members, worsening of the internal political and economic situation in Yugoslavia after the split between Josip Broz Tito and Josif Visarionovic Stalin and rising possibilities of an open conflict between the “free world” and countries of “peoples democracy”, most probably led YMA leadership to decide to go for a direct confrontation with the regime. The decision was made in the meeting of the central body on February 20 and 21, 1949. The meeting was attended by: Hasan Biber, Halid Kajtaz, Salih Behmen (leadership), Tarik Muftić and Teufik Velagić (group from Zagreb), Nusret Fazlibegović, Mahmut Jarebica and Kemo Kurbegović (group from Sarajevo). It seems that the regime took a serious view of this meeting and decided to destroy the Association and to give exemplary punishment to its members. The only available source for this event are documents from the investigation conducted by the State Security Service and the account of some Young Muslims, who were not personally present at that meeting. Alija Izetbegović said that “in that meeting it has been decided to start direct struggle against the communist system” (p.65).

Like all ideological associations, YMA's membership was composed of “hard-liners” and “moderates”. The “hard-liners” mainly came from the Mostar group. Documents from the investigation against

Hasan Biber and others mentioned that new leadership was elected at the meeting on 20th and 21st February 1949. Besides, further building up of the Association was discussed as well as the intensification of ideological work, continued education of members, including technical skill courses such as parachuting, car driving, telegraph-operating and the like. Less than two months later, in the first part of April 1949, the State Security Service started a series of arrests which marked the end of the Association. The arrested Young Muslims were subjected to torture in the prisons of the State Security: some of them died during the months of ceaseless investigation. The Association leadership was tried at the *Okružni sud* (District Court) Sarajevo in August 1949. The largest number of real or alleged members of the YMA, more than a thousand, was punished through administrative procedure by *Narodni odbori* (Peoples Committees) which were authorised to pass jail sentences up to two years or sent accused into labour camps euphemistically called "socially beneficial work" (p.23).

The main process where YMA leaders were tried was held Sarajevo. Fourteen members were accused and the District Court passed four death penalties (Hasan Biber, Halid Kajtaz, Omer Stupac and Nusret Fazlibegović). The others were sentenced to jail from 3 to 20 years (p.337-38). The YMA leaders were accused of committing "crimes against the people and the state" (an expression used in Marxist legal terminology for political crimes) such as: enemy propaganda, establishment of an illegal organisation, counter-revolution, and the like. Appeals made to the High Court of Bosnia and Hercegovina against the death sentences and their plea for clemency to the Presidency of Peoples Assembly of Yugoslavia were rejected. Death penalties were executed by a firing squad of the State Security Service somewhere around Sarajevo at an undisclosed date (p.31).

Why did the Communist regime try to crush the YMA? The regime, through its State Security Service, was aware that the Association did not represent a real danger to the system. But in a totalitarian regime having a different opinion is considered a crime. If such an opinion is based on a worldview other than Marxism, then it becomes an ideological crime. And if such a rival ideology is accompanied with a clandestine organisation, then it is considered counter-revolutionary. Uroš Ivaničević, one of the defence lawyers in the Sarajevo trial, who used to defend the Communists before the Royalist courts in pre-war

Yugoslavia, said in the courtroom that according to the criteria of the Yugoslav Monarchy Young Muslims would have received 25 canes and would be freed (p.30).

The Communist regime saw things differently. In YMA they recognised self-conscious Bosniaks who considered Islam as an inalienable part of their identity, who wished to resist the state-sponsored secularisation, who looked at themselves as a part of global Muslim community, who were ready to fight and sacrifice for their ideals. Because of that, the regime decided to punish them harshly. Certain naiveness, youthful enthusiasm and a lack of a sense of political reality (such as the decision of arming some members with home-made daggers) made it easier for the regime to brand YMA as a “terrorist organisation”. But that was not the crucial point. The major crime of YMA in the eyes of the Communists was their intention to build an Islamic social order and to work for it in an organised manner. Because of that and in order to prevent any similar attempts among future Bosniak generations, YMA rank and file were severely punished.

## IDEOLOGY

In the absence of fully preserved archival materials of YMA, one can only try to reconstruct their ideology on the basis of some rare articles published by its members during the period 1943-45 proclamation and brochures circulated secretly among members and published by Sead Trhulj as well as interviews of some former Young Muslims given to the same author. In this place we shall try to identify their views on Islam, revival, Pan-Islamism and Bosnia.

The YMA did not understand Islam only as a religion in the European sense of the word. They were the first in Bosnia to define Islam as an “ideology”, the approach common for revivalist movements and organisations in the 20th century. An anonymous “Young Muslim”, a student of Medicine (probably Tarik Muftić), published an article entitled *Kompromisni Islam i kompromisni muslimani* (Conformist Islam and Conformist Muslims) (*El-Hidaje* 6/1942/4). In this article he described Islam as “...universal ideology which includes social and political thought”. He has differentiated between “true Islam” (contained in Qur’an and Hadith) and “conformist Islam” (understanding and prac-



tice of Islam formed during the history as a result of Muslims' encounters with other cultures and mores).

The same idea was elaborated in the article *Budućnost je naša* (The Future is Ours) published in the paper *Mudžahid* secretly circulated among the members (p.147-48). In that article the unknown author says that the only way which leads the Muslims in to prosperous future is: "... the path of pure and uncorrupted Islam, as stated in the Qur'an and Hadith, the path of the Muslims of the first century, the path which made the Islamic state the biggest and socially the most advanced state in the world, the path along which we, Muslims of our time, move forward in the struggle for the realisation of Islamic ideals" (p.148).

In the *Upustva za rad* (Instructions on Methods of Work in the Association) under the section "Ideological developments" it has been said that, "It is needed to better know Islam as a religion, culture and social system" (p.136) Having such an understanding of Islam and an activist approach to its revival, YMA necessarily took a collision course towards most of the 'ulama' of the then Bosnia, whose understanding of Islam was mainly formalistic, ceremonial and static.

One of the most frequently addressed issues in the YMA was the issue of Muslim decadence and how to overcome it. That issue was present in Bosnian Muslim public life for decades and the famous treatise of Shakib Arslan (1869-1946), *Why did Muslims go backward while others advanced? (Limadha ta'akhhkhara 'l-Muslimun wa limadha takaddma ghayruhum?)* had been translated into Bosnian and published in 1934<sup>7</sup> The YMA was always interested in global issues of the Muslim *Ummah*. In that light they saw problems of the Bosniaks as a part of global problem of decadence and revival. In the opinion of Young Muslims: (1) Muslims themselves are responsible for their centuries long decadence and, (2) the main cause of decadence was their departure from the path laid down in the Qur'an and the *Sunnah* (p.148). Therefore, "the only path to felicity and better life is to return to Islam" (p.123) In a brochure written by Emin Granov under the title *Kako ćemo se boriti* (How to struggle), written during the Second World War, the answer is through the education of the youth.

Young Muslims held that they should be equipped with Islamic as well as modern European knowledge. All members

7 Fikret Karčić, *Društveno-pravni aspekt islamskog reformizma*, 228.

were asked to know reading the Qur'an, *aqida*, *akhlaq*, *fiqh*, history of Islam according to the textbook for secondary schools in Bosnia and after that to study the economic and social situation and the geography of the Muslim world (p.136). Members were encouraged to pursue further studies at universities in Yugoslavia (science and technology) and to master at least two European languages (English and German), in addition to Arabic and Turkish. Their attitude towards Europe was explained in *Upustvo za rad* (Instructions for Work). "It is necessary to emphasise what is good and what we should accept from Europe and that is mainly science, its results and pragmatic spirit. That we should accept but giving our Islamic color" (p. 131).

Apart from education, the development of personal Islamic morality is crucial. YMA members were asked to influence their immediate surrounding, family, neighborhood, working place and the like, to be an example of Islamic modesty and to fight vices. Members were asked to strictly observe the following: 1. regular prayer (*namaz*); 2. fasting; 3. not to go to mixed beaches and promenades; 4. not to dance; 5. not to attend theatre, opera or ballet and watch only those movies which the Association allows; 6. not to attend mixed parties and gatherings; 7. not to shake hands with women; 8. it is allowed to have a fiancée but those who do not have better to avoid that; 9. to be disciplined, obedient and punctual (p. 133).

The persecution of the Bosniak Muslims by the Communist regime brought up a radicalisation of thought among YMA. In *Proglas* (Proclamation) with no date, but certainly after 1946, it has been said: "YMA must change their views and take a new path which will get them out of previous deadlock where they found themselves. We are facing the choice of either to fight or to the extinguished like cowards. There is no third solution "...These are the days of the struggle for survival, i.e. days of *Jihad* and our organisation consequently is taking that way" (p. 126-27).

The first two methods of revival - education and personal development - could be considered as a main strategy of YMA commonly accepted by a large membership. The third method, *jihad* was emphasised in the last phase of the life of the Association parallel with the increasing pressure of the Communists against religion in Bosnia and police actions against YMA members.

The YMA held that the only way for Bosniaks is the affirmation of their Islamic identity. In the brochure *Prvi nastup* (The First Advent),

it has been stated that the objective of the Association or movement is “the revival of Islamic community in Bosnia and Hercegovina and in the world, the return of the Muslims to pure Islam and the elimination from communal life everything what is alien to Islam ...” (p. 129) Attempts of some Bosniaks to identify themselves ethnically as Serbs or Croats, YMA has condemned (p. 129). The need for revival, in the view of YMA, has been overlooked by both ‘*ulama*’ and the intelligentsia. They criticised the ‘*ulama*’ for delegating the concern over worldly affairs to the secularists and the secularists for confining God’s message only to the relationship between man and God (p. 151). YMA considered attempts by different Bosniak politicians and, especially intellectuals, to identify and ally with Croats and Serbs as politically wrong. “We have seen and witnessed that the name Croat or Serb does not represent anything else but a garb under which are hidden the Cross, the edge and the idea: down with Islam, revenge of Kosova,<sup>8</sup> raping, triumphing over the Crescent and the like” (p. 127).

The YMA did not precisely define its views on the future of Bosniaks and Bosnia. They had rejected all attempts by Bosniak politicians of Yugoslav Muslim Organisation (JMO), pro-Croat, pro-Serb, and pro-Communists (p. 151). Some Young Muslims were very suspicious towards politics in general. Hasan Biber, one of the YMA leaders, has written: “... politics is a deception even for the most skilful people” (p. 130). It could be said that their option was the Islamic revival of Bosniaks, Bosnian patriotism without precise views on its political status.

Young Muslims were Pan-Islamists in a sense that they saw Bosniaks as a part of the *Ummah* and they considered their work as a contribution to a global Islamic revival. In the brochure “How to struggle”, long-term objectives of that revival were mentioned: political and economical liberalisation and the unification of the Islamic world, and the establishment of Islamic culture and civilisation (p.123).

They were very interested in what was going on in Muslim countries. As all minorities, they tried to find a rallying point somewhere else in the central lands of Islam. Without proper information on events in the then Muslim world they even requested in 1948 from the secularist Turkish government to establish a radio station with a programme in the Bosnian language to disseminate news, comments and analysis from the Muslim countries, especially Turkey, Pakistan and

8 The medieval battle, where the Serbs were defeated by the Osmanlis in 1389; an inspiration for anti-Muslim policy among Serbian nationalists.

Palestine (p.157-58). The establishment of Pakistan, especially drew the attention of the YMA. Some Young Muslims believed that finally a true Islamic state in contemporary time had emerged. Furthermore, some members translated articles from the paper Pakistan which was sent legally to the Muslim cultural society *Preporod* and circulated them secretly among the members (p.230-31). The police took this as a proof of the connection of YMA with "foreign centers".

In the same direction was an attempt by the regime to link the YMA with the Palestinian Mufti al-Hajj Muhammad Amin al-Husayni (1893-1974).<sup>9</sup> He had connections with some Bosnian 'ulama' and politicians since the Pan-Islamic congress in Jerusalem in 1931. He also visited Bosnia and Hercegovina in 1943 as a part of a German sponsored plan to mobilise Muslims in the Balkans and Caucasus in the Waffen SS formations.<sup>10</sup> As a result, one Bosnian-Muslim based SS division was formed. The Yugoslav government after the Second World War proclaimed the Mufti as a war criminal. Due to this reason and in order to further disqualify the YMA, the State Security Service tried to connect the Mufti with the Association. In fact, YMA members who were on trial in 1949 were too young to know the Mufti and to closely co-operate with him. In addition, it has been proven that Young Muslims generally refused to serve in SS troops.

## THE ROLE OF THE YMA IN BOSNIAK MODERN HISTORY

The activity of the YMA was stopped harshly by police action during 1949 (trial of central group) and 1950 (prosecution of their members). After that there were no attempts for the revitalisation of the Association until 1991 when surviving members formed an association of YMA veterans. The official Islamic religious administration *Islamska Vjerska Zajednica*, through a resolution of its Supreme Council on August 14, 1949 strongly condemned the Young Muslims. That decision marked for the Islamic religious administration the beginning of the long history of submission to the state.

For the modern history of Bosnia, the Young Muslims are impor-

9 See Philip Mattar, *The Mufti of Jerusalem: Al-Hajj Amin al-Husayni and the Palestinian and National Movement* (New York: Columbia University Press, 1988).

10 See Enver Redžić, *Muslimansko autonomaštvo i 13 SS divizija* (Muslim Autonomous Movement and 13 SS Division) (Sarajevo: Svjetlost, 1987).

tant for two reasons: first, their resistance to an atheist totalitarian regime and, second, the role played by their members in Bosnian history. After serving sentences in the “Gulags” of the State Security Service prominent YWA members continued to work as experts in their respective fields. Some of them began publishing their views on Islam and Muslims, under pseudonyms in local Muslim media, which restarted in Bosnia in the 1970s. In that sense they influenced a new Bosniak generation which learned of the decadence of Muslims and their revival by reading the works of Alija Izetbegović, Salih Behmen, Munir Gavrankapetanović, Ešref Čampara and others. Because of that, some Young Muslims were again sent to jail in 1983; Alija Izetbegović, Salih and Omer Behmen, Rušid Prguda and Ismet Kasumagić.

In spring 1990, when multi-party system returned to Bosnia and Hercegovina, several former Young Muslims, centred around Alija Izetbegović, formed a core of *Stranka Demokratske Akcije* (Democratic Action Party-DAP) and the present leadership of Bosniaks. Is there any continuity between the YMA and the DAP? Personal continuity obviously exists as well as the allegiance to some fundamental tenets such as: Bosnia, Islam as a key element of Bosniak identity, needs to preserve a Muslim presence in that part of the Balkans, and the like. But changed circumstances in Bosnia after 1990, as well as the passage of time, brought important differences in the method of activity. DAP was formed as a modern political party, open for all people who belong to the “Muslim cultural milieu”. The YMA stress on personal development was replaced by party work. Political engagement brought old Young Muslims into new challenges and threats: from building coalition with future enemies Serbian Democratic Party (SDS) Croat Democratic Union (HDZ)-to leading a nation without inner homogeneity between Scilas and Haribdas in the ocean of conspiracy and betrayal. Those tragic events and complex developments fall out of the scope of the book on the Young Muslims and warrant another study.

## CONCLUSION

As can be seen from this review Islamic revivalism began in Bosnia in the 1930s when the YMA was established. In the beginning that organisation was similar to other “young” associations which emerged elsewhere in the world. The advent of the Second World War and sub-

sequent establishment of the Communist regime in Bosnia politicised the YMA, initially formed to strive for religious and cultural ends. The decision of the YMA leadership to organise clandestine work and even to go into “direct action” against the regime became a turning point in the history of the association. The association was destroyed and its members were severely persecuted.

After release from prisons, the former Young Muslims continued individually to contribute to a new wave of Islamic revival that began in Bosnia in the 1970s. Their involvement in the reconstructed political life in Bosnia after the 1990s is noticeable. However, we may talk only about personal continuity between YMA and today’s Bosniak political leadership since changed historical circumstances required new institutional expressions. All this has been reflected in the materials compiled in the book under review.

# TABLE OF CONTENTS

PREFACE.....	5
ISLAMIC STUDIES .....	7
TEXTUAL ANALYSIS IN ISLAMIC STUDIES: A SHORT HISTORICAL AND COMPARATIVE SURVEY.....	9
APPLYING THE Shari‘ah IN MODERN SOCIETIES: MAIN DEVELOPMENTS AND ISSUE.....	41
THE REFORM OF SHARI‘A COURTS AND ISLAMIC LAW IN BOSNIA AND HERZEGOVINA 1918-1941 .....	63
SECULAR STATE AND RELIGION(S) – REMARKS ON THE BOSNIAN EXPERIENCE IN REGULATING RELIGION AND STATE RELATIONS IN VIEW OF THE NEW LAW ON FREEDOM OF RELIGION.....	81
ISLAMIC REVIVAL AND INSTITUTIONS IN BOSNIA .....	95
ISLAMIC REVIVAL IN THE BALKANS 1970-1992.....	97
PREPOROD Newspaper: AN AGENT OF AND A WITNESS TO ISLAMIC REVIVAL IN BOSNIA.....	119
ADMINISTRATION OF ISLAMIC AFFAIRS IN BOSNIA AND HERCEGOVINA .....	125
THE OFFICE OF RA‘IS AL-ULAMA‘ AMONG THE BOSNIAKS (BOSNIAN MUSLIMS).....	153

*Table of Contents*

BALKAN MUSLIMS IN THE 20TH CENTURY .....	165
THE EASTERN QUESTION - A PARADIGM FOR UNDERSTANDING THE BALKAN MUSLIMS' HISTORY IN THE 20 <sup>TH</sup> CENTURY.....	167
DISTORTED IMAGES OF ISLAM: THE CASE OF FORMER YUGOSLAVIA..	185
BOSNIAN YOUNG MUSLIMS: A REVIEW ESSAY Sead Trhulj: <i>Mladi Muslimani</i> (Zagreb: Globus 1992., p.390).....	201