

International Treaties (*Mu'āhadāt*) in Islam: Theory and Practice in the Light of *Siyar*
(Islamic International Law)

Labeeb Ahmed Bsoul
Institute of Islamic Studies
McGill University, Montreal
August 2003

A thesis submitted to the Faculty of Graduate Studies and Research in partial
fulfillment of the requirement of the degree of Doctor of Philosophy

LS/m

2021077

Abstract

This dissertation seeks to explain the viewpoint of Islamic international law (*siyar*) with respect to the various aspects of treaties (*mu'āhadāt*) with non-Muslims. The *siyar* deals with (the notion) of mutual relations between Muslims and non-Muslims during times of war and peace, and thus has become an intrinsic branch of the Shari'a. The varying nature of *siyar* and its changing interpretation throughout Islamic history captured the attention of a number of jurists and historians from both the classical and modern times, whose works have been frequently consulted throughout this study. In the course of classical and pre-modern Islamic history, treaty-making continued to evolve and contributed to shaping both political and social relations between Muslims and non-Muslims. Non-Muslim residents in Islamic territories (*dār al-Islām*), such as the *ahl al-dhimma* and *ahl al-amān*, were dealt with as existing identities within Islam and were also dealt with by the means of contracts (*'aqd*), which determined their status under *siyar*. Relations between Muslims and non-Islamic territories (*dār al-ḥarb*) were determined by the conditions of peace and war, and treaties between the two were regulated according to the precedent set by *siyar*. The treaties selected for this dissertation cover the full spectrum of what Muslims and non-Muslims could do to develop and protect the interest of their communities. Thus, this study aims to shed some light on a relatively untouched branch of Islamic law, while also elucidating the social ramifications of legal theory and practice.

Résumé

Le but de cette dissertation est d'expliquer la position de la loi islamique internationale (*siyar*) vis-à-vis les complexités diverses des traités (*mu'āhadāt*) avec les non-Musulmans. Le *siyar* traite des rapports mutuels entre Musulmans et non-Musulmans en temps de guerre et de paix, et par conséquent est devenu une discipline intrinsèque de la *sharī'a*. Le caractère changeant du *siyar*, et la façon variée dont il a été interprété durant toute l'histoire islamique ont capté l'attention de nombreux juristes et historiens de l'époque classiques à nos jours, et leurs ouvrages sont consultés à plusieurs reprises dans l'étude présente. L'art de conclure un traité a une importance unique dans la civilisation islamique, et ainsi mérite qu'on y prête attention particulière. Au cours de l'histoire classique et prémoderne de l'Islam, l'art de conclure un traité a continué à s'élaborer et a exercé une certaine influence sur les rapports politiques et sociaux entre Musulmans et non-Musulmans. Les habitants non-Musulmans vivants dans des territoires islamiques (*dār al-Islām*), tel que les *ahl al-dhimma* et les *ahl al-amān*, avaient leurs propres droits et identités sous la loi islamique, et étaient sujets de contrats (*'aqd*), qui déterminaient leur statut selon le *siyar*. Les rapports entre les Musulmans et les territoires non-musulmans (*dār al-ḥarb*) étaient établis selon les conditions de guerre et de paix, et les traités entre les deux étaient réglés selon le précédent créé par le *siyar*. Les traités choisis pour cette dissertation présentent une gamme complète de ce que les Musulmans et non-Musulmans peuvent faire afin de développer et protéger les intérêts de leurs communautés. Par conséquent, cette étude vise éclairer une discipline plutôt méconnue de la loi islamique, et en même temps élucider les ramifications de la théorie et l'exercice de la loi pour la société.

ACKNOWLEDGEMENTS

In the Name of Allah, the Most Gracious, the Most Merciful

There are many people who must be thanked for contribution to the successful completion of this study. I would first of all like to express my gratitude to both of my advisors, Professor Uner Turgay, Director of the Institute of Islamic Studies at McGill University, and Professor El Obaid Ahmed El Obaid, Professor of the Law Faculty at McGill University, for their guidance, encouragement and comments. I would like to take the opportunity to extend my deep thanks to the staff of the Institute, namely, Professors Wael Hallaq, Donald Little, Eric Ormsby, Issa Boullata, Todd Lawson, Herman Londolt and Sajida Alvi. All of them assisted me in a variety of ways, especially by their example of scholarship in the course of my studies and through their support at both the personal and academic levels. The Institute's office staff deserve special thanks, particularly Dawn Richard and Ann Yaxley, whose moral support and encouragement I will never forget; my deepest gratitude goes to both. Also, I must thank the staff of the Islamic Studies library, especially Adam Gacek, Salwa Ferahian and Wayne St. Thomas for their assistance and support during my studies.

I am also grateful to many personal friends who aided me with moral support and scholarly discussion. It would take many pages and much space to thank all those who were part of my life and dear and true friends for many years. They include Ahmed Al-Hasan, Zohair Audwani, Ehab Zayid al-Taweel, Reem Mashal, Yasmin Badr, Lisa Alexandrin, Ro'fah and al-Makin, Abd al-Qadir ibn Saied, Nabil Jasim, Musa Hamdan, Jamil Sioufi, Dr. Mahmoud El-Astal, Ahmed El-Astal, Ramzy Mashy, Abdullah Chible, Iklil Erefe, Amelia Gallagher, Dr. Assad Busool, Dr. Ibrahim Abu Rabi', Dr. Nasir Khalifah, Dr. Khalil Barhoum, Daniela Pargelli, Bilal and Ibrahim al-Bitar, Fahid Abu Shawar, Shihadeh Kitami, Sami Masoud, Nadia Wardeh, Ahmad and Amani Khorchid, Nashaat Nassar, Mohammad Daoud, Fadi Draidi, Khalid Dawoud, Muhammad Abd El Karim, Maamoun Al-Hendi and Mrs. Al-Hindi Maysoun, Aspet Pehlivan, Hilmy Abd al-Rahman, Rabi al-Masri, Dr. Taiser al-Batnegy, Ahmed Hamad, Hisham Salfety, Raed

Hashaikeh, Abd al-Salam Bsoul, Muhamad Nimer Bsoul, Fakry Salim Bsoul, Lena and Cherine Hallaq. I must thank also those many friends whose names are not mentioned here, but who have contributed in one way or another to the completion of this study.

I would like also to express my deep gratitude and thanks to my colleagues in the History department at Saint Mary's University-Halifax, namely Drs. Michael Vance, Jim Morrison and Michael Earl, and fellow graduate student Karly Kehoe, as well as (and especially) Marlene Singer, for their moral support and encouragement. Thanks are due also to Drs. Jamal Badawi, Marguerite Abdalmasih, Bruce Andrew, Mahmoud Mohammad and David Heckerl for their friendship and encouragement. I would like to acknowledge Dr. David Sutherlnad of Dalhousie History Department as well as Dr. Tom Faulkner and Terry Woo of Dalhousie University's Department of Comparative Religion, who supported and encouraged my work throughout. A special thanks to Robert Cook for proofreading the final version of this work. Many thanks also to my students, both at Saint Mary's University and Dalhousie, with whom I was inspired to share my knowledge and from whose interesting discussions I benefited immensely. A special thanks to my T.A. Will Cullen and his wife Allana LeBlanc for their interesting discussion and assistance while I was writing and editing this study. And to my other T.A. Ameerah Yousef for her interest in my works and research.

I would like to express my gratitude and appreciation to Steve Mellier for editing my work, as well as to Yasmin Badr, Lisa Alexandria, Reem Mashal, Hashir Majoka and Swen Paloheimo, who read and offered valuable suggestions for improvement.

Finally, I am especially grateful to my wife Sana Ashour for being beside me throughout the difficult period while I was working on this dissertation, as well as for providing the atmosphere to do research and study. Her patience with me while I was spending so much time doing research in libraries and traveling was exemplary. The same goes for my beloved son Ahmed who was born during the middle of writing this research as well as my beloved son Muhammed who was born a month prior to the oral defense of this dissertation. May Allah be pleased with them always. My special gratitude and thanks go to both of my families: the Bsouls in Palestine, my brothers and sisters and their families, and to my in-laws the Ashours, in Canada. Lastly, may Allah furnish His blessing upon those who have assisted me in whatever capacity in my work

and to those who devoted their lives to providing support for those who needed it most. Last by no means least, I would like to thank those scholars and individuals who have contributed and continue to do so to improving lives and understanding throughout this world, in order to make it a better world for all to live in. AMEEN!

International Treaties (*Mu'āhadāt*) in Islam: Theory and Practices in the Light of *Siyar* (Islamic International Law)

Introduction:

This dissertation aims to shed light on an area in research on the field of Islamic international law (*siyar*): the formulation of treaties in Islam both theoretically and historically, and their continued relevance to the contemporary world. Not only is there a lacuna in scholarship, but it can also be argued that the failure of international legal theorists to study and integrate the Islamic treaty system into the body of modern international law has contributed to frequent misunderstandings and even conflicts between Muslim and non-Muslim countries. This study aims to demonstrate and re-iterate the importance of understanding this crucial yet neglected subject.

Part of the reason for this neglect is the fact that the Islamic law of nations has itself received little attention from modern scholars. What they have written on *siyar* in general and on treaties in particular will be considered in this study, but as the references will show, much of the information on this topic must be obtained from the original sources - - few of which have ever been exploited for this purpose. The opinions of these modern researchers and scholars of Islamic law shall also serve as a secondary focus of this study.

This study will begin by examining the juristic basis of the nature of treaties in Islam and their historical significance. There are explicit Qur'ānic verses which enjoin Muslims to seek accords with non-Muslims in eliminating conflicts and that oblige Muslims to respect the letter and the spirit of treaties once concluded even

when it may seem expedient not to do so.¹ The Qur'ān thus views the written agreement as a religious duty and not just as an act of political necessity (Q. 16:7,91, 17:34, 9:4, 8:72).²

Although many classical jurists consider the normal relationship between Muslim and non-Muslim communities to be one of natural hostility, there are others who insist that it is not inconsistent with Islam's ultimate objective that a peace treaty be concluded with the enemy, whether for purposes of expediency or because Muslims have suffered a setback. According to Islamic teachings making treaties with non-Muslims is permitted by divine legislation.³

Traditionally, the Muslims' duty to implement treaties, external or internal, was derived from Qur'ānic verses as well as Prophetic words and deeds. They also based themselves on precedent, which is why the principle focus of our study will be the written treaties concluded by the Prophet and the four Rightly Guided caliphs (Rāshidūn): these agreements became models for other treaties in later Islamic practice. Classical Muslim jurists collected these treaties, which can be found interspersed in their works on *fiqh* (both *siyar* – specific and otherwise). Certain jurists, however, showed a particular interest in the study of diplomacy and

¹ Q. 16: 91-92.

Fulfil the Covenant of Allah when you have made a covenant, and do not break oaths after making them.... be not like her who unravels her yarn, disintegrating it into pieces after she has spun it strongly.

All quotations from the Qur'ān used in this dissertation are from the translation of its meaning entitled *The Noble Qur'ān*, into the English language by Muḥammad Ṭaqī al-Dīn al-Hilālī and Muḥammad Muḥsin Khan (Riyad: Dār al-Salām, 1996).

² Q. 2: 281. The significance of this verse for contracts and, by extension, treaties, will be discussed more fully below in chapters two and three.

³ Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins University Press, 1955) 202; Abū Yūsuf, *Kitāb al-Kharāj*, 207; al-Ṭabarī, *Kitāb al-Jihād*, ed. J. Schacht (Leiden, 1933) 14-15; Hanse Kruse, "al-Shaybani on International Instruments," *Journal of the Pakistan Historical Society*, 1(1953) 90-100.

international law, and wrote under a variety of subject headings. Among the chief works in this discipline are Mālik ibn Anas's (d. 179/796) *al-Muwatṭa'*, Abū Yūsuf's (d. 182/798) *Kitāb al-Kharāj*, al-Shaybānī's (d. 189/804) *al-Siyar*, al-Shāfi'ī's (d. 204/820) *al-Umm*, Abū 'Ubayd's (d. 224/837) *Amwāl*, Balādhurī's (d. 279/893) *Futūḥ al-Buldān*, Ibn Qayyim al-Jawziyya's (d. 751/1350-1) *Aḥkām Ahl al-Dhimma* and al-Ṭabarī's (d. 310/922) *Kitāb al-Jihād*, besides many others.⁴ Their comments on these treaties, particularly the treaty of Ḥudaibiyya (concluded in 6/628) and the agreements reached by the four Rightly Guided Caliphs in their dealings with sovereign non-Muslims communities, contributed generally to the development of *siyar*. For this reason considerable attention is paid in the present study to these treaties, especially the treaty of Ḥudaibiyya, which in a sense forms the backbone of its arguments.

The dissertation is divided into four chapters, of which the first chapter will introduce the subject of *siyar* (Islamic international law) and its historical significance and development. It will also provide an overview of the jurists' reflections on *siyar* in all four Sunni schools of thought in regards to *dār al-Islām* and *dār al-ḥarb*. The second chapter will discuss various topics in Muslim-*dhimmi* and Muslim-*musta'min* relations, for example: *ahl al-dhimma*, *ḥarbī*, *musta'min*, *jizya*, *kharāj*, *'ushūr*, *'aqd al-amān* and *'aqd al-dhimma*. The third chapter will discuss, mostly in theoretical terms, the Islamic perspective on international treaties, especially definitions, conditions, duration and termination of the *mu'āhadāt*. The fourth chapter will discuss in detail five selected treaties from a variety of dynasties.

⁴ See bibliography specially the primary sources.

In this chapter the issues of how, when and by whom the treaties were concluded, as well as their particular outcomes, will be discussed.

In my analysis of these treaties and their influence, the opinions of jurists from the four Sunnī schools will be discussed, since there is disagreement among them concerning the interpretation and the consequences of the treaties that were concluded during earlier times.⁵ The works of the classical jurists provided their successors with precedents that enabled the latter to conclude and ratify further treaties during their own time.

For instance under the Umayyads (41/661-132/750), 'Abbāsids (132/750-657/1258), Ayyūbids (564/1635-1169/1238) and Ottomans (680/1281-1342/1924), jurists framed treaties to a greater or lesser extent on the earlier patterns, and debated whether they fit Islamic legal criteria or not. To show this, four treaties completed during the Umayyad, 'Abbāsid, Ayyūbid and Ottoman eras have been selected for special consideration, in which changes in their approach and substance are analyzed. The reasons for these changes will also be identified and discussed, as well as the way in which the different needs and purposes of Muslim rulers at various periods in Islamic history and at different stages of dynastic political and military power have influenced the drafting of such agreements. An understanding of these factors: social, political and economic, will in fact shed some light on the endorsements of these treaties by contemporary jurists.

The first treaty in the post-Rashidūn era that will be analyzed is the one that the fifth Umayyad caliph, 'Abd al-Malik ibn Marwān (d. 86/705), concluded in

⁵ Sunni rulers concluded the treaties used in this study, therefore, the works of scholars

70/689 with the Byzantine emperor Justinian II, whereby 'Abd al-Malik agreed to pay a tribute in exchange for cessation of hostilities. During that time, 'Abd al-Malik was faced with a strong insurgency in Iraq and riots in his capital. Thus, arriving at an understanding with the Byzantine emperor allowed him to secure his northern flank while consolidating his power over the Arab lands.

The second treaty to be examined was the one signed between the second-century 'Abbasid caliph Hārūn al-Rashīd (d. 193/809) and the Empress Irene of the Byzantines (d. 187/802). In this treaty the Byzantines were the weaker party and were forced to pay an annual tribute to Baghdād as well as to end their frequent violations of the 'Abbāsid frontier.⁶ This study examines this treaty in terms of the juristic legitimacy accorded to it by the jurists of his day -- an endorsement that was critical to its validity, as will be shown -- and the socio-economic factors that might have influenced their thinking.

The third treaty under examination is the one concluded between al-Malik al-Kāmil (d. 636/1238), the fourth Ayyūbid sultan, and Fredrick II of Germany in 1229 A. D. This treaty ceded control of Jerusalem and several other Palestinian towns to the Christians. Al-Kāmil faced a predicament similar to 'Abd al-Malik's and chose to placate the non-Muslim invaders, thus enabling him to turn his attention to his brother's rebellion in Syria. This major treaty presents an interesting insight into the

contributed to these treaties were Sunni.

⁶ Hārūn al-Rashīd also concluded several *fidā'* (ransom) treaties to secure the release of prisoners of war by mutual exchange and the payment of an agreed upon sum of money. Majid Khadduri, *War and Peace in the Law of Islam*, 217; regarding the legal and linguistic meaning of the term *fidā'* see Sarakhṣī, *Mabsūṭ*, 10: 139; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4349-4350; *Sharḥ al-Siyar al-Kabīr*, 4: 1592; Abū Yūsuf, *Khiraṭ*, 212; Shāfi'ī, *Umm*, 4: 170; Rāghib al-Iṣfahānī, *Mufradāt al-Qur'ān*, 374; Muṭarrizī, *al-Mughrab*, 2: 127; Fayyūmī, *al-Miṣbāḥ al-Munīr*, 2: 465.

process of legitimization by jurists of the time.⁷ On the face of it, ceding sovereignty over the holy city of Jerusalem would seem to run contrary to Muslim sentiment if not doctrine itself. But once again, the hard realities of the prevailing political climate and a realistic assessment of the strengths and weaknesses of both parties seems to have allowed jurists to accord legitimacy and support to this treaty.⁸

The fourth treaty selected for examination was concluded between the Ottoman Sultan Suleymān al-Qānūnī (the Magnificent) (d. 974/1566) and Francis I, King of France, in 1535 A.D. This treaty differs from the above-mentioned treaties in terms of mutual recognition and emphasis on the permanent nature of the agreement. At the time of the conclusion of this treaty, Ottoman power was at its zenith and many historians have attributed a degree of "magnanimity" to it.⁹ Moreover, it received full support from the *Shaykh al-Islām*, Abū Su'ūd (d. 982/1574) Grand Muftī of the Ottoman Empire.¹⁰ However, this treaty was to prove a landmark in Ottoman-European relations. Once Ottoman power declined, other treaties of this nature allowed the European powers a greater degree of control over Ottoman lands through the infamous "capitulations".¹¹

⁷ Muḥammad Sallām Madkūr, *Madkhal al-Fiqh al-Islāmī* (Cairo, 1964) 93-111; Ṣubḥī Maḥmaṣānī, *Falsafāt al-Tashrī' fī al-Islām* (Beirut, 1961) 198-219; Elie Salem, "Arab Reformers and the Reinterpretation of Islam" *The Muslim World* 55(October 1965) 311-320.

⁸ See R. Stephen Humphreys, *From Saladin to the Mongols: The Ayyubids of Damascus, 1193-1260*. (Albany: Sunny Press, 1977); Claude Cahen "Ayyubids," *Encyclopedia of Islam*, second edition, vol. I: 796-807; M. C. Lyons, and David Jackson, *Saladin: the Politics of the Holy War* (Cambridge: Cambridge University Press, 1982).

⁹ See for example, Bernard Lewis, *The Middle East: 2000 Years of History from the Rise of Christianity to the Present Day* (London: Weidenfeld and Nicolson, 1995); U. Heyd, *Ottoman Documents on Palestine: 1552-1615* (Oxford: Oxford University Press 1960).

¹⁰ Joseph Schacht, *An Introduction to Islamic Law* (Oxford, 1964): 90-91; idem, "Abu 'L-Su'ūd," by J. Schacht, in *The Encyclopaedia of Islam*, new edition (1960) 1:152; Uriel Heyd, *Ottoman Documents*, 59-61; for further information regarding the life, work and conduct of Abu Su'ūd please see the work of Colin Imber, *Ebu's-Su'ud: The Islamic Legal tradition* (Stanford: Stanford University Press, 1997).

¹¹ G. Veinstein, "Suleyman," *The Encyclopedia of Islam*, new edition (1997) 9: 832-842; Albert

These four treaties were selected to cover the broad spectrum of the Islamic history of diplomacy after the treaty of Ḥudaibīyya. They also cover the various periods of Muslim's state strength vis-à-vis their opponents. It is clear that the conduct of diplomacy by the aforementioned rulers differed according to their positions of relative strength and immediate necessities. Consequently, this study aims, in part, to determine whether Islamic jurisprudence evolved to accommodate these changes, and it will therefore attempt to draw correlations between historical and juristic developments.

As stated earlier, the study makes extensive use of available primary sources. It also identifies the areas of *ijmā'* (consensus)¹² and *ikhtilāf* (disagreement) between members of different legal schools. The areas of disagreement usually involved the issues of the duration and time limits imposed on the treaty as well as other conditions. An attempt will be made to determine how these differences came about and to identify the reasons and the factors that caused them. At the same time, we will see *ijmā'* was reached on the importance of strictly adhering to the treaty once it had been concluded. This dissertation then evaluates the argument that considers abiding by agreements not simply as an act of political necessity but also as a religious obligation dictated by Qur'ānic and Prophetic injunctions.

Hourani, *A History of the Arab Peoples* (Cambridge: Harvard University Press, 1991) 258-259.

¹² *Ijmā'*: general consensus on matters of Sharī'a laws in the first three successive generations after the death of the Prophet. It is the third source of law in Islamic jurisprudence. Later, the definition of *ijmā'* was later extended to include all schools at a particular time.

This dissertation also examines the works of historians¹³ such as Ibn Hishām and al-Ṭabarī, as well as of modern scholars such as Muḥammad Hamidullah and Majid Khadduri, particularly in reference to the Ḥudaibiyya treaty.

There are several completed studies that deal with the subject of Islamic international law but none focuses exclusively on the formulation of treaties and their legal and juristic aspects. It is hoped that this dissertation will provide fresh analyses and shed new light on this important subject.

¹³ See primary sources that were consulted throughout this research in the bibliography.

International Treaties (*Mu‘āhadāt*) in Islam: Theory and Practice in the Light of *Siyar* (Islamic International Law)

TABLE OF CONTENTS

Abstract.....	i
Acknowledgment.....	iii
Introduction:.....	1
Chapter One:	
Islamic Law of Nations (<i>Siyar</i>).....	9
A. Background	
i. Early usage	
ii. Technical legal term	
iii. <i>Al-qānūn al-dawli al-Islāmī</i>	
iv. Historical evolution	
v. Nature of Islamic law of nations	
vi. Sources	
B. Muslim non-Muslim Relations.....	34
A. <i>Dār al-Islām</i>	37
Definition	
a. Early scholars	
b. Modern scholars	
B. <i>Dār al-Ḥarb</i>	42
Definition	
a. Early scholars	
b. Modern scholars	
c. Rules on how the category of <i>dār al-Islām</i> may change	
C. <i>Dār al-‘Ahd</i> and <i>Dār al-Muwāda‘a</i>	55
D. The origins of relations between both <i>dārs</i>	60
Chapter Two: Muslim <i>Dhimmī</i> , <i>Musta‘min</i> Relations.....	64
I. Muslim <i>Dhimmī</i> Relations	
A. Definition of <i>dhimmī</i>	65
a. Linguistically	
b. Jurisprudence	
c. <i>‘Aqd al-dhimma</i>	
d. Legality of <i>‘aqd al-dhimma</i>	

B. The contractual basis of <i>'aqd al-dhimma</i>	74
a. <i>Ṣīgha</i> (form)	
i. <i>Naṣṣ</i> (text)	
ii. <i>Dalāla</i> (evidence)	
b. <i>Taba'iyya</i>	
i. Marriage	
ii. Birth	
iii. <i>Laqīṭ</i> (foundling)	
iv. Conquest	
C. The contractor party (<i>al-'āqid</i>).....	79
D. The contractee (<i>al-dhimmi</i>).....	81
a. Non-Arab People of the Book	
b. Majūs (Zoroastrian)	
c. The Arab ahl-Kitāb	
d. <i>'Ibadāt al-awthān</i> (idol worshiper)	
e. Ṣābi'a	
f. Apostates (<i>murtaddūn</i>)	
g. Arab idol worshiper	
E. The nature of <i>'aqd al-dhimma</i>	92
a. Conditions (<i>shurūṭ</i>)	
b. <i>Aḥkām</i> rights and obligations	
c. Status of <i>dhimmi</i>	
a. The general maxim and norm	
b. Foreign national	
c. Member of Islamic state	
d. Rights of <i>dhimmi</i>	
F. Implementation of <i>'aqd al-dhimma</i>	102
a. Religious freedom and practice	
b. Building ritual places	
c. Protection and defense	
d. Preservation of individual, life, honor and wealth	
e. Social matters	
f. Resident within <i>dār al-Islām</i>	
g. Judicial system	
G. <i>Jizya</i> (poll tax).....	123
a. Definition	
b. Necessity	
c. Condition	
d. Time of collection	
e. Types and amounts	

f. Cessation	
H. <i>Kharāj</i> (land tax).....	129
a. Definition	
b. Types	
c. <i>Aḥkām</i>	
I. <i>‘Ushūr</i>	132
a. Background	
b. Legitimacy	
c. Conditions	
d. Guardian	
II. Muslim <i>Musta’min</i> Relations.....	136
A. Definition of <i>amān</i>	
a. Legitimacy	
b. Prophet tradition	
B. The basis of <i>amān</i>	
a. Explicit: <i>Lafẓ</i> (utterance)	
b. Implicit: By sign	
c. Writing of <i>‘aqd al-amān</i>	
C. Condition of <i>‘aqd al-amān</i>	
D. The rights and obligations of the <i>musta’min</i>	
a. Rights	
b. Obligations	
E. Termination of <i>‘aqd al-amān</i>	
Chapter Three: International Treaties <i>Mu‘āhadāt</i>	159
I. Definitions of <i>Mu‘āhadāt</i>	
A. Linguistically	
B. The basis of <i>mu‘āhadāt</i>	
C. Basic elements of <i>mu‘āhadāt</i>	
D. The condition of <i>mu‘āhadāt</i>	
a. Signatories of the <i>mu‘āhada</i>	
b. The consent	
c. The condition of interest	
d. The status of <i>mu‘āhadāt</i>	
e. The condition of time	
II. The duration of the <i>mu‘āhadāt</i>	178
a. Permanent	

b. Temporary	
c. Not limited by time	
d. Sound and unsound condition	
III. The process of <i>mu'āhada</i>	188
A. Negotiation process	
B. Writing and editing	
C. Verification	
D. Reservation	
IV. <i>Āthār</i> (effect and impact upon the <i>mu'āhada</i>).....	201
A. Fulfillment	
B. Protection	
C. <i>Amāna and Rahā'in</i>	
V. Termination of <i>mu'āhadāt</i>	214
a. With consent	
b. Without consent	
c. Time violation	
d. Condition under Islamic law	
e. Changes of circumstances	
f. Termination of <i>mu'āhada</i> by Muslims	
Chapter Four: Selected Treaties.....	224
Background:	
A. The Treaty of Ḥudaybiya (Prophetic era).....	229
B. 'Abd al-Malik ibn Marwān (Umayyad period).....	236
C. Hārūn al-Rashīd ('Abbāsīd period).....	239
D. al-Malik al-Kāmil (Ayyūbid period).....	246
E. Sulaymān al-Qānūnī or the Magnificent (Ottoman period).....	251
Conclusion:.....	263
Appendix (A).....	272
(B).....	273
Glossary:.....	276
Bibliography:	
A. Primary Sources.....	280
B. Secondly Sources.....	299

Chapter One

Islamic Law of Nations: *Siyar*

A. Background:

The first question that must be raised in connection with our topic is: From where is the concept of Islamic treaty or treaties derived? In order to answer this question, it is first necessary to explore the bases of Islamic international law, known as *siyar*. An understanding of *siyar* is essential to this study, since in it lay the principles underlying the whole process of treaty-making. As well, a knowledge of its definition, sources, historical development and the juristic contributions that have shaped the field of *siyar* (and continue to do so) within the field of Islamic law is likewise important. As a matter of clarification, treaties in Islam are not considered a part of worship; rather they are viewed as an obligation that falls under *mu'āmalāt* (mutual relations of Muslims with other or with others nations).

Siyar is a significant element of Islamic law: its roots lie deep in the history of the latter, and it has long been considered a branch of the Shari'a. Essentially, the concept of *siyar* evolved from its lexicographical meaning, in particular from its connotation of behavior or conduct. Expressed as a noun, this is *sīra*, of which *siyar* is the plural. *Sīra* in the singular came to be used by chroniclers in their narrative accounts to mean life or biography, i.e., the conduct of an individual, such as in the *Sīra* of Ibn Hishām, which relates the life of the Prophet Muḥammad. In its plural form, though, it also came to be used by jurists to denote the conduct of a state in its relations with other communities.¹

¹ Maṭraẓī, *al-Mughrib* (Hyderabad, 1328/1910) 2: 272.

Four basic and interrelated concepts of Islamic international law determine the relations of the Islamic state with the external world. These principles are: *jihād*, *dār al-Islām* (the territory of the Islamic state); *dār al-‘ahd* (the territory of covenant); and *dār al-Ḥarb* (the territory of war). Because of their importance, these terms are defined below at length, and their origins examined both in terms of the period of their emergence and their incorporation into Islamic law in the formative period. This is important in determining the authenticity of these concepts, i.e., whether or not they are directly sanctioned by the Qur’ān or the traditions of the Prophet.

Other technical terms also represent the types of relations with non-Muslim states and their subjects, such as *hudna* or *muwāda‘ah* (truce), *ṣulḥ* (armistice or treaty), *amān* (safety), *mīthāq* (covenant or pact), *dhimmī* (non-Muslim subjects of the Islamic state) and *‘ahd* (covenant or pledge). All these relations are forms of *‘aqd* (contract) that are considered binding, provided that they do not stipulate anything that contradicts Islamic law. These contracts or treaties can be either written or oral, depending on the nature of the treaty.

Indirectly, this study is also a part of the debate on the nature of relations between Muslim and non-Muslim political entities in the contemporary world. By examining the *modus vivendi* that existed between the Muslim and the non-Muslim world in the early periods, we can identify the conditions that made such accommodation possible. It may show that a balanced and equitable relationship can only come about once Islamic values are understood and accommodated in the international political order. Ignoring them in favor of strictly European secular ideals will only lead to continued misunderstanding between Muslim and non-Muslim states.

Islamic civilization is no different from other civilizations in that, from a historical perspective, almost all civilizations have had systems for regulating various aspects of their social and economic lives. Such laws or codes of conduct not only governed inter-personal relations, but also communal and inter-civilizational relations. Each civilization dealt with its neighbors in a way that served its interests and represented its system of values and what it deemed to be acceptable behavior. Such conventions emanated from a variety of sources such as religion or social custom. What was needed above all, however, was a legal framework regulating such relations, one that created legal obligations among nations in times of either war or peace. This, in the course of time, crystallized into a law of nations.²

Even among primitive societies, various rules and precepts governed mutual relations between sovereign entities long before they were developed into a coherent system governing the relations of civilized nations.³ Each of these nations had a law of nations.⁴ Islamic civilization too developed such a law, although it was in many respects independent of the trends that preceded it.⁵

It is important, in connection with the above-mentioned points, to understand that Islam views itself as a universal and all-encompassing creed based on a profound consciousness of monotheism.⁶ Islamic law, in all of its branches, is believed to emanate from the two sources: the Qur'ān and the Sunna of the Prophet. Therefore, Muslims

² Baron S. A. Kroff, "An Introduction to the History of International Law," *American Journal of International Law*, 18 (1924) 248; Majid Khadduri, *The Islamic Law of Nations* (Baltimore: Johns Hopkins, 1966) 4.

³ Majid Khadduri, *The Islamic Law of Nations*, 4.

⁴ Baron de Montesquieu, *The Spirit of the Law* (New York: Appleton and Co., 1900) 1: 5.

⁵ 'Abdullhi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990) 141-144.

⁶ Marcel A. Boisard, *Humanism in Islam* (Indianapolis: American Trust Publications, 1988) 149.

view the Islamic law of nations as derived from the eternal truth and justice that God had bequeathed to humanity through His messenger. Thus, in theory, almost no weight could be given to previously established conventions, no matter how deeply entrenched. Nor could political and diplomatic norms be respected if they contradicted the words of God in any way.⁷

Another important feature of the Islamic law of nations is the emphasis it places on the universal brotherhood of mankind.⁸ The significance of this brotherhood is that it annuls all racial and material differences between human beings. According to Islamic tradition and practice, Islam does not recognize nationalities since it does not regard itself as an assembly of citizens but rather as a community of believers. Many verses in the Qur'ān suggest that the rest of the world be regarded as a community of non-believers and, therefore, not necessarily as an enemy *per se* but rather as potential subjects for submission to the divine law. Thus, the history of Islamic international law is, first of all, a history of ideas.⁹ However, in practice, the existing structure of diplomacy was partly incorporated by the Umayyad state.

International law operates between independent and sovereign states; it deals with relations between nations.¹⁰ Each nation possesses its own internal law and exercises an authority subject to no restrictions save those imposed by the law of

⁷ 'Abdullhi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990) 19-29.

⁸ This is made clear in two verses of the Qur'ān; chapter 49: 11 and 13, which read,
O you who believe! Let not a group scoff at another group, it may be that the latter are better than the former, nor defame one another, nor insult one another by nicknames...; O mankind we have created you from a male and female, and made you into nations and tribes, that you may know one another.

⁹ Hans Kruse, "The Foundations of Islamic International Jurisprudence." *Journal of the Pakistan Historical Society* 3, 4 (October 1955) 231.

¹⁰ Muḥammad Ḥamīdullāh, *The Emergence of Islam* edited and translated by Afzal Iqbal

nations.¹¹ International law, or *siyar* in the Islamic state, was derived from what are seen as infallible religious sources. In its application it has always operated within the spirit of *Shari'a*, i.e., Islamic law. Its rules were respected and observed by Muslim rulers as a branch of divine law and were rarely violated.¹² *Siyar* was thus a binding force and not merely a convention existing by the consent of the state, nor was it obeyed because it was the alternative to anarchy. It was part of Islamic religion and based on divine law; thus, violation of *siyar* was considered to invoke divine punishment. Hence it implied, by necessity, honoring principles was a religious duty set forth in the treaties.¹³

The term *siyar* did not refer as much to the concept of international, interstate relations in the early classical period as it came to do from the medieval period onwards. Nor was it necessarily a term used in this sense by Muslim jurists of the classical period. It is a modern term, but this does not mean that simply because Muslim jurists did not use it as a technical term that it did not exist as a concept within the sphere of Islamic jurisprudence. Muslim jurists simply identified it under a different rubric (category). Thus, in early works scholars generally discuss the relations of the Muslim state with other states under the subjects of *jihād*, *siyar* and *maghāzī* (conducts), while other jurists treat similar issues under the categories of *kharāj* (land-tax) and *siyāsa shar'iyyā* (administrative state organizations and public institutions).¹⁴

(Islamabad: Islamic Research Institute, 1993) 105.

¹¹ Majid Khadduri, *The Islamic Law of Nations* 1.

¹² Hosny M. Gaber, "The Early Islamic State, with Special Reference to the Evolution of the Principle of Islamic International Law, 632-750" (Ph.D dissertation, American University of Washington, 1962) 24.

¹³ *Ibid.*, 24-25.

¹⁴ Ja'far 'Abd al-Salām, *Qawā'id al-'Alāqāt al-Dawliyya fī al-Qānūn al-Dawli wa al-Sharī'ah al-Islāmiyya*, 31; Subhī Maḥmaṣāni, *Falsafat al-Tashri' al-Islāmi*, 25; 'Abd al-Karim Zaydān,

The *ahkām* (rulings) that arose from these cases later became known as *siyar*. Nor is it surprising that Islamic rulings on the topic in the early period dealt mostly with the law of war, since the Muslims faced major threats from the beginning and were surrounded by many enemies. They therefore had to develop laws and regulations to communicate with other states. However, the field gradually expanded to cover the field of international political relations, which was a natural progression to the outcome of *jihād* and the expansion of the Islamic state.¹⁵ Some modern scholars, such as Ḥamidullāh, contend that Muslim jurists and scholars were responsible for the origin of international law as a whole.¹⁶

i. Early usage:

The first scholars to use the term *sīra* were the *muḥaddithūn* (collectors of *ḥadīths* or traditions). They used the term to refer to the Prophet's conduct, and all of the Prophet Muḥammad's deeds, sayings and actions in his lifetime.¹⁷ In effect, the term *sīra* became synonymous with *maghāzī*, which encompassed the biography of the Prophet, his wars and his conduct. It became common among the Muslim jurists and *muḥaddithūn* to list different topics, such as *al-Jihād wa al-Siyar* and *al-Maghāzī* along with other headings, such as faith (*īmān*), *'ibādāt* (religious observances), *adab*, *akhlāq* (morals) and *mu'āmalāt* (mutual relations) under the heading of *sīra* in their books.¹⁸

Majmū'at Buḥūth Fiqhiyya (Baghdād: Maktabat al-Quds, 1396) 12-16.

¹⁵ Najib Armazāni, *al-Shar' al-Duwalī fī al-Islām*, 44-45.

¹⁶ Muḥammad Ḥamidullāh, *The Emergence of Islam*, 107-109

¹⁷ Muṣṭafa al-Subā'ī, *al-Sunna wa Makānatihā fī al-Tashrī' al-Islāmī*, 47.

¹⁸ For example see the *Muwaṭṭa'* of Malik ibn Anas (d. 178 H), as transmitted by al-Kanawī, 3: 362; Bukhārī, *Ṣaḥīḥ al-Bukhārī* (d. 256 H), 6: 3-285; Muslim, *Ṣaḥīḥ Muslim* (d. 261 H), 3: 1356; Taḥāwī, *Sharḥ Ma'ānī al-Āthār*, 3: 206; and al-Khawārizmī, *Jāmi' al-Masānīd*, 2: 281-298; as well as other books of Ḥadīth. See Sakhāwī, *al-A'lān bi al-Tawbikh liman Dham al-Tārīkh*, 518, in *al-Tārīkh 'ind al-Muslimīn*, ed. Rosenthal, trans. Ṣaliḥ 'Alī; C. Brockelman, *Tārīkh al-Adab al-'Arabī*, 3: 10; Muḥammad 'Abd al-Ghanī Ḥasan, *al-Tarājim wa al-Siyar* (Cairo: Dār al-Ma'ārif,

The literature on *sīra* and *maghāzī* is concerned above all with the biography of the Prophet and his companions. It includes the reports and transmitted conduct about him by *isnād* (the process of providing authentication for *ḥadīth*),¹⁹ arranged according to the year and the place. These methods came to be employed by both the traditionists and historians in the decades and centuries to come.²⁰

The term *sīra* was first used by Ibn Hishām (d. 218/833) in his *al-Sīra al-Nabawīyya*, an abridgement of an earlier work by Ibn Ishāq (d. 151/768). In applying it to the Prophet's biography he established a precedent that was followed by later historians,²¹ who eventually used it to the entirety of Prophet Muḥammad life, including accounts of his *maghāzī*.²²

Maghāzī is a term that, strictly speaking, denotes battles and wars and, especially in the early years of Islam, the wars in which the Prophet and his companions had participated. This term consequently took on the sense of the Prophet's biography as well. Initially, it referred to the portion of his life in Medina, because that was where he was the most involved in the warfare out of which the Islamic state emerged. Later, the term was expanded to refer to accounts of the Prophet's entire life,²³ leading to it being used almost synonymously by jurists, biographers, etc. For example, Ibn Kathīr in

1955) 30-31. Horovitz, *al-Maghāzī al-ʿUlā wa Muallifūha*, trans. Husayn Nassar, 1 and Husayn Naṣṣār, *Nashʿat al-Tadwīn al-Tārikhī*, 27.

¹⁹ The root of the word *isnād* is *sanad* (pl. of *asnād*) which signifies a "prop" or "support" in the sense of a person who has transmitted a report. The *isnād* is the chain of transmitters responsible for handing down a given *ḥadīth*. See Ibn Maḍūn, *Lisān al-Arab*, 6: 387.

²⁰ Ibn Badī' al-Shaybānī, *Ḥadā'iq al-Anwār fī Sīrat al-Nabī al-Mukhtār* (Doha: al-Shu'ūn al-Dīniyya, 1403/1982) 3; Munir Muhammad al-Ghadhban, *Fiqh al-Sīra al-Nabawīyya* (Mecca: Ma'had al-Buhūth wa Ihya' al-Turāth al-Islāmi, 1410/1989) 13.

²¹ Ibn Badī' al-Shaybānī, *Ḥadā'iq al-Anwār fī Sīrat al-Nabī al-Mukhtār* (Doha: al-Shu'ūn al-Dīniyya, 1403 H.) 3; Ibn Khaldūn, *Tārikh*, 2: 569; Abū Ja'far Muḥammad ibn Ḥabīb, *al-Maḥbar* (Beirut: Dār al-Afāq, n.d.) 265.

²² Sarakhsī (d. 571/1175) *al-Muḥīṭ*, 25; Ibn Qutlūbighā, *Tāj al-Tarājim*, 248-249.

²³ Horoviets, *al-Maghāzī al-Ula wa Muallifūha*, translated by Hussin Nassar. P. 1 and Hussin

his *al-Bidāya wa al-Nihāya* uses the two terms interchangeably, referring to Ibn Hishām's recension of Ibn Ishāq's book on the one hand as "*Sirāt Ibn Ishāq*" and on the other as "his *Maghāzī*."²⁴

The *sīra* works themselves depended on an emerging body of data known as *ḥadīth*. The concern to sort out authentic from fabricated narrations was felt by both historians and *muḥaddithūn* (*ḥadīth* collectors). The former were diligent in evaluating their sources, but, more often than not, determined authenticity on the basis of a connection between the *ḥadīth* and the Qur'ānic verses. The *muḥaddithūn*, however, were developing at the same time a more systematic approach to *ḥadīth* criticism.²⁵ Historians, who until then had tried to determine whether or not Medina was the birthplace of this historical methodology of *sīra* and *maghāzī*, based on the authentication of *isnād* (chain of transmission), as first expressed in the works of both Abān ibn 'Uthmān and 'Urwāh ibn al-Zubayr. The leading figure in this field was Muḥammad Ibn Ishāq whose *Sīra* of the Prophet is the culmination of all the historical trends that existed in his era.²⁶

In the second phase of the evolution of the term *sīra*, it was used to refer to the biography of anyone and not only of the Prophet. This became evident at the end of the third century H., when Aḥmad ibn Yūsuf al-Miṣrī (d. 340/951)²⁷ became the first writer

Nassar, *Nasha't al-Tadwīn al-Tārikhī*, 27.

²⁴ Ibn Kathīr, *al-Bidāya wa al-Nihāya*, 3: 242; Wāqidi, *al-Maghāzī*, 1: 19; Ibn Daybi, *Hadā'iq al-Anwār*, 5.

²⁵ The subject of the authenticity of *ḥadīth* has attracted the attention of many scholars wanting to distinguish between authentic and fabricated *ḥadīth*. For this subject in particular, see the work of Muḥammad Muṣṭafa al-A'zamī, *Manhaj al-Naḥd 'inda al-Muḥaddithīn: Nash'atuhu wa Taṭawwuruḥu* (Riyadh, n.p., 1402/1981); Nūr al-Dīn 'Atār, *Manhaj al-Naḥd 'end al-Muḥaddithīn* (Beirut: Dar al-Fikr, 1401/1980) and Asad Rustom, *Muṣṭalah al-Tārikhī*, third edition n.d.

²⁶ Ḥusayn Nassar, *Nasha't al-Tadwīn al-Tārikhī*, 67-70.

²⁷ Aḥmad ibn Yūsuf ibn Ibrāhīm al-Baghdādī al-Miṣrī, Abu Ja'far al-Khāṭṭib ibn al-Dāyah were some one of the most prominent authors in many fields. The author of *al-Mukāfa'a*, *Ḥusn al-*

to employ it for the biography of another individual in his work entitled *Sīrat Ibn Ṭulūn*. The second instance of this usage comes from al-Balawī,²⁸ in his treatise entitled *Sīrat Aḥmad ibn Ṭulūn*.²⁹ In the fifth and sixth centuries H., this usage of *sīra* gained wider currency in the Muslim world and came to be applied even to the lives of everyone from scholars to caliphs. Examples include Ibn al-Jawzī's (d. 597/1201) treatises *Sīrat 'Umar ibn al-Khaṭṭāb* and *Sīrat 'Umar ibn 'Abd al-'Azīz*, and al-Rāzī's (d. 660/1261) treatise, *Sīrat al-Shāfi'ī*, or *Manāqib al-Shāfi'ī*.³⁰ Some scholars even wrote biographical encyclopedias using this term. For example, al-Dhahābi's (d. 748/1347-8) work is entitled *Siyar A'lām al-Nubala'*.³¹

The third phase in the development of *sīra*, or more properly, *siyar*, as a technical term denoting international law arose from the jurists' use of the term *siyar* in direct reference to certain areas such as *maghāzī* and *jihād*, as well as relations with non-Muslims, such as the Ahl al-Kitāb (People of the Book).³² For example, Ibn Ishāq reported that the Prophet ordered Bilāl to pay a sum of money to 'Abd al-Raḥmān ibn 'Awf (d. 32/652)³³ at the battle of Duwmat al-Jandal,³⁴ saying:

Fight in the path of Allah, fight the unbelievers, do not commit treachery, nor depart from the right path. You must not mutilate, nor kill a child. This is the covenant of Allah and the conduct [*sīra*] of his Prophet for you³⁵

²⁸ *'Aqba and Sirat Ibn Ṭulūn*. See, *Mu'jam al-Adabā'* 2: 157 and Ziriklī, *al-A'lām*, 1: 272.

²⁹ Abū Muḥammad 'Abdullah ibn Muḥammad al-Madanī al-Balawī, see Ziriklī, *al-A'lām*, 1:140.

³⁰ This work was edited by Muhammad Kurd 'Alī (Damascus: Maṭba'at al-Taraqqī, 1358/1939).

³¹ Muḥammad 'Abd al-'Azīz Ḥasan, *al-Siyar wa al-Tarājim*, 28-29.

³² This work was edited by Shu'ayb al-Arna'ūṭ (Beirut: Mu'assasat al-Risāla), in 25

³³ Al-Qunawī, *Anīs al-Fuqahā'*, 181; Tahānawī. *Kashshāf Iṣṭilāḥāt al-Funūn*. 1: 170; Kaffawī, *Kulliyāt*, 3: 38; Ibn Humām, *Fath al-Qadīr*, 4: 277; 'Abdallah ibn Muḥammad ibn Sulaymān Damād Afandī, *Majma' al-Anhur Sharḥ Multaqā al-Abḥur*, 1: 631.

³⁴ Daynūri, *al-Ma'ārif* (Beirut: Dār al-Kutub al-'Ilmiyya, 1987) 137-138.

³⁵ Wāqidi, *Maghāzī* 2: 560.

³⁶ *Sīrat Ibn Hishām*, edited by Muṣṭafā al-Saqā, 2: 632; see Ibn Sa'd, *Ṭabaqāt al-Kubrā*, 1: 283 regarding the Prophetic *ḥadīth Innahum Aminūn bi Amān Allah wa Rasūlih* (they are protected by the protection of Allah and His Messenger).

The Prophet's teaching was carried on by the later caliphs, such as 'Umar ibn al-Khaṭṭāb, who advised his generals:

Allah has revealed into you everything which is permissible in some cases except two: the '*adl fi al-sīra wa al-dhikr*' (justice of conduct and glorification).³⁶

A similar approach was followed by Caliph 'Uthman ibn 'Affān, who issued commands to his deputies saying:

Allah has ordained the leaders of the community to be responsible and to look after the interest of the people under them. Allah did not ordain them to collect money from the people under their control. The heart of Islam is to be responsible and protect the interests of the people and this is the ultimate duty and obligation of the leaders. If the leaders stray from this path they will mark the end of trust, loyalty and modesty. Therefore, the best conduct [*a'dal al-sīra*]: is the fulfillment of duty beholds upon you and to look after the interest of the community as well as to be kind to the enemy.³⁷

The foregoing examples show how the term *sīra* evolved as a term denoting an individual's life/conduct and abstract notion of conduct. This was the foundation on which the concept of *siyar* was to be based, as we shall see in the following section.

ii. Technical legal term:

The term *sīra/siyar* come to be used in the medieval period in reference to several kinds of relations between Muslims and non-Muslims, including: *maghāzī*, *jihād*, *murtaddīn* (apostates), relations with polytheists, *musta'mins* (an enemy alien who has been given *amān*, the promise of security and safe conduct given to an enemy

³⁶ Ṭabarī, *Tārīkh*, 3, 585; Muḥammad Ḥamīdullāh, *Majmū'*, 233-234

³⁷ Ibid., 4: 244-245.

or alien by Muslims), dealing with the *ahl al-dhimma* (non-Muslims subjects of the Islamic state), and war and peace.³⁸ In the following paragraphs the gradual evolution of this concept is surveyed in summary form.

According to Sarakhsi (d. 483/1090), the word *siyar* represents the plural of *sīra*, of which he offers in his *Mabsūṭ* a more precise definition:

It describes the conduct of the believers in their relations with the unbelievers in the enemy territory, as well as with the people with whom the believers had made a covenant,-temporary (*musta'min*) or permanent (*ahl al-dhimah*)-; with the apostates who were considered the worst of the unbelievers, since they adjured after they accepted Islam, and with rebels (*bāghīs*), who were not counted as unbelievers, thought they were ignorant and their understanding of Islam was considered to be inadequate.³⁹

Najm al-Dīn ibn Ḥafṣ al-Nasafī (d. 537/1132) defines *siyar* in his *Ṭalbat al-Ṭalaba* as:

The campaign of conquest, similar to the ceremonies of pilgrimage, and it is the plural of *sīra*. It is the noun of *sāra*, *yasīru sīra*. *Sīrā*, likewise *al-Masīra* and *Siyar* the method, the way or path. The majority of these terms were named as such, because it referred to the movement to conquer the enemy territory.⁴⁰

Kāsānī (d. 587/1191) even went so far as to name one of his works *Kitāb al-Siyar*, because it expressed the theory and process of conquest of the enemy.⁴¹ Maṭrīzī (d. 610/1213) also explains the word *sīra* is the root of *siyar*, but adds that it became known in legal circles as a term referring to the conduct of *maghāzī* and matters related

³⁸ Qūnawī, *Anīs al-Fuqahā'*, 189; Tahānawī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 1: 170; Kaffawī, *Kulliyāt*, 3: 38; Ibn Humām, *Fath al-Qadīr*, 4: 277; Dāmād Afandī, *Majama' al-Anhur Sharḥ Multaqā al-Abḥur*, 1: 63.

³⁹ Sarakhsi, *Kitāb al-Mabsūṭ*, 10: 2.

⁴⁰ Nasafī, *Ṭalbat al-Ṭalaba fī al-Iṣṭilāḥāt al-Fiḥhiyya*, edited by Khalīl al-Mīs (Beirut, 1406 H.) 165.

⁴¹ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 429.

to it.⁴² The term *siyar* then spread throughout the Islamic Empire, bearing with it this connotation. Similarly, *jihād* acquired the meaning of striving against the unbelievers.⁴³

Nawawī (d. 776/1374) acknowledges that *siyar* is the plural of *sīrā*, and adds that the books on *siyar* were given this title because they dealt with all of the rulings that were transmitted from the Prophet in his *ghazawāt* (battles and conducts). Books of *siyar* also discussed the rules of *jihād*.⁴⁴ Some other authors, in their writing on the subject, included chapters entitled *Kitāb al-Jihād*, *Kitāb al-Tanbīh* and *Bāb Qatl al-Mushrikīn*.⁴⁵

Some scholars expanded the definition and meaning of *siyar* to contain the biography and conduct of the companions of the Prophet. For example, ‘Aynī (d. 855/1451) defined *siyar* as the plural of *sīra* and said that it meant ‘way’ or ‘method’ such as in *Sīrat al-‘Umarayn* (Abū Bakr and ‘Umar), which concentrated on their conduct of public affairs.⁴⁶ Furthermore, ‘Aynī asserts that works on *siyar* contained guidance for Muslims on how to conduct themselves with others, modeled on the conduct of the Prophet and his Companions in their dealings with non-Muslims.⁴⁷

In the twelfth century *hijra*, al-Tahānawī defined *siyar* as the plural of *sīra*, and interpreted it to mean either “method” or “conduct” pertaining to a Muslim's dealings with unbelievers, wrongdoers, the *ahl al-dhimma*, *musta‘minīn* and apostates. According to Tahānawī, this is fully in accordance with the Sunna of the Prophet and

⁴² Abū Faṭḥ al-Maṭrizī, *al-Mughrib fī Tartīb al-Mu‘rab*, 1: 427.

⁴³ Maṭrizī, *al-Mughrib fī Tartīb al-Mu‘rab*, 1: 427; Za‘yālā‘ī, *Tabyīn al-Ḥaqā‘iq Sharḥ Kanz al-Duqā’ iq*, 3: 240; Ibn Nujaym, *al-Baḥr al-Rā‘iq*, 5:76 Ibn Humām, *Faṭḥ al-Qadīr*, 4: 277; al-Fayoumī, *al-Muṣbāḥ al-Munīr*, 1: 299; Ibn ‘Abidīn, *Mujmū‘at al-Rasā’il*, 1: 18.

⁴⁴ Nawawī, *Tahdhīb al-Asmā’ wa al-Lughāt*, 3: 159 and idem, *Rawḍat al-Ṭalībīn*, 10:204

⁴⁵ Shīrāzī, *al-Tanbīh fī al-Fiqh*, 134; Rafī‘ī, *al-‘Azīz Sharḥ al-Wajīz*, 11: 337.

⁴⁶ Badr al-Dīn al-‘Aynī, *Umdat al-Qārī Sharḥ Ṣaḥīḥ al-Bukhārī*, 14: 87.

⁴⁷ Badr al-Dīn al-‘Aynī, *al-Bināya Sharḥ al-Hidāya* (Beirut: Dar al-Fikr, 1989), 5: 624.

his Companions. Thus some principles are derived from the Companions' practice of imitating the Prophet: "*sāra Abū Bakr bi sīrat Rasūl Allāh*" (Abū Bakr imitated the Prophet's conduct). For example, he cites the phrase "*Sayr Zayd*" in order to describe the individual's conduct in conquest and dealing with unbelievers as practiced by the Prophet.⁴⁸

Modern Muslim scholars, such as Abū Zahra, define the field of *siyar* as a set of rulings on the subject of *jihād* and war, on what is prohibited and what is permissible, and on the conduct of *amān* (protection) and with whom it is permissible. Furthermore, it deals with booty, ransom, slavery and other matters that are related to warfare. In general, *siyar* is the body of laws that concerns the relations between Muslims and non-Muslims in times of peace and war, although the classical literature mostly deals with their relations within the confines of *dār al-Islām*.⁴⁹ Other scholars define *siyar* more in terms of the conduct of Muslims with others in regards to treaties, rulings, foreigners inhabiting the *dār al-ḥarb*, the *Ahl al-Kitāb*, and people who have been granted *amān* (temporary safe-conduct), i.e., *musta'mins*.⁵⁰ *Siyar* is thus seen as applying not only to relations between nations, but also to the obligations of Muslims with respect to individuals residing in *dār al-Islām* as well.⁵¹

iii. *Al-Qānūn al-Dawlī al-Islāmī* (The Islamic law of nations)

The early and medieval Muslim jurists never used the term "international law" (*al-qānūn al-dawlī*) as such; this term belongs to the modern period and was developed

⁴⁸ Muḥammad 'Alī al-Farūqī al-Tahānawī, *Kashshāf Iṣṭilāḥāt al-Funūn* (Cairo: Wizārat al-Thaqāfā wa al-Irshād, 1382/1962), 3:170-171. He refers to the Ḥanafī treatises *Fath al-Qadīr*, *al-Kifāya* and *Jāmi' al-Rumūz*.

⁴⁹ This is the introduction by Muḥammad Abū Zahra to the *al-Siyar al-Kabīr* of Muḥammad ibn Ḥasan al-Shaybānī with the commentary of Sarakhsī (Cairo: University of Cairo Press, n.d.) 33.

⁵⁰ Muṣṭafā Kamāl Waṣṣī, *al-Nuẓum al-Islāmiyya*, 280.

as a concept in the West.⁵² For many centuries, Muslim jurists used the term *qānūn* (law) as a singular noun in referring to legislation on a variety of subjects, including theology, jurisprudence and civil matters. For example, a treatise of al-Māwardī (d. 450/1058) entitled *Qawānīn al-Wizāra*,⁵³ dealing with *siyāsa sharʿiyya* ('policy', administrative justice within the limits assigned to it by the Sharīʿa), is more of a guidance manual for *wazīrs* (deputies or ministers) and not a work of law per se.⁵⁴ There is also the treatise of Abū Ḥamid al-Ghazālī entitled *Qānūn al-Taʿwīl*, but here too the term *Qānūn* is used to mean guidance and regulation on the usage of the Qurʾān.⁵⁵ Moreover, the judge Abū Bakr ibn al-ʿArabī (d. 546/1151), in his book likewise entitled *Qānūn al-Taʿwīl*, also deals with the fundamentals of the study of the Sharīʿa.⁵⁶ The Egyptian administrator Asʿad ibn Mammātī (d. 606/1209), who held the post of minister under the Mamluk sultans, discusses in his book entitled *Qāwanīn al-Dawāwīn*, the regulation of the state.⁵⁷ Naṣr al-Dīn Qāsim ibn Yūsuf al-Ḥusaynī Samarqandī's treatise, *al-Qānūn fī al-Furūʾ*, a member of the Ḥanafī school, uses *qānūn* to designate a corpus of rulings.⁵⁸ The Mālikī jurist Muḥammad ibn Aḥmad ibn Juzayy al-Gharnāṭī's (d. 735/1334) treatise *al-Qawānīn al-Fiqhiyya* or *Qawānīn al-Aḥkām al-Sharʿiyya*,

⁵¹ Muṣṭafā Kamāl Waṣfī, *al-Mashrūʿiyya fī al-Nizām al-Islāmī*, 49.

⁵² Jaʿfar ʿAbd al-Salām, *Qawāʿid al-ʿAlāqāt al-Dawliyya*, 31; Ṣubḥī Maḥmaṣānī, *Falsafat al-Tashrīʿ al-Islāmī*, 17-18. Maḥmaṣānī indicates that Muslim jurists rarely used the term *qānūn* (law); instead they used *Sharʿ*, *Sharīʿa* and *al-ḥukm al-Sharʿī*. In a modern period, *qānūn* has known three meanings: the first and the most common is corpus or a collection of rulings; the second is in general reference to the *Sharʿ* or *Sharīʿa*, and third it refers to civil conduct (in the absence of ritual), and this is what makes it different from Islamic jurisprudence.

⁵³ Suyūṭī, *Ṭabaqqāt al-Mufasssīrīn*, ed. ʿAlī Muḥammad ʿUmar (Cairo: Maktabat Wahba, 1976) 71-72.

⁵⁴ Māwardī, *Qawānīn al-Wizāra wa Siyāsāt al-Mulk*, edited by Fuʿād ʿAbd al-Munʿim and Muḥammad Salām (Beirut: Dār al-Taʿlīf, 1993).

⁵⁵ Abū Ḥamid al-Ghazālī, *Maʿārij al-Quds* (Damascus: Dār al-Albāb, 1989).

⁵⁶ Abū Bakr ibn al-ʿArabī, *Qānūn al-Taʿwīl*, edited by Muḥammad al-Sulaymānī (Jedda: Dār al-Qibla, 1406/1985).

⁵⁷ Ibn Mammātī, *Qāwanīn al-Dawāwīn*, edited by ʿAzīz Suryāl ʿAṭiyya (Cairo: Maṭbaʿat Miṣr, 1943); see also Muḥammad ʿAbd al-Ghanī Ḥasan, *al-Tārīkh ʿinda al-Muslimīn*, 42.

contains in part an introduction to the Maliki school and its disagreements with other schools of law.⁵⁹ Likewise, in *Qānūn al-Islām fī al-Faḍā'il al-Islāmiyya* by Ja'far ibn Sharīf 'Alī al-Qurayshī al-Hindī, *qānūn* is used to refer to the customs of Muslims and provides an account of their various rites and ceremonies in India.⁶⁰

In the twentieth century, scholars in the field of Islamic jurisprudence have chosen to use the term *qānūn fī al-furū'* (branches of law) in all branches of the Sharī'a. This was due in part to their attempt to compare *siyar* with modern international law, especially by those with a keen interest in the literature of Islamic jurisprudence. Therefore, some modern scholars have defined Islamic international law (*siyar*) in such terms. For example, Muḥammad Ḥamidullāh defines *siyar* as a body of rulings and as '*urf*' (custom) according to the usage of a particular society or state, one of whose main purposes is to guide the drawing-up of treaties between the state and other states.⁶¹ Another scholar, Najīb Armazānī, defines Islamic international law as a collection of rulings that provide guidance to Muslims with regard to their relations with non-Muslims, whether they be *muḥāribūn* (combatants) or *musālimūn* (non-combatants), or whether they be states or individuals residing within the *dār al-Islām* or outside it. These rulings also apply to apostates, highwaymen and the *bughāt* (rebels).⁶² Similarly, 'Abd al-Karīm Zaydān defines Islamic international law as the corpus of rulings in the Sharī'a that guide the Islamic state's relations with non-Muslim states.⁶³ In addition, Muhammad

⁵⁸ See Ḥajjī Khalīfa, *Kashf al-Zunūn* (Baghdād: Maktabat al-Muthannā, n.d.), 2:13

⁵⁹ Muḥammad ibn Aḥmad ibn Juzayy al-Gharnāṭī, *Qawānīn al-Aḥkām al-Sharī'iyya*, 2-3.

⁶⁰ Ismā'īl Bāshā, *al-Dhayl 'alā Kashf al-Zunūn*, 2: 219; Ja'far Sharīf, *The Customs of Mussulmans of India*, trans. Gerhard Andreas Herklots (New Delhi: Asian Education Service, 1991).

⁶¹ Muḥammad Ḥamidullāh, *Dawlat al-Islām wa al-'Ālam*, 14.

⁶² Najīb Armazānī, *al-Shar' al-Duwalī fī al-Islām*, 44.

⁶³ 'Abd al-Karīm Zaydān, *Majmū'at Buḥūth Fiqhiyya*, 16.

Ṭal‘at al-Ghunaymī defines *siyar* as a collection of rulings observed or arrived at by Muslims in the early period that represent Islamic teachings and that are acceptable in the field of international relations.⁶⁴ By the same token, Majid Khadduri defines *siyar* as a compilation of rulings and customs that organize and normalize the relations of Muslims with other nations.⁶⁵

Among scholars writing on the topic today is Ja‘far ‘Abd al-Salām, who disagrees with the definitions of his contemporaries. In his view modern scholars fail to address the genuine meaning of *siyar*, and so he calls upon Muslims to look at how the Shari‘a deals with the questions raised by *siyar* in their original terms, and not to assume that *siyar* has the same meaning as that found in modern, foreign terminology. Only in this way can valid comparisons be drawn, in the correct framework of interpretation.⁶⁶

iv. Historical evolution of *Siyar*

The expansion and addition of newly conquered territories to the Islamic state had a significant influence and effect on the *tadwīn* (recording) of the rulings on international relations with non-Muslims, whether these qualified as *ḥarbīs* (enemy aliens, those belonging to the *dār al-ḥarb*), *dhimmīs* (non-Muslim subjects of the caliph who are protected by a treaty of surrender) or as free non-Muslims within the *dār al-*

⁶⁴ Muḥammad Ṭal‘at al-Ghunaymī, *al-Aḥkām al-‘Amma fī Qānūn al-Umam*, 37.

⁶⁵ Majid Khadduri, *War and Peace in Islamic Law*, 17 and 71. Khadduri however mixes the definitions of both modern scholars and the international court of justice with the Sunna and the customary practices prior to Islam, while failing to produce any evidence to substantiate his claims.

⁶⁶ Ja‘far ‘Abd al-Salām, *Qawā‘id al-‘Alāqāt al-Dawliyya*, 31-32; see also the works of ‘Abdullhi Ahmed An-Na‘im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990) 31-33.

Islām. Muslim jurists began producing and compiling a number of works related to the field.

The common interest of these scholars was to derive the rulings of *siyar*, based on the Prophet's conduct and relations with non-Muslims in matters of conquest and peaceful agreements. Some approached the subject from a chronological historical aspect, while others strove to study the principles of Shari'a as they applied to the situation. They produced a vast amount of literature and treatises, which acquired great significance with the passage of time.⁶⁷

The first generation of jurists tended to discuss topics related to *siyar* in the context of such subjects as *jihād*, *maghāzī* (raids), *ghanā'im* (booty), *ridda* (apostasy), *'ahd* (covenant), *amān* (safe conduct) and *jizya* (poll tax). Among those who wrote on these issues were 'Āmir ibn Sharāḥīl Sha'bī (d. 103/721), Awzā'i (d. 157/774), Thāwri (d. 161/778) and Fazāri (d. 186/802).⁶⁸ Complementing the efforts of these jurists, Abū Ḥanīfa and his disciples contributed greatly to the field of *siyar* themselves, as well, gaining recognition among later jurists.⁶⁹

'Āmir ibn Sharāḥīl al-Sha'bī, one of the most prominent Kufān jurists and *muḥaddithūn* (traditionists),⁷⁰ was an advisor to the Umayyad caliph 'Abd al-Malik ibn Marwān, and ambassador on his behalf to the Byzantine court. Many *ḥadīth* sources refer to him as having been one of the most knowledgeable regarding the Prophet's

⁶⁷ Majid Khadduri, *al-Qānūn al-Dawli al-Islāmī Kitāb al-Siyar lil Shaybānī*, 52-54.

⁶⁸ Ibid.

⁶⁹ Abu Yūsuf, *al-Radd 'alā Siyar al-Awzā'i*, 1; Muḥammad ibn Zayhid al-Kawtharī, *Bulūgh al-Amānī fī Sīrat al-Imām Muḥammad ibn Ḥasan al-Shaybānī*, 18; Abū Zahra, *Sharḥ al-Siyar al-Kabīr*, 33.

⁷⁰ Ibn Sa'd, *Ṭabaqāt al-Kubrā*, 6: 246-256; Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 12: 227-233; Ibn al-Na'im, *Ḥilyāt al-Awliyā'*, 4: 310-338; Dhahabī, *Tadhkirat al-Ḥuffāz*, 1: 79-88 and idem, *Sayr A'lām al-Nubalā'*, 4: 294-319; Ibn 'Imād, *Shadhārāt al-Dhahab*, 1: 126-128.

conduct in his campaigns and therefore an expert in the practical as well as theoretical aspects of international relations.⁷¹ Similarly, Abū ‘Amr ‘Abd al-Raḥmān ibn ‘Amr ibn Yuhmad al-Awzā‘ī (d. 157/773), *Shaykh al-Islām* and a prominent scholar of Syria, was among the leading *mujtahidūn* of his day and eponymous founder of his own school of *fiqh* (jurisprudence), which spread all over the Near East and was introduced into Andalusia before finally vanishing in the middle of the third century *hijra*.⁷² Awzā‘ī had a special interest in *siyar* as demonstrated by his teaching, writings and commentaries. He produced a work on *siyar* that was written in response to the opinions expressed on the subject by Abū Ḥanifā, and which was destined to have a profound influence. In fact, when this treatise reached Abū Ḥanifa's disciple Abū Yūsuf, this latter wrote a refutation of al-Awzā‘ī's opinions in a treatise known as *al-Radd ‘alā Siyar al-Awzā‘ī*. Later, a second Ḥanafī jurist, Muḥammad ibn Ḥasan al-Shaybānī, responded to al-Awzā‘ī's formulation of *siyar* in a work entitled *al-Siyar al-Kabīr*.⁷³ Furthermore, Shāfi‘ī, in his treatise *al-Umm*, discusses al-Awzā‘ī's opinion on the subject, with reference to the *Radd* of Abū Yūsuf.⁷⁴

Another prominent scholar in the field was Sufyān ibn Sa‘īd ibn Masrūq al-Thawrī (d. 161/777), who was an expert in Qur’ānic recitation, a *ḥāfiẓ* (one who knows the Qur’ān by heart) and a prominent scholar of his era. He was one of the leading *mujtahids* (one who exercises *ijtihād*, i.e., independent legal reasoning) of his time and

⁷¹ Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 12: 230.

⁷² Ibn Sa‘īd, *Ṭabaqāt al-Kubrā*, 7: 488; Ibn al-Na‘īm, *Ḥilyat al-Awliyā’*, 6: 135-149; Dhahabī, *Tahdhīb al-Tahdhīb*, 6: 216-219; Dhahabī, *Tadhkirat al-Ḥuffāz*, 1: 187-185, Dhahabī, *Sayr A’lām al-Nubalā’*, 7: 107-134; Carl Brockelman, *Tārīkh al-Adab al-‘Arabī*, 3: 307-308.

⁷³ See Abū al-Wafā al-Afghānī's introduction to Abū Yūsuf, *al-Radd ‘alā Siyar al-Awzā‘ī*, 3-4. Awzā‘ī treatise is unfortunately no longer extant, and is only known to scholars through the extracts found in Abū Yūsuf's refutation.

⁷⁴ Shāfi‘ī, *al-Umm*, 7: 303-335; see also Ṭabarī, *Ikhtilāf al-Fuqahā’*, where he reports both

had many disciples. The author of a treatise entitled *al-Jāmi'*, he had a special interest in *siyar* in terms of the nature of relationships between Muslims and non-Muslims in time of war.⁷⁵ In the same century, Ibrāhīm ibn Muḥammad ibn al-Ḥārith al-Fazārī (d. 186/802), one of the leading scholars and traditionists of Kufa, wrote a treatise on *Siyar*,⁷⁶ in which he dealt with the subjects of *maghāzī*, *siyar*, *jihād* and other rulings. In addition, he analyzed the nature of the relationship between Muslims and non-Muslims, such as *ahl al-dhimma* (inhabitants of territory protected by a treaty of surrender) and *muḥāribīn* (non-Muslims dwelling in the *dār al-ḥarb*). Shāfi'ī praised al-Fazārī and said "nobody has written a treatise on *siyar* as good as that of Abū Ishāq al-Fazārī."⁷⁷

However, the first jurist to compile a treatise on *siyar* was Abū Ḥanīfā al-Nu'mān ibn Thābit (d. 150/767). His work was much praised by many later scholars. Abū al-Wafā al-Afghānī reported:

The earliest jurist to compile a treatise in *siyar* is *Kitāb al-Siyar's* is the Kufan author Imām Abū Ḥanīfā al-Nu'mān ibn Thābit, who dictated it to his disciples Abu Yūsuf (d. 182/798), Zufar (d. 158/774), Asad ibn 'Amr al-Ḥasan ibn Ziyād al-Lu'lu'ī (d. 204/819), Ḥaḥṣ ibn Ghiyāth al-Nakha'i, Muḥammad ibn al-Ḥasan al-Shaybānī, and 'Afiya ibn Yazīd.⁷⁸

Many of the above -named jurists based their works on Abū Ḥanīfā's or edited his work and systematized and classified his teaching, for example, the treatise of al-Ḥasan ibn

opinions of al-Awzā'ī on the subjects of *jihād*, *jizya* and non-Muslims residing within the Muslim state.

⁷⁵ Ibn Sa'd, *Ṭabaqāt al-Kubrā*, 6: 371-374; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 1: 55-126; Dhahabī, *Tadhkirat al-Ḥuffāz*, 1: 203-207 Abu al-Na'im, *Hilya*, 6: 356 and 7: 1-144; and Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 9: 151-174.

⁷⁶ Majid Khadduri, *War and Peace in Islamic Law*, 29 and 54. Khadduri keeps repeating in the above pages that he was among the *aṣḥāb* of Abū Ḥanīfā and his disciple, but this is not accurate, since he had experienced a disagreement with them. There is no evidence regarding which school he belonged to.

⁷⁷ Abū Ishāq al-Fazārī, *Kitāb al-Siyar*, edited by Fārūq Ḥamāda (Beirut: Mu'assasat al-Risālā, 1408/1987) 78.

⁷⁸ Abū al-Wafā al-Afghānī, introduction to Abū Yūsuf, *al-Radd 'alā Siyar al-Awzā'ī*, 1.

Ziyād entitled *Kitāb al-Siyar*, and that by Muḥammad ibn Ḥasan al-Shaybānī, known as *Kitāb al-Siyar al-Ṣaghīr*.⁷⁹

Muḥammad Ḥamīdullāh says that the first jurist to use the term *siyar* in the technical sense was Abū Ḥanīfa in the second century, and that it was developed and spread by his disciples. It was in fact through the works of Abū Ḥanīfa's disciples that the term *siyar* became so widely used in later centuries to represent this area of the law.⁸⁰

The last work that needs to be mentioned in this survey of the origin of the term *siyar* is the treatise of Imām Zayd ibn ‘Alī ibn al-Ḥusayn ibn ‘Alī ibn Abī Ṭālib (d. 122/738). Zayd ibn ‘Alī was a jurist and *ḥadīth* collector whose teachings were compiled by one of his disciples in two books known as *Majmū‘ al-Ḥadīth* and *Majmū‘ al-Fiqh*. These works were later combined into one book known as the *Majmū‘ al-Kabīr*, by his disciple Abū Khālīd al-Wāṣifī al-Ḥāshimī (d. late second century).⁸¹

This work was edited and translated to Italian some eighty years ago by Eugenio Griffine under the title *Corpus Iurus di Zaid ibn ‘Alī*. Its chapters and other headings are arranged in the same way as in traditional books of jurisprudence. Thus it begins with *ṭahāra* (ablution) and goes on to discuss *‘ibādāt* (rituals), *buyū‘* (sales transaction), *sharāka* (partnerships), *shahādāt* (testimonies), *nikāḥ* (matrimonial), *ṭalāq* (divorce) and *ḥudūd* (punishments), before at last coming to a chapter on *siyar*. This chapter itself includes several sections, beginning with *ghazw* (raid) and *siyar*, which

⁷⁹ Muḥammad Abū Zahra, *Muqaddimat Sharḥ al-Siyar al-Kabīr*, 33; Abū Yūsuf, *al-Radd ‘alā Siyar al-Awzā‘ī*, 1; *Bulūgh al-Amānī*, 18.

⁸⁰ Muḥammad Ḥamīdullāh, *Dawlat al-Islām wa al-‘Ālam*, 23-24. As we mentioned earlier regarding the treatises of *al-Radd* by Abū Yūsuf and *Siyar* of Shaybānī, these treatises were heavily influenced by Abū Ḥanīfa's teachings.

⁸¹ Muhammad Abū Zahra, *Tārīkh al-Madhāhib al-Fiqhiyya*, 674 -657.

are followed by sections on *jihād*, *shahādā*, *qismat al-ghanā'im* (booty), *al-'ahd wa dhimma* (covenant), *al-alwiyya wa al-rāyāt* (banners and standards), *al-khums wa al-anfāl* (fifth of the booty and spoils), *al-murtadd wa al-ghulūw* (apostasy and immoderation), *qitāl ahl al-baghy* (fighting rebels) and finally *ṭā'at al-imām* (obedience to the ritual leader) and *quṭṭā' al-turuq* (highway robbers).⁸²

Scholars have disagreed regarding the authenticity of *al-Majmū'*. The majority of Sunni scholars have accused Abū Khālīd al-Wāṣiṭī of fabrication and said that he was not trustworthy. On the other hand the Zaydi school has always accepted his authority and his works as authentic.⁸³ Because it represents one of the earlier treatment of *siyar*, it would be useful to establish its authenticity. To do so, we may ask: How was *al-Majmū'* recorded? Did Imām Zayd himself compile it or did he dictate it to his disciple Abū Khālīd or narrate to him both treatises of *Majmū' Aḥādith* and *Fiqh*? If not, who then recorded and systemized it?

Abū Zahra replies to this question by summarizing the opinions of scholars, pointing out that all of them have in the past regarded the *Majmū'* as a genuine expression of Imām Zayd's doctrine. Moreover, because Zaydī scholars accepted it without any *dalīl qat'i* (authoritative evidence), he also feels certain of its authenticity. The lack of a traditional *isnād* might arouse suspicions, however, and so Abū Zahra

⁸² Imām Abū al-Ḥasan Zaid ibn 'Alī ibn Ḥusayn ibn 'Alī ibn Abū Ṭalīb, *Mujmā' fi al-Fiqh*, edited by Eugenio Griffini under the title "Corpus Iurus di Zayd Ibn 'Alī (Milano: Libreria Della Real Cassia, 1919); see "*Musnad al-Imām Zayd*," 349-362; Sharīf al-Dīn al-Ḥusayn ibn Aḥmad al-Suyāghī, *Sharḥ Majmū' al-Fiqh al-Kabīr*. 4: 608 and 5 (Ṭā'if: Maktabat al-Mu'ayyad, 1388/1968) 7-34.

⁸³ Joseph Schacht, *Origins of Muhammadan Jurisprudence* (Oxford, 1950) 262.

favors the opinion that Abū Khālīd received the narration of the *Majmūʿ* from Imām Zayd and then recorded and systemized it.⁸⁴

The opinion of Abū Zahra was, however, not widely accepted; many authoritative Sunni scholars of the science of *al-jarḥ wa al-taʿdīl* (contest and adjustment) continued to reject the claim of the *Majmūʿ*'s authenticity. Their reasoning was that Khālīd al-Wāṣiṭī's narration of the *Majmūʿ* was not valid because he was judged untrustworthy, and thus the work might be considered fabricated.⁸⁵ Furthermore, Ibn al-Nadīm, despite his special emphasis on Shīʿī scholars in general, does not even mention al-Wāṣiṭī in his *Fihrist*.⁸⁶

If we compare the *Majmūʿ* with other treatises such as the *Muwatṭaʿ* of Mālīk ibn Anas, or even early Ḥanafī treatises like the *Āthār* of Shaybānī, the *Majmūʿ* suffers from the comparison in a number of ways. In the first place, the latter work is not as accurate as the treatises of the scholars of medieval Iraq. Secondly, Imām Zayd appears to have been influenced by the Iraqi schools and not the other way around, rendering his contribution less original. This may be seen from the fact that the *Majmūʿ* represents the collections of Shīʿī jurists who were not sufficiently trained, and who derived their material from the available Sunni sources. The only additional information it provides is in the form of materials that are not considered authentic. Nor does Imām Zayd mention any of the major jurist's opinions of his era, with minor exceptions. But most telling is the fact that the latest material in *al-Majmūʿ* dates from the second half of the second century, and it is common knowledge that the second half of the second century

⁸⁴ Abū Zahra, *Tārīkh al-Madhāhib al-Islāmiyya*, 674-677 and idem, *al-Imām Zayd*, 233-258; *al-Rawḍ al-Nadhīr*, 1: 66, and the introduction to *Musnad al-Imām Zayd*, 17-20.

⁸⁵ Ibn Abī Ḥātim, *al-Jarḥ wa al-Taʿdīl*, 6: 230; Bukhārī, *al-Tārīkh al-Ṣaghīr*, 139; al-Dhahabī, *al-ʿItidāl*, 3: 257-257; Ibn Ḥajar al-ʿAsqalānī, *Tahdhīb al-Tahdhīb*, 8: 24-25.

saw the emergence of prominent Iraqi jurists such as Abū Ḥanifā (d. 150/767), Abū Yūsuf (d. 182/798), Shaybānī (d. 189/805), Thawrī (d. 161/778) and Awzā'ī (d. 157/774),⁸⁷ who accepted the authenticity of *al-Majmū'*.

v. Nature of Islamic International Law

Islamic international law was not the product of an attempt to discover the rules actually observed and practiced by states in their mutual intercourse, as is the case generally with modern systems of international law. Instead, its origins lie in what are perceived to be infallible religious sources, so that its application and observation had to operate in accordance with the spirit of those general rules. Islamic international law from the outset was neither an *a priori* inquiry into what the rules of international intercourse ought to be, nor was it a historical investigation of what they truly were. It proceeded from divine revelation, from which were deduced most of its provisions, and these were generally conformable to justice and humanity. They were applied to cases in keeping with the spirit in which they were derived.⁸⁸

What makes the rulings of Islamic international law (*siyar*) different from modern concepts of international law is the fact that *siyar*, like any branch of Islamic law, has always carried with it the added weight of religious sanction. The rulings of *siyar* were derived not from human but from divine sources, i.e., the Qur'ān and the Prophet's traditions. In addition to these sources, there were the treaties themselves

⁸⁶ Muḥammad Yūsuf Mūsā, *'Aṣr Nash'at al-Madhāhib*, 73-74.

⁸⁷ Ibid., 72-73; 'Alī 'Abd al-Qādir Ḥasan, *Nadhrah 'Āmā fi Tārīkh al-Fiqh al-Islāmī*, 182.

⁸⁸ Hosny M. Gaber, *The Early Islamic State with Special Reference to the Evolution of the Principle of Islamic International Law, 632-750* (Ph. D. dissertation, The American University, Washington, D. C., 1962) 24-25; 'Abdullhi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990): 185.

ratified by the caliphs and the *ijmā'* (consensus) of scholars. It is not, therefore, subject to arbitrary change or replacement.

What is more, Islamic international law places individuals and relations with other nations on an equal footing,⁸⁹ unlike modern international law, which does not recognize individuals. Nevertheless, its ultimate focus is on sovereign states and on deriving rulings on matters affecting nations in peace and war.⁹⁰

vi. Sources of Islamic international law

The rulings of Islamic international law are seen as being derived ultimately from revelation. This is a very important consideration, for it lends to this branch of the law the same authority for Muslims that other branches of the Shari'a enjoy by virtue of their grounding in the Qur'an and the Prophet's Sunna.⁹¹ The Prophet's Sunna is of equal importance as a source, since, according to Muslim scholars, the Prophet regulated all his decisions on the basis of the revelations he received, including those affecting the day-to-day existence of Muslims, as individuals and as a community. Thus, he often ruled on the conduct of the Muslim state, or what we call rulings of international relations. It was (and still is) obligatory for all jurists of succeeding generations to base their opinions on these sources.⁹²

⁸⁹ *Mithāq al-Umam wa al-Shu'ub*, 5-6; *Qawā'id al-'Alāqāt al-Dawliyya*, 35; Sulayman al-Ṭamāwī, *al-Sulṭāt al-Thalāth fi al-Dasātir al-'Arabiyya fi al-Fikr al-Islāmī* (Cairo: Dār al-Fikr al-'Arabī, n.d.) 382-385.

⁹⁰ For further details see chapter II in Gaber M. Husni, 24; 'Abdullhi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990) 19-29.

⁹¹ Muḥammad Ḥamīdullāh, *Dawlat al-Islām wa al-'Ālam*, 108-109.

⁹² Muḥammad Yūsuf Musa, *al-Tashrī' al-Islāmī wa Atharhu fi al-Fiqh al-Gharbī*, 60-61; see also by the same author, *al-Amwāl wa Nazariyat al-'Aqd*, 136-137; al-Kaffawī, *al-Kulliyāt*, 2: 80-82; Amādī, *al-Aḥkām fi Usūl al-Aḥkām*, 1: 138-140; Manāwī, *al-Tawqīf 'alā Muhimmāt al-Ta'rīf*, 202.

Ibn Khaldūn, in his *Muqaddima*, indicates that, with regard to the rulings of God, those scholars who undertake to interpret and to express their opinions must ensure that these are based on the revelation. As long as they do so, these opinions deserve the application of *fiqh* (jurisprudence).⁹³ Given the status of revelation as a criterion in both the formation and application of Islamic law,⁹⁴ it seems spurious to argue that *Tashrī‘ al-Islāmī* is based equally on revelation and positive law, as some scholars do.⁹⁵ Indeed, some modern scholars divide the system of Islamic constitutional law into two types: first, that derived from the Creator *‘Ibtidā‘* (worship) and second, that derived as *Ibtinā‘* (anabolism). The latter introduces human agency, acknowledging that people have the right to determine jurisprudentially the application of Sharī‘a, but that they have no right to make their own legislation.⁹⁶

It is this that distinguishes the rulings of Islamic international law from any other non-Islamic legislation based solely on positive law, whether practiced in ancient or modern times. The distinction lies, as we have seen, in the role of revelation, i.e., the

⁹³ Ibn Khaldūn, *Muqaddima*, 2 (Beirut: Dār al-Kitāb al-Lubnānī, 1981) 789.

⁹⁴ There are many Qur’ānic verses that speak of how revelation is a mercy to all human kind. The Prophet’s duty was communicate this revelation to its intended audience. See for example, Sura: 52 and 53; (Najm) 1-4, (al-I‘rāf) 54; (al-Ma’ida): 67, (Yūsuf) 40, (al-An‘ām) 106, (al-Qaṣaṣ): 5, (Nisā’) 65, (Aḥzāb) 36, (al-Ma’ida) 44-47, (al-Baqara) 140, (al-Nūr) 19.

⁹⁵ ‘Abd al-Ḥamīd Mitwallī, *al-Islām wa Mabādi‘ Nizām al-Ḥukm* (Alexandria: Munsha’at al-Ma’ārif, n.d.) 11. Here Mitwallī argues that Islamic rulings are based on both positive law and revelation. On the other hand, ‘Abid al-Sufyānī refutes these claims that Sharī‘a is based on positive law in his book *al-Thabāt wa al-Shumūl fī al-Sharī‘a*, 96-99.

⁹⁶ ‘Abd al-Wahhāb Khallāf, *al-Sulṭāt al-Thalath fī al-Islām*, 35 and 80; ‘Alī Jarīshā, *al-Mashrū‘yya al-Islāmiyya al-‘Ālya*, 38. Among the scholars who adopt this interpretation is Ṭal’at al-Ghumaymī in his book, *Qānūn al-Salām fī al-Islām*, 111-112. In these pages, Ghumaymī explains that the original legislator of the Sharī‘a is the Creator and that most jurisprudential interpretation reflects the desire of His servants, such as the state, which bears the responsibility for interpreting of these laws. Thus, the state is allowed to legislate within the range, sphere and framework of principles of these branches. Ghumaymī defines this as being of secondary importance since it is derived and originates from authentic legislation that reflects the Creator’s desire.

Qur'ān and in the Prophet's traditions, which were highly respected, memorized, interpreted and observed in principle by Muslims throughout the ensuing generations.⁹⁷

Islamic international law (*siyar*) therefore, based as it is on the Qur'ān and Sunna, enshrines certain major ethical principles that are incumbent upon Muslims. And just as individual Muslims are obliged to observe certain ethical principles, so are nations. Throughout Islamic history, ethical principles have governed the conduct of Muslims in their relations with other individuals or states both in peace and in war. Indeed, in the eyes of Muslim jurists, any system of human relations not based first and foremost on ethical principles loses all its significance.⁹⁸

B. Relations between Muslim and Non-Muslim

After thirteen years of hardship, torture, agony and collective and individual suffering on the part of the Muslims in Mecca, the Prophet decided on emigrating in order to protect and safeguard Muslims from harassment and persecution. The place he chose as refuge turned out to be Yathrib (later called Medina), where the Prophet and his followers began to conduct their lives in accordance with the political and religious edicts of Islam.⁹⁹

Islam established the foundation of relations between people on the basis of whether they are believers or non-believers.¹⁰⁰ It has been stated by 'Abdullāh ibn

⁹⁷ Shāṭibī, *Muwāfaqāt*, 2: 58-62; Ibn Ḥazm, *al-Aḥkām fī Usūl al-Aḥkām*, 4: 453; Zarqānī, *Manāhil al-'Irfān fī 'Ulūm al-Qur'ān*, 1: 289-337.

⁹⁸ Majid Khadduri, *al-Qānūn al-Dawī al-Islāmī*, 86-87. Ja'far 'Abd al-Salām, in his book *Sharḥ al-Baqā' al-Shay' 'alā Ḥalihu*, (p. 396), says that many western scholars lacks awareness of the benefits that can be derived from Sharī'a, and further indicates that these benefits can contribute to improving modern international law, especially in two fields. The first of these in the area of individual rights in individuals of international law, while the second in the inclusion of ethical principles in the system.

⁹⁹ Ibn al-Athīr, *al-Nihāya*, 1: 236.

¹⁰⁰ Sarakhsī, *al-Mabṣūṭ*, 10: 84-86; Abū Zahra, *Sharḥ al-Siyar al-Kabīr*, 1: 306; 'Abd al-Raḥmān

‘Abbās that the unbelievers in Yathrib were divided into two categories in terms of their relations with the Prophet and the believers: in the first category were the *mushrikī ahl ḥarb* (unbelievers from among the people in conflict), while in the second group were the *mushrikī ahl ‘ahd* (unbelievers from among the people of truce). Essentially, the division was between those who fought constantly against the Prophet and those who did not.¹⁰¹

Ibn Qayyim, in his *Zād al-Ma‘ād*, indicates that relations between the Prophet and the unbelievers remained ill-defined until a portion of *surat "al-Tawba"*, (Q. 9: 1-4) in the Qur’ān was revealed,¹⁰² dividing unbelievers into three groups: *muḥaribūn* (those in a state of war with Muslims), *ahl al-‘ahd* (people in a treaty relationship with Islam), and *ahl al-dhimma* (non-Muslims who are protected by a treaty of surrender). In essence, therefore, the non-Muslim opposition to the nascent Islamic state could be divided into two: the *ahl al-‘ahd* and *ahl al-dhimma* on the one hand, who had reached an agreement with the Muslims, and the *muḥaribūn* who maintained hostile relations. Hence, the Prophet always had three groups of people to deal with: believers who accepted him as Messenger of Allah, known as Muslim *mu’minūn* (believing Muslims), those who were *musālim āmin* (those who were not Muslims but were securely at peace), and the *khā’if muḥarib* (fearful combatants).¹⁰³

These relationships lay at the heart of the system of relationships that the Prophet was developing, and that emerged in subsequent decades as the bipartite division of the world into *dār al-Islām* (the territory of the Islamic state) and *dār al-ḥarb*

¹⁰¹ ‘Azzām, *al-Risāla al-Khālīdah*, 156.

¹⁰² Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 9: 417.

¹⁰³ Q. 9: 1-4.

¹⁰³ Ibn Qayyim al-Jawziyya, *Zād al-Ma‘ād*, 3: 160.

(enemy territory). At the same time it had to address the status of people who did not fully belong to either territory. This points to the special character of *siyar*, for the Islamic law of nations applies both within and without *dār al-Islam*. According to Muslim tradition, Islam is one truly universal religion that addresses all people, and its rulings should apply to all peoples without distinction between tribe, nation or race. The goal of the Shari‘a is to establish one human society that follows one system.¹⁰⁴ This goal, however, has never attained its final state, since Islam had no control over other nations, nor has the Shari‘a become the religious code of the entire world. Given existing political and social circumstances, the Shari‘a could only be applied in places where Islam was the dominant religion, or where the majority of the people submitted to Islam and accepted its rulings.¹⁰⁵

On that basis Muslim jurists divided the world into two “worlds,” one known as the *dār al-Islām*, encompassing all of the *bilād al-Islām* (Muslim world), where the rulings of the Shari‘a apply, and the other made up of all the nations where law is based on rulings other than the Shari‘a, called *dār al-ḥarb* (territory of war) in recognition of the state of hostility that characterized Muslim non-Muslim relations in the first centuries of Islam.¹⁰⁶ The legal term *dār* in Islam refers to a territory or region, or the states that form part of these according to the constitutional and international law.¹⁰⁷

¹⁰⁴ Sarakhṣī, *Sharḥ al-Siyar al-Kabīr*, 1: 21-24; Kasānī, *Badā‘i ‘al-Ṣanā‘i*, 9: 4315-4318.

¹⁰⁵ Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 86; Sayyid Quṭub, *Fī Dhilāl al-Qur‘ān*, 3: 1559-1560; Najīb Armanāzī, *al-Shar‘ al-Duwalī fī al-Islām*, 67, 164; ‘Abd al-Raḥmān ‘Azām, *al-Risāla al-Khālida*, 156-160;

¹⁰⁶ Abu Ya‘lā al-Farrā’, *al-Mu‘tamad fī Uṣūl al-Dīn*, 276; Ibn Mufliḥ, *al-Ādāb al-Shar‘iyya*, 1: 213.

¹⁰⁷ For further lexical meanings of *dār*, please see the following dictionaries where the term is defined in general and specific senses: *al-Ṣiḥāḥ*, 2: 659-660; *Mu‘jam Maqāyīs al-Lughā*, 12:311; *Mufradāt al-Qur‘ān*, 174, *Lisān al-‘Arab*, 4: 295-300, *al-Qāmūs al-Muḥīṭ*, 2: 229-231; *al-Miṣbāḥ al-Munīr*, 1:202-203; *al-Tawqīf ‘alā Muhimāt al-Ta‘ārīf*, 332 and *al-Mu‘jam al-Wasīṭ*, 1: 202-203.

Ibn ‘Ābidīn, for one, defined *dār* as a specific territory that is subjugated by Islam after being wrested from unbelievers. At the same time, it does not necessarily mean a territory where mainly Muslims reside.¹⁰⁸

Perhaps the most extensive treatment of the issue is that of Shaybānī, who looks at the division of the *dār* in detail in a series of treatises on Islamic legal rulings. The following pages attempt to clarify the meanings of both *dār al-Islām* and *dār al-ḥarb* and the rulings that imposed those differences. This inquiry will be divided into two parts, the first dealing with the legal definition of *dār* and the second focusing on the differences between the two *dārs*.

A. *Dār al-Islām* (The Territory of the Islamic State)

i. Definition of *dār* applied by early scholars to *dār al-Islām*.

Since Shaybānī is the chief architect of *siyar*, I intend to rely on his work regarding the reference to legal definitions of technical terms that serve the objective of study. According to Shaybānī, *dār al-Islām* can be *dār* that comes under Islamic authority, or one where the *zuhūr* (emergence) of Islamic rulings apply,¹⁰⁹ or one where Muslims live in a state of protection. This allows for cases where non-Muslims reside in Muslim territory (the *ahl al-dhimma*), retaining their identity but living in a full state of subjugation.¹¹⁰

Following Shaybānī’s explanation in his *Siyar al-Kabīr* and the commentary of Sarakhsī on that work, we observe that *dār al-ḥarb* can become *dār al-Islām* under any

¹⁰⁸ Ibn ‘Ābidīn, *Ḥāshiyat Ibn ‘Ābidīn*, 4: 166.

¹⁰⁹ The verb *dhahara* means to have authority or full influence; its original meaning is to give assistance, triumph or grant victory; for other meanings see the following references: *al-Mughrib*, 2: 36-37; al-Kaffawī, *al-Kulliyāt*, 3: 172-173 and *Majma‘ Biḥār al-Anwār*, 3: 498-502.

one of the three following conditions: first, if the people in a city at war with Islam become Muslims, and yet remain residents of that city - - in which case the city would become a part of *dār al-Islām*,¹¹¹ or second, if this city or territory within the confines of *dār al-ḥarb* comes under the authority of *dār al-Islām* and the people remain non-Muslims - - in which case the city will yet again become part of *dār al-Islām*, or third, if the city was under the influence of *dār al-Islām* but came under the influence of *dār al-ḥarb*, and then the Muslims redeem it.¹¹²

Thus basically, if Muslims conquer any territory in the course of war and declare the authority of Islam and apply its rulings there, it becomes part of *dār al-Islām*,¹¹³ although the territory of war does not become *dār al-Islām* if the authority or influence of *dār al-ḥarb* is not fully dismantled.¹¹⁴ In *dār al-Islām*, furthermore, when the rulings of Islam apply, “People of the Book” or non-Muslims who possess a scripture (*ahl al-Kitāb*)¹¹⁵ become *ahl al-dhimma*, and Islamic rulings apply to them.¹¹⁶ Thus, a territory can become *dār al-Islām* despite the status of its inhabitants. Shaybānī takes the extreme position and insists that, even if all of the inhabitants of a territory were non-

¹¹⁰ *Sharḥ al-Siyar al-Kabīr*, 1: 249-250, 3: 1004-1006, 4:1253 and 1257

¹¹¹ *Ibid.*, 1: 249-250.

¹¹² *Ibid.* This is also the opinion of members of the Shāfi‘ī school; see for instance al-Māwārdī, *al-Aḥkām al-Sulṭāniyya*, 137.

¹¹³ According to Haskafī, in his *Durr al-Muntaqā Sharḥ al-Multaqā*, 1: 638, there is no disagreement that *dār al-ḥarb* may become *dār al-Islām* even if only a part of the Islamic rulings are implemented. A majority of jurists however disagree with Haskafī on this particular point.

¹¹⁴ *Sharḥ al-Siyar al-Kabīr*, 3: 1004-1006 and 4: 1253-1257; Sarakhsī, *al-Mabsūṭ*, 10: 23 and 114; *al-Fatāwā al-Hindiyya*, 2: 232; *al-Fatāwā al-Bazāziyya*, 3: 311-312 in the margins *al-Fatāwā al-Hindiyya*, and *Kashshāf Iṣṭilāḥāt al-Funūn*, 2: 256.

¹¹⁵ The term *ahl al-Kitāb* (People of the Book or Scripturaries) applied to all non-Muslims who possessed a scripture whether they resided within or without the *dār al-Islām*. However, their are tolerated communities within Islam or *dhimmīs* whom they accepted residence in any Muslim territory except the Arabian Peninsula, such as Christians, Jews, Majūs (Zoroastrians), Samaritans, and Ṣābiyans. See Abū Yūsuf, *Kharāj*, 128-129.

¹¹⁶ *al-Siyar al-Kabīr* with Sarakhsī’s commentary 5: 216, 2191, 2197; Sarakhsī, *al-Mabsūṭ*, 10:23; *al-Fatāwā al-Hindiyya*, 2: 232; *al-Durr al-Mukhtār*, 4: 175; *Durr al-Muntaqā*, 1: 634. For the same opinions expressed by the Shāfi‘ī school, see *Rawḍat al-Ṭālibīn*, 5: 433 and *Tuḥfat al-Muḥtāj*, 9:

Muslim, but the authority belonged to Muslims and Islamic rulings were applied, then the territory would be defined as *dār al-Islām*. Shaybānī gives the example of a situation where a Muslim army enters the *dār al-ḥarb*, with the permission of the caliph, and in taking possession of a city, finds that the inhabitants refuse to accept Islam. In this case the caliph will ask them to pay the *jizya* (poll-tax), and if they accept, then they may demand an '*ahd*' (covenant) allowing them to stay in their homes without any fear of threat or attack. If Muslims reside along with them in the same place in order to continue fighting with *ahl al-ḥarb* and the inhabitants of that place do not intervene, then there is no penalty if the commander changes their status to *ahl al-dhimma*. So long as they accept the condition of application of Islamic rulings, their place, city or territory will become an Islamic city. In the event that a Muslim commander cannot apply the principles of Islamic rulings without the cooperation of the *ahl al-dhimma*, then the commander ought not to sign or conclude an agreement, i.e., an '*aqd al-dhimma*'.¹¹⁷ For if the Muslims are not capable of applying the rulings without the acceptance of the *ahl al-dhimma*, then the territory or the city cannot be considered as *dār al-Islām*.¹¹⁸

If Muslims are subjugated by the *dār al-ḥarb*, after having lived under *dār al-Islām*, this does not change the status of the territory. Shaybānī explains in his *Kitāb al-Siyar* that this *dār* cannot become *dār al-ḥarb*. Even if the *ahl al-dhimma* violate the

269.

¹¹⁷ Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 2: 475-476.

¹¹⁸ *al-Siyar al-Kabīr*, 5: 2191-2193; *Majma' al-Anhur*, 1: 659; 'Ubayd al-Sufyānī, *Aḥkām al-Dhiyyār*, 18-20. Similar cases can be found in the modern world. For example, there are several Muslim communities residing in the western world. They are allowed to perform their rituals, such as the feasts and the month of fasting Ramaḍān without any harassment or duress. Despite this fact, however, the western world cannot be considered *dār al-Islām*, because the governors or the leaders are not Muslim and the rulings of Islam are not enforced by Muslim authorities.

‘*ahd* (covenant), declare war against Muslims and conquer *dār al-Islām*, the Islamic rulings state that this *dār* does not become *dār al-ḥarb* so long as the Muslims are protected, as they were under *dār al-Islām*.¹¹⁹

Sarakhsī, for his part, comments that any place where Muslims are subjected to a threat is a part of *dār al-ḥarb*. Since *dār al-Islām* designates a locality, place or post under the Muslim control and influence, the inference is that authority or influence is necessary for Muslims to feel secure.¹²⁰

Scholarly consensus sided with Shaybānī regarding the definition of *dār al-Islām*. For example, Kāsānī indicates that there was no disagreement among his fellow Ḥanafī jurists (*aṣḥāb*) on the question of whether *dār al-kufr* (Kāsānī sometimes uses this term in preference to *dār al-ḥarb*) might become *dār al-Islām* whenever Islamic rulings are enforced or implemented there.¹²¹ The Mālikī jurists similarly define *dār al-Islām* as the *dār* where Islamic rulings are enforced and practiced.¹²² Shāfi‘ī jurists express a similar definition, saying that *dār al-Islām* is where Islamic principles are applied without *khafīr* (guards), grants of *muḥīr* (asylum) and without paying *jizya*. Furthermore, if the principles of Islamic rulings are implemented with respect to the *ahl al-dhimma*, and as long as the *ahl al-bid‘a* (people of heterodoxy) do not apply compulsion on the *ahl al-Sunna* (people of tradition), then it is *dār al-Islām*.¹²³ Lastly, any place where Muslims can implement the principles of Islamic rulings without any kind of fear becomes *dār al-Islām*.¹²⁴ The Ḥanbalī jurists defined *dār al-Islām* as the *dār*

¹¹⁹ Shaybānī, *Aṣl*, 217.

¹²⁰ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1253; and idem, *al-Mabsūṭ*, 10: 93, 114.

¹²¹ Kāsānī, *Badā‘ī‘ al-Ṣanā‘ī‘*, 9: 4374.

¹²² Ibn Rushd, *al-Muqadīmāt al-Mumahidāt*, 2: 153.

¹²³ Abu Mansūr al-Baghdādī, *Usūl al-Dīn*, 270.

¹²⁴ Ramlī, *Nihayat al-Muḥtāj*, 8: 82; Zakariyyā al-Anṣārī, *Asmā al-Maṭālib Sharḥ Rawḍ al-Ṭālib*,

where the majority of rulings were Islamic in nature as opposed to rulings of *kuf* (unbelief).¹²⁵ Thus Ibn Qayyim al-Jawziyya says that the *dār* of migration in the time of the Prophet was *dār al-Islām*, and that when the inhabitants of that place became Muslim, the entire territory became *bilād al-Islām* (Islamic territory).¹²⁶ He also indicates that *dār al-Islām* is the *dār* where Muslims reside and Islamic rulings are applied and that if the rulings of Islam are not implemented, then that *dār* is not considered *dār al-Islām*. This is so even in the case of a neighboring city, such as Ṭā'if, which was close to Mecca when it came under Muslim rule but did not become part of *dār al-Islām* until some time later.¹²⁷ In the Zaydī school, *dār al-Islām* is defined in terms of the implementation of the promotion of Islamic principles and its rulings under Islamic authority, along with acceptance of other rulings such as those regarding *dhimma* and *amān*.¹²⁸

ii. Definitions applied by modern Muslim scholars to *dār al-Islām*.

According to 'Abd al-Qādir 'Awdah, *dār al-Islām* includes the territories where the principles of Islamic rulings are enforced or where Muslims are able to practice the legal rulings of Islam.¹²⁹ Thus any place or territory populated by a majority of Muslim residents, or any place that is conquered by Muslims and ruled by them (even if the majority of its inhabitants are non-Muslim), as well as any place that is conquered and

4: 204.

¹²⁵ Abū Ya'lā, *al-Mu'tamad fī Uṣūl al-Dīn*, p. 276; Ibn Muflīh, *al-Adāb al-Shar'iyya*, 1: 213.

¹²⁶ Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 5.

¹²⁷ Ibid., 1: 366.

¹²⁸ *Sharḥ al-Azhār*, 5: 571-572.

¹²⁹ 'Abd al-Qādir 'Awdah, *al-Tashrī' al-Jinā'ī al-Islāmī*, 1: 274-275; see also 'Abdullhi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990) 150 and 183.

ruled by non-Muslims and where the Muslim residents are free to implement Islamic rulings, is *dār al-Islām*.¹³⁰ ‘Abd al-Wahhāb Khallāf, on the other hand, defines *dār al-Islām* as the *dār* where Islamic rulings are enforced on all its residents and the protection of Islam is extended to them, i.e., Muslims or *dhimmiyyūn*.¹³¹ Abū Zahra defines *dār al-Islām* as a state that is ruled by Islamic authorities and that maintains the full capacity to enforce or forbid all orders or rulings.¹³² Finally, Muḥammad Rashīd Riḍā defines *dār al-Islām* as whatever territory is encompassed by the Islamic realm and where Islamic rulings are implemented and practiced.¹³³

The above definitions of *dār al-Islām* demonstrate a basic agreement on the part of all schools of jurisprudence. Modern scholars, along with their classical and medieval predecessors agree in principle that *dār al-Islām* is the territory that is under the full control of Muslims and where all submit to Islamic rulings, in contrast to the *dār al-ḥarb*, whose character we will analyze in the following section. Some scholars would, in addition, extend the definition of *dār al-Islām* to include those territories where Muslims are allowed to practice their faith unhindered, whether or not Muslims are in full control of the civil authority.

B. *Dār al-Ḥarb* (enemy territory)

i. Definitions Applied by Early Scholars to *Dār al-Ḥarb*.

¹³⁰ ‘Abd al-Qādir ‘Awdah, *al-Tashrī‘ al-Jinā‘i*, 1: 275-276, where the author makes reference here to *Badā‘i‘ al-Ṣanā‘i‘* and *Ismā al-Maṭālib*, see also Muḥammad Ḥāfiẓ, *Mabādi‘ al-Qānūn al-Duwalī*, 51.

¹³¹ ‘Abd al-Wahhāb Khalāf, *al-Siyāsa al-Shar‘iyya wa Niẓām al-Dawla al-Islāmiyya*, 71; see also Hāmid Sulṭān, *Aḥkām al-Qānūn al-Dawli fī al-Sharī‘a al-Islāmiyya*, 112; ‘Abd al-Karīm Zaydān, *Majmū‘at Buḥūth Fiqhiyya*, 50; Wahbī Zuhaylī, *al-‘Alāqāt al-Dawliyya fī al-Islām*, 104-105; Muṣṭafā Kamāl Waṣfī, *Muṣannafāt al-Niḍum al-Islāmiyya*, 285.

¹³² Abū Zahra, *al-‘Alāqāt al-Dawliyya fī al-Islām*, 53; and idem, *al-Jarīma wa al-‘Uqūba fī al-*

According to Shaybānī, *dār al-ḥarb* (enemy territory) is the territory where the rulings, based on non-Islamic principles, are authoritatively implemented and enforced.¹³⁴ Shaybānī furthermore says that, even if a *dār* was part of the *dār al-ḥarb* and the Muslims living there came to an agreement with the non-Muslims to the effect that the rulings of the *dār al-ḥarb* would not apply to them, it would still be considered *dār al-ḥarb*.¹³⁵ Sarakhsī, on the other hand, maintains that in this case the *dār* would become *dār al-Islām* only if the Islamic rulings are applied within the framework of the *dār*. Hence, if the Islamic rulings are not applied, then the *dār* would continue to be *dār al-ḥarb*, based as it is on a non-Islamic legal structure.¹³⁶

The safety of Muslims is a very important consideration in determining the type of *dār*, according to Muslim scholars. Shaybānī explains that if the place of residence is not safe for Muslims, then it is to be considered *dār al-ḥarb*, since the only place that a Muslim may feel safe and protected is a territory under Muslim control.¹³⁷ Whenever a place where Muslims reside comes under threat, and where rulings based on polytheism or a non-Islamic legal system are imposed on them, then, according to the majority of the Ḥanbalī jurists, that place is defined as *dār al-ḥarb*.¹³⁸

The scholars of all the other schools reached *ijmā'* (consensus) regarding the definition of *dār al-ḥarb*. For example, Mālik asserts that at the time when Muslims were living in Medina, prior to the capture of Mecca, Mecca was considered *dār al-ḥarb*,

Fiqh al-Islāmī, 1: 341-343.

¹³³ Muḥammad Rashīd Riḍā, *Tafsīr al-Manār*, 10: 371.

¹³⁴ Shaybānī, *al-Siyar al-Kabīr*, 1: 251, 4: 2070 and 2197; Sarakhsī, *al-Mabṣūṭ*, 10: 114; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4375; *Durr al-Muntaqā*, 1: 634; *Mujama' al-Anhur*, 1: 659.

¹³⁵ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1253.

¹³⁶ *Ibid.*, 5: 2165; Sarakhsī, *al-Mabṣūṭ*, 10: 114.

¹³⁷ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1253.

¹³⁸ *Durr al-Muntaqā*, 1: 634; Tahanāwī, *Khashshāf Iṣṭilāḥāt al-Funūn*, 2: 256; al-Kaffawī, *al-*

because the system of law there was based on *jāhiliyya* (pre-Islamic) customs.¹³⁹ Mālik expresses himself vehemently on the question of whether relations with the people of *dār al-ḥarb* are allowed, and maintains that Muslims should not visit or have commercial dealings with them in order to prevent the rulings of *dār al-ḥarb* from being applied to their transactions.¹⁴⁰ This is also the opinion of Abū al-Walīd Muḥammad ibn Aḥmad ibn al-Ruṣhd (d. 520/1122), who defines *dār al-ḥarb* as the *dār* where the dominant rulings are based on polytheism.¹⁴¹

The Shāfiʿī jurists took the same approach to the definition of *dār al-ḥarb*, with Abū Maṣṣūr al-Baghdādī (d. 429/1037) defining *dār al-ḥarb* as the *dār* in constant opposition to *dār al-Islām*. Further, he says that *dār al-ḥarb* is the *dār* where Muslims are prevented from practicing their faith freely and where they cannot enforce the Islamic rulings on *dhimmīs* if there was a *dhimmi* presence among them.¹⁴² The Ḥanbalī jurists also define *dār al-ḥarb* as a *dār* where the rulings of polytheism prevail.¹⁴³ They in fact hold an extreme view of *dār al-ḥarb*, defining it as the *dār al-tabāʿud wa al-bagḥḍa* (territory of separation and hatred), taking the word *ḥarb* (war) in its most literal sense.¹⁴⁴

Kulliyāt, 2: 341.

¹³⁹ Mālik, *al-Muddawana*, with Saḥnūn's commentary, 2:22

¹⁴⁰ Ibid., 3: 270.

¹⁴¹ Ibn Ruṣhd, *al-Muqaddamāt al-Mumahhidāt*, 2: 151; *Fatāwī al-Shaykh ʿAlīsh*, 1: 377.

¹⁴² Baghdādī, *Uṣūl al-Dīn*, 270.

¹⁴³ Ḥajjāwī, *al-Iqnāʿ* with Bahūtī's *Khashshāf al-Iqnāʿ*, 3: 38; Mardāwī, *al-Muqniʿ* with the *Inṣāf*, 4: 121; Ibn Muflih, *al-Furūʿ*, 6: 197, *al-Adāb al-Sharʿiyya*, 1: 213 and *al-Mubdiʿ Sharḥ al-Muqniʿ*, 3: 313.

ii. Definition Applied by Modern Muslim Scholars to *Dār al-Ḥarb*.

‘Abd al-Qādir ‘Awdah defines the *dār al-ḥarb* as the *dār* that includes all non-Islamic territories that are governed by non-Muslims and where the laws enforced within that territory are based on non-Islamic sources. According to ‘Awdah, whether these territories are governed by single or multi-party systems, and regardless of whether or not non-Muslims reside there, as long as the Muslims living there are incapable of enforcing Islamic rulings, this territory is part of *dār al-ḥarb*.¹⁴⁵ ‘Abd al-Wahhāb Khallāf, another modern scholar, for his part defines *dār al-ḥarb* as the *dār* in which Islamic laws are not enforced.¹⁴⁶ Yet, he also defines the *dār al-ḥarb* as the *dār* that has peaceful relations with the *dār al-Islām*, acknowledging perhaps that the word *ḥarb* (war) should no longer be taken literally in modern definitions of the term.¹⁴⁷ Abū Zahra nevertheless claims that there is a difference of opinion among scholars in terms of defining the *dār al-ḥarb*. One opinion, according to him, defines *dār al-ḥarb* as the *dār* exclusive of Islamic authority and therefore outside the reach of Muslim rulers; this *dār* also has no covenant with Muslims. The second opinion, he says, is that a lack of authority on the part of Muslim rulers does not automatically make a territory *dār al-ḥarb*. There are three conditions that need to be met to declare a place *dār al-ḥarb*, as follows: 1) if the power and authority belongs to non-Muslims; 2) if the territory is settled by Muslims but there is an expectation of enemy attack; and 3) if the Muslims

¹⁴⁴ Ba‘ī, *al-Muṭla‘ ‘alā Abwāb al-Muqni‘*, 226.

¹⁴⁵ ‘Abd al-Qādir ‘Awdah, *al-Tashrī‘ al-Jinā‘ī al-Islāmī*, 1: 277.

¹⁴⁶ ‘Abd al-Wahhāb Khallāf, *al-Siyāsa al-Shar‘iyya wa Niẓām al-Dawla al-Islāmiyya*, 71. The author summarizes the opinions of a member of scholars, for example see Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 366; and ‘Abd al-Karīm Zaydān, *Majmū‘at Buḥūth Fiqhiyya*, 51.

¹⁴⁷ ‘Abd al-Wahhāb Khallāf, *al-Siyāsa al-Shar‘iyya wa Niẓām al-Dawla al-Islāmiyya*, 77; a similar approach is defined by Ḥāmid Sulṭān, *al-Qānūn al-Dawli fī al-Sharī‘a al-Islāmiyya*, 115.

or *dhimmis* who continue to reside in the *dār* lack the protection that was accorded when the territory was part of *dār al-Islām*. Abū Zahra favors the second opinion over the first one, and further explains that the third condition of the second opinion is meaningless since, in origin, the relations between Muslim and non-Muslim are supposed to be peaceful.¹⁴⁸

iii. Rules on How the Category of *Dār al-Islām* May be Changed:

Dār al-ḥarb can become *dār al-Islām* when the Muslims conquer it and impose Islamic law.¹⁴⁹ As was mentioned earlier, there is a consensus among scholars in both the early and modern periods regarding the condition of *dār al-Islām*, which is that a *dār* becomes *dār al-Islām* whenever Islamic rulings are applied and enforced.¹⁵⁰ A question remains: Can a part of *dār al-Islām* become *dār al-ḥarb* in the event that Islamic authority is lifted? It would appear at first glance that there are three conditions under which such a change of designation may take place, and these are: 1) if the *ahl al-ḥarb* defeat Muslims and take full control of a given territory; 2) if the people apostatize from Islam and take full control of their territory and apply the laws of polytheism (*kuff*); and 3) if the *ahl al-dhimma* abolishes an already existing covenant and are victorious in their struggle against Muslim authority.¹⁵¹

¹⁴⁸ Abū Zahra, *al-'Alāqāt al-Dawliyya fi al-Islām*, 53-54, and idem, *al-Jarīma wa al-'Uqūba*, 1: 340-343; Wahbi al-Zuhaylī, *al-'Alāqāt al-Dawliyya fi al-Islām*, 105-106.

¹⁴⁹ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4374; *Durr al-Muntaqā*, 1: 634; *Fatāwī al-Bazāziyya*, 3: 312 and *Fatāwī al-Hindiyya*, 2: 232.

¹⁵⁰ Ibid.

¹⁵¹ These three phases are outlined in the following treatises: Shaybānī, *Aṣl, Kitāb al-Siyar*, 217-220; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1914 and 1941; *al-Jamī' al-Ṣaghīr*, 249; *al-Mabsūṭ*, 10: 113-114; Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4376; Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, 249, *al-Fatāwī al-Hindiyya*, 2: 232; *Fatāwī Qāḍī Khān*, 3: 584; *Ḥāshiyat Ibn 'Abdīn*, 4: 174; *al-Baḥr al-Rā'iq*, 3: 230-231; Karābīsī, *Furūq*, 1: 340; Māwardī, *Aḥkām al-Sulṭaniyya*, 138; Ibn Hubayra, *al-Ifṣāḥ*, 2: 229-230; and Dimashqī, *Raḥmat al-'Umma*, 352.

We will begin with the opinion of Shaybānī first. Shaybānī and Abū Yūsuf share the same opinion regarding when the *dār al-Islām* may become *dār al-ḥarb*. According to both these Ḥanafī jurists, this may take place whenever non-Islamic laws are applied and enforced in a given territory. This is the case whether or not the territory is physically connected with *dār al-ḥarb* or whether or not Muslims or *dhimmis* remain there.¹⁵²

Furthermore, both Abū Yūsuf and Shaybānī express the opinion that, wherever the rulings of polytheism are enforced, the authority in that particular place has by definition come under a non-Islamic system and the place becomes *dār al-ḥarb*, just as wherever the authorities enforce Islamic law, that place becomes *dār al-Islām*.¹⁵³

Both these Ḥanafī jurists base their opinions on the legal device known as *qiyās* (analogy).¹⁵⁴ Since *dār al-ḥarb* becomes *dār al-Islām* whenever the Islamic *aḥkām* (rulings) are enforced there, regardless of the presence of polytheists or whether that *dār* is connected with *dār al-Islām* and or not, the same thing is true, by analogy, of *dār al-Islām*.¹⁵⁵

Kāsānī, another Ḥanafī jurist, supports this opinion and demonstrates that the original concept of the two ‘*dārs*’ is derived from the true determination and reflection in the fullest sense of what Islam and polytheism stand for. Any distinction between the two comes down to the types of rulings each *dār* implements. Whether it is ‘*Islām*’ or ‘*ḥarb*’ that is specifies it, as Abū Yūsuf and Shaybānī point out, it is the conditions or

¹⁵² Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1914; and idem, *al-Mabsūṭ*, 10: 113-114; Kāsānī, *Badā’i’ al-Ṣanā’i’*, 9: 4376

¹⁵³ Kāsānī, *Badā’i’ al-Ṣanā’i’*, 9: 4376

¹⁵⁴ *Qiyās* is the method of systematic reasoning (analogy) that tries to identify the “‘*illā*” (effective reasoning) in a given “‘*ḥukm*” (judgement) on the basis of the Qur’ān, Sunna and “‘*ijmā*” (consensus)

¹⁵⁵ Shaybānī, *al-Aṣl Kitāb al-Siyar*, 217; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1914; and idem, *al-*

phenomena associated with the type of *dār* that define it. Kāsānī offers a few examples to illustrate his point, by equating *janna* (paradise) with *dār al-salām* (house of peace), because of the safety and security that are associated with it, and then contrasting this with *nār*, called *dār al-bawār* (hellfire) because of the perdition that characterizes the latter. Similarly, the occurrence of Islam or disbelief reflects the rulings that are enforced in a particular place. If the laws of a *dār* are derived from polytheism then it becomes *dār al-kufr* or *dār al-ḥarb*, thereby validating the categorization, just as a *dār* will become *dār al-Islām* if it implements and observes genuine Islamic rulings.¹⁵⁶

The above-mentioned opinions of Ḥanafī jurists came into play later when jurists of that school engaged in *iftā'* (the exercise of issuing a "*fatwa*" or legal opinion of a *mufti*) regarding the Mongols' conquests of Islamic territory in the 13th century. Ibn Nujaym indicates that in his day, after the *fitna* (turmoil or socio-religious strife) of the Mongols, certain provinces of *dār al-Islām*, such as Khawārizm, Transoxiana, and Khurasān and its surroundings, were regarded as having become *dār al-ḥarb* because they were governed under the Mongol law "*yāsā*",¹⁵⁷ even though the majority of the population was still Muslim.¹⁵⁸

The opinion of Abū Ḥanifā is recorded by Shaybānī in his work *Ziyādāt*.¹⁵⁹ According to the former, the *dār* will become *dār al-ḥarb* under three collective

Mabṣūṭ, 10: 114; *al-Fatāwī al-Hindiyya*, 2-232; Tahānawī, *Kashshāf Iṣṭilāḥ al-Funūn*, 2: 256.

¹⁵⁶ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4375; Abū Zahra, *al-Jarīma wa al-'Uqūba fī al-Islām*, 341; and *Fatāwī al-Imām Rashīd Riḍā*, edited by Ṣalāḥ al-Dīn Munajjid, 1: 373.

¹⁵⁷ Such as in the "great *yāsā* of Ghengīz Khān," a comprehensive legal code laid down by the founder of the Mongol empire. See, "Yāsā" in the *Encyclopedia of Islam*, 11: 293-294.

¹⁵⁸ Ibn Nujaym, *al-Baḥr al-Rā'iḳ Sharḥ Kanz al-Daqa'iq*, 3: 230-231; the term also appears in "Hāshiyat al-Shalabī", *Tabyyīn al-Ḥaqā'iq*, 3: 285.

¹⁵⁹ *Ziyādāt* (additional) this title was given on the bases of additional cases to the earlier works as well as recorded the case where he defers of Abū Yūsuf one. It is known through the commentary works of both Qāḍī Khān (d. 596/1199) and al-'Attābī (d. 586/1190), see Hajji Khalīfa, *Kashf al-Zunūn*, 2: 962-963; Brockelman, *Tārīkh al-Adab al-'Arabī*, 3: 248-249; Foad

conditions. The first condition is the imposition of a legal system that leaves Muslims without recourse to Islamic judges, that prorogues Islamic laws and that imposes on Muslims non-Islamic law. Furthermore, the rulings that are applied will, in this situation, be contradictory to Islamic principles. For example, Islam forbids *ribā* (usury or unlawful interest proscribed by the Sharī‘a law), whereas the predominant law in *dār al-ḥarb* permits it, just as the Qur’ān condemns *zinā* (sexual intercourse outside a valid marriage contract) while the new law of the land may permit it. The same thing may be said of laws on consuming alcohol, eating pork and gambling. However, according to Ibn ‘Ābidīn, if the rulings (*ahkām*) of both Islam and polytheists become permissible, the *dār* may not be considered *dār al-ḥarb*.¹⁶⁰

The second condition, according to Abū Ḥanīfa, is where the *dār* is adjacent or somehow connected with part of the *dār al-ḥarb*, without any Islamic province separating them and capable of coming to the aid of their fellow Muslims in the *dār* in question; thus geographical communication with *dār al-Islām* can be a mitigating factor.¹⁶¹ Moreover, if a non-Islamic territory or province surrounds an Islamic territory and yet has no *sulṭān* (supreme ruler or sovereign) set over it, the Islamic territory will not be considered *dār al-ḥarb*.¹⁶² Ibn ‘Ābidīn indicates furthermore that the sea is not considered a barrier, nor can the sea be under the authority of *dār al-ḥarb*, because it cannot be physically subjugated.¹⁶³

Sezgin, *Tārīkh al-Turāth al-‘Arabī*, 3: 57-59.

¹⁶⁰ Ibn Nujaym, *al-Baḥr al-Rā‘iq Sharḥ Kanz al-Daqā‘iq*, 3: 230-231; Ibn Qāḍī Simāwnah, *Jāmi‘ al-Fuṣūlayn*, 1: 13.

¹⁶¹ *Fatāwī Qāḍī Khān*, 3: 582-584.

¹⁶² Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1914; and idem, *al-Mabsūṭ*, 10: 114.

¹⁶³ *Ḥāshiyat Ibn ‘Ābidīn*, 4: 174-175.

The third condition is where the *dār* offers no protection to Muslims or *dhimmīs* and where the only protection is that afforded by polytheist rulings. Polytheist protection of both Muslims and *dhimmīs* is unstable, and besides, their loyalties continue to belong to the Islamic state. They only continue to reside within the *dār al-ḥarb* under the covenant of the government of *dār al-Islām*. Hence their loyalties are not determined by their residence, even though they may dwell in territory outside of *dār al-Islām*.¹⁶⁴

In his work Sarakhsī addresses some of the disagreements between Abū Ḥanīfā and his disciples, especially Abū Yūsuf and Shaybānī, regarding the determination of the status of the *dār*. The latter had categorized the status of the *dār* on the basis of whether or not the authority of Islam had been established. However, Abū Ḥanīfā placed great importance on the nature of this authority. This is due to the fact that he believed that, once a territory was part of the Islamic realm, nothing could dismantle that achievement without one of three conditions coming into play. For example, if the territory is not connected with *dār al-ḥarb*, and its residents are subjugated because they are surrounded by Muslims from all sides, this is true if the residents were granted protection whether Muslim or *dhimmi* which does not indicate whether they were fully subjugated by them. Similarly if they took the wealth of a Muslim in *dār al-Islām* which is impossible since it could not be accomplished that in their *dār* because the subjugation is not present.¹⁶⁵ Abū Ḥanīfā's opinion regarding the status of the *dār* is based on a theoretical rather than an actual model. This is because he considers it possible for Muslims or *dhimmīs* to remain in *dār al-ḥarb* where the law enforced is

¹⁶⁴ Raḥbī, *Fiqh al-Mulūk wa Miftāḥ al-Ratāj al-Murşad 'alā Khazānat al-Kharāj*, 1: 463.

non-Islamic. For him there is no reason why, by remaining residents of that *dār* (whether Muslim or *dhimmi*), they will be forced to abandon the religious practices they observed before their *dār* become *dār al-ḥarb*. According to Abū Ḥanīfa, the *dār* will remain under the authority of *dār al-Islām*.¹⁶⁶

A *fatwā* (legal opinion) was issued by Ḥāfiẓ al-Dīn al-Bazzāzī, known as Ibn Bazzāz al-Kardārī (d. 827/1423), based on the opinion of Abū Ḥanīfa, at the time when the Mongols took over some of the Muslim territories.¹⁶⁷

The *fatwā* expressed the opinion of Abū Ḥanīfa, which was that the occupied territories remained part of *dār al-Islām*. This *fatwā*, issued in the fifth century (A.H.) by Ḥanafī jurists at the time of Mongol invasion, defined the occupied territories as still Islamic since they had no connection with the *dār al-ḥarb* (enemy territory) and because polytheist rulings did not prevail there. Another consideration was the fact that the judges there continued to be Muslim, just as the people under Mongol control remained Muslim. Muslim governors were even put in charge of the civil government, despite the fact that necessary obedience had to be shown to the Mongols. Muslims were furthermore allowed to perform their religious duties, while any obedience to polytheists was defined as *maṣlaḥa* (self-preservation) or dissemblance. Thus, as Abū Ḥanīfa indicated, as long as any part of an *‘illa* (effective reasoning) remained in force and the territories did not become part of *dār al-ḥarb*, a territory's status as *dār al-Islām* would prevail. In this case, since the Muslims were capable of conducting their affairs according to Islamic principles, the *dār* could not be called *dār ḥarb*.¹⁶⁸

A similar approach was adopted by ‘Abd al-‘Azīz al-Ḥulwānī (d. 448 H.), one of the leading Ḥanafī scholars of his time. He indicated that a *dār* would become *dār al-*

¹⁶⁵ Sarakhsī, *al-Mabsūṭ*, 10: 114

¹⁶⁶ Ibid.

¹⁶⁷ al-Bazzāz's opinion was transmitted from Muḥammad ibn Aḥmad b. Ḥamzā b. al-Husayn al-‘Alawī, known as Abū Shujā’, one of the leading Ḥanafī jurists of the fifth century H., and well known for his *fatwā* 's in that day. For further information, see *al-Jawāhir al-Mudhiyya*, 3: 28, and *al-Fawā'id al-Bahiyya*, 155.

¹⁶⁸ Ibn al-Bazzāzī, *al-Fatāwā al-Bazzāziyya*, 3: 311-312, in the margins of volume 6 of the

ḥarb if polytheist rulings were implemented and none of its rulings were based any longer on Islamic law (apparently acknowledging by this that Islamic law can only partially be imposed and yet still be said to create the conditions for *dār al-Islām*). Furthermore, if the *dār* were connected with the *dār al-ḥarb* where neither Muslims nor *dhimmis* remained under the protection of Islamic law, the *dār* would become *dār al-ḥarb*. The *dār* would, however, remain a part of *dār al-Islām* if any one of the conditions set out by Abu Ḥanīfa were not met in the case of subjugation by non-Muslims.¹⁶⁹

According to Ḥanafī jurists, furthermore, once a *dār* becomes a part of *dār al-ḥarb*, the *ḥudūd* (legal punishments prescribed by the Sharī'a law), would no longer be enforced; however, their application would resume once the territory were to revert to *dār al-Islām*. In the event that Muslim judges are assigned to enforce Islamic rulings and should Muslims receive a guarantee of protection, then the *dār* will be considered *dār al-Islām*.¹⁷⁰ Shaybānī's opinion regarding this situation is that, whenever polytheists conquer Muslim territories, these territories will become part of the polytheist *dār*.¹⁷¹ Mālik, Shāfi'ī, and Ibn Ḥanbal favored Shaybānī and Abū Yūsuf's opinions over those of other jurists, i.e., that the *dār* would only become polytheist should polytheist laws come to override the Islamic rulings.¹⁷²

However, some Mālikī jurists, such as Muḥammad ibn 'Arafa al-Dasūqī (d. 1230 H.), insist that a *dār* cannot become a polytheist *dār* if Islamic rulings continued to be

Fatāwā al-Hindiyya.

¹⁶⁹ Ibid.; see also Tahanāwī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 2: 256.

¹⁷⁰ Ibn 'Abidīn, *Ḥāshiyat Ibn 'Abidīn*, 4: 175; *al-Fatāwā al-Hindiyya*, 2: 232; Kāsānī, *Badā'i' al-Sanā'i'*, 9: 4376; *Mukhtaṣar al-Ṭahāwī*, 295.

¹⁷¹ Shaybānī, *al-Siyar al-Kabīr*, 5: 1957.

¹⁷² Mālik, *al-Mudawwana*, 2: 22; Ibn Rushd, *al-Muqaddamat al-Mumahhadāt*, 2: 152; *al-Mughnī* with the *Sharḥ al-Kabīr*, 6: 403-404; Mirdāwī, *al-Inṣāf*, 4: 121; "*Kashshāf al-Iqnā'*", 3: 38; Ibn Haybara, *al-Ifṣāḥ*, 2: 230; Dimashqī, *Raḥmat al-'Umma fī Ikhtilāf al-A'imma*, 352.

applied; indeed, the simple fact of polytheists taking over the government is not enough. Whether some or all or none of the Islamic rulings were applied the *dār* would still not become *dār al-ḥarb*.¹⁷³ A similar stance was taken by some Shāfiʿī jurists, who argued that a *dār* with a Muslim population conquered by polytheists who enforced their own laws would remain part of *dār al-Islām* and this would not change its status. Zakariyyā al-Anṣārī (d. 926/1520), one of the Shāfiʿī jurists who advanced this opinion, states that Muslims must continue residing in a *dār* after it is conquered by polytheists and that Muslims are prohibited from leaving that *dār* regardless of the type of rulings applied so as to maintain the status of that *dār* as *dār al-Islām*.¹⁷⁴ Ibn Ḥajar al-Haythamī (d. 974 H.) indicates that whenever a *dār* becomes *dār al-Islām*, it can never again become a polytheist *dār*, even if it were conquered and controlled by polytheists.¹⁷⁵

Shams al-Dīn al-Ramī (d. 1004 H.) expresses a similar opinion to that of his fellow Shāfiʿī jurists. He indicates that, for example, when a non-Muslim becomes a Muslim in the polytheist *dār* and manages to separate himself from the *ḥarbīs* (those who belong to *dār al-ḥarb*), and yet cannot obtain Muslim aid and assistance to emigrate, then his status is acceptable because the territory he is currently residing becomes *dār al-Islām*. However if he were to leave that place, then it would become *dār al-ḥarb*. Ramī states furthermore, in regard to a similar situation, that if in any place the same residents abstain from and do not affiliate with *ḥarbīs*, the place becomes *dār al-Islām*. He supports his opinion by referring to a *ḥadīth* which reads, “*al-Islām yaʿla*

¹⁷³ *Ḥāshiyat al-Dasūqī ʿalā al-Sharḥ al-Kabīr*, 2: 188.

¹⁷⁴ Zakariyyā al-Anṣārī, *Sharḥ Minhaj al-Ṭālibin*, 4: 244.

¹⁷⁵ Ibn Ḥajar al-Haythamī, *Tuḥfāt al-Muḥtāj Sharḥ al-Minhāj*, 9: 268-269.

*wa lā yu‘lā*¹⁷⁶ (Islam is superior but nothing rises over it). This particular *ḥadīth* was used and referred to whenever the jurists ran into a case or situation similar to the conditional status of the *dār*. Many jurists from all schools favored the opinion that a *dār* would remain *dār al-Islām*, despite coming under the control of the polytheists. These included Abū Ḥanīfa, Kāsānī, Rāfi‘ī, Ramli and others. Al-Ramli defended these scholars by saying that, when they (Abū Ḥanīfa, Kāsānī, Rāfi‘ī) referred to the *dār* meant by *dār al-ḥarb* then the *dār* does not necessarily become *dār al-ḥarb*, *ipso facto*.¹⁷⁷ Ramli’s *fatwā* refers to the case of the Muslims in Andalusia (Spain) when the Christians took over Muslim territory. He states that it was prohibited to leave that territory because the people who would replace them were not Muslim, and because, if they were to leave, then the existing *dār al-Islām* would become *dār al-ḥarb*.¹⁷⁸

Rāfi‘ī al-Qazwīnī (d. 632/1226) sets forth three categories for defining the status of the *dār al-Islām*: 1) that the *dār* must be populated by Muslims; 2) that it must be conquered by Muslims; and 3) that the *dār* must have been populated by Muslims who evacuated so that it then came under the control of the polytheists. According to him, any one of these will render a *dār* as a part of *dār al-Islām*, even the third category, over which some of the earlier and later jurists differed. However, he narrows the third category by setting some conditions. For example, he explains that, if the polytheists prevent Muslims from staying in the territory under their control, then it will become a *dār al-ḥarb*. However, if they do not force the Muslims to leave, then the *dār* will remain

¹⁷⁶ According to various *ḥadīth* collections, which preserve its *isnād*, this *ḥadīth* was narrated by Ibn ‘Abbās. See al-Ṭaḥāwī, *Sharḥ Ma‘ānī al-Athār*, 3: 258; Ibn Ḥajar, *Taghliq al-Ta‘liq*, 2: 490; Bukhārī, *Saḥīḥ*, 3: 218.; Bayhaqī, *Sunan*, 6: 205; *Irwā’ al-Ghālīl*, 5: 106-109.

¹⁷⁷ Ramli, *Nihayat al-Muhtāj*, 8: 82 and 5: 454; *Mughnī al-Muhtāj*, 4: 239.

¹⁷⁸ *Fatāwā al-Ramli*, 4: 53-54 in the margins of the *Fatāwā al-Kubrā* of Ibn Ḥajar al-Hyṭhamī; see also *Nihāyat al-Muhtāj* of Ramli, 5:454.

dār al-Islām despite the fact that the political control of the *dār* has been passed to non-Muslims.¹⁷⁹

C. *Dār al-‘ahd* and *Muwāda‘a* (Territory in a Treaty Relation with Islam):

As was mentioned earlier, the *dār* that accepts and enforces the Islamic *aḥkām* and is under Islamic authority is considered *dār al-Islām*, according to the opinion of the majority of Muslim scholars. These same scholars say that the status of *dār al-Islām* can be attained in any of the four following ways: 1) the residents of a territory became Muslim and remain in their territory; 2) the territory is captured by force but the government allows the Muslim to practice and enforce Islamic rulings; 3) the non-Muslim residents accept Islamic law under Muslim protection by becoming *ahl al-dhimma*, and 4) if the territory is conquered under a peaceful agreement where Muslims are allowed to settle and apply the *kharāj* (land-tax). In all other circumstances, the *dār* will remain *dār al-ḥarb*. Furthermore, Muslim scholars have agreed that the world can only be divided into two parts, i.e., *dār al-Islām* and *dār al-ḥarb*, there is no third type of *dār*.¹⁸⁰

However, the status of *dār al-ḥarb* can further be modified as a result of whether or not a covenant or agreement exists with Muslim authorities. Early jurists such as Shaybanī and some contemporary scholars and jurists thus distinguish between *dār al-ḥarb* (enemy territory) *dār al-‘ahd* (territory in treaty relation with Islam) or *dār al-muwāda‘a* (territory in a temporary peaceful treaty relation with Islam for a fixed

¹⁷⁹ Rafī‘ī, *al-‘Azīz Sharḥ al-Wajīz*, 6: 423-424; Nawawī, *Rawḍat al-Tālibīn*, 5: 433-434.

¹⁸⁰ Abū Ya‘lā, *al-Mu‘tamad fī Uṣūl al-Dīn*, 267; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 475-576; Ibn Muflīh, *al-Ādāb al-Shar‘iyya*, 1: 213.

time).¹⁸¹ Shaybānī was among the first jurists to discuss this matter in his writings, though he sees *ahl al-muwāda'a* not as an independent *dār* but as part of *dār al-ḥarb*, and in his commentary on Shaybānī's work Sarakhsī endorses the latter opinion.

Shaybānī maintains that, if any part of *dār al-ḥarb* reconciles with Muslims by paying them a yearly *kharāj* (land tax) or a fixed tribute in exchange for not applying the Islamic *aḥkām* and for not imposing *dhimma* status on them, and if one of its residents enters *dār al-Islām* with considerable wealth, then according to that reconciliation agreement he should be granted *amān* (be safe or protected). Sarakhsī justifies the opinion of Shaybānī by saying that in this case the man who enters *dār al-Islām*, even though a *ḥarbī* is safe, and does not become a *dhimmī*, because the Islamic *aḥkām* are not applicable to the people (*ahl*) of *muwāda'a*. Moreover, the *dār* does not become *dār al-Islām* under the terms of this reconciliation because it does not enforce the Islamic *ḥukm*, and thus remains *dār al-ḥarb*.¹⁸² Furthermore, Shaybānī elaborates that, if someone party to a *muwāda'a* kills another party to the same in the *dār al-muwāda'a*, he will not be subjected to *qisās* (legal punishment), although, if he should kill a *musta'min* (anyone who has been given the promise of security or safe-conduct by Muslims) in *dār al-Islām*, the *qisās* will apply. This is because, according to Sarakhsī, the *ahl al-muwāda'a* (people who have a treaty or contract with Muslims) have no commitment to Islamic *aḥkām* under the reconciliation agreement, so their *dār* is considered *dār al-ḥarb*.¹⁸³

¹⁸¹ See for example: 'Abd al-Karīm Zaydān, *Aḥkām*, Wabbah Zuhaylī, *Athār al-Ḥarb*, Abū Zahra, *al-'Alāqāt al-Dawliyya*.

¹⁸² Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 2157 and 2165.

¹⁸³ Ibid., 5: 1857 and 1893; Sarakhsī. *Mabsūṭ*, 10: 88-89 and 97.

Most contemporary scholars claim that *dār al-‘ahd* is an independent *dār* and that it is distinguished from the other *dārs*, i.e., *dār al-ḥarb* and *dār al-Islām*, and is thus a third type of *dār*, although some scholars claim that Shaybānī, and Shāfi‘ī in his *al-Umm*, indicate that *dār al-‘ahd* is a distinctive type of *dār*. Among contemporary scholars, Najīb Armanzānī¹⁸⁴ insists that the relations between Muslim and non-Muslim nations are to be based on the *dār al-‘ahd*. Muḥammad Abū Zahra on the other hand maintains that the *dār al-‘ahd* is primarily a theoretical construct, but that it has existed in reality. He cites the examples of certain tribes and nations that did not submit fully to Islamic rulings and on whom these were not subsequently applied, because an *‘ahd* had been concluded and respected.¹⁸⁵ All of these scholars ultimately base their opinions on the position of the Ḥanbali jurist Abū Ya‘la.¹⁸⁶ However, other jurists claim that the *dār al-‘ahd* should be considered *dār al-Islām*, because the Muslims never concluded any contract while they were in a position of power and strength.¹⁸⁷

The divergence in opinion between modern and early scholars regarding the status of the *dār al-‘ahd* invites certain observations. First, as was mentioned earlier, scholars in the early period divided the world into two *dārs*: *dār al-Islām* and *dār al-ḥarb*, while later scholars (particularly in the twentieth century) they identify a third, independent *dār* in addition to this division, namely *dār al-‘ahd*. The early scholars, if they recognized a *dār al-‘ahd* (territory at treaty relation with Islam) at all, saw it as falling within the *dār al-Islām*, based on the view that there must either be an agreement

¹⁸⁴ Najīb Armanzānī, *al-Shar‘ al-Dawli fī al-Islam*, 50.

¹⁸⁵ Abū Zahra, *al-‘Alāqāt al-Dawliyya fī al-Islam*, 55; Wahbah Zuḥayfī, *Āthār al-Ḥarb fī al-Islam*, 157-156 and idem, *al-‘Alāqāt al-Dawliyya fī al-Islam*, 107-108.

¹⁸⁶ Muḥammad al-Dasūqī, *al-Imām Muḥammad ibn Ḥasan wa Atharihi fī al-Fiqh*, 30; Majid Khadduri, *al-Qānūn al-Dawli al-Islāmī: Kitāb al-Siyar li Shaybānī*, 22-23.

¹⁸⁷ Abū Zahra, *al-‘Alāqāt al-Dawliyya fī al-Islam*, 57; Wahbah Zuḥayfī, *al-‘Alāqāt al-Dawliyya*,

making the *ahl-dhimma* a subject population; otherwise, that population is simply no longer a part of *dār al-Islām* and is by definition part of *dār al-ḥarb*.¹⁸⁸

Secondly, modern scholars claim that Shāfiʿī in his *al-Umm* saw the *dār al-ʿahd* as an independent *dār*, but this is not strictly accurate. He does refer to a *dār al-ṣulḥ* (territory at peace with Islam) in this work,¹⁸⁹ but his reference to it is not in the context of the division of *dārs*, but rather in discussing the conditions of the *ahl al-ṣulḥ*, whether they were to pay *jizya* and become a part of *dār al-Islām*, subject to Islamic rulings. In such a case, he claims that their *dār* would become a *dār ahl al-dhimma*. But if they submitted to Islamic rulings and authority they would become part of *dār al-Islām*. The intention of Shāfiʿī in stating this case has not fully been understood by modern scholars.¹⁹⁰

Thirdly, modern scholars repeat the same claim and ascribe it to the followers of Shāfiʿī. This claim is given special attention by al-Māwardī in his *Aḥkām*.¹⁹¹ There, Māwardī refers to the division of territory conquered by Muslims, and he keeps to the standard definitions; in fact he refers to the possession of territory without mentioning any type of *dār* division.¹⁹²

Fourth, the claim by modern scholars regarding the opinions of early scholars such as Abū Yaʿlā in one of his treatises¹⁹³ is spurious, as he does not see a third *dār* existing alongside *dār al-Islām* and *dār al-ḥarb*. However, the modern scholars' appeal

108-109; ʿAbd al-Ḥamīd al-Hajj, *al-Nuẓum al-Dawliyya fī al-Qānūn wa al-Sharīʿa*, 183-184.

¹⁸⁸ See Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins Press, 1955); ʿUthmān J. Ḍamīriyya, *Manhaj al-Islām fī al-Ḥarb wa al-Silm*, 58.

¹⁸⁹ Shāfiʿī, *al-Umm*, 4: 103-104.

¹⁹⁰ Ibid.

¹⁹¹ Māwardī, *al-Aḥkām al-Sulṭāniyya*, 137-138.

¹⁹² Ibid.

¹⁹³ Abū Yaʿlā, *al-Muʿtamad fī Uṣūl al-Dīn*, 276.

to earlier secondary sources is an effort to fit today's realities, for the Muslim world after all has to deal with non-Muslims in terms of foreign relations, trade and boundaries that are no longer the same as they were during the earlier period of Islam. For example, there has been an increase in the literature of *ijtihād* (independent legal reasoning engaged in by a *mujtahid*) on how to deal with new cases that have emerged in today's world and what the role of Islam is in this new cases.¹⁹⁴

Lastly, the claim made that Shaybānī was one of the initiators of the third type of *dār* has no ground in evidence since the commentator on his treatises, al-Sarakhsī, indicates that the existence of *muwāda'as* with non-Muslims does not necessarily illuminate the nature of *dār al-ḥarb*: for *dār al-muwāda'a* is *dār al-ḥarb*, simply because Islamic rulings do not apply there. The opinion of Abū Zahra, who regards the United Nations as an example of *dār al-'ahd*, contradicts his own basic claim that *dār al-'ahd* is an independent *dār*. As was mentioned above, the third *dār* did not exist and it is only a product of modern scholars' personal interpretations. The only two *dārs* that were recognized by early scholars were the *dār al-ḥarb* and *dār al-Islām*, while the third *dār* is modern scholars' invention.¹⁹⁵

Western scholars' definitions of *dār al-Islām* and *dār al-ḥarb* make no reference to the possibility of a third independent *dār al-'ahd*, although the latter is discussed, and

¹⁹⁴ See for example the literature advocating reforms produced by modern Muslim thinkers, such as Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore, Pakistan: Sh. Muhammad Ashraf, 1951); Malcolm Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad 'Abduh and Rashīd Riḍā* (Berkeley: University of California Press, 1966).

¹⁹⁵ Abū Zahra, *al-'Ilāqāt al-Dawliyya fī al-Islām*. Therefore, since the countries of modern world belong to one organization which is the United Nations and all of its members are obligated to its rulings and concluded, Islamic nations are obligated under Qur'ānic injunction to accept and respect any treaties conducted with the United Nations members. According to other modern scholars, members of the United Nations are to be counted among *dār al-ḥarb* rather *dār al-'ahd*, 57; Wahbah Zuḥaylī, *al-'Alāqāt al-Dawliyya*, 108-109; 'Abd al-Ḥamīd al-Ḥājj, *al-Nuẓum al-Dawliyya fī al-Qānūn wa al-Sharī'a*, 183-184.

usually in terms of particular early scholars' opinions. *Dār al-'ahd* was considered as a temporary and often intermediate territory between *dār al-Islam* and *dār al-ḥarb*.¹⁹⁶

D. The origin of relations between *dār al-Islam* and *dār al-ḥarb*.

The origin of Muslim relations with non-Muslims regardless of religion, color, race or language is not based on hostile but rather on peaceful relations. According to one modern Muslim scholar, the relationship between Muslim and other nations is based on how the other nations perceive Islam.¹⁹⁷ If these nations have the intention of arriving at a peaceful agreement with Muslims such as a *muwāda'a*, then this would determine the type of mutual relations. Upon the establishment of such relations with given nations, Muslims are prohibited from taking any type of offensive action against them.¹⁹⁸ According to the Qur'ān:

Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your home. Verily, Allah loves those who deal with equity.¹⁹⁹

As this verse states, *ikrah* (hatred) and *iqsāt* (equity) are contradictory states. Therefore, in order for Muslims to gain eternal reward, they have to abide by the command of God.²⁰⁰ There should be no more hatred in religion than there should be

¹⁹⁶ Halil Inalcik, "Dār al-'Ahd," *The Encyclopaedia of Islam*, new edition 2, (Leiden: E. J. Brill, 1965) 116; Majid Khadduri, *War and Peace in the Law of Islam*, Idem, *Islamic Law of Nations*, Hans Kruse, "Al-Shaybāni on International Instruments," *Journal of Pakistan Historical Society* (1953) 90-100.

¹⁹⁷ Ghunaymī, *Qānūn al-Salām fī al-Islam*, 104.

¹⁹⁸ 'Abdallah Ibrahim al-Ṭarīqī, *al-Isti'āna bi ghayr al-Muslimīn fī al-Fiqh al-Islāmī*, 26.

¹⁹⁹ Q. 60: 8.

²⁰⁰ Ghunaymī, *Qānūn al-Salām fī al-Islam*, 104; al-Ṭarīqī, *al-Isti'āna bi ghayr al-Muslimīn fī al-Fiqh al-Islāmī*, 26; Nadia Maḥmūd Muṣṭafā, *al-Muqaddima al-'Āmma li Mashru' al-'Alāqāt al-Dawliyya*, 160.

compulsion.²⁰¹ According to Shaybānī, if Muslims meet with non-Muslims who are ignorant of Islam, Muslims should not consider fighting with them until the message of Islam has been conveyed to them first.²⁰² That is also what the Prophet ordained to the Muslim army generals:

Whenever there was a battle between Muslims and non-Muslims the Muslim general had first to convey the message of Islam, because Muslim's ultimate goal is to convey the message of Allah. The unbelievers should realize that the Muslim's intention in fighting is not desire for wealth or to capture booty.²⁰³

The primary object was seen therefore as informing the “infidels” about the message of Islam, and if this was accepted, then the need for battle and loss of life and property would be obviated. Prior to all of this, Muslims should direct and conduct their *du‘ā* (prayers) or preaching with others under the article of faith, i.e., *ḥikma, wa maw‘iẓa al-ḥasana* (wisdom and fair preaching).²⁰⁴

According to the Ḥanafī jurist Abū al-Qāsim al-Simnānī (d. 499/1105), whoever is invited to Islam should know why he was invited and understand its rulings and principles. If he becomes a Muslim then he will be enjoy freedom of movement, though he should be invited to live in *dār al-Islām*. In case he refuses to adopt the faith, he will be asked to pay *jizya* (poll tax or alms tax), and if he accepts that arrangement he will be left alone, unmolested. But in the event that he refuses to pay *jizya*, he will be fought against, which is truly the last resort.²⁰⁵

²⁰¹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 75-76.

²⁰² Ibid.

²⁰³ Khawārizmī, *Jāmi‘ al-Masānīd*, 1: 291-292; Zubaydī, *Uqūd al-Jawāhir al-Munīfa fī Adillat Abi Ḥanīfa*, 1: 195.

²⁰⁴ *Jāmi‘ al-Masānīd*, 1: 291-292.

²⁰⁵ Sumnawī, *Rawḍat al-Quḍāh wa Ṭarīq al-Nafā*, 3: 1237.

A similar explanation is given by the Ḥanafī scholar al-Kāsānī (d. 587/1191), who indicates that the relations between Muslim and non-Muslims should be based on fair preaching first. Muslim should not fight against or attempt to conquer any territory without first inviting the people of that territory to accept Islam and preaching its message fairly “by the tongue”.²⁰⁶ It is quite essential, according to Kāsānī, that Muslims should not initiate or go to war without proper and fair preaching beforehand. Preaching according to him is divided into two kinds: one is *binān* (fight) and the second is *bayān* (tongue); the latter is far preferable since the consequences are less severe for both parties.²⁰⁷

These types of relations are subject to transformation in a war. Where the opponents are those who have rejected *jizya*, or if they are apostates or idol worshipers, then their only choice is to accept Islam. If they refuse, then they are subjected to war.²⁰⁸ According to Shaybānī, Abū Yūsuf was in favor of that explanation that from the Arab idol worshipers, nothing is acceptable except conversion to Islam or war.²⁰⁹

Concluding remarks:

This survey of the evolution of *siyar* and of its key concepts *dār al-ḥarb* and *dār al-Islām* shows how highly complex legal structure evolved out of a very localized effort at dealing ethically with the enemies of the nascent Islamic state. The simplicity of the bipartite worldview belies the work that went into developing an ideal of

²⁰⁶ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4304–4305; Juwaynī, *Ghiyāth al-Umam fī Itiyāth al-Zulam*, 207.

²⁰⁷ Ibid.

²⁰⁸ Shaybānī, *al-Siyar al-Kabīr*, 1: 76–77 and 198; idem, *al-Jāmi' al-Ṣaghīr*, 248–249; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 1: 261; Qurṭubī, *Tafsīr al-Qurṭubī*, 16: 273.

²⁰⁹ Shaybānī, *Kitāb al-Siyar*, 222 edited by Majid Khadduri; *Sharḥ al-Siyar al-Kabīr*, 5: 1708.

coexistence that had at its core not just the preservation of Muslims' freedom to preserve or even spread their faith, but to ensure fair dealings with other sovereign nations and national groups.

Indeed, a constant refrain in the debate over *dār al-ḥarb* and *dār al-Islām* is the overriding concern for “protection” or safeguarding not only Muslim territory but also communities of *dhimmīs* with whom Muslim leaders had entered into agreements. That such a commitment should have been paramount in the face of constant conflict and shifting boundaries (even if the discussion is largely theoretical) is testimony to the respect in Islamic law and culture for contractual obligations. In the next chapter we will see how deeply Muslim jurists went into the legalities of the Muslim-*dhimmī* relationship, and for that matter, into every aspect of the legal status of aliens (or non-Muslims) within the borders of *dār al-Islām* - itself of crucial importance to our later examination of the legal aspects of relations with non-Muslims beyond its frontiers.

Chapter Two: Muslim *Dhimmi* and *Musta'min* Relations

The legal aspects of relations between Muslims and non-Muslims within *dār al-Islām* had important theoretical and practical implication for the ways in which Muslim rulers dealt with their counterparts in the *dār al-ḥarb*, and particularly in regard to the law of international treaties and agreements. In *dār al-Islām* proper, a set of contractual agreements (or, in a sense, a treaty) grew out of the need to regulate relations between former or potential combatants in newly conquered territory. This came to be known as the '*aqd al-dhimma* (a covenant of protection by a treaty of surrender to non-Muslims residing within *dār al-Islām*) referring to the covenant agreed to between Muslims and non-Muslims aimed at putting an end to hostilities and establishing civil peace within the borders of *dār al-Islām*. Those covered by the covenant were known as *dhimmīs*. At the same time, a practical arrangement, known as *amān* (pledge of security given to non-Muslims upon entering to *dār al-Islām* for fixed period of time), grew out of the real necessity for non-Muslims from the *dār al-ḥarb* to traverse Muslim territory - - an arrangement that resembled in many respects the '*aqd al-dhimma*. Those who came under the protection of an *amān* were known as *musta'mins*. There are many parallels between the status of *dhimmi* and that of *musta'min*, but they are founded on slightly different assumptions and should be discussed separately.

I. Muslim-*Dhimmi* relations:

The term *dhimmi* can mean a number of things, but for the purpose of this study it has a specific linguistic and legal significance.

a. Linguistic sense of *dhimma*.

The lexical meaning of the term *dhimma* is engagement, undertaking, care as a duty of conscience or obligation, although depending on the circumstances it can signify *'ahd* (covenant), *amān* (temporary safe-conduct), *ḍamān* (liability), *kafāla* (suretyship) or *ḥaqq* (right or claim). In the phrase *ahl al-dhimma*, however, the term specifically designates those who have entered into a specific agreement to pay tribute to *dār al-Islām* in exchange for the safety and security of their wealth and lives. They are given this designation because they enter into an *'aqd* or *'ahd* with Muslims; therefore, they are *ahl al-'aqd wa al-'ahd*, collectively known as *ahl al-dhimma*. The *amān* thus might be a temporary or permanent *'ahd* of a fixed or open ended time period known as *'aqd al-amān* or *'aqd al-dhimma*.¹

The term *dhimma* is used in the Qur'ān to denote *'ahd* (covenant), *mīthāq* (pact), *ḥilf* or *qarāba* (alliance, affinity or blood relationship)², such as in the following verse:

How (can there be such a covenant with them) that when you are overpowered by them, they regard not the ties, either of kinship or of covenant (*dhimma*) with you?³

In this verse *dhimma* has the connotation of *'ahd* (covenant), an *'ahd* that stipulates certain obligations on the part of the two parties who have concluded it.⁴ There are also

¹ al-Azharī, *al-Zāhir fi Gharīb Alfaz al-Shāfi'i*, 257; *Mu'jam Maqāyīs al-Lughā*, 2: 345-356; Jawharī, *al-Shihāb*, .5: 1926; Ibn Manẓūr, *Lisān al-'Arab*, 12: 220-223; Firūzābādī, *al-Qāmūs al-Muḥīṭ*, 2: 267-268; Jurjānī, *al-Ta'rīfāt*, 143; Kafawī, *al-Kulliyāt*, 2: 346-347; Manāwī, *al-Tawqīf 'alā Muḥimmāt al-Ta'arīf*, 350; al-Muṭraẓī, *al-Mughrib fi Tartīb al-Mu'rib*, 1: 307-310.

² See *Tafsīr al-Ṭabarī*, 14: 148; *Tafsīr al-Baghawī*, 4:15; Zamakhsharī, *Tafsīr al-Kashshāf*, 2: 241; Raghīb al-Iṣfahānī, *Mufradāt al-Qur'ān*, 262 and Firūzābādī, *Baṣā'ir dhawī al-Tamyīz*, 3: 18.

³ Q. 9:8

⁴ Sarakhsī, *Mabsūṭ*, 10:8; and idem, *Sharḥ al-Siyar al-Kabīr*, 1: 39.

Prophetic traditions which refer to *dhimmīs* in the above sense: the text of one *ḥadīth* reads, for instance: “*yaṣ‘ā bi dhimmatihim adnāhum*” (all *dhimmīs* are protected).⁵

Some scholars simply define *dhimma* as ‘*ahd*. For example, Fakhr al-Islam al-Bazdawī refers to *dhimma* as a case where a person or *raqabah* (bondsmen) is party to a *dhimma* and ‘*ahd*. Hence many scholars have used the two terms almost interchangeably.⁶

b. *Dhimma* as defined in the terminology of jurisprudence:

Dhimma, when it is found in treatises of *siyar* jurisprudence, is also most often defined as ‘*ahd*. For example, Shaybānī refers to *dhimma* as ‘*ahd* whether it be temporary or everlasting.⁷ However, Ibn Qayyim al-Jawziyya indicates that, originally, the concept of *dhimma* or ‘*ahd* referred to agreements that could be concluded with the *ahl al-dhimma* (people under the protection of Islam), the *ahl al-hudna* (people who have a treaty relationship with Islam) and the *ahl al-amān* (people who are given safe passage in *dār al-Islām*). Later, however, *dhimma* the term came to be associated exclusively with the *ahl al-dhimma*, and specifically with those people who are obligated to pay tribute (*jizya*). The latter have everlasting *dhimma* status in that they have concluded a truce with Muslims regarding their acceptance of certain provisions of Islamic law while they are residing in *dār al-Islām*.⁸

⁵ Shaybānī, *Aṣl*, 100; Abū Yūsuf, *al-Radd ‘alā Siyar al-Awzā’ī*, 59-60; Abū ‘Ubayd, *Amwāl*, 215. This same *ḥadīth* states that if a member of a Muslim army grants an enemy *amān*, this *amān* must be respected by all Muslims; no one can violate this pledge of protection.

⁶ *Kashf al-Asrār ‘an Uṣūl al-Bazdawī*, 4: 237- 238. For further reference to the meaning of these terminology please see Sarakhsī, *Uṣūl al-Sarakhsī*, 2: 332-334; Samarqandī, *Mizān al-Uṣūl*, 742; Nawawī, *Tahdhīb al-Asmā’ wa al-Lughāt*, 3: 112; Ibn Nujaym, *Fatḥ al-Ghaffār bi Sharḥ al-Manār*, 3: 80; Qarāfī, *al-Furūq*, 3: 33 and 226-236; Kafawī, *al-Kulliyāt*, 2: 346-347; Maṭrīzī, *al-Mughrib*, 1: 307-310; Thānawī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 2: 324; Jurjānī, *Ta’rīfāt*, 143.

⁷ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 252; Kasānī, *Badā’i’ al-Ṣanā’i’*, 9: 4318 and 4327.

⁸ Ibn Qayyim al-Jawziyya, *Aḥkām Aḥl al-Dhimma*, 2: 475-476.

Since we have identified the legal term *dhimma*, it is essential now to identify the ‘*aqd al-dhimma*’. According to Ḥanafī scholars, ‘*aqd al-dhimma*’ refer to a particular legal act, whether concluded by individuals or by a community, between both parties, under certain conditions.⁹ Shaybānī defines ‘*aqd*’ specifically as the pact that leads to the termination of fighting and the ‘*aqd al-dhimma*’ as *dhimmī*’s acceptance of the precedence of Islamic *aḥkām* in matters of business or trade while continuing to reside in *dār al-Islām*.¹⁰ Al-Kāsānī on the other hand indicates that ‘*aqd al-dhimma*’ refers to the termination of fighting between Muslims and non-Muslims as well as the everlasting *amān* that maintains this cessation of hostilities..¹¹ Al-Ghazālī for his part defines it as a pact enshrining the commitment of non-Muslims to dwell in *dār al-Islām* and the obligation on the part of Muslims to protect and defend them in return for their tribute and peaceful behavior.¹² Ibn Muflīḥ, a Ḥanbalī jurist, defines ‘*aqd al-dhimma*’ as the toleration of *dhimmīs*’ maintaining their beliefs on the condition of paying a tribute and abiding by their commitment to Islamic rulings.¹³

Modern Muslim scholars define ‘*aqd al-dhimma*’ as the ‘*aqd*’ that is agreed between the Imām or his deputy on one side and the *dhimmīs* or their representatives on the other to terminate fighting on a permanent basis.¹⁴ Furthermore, it is the ‘*aqd*’ that makes it possible for non-Muslims (among the *ahl al-Kitāb*)¹⁵ to retain the right to

⁹ Tahanāwī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 2: 953-954; Jaṣṣāṣ, *Aḥkām al-Qur’ān*, 2: 294; *al-Nihāya alā al-Hidāya*, 5: 74; Ibn Taymiyya, *Nazarīyyat al-‘Aqd*, 18-22.

¹⁰ Shaybānī, *Siyar al-Kabīr*, 1: 191.

¹¹ Kāsānī, *Badā’i’ al-Ṣanā’i’*, 9: 4311 and 4327.

¹² Ghazālī, *Wajīz*, 2: 197; Dusūqī, *Hāshīyyat al-Dusūqī alā al-Sharḥ al-Kabīr*, 2: 200-201; Ibn Shās, ‘*Aqd al-Jawāhir al-Thamīnā fī Madhhab A’lām al-Madīna*’, 1: 485; Muḥammad ‘Alīsh, *Manḥ al-Jalīl ‘alā Mukhtaṣar Khalīl*, 1: 756.

¹³ Ibn Muflīḥ, *al-Mubdi’ Sharḥ al-Muqni’*, 3: 404; Bahūtī, *Kashshāf al-Qinā’*, 3: 103; Raḥībānī, *Maṭālib Awlī al-Nuhā fī Sharḥ Ghayat al-Muntahā*, 2: 591.

¹⁴ ‘Abdallāh Muṣṭafā al-Muraghī, *al-Tashrī’ al-Islāmī li ghayr al-Muslimīn*, 30.

¹⁵ The *Ahl al-Kitāb*, or “People of the Book”, are those non-Muslims who possess a recognized

maintain a permanent residence in *dār al-Islām* with full protection under the Shari'a in return for paying tribute and the performance of some contractual and customary obligations.¹⁶ On the other hand, Ghunaymī defines it as an *'aqd* that maintains the conditions of residency of non-Muslims in territories that have been conquered by Muslims. Nevertheless, as far as he sees it, while it provides general and specific rights for non-Muslims it does not require the paying of a tribute. Ghunaymī's opinion is clearly at odds with that of earlier scholars, whom he accuses generally of blind imitation.¹⁷

c. Definitions of *'aqd al-dhimma*.

The phrase *ahl al-dhimma* is in effect shorthand for "*ahl dhimmat rasūl al-Allāh*" (people under the protection of the Prophet), because the Prophet was the initiator of the first *'aqd al-dhimma* with non-Muslims in order to secure and protect their rights.¹⁸ The phrase was used in contemporary documents, such as in the letters sent by the Prophet to the people of Najrān in the treaty that he concluded with the people of Maqna.¹⁹

Classical Muslim scholars generally define *dhimmīs* as non-Muslims who pay tribute to Muslims in return for the protection of their wealth and lives.²⁰ Ghazālī defined *dhimmīs* as any male individuals belonging to the People of the Book, who are

scripture (Christians, Jews, etc.) See the following sections for more in depth definitions of their legal identity.

¹⁶ Ṣubḥī Maḥmaṣānī, *al-Qānūn wa al-'Alāqāt al-Dawliyya fī al-Islam*, 101-102.

¹⁷ See Muḥammad Ṭal'āt al-Ghunaymī, *Qānūn al-Salām fī al-Islam*, 405, 421, 426-427, 431-432.

¹⁸ al-'Aynī, *'Amdat al-Qārī*, 15: 86.

¹⁹ Abū Yūsuf, *al-Kharāj*, 72 and 77; Abu 'Ubayd, *al-Amwāl*, 27; Shaybānī, *Asl*, 267, Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1783; Muḥammad Ḥamidullah, *Majmū' al-Wathā'iq al-Siyāsiyya*, 60, 120-121 and 172.

²⁰ al-Azhārī, *al-Zāhir fī Gharīb Alfāz al-Shāfi'i*, 375.

mature, free, sound of mind, capable of fighting and ready to pay *jizya* (tribute).²¹ The Ḥanbalī jurist Ibn ‘Abd al-Hādī defined the *ahl al-dhimma* as non-Muslims who live under the protection of Muslims while paying tribute.²²

Among the modern scholars who have offered a definition of the term *dhimmi* is Abū Zahra, who says *dhimmīs* are individuals residing among Muslims who possess the same rights and obligations as the Muslims.²³ Other scholars define the *ahl al-dhimma* as People of the Book who dwell with the Muslims under everlasting protection.²⁴ The consensus of modern scholars therefore on the definition of *dhimma* can be summed up as non-Muslims residing within *dār al-Islām* perpetually under an ‘*aqd al-dhimma*’.²⁵

Most definitions of the *ahl al-dhimma* make it clear that an ‘*aqd al-dhimma*’ can only be concluded with the People of the Book, a category of non-Muslim that enjoys a special status in Muslim religious, and they are tolerated as *dhimmīs* by Muslim governments.

d. The legality of the ‘*aqd al-dhimma*’

The legal status of the ‘*aqd al-dhimma*’ is said to derive from the Qur’ān, the Prophet’s traditions (Sunna), the deeds of the four rightly-guided caliphs and the *ijmā’* (consensus) of scholars on this issue based on the above-mentioned sources. In the following pages an attempt is made to trace these sources one by one and to analyze them. The ‘*aqd al-dhimma*’ is first mentioned in chapter nine, verse 29 of the Qur’ān

Fight against those who believe not in Allah, nor in the Last Day, nor forbid that which has been forbidden by Allah and His Messenger and those who acknowledge not the religion of truth

²¹ Ghazālī, *al-Waḥīz*, 2: 198.

²² Ibn ‘Abd al-Hādī, *al-Durr al-Najī fī Sharḥ Alfāz al-Kharqī*, 1: 290.

²³ Abū Zahra, *al-‘Alāqāt al-Dawliyya fī al-Islam*, 61.

²⁴ Muḥammad Ḥāfiẓ Ghānim, *Mabādi’ al-Qānūn al-Duwalī al-‘Āmm*, 52.

²⁵ Ḥamid Sulṭān, *Ahkām al-Qānūn al-Duwalī fī al-Sharī‘a al-Islāmiyya*, 224.

(i.e. Islam) among the people of the Scripture (Jews and Christians), until they pay the *jizya* with willing submission, and feel themselves subdued.²⁶

This particular verse defines and specifies the relations between Muslims and the People of Book while at the same time illustrating the historical aspects of these relations. Furthermore, it reflects upon the nature of Islam and its differences with other religions.²⁷ The chapter was revealed after the conquest of Mecca in the ninth year of Hijra, and it was the last chapter, revealed in uninterrupted form,²⁸ while verse 29 itself was revealed at the time when the Prophet and his companions were asked to prepare for the battle of Tabūk where they would confront the Romans and their allies, such as the Christian Arab tribes (Ghasāsina).²⁹

Sunna also defines the '*aqd al-dhimma*' as an '*aqd*' that is concluded in exchange for tribute.³⁰ At the start of his mission the Prophet would preach in Mecca on the Oneness of Allah, without reference to fighting, but, when he migrated to Medina, he was asked to fight in the way of Allah against the unbelievers and those who waged war against him, making peace only with those who did not fight him. Then when chapter nine of the Qur'ān was revealed, he was asked to fight all of the Arab people who refused to accept Islam. Of the people who fought, he was ordered to spare those who made a truce with him and he was asked to abide by such truces, although he was not at

²⁶ Q. 9: 29.

²⁷ Sayyid Quṭb, *Fī Zilāl al-Qur'ān*, 3: 1566.

²⁸ Suyūṭī, *al-Durr al-Manthūr*, 4: 119; Scholars agree that this chapter was revealed in the ninth year of *hijra*, however there is a disagreement whether it was revealed as a whole or in stages. For example, Sayyid Quṭb indicates that the chapter was revealed in three stages, the first stage before the battle of Tabūk, the second during the preparation for that battle and the third after the battle. See Sayyid Quṭb, *Fī Zilāl al-Qur'ān*, 3: 1564-1565.

²⁹ The Tabūk battle was the last battle in which the Prophet participated. See Suyūṭī, *al-Durr al-Manthūr*, 4: 117; Abu 'Ubayd, *Amwāl*, 29; *Sīrat Ibn Hishām*, 2: 515; Ibn 'Abd al-Barr, *al-Durar fī Ikhtisār al-Maghāzī wa al-Siyar*, 238.

³⁰ Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 5: 90-91

this point assigned to collect *jizya* from the non-Muslims. Indeed, he fought the Jews several times and won, without imposing *jizya* on them. Later, however, he was asked to fight the People of Book in order to impose Islam and to collect *jizya* from them. Some of them accepted Islam and others chose to pay tribute instead.³¹

A *ḥadīth* narrated by Sulaymān ibn Baridah from his father states that whenever the Prophet appointed an army general he advised him of the following:

If you meet with an enemy from the unbelievers, call upon them to do three things. If they comply with these demands then terminate the fight with them. The first is to invite them to Islam, if they refuse then ask them to pay *jizya* (tribute), if they accede to your request then accept it from them, and if they refuse both, then fight them for the path of Allah.³²

Most of the *ḥadīths* related to the topic of paying tribute indicate that the Prophet took *jizya* from the Majūs (Zoroastrians),³³ the Christians of Najrān³⁴ and the Jews of Yemen.³⁵ The Prophet did not collect the *jizya* from the Jews of Khaybar because the verse regarding the collection of the *jizya* was revealed only after the Prophet concluded a pact with them.³⁶ This is an added proof that the Prophet abided by his treaties, for despite the implication of the verse, which ordered the Prophet to collect *jizya* from the People of the Book, he did not abrogate his prior treaty. Thus, a pact of *dhimma* was sacred for Muslims, whether its conditions were seen as derived

³¹ Ibid.; Ibn Ḥazm, *al-Muḥalla*, 7: 349; Abū ‘Ubayd, *Amwāl*, 36; Shāfi‘ī, *Umm*, 4: 94-95; Bulādhurī, *Futūḥ al-Buldān*, 1: 81.

³² This *ḥadīth* can be found in *Ṣaḥīḥ Muslim* in the chapter on *jihād* and *siyar*, 3: 1357-1368; Shaybānī, *Aṣl*, 93; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 38-39; Abū Yūsuf, *Kharāj*, 209-210.

³³ Mālik, *Muwatta’*, 1: 278; Abū ‘Ubayd, *Amwāl*, 30-31; Abū Yūsuf, *Kharāj*, 140.

³⁴ Abū ‘Ubayd, *Amwāl*, 37; Balādhurī, *Futūḥ al-Buldān*, 1: 78; Jaṣṣāṣ, *Aḥkām al-Qur’ān*, 3: 93-94.

³⁵ Yahyā ibn Adam, *Kharāj*, 68; Abū ‘Ubayd, *Amwāl*, 36; Bulādhurī, *Futūḥ al-Buldān*, 1: 86; Shāfi‘ī, *Musnad al-Shāfi‘ī*, 2: 129.

³⁶ Baghawī, *Maṣābiḥ al-Sunna*, 3: 115-117; *Ṣaḥīḥ Muslim*, 3: 1387; Ibn Qayyim al-Jawziyya, *Zād al-Ma‘ād*, 3: 151-152.

form the Qur'ān or from the Prophetic tradition. It had to be honored and enforced according to the conditions that were negotiated.³⁷

According to Ibn Qayyim al-Jawziyya, the Prophet's traditions suggest that he did demand *jizya* from idol worshipers in the Arab peninsula. But this seems unlikely, for as we have seen, verse 9: 29 was revealed at the time of the Battle of Tabūk in the ninth year of *hijra*, at which time the people in the peninsula had accepted Islam and there were no idol worshipers left.³⁸

The four rightly guided caliphs carried on the same practices in the early Islamic state, updating and renewing the '*uqūd al-dhimma*, such as Abū Bakr and 'Umar did with the people of Najrān.³⁹ Later, similar agreements were concluded with newly conquered territories by the army's generals. Under the caliphate of Abū Bakr, for instance, Khālīd ibn Walīd concluded an '*aqd al-dhimma* and *ṣulḥ* with the people of Ḥīra,⁴⁰ while under 'Umar, '*uqūd al-dhimma* were agreed upon with the people of Iraq and Shām.⁴¹ Eventually, pacts of this nature were concluded with the people of Iṣfahān, Rayy, Qūmis, Jurjān, Ṭabaristān and Azarbayjān.⁴² 'Umar always ordered his generals to invite the enemy to accept Islam: if they refused, then they were to invite them to pay *jizya*, and if they accepted they were to be protected and not asked for anything beyond their abilities.⁴³

³⁷ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 1: 142.

³⁸ Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 6-7.

³⁹ Shaybānī, *Siyar*, 268; Abū Yūsuf, *Kharāj*, 85-89; Bulādhurī, *Futūḥ al-Buldān*, 1: 77-78.

⁴⁰ Abū Yūsuf, *Kharāj*, 155-156; Abū 'Ubayd, *Amwāl*, 38 and 43; Muḥammad Ḥamidullah, *Majmū'at al-Wathā'iq*, 379-381.

⁴¹ Abū Yūsuf, *Kharāj*, 42-45; Bulādhurī, *Futūḥ al-Buldān*, 1: 28; Muḥammad Ḥamidullah, *Majmū'at al-Wathā'iq*, 418, 474 and 487-488.

⁴² Muḥammad Ḥamidullah, *Majmū'at al-Wathā'iq*, 441-446; Bulādhurī, *Futūḥ al-Buldān*, 2: 383; Abū 'Ubayd, *Amwāl*, 97-98.

⁴³ Abū Yūsuf, *Kharāj*, 209-210.

There was a consensus among Muslim scholars of the classical and medieval periods that it is permissible to conclude an *'aqd al-dhimma* and impose *jizya* collectively.⁴⁴ The general practice was that, when the Muslims intended to conquer new territories, they had to follow the practice of the Prophet and the Qur'ānic injunction regarding the *'aqd al-dhimma*. As Samarqandī indicates, if Muslim forces encountered unbelievers, they had to invite them to Islam first, and if they met with refusal, the unbelievers were to be asked to submit to *jizya*. The last resort of course was to resume the fighting.⁴⁵

The purpose of the *'aqd al-dhimma*, according to Muslim scholars, is to avoid confrontation with the People of the Book, to prevent future hostilities and to allow them to practice their own faith. The advantage to Muslims is that, instead of fighting, they are better empowered to spread Islam. The Muslim obligation, on the other hand, is to treat the *ahl al-dhimma* with respect and understanding while they are living in *dār al-Islām*.⁴⁶ Furthermore, Muslims should strive to spread Islam and reduce the desire of non-Muslims to continue living in Muslim territory as well as to gain respect and dignity for Muslims.⁴⁷

According to Shaybānī, an *'aqd al-dhimma* entails asking the people of the *ahl al-ḥarb* to become *ahl al-dhimma* by accepting the laws of Islam and paying *jizya* for the protection of their wealth and their lives. If unbelievers ask the Imām to offer Islam

⁴⁴ Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 1-6; Khaṭīb al-Baghdādī, *Mughnī al-Muḥtāj*, 4: 242; Ibn Qudāma, *Mughnī*, 10: 588; Ibn Muḥliḥ, *al-Mubdī*, 3: 405; Ibn Ḥazm, *Marātib al-Ijmā'*, 114; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 199.

⁴⁵ 'Alā' al-Dīn al-Samarqandī, *Tuḥfat al-Fuqahā'*, 3: 500-501; Mawṣilī, *al-Ikhtiyār li Ta'īl al-Mukhtār*, 4: 187; Samnānī, *Rawḍat al-Quḍāt*, 3: 1237.

⁴⁶ Abū Yūsuf, *Kharāj*, 134-136; Abū 'Ubayd, *Amwāl*, 53-58; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 84.

⁴⁷ Sarakhsī, *Mabsūt*, 10: 7 and 77-78; Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4229 and 4232; Qarāfī, *Furūq*, 3: 9-11; Khaṭīb al-Baghdādī, *Mughnī al-Muḥtāj*, 4: 233; Subkī, *Fatāwā al-Subkī*, 2: 404.

to them, he must proceed as though have asked for an *'aqd al-dhimma*. By complying with Islamic rulings in fulfilling the obligations of *ahl al-dhimma*, they (the unbelievers) may notice the merits of the Shari'a, which would lead to their accepting Islam. This is considered the best and the most favored method of preaching.⁴⁸ Furthermore, al-Jassās indicates that when Muslims ask the *ahl al-dhimma* to pay *jizya*, they do so not because they condone non-Muslims beliefs, but rather as a sort of punishment for the unbelievers' insistence on persisting in their error.⁴⁹

B. The Contractual Basis of the *'aqd al-dhimma*

According to Ḥanafī jurists, the elements of the *'aqd al-dhimma* are similar to those found in an ordinary contract, i.e., offer acceptance (*ījāb* and *qubūl*). In fact, the majority of scholars see the *'aqd al-dhimma* as composed of a number of features normally found in contracts: 1) *ṣigha* (form), 2) the parties and 3) the content of *'aqd* (which is the *jizya*).⁵⁰

a. *Ṣigha* (Form):

The *ṣigha* of the *'aqd al-dhimma* may take many shapes, but it is broadly divisible into an *'aqd* voluntarily entered into, where the important aspects are the *naṣṣ* (text), and the *dalāla* (evidence), and one entered into involuntarily by virtue of a dependency (*taba'iyya*) of some sort, such as by conquest or victory. The voluntarily contracted *'aqd al-dhimma*, takes on the form of a contract in the classical sense, in which elements such as the *naṣṣ* and the *dalāla* are of extreme importance. The *naṣṣ*

⁴⁸ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1529-1530.

⁴⁹ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 103.

⁵⁰ Jurjānī, *Ta'rīfāt*, 149; *al-Kullīyyāt*, 2: 395; *al-Miṣbāḥ al-Munīr*, 1: 237; Nawāwī, *Tahdhīb al-*

(text) of the *'aqd* must be a declaration that reflects the true intention of concluding an *'aqd al-dhimma* and its content. Hence the *'aqd* may refer to a specific request from a *ḥarbī* or a group of *ḥarbīs* (or their representative) made to an Imām that he be allowed to reside in *dār al-Islām* under the provision of an *'aqd al-dhimma*.⁵¹ In such a case, the *imām* is under obligation to answer a sincere request by accepting it.⁵² Furthermore, the *'aqd* contains written articles stating clearly whatever was discussed and agreed upon by both parties and their representatives.⁵³ Shaybānī indicates that it is permissible to comply with the *ḥarbī*'s request to make an *'aqd* with him because, when the Prophet was asked to make an *'aqd* with the people of Najrān, he accepted and established a *ṣulḥ* on the condition that they would pay a yearly tribute.⁵⁴

Dalāla or evidence is based on all the actions that indicate the acceptance of *jizya* and the obligation to be bound by the Islamic *aḥkām*.⁵⁵ This is best illustrated by the case of the *musta'min* (any one who has been given the promise of security or safe-conduct by Muslims), about whom there will be more in depth description below. The *musta'min* can demonstrate this evidence in either of two ways: 1) physical residency within *dār al-Islām* and 2) by purchasing land within *dār al-Islām*. If the *musta'min* decides to live and reside within *dār al-Islām* and yet exceeds the period of time stipulated under the *'aqd*, the Imām will ask him to leave, or if he wishes to stay, he may do so by paying *jizya*. If he leaves after that time period, but before completing one

Asmā' wa al-Lughāt, 3: 126; *'Aqd al-Jawāhir al-Thamīna*, 1: 485.

⁵¹ Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4327; Bahūtī, *Kashshāf al-Qinā'*, 3: 108; *Mughnī al-Muḥtāj*, 4: 442-443; *Rawḍat al-Ṭālibīn*, 1: 297.

⁵² Ṭahāwī, *Mukhtaṣar al-Ṭahāwī*, 283.

⁵³ Kasānī, *Badā'i' al-Ṣanā'i'*, 4: 814; Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 3343-346; Zarkhashī, *al-Manthūr fī al-Qawā'id*, 1: 164-168; Suyūfī, *al-Ashbāh wa al-Nazā'ir*, 308-316.

⁵⁴ *al-Siyar al-Kabīr*, 4: 1429-1430.

⁵⁵ Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4327.

year of residence, he may do so without paying *jizya*, but if he exceeds the one year limit then the Imām will count him as a *dhimmī* and enforce the *kharāj* (land tax) upon him and prevent him from returning to *dār al-ḥarb*.⁵⁶ Shaybānī, indicate that:

If the *musta'min* extends his stay in *dār al-Islām* then the *imām* will ask him to leave by giving him enough time to arrange for his departure, such as a year or less, and he [the Imām] should not place any burden on him which might result in his coming to harm.⁵⁷

This is so because the Imām is obligated to look after the interests of both parties.⁵⁸

Thus, if the *ḥarbī* enters *dār al-Islām* through *amān*, he is not allowed to stay more than the specified time limit, unless he decides to stay and pay *jizya*. The reason for this, according to Shaybānī, is that if he were allowed to stay for a longer period, he might cause harm to Muslims by passing information to their enemies.⁵⁹ Therefore, he is allowed to stay for a fixed time. Should he violate that time limit, the Imām will then issue him a warning. By giving him enough time to leave, the Imām may warn him by saying that, should the time limit be exceeded, he would be counted among the *ahl al-dhimma*, and will become a *dhimmī*. Because the Imām is supposed to inform him of the conditions, the *ḥarbī* is always fully aware of the consequences.⁶⁰

Some other Muslim jurists, such as Awzā'ī, Shāfi'ī, and some of the Ḥanbalī jurists, indicate that the *musta'min* cannot stay any longer than one full year within *dār al-Islām* without paying *jizya*. They do allow that a *ḥarbī* may stay for four months

⁵⁶ Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, 291; *al-Fatawā al-Hindiyya*, 3: 234-235.

⁵⁷ *al-Siyar al-Kabīr*, 5: 1867 and 2246-2247; *al-Jāmi' al-Ṣaghīr*, 263.

⁵⁸ *al-Siyar al-Kabīr*, 5: 2062.

⁵⁹ *Ibid.*, 5: 1876.

⁶⁰ Shaybānī, *al-Siyar al-Kabīr*, 5: 2263; Abū Yūsuf, *Kharāj*, 205; Jaṣṣaṣ, *Aḥkām al-Qur'ān*, 3: 84; Sarakhsī, *Mabsūṭ*, 10: 84; Karābīsī, *Furūq*, 1: 336-337; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4328-4329; Ibn Humām, *Fath al-Qadīr*, 4: 351; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 3: 268; Ibn 'Abidīn, *Ḥaṣhiyat Ibn 'Abidīn*, 4: 168-169.

within *dār al-Islām* without paying this tax, but that if he stays longer he must pay *jizya*.⁶¹

In the event that a *musta'min* purchases land within *dār al-Islām* and cultivates that land, according to the Ḥanafī jurists the state can impose on him *kharāj* (land tax); thus he automatically becomes a *dhimmī* and is obligated to pay the *jizya* as well. For by paying the *kharāj*, the *musta'min* demonstrate his intention to stay within *dār al-Islām*, and thus the Islamic *aḥkām* apply to him, making him a *dhimmī*.⁶²

b. The *'aqd al-dhimma* entered into as a consequence of *tab'iyya* (dependency). This is the case for instance when the *musta'min* (here again the *musta'min* offers the best illustration of how things function) becomes a *dhimmī* through marriage, birth or as a *laqīṭ* (foundling), as well as in the case of one who is a member of a conquered population.

(i) In the case of marriage: If the *musta'mina* (female *dhimmī*) or non-Muslim woman dependent on *dhimmī* parents marries within *dār al-Islām* to a Muslim or *musta'min*, she becomes a *dhimmiyya* through marriage, and because dependent on her husband.⁶³ The *aḥkām* affecting the *ahl al-dhimma* will be applicable to her. Because the wife depends on her husband for her residential status, she cannot leave without his permission, although this does not work the other way around.⁶⁴ By agreeing to marry someone living within *dār al-Islām*, she accepts the conditions and *aḥkām* that

⁶¹ Ibn Jamā'a, *Tahrīr al-Aḥkām*, 238; *Mughnī al-Muḥtāj*, 4: 243; Māwardī, *Aḥkām al-Sulṭāniyya*, 146; Abū Ya'lā, *Aḥkām al-Sulṭāniyya*, 145; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 2: 476.

⁶² Sarakhsī, *Mabsūṭ*, 10: 84; and idem, *Sharḥ al-Siyar al-Kabīr*, 5: 1869 and 2244-2245; *al-Jāmi' al-Ṣaghīr*, 263; *Kitāb al-Siyar*, 159; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 131 and 227; Zayla'ī, *Tabyīn al-Haqā'iq*, 3: 269; Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, 291; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4328. *Kharāj* is merely taxation levied on the land at the time of its cultivation.

⁶³ *Mukhtaṣar al-Ṭaḥāwī*, 291; *al-Mabsūṭ*, 10: 84; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4328-4329; Ibn

determine her status as a *dhimmiyya*.⁶⁵ However, if a male *must'amin* marries a female *dhimmī*, he does not in his turn become a *dhimmī*, because the husband is not dependent on his wife for his residential status.⁶⁶ He may for instance divorce her and return to his own country, should he not wish to stay in *dār al-Islām*. Therefore, his wife's status does not make him a *dhimmī*.⁶⁷

(ii) In the case of birth: Young children may become *dhimmīs* through either parent. As Shaybānī indicates, if a *musta'min* enters *dār al-Islām* with his children, and he accepts Islam, the young children will become Muslim through their parents' conversion, while the older ones would have the choice of staying in *dār al-Islām* or returning to *dār al-ḥarb*, this is because they are mature and independent, unlike the younger ones and can make their own decision.⁶⁸

(iii) The case of the *laqīṭ* (foundling):⁶⁹ If the *laqīṭ* is found within *dār al-Islām*, he will be considered a Muslim, but only if he is fostered by Muslims. In the case where he is fostered by a *dhimmī*, then he will be considered part of the *ahl al-dhimma*.⁷⁰ According to Ibn Mundhir al-Naysābūrī (d. 319/931), there was consensus among Muslim jurists and scholars that, if an infant was found living within Muslim territory,

Humām, *Fath al-Qadīr*, 4: 353; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 3: 269; *al-Fatāwī al-Hindiyya*, 2: 235

⁶⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1533-1434 and 1865-1865.

⁶⁵ Ṭahāwī, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 452.

⁶⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1533-1434 and 1865-1865.

⁶⁷ Shaybānī, *Kitāb al-Siyar*, 159; Sarakhsī, *Mabsūṭ*, 10: 84; and idem, *Sharḥ al-Siyar al-Kabīr*, 5: 1533-1534 and 1864-1865; Ṭahāwī, *Mukhtaṣar al-Ṭahāwī*, 291; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4328; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 3: 269; Ibn Humām, *Fath al-Qadīr*, 4: 353; *al-Fatāwī al-Hindiyya*, 2: 235.

⁶⁸ Shaybānī, *al-Siyar al-Kabīr*, 5: 1869-1871; Ibn Shās, *'Aqd al-Jawāhir al-Thamīna*, 1: 486; *Mughnī al-Muḥtāj*, 4: 245

⁶⁹ The *laqīṭ* is an infant found abandoned or one without known parents or guardians. See Jurjānī, *Ta'rīfāt*, 248.

⁷⁰ See Midānī, *al-Lubāb Sharḥ al-Kitāb*, 2: 206; Sarakhsī, *Mabsūṭ*, 10: 214-215 and 17: 128-130; Ibn Humām, *Fath al-Qadīr*, 4: 420.

he should be considered a Muslim, and if he was found dead he should be buried in a Muslim cemetery. Should the infant be found in some other place, then his status would be determined by where he was found.⁷¹

(iv) The case of *dhimma* status by conquest and victory: In non-Muslim territories that are conquered and come under Muslim authority and where the population is offered and accepts the option of paying the *jizya*, their inhabitants become *dhimmīs*. It is up to the Imām to determine the status of the *ahl al-ḥarb* and their lands. If they qualify as *ahl al-dhimma*, then he will leave the land under their control so long as they pay the *kharāj*, just as the caliph ‘Umar did in the lands of Sawād and Shām.⁷² On the other hand the Imām might declare the land to be “booty,” i.e., a place won by force of arms, where the *khums* is applied, as the Prophet did with Khaybar.⁷³ The Imām therefore will determine the future status of newly conquered territories, deciding whether, if the inhabitants become *dhimma*, he will impose *jizya* (or *kharāj* on their cultivated land), or whether to apply the *khums*.⁷⁴ This is the Ḥanafite opinion, but it is also shared by Shāfi‘ī and Ḥanbalī jurists.⁷⁵

C. The contractor (*al-‘aqid*):

The person who is qualified to conclude an *‘aqd* or *‘aqd al-dhimma* specifically is the Muslim *imām* or his deputy, since part of the *imām*’s obligation is to look after

⁷¹ Ibn Mundhir al-Naysābūrī, *al-Ijmā‘*, 131; Ibn Qudāma, *Mughnī*, 6: 403; Mardāwī, *al-Inṣāf*, 6: 434-435; *Mughnī al-Muhtāj*, 2: 422-423.

⁷² Abū Yūsuf, *Kharāj*, 30-34; Abū ‘Ubayd, *Amwāl*, 25 and 73; Yaḥyā, Ibn Ādam, *Kharāj*, 27

⁷³ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 3: 1039, 1536, and 5: 1143; Bukhārī, *Ṣaḥīḥ*, 5: 10 and 15 and 6: 496.

⁷⁴ Shaybānī, *al-Jāmi‘ al-Ṣaghīr*, 254; Abū Yūsuf, *Kharāj*, 30-34; Sarakhsī, *Mabsūṭ*, 10: 15 and 23; Ibn Humām, *Fatḥ al-Qadīr*, 4: 303-304 Kasānī, *Badā‘i‘ al-Ṣanā‘i‘*, 9: 4329. Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 105; Yaḥyā ibn Ādam, *Kharāj*, 45.

⁷⁵ Yaḥyā ibn Ādam, *Kharāj*, 45; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 105.

the interests of the Muslim community and to act as spokesperson on their behalf.⁷⁶ He is also responsible for enforcing the rulings of the Shari'a and regulating the political conduct of Muslims.⁷⁷ The *imām* is entrusted with the interests of the community; he is authorized to take any measures for the interest of the community and prevent any occurrence that he deems harmful.⁷⁸

The *imām* is the one who issues the authorization for non-Muslims to stay in *dār al-Islām*, where the Islamic *aḥkām* prevail. According to Muslim scholars, Islam is a system based on a creed; it is a religion and a nationality, one that requires a united understanding and even solidarity, to which the presence of non-Muslims might pose a danger. Therefore, the *imām* or his deputies have a very onerous responsibility in concluding an '*aqd al-dhimma*, taking into consideration the fact that he is the representative of his community.⁷⁹

According to Shaybānī the Imām is the only one permitted to ask the *musta'min* who has overstayed his welcome in *dār al-Islām* to leave.⁸⁰ It is likewise the Imām's responsibility to renew the '*aqd* if he should so desire.⁸¹ The Imām's deputies, such as the Amīr or army generals, can conclude the '*aqd* on behalf of the Imām in some cases such as if at the time of battle, the army's general offers acceptance of Islam to the

⁷⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 189 and 5: 1955.

⁷⁷ Ibn Khaldūn, *Muqaddima*, 1: 338; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 5; Juwaynī, *Ghiyāth al-Umam*, 22.

⁷⁸ Ibn Nujaym, *al-Ashbāh wa al-Naẓā'ir*, 123-124; Suyūṭī, *al-Manthūr fī al-Qawā'id*, 121-122; Zarkashī, *Durar al-Ḥukkām Sharḥ Majallat al-Aḥkām*, 1: 51-52; Zarqā, *Sharḥ al-Qawā'id al-Fiqhiyya*, 247-251.

⁷⁹ Shīrāzī, *al-Muhadhdhab*, 18: 190; Bahūtī, *Kashshāf al-Qinā'*, 3: 108; Maqdisī, *Sharḥ al-Kabīr*, 10: 575; Raḥbānī, *Maṭālib Allū al-Nuḥā*, 2: 592; Şubḥī Maḥmaṣanī, *al-Qānūn wa al-'Alāqāt' al-Dawliyya fī al-Islām*, 102.

⁸⁰ Shaybānī, *al-Siyar al-Kabīr*, 5: 1867, *al-Jāmi' al-Saghīr*, 263; Sarakhsī, *Mabsūṭ*, 10:84; Ibn Humām, *Fath al-Qadīr*, 4: 351; Mukhtaṣar al-Ṭaḥāwī, 291; *al-Fatawī al-Hindiyya*, 3: 234-235; Zayalī, *Tabyīn al-Ḥaqā'iq*, 2: 276.

⁸¹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 2252.

enemy and they accept. Should they reject it, and the general asks them to become *dhimmīs*, then they will be treated as *dhimmīs*.⁸² There is a consensus among Muslim jurists regarding the responsibilities and obligations of the *imām* in the case of ‘*aqd al-dhimma*’.⁸³ The consensus of scholars therefore is that no one can conclude the ‘*aqd al-dhimma*’ apart from the *imām* and his deputies. If any member of the Muslim community tries to do so, this ‘*aqd*’ is not valid, because ordinary Muslims can only conclude an ‘*aqd al-amān*’.⁸⁴

D. The contractee (*al-ma‘qūd lahu or al-dhimmi*):

Shaybānī demonstrates that the *dhimmi* is the one who is eligible to conclude an ‘*aqd*’ in return for a promise to pay *jizya*.⁸⁵ For not all non-Muslims were *dhimmī*, some non-Muslims were not even eligible for *dhimma*, such as the Arab polytheists and apostates. The people who are entitled to conclude an ‘*aqd al-dhimma*’ were the following.

a. Non-Arab People of the Book:

The term “People of the Book” refers to the Jews and Christians and all the peoples agreeing at least in part with the People of the Book, such as the Samiriyyūn.⁸⁶ Furthermore, all of the various Christians sects, such as the Ya‘qūbiyya (Jacobites), Naṣṭūriyya (Nestorians), Malikiyya (Malkites), Faranjiyya (Roman

⁸² Shaybānī, *al-Siyar al-Kabīr*, 5: 2179-2180.

⁸³ Ṭabarī, *Ikhtilāf al-Fuqahā*, 199 and 208.

⁸⁴ See Ibn Shāsh, ‘*Aqd al-Jawāhir al-Thammīna*’, 6: 486; *Hāshiyat al-Dasūqī ‘alā al-Sharḥ al-Kabīr*, 2: 201; Shīrāzī, *al-Muhadhdhab*, 18: 190; Qarāfī, *Furūq*, 3: 23; Ibn al-Murtaḍā, *al-Baḥr al-Zakhār*, 6: 447; *al-‘Azīz Sharḥ al-Wajīz*, 13: 496-497; *Mughnī al-Muḥtāj*, 4: 234

⁸⁵ Shaybānī, *Sharḥ al-Siyar al-Kabīr*, 3: 1035-1036.

⁸⁶ Shāfi‘ī, *al-Umm*, 1: 90-92; Ibn Jamā‘a, *Taḥrīr al-Aḥkām fī Tadbīr Ahl al-Islam*, 249; Abū Yūsuf, *al-Kharāj*, 122-124; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 90-92.

Catholics) and the Armenians are referred to in the sources as eligible to conclude an ‘*aqd al-dhimma*.⁸⁷ However there is disagreement among Muslim scholars over the qualification for the status of Ahl al-Kitāb by groups other than Christians and Jews. According to Ḥanafī jurists, whoever believes in a book of a Prophet, such as the Zabūr (Psalms) or Suḥuf Ibrāhīm (Books of Abraham), belongs to the Ahl al-Kitāb. These, however, are not considered Ahl al-Kitāb by Ḥanbali and Shāfi‘ī jurists.⁸⁸

b. Majūs (Zoroastrians):⁸⁹

It was believed by classical and medieval authors that the Majūs originally possessed a scripture, but that it was taken from them; given the benefit of the doubt in this case,⁹⁰ Muslim scholars said the *jizya* was accepted from them. Nor is there any objection or prohibition against marrying or eating with the Majūs mentioned in the texts. Nevertheless, according to Muslim scholars, Muslims should take precautions

⁸⁷ See for example, Ibn Humām, *Fath al-Qadīr*, 4: 370; Kasānī, *Badā’i’ al-Ṣanā’i’*, 9: 4329; *al-Fatāwī al-Hindiyya*, 2: 244-245; *Ḥāshiyat Ibn ‘Ābidīn*, 4: 198; Ibn Shāsh, *‘Aqd al-Jawāhir al-Thamīna*, 1: 486; Ibn Rushd, *al-Muqadamāt al-Mumahidāt*, 1: 375-376; Shāfi‘ī, *al-Umm*, 4: 304; Ibn Qudāma, *al-Mughnī*, 10: 558-559; Ibn Mufliḥ, *al-Mubdī*, 3: 404; *Majmū‘at Fatāwī Shaykh al-Islām Ibn Taymiyya*, 28: 356, and 29: 218; Bahūtī, *Kashshāf al-Qinā’*, 3: 108; Ibn Hubayrā, *al-Iṣṣāḥ ‘an Ma‘ānī al-Ṣiḥāḥ*, 1: 292; Sha‘rānī, *al-Mizān al-Kubrā*, 2: 184; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 1; Ibn Ḥazm, *al-Muḥalla*, 7: 345; Abū Manṣūr al-Baghdādī, *Uṣūl al-Dīn*, 318.

⁸⁸ Ibn ‘Ābidīn, *Durr al-Muntaqā Sharḥ al-Multaqā*, 10: 670; Nawawī, *al-Muḥadhdhab*, 18: 170; and idem, *Rawḍat al-Ṭalībīn*, 10: 304; *Mughnī al-Muḥtāj*, 4: 244; Ibn Qudāma, *al-Mughnī*, 10: 559, 564-565; Mirdāwī, *al-Inṣāf*, 4: 217; *Majmū‘at Fatāwī Shaykh al-Islām Ibn Taymiyya*, 35: 223-233 and 7: 50 and 56.

⁸⁹ The Zoroastrians worshipped the sun, moon and fire, and believed in two gods, one representing the good and the other the bad, or light and dark. Furthermore, they believe in two principles the first is the reason of intermixture of the light with the dark and the second is the salvation of light from the dark. They are many sects such as the Zardashtiyya, Zarwāiyya and Kiyomorthiyya. For more details see Shahrastānī, *al-Milāl wa al-Niḥāl*, 245-263; Ibn Ḥazm, *al-Faṣl fī al-Milāl wa al-Niḥāl*, 1: 86-90; Rāzī, *I’tiqādāt Firqat al-Muslimīn wa al-Mushrikīn*, 86-87; Ahmad ‘Abd al-Ghāfir ‘Aṭār, *al-Diyānāt wa la-‘Aqā’d fī Mukhtalaf al-‘Uṣūr*, 1: 240.

⁹⁰ Ibn Humām, *Fath al-Qadīr*, 4: 370-371; Kasānī, *Badā’i’ al-Ṣanā’i’*, 9: 4329; Zayla‘ī, *Tabyīn al-Ḥaqā’iq*, 3: 377; Ibn Shāsh, *‘Aqd al-Jawāhir*, 1: 486; Ibn Rushd, *al-Muqadamāt al-Mumahidāt*, 1: 376; Māwardī, *al-Aḥkām al-Sultāniyya*, 143; Nawawī, *Rawḍat al-Ṭalībīn*, 10: 304; Ibn Qudāma, *al-Mughnī*, 10: 599; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1:1-2; Mirdāwī, *al-Inṣāf*, 4: 217; Bahūtī, *Kashshāf al-Qinā’*, 3: 109; Ibn al-Mundhir, *al-Ijmā’*, 17; Sha‘rānī, *al-Mizān al-Kubrā*, 2: 184; Jaṣṣaṣ, *Aḥkām al-Qur’ān*, 3: 92-93; Ibn Ḥazm, *al-Muḥalla*, 7: 354; Baghdādī, *Uṣūl*

when it comes to marriage with or obtaining food from the Majūs.⁹¹ It was however the practice of the Prophet and the rightly guided caliphs to conclude the *'aqd al-dhimma* with the Majūs.⁹²

Some Muslim jurists consider the Majūs as Ahl al-Kitāb.⁹³ The majority, however, maintains that the Majūs do not belong in this category, and base their consensus on the Qur'ānic verse which reads:

Lest you [pagan Arabs] should say: "The Book was only sent down to two sects before us (the Jews and the Christians)".⁹⁴

They argue that, if the Majūs belonged to the Ahl al-Kitāb, there would have been a reference to three sects in this passage. Hence they argue that no Muslim jurists can justify that the Majūs were among the people of the Book. Furthermore, the Qur'ān mentions that all the Prophets received a Book that was revealed to them, and there is no mention of a Prophet being sent to the Majūs, nor any book, in spite of their numbers and power.⁹⁵ All the same, others point to a *ḥadīth* of the Prophet that reads "*Sunnū bihim Sunnat Ahl al-Kitāb*" (apply to them [Majūs] the method of the People of the Book).⁹⁶ For them, this is an indication that the Majūs were indeed originally part of Ahl al-Kitāb.

c. The Arab Ahl al-Kitāb:

According to Shaybānī:

al-Dīn, 319.

⁹¹ Ibid.

⁹² Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 921; *Tafsīr al-Qurṭubī*, 8: 110; Baghawī, *Sharḥ al-Sunna*, 11: 170.

⁹³ Ṭabarī, *Ikhtilāf al-Fuqahā'*, 203; Khalāl, *Aḥkām Ahl al-Milal*, 298; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 10; Ibn Qudāma, *al-Mughnī*, 10:559; Abū Yūsuf, *Kharāj*, 140; Shāfi'ī, *Umm*, 4: 96.

⁹⁴ Q: 6: 156.

⁹⁵ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 91 and 93; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 6.

⁹⁶ Mālik, *Muwatṭa'*, 1: 278; Shāfi'ī, *Risāla*, 430; Ṭahāwī, *Ikhtilāf al-'Ulamā'*, 3: 485; Shawkānī,

Some of the People of the Book are Arab and they are *ahl al-ḥarb*, if they decide to pay *kharāj* and become *dhimma* it is acceptable. [Shaybānī's opinion is based] on the Prophet's practice when he concluded an *'aqd* with the people of Najrān in return for payment of a thousand *ḥullas* (garment), and they were Christian Arabs, and the rulings regarding them [were just] as applicable as the rest of the non-Muslims.⁹⁷

According to the Mālikī, Shāfi'ī and Ḥanbalī schools, as well as Awzā'ī, Abū Thawr and Ibn al-Mundhir, it was the common practice of Muslims to accept *jizya* from Christian Arabs as well as non-Arab Jews and Christians.⁹⁸ Ḥasan al-Baṣrī, however, disagrees with the above-mentioned jurists in this matter. He claims that *jizya* could not be accepted from Arabs because they were honored to be among the kin of the Prophet.⁹⁹ Nevertheless it was the practice of the Prophet and his successors to accept *jizya* from the Christian Arabs, making no distinction between them and their non-Arab coreligionists.¹⁰⁰

d. *'Abadat al-awthān* (idol worshippers):

There is a *ḥadīth* suggesting that the *'aqd al-dhimma* used to be concluded with non-Arab pagans or idol worshippers. It reads:

If you meet with your enemies from the polytheists invite them to the *shahādah* (testimony) that there is no God but Allah...in case they refuse, accept their *jizya*.¹⁰¹

Nayl al-Awṭār, 8: 64; Ibn 'Abd al-Barr, *al-Tamhīd*, 2: 116; Baghawī, *Tafsīr*, 4: 35.

⁹⁷ Shaybānī, *al-Jāmi' al-Saghīr*, 248; Sarakhsī, *Mabsūṭ*, 10: 118-119; Ibn Humām, *Fath al-Qadīr*, 4: 95-96; Zayal'ī, *Tabyīn al-Ḥaqā'iq*, 3: 277.

⁹⁸ Abū 'Ubayd, *Amwāl*, 36; Shāfi'ī, *Umm*, 4: 95-96; Ibn Rushd, *al-Muqadimāt al-Mumahidāt*, 1: 375; *al-Mubdi'*, 2: 404; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1:3; and idem, *Zād al-Ma'ād*, 3: 155-157; Ibn al-Mundhir, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 484.

⁹⁹ According to Ṭaḥāwī that Shāfi'ī was the only jurist to narrate this opinion from Abu Yūsuf. See Ṭabarī, *Ikhtilāf al-Fuqahā'*, 203; Ṭaḥāwī, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 486; Shāfi'ī, *Umm*, 4: 196; Abū Yūsuf, *Kharāj*, 131.

¹⁰⁰ See Ibn Qudāma, *al-Mughnī*, 10: 561-562; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1:2-7; Abū 'Ubayd, *Amwāl*, 36-40; Siyāghī, *al-Rawḍ al-Nadīr*, 4: 641-642.

¹⁰¹ Shaybānī, *Siyar al-Kabīr*, 1: 38-39. *Ṣaḥīḥ Muslim*, "Jihād," 3: 1357.

This *ḥadīth* would extend *dhimmī* status to all polytheists in general and in particular the Arab polytheists.¹⁰² For if the *jizya* could be accepted from the Majūs, who are not generally recognized as being from the Ahl al-Kitāb (as was mentioned earlier), then *jizya* must not have been limited to the Ahl al-Kitāb alone, but accepted from all the non-Arabs whether they belonged to the Ahl al-Kitāb or were polytheists; irregardless, the '*aqd al-dhimma*' could be concluded with all of them. This was the opinion of many jurists such as Abu Ḥanifa, Abū Yūsuf, Ḥanbalī, Awzā'ī, Thawrī, Ḥasan al-Baṣrī and Abū 'Ubayd al-Qāsim ibn Salām.¹⁰³

Shāfi'ī and Ibn Ḥanbal, and some Mālikī jurists such as Ibn Mājishūn, were of the opinion that the '*aqd al-dhimma*' cannot be concluded with idol worshipers, whether they were Arabs or non-Arabs; nothing can be accepted from them except adoption of Islam or *qital* (combat). The problem of the Majūs was not a stumbling block for them, as they considered them to be of the Ahl al-Kitāb. Nevertheless, the opinions of the above-mentioned jurists were not in accord with the majority of the scholars.¹⁰⁴

e. al-Ṣābi'a¹⁰⁵:

The Ṣābi'a were also a subject of disagreement among classical Muslim scholars, because these scholars knew little about their true beliefs, as a result of their

¹⁰² Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 93.

¹⁰³ Sarakhsī, *Mabsūṭ*, 10: 119; Ibn Humām, *Fatḥ al-Qadīr*, 4: 371; Abū Yūsuf, *Kharāj*, 139; Zayāl'ī, *Tabyīn al-Ḥaqā'iq*, 3: 277; Damād Afandī, *Majma' al-Anhur*, 1: 670; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 91 and 93; Mālik, *Mudawwana*, 3: 46; Abū 'Ubayd, *Amwāl*, 40-41; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 200-203; Ṭahāwī, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 484-485; Sha'rānī, *al-Mizān al-Kubrā*, 2: 184; Ibn Shāsh, *'Aqd al-Jawāhir al-Thammīna*, 1: 486.

¹⁰⁴ Shāfi'ī, *al-Umm*, 4: 95 and 96; Ibn Jamā'a, *Tahṛīr al-Aḥkām*, 249; Ibn Shāsh, *'Aqd al-Jawāhir al-Thamina*, 1: 486; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 919; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 91-92; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 203; Sha'rānī, *al-Mizān al-Kubrā*, 2: 182; Baghdādī, *Uṣūl al-Dīn*, 319.

¹⁰⁵ The Ṣābi'a group claim to be the descendants of Yahya and they have their own scripture, T, Fahd, "Ṣābi'a" in the *Encyclopaedia of Islam*, new edition, vol. 8, (Leiden: E. J. Brill, 1994) 675-678; Albert Riḥānī, *al-Mawsū'a al-'Arabiyya*, 458-459; 'Abd al-Karīm Zaydān, *Aḥkām al-*

secrecy. For this reason they could not agree on whether to classify them as part of Ahl al-Kitāb. Abū Ḥanifa, for example, considers them as belonging to the Ahl al-Kitāb, judging them to be a Christian sect from what he could see of their beliefs. However, his disciples Abū Yūsuf and Shaybānī insisted that the Ṣābi'a could not be considered as Ahl al-Kitāb (People of the Book).¹⁰⁶

Some Muslim scholars divided the Ṣābi'a (which still exists at present time in Iraq and southern Iran) into two groups.¹⁰⁷ The first group was considered to be a Christian sect, even though they differed from Christians in many ways. The second group, known as Ḥarrāniyyūn, were idol worshippers, had no Prophet and did not follow a revealed book. Therefore, the latter were not regarded as belonging to the People of the Book. Al-Jaṣṣās describes them thus:

They are not among the People of the Book, since they worship idols such as the seven stars or planets as god. They are idol worshippers, [though] some consider themselves as a sect of Christianity. Many Muslim jurists cannot find a ground for their claims [to be a sect of Christianity] nor any evidence as to whether *jizya* was accepted from them. Nothing can be accepted from them except for Islam or the sword. Their food cannot be eaten nor can marriage be allowed with them. For whoever considers them as People of the Book, [however], their food and marriage with them are lawful.¹⁰⁸

It appears that the Muslim jurists were disagreed over whether to conclude an '*aqd al-dhimma*' with the Ṣābi'a sect. Abū Yūsuf is in favor of doing so with the Ṣābi'a, just as he is with the Majūs, and is ready to accept *jizya* from them.¹⁰⁹ The same

Dhimmiyyīn wa al-Musta'minīn fī Dār al-Islām, 14-15.

¹⁰⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 149; the various types of Ṣābi'a can be found as described in Baghdādī, *Uṣūl al-Dīn*, 324-327.

¹⁰⁷ See Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 92, 99; Ibn Qudāma, *al-Mughnī*, 10: 558-559; *Tafsīr al-Qurṭubī*, 1: 434-435.

¹⁰⁸ Jaṣṣās, *Aḥkām al-Qur'ān*, 2: 328 and 3: 91

¹⁰⁹ Abū Yūsuf, *Kharāj*, 131.

opinion was adopted by the Mālikī as well as Ḥanbali jurists, i.e., that *jizya* can be accepted from them as it can be accepted from the People of the Book.¹¹⁰ Shāfiʿī jurists on the other hand show a reluctance to accept *jizya* from the Ṣābiʿa. On some occasions they are willing to consider them as a sect of Christianity and accept *jizya* from them, while on others they insist that the matter should be looked at carefully. Wherever and whenever the Ṣābiʿa are seen to conform to the requirements and qualifications to pay *jizya*, then it is accepted. But should they fail to meet these requirements the *jizya* cannot be accepted and no *ʿaqd al-dhimma* with them can be concluded or deemed valid. The Ḥanbali jurists adopt a similar approach.¹¹¹ Ibn Qayyim al-Jawziyya for one favored the Ṣābiʿa over the Majūs. He claimed that, if the *jizya* can be accepted from the Majūs, then this is an indirect sign to accept *jizya* from the Ṣābiʿa. In his eyes the Ṣābiʿa sect was less polytheistic than the Majūs.¹¹²

In the above pages we have looked at those non-Muslim groups with whom the *ʿaqd al-dhimma* can generally be concluded, and in which cases it is lawful or unlawful. The opinions of jurists varied, with some regarding the *ʿaqd al-dhimma* with different groups as valid, and others being much more restrictive. This leads us to the other category of non-Muslims, i.e., those whom the *ʿaqd al-dhimma* could not, generally speaking, be concluded.

There is some agreement among jurists in the case of with whom the *ʿaqd al-dhimma* cannot be valid. Some jurists, such as Shaybānī, claim that apostates and Arab

¹¹⁰ Ibn al-Rushd, *Bidāyat al-Mujtahid*, 1: 389 and 404; *Tafsīr al-Qurṭubī*, 1: 435; Ibn Qudāma, *al-Mughnī*, 10: 559; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 92-93; Ibn Muflīh, *al-Mubdiʿ*, 4: 405; Mardāwī, *al-Inṣāf*, 4: 218.

¹¹¹ Nawawī, *Rawḍat al-Ṭālibīn*, 10: 305-306; *Mughni al-Muḥtāj*, 4:244; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 143-144; Nawawī, *al-Muḥadhdhab*, 18: 170.

¹¹² Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 98-99.

polytheists cannot be parties to an *'aqd al-dhimma*. The consensus of scholars regarding apostates was clear on the idea that an *'aqd al-dhimma* with them cannot be concluded and that, consequently, *jizya* cannot be accepted from them. On the other hand, they do disagree over the status of Arab polytheists. In order to clarify this, we will discuss the case of the apostates followed by that of the Arab polytheists.

f. Apostates (*murtaddūn*):¹¹³

There are several references to the apostate in the Qur'ān and the Prophetic tradition.¹¹⁴ The Qur'ān states:

You shall be called to fight against a people given a great warfare, then you shall fight them, or shall surrender.¹¹⁵

This particular verse was revealed in regard to the apostates of the Banū Ḥanīfa, at the time when Abū Bakr, the future first caliph, was by them. He fought against them, sparing only *al-murtadda* (female apostates) and the youth.¹¹⁶ The *ḥadīth* on the other hand reads: “*man baddala dīnahu faqtulūh*” (who commits the act of changing his religion shall be killed).¹¹⁷ According to this *ḥadīth* the apostate shall be killed, and since an *'aqd al-dhimma* forbids killing, the status of the *murtadd* (male apostate)

¹¹³ Apostates (*murtaddūn*) is the plural of *murtad*, are those who have abandoned their religious faith or a cause to which they were once loyal. In legal terms it refers to those who withdraw from the true religion and who adopt another faith, such as in the case of Muslim apostates from Islam, either intentionally or inadvertently or through performing the action of an infidel. For more information see the following: Jawharī, *al-Ṣiḥāḥ*, 2: 473; *al-Qāmūs al-Muḥīṭ*, 2: 323; Kafūwī, *al-Kulliyāt*, 2: 387; Rāghib al-Iṣbahānī, *Mufradāt al-Qur'ān*, 280; Qawnawī, *Anīs al-Fuqahā'*, 186-187.

¹¹⁴ Ibn al-‘Arabī, *Aḥkām al-Qur'ān*, 4: 1693; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 393; *Tafsīr al-Qurṭubī*, 26: 83; *Tafsīr al-Baghawī*, 7: 303.

¹¹⁵ Q. 48: 16.

¹¹⁶ Wāqidī, *Kitāb al-Ridda*, 3: 450-451.

¹¹⁷ Bukhārī, *Bāb Ḥukm al-Murtadd*, 12: 267.

disqualifies him from being party to such an agreement. Therefore, it is prohibited to conclude an *'aqd* with him unless he seeks repentance.¹¹⁸

Shaybānī states that, if apostates ask to be allowed to pay *jizya* or *kharāj* and thus become *dhimmī*, their request should not be accepted.¹¹⁹ If a free or slave male apostate is asked to return to Islam and he refuses, he is to be punished according to the *ḥudūd* law. By contrast, a female, whatever her status, cannot be punished or killed for an act of apostasy.¹²⁰ Sarakhsī explains in turn that punishment of the apostate is obligatory, and that punishment should not be commuted in lieu of a sum of money. This is because the point of concluding *'aqd al-dhimma* with the *ahl al-ḥarb* is not to acquire money but to ensure that the Islamic *aḥkām* are observed in the areas of business and interpersonal relations. Therefore, the Islamic *aḥkām* must be applied in the case of an apostate, while accepting money in exchange for his release from punishment is not acceptable and not lawful.¹²¹

Therefore, there is a consensus among the jurists that *jizya* cannot be accepted from the apostate nor an *'aqd al-dhimma* contracted with them.¹²² To enter into such a contract would, after all, contradict the punishment prescribed for them, especially since amnesty is granted to the *dhimmī* at the time of concluding an *'aqd*. Therefore, it is unlawful to conclude an *'aqd* with an apostate.¹²³

¹¹⁸ Sarakhsī, *Mabsūṭ*, 10: 7, 77; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4330; *Tafsīr al-Qurṭubī*, 8: 110 and 16: 272; Shawkānī, *Nayl al-Awṭār*, 7: 219; Sa'dī Abū Ḥabīb, *Mawsū'at al-Ijmā'*, 1: 263.

¹¹⁹ Shaybānī, *al-Siyar al-Kabīr*, 1: 76-77 and 189, 5: 2016; Abū Yūsuf, *Kharāj*, 139.

¹²⁰ Sarakhsī, *Mabsūṭ*, 10: 117-118.

¹²¹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 2016.

¹²² Ibn Humām, *Fath al-Qadīr*, 4: 372; Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4385-4386; al-'Aynī, *Umdat al-Qārī*, 14: 264; 'Abd al-Qādir 'Uwdeh, *al-Tashrī' al-Jinā'i al-Islāmī*, 2: 721-722.

¹²³ Sarakhsī, *Mabsūṭ*, 10: 7, 77; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4330; Ibn Humām, *Fath al-Qadīr*, 4: 371; Zayla'i, *Tabyīn al-Ḥaqā'iq*, 3: 277-278; *Ḥāshiyat Ibn 'Ābidīn*, 4: 198; Ibn al-Rushd, *al-Muqaddimāt al-Mumabhidāt*, 1: 376; *Kashshāf al-Qinā'*, 3: 109; *Majmū'at Fatāwā Ibn Taymiyya*, 28: 414; *Tafsīr al-Qurṭubī*, 8: 110, 16: 272; Shawkānī, *Nayl al-Awṭār*, 7: 219; Sa'dī

g. Arab idol worshiper (*wathaniyyūn*):

According to Shaybānī, the *'aqd al-dhimma* is not valid with Arab polytheists either. Furthermore, he indicates that if any Arab polytheist were to request *dhimmī* status and promise to pay *kharāj*, his offer should be rejected.¹²⁴ Sarakhsī expresses an opinion regarding the Arab polytheists that calls for absolute rejection of both *ṣulḥ* and *jizya* with this group. His opinion was derived from the Qur'ānic verse¹²⁵ which refers to the status of Arab polytheists.¹²⁶ This was also the opinion of Abū Ḥanīfa, Abū Yūsuf and Shaybānī,¹²⁷ and one that Mālikī, Shāfi'ī and Ḥanbalī jurists tended to share.¹²⁸

The consensus of scholars is that *jizya* and the *'aqd al-dhimma* are valid for Jews, Christians, Zoroastrians and non-Arab idol worshipers, but not for apostates. However, Abū Ḥanīfa and Shaybānī would treat Arab polytheists in the same way as apostates. Abū Yūsuf goes so far as to say that neither *jizya* nor an *'aqd al-dhimma* can be contracted with Arabs at all, whether they are *Kitābī* (People of the Book) or polytheist. Shāfi'ī indicates that *jizya* is offered on the basis of religion, not that of kinship; therefore, it can be accepted from the Ahl al-Kitāb whether they be Arabs or

Abū Ḥabīb, *Mawsū'at al-Ijmā'*, 1: 263.

¹²⁴ Shaybānī, *al-Jāmi' al-Ṣaghīr*, 348-349; Sarakhsī, *Mabsūṭ*, 10: 117.

¹²⁵ In Q: 48: 16, the verse reads,

Say to the Bedouins who lagged behind: "You shall be called to fight against a people given to great warfare, then you shall fight them, or they shall surrender..."

¹²⁶ *Mabsūṭ*, 10: 117-118;

¹²⁷ Abū Yūsuf, *Kharāj*, 139 and idem, *al-Radd 'alā Siyar al-Awzā'i*, 131; Majid Khadduri, *Shaybānī Kitāb al-Siyar*, 222;

¹²⁸ Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4329; Ibn Humām, *Fatḥ al-Qadīr*, 4: 173; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 3: 277; *Ḥāshiyat Ibn 'Abdīn*, 4: 198; Shāfi'ī, *al-Umm*, 4: 95-96 and 158-160; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 305; Ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, 1: 376-377; Ibn Shāsh, *'Iqd al-Jawāhir al-Thamīna*, 1: 486; Ibn Mufliḥ, *al-Mubdi'*, 3: 405; Mardāwī, *al-Inṣāf*, 4: 217; Abū 'Ubayd, *Amwāl*, 40; Jaṣṣās, *Aḥkām al-Qur'ān*, 3: 91; *Tafsīr al-Qurṭubī*, 8: 110; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 200-203; *Majmū'at Fatāwā Ibn Taymiyya*, 19: 18-30.

non-Arabs. Awzā'ī and Mālik's opinions indicate that it can be accepted from all polytheists, except the apostate.

Ibn Taymiyya, Ibn al-Qayyim, Shawkānī, and Muqbilī all favor the opinions of Awzā'ī and Mālik, which is that the *'aqd al-dhimma* extends to all polytheists except the apostate. Their opinions were derived from the Qur'ān in the case of the Ahl al-Kitāb and the Majūs, and from the Prophet's Sunna. Since the *jizya* was accepted from the Majūs, who were polytheists, then it can be accepted from all polytheists. There is no particular Qur'ānic injunction or specific ruling in the Sunna denying Arab polytheists the opportunity to make an agreement to pay *jizya* or conclude an *'aqd al-dhimma* with Muslims.¹²⁹

So far the discussion has focused on relations between the *ahl al-dhimma* and Muslims based on contractual relations. This is an example of how Islamic legal rulings are essentially based on contractual foundations. Indeed, the *imām*, who is the representative of the Islamic state and party to such contracts, himself owes his status to a contract of sorts, the *'aqd al-bay'a*, which is governed by and subject to the rulings on contract law. Thus, Islamic jurisprudence is fundamentally dependent on contracts in the areas of both domestic and foreign relations. That is why in Islamic jurisprudence the usage of the *'aqd al-dhimma* is widespread and prevailing.¹³⁰ If the institution of *dhimma* is seen as an *'aqd*, then it is subject to the overall rules concerning contracts in

¹²⁹ Shawkānī, *al-Sayl al-Jarrār*, 4: 571; Ibn al-'Arabī, *Aḥkām al-Qur'ān*, 2: 922; *Majmū'at Fatawā Ibn Taymiyya*, 19: 18-30; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 5: 91-92 and idem, *Aḥkām Ahl al-Dhimma*, 1: 6-12; *al-Rawḍ al-Nazīr*, 4: 642; 'Abdallāh al-Jabūrī, *Fiqh al-Imām al-Awzā'ī*, 2: 530.

¹³⁰ Sarakhṣī, *Sharḥ al-Siyar al-Kabīr*, 4: 1530, 1537; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4327; Ibn Shāsh, *'Aqd al-Jawāhir al-Thamīna*, 1: 485; Bahūfī, *Kashshāf al-Qinā'*, 3: 108; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 136-137, 151-152; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 289, 303, and 320; Ibn Jamā'a, *Tahrīr al-Aḥkām*, 248; Ibn Hubayra, *al-Ifṣāḥ*, 2: 296.

general, though with its own special features.¹³¹ In the following, we will discuss the contractual aspects of the *'aqd al-dhimma*.

E. The *'aqd al-dhimma* as a contract:

Shaybānī explains that, in the case of the *'aqd al-dhimma*, should a people belonging to the *ahl al-ḥarb* request of the Imām that they be allowed *dhimma* status, the *imām* under the Islamic *aḥkāṁ* must accept their request, because the acceptance of *dhimma* under prescribed conditions is obligatory for Muslims.¹³² Ṭabarī, in his treatise entitled *Ikhtilāf al-Fuqahā'*, mentions the consensus among Muslim scholars that it is permissible to accept *jizya* and in return grant *dhimmī* status, without resorting to force of any kind. The *imām*'s duty is to conclude the *'aqd al-dhimma* for non-Muslims.¹³³ After concluding an *'aqd al-dhimma*, it is forbidden for Muslims to declare war on its signatories: this is because the *'aqd al-dhimma* is meant to put an end to the fighting among the parties involved.¹³⁴

We have seen how verse 9: 29 of the Qur'ān emphasizes that *jizya* is obligatory, and how it limits the potential of fighting.¹³⁵ The Prophet's tradition and the practice of the rightly guided caliphs regarding the *jizya* were also commonly known,¹³⁶ as was the

¹³¹ Ṭ al'at al-Ghunaymī, *Qānūn al-Salām fī al-Islām*, 407.

¹³² Shaybānī, *al-Siyar al-Kabīr*, 4: 1529, 5: 2191, 2198-2199.

¹³³ Ṭabarī, *Ikhtilāf al-Fuqahā'*, 208.

¹³⁴ Shāfi'ī, *al-Umm*, 4: 97; Ibn Shāsh, *'Iqd al-Jawāhir al-Thamīna*, 1: 486; Ghazālī, *Wajīz*, 2: 198; Nawawī, *al-Muhaddhab*, 18: 190; and idem, *Rawḍat al-Tālibīn*; Ibn Jamā'a, *Tahrīr al-Aḥkāṁ*, 248; 10: 297; *Mughnī al-Muḥtāj*, 4: 234; Ibn Mufliḥ, *al-Mubdi'*, 3: 404.

¹³⁵ In Q. 9: 29, the verse reads,

Fight against who believe not in Allāh, nor in the Last Day, nor forbid that which has been forbidden by Allāh and His Messenger and those who acknowledge not the religion of truth among the people of the Scripture, until they pay *jizya* with willing submission, and feel themselves subdued

¹³⁶ The Prophet advised his generals never to begin fighting until they had first given the enemy

consensus among jurists from all schools regarding the conditions for *jizya* and the '*aqd al-dhimma*'.¹³⁷ The purpose of the '*aqd al-dhimma*' thus goes beyond the acceptance of *jizya*. It is meant above all to end fighting between Muslims and non-Muslims. *Jizya* is merely accepted in return for full protection granted to the *dhimma* by Muslims for their well-being, wealth, and honor. This however does not change the most significant element of the '*aqd al-dhimma*', which, as we shall argue in the following pages, is meant to put a stop to fighting.¹³⁸

The '*aqd al-dhimma*' furthermore is an everlasting '*aqd*',¹³⁹ one that Muslims cannot terminate since it is incumbent upon them to honor it.¹⁴⁰ Among the basic obligations imposed by Islamic law is faithfulness to and respect for '*uqūd*' (pacts) and '*uhūd*' (treaties). The provisions of the '*aqd al-dhimma*' are a right accorded to *dhimmīs*, not a privilege. The consensus of scholars regarding the '*aqd al-dhimma*' is that if the *dhimmī* fulfills what he is obligated to do, then it is forbidden to abrogate this covenant. Furthermore, he should not be bound by any additional obligations outside the concluded covenant.¹⁴¹

two options. First, they were to invite the enemy to accept Islam, and if they did, war would be avoided. Should they refuse, however, the second option was to ask the enemy to pay *jizya*. In the event this was rejected, the generals could proceed to battle with the blessing of Allah. See *al-Siyar al-Kabīr*, 1: 38-39; Abū Yūsuf, *Kharāj*, 209-210.

¹³⁷ '*Aqd al-Jawāhir al-Thamīna*, 1: 486; Ghazālī, *Wajīz*, 2: 198; *al-Muhadhab*, 18: 190; *Rawdhat al-Ṭalībīn*, 10: 297; *Mughnī al-Muhtāj*, 4: 234; *Kashshāf al-Qinā'*, 3: 108.

¹³⁸ Kasānī, *Badā'i' al-Ṣanā'i'*, 10: 4330; Ibn Shāsh, '*Iqd al-Jawāhir al-Thamīna*', 1: 491; Ghazālī, *Wajīz*, 2: 201; Nawawī, *Rawḍat al-Ṭalībīn*, 10: 303; Ibn Jamā'a, *Taḥrīr al-Aḥkām*, 252.

¹³⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1614 and 1616; Kasānī, *Badā'i' al-Ṣanā'i'*, 10: 4330.

¹⁴⁰ Zarkashī, *al-Manthūr fī al-Qawā'id*, 2: 398-402; Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 336-338; Muhammad Yūsuf Mūsa, *al-Amwāl wa Nazariyyat al-'Aqd*, 447.

¹⁴¹ Qarāfī, *Furūq*, 3: 13; Shāfi'ī, *al-Umm*, 4: 188; Ghazālī, *Wajīz*, 2: 197; *Mughnī al-Muhtāj*, 4: 285; Ibn Qudāma, *al-Mughnī*, 1: 563.

a. The conditions (*shurūt*) of '*aqd al-dhimma*'

According to Shaybānī, in order for an '*aqd al-dhimma*' to be valid, certain essential conditions must be taken into consideration. Muslim scholars generally voice the same opinion as Shaybānī. The *shurūt* (conditions) of an '*aqd*' of any kind may be divided into *ja'liyya* (determined) and *shar'iyya* (legal) conditions, on which its legal validity depend. The *shurūt al-shar'iyya* require fulfillment of what the *shar'* specifies or demands, while the *shurūt al-ja'liyya* are the conditions that are imposed on each other by the parties, i.e., the content of the '*aqd*'. In the following we will discuss the *shurūt al-shar'iyya* in the light of some of the jurists' interpretations.¹⁴² Some of these conditions were mentioned earlier while others will be discussed under the heading of the *ahkām* of the '*aqd al-dhimma*'. Thus, we will survey only briefly these conditions below.

First, the '*aqd al-dhimma*' has no limitation of time and period. If any period of time is stipulated then the '*aqd al-dhimma*' will not be valid, according to Ḥanafite scholars.¹⁴³ Jurists from the Maliki, Shāfi'i, and Ḥanbali schools indicate that it is forbidden to conclude such an '*aqd*' on a temporary basis, because it is similar to '*aqd al-Islam*'. However, according to these jurists it is permissible to decide on a clear time period in which the '*aqd al-dhimma*' will be in effect. As long as the time period is

¹⁴² *Sharṭ* is an Arabic term meaning "sign" (plural, *shurūt*). As a legal term, *sharṭ* mean what the abidance of *ḥukm* stands for. This *sharṭ* consider to be the source of determination which is the person or party desire, which is to make '*aqd*' based or connected to him, as to say if the condition exist the '*aqd*' is valid. Thus, if the *sharṭ* fail to address the demanded matter then the '*aqd*' will not be accomplish. However, the *sharṭ shurṭ* is the obligatory fulfillment of what the *shar'* demand and it is beyond the parties limit. Because the *shar'* condition derived form the Texts. For more details see the following: *Mu'jam Maqāyīs al-Lughā*, 3: 260; Kafawī, *al-Kulliyāt*, 3: 64; Jurjānī, *Ta'rīfāt*, 166; Samarqandī, *Mizān al-Uṣūl*, 616-617; Nazīh Ḥammād, *Mu'jam al-Muṣṭalahāt al-Iqtisādiyya fī Lughat al-Fuqahā*, 163-164.

¹⁴³ This point was discussed earlier, for more discussion see Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4330; Sarakhsī, *Sharḥ Ziyādāt al-Ziyādāt*, 144.

clearly specified, then it is permissible, since there is no “eternal ‘*aqd*’ according to them.”¹⁴⁴

Secondly, the ‘*aqd*’ must be concluded with the people from whom *jizya* may legally be accepted, such as the Ahl al-Kitāb (the People of the Book), i.e., Jews and Christians (Arabs and non-Arabs), Majūs, non-Arab idol worshipers, Ṣābi’a, etc. The ‘*aqd*’ is valid only insofar as it is concluded with people from the above-mentioned categories, the exceptions being apostates and Arab polytheists.¹⁴⁵

Thirdly, among the conditions that an ‘*aqd*’ requires to achieve validity is for the person in charge of concluding it to be either the *imām* or his deputy. One or the other is deputy obliged to guarantee all rights and full protection to the *dhimmīs*.¹⁴⁶ Lastly, the *dhimmī* is obligated to pay the tribute that was agreed upon at the time of concluding the ‘*aqd*’. By paying *jizya*, the *dhimmī* is granted full protection, with the rights provided for under the Sharī’a.¹⁴⁷ In return, *dhimmīs* are exempted from military service on behalf of the Islamic state.

b. *Aḥkām ‘aqd al-dhimma*: The rights and obligations of *dhimmīs*

It is essential before going into any discussion of the *aḥkām* that apply to *dhimmīs* to clarify in the first place the meaning of *ḥukm*. Linguistically, a *ḥukm* is the product of a *qaḍā’* (judgment or verdict) and its intention is the prevention or

¹⁴⁴ *Mughnī al-Muḥtāj*, 2: 234; Ghazālī, *Wajīz*, 2: 197; Ibn Jamā’a, *Taḥrīr al-Aḥkām*, 248; Qarāfī, *Furūq*, 3: 23; Bahūtī, *Kashshāf al-Qinā’*, 3: 108; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 475 and 477; Maqdisī, *al-Sharḥ al-Kabīr*, 10: 575; Ibn Qudāma, *al-Mughnī*, 10: 563.

¹⁴⁵ This was discussed earlier under the subheading “The contractee (*al-ma’qūd lahu*) or *al-dhimmi*”; see also the following: Shawkānī, *al-Sayl al-Jarār*, 4: 571; Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, 2: 922; *Majmū’at Fatawā Ibn Taymiyya*, 19: 18-30; Ibn Qayyim al-Jawziyya, *Zād al-Ma’ād*, 5: 91-92 and idem, *Aḥkām Ahl al-Dhimma*, 1: 6-12; Suyāghī, *al-Rawḍ al-Naḍīr*, 4: 642; ‘Abdallāh al-Jabūrī, *Fiqh al-Imām al-Awzā’ī*, 2: 530.

¹⁴⁶ Shaybānī, *al-Siyar al-Kabīr*, 4: 1529; Ibn Qudāma, *al-Mughnī*, 10: 563; Ramī, *Nihāyat al-Muḥtāj*, 8: 86.

¹⁴⁷ Kasānī, *Badā’i’ al-Ṣanā’i’*, 9: 4330; Ibn Qudāma, *al-Mughnī*, 10: 563 and 608; Bahūtī,

prohibition of specific acts. The *ḥukm* aims at the prevention of injustice, tyranny, oppression and unfairness.¹⁴⁸ In the Qur'ān, the term *ḥukm* can be taken to mean 'ilm (knowledge) and *fiqh* (jurisprudence). It can also mean maxim (*ḥikmā*) and *rashād* (conscious awareness and right guidance), in the sense of judgment and determination among people.¹⁴⁹ As a legal term, scholars use *ḥukm* in a variety of senses, but the meaning generally implied is that of an attribution of one thing to another in a positive or negative sense. According to the jurists, *ḥukm* is what is evident in the Shari'a, reflecting the system of obligations, prohibitions and definitions of the undesirable and the permissible. Furthermore, some scholars use the term *ḥukm* to specify a subject, for example, what the *ḥukm* specifically requires as it relates to the subject matter.¹⁵⁰

In the following pages we will discuss the '*aqd al-dhimma* in relation to the *dhimmīs* and the Islamic state. The first section deals with the rights of *dhimmīs* and the second, the obligations of the Islamic state towards them.

c. Status of *dhimmīs*

i. The general maxim or norm:

The general norm respecting the status of *dhimmīs* within the Islamic state is that they are considered as part of the state. Where Islamic law is applicable to them is in the area of worldly affairs; hence they are bound by the Islamic *ahkām* in relation to conduct and punishments in terms of business dealings, etc., because they are among

Kashshāf al-Qinā', 3: 108; *Majmū'at Fatawā Ibn Taymiyya*, 18: 190.

¹⁴⁸ See *Mu'jam Maqāyīs al-Lughā*, 2: 91-92; *al-Qāmūs al-Muḥīṭ*, 1: 685-686; Ibn Mandūr, *Lisān al-'Arab*, 14: 145.

¹⁴⁹ Rāghib, *Mufradāt al-Qur'ān*, 126-128; Fayrūzābādī, *Baṣā'ir Dhawī al-Tamyīz*, 2: 487-490.

¹⁵⁰ Samarqandī, *Mizān al-Uṣūl*, 17-23; *al-Talwīh 'ala al-Tawqīf*, 1: 12-15; Āmadī, *al-Aḥkām*, 1: 90-91; *Sharḥ al-Kawkab al-Munīr*, 1: 333-340; Jurjānī, *Ta'rīfāt*, 123; Tahāwānī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 1: 134-142; Ibn al-Ghurs, *al-Fawākih al-Badriyya fī al-Aqdiyya al-Ḥakīma*, 5-7.

ahl dār al-Islām (part of the Islamic state). However, in terms of their religious rituals and practices, such as marriage and divorce (*aḥkām al-shakṣiyya*), and whatever they believe permissible (such as eating pork or drinking alcohol, etc.), they are entitled to engage in these practices in private and are free to act upon them. Muslims must not interfere in their internal affairs.¹⁵¹ The general rule was best described by the Caliph ‘Alī who said: “whoever is among our *dhimma* (in our protection) his blood is the same as ours and his blood money is equal to ours.”¹⁵² Based on this, the jurists established a general maxim in dealing with *ahl al-dhimma* in terms of their status and rights, which has been expressed thus: “They (*ahl al-dhimma*) have what we have and whatever is obligatory upon us is equally obligatory upon them as well.”¹⁵³ However, the obligations that Muslims have are different from the obligations imposed on the *dhimmīs*; indeed, the responsibilities and obligations vary considerably between the two, but the interpretation of that general rule stipulates that there is no distinction between the two parties in terms of the understanding of or the content of the ‘*aqd al-dhimma*. According to Sarakhsī, if they (*dhimmīs*) accept the ‘*aqd al-dhimma*, then their wealth is secure and their rights are the same as those of Muslims.¹⁵⁴

Some modern scholars define the status of the *dhimmīs* as meaning that they will be treated on an equal footing with the Muslims before the law, i.e., equality before the law but not equality within the law. This is because the obligations and rights of

¹⁵¹ Sanhūrī, *Fiqh al-Khilāfā*, 132; Tal‘at al-Ghunaymī, *Qānūn al-Salām fī al-Islām*, 423; ‘Abd al-Karīm Zaydān, *Aḥkām al-Dhimmiyyīn wa al-Musta‘minīn*, 70; Ḥazim al-Ṣa‘īdī, *al-Naḍariyya al-Islāmiyya fī al-Dawla*, 197.

¹⁵² Shāfi‘ī, *Musnad*, 2: 105-106; Shaybānī, *al-Ḥujja ‘alā Aḥl al-Madīna*, 4: 352-354; Jaṣṣaṣ, *Aḥkām al-Qur’ān*, 1: 141.

¹⁵³ See, *al-Hidāya*, 3: 286; *Hāshiyat Ibn ‘Abidīn*, 4: 128

¹⁵⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1530.

Muslims are to some extent specific to them; not all are applicable to the *dhimmīs*.¹⁵⁵ According to Sarakhsī these definitions emerged and originated because the *dhimmīs* are considered among the people of *dār al-Islām* but not entirely so.¹⁵⁶ They are nationals of the Muslim state, but not a component of the Islamic nation, because the “Islamic nation” is based on religious ideals. Although in the constitution of Medina the Prophet described the Jews and Muslims as one nation, some scholars agree that it was intended only in a political sense.¹⁵⁷ For example, Ibn Ḥanbal too refuted the claim that the Jews and Christians are part of the nation of the Prophet, indicating that it is impossible to include them (Jews and Christians) since they do not believe in the Prophet.¹⁵⁸

The *ikhtilāf* (disagreement or differences of opinion) over this issue was not limited to the classical scholars alone; it continued to be a point of disagreement among modern scholars too. In the following pages we will attempt to illustrate the *ikhtilāf* between the two camps regarding the status of *dhimmīs*. One camp considers them to be foreign nationals despite their status as part of the national entity of *dār al-Islām*, even though they have rights and obligations imposed on them. The second camp considers them as residents who are Islamic citizens.

¹⁵⁵ Ṭal’at al-Ghunaymi, *Qānūn al-Salām fī al-Islām*, 423-428.

¹⁵⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 2: 688, 5: 1703, 1832 and 2245; idem, *Mabsūṭ*, 10: 84.

¹⁵⁷ Muḥammad Ḥamīdullāh, *Majmū’at al-Wathā’iq al-Siyāsiyya*, 59-61. For further details see *al-Islām wa ‘Alāqatuhu bi al-Sharā’i’ al-Ukhrā*, 51-92.

¹⁵⁸ Khallāl, *Aḥkām Ahl al-Milal*, edited by Sayyid Kasūri Ḥusayn, 5-8. According to the translation of the constitution of Medina by Muḥammad Ḥamīdullāh specifically in reference to the question of *umma*, article number two reads: “Verily they constitute a political unit (*umma*) as distinct from all the people”. The Jews were thus mentioned in the constitution as a distinct *umma* rather than part of the Muslim *umma*. See Muḥammad Ḥamīdullāh, *The First Written Constitution in the World*, third revised edition, 1975: 35. For further details regarding the meaning of *umma* see the following: *Sharḥ al-Nawawī ‘alā Muslim*, 1: 369; ‘Arāqī, *Ṭarḥ al-Tathrīb*, 7: 16.

ii. *Dhimmi* as foreign nationals: Prior to the appearance of Islam, the concept of citizenship or nationality was unknown to jurisprudence. With the coming of Islam, the concept of a spiritual brotherhood was introduced under the Islamic creed. There was a spiritual and social correlation in this development. The Islamic nation is composed of Muslims as well as indigenous non-Muslim residents of the state. Muslims are naturally entitled to all of the political rights that the state can offer. Non-Muslims within the state are considered foreigners since they are not members of the Islamic nation (This 'nation' is not the same as a modern nation state). The connection of non-Muslims to the Islamic state is therefore based on treaty or '*aqd al-dhimma*', which entitles them to exercise their full rights without any discrimination, deficiency, injustice, tyranny or oppression. This is because the *dhimmi* retains the status of *dhimma*, i.e., someone under the protection of the Prophet, ensuring the preservation of his life, wealth, and honor. None of the above however excludes the *dhimmis* from enjoying Islamic citizenship. Their rights to some extent are equal to any ordinary Muslim, in that they do not need any permission to live or stay for a time period, such as the modern state demands. The person who applies for citizenship must simply meet specific demands to stay and live within that state for a specific time in order to be qualified to obtain citizenship. The only right that the *dhimmi* cannot enjoy, according to the scholars of the first camp, is that of being appointed to the highest ranks of state, such as the leadership of the Islamic community.¹⁵⁹

¹⁵⁹ Ḥāmid Sulṭān, *Aḥkām al-Qānūn al-Dawli fī al-Sharī'a al-Islāmiyya*, 17-218, 220-223; *Aḥkām Ahl al-Dhimma*, 1: 89-90; Aḥmad Ṭāha al-Sanūsī, *Fikrat al-Jinsiyya fī al-Tashrī' al-Islāmi*, 44, 57-63; 'Abd al-Karīm Zaydān, *Aḥkām al-Dhimmiyyin wa al-Musta'minīn*, 64; Majid Khadduri, *al-Ḥarb wa al-Silm fī Shar' al-Islām*, 219.

iii. *Dhimmīs* as full members of the Islamic state: The second group or camp of scholars claims that the *dhimmīs* are given citizenship in the Islamic state because they are considered part of the people of *dār al-Islām*. They are merely obliged to observe the Islamic *aḥkām* in relation to business or mutual conduct and can enjoy an unlimited stay in *dār al-Islām*. These scholars claim that the “citizenship” of the *dhimmī* in *dār al-Islām* is granted through the *‘aqd al-dhimma*, and the desire of the state whether the *dhimmī* should become a *dhimmī* through *tab‘iyya* (dependence or nationality) or *fath* (conquest).¹⁶⁰

Early scholars did not discuss the question of citizenship per se, since it is really a modern concept. The early Islamic system was rather based on the religious beliefs of its members. Therefore, there is no harm in considering *dhimmīs* as citizens equipped with the rights they exercised in the earlier period of *dār al-Islām*. A similar situation may even be seen in some modern states, for example, in that of Argentina, where one of the candidates for the presidency who was originally a Muslim - - Carlos Menem Saul - - converted to Catholicism to be eligible to run for office, as the constitution of Argentina specifies.¹⁶¹

In the ensuing discussion we look at the rights and obligations of *dhimmīs* within *dār al-Islām* under two headings. The first will deal with their rights and the second with their obligations.

¹⁶⁰ Ṣubḥī Maḥmaṣānī, *al-Qānūn wa al-‘Alāqāt’ al-Dawliyya fī al-Islām*, 122-123; ‘Abd al-Karīm Zaydān, *Aḥkām al-Dhimmiyyin wa al-Musta‘minīn*, 65-66; Ṭal‘at al-Ghumaymī, *Qānūn al-Salām fī al-Islām*, 323-324; Sanḥūrī, *Fiqh al-Khilāfā*, 32.

¹⁶¹ Barbara A. Tenenbaum, ed., *Encyclopaedia of Latin American History and Culture* (New York: Simon and Schuster Macmillan, 1996) 1, 113, 3. 300, and 4, 46; John Coggins and D. S. Lewis, *Political Parties of the Americas and the Caribbean*, (London: Longman Group, 1992) 16-

d. The rights of *dhimmīs*:

The '*aqd al-dhimma* sets out the rights that a *dhimmī* can expect from the Islamic state, the first of them being the guarantee of the '*ahd* and the fulfillment and honoring of the stipulations and conditions agreed upon at the time of its conclusion. Since the Muslims grant in effect the protections given to them in the Qur'ān and in accordance with the tradition of the Prophet, the '*aqd* is inviolable and must be carefully observed.

This was the case with the people of Najrān, where such an '*aqd* was concluded between 'Amr Ibn Ḥazm and the Prophet.¹⁶² The assurance of the fulfillment and guardianship of the '*aqd* was granted to the people of Najrān throughout the rule of the four rightly guided caliphs.¹⁶³ According to Shaybānī, because the Prophet concluded the '*aqd* with the people of Najran in this fashion, Muslims ought to fulfill and honor similar pacts in the same way. Whoever violates or neglects such a pact will be committing a sin and an act of injustice.¹⁶⁴ Muslims should fulfill all of the rights and obligations expected of them and provide all necessary assistance and protection, taking care never to omit any article within that *ṣulḥ*.

17.

¹⁶² The text of that *ṣulḥ* can be found in the following writings: Shaybānī, *Kitāb al-Siyar*, 267; Ibn Hishām, *Sīra*, 2: 594-595; Bulādhurī, *Futūḥ al-Buldān*, 1: 77-78; *Ṭabaqāt Ibn Sa'd*, 1: 358; Abū 'Ubayd, *Amwāl*, 218-220; Ibn Zanjawīh, *Amwāl*, 2: 499; Abū Yūsuf, *Kharāj*, 77-78; Ṭabarī, *Tārīkh*, 3: 128-129; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 636; Maqrīzī, *Imtā' al-Asmā'*, 1: 502; Ibn Kathīr, *al-Bidāya wa al-Nihāya*, 5: 77, 99; Muḥammad Ḥamīdullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 175-179.

¹⁶³ Abū Yūsuf, *Kharāj*, 77-81; Bulādhurī, *Futūḥ al-Buldān*, 1: 76-81; *Ṭabaqāt Ibn Sa'd*, 1: 358; Ibn Zanjawīh, *Amwāl*, 2:450; Muḥammad Ḥamidullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 191-193.

F. The implementation of the *'ahd al-dhimma*.

Shaybānī indicates that the highest rank of loyalty and honor in the *'uhūd* of the conditions toward *ahl al-dhimma* consists in the fact that these will be enforced and implemented even should the *dhimmīs* fail to fulfill what they have agreed to. This is the kind of respect for the principles of the *'ahd* held by the Prophet as well as the four rightly guided caliphs.

During the reign of Hārūn al-Rashīd, Shaybānī was asked by the caliph to express his opinion regarding the case of the Christians of the Banū Taghlib. The caliph asked Shaybānī to issue a *fatwā* (legal opinion) on the case of the *'ahd* that had been concluded between 'Umar ibn al-Khaṭṭāb and the Christians of the Banū Taghlib. The *'ahd* had stipulated that they not be immersed or baptized, in return for double the alms that they would normally receive as well as the promise to drop the *jizya* imposed on them.¹⁶⁵ The Banū Taghlib, however, violated the *'ahd* by choosing to baptize their children. This case was put to Shaybānī, whose *fatwā* concluded that 'Umar had established the *'ahd* with them on the basis of a certain condition that they had violated, rendering it null and void. Hārūn al-Rashīd however decided to maintain the practice of the early caliphs towards the Banū Taghlib all the same.¹⁶⁶

Moreover, during the rule of the second caliph, 'Umar, Abū 'Ubayda sought his advice regarding the *'ahd* setting out conditions for the people of Syria (Shām). 'Umar advised him to ask them for *jizya* and the release of Muslim prisoners, and in turn to

¹⁶⁴ Shaybānī, *Aṣl*, 269; Ibn Humām, *Fath al-Qadīr*, 4: 382-383.

¹⁶⁵ Abū Yūsuf, *Kharāj*, 129-130; Yaḥyā ibn Ādam, *Kharāj*, 62-63; Abū 'Ubayd, *Amwāl*, 38; Ṭabarī, *Tārīkh*, 4: 55-56; Muḥammad Ḥamīdullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 523-525.

¹⁶⁶ Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 2: 174; Ṣaymarī, *Akhbār Abū Ḥanīfa*, 121; Kardārī, *Manāqib Abū Ḥanīfa*, 434; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 95; Sarakhsī, *Sharḥ Ziyādāt al-Ziyādāt*, 140. This case will be discussed in detail below in the section on international treaty in chapter

prevent Muslim forces from committing any excesses against them, maintain fair conduct and fulfill all of their obligations. Furthermore, he told Abu ‘Ubayda to grant the Christians their request to hoist crosses during public festivals.¹⁶⁷ Abū Yūsuf, in his book *Kharāj*, writes that the caliph ‘Umar ibn al-Khaṭṭāb also recommended to his successors that they look after the interests of the *ahl al-dhimma*, to fulfill and honor their *‘uhūd*, to protect them, and not to impose heavy burdens on them or demand things that they were unable to provide.¹⁶⁸

From the above examples of Muslim traditions and practices in the formative period of Islam, it appears that the *‘aqd* or *‘ahd* with the *ahl al-dhimma* was greatly respected and honored. Furthermore, the Qur’ānic verses and the Prophetic traditions in conjunction with the early practice of the caliphs provide a sound theoretical framework for treatment of the *ahl al-dhimma* that lays out their rights and obligations in great detail and prevents their persecution at the hands of the Muslims.¹⁶⁹

i. Religious freedom and practice:

Shaybānī, clearly states that *dhimmīs* are allowed to practice their own faith without any interference from Muslims. There is ample evidence from the Qur’ān on which Shaybānī has based his judgment.

There is no compulsion in religion. Verily, the right path has become distinct from the wrong path.¹⁷⁰

three.

¹⁶⁷ Abū Yūsuf, *Kharāj*, 152.

¹⁶⁸ Ibid., 136. Examples of the extent to which Muslims went in honoring the *‘uhūd* will be discussed in detail in a later section of this study.

¹⁶⁹ Q. 9: 7 “So long, as they are true to you, stand you true to them”; The Prophet’s tradition reads: “*wafā’ bil ‘ahd khayrun min ghadr bi ghadr*” (Standing by and honoring the treaty supersedes treachery by perfidy). See Abū ‘Ubayd, *Amwāl*, 190; Bulādhurī, *Futūḥ al-Buldān*, 1: 188; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 51.

¹⁷⁰ Q. 2: 256.

This verse was revealed in conjunction with the rights of Jews in particular and the Ahl al-Kitāb and the Arab polytheists in general.¹⁷¹ In any event the *ahl al-dhimma* may never be forced to convert to Islam.¹⁷²

According to classical Muslim scholars, had it been lawful to compel the Ahl al-Kitāb to accept Islam, then the *jizya* would never have been allowed. Since infidelity is one of the most serious offences, it is between the individual and his God.¹⁷³ The Prophet sent his envoy to the people of Yemen to inform them that if they adhered to Judaism or Christianity they would not be asked to change their faith.¹⁷⁴ In the *ṣulḥ* concluded with the Christians of Najrān, as mentioned earlier, the Prophet did not demand that its signatories change their religion; rather, he asked them to persevere in it.¹⁷⁵ The four rightly guided caliphs observed the same policy, as we saw earlier, and especially in the case of ‘Umar and his Christian slave Asbaq. Asbaq refused to accept Islam and ‘Umar, despite being caliph, never forced him to convert to Islam, and in fact set him free before his death.¹⁷⁶

¹⁷¹ Wāḥidī, *Asbāb al-Nuzūl*, 78; *Tafsīr al-Qurṭubī*, 5: 409-410; *Tafsīr al-Baghawī*, 1: 314; Suyūṭī, *al-Durr al-Manthūr*, 2: 20; Ibn Humām, *Fath al-Qadīr*, 1: 275; Jaṣṣāṣ, *Aḥkām al-Qur’ān*, 1: 452-453; see also the *Muṣannaf* of Ibn Abī Shaybā, 10: 318-319, where he discusses matters dealing with the *ḥukm* on the *mushrik* (polytheist) changing his religion to another one.

¹⁷² Ibn ‘Arabī, *Aḥkām al-Qur’ān*, 1: 233-234; *Tafsīr al-Ṭabarī*, 5: 409; Fakhr al-Dīn al-Rāzī, *Tafsīr*, 4: 15-16; Ibn Kathīr, *Tafsīr*, 1: 311-312; Ibn ‘Aṭīyya, *al-Muḥarrar al-Wajīz*, 2: 388-391.

¹⁷³ Abū ‘Ubayd, *Amwāl*, 37.

¹⁷⁴ Muḥammad Ḥamīdullāh, *Majmū‘at al-Wathā’iq al-Siyāsiyya*, 209.

¹⁷⁵ Abū ‘Ubayd, *Amwāl*, 37. The actions of the Prophet in preventing Muslims from interfering in the practice of non-Muslim faith provided an example. When a group of the people from Najrān approached him in his mosque, he was still performing the ‘aṣr (afternoon) prayer with his companions, and as this was the time for the Christians to do the same, they too began praying. Some Muslims however objected and tried to prevent them from praying in the mosque. But the Prophet asked the Muslims not to interrupt or intervene, and said let them pray and they did. See Ibn Ishāq, *Sīra*, 1: 574; Ibn Sa’d, *Ṭabaqāt*, 1: 357; Ṭabarī, *Tafsīr*, 6: 151-153; Baghawī, *Tafsīr*, 2: 5; Suyūṭī, *al-Durr al-Manthūr*, 2: 141-142; Ibn Qayyim al-Jawziyya, *Zād al-Ma‘ād*, 3: 629; Ibn Kathīr, *Tafsīr*, 1: 369-371; and idem, *al-Bidāya wa al-Nihāya*, 5: 56.

¹⁷⁶ Ibn Sa’d, *Ṭabaqāt*, 6: 158; Abū ‘Ubayd, *Amwāl*, 44; Suyūṭī, *al-Durr al-Manthūr*, 2: 22; Ibn Qayyim al-Jawziyya, *Sīrat ‘Umar Ibn al-Khaṭṭāb*, 82-83.

Similarly, Islamic law does not allow Muslims to prevent *dhimmīs* from freely practicing their own religion in their own places of worship, which by the way are also considered sacred and inviolable.¹⁷⁷

The *ahl al-dhimma* are forbidden to sell alcohol and pork overtly, since these products are prohibited by the Islamic religion. However, they are allowed to consume both in their homes and communal gathering-places. Furthermore they are prevented from committing adultery. According to Shaybānī, relationships with non-Muslims are based on the acts of *ṣulḥ* established with them, and these acknowledge mutual respect and agreement for both parties.¹⁷⁸

At the time of their feast *dhimmīs* are allowed to carry crosses in their own neighborhood areas and churches. They are permitted to practice what their religion allows them to. Muslims should not intervene in their personal affairs and conduct, such as in matters of marriage and divorce. *Dhimmīs* are to follow their own religion and Muslims have no right to intervene since the *ahl al-dhimma* are allowed their own judicial system and are under no obligation to take their cases to Muslim courts.¹⁷⁹ Furthermore, if the wife of a Muslim is a *dhimmī*, he cannot prevent her from drinking alcohol, because it is permissible in her own religion. However he can prevent her from drinking alcohol within the house.¹⁸⁰

¹⁷⁷ *Sharḥ al-Siyar al-Kabīr*, 14: 1531; Ibn Humām, *Fatḥ al-Qadīr*, 4: 378; Shāfiʿī, *al-Umm*, 4: 125-126; *Mukhtaṣar al-Muzanī*, on the margins of Shāfiʿī's *al-Umm*, 5: 203; Ṭabarī, *Ikhtilāf al-Fuqahā*, 239.

¹⁷⁸ See Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1531-1536 and 1546-1547; Kasānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 9: 4335-4336; Khafās, *Adab al-Qaḍī*, 596-597 along with Jaṣṣaṣ's commentary; Ibn Humām, *Fatḥ al-Qadīr*, 4: 379-380; *Mukhtaṣar Ikhtilāf al-ʿUlamā*, 3: 497; *al-Fatāwā al-Hindiyya*, 2: 348, 350-351.

¹⁷⁹ Jaṣṣaṣ, *Adab al-Qaḍī*, 596-600; Ibn Humām, *Fatḥ al-Qadīr*, 2: 483; Ṭabarī, *Ikhtilāf al-Fuqahā*, 233.

¹⁸⁰ *Al-Fatāwā al-Hindiyya*, 2: 252; *al-Fatāwā al-Khāniyya*, 3: 591. The consensus of Muslim scholars regarding what the *dhimmī* rights and obligation as was mentioned above, see Ibn

There is some *ikhtilāf* (disagreement) among Muslim scholars over some of the practices of *dhimmīs*. Mālikī scholars say that if the *ahl al-dhimma* demonstrate what is permissible to them according to their religion, e.g., consumption of alcohol and pork, and if when they partake of it a Muslim complains, then that Muslim is liable¹⁸¹ to pay a penalty. This is because Muslims are prevented from intervening in *dhimmī* affairs such as this, or in business matters, even if these extend to *ribā* (usury).¹⁸²

Shāfiʿī scholars claim that the *ahl al-dhimma* should not produce in public “signs of abomination and infidelity,” such as the cross, alcohol, etc., whether this condition was imposed upon them or not at the time of concluding the *ʿaqd*. If they commit these acts, according to these scholars, they should be punished and the infraction would automatically invalidate the *ʿaqd*. However, Muslims should not intervene in truly private conduct or deny what it is permissible to them. If any Muslim intervenes in the affairs of *dhimmīs* he should be punished for violating the *ʿaqd*, but he is not liable for any damages, a position that the Malikī school rejects.¹⁸³

Hanbalī scholars insist that the *ahl al-dhimma* should be prevented from selling or consuming alcohol and pork in public. If they do so, then any attempt at spilling the alcohol by Muslims is not an offense deserving punishment.¹⁸⁴ Furthermore, the Imam is allowed to apply the *ḥadd* (punishment) to a *dhimmī* if he commits any act prohibited

Ḥazm, *Marātib al-Ijmāʿ*, 115-116; Ṭabarī, *Ikhtilāf al-Fuqahāʾ*, 199, 208, 233 and 236

¹⁸¹ The term *ḍamān* in Arabic means liability i.e., the obligation of the person who cause some damage or loss to another to pay an amount of money or compensation for the damage and harm he caused. See Naẓīh Ḥammād, *Muʿjam al-Muṣṭalāḥāt al-Iqtiṣādiyya fī Luḡhat al-Fuqahāʾ*, 182; ʿAlī al-Khafif, *al-Ḍamān fī al-Fiqh al-Islāmī*, 5.

¹⁸² Ibn ʿAbd al-Barr, *al-Kāfī*, 1: 418; Ibn Juzayʿ, *al-Qawānīn al-Fiqhiyya*, 164-165; Ibn Shās, *ʿAqd al-Jawāhir al-Thamīna*, 1: 491; *Tafsīr al-Qurṭubī*, 8: 113.

¹⁸³ Shāfiʿī, *al-Umm*, 4: 126-127; Ghazālī, *Wajīz*, 2: 201-202; *Mughnī al-Muḥtāj*, 4: 255, 257; *Nihāyat al-Muḥtāj*, 8: 98, 103-104; Ibn Jamāʿa, *Taḥrīr al-Aḥkām fī Tadbīr Ahl al-Islām*, 253; Nawawī, *Rawḍat al-Ṭālibīn*, 10-321; *Fatāwā al-Ramlī*, 4: 59-60; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 145.

in his own religion, such as theft or adultery. On the other hand, the Imām is not allowed to prescribe punishments for any action allowed by his faith, such as drinking alcohol or eating pork, as long as it is conducted in private.¹⁸⁵ Furthermore, a Muslim may not prevent his *dhimmī* wife from drinking alcohol or wearing the cross. Furthermore, he may not prevent her from going to church. Awzā'ī too would permit her to go to church if she obtains her husband's permission.¹⁸⁶ The Muslim husband should not force his *dhimmī* wife to perform ritual ablution either.¹⁸⁷

ii. The right of *dhimmīs* to build ritual places of worship:

According to Shaybānī there are four cases of disagreement regarding the right to build structures for *dhimmī* ritual practice, which differ according to the part of Islamic territory in question. The first insists that it is prohibited in the Arabian Peninsula and the territories that are overwhelmingly Muslim¹⁸⁸ to build any *kanīsa* (church), *bay'a* (synagogue) or *bayt al-nār* (temple of fire).¹⁸⁹ The second maintains that in places conquered by Muslims any existing ritual places from prior to the time of conquest should be preserved. According to the third, in places conquered under an *'aqd al-ṣulḥ*, places of worship may or may not be built depending on the content of the

¹⁸⁴ *Aḥkām Ahl al-Milal*, from *al-Jāmi' li Masā'il al-Imām Aḥmad*, 287-288.

¹⁸⁵ Bahūtī, *Kashshaf al-Qinā'*, 3: 117; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 61, 672, 727; and idem, *Zād al-Ma'ād*, 3: 638; Mirdāwī, *Inṣāf*, 4: 238; Ibn Qudāma, *Mughnī*, 10: 608-609; *Majmū'at Fatāwā Ibn Taymiyya*, 28: 642-643 and 677; Ibn Muflīḥ, *al-Mubdi'*, 3: 416; Raḥibānī, *Maṭālib Awlū al-Nahī*, 2: 603.

¹⁸⁶ Khalāl, *Aḥkām Ahl al-Milal*, 355-356; Ibn Qudāma, *Mughnī*, 8: 130.

¹⁸⁷ Ibn Qudāma, *Mughnī*, 8: 129.

¹⁸⁸ The Arabian Peninsula. Mālik the jurist defined the limit of the Arabian Peninsula as Madina, Ḥijāz, Yemen and Yamāma. Bukhārī considered it to include only the territories of Mecca and Medina. See, Ibn Ḥajar al-'Asqalānī, *Hadīṣ al-Sārī*, 98 and 102; Ibn Humām, *Fath al-Qadīr*, 4: 379-380. In regard to the territories gained by Muslims, according to Ibn 'Abbās, this was Arab territory, or the territory that was taken from the polytheists. See, 'Abd al-Razāq, *al-Muṣannaf*, 6: 90.

¹⁸⁹ *Kanīsa*, not originally an Arabic word, refer to Christian spiritual place, the *B'ah* synagogue, the spiritual place for Jews, while the house of fire is a ritual place for the Majūs. See, Ibn Humām, *Fath al-Qadīr*, 4: 377; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 238.

conditions concluded by both parties. The fourth and final opinion is that in places where the majority population is *ahl al-dhimma*, the inhabitants should not be prevented from building new places of worship or renovating old ones.¹⁹⁰

When the 'Abbasid caliph Hārūn al-Rashīd consulted Abu Yūsuf regarding the ritual places of worship of the *ahl al-dhimma*, he asked why they had resumed their function after the Islamic conquest and had not been demolished, and whether *dhimmīs* are permitted to bring out their crosses during their feasts. Abū Yūsuf replied that if the *ṣulḥ* (pact of peace) concluded between Muslims and the *ahl al-dhimma* stipulating payment of the *jizya* prevented the demolishing of any places of worship in the conquered lands and allowed the Christians to bring out their crosses during their feasts, then the agreed upon conditions could not be violated, which explained why these structures must not be demolished.¹⁹¹ Furthermore, Abū Yūsuf indicated that any new attempt to construct churches, etc. outside the conditions of the *'aqd*, should not be forbidden either.

Dhimmi places of worship were kept protected under the rule of the first four caliphs, and this practice established the theoretical framework.¹⁹² The consensus of scholars on the building of places of worship in Muslim territory was that the *ahl al-dhimma* should not build any new such structures in territories freshly conquered by Muslims, or in the Arabian Peninsula.¹⁹³ Furthermore, the consensus of scholars was not

¹⁹⁰ Shaybānī, *Aṣl*, 265; and idem, *al-Siyar al-Kabīr*, 4: 1528; Tabarī, *Ikhtilāf al-Fuqahā'*, 238;; *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 497; see also in detail the following: Sarakhsī, *Mabsūṭ*, 16: 39; Ibn Humām, *Fath al-Qadīr*, along with *al-'Ināya 'alā al-Hidāya*, 4: 377-379; *Ḥāshiyat Ibn 'Abidīn*, 4: 202; Zayalā'ī, *Tabyīn al-Ḥaqā'iq*, 3: 279-280; *al-Fatāwā al-Hindiyya*, 2: 247-248; Ramlī, *Fatāwā al-Khayriya li Naf' al-Bariya*, 1: 92-93; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4336.

¹⁹¹ Abū Yūsuf, *Kharāj*, 149.

¹⁹² Ibid., 159.

¹⁹³ Tabarī, *Ikhtilāf al-Fuqahā'*, 236.

to prevent the *ahl al-dhimma* from building new places of worship in areas under their control or authority.¹⁹⁴

There is additional disagreement over the results of this consensus. Mālik for one indicates that Christians are not permitted to build their churches in Islamic territory unless they have been given permission to do so; once they are permitted by the government, then Muslims cannot demolish their new churches. For Malik, as long as there is a written agreement between the *ahl al-dhimma* and Muslims, the latter should treat the *ahl al-dhimma* according to the content of the agreement and its conditions.¹⁹⁵

Shāfiʿī on the other hand insists that the *ahl al-dhimma* should not build new places of worship within the Muslim territories, although any such structures built prior to the Islamic conquest should be left alone and not demolished. In lands conquered by Muslims by force, they should respect whatever conditions were agreed upon in the *ʿaqd al-ṣulḥ*.¹⁹⁶ Ibn Ḥanbal too asserts that the *ahl al-dhimma* are not permitted to build new places of worship in any Muslim territory unless there is a condition within the *ʿaqd al-ṣulḥ* that stipulates otherwise. If they are permitted to do so, then they are allowed to build their churches according to the *ʿaqd*.¹⁹⁷

¹⁹⁴ Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿUlamāʾ*, 3: 497.

¹⁹⁵ Mālik, *Mudawwana*, 4: 424; *al-Qawānīn al-Fiqhiyya*, 164; *al-Sharḥ al-Ṣaghīr ʿalā Aqrab al-Masālik*, 2: 60-61; *Mawāhib al-Jalīl*, 2: 335-336; *ʿAqd al-Jawāhir al-Thamīna*, 1: 492-493; Ibn ʿAbd al-Barr, *Kāfi*, 1: 464; Ṭabarī, *Ikhtilāf al-Fuqahāʾ*, 234; *Mukhtaṣar Ikhtilāf al-ʿUlamāʾ*, 3: 497; *Tafsīr al-Qurṭubī*, 11: 70-71.

¹⁹⁶ Shāfiʿī, *Umm*, 4: 126; *Mukhtaṣar al-Muzanī* on the margins of Shāfiʿī, *al-Umm*, 5: 198; *Rawḍat al-Tālibīn*, 10: 323; *Mughnī al-Muḥtāj*, 4: 254; Ramli, *Nihāyat al-Muḥtāj*, 8: 92-94; Māwardī, *Aḥkām al-Sulṭāniyya*, 146; *Fatāwā al-Subkī*, 2: 369; Ibn Ḥajar al-Haythamī, *al-Fatāwā al-Fiqhiyya al-Kubrā*, 4: 248; *Fatāwā al-Ramli*, 56.

¹⁹⁷ Khalal, *Aḥkām Ahl al-Milal*, 345-350; *Majmūʿat Fatāwā Shaykh al-Islām Ibn Taymiyya*, 18: 632; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 2: 662; Ibn Mifliḥ, *al-Mubdiʾ*, 3: 420-421; Mardāwī, *al-Inṣāf*, 4: 236-239; Bahūfī, *Kashshāf al-Qināʾ*, 3: 123-124; Ibn Qudāma, *al-Mughnī*, 10: 599-602.

The prohibition against compulsion in religion seems to have been respected to a remarkable degree over the course of time. According to a number of European scholars, the history of the relations of Muslims with the *ahl al-dhimma* testifies that there was no single instance of Muslims systematically forcing non-Muslims to convert to Islam or intervening in their religious practices. Thomas Arnold states that there were never any systematic attempts by the Muslims to impose restrictions upon the *ahl al-dhimma* to force them to change their religion or any organized attempts at some kind of oppression. The present existence of many churches, etc., within the Muslim world, is a testament to general religious tolerance there.¹⁹⁸

iii. The protection and defense of the *ahl al-dhimma*.

The *'aqd al-dhimma* is itself an absolute restraint upon violence against *dhimmīs*. Indeed, Muslims are not only prevented from intervening in their internal affairs, but, according to the *'aqd al-dhimma*, they are even obligated to protect them and to defend them from their enemies.¹⁹⁹ According to Shaybānī, the *imām* is under an obligation to defend the *ahl al-dhimma* from any attack, and should they become prisoners of war, the *imām* has to use all his powers to secure their release.²⁰⁰

¹⁹⁸ See Thomas Arnold, *Preaching of Islam*, that was translated to Arabic "Da'wat al-Islām" by Ḥasan Ibrahim, 98-99; Edmond Rabāt, *Min Ajl Naẓariyya fī al-Qānūn al-Dawli al-Islāmi*, translated to Arabic by Ibrahim 'Awaḍ, 40; Gustave LeBon, *Ḥaḍārat al-'Arab*, translated to Arabic by 'Ādil Zu'aytar, 128-129; Najib Armazānī, *al-Shar' al-Dawli fī al-Islām*, 132; S. D. Goitein, *Jews and Arabs* (New York: Schocken Books, 1964):7. Goitein, in this event, asserts that:

There can be no doubt that the legal status of the Jewish religion under Islam, particularly during its early period when the Arabs still predominant, was very much better than their situation in the Byzantine Empire, which ruled over many countries occupied later on by Arabs.

¹⁹⁹ *al-Siyar al-Kabīr* with Sarakhsī's commentary, 1: 208-209, 2: 688, 4: 1299; *al-Fatāwā al-Hindiyya*, 2: 190-191; Sarakhsī, *Mabsūṭ*, 10: 89; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 84.

²⁰⁰ Shaybānī, *al-Siyar al-Kabīr*, 4: 1854-1855.

Furthermore, if Muslims have concluded an *'ahd* with the *ahl al-ḥarb* and the latter launches an attack on the *ahl al-dhimma*, the Muslims must break their pact with the *ahl al-ḥarb* in order to protect and defend the *ahl al-dhimma*, since these latter are part of the *ahl dār al-Islām*. In this specific instance the *'aqd* with the *ahl al-dhimma* takes precedence over the *'aqd* with the *ahl dār al-ḥarb*.²⁰¹ In the event that the *ahl al-ḥarb* conclude or renew their *'ahd* with Muslims and they have prisoners from among the *ahl al-dhimma*, the Muslims cannot conclude that *'aqd* unless they secure the release of all the *ahl al-dhimma* prisoners. This is because the *ahl al-ḥarb*, according to Shaybānī, tend to treat their prisoners harshly. Muslims should not therefore conclude an *amān* or *'ahd* with any party that treats their prisoners in this fashion.²⁰² The practices of the Prophet and the four Rightly Guided Caliphs regarding the protection of the *ahl al-dhimma* are well known, and the *ṣulḥ* of the people of Najrān is prime evidence of these practices.²⁰³

Abu Yūsuf indicates that if the Muslims are not capable of defending the *ahl al-dhimma* they have to return the entire amount of the *jizya* collected from them, since the purpose of *jizya* is to protect the *dhimmīs* from any foreign attack. An illustration of this can be seen in the practice of Abū 'Ubayda in Syria, who asked all of his deputies to return to the *ahl al-dhimma* what they had collected from them as *jizya* when he had to stage a tactical retreat. Therefore, there exists a consensus among scholars regarding the fulfillment of the condition of protecting and defending *dhimmīs* as long as they have the capability.²⁰⁴

²⁰¹ Ibid., 4: 1856.

²⁰² Ibid., 5: 1892.

²⁰³ Shaybānī, *Aṣl*, 268.

²⁰⁴ Abū Yūsuf, *Kharāj*, 149-150; Bulādhurī, *Futūḥ al-Buldān*, 1: 162; Muḥammad Ḥamīdullāh,

Shāfi'ī indicates that the *imām* has an obligation to protect fully the *ahl al-dhimma* from any attack, wherever they are. The *imām* should prevent the enemies from taking members of the *ahl al-dhimma* prisoner, whether they have written this condition into the 'aqd or not. In the event that the *imām* is not capable of defending them from their enemies he has to return the *jizya* that was collected from them.²⁰⁵ Ḥanbali scholars express a similar opinion.²⁰⁶

iv. The preservation of individual life, honor and wealth:

The Qur'ān forbids Muslims to commit any act of aggression against the *ahl al-Kitāb* once they pay the *jizya*.²⁰⁷ In fact, because fighting against the *ahl al-dhimma* is forbidden in the Qur'ān, it then follows that their preservation is equally important.²⁰⁸ Among the requirements of the 'aqd *al-dhimma* is respect for *dhimmīs* and the prevention of any harassment. According to Shaybānī, if a Muslim kills a *dhimmī* intentionally, then the Muslim will be punished as if he had killed a Muslim.²⁰⁹ In fact, it is the consensus of Muslim scholars on this issue that the punishment is applicable on an equal basis, i.e., as if a Muslim had killed another Muslim. The family of the person

Majmū'at al-Wathā'iq al-Siyāsiyya, 470; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 240; Ibn Ḥazm, *Marātib al-Ijmā'*, 116, 138.

²⁰⁵ Shāfi'ī, *al-Umm*, 4: 127; Bayḍāwī, *al-Ghāya al-Quṣwā fī Dirāyat al-Fatwā*, 2: 158; Nawawī, *al-Muhadhdhab*, 18: 196; and idem, *Rawḍat al-Tālibīn*, 10: 321-322; Ramlī, *Mughnī al-Muḥtāj*, 4: 253; *Tahrīr al-Aḥkām*, 253; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 143; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 240-241.

²⁰⁶ Khalāl, *Aḥkām Ahl al-Milal*, 336-337; Ibn Taymiyya, *al-Muḥarrar fī al-Fiqh*, 2: 187; Ibn Muflih, *al-Mubdi'*, 3: 428; Ibn Qudāma, *al-Mughnī*, 10: 613; Bahūtī, *Kashshāf al-Qinā'*, 3: 129; Mardāwī, *al-Inṣāf*, 4: 247; *Majmū' Fatāwā Ibn Taymiyya*, 28: 617-618.

²⁰⁷ Q. 9: 29,

And those who acknowledge not the religion of truth (i.e. Islam) among the people of the Scripture (Jews and Christians), until they pay the *Jizyah* with willing submission, and feel themselves subdued.

²⁰⁸ Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4330.

²⁰⁹ Shaybānī, *al-Hujja 'alā Ahl al-Madīna*, 4: 341; *Aṣl*, 4: 488; *Kitāb al-Āthār*, 128. Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 1: 140-144; Sarakhsī, *Mabsūt*, 26: 132-136; Ibn Humām, *Fatḥ al-Qadīr*, 6: 44;

killed should be given the right to demand blood money, and there should be no amnesty without it.²¹⁰ However, Shāfi'ī, Mālikī and Ḥanbalī scholars differ from their Ḥanāfi counterparts on this specific issue. They agree that punishment should apply, but not on equal terms, i.e., where the killer must be killed. They do agree however to a sum of blood money being granted to different groups of *ahl al-dhimma*.²¹¹

The preservation of an individual is connected with the preservation of his or her honor; therefore, Muslims have no right to assault the honor of the *ahl al-dhimma*. In the case, for instance, that a Muslim commits adultery with a *dhimmī* female within *dār al-Islām*, the full *ḥadd* (punishment) should be inflicted on him.²¹² In the event that a Muslim commits adultery outside the realm of *dār al-Islām*, some scholars are of the opinion that the punishment of adultery is not applicable, since by definition the *ḥudūd* cannot be applied within *dār al-ḥarb*.²¹³

Al-Qarāfi explains that the '*aqd al-dhimma*' is a contract guaranteeing the rights of *dhimmīs* and obligating Muslims to fulfill these rights. Whoever commits any type of assault (even verbal assault) on another, or assists in an assault, commits a punishable sin.²¹⁴

Kasānī, *Badā'i' al-Ṣanā'i'*, 10: 4625-4626; *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 5: 157-159;

²¹⁰ Ibn Ḥazm, *Marātib al-Ijmā'*, 116, 138-139; and idem, *al-Muḥaḍḍar*, 10: 348; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 240.

²¹¹ Mālik, *Mudawwana*, 6: 427-428; Ibn al-Rushd, *al-Muqadamāt al-Mumahidāt*, 3: 281; Ibn Juzayy, *al-Qawānīn al-Fiqhiyya*, 362; Shāfi'ī, *al-Umm*, 6: 32-34; Nawawī, *al-Muḥadhdhab*, 18: 197-202; and idem, *Rawḍat al-Ṭālibīn*, 9: 148; Ramli, *Mughnī al-Muhtāj*, 4: 14; Ibn Qudāma, *al-Mughnī*, 9: 334; Ibn Taymiyya, *al-Muḥarrar fī al-Fiqh*, 2: 125; Mardāwī, *al-Inṣāf*, 9: 462; *Aḥkām Ahl al-Milal*, 318-323; Ibn Ḥazm, *al-Muḥaḍḍar*, 10: 347-355; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 626; *Tafsīr*, *al-Qurṭubī*, 2: 248; Shawkānī, *Nayl al-Awṭār*, 7: 10-14; 'Abd al-Karīm Zaydān, *Aḥkām al-Dhimmiyyīn wa la-Musta'minīn*, 254.

²¹² Sarakhsī, *Mabsūṭ*, 9: 57; Ibn Humām, *Fatḥ al-Qadīr*, 4: 213; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4125.

²¹³ Abū Yūsuf, *al-Radd 'alā Siyar al-Awzā'i'*, 80-83; Shāfi'ī, *al-Umm*, 7: 323; Ibn Humām, *Fatḥ al-Qadīr*, 4: 152-154, 6: 30; Sarakhsī, *Mabsūṭ*, 9: 99-100; and idem, *Sharḥ al-Siyar al-Kabīr*, 5: 1851-1852; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4152-4153; Ibn Qudāma, *al-Mughnī*, 10: 528.

²¹⁴ Qarāfi, *Furūq*, 3: 14.

In the case of preservation of wealth, this is again connected with the preservation of both an individual and his honor. The Islamic *ahkām* regarding the preservation of the wealth of the *ahl al-dhimma* is the same as those protecting the wealth of Muslims within *dār al-Islām*.²¹⁵ Muslims are prohibited from taking the wealth of *dhimmīs* unjustly or by force, or in a way that violates the ‘*aqd*,²¹⁶ such as, for example, through the taking of wealth by force or by theft, because these acts are a kind of oppression. If a Muslim commits such acts and causes any damage or harm to a *dhimmī* wealth the Muslim is liable for ensuring damages.²¹⁷

The consensus of scholars regarding the preservation of *dhimmī* wealth is that Muslims have an obligation to provide every protection against wrongdoing, harm or damage. Muslims should only earn or benefit from the wealth of the *dhimmī* in a fair and just way. Moreover, not only should Muslims refrain from stealing their wealth, but they should also protect it from highway robbers and other thieves. Should a Muslim steal from a *dhimmī*, the *ḥadd* punishments must apply, including the amputation of the thief’s hand and restitution of the property stolen.²¹⁸

In the event that alcohol or pork is stolen, the punishment inflicted on a Muslim will not be amputation of the hand, but simply repayment of the value of what was stolen.²¹⁹ The same opinion was expressed by the Shāfi‘ī and Sufyān al-Thawrī

²¹⁵ Shaybānī, *al-Siyar al-Kabīr*, 4: 1299, 1324; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1530; Wāqidi, *Maghāzī*, 2: 691.

²¹⁶ ‘Abd al-Razāq, *al-Muṣanaaf*, 6: 91-96.

²¹⁷ Shaybānī, *al-Siyar al-Kabīr*, 4: 1544-1545; *al-Fatāwā al-Hindiyya*, 2: 251-252; Sarakhsī, *Mabsūṭ*, 11: 53, 102-104; Kasānī, *Badā’i’ al-Ṣanā’i’*, 9: 4413-4414; Ṭabarī, *Ikhtilāf al-Fuqahā’*, 160.

²¹⁸ Ṭabarī, *Ikhtilāf al-Fuqahā’*, 146; Ibn Rushd, *Bidāyat al-Mujtahid*, 2: 446; Ibn Qudāma, *al-Mughnī*, 10: 271; Ibn Taymiyya, *al-Muharrar fī al-Fiqh*, 2: 158; Ramifī, *Mughnī al-Muḥtāj*, 4: 453; *Mawsū‘at al-Ijmā’ fī al-Fiqh al-Islāmī*, 1: 342.

²¹⁹ Khalāl, *Ahkām Ahl al-Milal*, 289-291; Ibn Qudāma, *al-Mughnī*, 10: 278-279; Ibn Rushd, *al-Muqadamāt al-Mumahidāt*, 3: 220.

regarding the penalties meted out to Muslims who steal alcohol or pork from a *dhimmī*.²²⁰

v. The protections of *dhimmī* and their rights in social matters:

As mentioned earlier, the *ahl al-dhimma* is seen as part of the *ahl dār al-Islām*²²¹ and a national entity within the greater nation of Islam. The obligation of the Muslim state is to provide to all of its citizens certain basic needs, such as a social environment that makes life easier for all. Indeed the *ahl al-dhimma* enjoys these advantages as well.

According to scholars, Muslims are obligated to make social contact with *dhimmīs*. The Prophet and his companions were, in practice, open to socializing with non-Muslims whether they were of the *ahl al-ḥarb* or *dhimmīs*. There is an account of how the Prophet sent five hundred *dinārs* to the people of Mecca at a time of drought, asking that the money to be given to Abu Sufyān and distributed among the poor of the people of Mecca. In most *fiqh* books as well there is a special chapter dealing with contacts with non-Muslims.²²²

Abū Yūsuf gives the illustration how of ‘Umar ibn al-Khaṭṭāb, when he noticed an elderly man begging for money, spoke to him and learned that he was a Jew. ‘Umar then asked him how he had come to fall so low in life, and was told that he had no choice but to pay *jizya* despite being old and unable to work. ‘Umar was very disturbed by the story of the elderly man: he took him to his house, gave him some money and asked the deputy of the *bayt al-māl* (public treasury) to look after the man and the

²²⁰ Mālik, *Mudawwana*, 5: 365; Ibn Shāsh, *‘Iqd al-Jawahir al-Thamīna*, 2: 743; Khalāl, *Aḥkām Ahl al-Milal*, 290; Ibn Qudāma, *al-Mughnī*, 10: 442-443; Bahūtī, *Kashshāf al-Qinā*, 4: 84; ‘Alī al-Khafīf, *al-Dhamān fī al-Fiqh al-Islāmī*, 49-51.

²²¹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 2: 688, 5: 1703, 2245.

²²² See for example. Abū ‘Ubayd, *Amwāl*, p. 643; Ibn Zanjawīh, *Amwāl*, 3: 1212.; *Sharḥ al-Siyar al-Kabīr*, 1: 96; *Ṭabaqāt Ibn Sa‘d*, 2: 90; *Sīrat Ibn Hishām*, 2: 617.

situation of needy people like him. ‘Umar stated that, while *jizya* should be collected from the able-bodied young, it was wrong to do so from those of advanced years. This became standard practice with the *ahl al-dhimma*.²²³

Similar decisions were made by the successors of the four Rightly Guided Caliphs. To mention but one example, ‘Umar Ibn ‘Abd al-‘Azīz wrote to his deputy in Baṣra (Irāq), ‘Uday ibn Arṭā, and

advised him to look after the *ahl al-dhimma* there, to ascertain the elderly people, the weak and the poor and to give them what they needed from the *bayt al-māl* (public treasury) to enable them to survive and overcome their hardships.²²⁴

Some scholars saw it as permissible to pay out *zakāh* (alms tax) to the *dhimmī*. This is an extraordinary indication of the extent to which Muslim looked after the needs of the *ahl al-dhimma*. In addition, a Muslim’s duty was seen as more than just collecting *jizya*: his prime responsibility in this regard was to look after the *dhimmīs* in their time of need. This was the opinion of Zufar, the disciple of Abu Ḥanīfa, and of others as well.²²⁵

Good will toward *dhimmīs* is a significant aspect of the *‘aql ahl al-dhimma*. Muslim granted the *ahl al-dhimma* privileges and rights such as protection of their wealth, honor and lives. Muslims felt obliged to treat them with fairness and to be kind

²²³ The Qur’ān makes two allusions to this matter, the first in regard to the description of charity (*ṣadaqa*) to the poor and needy, and the second to occasions when a fellow Muslim ask for money, in which case one should not repulse him. Q. 94: 10; see Abu Yūsuf, *Kharāj*, 136. A similar event is that reported by Abū Yūsuf regarding the *ṣulḥ* concluded with the people of Ḥira under the rule of Abu Bakr. The *‘aql* contained articles making provision for elderly people who could not find work and feed their families, or they got sick, or were wealthy and then became poor, his own people start giving him charity. In such as case the *jizya* will be lifted and the Muslims will look after so that needs from Bayt al-Māl (public treasury) as long as he reside within *dār al-Islam*. See Abū Yūsuf, *Kharāj*, 155-156.; Abū ‘Ubayd, *Amwāl*, 56-57.

²²⁴ Abū ‘Ubayd, *Amwāl*, 56-57; Ibn Zanjūwai, *Amwāl*, 1: 163.

²²⁵ Sarakhsī, *Mabsūt*, 2: 202, 3: 3: 19 and Shaybānī, *Aṣl*, 2: 183.

to them in both social and material aspects, despite their dissent from the Islamic religion.²²⁶

vi. The rights of *ahl al-dhimma* to reside in and freely move within *dār al-Islām*.

Since the *dhimmī* is considered an integral member of the *ahl dār al-Islām*, he is therefore permitted to reside anywhere he wants and to move freely within its borders. Ibn Ḥazm indicates that there was a consensus on the part of scholars that the *ahl al-dhimma* were free to reside and move as they pleased within *dār al-Islām*, the sole exception being the sacred places of Mecca.²²⁷ There were some other disagreements as well among scholars however regarding the places they can and cannot enter.

According to Shaybānī, the *ahl al-dhimma* are not permitted to enter and reside in sacred places, such as the sacred mosque in Mecca. Shaybānī reached his opinion in reference to the Qur'ānic verse,

Verily the *Mushrikūn* (polytheists) are impure. So let them not come near al-Masjid al-Ḥaram.²²⁸

Nor are they allowed to reside in the Muslim cities built by Muslims such as Kufa, Baghdād, Baṣra and Wāsiṭ.²²⁹ According to Shaybānī, the Prophet evacuated them from Medina, while 'Alī evacuated them from Kūfa. However they are fully permitted to

²²⁶ Q. 60: 8, reads:

Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your home. Verily, Allah loves those who deal with equity. See al-Qarāfi, *Furūq*, 3: 14-16.

²²⁷ Ibn Ḥazm, *Marātib al-Ijmā'*, 122; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 233; *Mawsū'at al-Ijmā' fi al-Fiqh al-Islāmī*, 1: 444.

²²⁸ Q. 9: 28. The word *jānib* (near) used in this verse does not necessarily mean permit them not, it meant staying within the mosque. See *Sharḥ al-Siyar al-Kabīr*, 1: 134-135; *Ikhtilāf al-Fuqahā'*, 226; *Hāshiyat Ibn 'Abdīn*, 4: 208-209; Ibn Nujaym, *al-Ashabāh wa al-Nadhā'ir*, 325; Jaṣṣaṣ, *Aḥkām al-Qur'ān*, 3: 88-89; 'Aynī, *Amdat al-Qārī*, 14: 299-300; Ṭahāwī, *Mushkhal al-Athār*, 7: 183

²²⁹ *Hāshiyat Ibn 'Abdīn*, 4: 203.

reside in any other places except those specifically of limits.²³⁰ According to a Prophetic *ḥadīth* recorded in the *Muwaṭṭaʾ* of Mālik, “there cannot be two religions within the Arabian peninsula.”²³¹

Abū Ḥanīfa and Abū Yūsuf differ from Shaybānī and maintain that it is up to the *dhimmī* to decide for himself where to live and stay. According to both Abū Ḥanīfa and Abū Yūsuf, the *dhimmī* is allowed and permitted to reside in any place of the *dār al-Islam*. The *dhimmī* is also allowed to enter any mosque. The only reason for not permitting the *dhimmī* to enter the sacred mosque in Mecca is because the polytheists used to perform pilgrimage there in the nude prior to the coming of Islam. They are therefore banned forever afterward from visiting the site out of fear that they will repeat that performance.²³²

Mālik indicates that the *ahl al-dhimma* are permitted to reside in all Islamic territories except for certain places in the Arabian peninsula, i.e., Mecca, Medina and Yamāma.²³³ They are permitted to pass through as travelers and to stay temporarily, but no longer than three days. This is what the Prophet permitted with respect to the Jews and Majūs, allowing them to stay three nights for marketing and meeting their needs.²³⁴ A similar opinion was adopted by al-Shāfiʿī.²³⁵ Ibn Ḥanbal’s opinion was that

²³⁰ Ṭabarī, *Ikhtilāf al-Fuqahāʾ*, 236.

²³¹ See, *al-Muwaṭṭaʾ* with Sharḥ al-Zarqānī, 4: 233-243; *Ṣaḥīḥ al-Bukhārī*, 6: 170, 270; ‘Umar the caliph evacuated the Jews and Christians from the Arabian Peninsula and its surroundings, i.e., Mecca and Medina, see, al-Tamarāshī, *al-Durr al-Mukhtār*, 4: 208, along with *Ḥāshiyat Ibn ‘Abidīn*

²³² Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 134-135; Ṭabarī, *Ikhtilāf al-Fuqahāʾ*, 226; *Ḥāshiyat Ibn ‘Abidīn*, 4: 208-208; Ibn Nujaym, *al-Ashbāḥ wa al-Naẓāʾir*, 325; Jaṣṣaṣ, *Aḥkām al-Qurʾān*, 3: 88-89; ‘Aynī, *Umdat al-Qārī*, 14: 299-300; Ṭaḥāwī, *Mushkhal al-Athār*, 7: 183

²³³ *Ḥāshiyat Ibn ‘Abidīn*, 4: 203.

²³⁴ Ibn Shāsh, *Iqd al-Jawāhir al-Thamīna*, 1: 487; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 187-188; *al-Muntaqā Sharḥ al-Muwaṭṭaʾ*, 7: 195-196; *Tafsīr al-Qurṭubī*, 8: 104; ‘Aynī, *Umdat al-Qārī*, 14: 299.

²³⁵ Shaybānī, *Muwaṭṭaʾ* Malik, 3: 378; Muṣannaf ‘Abd al-Raẓāq, 6: 51 and Ibn Zanjūwai,

they are allowed to enter the sacred places for trade purposes. However they are not permitted to stay longer than three days. Should a *dhimmī* fall ill, he is allowed to stay until his recovery, or should they not be able to sell their merchandise within three days, they may be allowed to stay longer with the permission of the *imām*. Whatever happens, they are not permitted to enter the sacred mosque of Mecca, but they are allowed to enter the sacred mosque of Medina.²³⁶

Muḥammad Rashīd Riḍā denies in his *Tafsīr al-Manār* of the lack of the *ahl al-dhimma* to stay within the limits of the Arabian Peninsula. Islam clearly sees the peninsula as the birthplace of the faith, and rightfully forbids any non-Muslims from entering the place, just as it is the right of any state to protect its borders from foreign presence. For him, this provision does not contradict any principle of human rights; rather, it reinforces them.²³⁷

In the previous pages we have focused on the rights of *dhimmīs* within *dār al-Islām*. In the following pages we will look instead at the obligations of *dhimmīs* towards *dār al-Islām*. Here the discussion will cover specific elements such as the obligation of the *dhimmī* towards the Islamic judicial system, his responsibilities with regard to payment of *jizya* and his position with respect to the *kharāj*.

Amwāl, 1: 276.

²³⁵ See, Shāfiʿī, *al-Umm*, 4: 99-101; Ramlī, *Mughnī al-Muḥtāj*, 4: 246-247; Nawawī, *Rawḍat al-Tālibīn*, 10: 308-309; and idem, *Takmilat al-Majmūʿ*, 18: 311; Māwardī, *Aḥkām al-Sulṭāniyya*, 51; Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, 11: 393-394; Ibn Ḥajar, *Fath al-Bārī*, 6: 171, 272.

²³⁶ Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 185-187; Khalāl, *Aḥkām Ahl al-Milal*, 54-56; Ibn Qudāma, *al-Mughnī*, 10: 428; Ibn Muflīḥ, *al-Mubḍīʿ*, 2: 424-425; Mardāwī, *al-Inṣāf*, 4: 239-241; Bahūtī, *Kashshāf al-Qināʾ*, 3: 101; *Majmūʿat Fatawā Ibn Taymiyya*, 22: 194.

²³⁷ Muḥammad Rashīd Riḍā, *Tafsīr al-Manār*, 10: 373-374.

vii. The submission of *dhimmīs* to the Islamic judicial system:

The consensus of jurists regarding the mistreatment of a *dhimmī* by a Muslim is that it constitutes a violation of the '*aqd al-dhimma*'. Since *dhimmīs* pay *jizya*, they are entitled to just treatment and fair dealing on the basis of the '*aqd*' concluded with them. In the case that a *dhimmī* feels that he has been mistreated, he can take his case before an Islamic judge, and the same applies in the case of a Muslim complainant against a *dhimmī*. The judge must look into this case and issue a verdict according to Islamic law.²³⁸

However, there are some cases of disagreement on the part of jurists regarding the submission of the *ahl al-dhimma* to the Islamic judicial system. The areas where a *dhimmī* is generally seen as subject to Islamic law are *mu'āmalāt* (business transactions), inheritance and '*uqūd*' (contracts). In such instances the *dhimmī* is under an obligation to submit his case before the Islamic judiciary, unless the case involves the selling of alcohol or pork, since this is permitted to them.²³⁹

The Prophet prevented the people of Najrān from engaging in *ribā* (usury) with Muslims.²⁴⁰ In matters of mutual trade or business transactions, Muslims and the *ahl al-dhimma* must comply with the Islamic law as is clearly stated in the Qur'an:

O you believe, eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent.²⁴¹

²³⁸ Ibn al-Qāṣṣ al-Ṭabarī, *Adab al-Qāḍī*, 1: 141; Ibn Ḥazm, *Marātib al-Ijmā'*, 50; Ibn Farḥūn, *Tabṣirat al-Hukkām*, 1: 96; *Mawsū'at al-Ijmā' fi al-Fiqh al-Islamī*, 2: 909.

²³⁹ Q. 5: 48,

And so judge between them by what Allah has revealed and follow not their vain desires.

²⁴⁰ Q. 4: 161,

And they're taking of usury though they were forbidden from taking it and they are devouring of men's substance wrongfully (bribery, etc.).

²⁴¹ Q. 4: 29.

Regarding the *ḥudūd* (criminal punishments), the Imām must judge *dhimmīs* in accordance with the rules on *ḥadd* (criminal acts) in Islamic law, except insofar as the case deals with what is permissible to *dhimmīs* according to their own religion, such as the drinking of alcohol, in which case the *ḥadd* will apply; however, it would not apply in the case of a *dhimmī*, because it is permitted for him to drink alcohol according to his own religion.

The Islamic laws on adultery are applicable to both Muslims and *ahl al-dhimma*, whenever they report such a case to the imām. This was the practice during the time of the Prophet and the four Rightly Guided Caliphs. Therefore, under the *ḥudūd*, all those belonging to *dār al-Islām* are treated according to Islamic law without distinction as to the religion to which they belong.²⁴²

Mālik is of the opinion that, while the *ahl al-dhimma* must appeal to the Islamic judiciary in the case of business transactions, there are cases where it is not an obligatory but a voluntary decision to present their case to a Muslim *qāḍī* (judge). The *qāḍī* in turn may accept or turn down the case. Should he accept to do so, his verdict will be in accordance with Islamic law. In the case of theft for instance, the *dhimmī*, if found guilty, will have his hand cut off. He is likewise subject to the Islamic legal penalties for murder. However if he should commit adultery he will not be judged according to Islamic law but rather according to the provisions of his own religion. In

²⁴² Shaybānī, *Aṣl*, 5: 221; Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 2: 436; Ṭahāwī, *Sharḥ Maʾānī al-Āthār*, 4: 141-144; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 306; and idem, *Mabsūt*, 5: 38; Kasānī, *Badāʾiʾ al-Ṣanāʾiʾ*, 3: 1503; Khaṣṣāf, *Adab al-Qāḍī*, 596-601; *Mukhtaṣar Ikhtilāf al-ʿUlamāʾ*, 3: 390; Ramli, *al-Fatāwā al-Khayriyyah li Naṣr al-Bariyya*, 1: 93; Ibn Nujaym, *al-Baḥr al-Rāʾiq*, 6: 188; Ibn Humām, *Fath al-Qadīr*, 2: 483-485, 7: 399; Ṭarābulṣī, *Muʾīn al-Ḥukkām fīmā Yataradad bayna al-Khaṣmayn min al-Aḥkām*, 36.

cases of inheritance, *dhimmīs* must first seek redress in their own community's court, but in the event that they do not reach a fair settlement, they may prefer to present it before a Muslim *qāḍī*, who will make then his decision according to Islamic law. Likewise in divorce cases: if a *dhimmī* divorces his wife three times and decides to seek an Islamic ruling, the *qāḍī* will likewise make his decision based on Islamic law. Again, in any matter not related to the Islamic judicial system, the *dhimmī* is free to pursue the case in a *dhimmī* court; it is a voluntary decision on his part and the other party involved to seek a decision from a Muslim *qāḍī*.²⁴³

Shāfi'ī, on the other hand, indicates that the *ahl al-dhimma* should present their cases before their own courts or judges. For those cases which they decide to bring before the Muslim *qāḍī*, it is entirely up to the latter whether or not to accept the case. Should he accept to try it, he must make it clear at the outset that the ruling will be based on Islamic law and the testimony of the witnesses handled in the same way as in a Muslim court. Furthermore, regarding the *ḥudūd*, the ruling must be applicable to both parties and accepted by them.²⁴⁴

Ḥanbalī jurists indicate that if the dispute is between a Muslim and a *dhimmī*, the case should be presented before the Muslim *qāḍī*, because it is the obligation of the Muslim state to protect the *dhimmī* from injustice or unfairness of treatment by Muslims and vice-versa. In cases of dispute among *dhimmīs* themselves, and where they

²⁴³ Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 391; Ibn Rushd, *al-Bayān wa al-Taḥṣīl*, 4: 181-186; and idem, *al-Muqaddimāt al-Mumahhidāt*, 2: 156; Ibn Farḥūn, *Tabṣirat al-Ḥukkām*, 1: 96; Ibn Juzayy, *al-Qawānīn al-Fiqhiyya*, 307; Ibn 'Abd al-Barr, *al-Kāfi*, 1: 418 and *al-Tamhīd*, 14: 385; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 620-623; *Tafsīr al-Qurṭubī*, 6: 179, 184-186; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 306, in which he make some reference to the opinion of the *ahl al-Madīna* regarding the cases of *ahl al-Dhimma* and whether these can be presented before a Muslim *qāḍī*, such the *ḥudūd* cases of adultery, theft, etc.

²⁴⁴ Shāfi'ī, *al-Umm*, 7: 38-39, 4: 183, 6: 124; Ibn al-Qaṣṣ al-Ṭabarī, *Adab al-Qāḍī*, 1: 142-144;

decide to present their case before the Muslim *qāḍī*, it is optional for the *qāḍī* to accept or reject their case, and the verdict will be derived from Islamic law in all matters, just as though he were arbitrating in a Muslim case, involving adultery, divorce, theft, usury, etc.²⁴⁵

G. *Jizya* (poll tax):

The *jizya*, or the concept behind it, is not an invention of Muslim civilization; it has been the practice of countless other nations to collect a similar tax. With the advent of Islam, the Muslims began to impose *jizya* upon the *ahl al-dhimma*, but for a specific purpose. Moreover, it was collected from those people capable of paying it, and redistributed among the incapable such as the elderly, poor and ill, in accordance with the standards of Islam. This is the type of consideration which overrides the material aspect of collecting the *jizya*, because the incapable were given a share of assistance from the *bayt al-māl* (public treasury).²⁴⁶

Nawawī, *al-Muhadhdhab with the Majmūʿ*, 18: 201; and idem, *Rawḍat al-Ṭālibīn*, 10: 327; Ramī, *Mughnī al-Muḥtāj*, 4: 127-128; Jaṣṣaṣ, *Mukhtaṣar Ikhtilāf al-ʿUlamāʾ*, 3: 392.

²⁴⁵ Ibn Qudāma, *al-Mughnī*, 10: 613-614; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 391; Khalāl, *Aḥkām Ahl al-Milal*, 122; Ibn Muflīḥ, *al-Mubdīʿ*, 3: 429-430; Bahūtī, *Kashshāf al-Qināʾ*, 3: 117, 130-131.

²⁴⁶ Najib Armazānī, *al-Sharʿ al-Duwalī fī al-Islam*, 126; Daniel C. Dennett in his *Conversion and Poll Tax in Early Islam*, argues that the collection of *jizya* or imposing of *jizya* on non-Muslims lacks classical evidence, but attributes this to deliberate falsification by Muslim jurists and historians. Demmett echoes the opinions of Western scholars, such as Julius Wellhausen and L. Ceatani and many others, who raised doubts regarding the process of imposing *jizya* on non-Muslims and relevant literature. Western scholars do not, however, universally share this opinion. For example, Goitein challenge this claims in his work *Jews and Arabs: Their Contacts through the Ages*. There isn't space here to discuss this issue of the 'authenticity' of the classical literature at great length, but it does have certain consistency: witness the recent work of Bat Ye'or, *Islam and Dhimmitude: Where Civilization Collide* (New Jersey: Fairleigh Dikston University Press, 2002), 65-66 and 74-75. The latter writes on the status of the *dhimmī* under Islam, specifically referring to the status of the Jews and Christians. Her research indicates that the *dhimmī* under Islam was not treated fairly, citing in illustration a few examples from the legal domain, such as the fact that the *dhimmī* cannot testify against a Muslim in an Islamic court. This however was clearly indicated and pointed out by early jurists and cannot be denied. Moreover, if we take a look at her definitions of *kharāj* and *jizya*, there are almost in agreement with our information, but when it comes to her analysis, this is different. She nevertheless

i. The definition of *Jizya*

Linguistically, *jizya* is the plural of *jaza'*, which is derived from the root word signifying “rewards,” and which can be generally be defined as the recompense for an act.²⁴⁷ *Jizya*, according to Shaybānī, refers to the *kharāj* of individuals, although *kharāj* can apply to both land and individuals. The common usage of *kharāj* however is in reference to land tax, and is not used for *jizya* unless it is associated with or limited by a similar concept such as *kharāj al-ra's* (tax per capita).²⁴⁸

The Ḥanafī jurists define *jizya* as the levy imposed on the *dhimmī*.²⁴⁹ Moreover, it is the name of whatever is taken from the *ahl al-dhimma* in exchange for the rights and privileges they enjoy under Islam. We have seen that its purpose, according to revelation, is to prevent and put an end to fighting.²⁵⁰ Mālikī jurists define *jizya* as the share of the unbelievers' income that he is obligated to pay for his protection as long as he is living under Islamic law.²⁵¹ Shāfi'ī jurists define *jizya* with reference to '*aqd al-dhimma*, and the money payable as determined by the '*aqd*. Furthermore, it is used to denote the '*aqd* of insurance and compensation that is granted by the *imām* or his deputy in a fixed amount that is collected from the unbelievers every year, with their consent,

indicates in her recent book, in theory the status of the *dhimmī* under Islam in terms of treatment is fair, which is similar to what this study seeks to illustrate.

²⁴⁷ Jawharī, *al-Ṣiḥāḥ*, 6: 2302-2303; *Tartīb al-Qāmūs al-Muḥīṭ*, 1: 490; Fayūmī, *al-Muṣbāḥ al-Munīr*, 1: 100; Ibn Munẓūr, *Lisān al-'Arab*, 14: 143; Ibn Athīr, *al-Nihāyya fī Ghariḥ al-Ḥadīth*, 1: 270-271; *Majma' Biḥār al-Anwār*, 1: 358-359.

²⁴⁸ Shaybānī, *Aṣl*, 152, 263; Sarakhsī, *Mabsūṭ*, 10: 77; Ibn Humām, *Fath al-Qadīr*, 4: 367.

²⁴⁹ Tahānawī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 1: 383; Maṭrīzī, *al-Mughrib*, 1: 143.

²⁵⁰ *al-Fatāwā al-Hindiyya*, 2: 244; Ibn Humām, *Fath al-Qadīr*, 4: 367; *al-Ikhtiyār li Ta'līl al-Mukhtār*, 4: 215; Ibn Nujaym, *al-Baḥr al-Rā'iq*, 5: 119; Damad Afandī, *Majma' al-Anhur*, 1: 667; *Anīs al-Fuqahā'*, 182.

²⁵¹ *Ḥudūd Ibn 'Arafā*, with the commentary of Raṣā', 1: 227; *Jawāhir al-Iklīl*, 1: 266; *Mawāhib al-Jalīl*, 2: 332; Dasūqī, *Ḥāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr*, 2: 201; *al-Sharḥ al-Ṣaghīr 'alā Aqrab al-Masālik*, 3: 52-53.

in return for continuing their residence within *dār al-Islām*.²⁵² It is the amount of money taken with the consent of the *dhimmīs* residing in *dār al-Islām* in return for protection of their lives, wealth and honors, and with the ultimate purpose of putting an end to fighting.²⁵³ The Ḥanbalī jurists define *jizya* as that which is taken from the polytheists for their protection while they reside in *dār al-Islām*.²⁵⁴

ii. The reason for the obligation of paying *jizya*.

The legal basis for *jizya* is the '*aqd al-dhimma*', which makes it possible for non-Muslims to reside within *dār al-Islām* and maintain relations with their hosts. It does not however constitute ratification or acceptance of the beliefs of *dhimmīs*. According to Sarakhsī, if the *dhimmī* wants to reside within *dār al-Islām* and insists on keeping his faith, he cannot escape paying the *jizya*. There is an implicit acknowledgment here of the distinction in status between the *dhimmī* and the Muslim in terms of the prestige or the esteem of the believer. Moreover, the *jizya* is taken in exchange for the aid afforded to *dhimmīs* in maintaining their beliefs. Indeed, whoever belongs to the *ahl dār al-Islām* is obligated to assist and contribute to the protection of the *dār*, but as the *dhimmī* himself cannot fight on behalf of the *dār al-Islām* (since he may favor the opposite *dār*, to the detriment of *dār al-Islām*), *jizya* is taken from him as an aid to Muslim soldiers in their efforts to defend the *ahl dār al-Islām* from foreign attack and other enemies.²⁵⁵

²⁵² *Mughnī al-Muḥtāj*, 4: 242; Ramī, *Nihāyat al-Muḥtāj*, 8: 85; *Mawāhib al-Ṣamad fī Alfāz al-Zubad*, 2: 629; *al-Tawqīf 'alā Muḥimmāt al-Ta'ārīf*, 242; *Ḥāshiyat al-Sharqāwī 'alā al-Taḥrīr*, 2: 456-457; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 142.

²⁵³ Ḥuṣnī, *Kifāyat al-Akhyār fī Ghāyat al-Ikhtiṣār*, 2: 407.

²⁵⁴ *al-Durr al-Naqī fī Sharḥ Alfāz al-Khiraqī*, 3: 777; Ibn Muflīh, *al-Mubdī*, 3: 404; Bahūtī, *Kashshāf al-Qinā'*, 3: 108;

²⁵⁵ Sarakhsī, *Mabsūt*, 10: 78.

The amount of *jizya* taken depends on the financial status of the *dhimmī*.²⁵⁶ Some scholars claim that the collection of *jizya* from the *ahl al-dhimma* is necessary because it is sort of a worldly punishment for being polytheist, which lies at the heart of the dispute with the Muslim. Therefore, *jizya* is given to the Muslim by the *dhimmī* in recognition of the latter's decline in force or power.²⁵⁷

iii. The conditions for the necessary imposition of *jizya*:

As was mentioned earlier the *jizya* is only collected or taken from capable individuals. For example, it is not taken from the women of the *ahl al-dhimma*, the young, the blind, the handicapped, the insane, the chronically ill, the elderly, the enslaved or the poor. It is taken from their priests, monks, and skilled individuals, etc., if they can afford to pay it.²⁵⁸

Kasānī divides the conditions for the necessary imposition of *jizya* into different types. Among these conditions is maturity and manhood, since it is revealed as such in the Qur'ān. The individuals capable of paying must also be of good health, since *jizya* is not accepted from ill individuals. Moreover, he states that *jizya* is not being taken from the blind, the elderly and slaves.²⁵⁹

The consensus of scholars regarding the conditions of *jizya* is that it is taken from sound, mature, healthy males, and they alone. Ibn al-Mundhir al-Naysāburī,

²⁵⁶ Ibid.

²⁵⁷ Ibn Humām, *Fath al-Qadīr*, 4: 370, 375; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4332-4333; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 17-22.

²⁵⁸ Shaybānī, *Aṣl*, 152, 263-264; *Mukhtaṣar al-Ṭaḥāwī*, 294; Sarakhsī, *Mabsūṭ*, 10: 79-80; Jaṣṣās, *Aḥkām al-Qur'ān*, 3: 96.

²⁵⁹ Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4330-4331; Abū Yūsuf, *Kharāj*, 131-132; *Tuḥfat al-Fuqahā'*, 3: 527-528; Ibn Humām, *Fath al-Qadīr*, 4: 372-374; *al-Ikhtiyār li Ta'līl al-Mukhtār*, 4: 217-218; *Mukhtaṣar al-Qadūrī* with the *Libāb*, 4: 145; Damād Afandī, *Majma' al-Anhur*, 1: 671-672; Zayla'i, *Tabyīn al-Ḥaqā'iq*, 3: 218-219; *Ḥāshiyat Ibn 'Abidīn*, 4: 199-201; *al-Fatāwā al-Hindiyya*, 2: 245-246; Jaṣṣās, *Aḥkām al-Qur'ān*, 3: 93; Abū 'Ubayd, *Amwāl*, 47.

indicated in his *Ijmā'* that the scholars have agreed that the *jizya* cannot be taken from the young, women, slaves and those who cannot afford it.²⁶⁰

iv. The time of the collection of *Jizya*

Generally, the time of *jizya* collection is at the beginning or end of the year, or at the time of concluding the *'aqd al-dhimma*. According to the three jurists Abū Ḥanīfā, Abū Yūsuf and Shaybānī, *jizya* can be collected every two months.²⁶¹ Maliki, Shāfi'ī and Ḥanbalī jurists all indicate that the *jizya* can be collected once every year, basing their opinions on the tradition of the Prophet, who asked the people of Yemen that each mature male pay the *jizya* once every year.²⁶²

v. Types and Amounts of *Jizya*

There are two types of *jizya*, the first of which is imposed with the consent and according to the original treaty with the *dhimmi*, determined an *'aqd* which also fixes the amount that was agreed upon. In this type the amount cannot exceed that which was agreed upon with the consent of the two parties. This was the tradition of the Prophet who concluded an *'aqd al-ṣulḥ* with the people of Najrān and of the Caliph 'Umar Ibn al-Khattāb, who came to terms with Banū Taghlib. The second type is *jizya*

²⁶⁰ Ibn al-Mundhir Naysābūri, *Ijmā'*, 71; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 203-208; Ibn Ḥazm, *Marātib al-Ijmā'*, 114-115; Sha'rānī, *al-Mizān al-Kubra*, 2: 184; *al-Kāfi fī Fiqh Ahl al-Medina*, 1: 413; Ibn Juzayy, *al-Qawānīn al-Fiqhiyya*, 264; Shāfi'ī, *al-Umm*, 4: 98; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 299-302; *Mughnī al-Muḥtāj*, 4: 245-246; Ibn Qudāma, *al-Mughnī*, 10: 572-577; *Majmū' Fatāwā Ibn Taymiyya*, 28: 659-663; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 42-50; Ibn Jamā'a, *Taḥrīr al-Aḥkām*, 252-253; *Tafsīr al-Qurṭubī*, 8: 110-112; *Mawsū'at al-Ijmā' fī al-Fiqh al-Islamī*, 1: 262-263.

²⁶¹ Shaybānī, *Aṣl*, 263-264; Sarakhsī, *Mabsūṭ*, 10: 82; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4331; Ibn Humām, *Fatḥ al-Qadīr*, 4: 368; *al-Fatāwā al-Hindiyya*, 2: 244; *Ḥāshiyat Ibn 'Abidīn*, 4: 197-198; Jaṣṣās, *Aḥkām al-Qur'ān*, 3: 100-103.

²⁶² Ibn 'Abd al-Barr, *al-Kāfi*, 1: 413; Dardīr, *al-Sharḥ al-Saghīr*, 3: 56; *al-Muhadhdhab* with the *Majmū'*, 18: 177; *Mughnī al-Muḥtāj*, 4: 246; Ibn Qudāma, *al-Mughnī*, 10: 568; Bahūtī, *Kashshāf al-Qinā'*, 3: 112; Ibn Hubayra, *al-Ifṣāḥ*, 2: 294; Ibn Jamā'a, *Taḥrīr al-Aḥkām*, 250; Ibn Qayyim al-

that is determined by the *imām*, and which is divided into three levels according to the three levels of *ahl al-dhimma*: the wealthy (48 *dirhams*), those of middle income (40 *dirhams*) and the poor (12 *dirhams*).²⁶³

The consensus of scholars regarding the valid amounts of *jizya* collected is that it should be 4 *dinārs* and up. Malik indicate that under the second type of *jizya* (that determined by the *imam*), 4 *dinārs* should be claimed from the *ahl al-dhahab* or gold (wealthy) class 40 *dirhams* from the *ahl al-fiqdā* or silver (middle) class, and the rich and the poor treated according to their abilities. Shāfi'ī, favored a flat rate of one *dinār* per person, rich or poor. Yahyā ibn Ādam said the amount of imposed *jizya* will be gauged according to the abilities of those obliged to pay without limitation. Ibn Ḥanbal states that it is up to the *imām* to determine the amount of *jizya*, and that the *dhimmī* is under obligation to pay whatever amount is decided.²⁶⁴

vi. The cessation of *jizya*

Payment of *jizya* ceases if the *dhimmī* becomes Muslim before the end of the taxation year, or when the *jizya* was not collected from him in the previous year, or the part he owes of the remaining *jizya*, then the *jizya* will cease at the minute he becomes

Jawziyya, *Aḥkām Aḥl al-Dhimma*, 1: 39-42; *Mawsū'at al-Ijmā' fī al-Fiqh al-Islamī*, 1: 264.

²⁶³ Shaybānī, *Aḥl*, 2: 184; *Siyar*, 152; Abū Yūsuf, *Kharāj*, 39; Abū 'Ubayd, *Amwāl*, 50; Ibn Abī Shaybā, 14: 574; Ibn Sa'd, *Ṭabaqāt*, 3: 283; *Naṣb al-Rayā*, 3: 447-448.

²⁶⁴ Ṭabarī, *Ikhtilāf al-Fuqahā*, 208-211; *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 486-487; Ibn Hubayra, *al-Ifṣāḥ*, 2: 292-293; Shāfi'ī, *al-Umm*, 4: 101-102; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 311-314; Ibn Jamā'a, *Tahrīr al-Aḥkām*, 250; Mālik, *al-Mudawwana*, 3: 46; Ibn 'Abd al-Barr, *al-Kāfī*, 1: 413-414; Ibn Shāsh, *'Aqd al-Jawāhir al-Thamīna*, 1: 488; Dardīr, *al-Sharḥ al-Ṣaghīr*, 3: 56; Ibn Qudāma, *Mughnī*, 10: 566; Khalāl, *Aḥkām Aḥl al-Milal*, 64; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 96-97; *Tafsīr al-Qurṭubī*, 8: 111-112. Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād fī Hudā Khayr al-'Abād*, 3: 155-158; and idem, *Aḥkām Aḥl al-Dhimma*, 1: 26; *Majmū'at Fatawā Ibn Taymiyya*, 19: 253, 35: 350; Yahyā Ibn Ādam, *Kharāj*, 66; Abū 'Ubayd, *Amwāl*, 49-53.

a Muslim.²⁶⁵ In the event that the *dhimmī* dies and leaves some wealth, the *jizya* will not be collected from his inheritance or wealth. Likewise, should the *dhimmī* become ill or blind, or lose his wealth, *jizya* automatically ceases.²⁶⁶

The consensus of scholars regarding the cessation of *jizya* is that it will cease upon a person's becoming a Muslim. Moreover, it will cease upon the death of a person, and in the case where he has not consented to pay it before the assigned time, then the *jizya* ceases even if he leaves inheritance wealth or money, since *jizya* is imposed upon the individual alone.²⁶⁷

H. *Kharāj* (land tax):

a. Definition:

Kharāj is the second material obligation of imposed upon the *ahl al-dhimma* by the Islamic state in exchange for protection and other rights mentioned above. Linguistically, *kharāj* signifies revenue and rental premises that can generate revenue. It is an Arabic term, used in the Qur'ān as well as in the traditions of the Prophet.²⁶⁸ In *fiqh* usage, *kharāj* is used to refer to items attached to lands that generate revenue, a portion of which is given to the *bayt al-māl* (public treasury) of the state. In practice,

²⁶⁵ As was mentioned above, the *jizya* was imposed upon the *dhimmī* for a reason. The moment he becomes a Muslim, however, there is no reason to impose the *jizya*, for the *jizya* is only applicable or collected from non-Muslims. See Abū 'Ubayd, *Amwāl*, 58.

²⁶⁶ Shaybānī, *Aṣl*, 153, 263; and idem, *al-Siyar al-Kabīr*, 5: 2137-2138; Sarakhsī, *Mabsūṭ*, 10: 72-79; Abū Yūsuf, *Kharāj*, 132; Kasānī, *Badā'ī' al-Ṣanā'ī'*, 9: 4332-4334; Ibn Humām, *Fatḥ al-Qadīr*, 4: 374; Zaylā'ī, *Tabyīn al-Ḥaqā'iq*, 3: 278-279; *al-Fatāwā al-Hindiyya*, 2: 246; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 100-101; *Rawḍat al-Quḍāt*, 2: 2253; *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 487-488.

²⁶⁷ Malik, *al-Mudawwana*, 1: 282; Shāfi'ī, *al-Umm*, 4: 123; Ibn Qayyim al-Jawziyya, *Aḥkām Aḥl al-Dhimma*, 1: 39, 57-60; Ibn Ḥazm, *Marātib al-Ijmā'*, 120; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 211-213; *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 487-488; Abū 'Ubayd, *Amwāl*, 58-63.

²⁶⁸ See Jawharī, *al-Ṣiḥāḥ*, 1: 309; Ibn Manẓūr, *Lisān al-'Arab*, 2: 215-252; *Tartīb al-Qāmūs al-Muḥīṭ*, 2: 32; Azharī, *al-Zāhir*, 208, 356; Rāghib, *Mufradāt Gharīb al-Qur'ān*, 145.

however, it is the land tax²⁶⁹ that is imposed upon the *ahl al-dhimma*.²⁷⁰ According to Māwardī, *kharāj* is the obligation to pay taxes on the income from land to the Islamic state.²⁷¹ The first implementation of *kharāj* in the form of land tax was imposed by the caliph ‘Umar ibn al-Khaṭṭāb. He imposed on each property that was cultivatable a fixed amount (one *dirham* and a percentage of the value) and on the produce a fixed amount of 10 *dirhams*, (but only five *dirhams* on dates).²⁷²

b. Types of *kharāj* land:

When lands were conquered by force, the *imām* distributed them among Muslims, leaving the land under their control, then imposed the *jizya* upon the non-Muslims and *kharāj* on the land. In the cases where the land was left in the hands of the original inhabitants under *ṣulḥ*, a fixed amount of *kharāj* was imposed upon them, just as the Prophet did with the people of Najrān. Lastly, any lands given by the *imām* to the *dhimmī* in return for his services was to be considered *kharājī* land.²⁷³

c. *Aḥkām al-kharāj* and its collection:

If the *imām* concludes an *‘aqd al-dhimma*, the *kharāj* is payable by the *ahl al-dhimma* according to their capabilities; the *kharāj* should not exceed the limit of what

²⁶⁹ Ibn Humām, *Fatḥ al-Qadīr*, 4: 283, 358; Wansharīṣī, *al-Mughrib*, 1: 249-250; Tahanāwī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 2: 183; Mu‘jam al-Iṣṭilāḥāt al-Fiqhiyya, 125; *al-Kharāj wa al-Nuẓum al-Māliyya*, 116; *Aḥkām al-Kharāj fī al-Fiqh al-Islāmī*, 13; Hossein Modarressi Tabataba‘ī, *Kharāj in Islamic law*, 27.

²⁷⁰ Karābisī, *al-Furūq*, 1: 344

²⁷¹ Māwardī, *Aḥkām al-Sultāniyya*, 146, Abū Ya‘lā, *al-Aḥkām al-Sultāniyya*, 163.

²⁷² See for example regarding the measurement and the amount of money that was divided with reference to the type of land and its product, Ibn Raf‘a, *al-Īdhāḥ wa al-Tibyān*, 72, and 81. In addition with reference to ‘Umar ibn al-Khaṭṭāb’s practice see *Muṣannaf ‘Abd al-Razāq*, 10: 333.

²⁷³ *al-Jāmi‘ al-Ṣaghīr*, 104; Shaybānī, *al-Aṣl*, 257-258; Kāsānī, *Badā‘ī‘ al-Ṣanā‘ī‘*, 2: 935-936; Ibn

they are able to afford.²⁷⁴ Furthermore, *kharāj* should not be collected more than once every year, no matter how many months of the year the land can be cultivated. Should the land be cultivable and not used by its owners, he is still obligated to pay *kharāj* on that land. Since the owner has no excuse to leave the land untilled except in order to escape the *kharāj*, the *imām* has the right to ask him to pay the *kharāj* anyway. If the land is affected by drought or fire, then the *kharāj* will be lifted that year. Therefore, *kharāj* is tied to the capacity and revenue of the land. The *imām* and his deputies should not impose any undue pressure on the *ahl al-dhimma* and should treat them justly with respect to the *kharāj*.²⁷⁵

The consensus of scholars regarding the rulings on *kharāj*, is that the deputy of the *imām* who is in charge of collecting it every year should be kind and just to the people who are paying it. It should be calculated according to a fair standard, which means the amount should not exceed a reasonable percentage of what the land can produce. Ibn Hubayra indicates that there is no single scholar who supports the imposition of *kharāj* at a rate inconsistent with the capacity of the land to produce. All in fact insist that the amount of *kharāj* should benefit the owner, as it is certainly not intended to harm the *ahl al-dhimma*. He adds furthermore that the revenue of *kharāj* should be directed to the *bayt al-māl* (public treasury).²⁷⁶

Humām, *Fath al-Qadīr*, 4: 358-360; Abū Yūsuf, *Kharāj*, 30, 75; *Ḥāshiyat Ibn ‘Ābidīn*, 4: 177.

²⁷⁴ There is the case of ‘Umar ibn al-Khaṭṭāb, who fixed the amount *kharāj*’s on land at varying amounts, depending on the circumstances of the owner. Hossein Modarressi Tabataba’i, *Kharāj in Islamic Law*, *Kharāj in Islamic law*, 33.

²⁷⁵ Shaybānī, *Aṣl*, 152, 257-258, 279; *al-Jāmi‘ al-Ṣaghīr*, 104-104; Sarakhsī, *al-Mabsūṭ*, 10: 79; Abū Yūsuf, *Kharāj*, 38-42 and 134-135; Kasānī, *Badā’i‘ al-Ṣanā’i‘*, 2: 945-946; Ibn Humām, *Fath al-Qadīr*, 4: 362-367; *Ḥāshiyat Ibn ‘Ābidīn*, 4: 177; Zayla‘ī, *Tabyīn al-Ḥaqā’iq*, 3: 271-274; Damād Afandī, *Majma‘ al-Anhur*, 1: 666-668; *al-Fatāwā al-Hindiyya*, 2: 238; Hossein Modarressi Tabataba’i, *Kharāj in Islamic law*, 27-30.

²⁷⁶ Ibn Hubayra, *Ifṣāḥ*, 2: 283-285; Ṭabarī, *Ikhtilāf al-Fuqahā’*, 218-225; Māwardī, *Aḥkām al-Sulṭāniyya*, 152; Shāfi‘ī, *al-Umm*, 4: 192-193; *Jawāhir al-‘Uqūd*, 1: 482-483; Ibn Qudāma, *al-*

I. *al-‘Ushūr*²⁷⁷:

a. Background

‘Ushr, (pl. *a‘shār* or *‘ushūr*), is the tenth or the tithe in Islamic law. It is either a tax levied on lands held in absolute ownership or a tax on commercial goods to be paid by Muslim, *dhimmī*, or *ḥarbī* merchants from non-Muslim countries (*dār al-ḥarb*). It has been regarded as kind of *zakāt* (legal almsgiving, calculated on the basis of one’s wealth; one of the categories of Islamic worship (*‘ibāda*); it is important to note that *zakāt* is not the same thing as charity, *ṣadaqa*, the latter should be dispensed spontaneously and continually), and is frequently used also in the sense of *ṣadaqa*.²⁷⁸

The *‘ushr* is the third material obligation imposed upon the *ahl al-dhimma* after *jizya* and *kharāj*. It is calculated at one tenth of the market value of the goods subject to taxation and it is not imposed upon Muslims or the People of the Book (Ahl al-Kitāb). It is however imposed on merchants and travelers who fall outside these categories. It is levied by the *imām* on the avenues or roads between the territories of Muslims and polytheists, in return for the protection of these latter and their merchandise from robbery.²⁷⁹

There are actually two types of *‘ushr* identified by jurists. The first is the *‘ushūr al-zakāt* (almsgiving), which amount is taken from Muslims as an alms from their income derived from produce and crops. The second type is the *‘ushūr* described above,

Mughnī, 2: 575-581, 725; Abū ‘Ubayd, *Amwāl*, 81; Ibn Ādam, *Kharāj*, 50-58, 160-168; Muhammad ‘Uthmān Shabīr, *Aḥkām al-Kharāj fī al-Fiqh al-Islāmī*, 79; for further details on *Kharāj* see the work of Hossein Modarressi Tabataba’i, *Kharāj in Islamic Law*,

²⁷⁷ T. Sato, “‘Ushur,” in the *Encyclopaedia of Islam*, new edition (Leiden: Brill, 2000), 10: 917

²⁷⁸ Ibid.

²⁷⁹ Ibid.

imposed on polytheist merchants whenever they travel between their own territory and *dār al-Islām*.²⁸⁰

b. The legitimacy of the *'ushūr* that imposed on *ahl al-dhimma*.

'ushūr was not imposed during the time of the Prophet or that of Caliph Abū Bakr. It only first began to be imposed by the caliph 'Umar ibn al-Khaṭṭāb upon foreign merchants whenever they entered *dār al-Islām*, in response to the taxes imposed by non-Muslims on Muslim merchants, *al-mithl bi al-mithl* (quid pro quo). He also took the step of imposing half of the *'ushūr* upon the *ahl al-dhimma*.²⁸¹

The *'ushūr* that is collected from Muslims is used for *zakāt* (almsgiving), to be distributed among the poor and the needy. The *'ushūr* collected from the *ahl al-dhimma* and *ahl al-ḥarb* is treated as *kharāj* and reserved in the *bayt al-māl* (public treasury) for purposes of defense.²⁸² Sarakhsī indicates that the Muslims paid a quarter of the *'ushūr*, *dhimmīs*, half the amount, and the *ḥarbīs* the full *'ushūr*. We can find no dispute over this issue, which became a subject of consensus.²⁸³

c. The conditions of accepting *'ushūr*.

'ushūr is imposed upon merchants who enter *dār al-Islām* for trade purposes, and is calculated on the balance of his receipts exceeding a fixed number. The *'ushūr* is

²⁸⁰ *al-Qāmūs al-Muḥīṭ*, 3: 230; Fayūmī, *al-Miṣbāḥ al-Munīr*, 1: 166; Muṭarrizī, *al-Mughrib*, 2: 62; Tahanāwī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 2: 960; Sarakhsī, *al-Mabsūṭ*, 10: 199; Ibn Humām, *Faṭḥ al-Qadīr*, 1: 531; *al-Fatāwā al-Hindiyya*, 1: 183; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 1: 282; Nazīh Ḥammād, *Mu'jam al-Muṣṭalahāt al-Iqtisādiyya fi Lughat al-Fuqahā'*, 198; *Aḥkām al-Kharāj fi al-Fiqh al-Islāmī*, 11-15.

²⁸¹ Aḥmad Ibn Ḥanbal, *Faḍā'il al-Ṣaḥābā*, 1: 329; Abū 'Ubayd, *Amwāl*, 566; 'Abd al-Razzāq, *Muṣannaf*, 6: 97; Abū Yūsuf, *Kharāj*, 145; Khawārizmī, *Jāmi' al-Masānīd*, 1: 465; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 2136; Akram 'Umārī, *Aṣr al-Ṣaḥābā*, 198.

²⁸² Shaybānī, *Kitāb al-Athār*, 63.

²⁸³ Sarakhsī, *Mabsūṭ*, 2: 199; and idem, *Sharḥ al-Siyar al-Kabīr*, 5: 2133-2134; Kasānī, *Badā'i' al-Ṣanā'i'*, 2: 891; Ṭahāwī, *Sharḥ Ma'ānī al-Athār*, 2: 32; Shawkānī, *Nayl al-Awṭār*, 8: 71. See Abū Yūsuf in reference to the 'Umar ibn 'Abd al-'Azīz imposing the *'ushūr*, in his *Kharāj*, 147.

taken from free merchants only; slaves and employees need not to pay it.²⁸⁴ The *'ushūr* is furthermore taken from the sales of alcohol but not pork. According to Sarakhsī, this is because alcohol was formerly juice and money derived from the sale of juice is not forbidden, especially at the beginning of the process. Pork however is never lawful, from beginning to end. The *imām* is responsible for the protection of the sources of alcohol but not those of pork.²⁸⁵ There is disagreement among scholars regarding what can be taken as *'ushūr*, for instance, Zufar insists that the *'ushūr* can be taken neither from alcohol nor pork.²⁸⁶ Abū Yūsuf indicates that if the merchant deals in pork alone, *'ushūr* does not apply, but if he sells both alcohol and pork, *'ushūr* is taken from the profits on both.²⁸⁷

There are various rules on the *'ushūr al-dhimmi*, thus, if the *dhimmi* obtains money and passes through *dār al-Islām* and is asked to pay the *'ushūr* and yet declares that this money does not belong to him or that he has to pay a debt with it, then the *'ushūr* will not apply in his case. Furthermore, if the *dhimmi* enters *dār al-ḥarb* for trade and tells the *imām* or his deputy, "I made this money a few months ago" and within the limit of one year, the *'ushūr* does not apply to him. Should the *dhimmi* enter *dār al-ḥarb* and use the money for trade and spend one year there before re-entering *dār al-Islām*, the *'ushūr* is not applied.²⁸⁸ In case the *dhimmi* engages in trade for three years

²⁸⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 2136; and idem, *Mabsūṭ*, 2: 199, 10: 80; Shaybānī, *Aṣl*, 2: 102-103; *Jāmi' al-Ṣaghīr*, 100-101; Abū Yūsuf, *Kharāj*, 143-144; *Sharḥ al-Hidāya*, 1: 533-544; Kasānī, *Badā'i' al-Ṣanā'i'*, 2: 899-890; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 1: 286; Jaṣṣās, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 1: 462; *Ḥāshiyat Ibn 'Abidīn*, 2: 314.

²⁸⁵ Shaybānī, *al-Siyar al-Kabīr*, 5: 2142-2143; *al-Jāmi' al-Ṣaghīr*, 102; Sarakhsī, *Mabsūṭ*, 2: 205; Kasānī, *Badā'i' al-Ṣanā'i'*, 2: 890; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 1: 286; *al-Fatāwā al-Hindiyya*, 1: 184; *Ḥāshiyat Ibn 'Abidīn*, 2: 315; Damād Afandī, *Majma' al-Anhur*, 1: 211.

²⁸⁶ Laknūwī, *al-Nafi' al-Kabīr Sharḥ al-Jāmi' al-Ṣaghīr*, 102.

²⁸⁷ Sarakhsī, *Mabsūṭ*, 2: 205, *al-Nafi' al-Kabīr*, 102; Kasānī, *Badā'i' al-Ṣanā'i'*, 2: 840; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 1: 286.

²⁸⁸ Shaybānī, *al-Siyar al-Kabīr*, 5: 2147-2148; *al-Jāmi' al-Ṣaghīr*, 100; Ibn Humām, *Fatḥ al-Qadīr*,

and is not asked to pay the *'ushūr* and reports this facts in the third year, only the *'ushūr* of the third year will be counted, while that of other two years will be waived.²⁸⁹ In case the *dhimmī* refuses to report the number of years that he did not pay the *'ushūr*, then he will have to pay the total of all the years that he did not pay it.²⁹⁰

d. The guardianship of *ahl al-'ushūr*.

Abū Yūsuf, in advising Hārūn al-Rashīd, told him to look after the *ahl al-'ushūr* and to be kind to them, and to ask his deputies to treat them fairly and not to take more than what is needed. In the event that one of his deputies mistreats or takes more than he is supposed to, he must be punished and dismissed from his post. Nor should he be too aggressive with them, for if his deputies perform their duties in full they deserve the generosity of the caliph.²⁹¹

The consensus of scholars regarding the guardianship of *ahl al-'ushūr* makes it clear that *'ushūr* was regarded an obligation of the *ahl al-dhimma*. Malik for example, indicates that if a Christian makes a trade in his own territory he is not obligated to pay *'ushūr*. If he should enter *dār al-Islām* as a merchant, he will still not pay *'ushūr* on what he brings with him unless he sells his merchandise. And if he cannot sell his merchandise, he will not pay *'ushūr*. Shāfi'ī indicates furthermore that *'ushūr* is to be taken only if the merchants in question have been informed in advance that *'ushūr* will be taken with their consent, but only once a year. Awzā'ī indicates that if the Christian merchant does not manage to sell his merchandise, *'ushūr* will not apply; he will only be

1: 531.

²⁸⁹ Shaybānī, *al-Siyar al-Kabīr*, 5: 2149-2150.

²⁹⁰ Ibid., 5: 2148-2149; Kasānī, *Badā'i' al-Ṣanā'i'*, 2: 889; *al-Fatāwī al-Hindiyya*, 1: 184.

²⁹¹ Abu Yūsuf, *Kharāj*, 142-143.

obliged to pay the *jizya*. Ibn Ḥanbal for his part insists that only half the '*ushūr*' should be taken from the *ahl al-dhimma*, including on profits from alcohol and pork sales even if these products are not approved of in Islam.²⁹²

II. Muslim *Musta'min* Relations

As we saw above, Islamic law does not limit itself to Muslims - *dhimmī* relations but also regulates the entry of foreign nationals who enter *dār al-Islām* under the temporary *amān* (temporary safe conduct) as a *must'amin* (an enemy alien who has been given *amān* by Muslim). Before going into a discussion of the relationship between the Muslim and the *musta'min*, we must define the term *amān* in order to have a better understanding of the subject.

A. The definition of *amān*:

There are two kinds of *amān*: one temporary, and the other permanent. The latter is embodied in the '*aqd al-dhimma*', which was discussed at length earlier. The upcoming discussion will be devoted to the '*aqd al-amān*' (contract of temporary safe conduct within *dār al-Islām*), which in turn is of many kinds. One '*aqd al-amān*' for instance is the *amān* given to the *ḥarbi* (enemy alien), the other the *muwāda'a* or *mu'āhada* or *ṣulḥ* meant to end fighting between nations or *dārs*. These two kinds of *amān* will be dealt with at length in the discussion of *mu'āhadāt al-dawliyya* (international treaties). The third kind of '*aqd al-amān*' is the pact or contract that is concluded among two or more individuals for the purpose of individual pursuits, such

²⁹² Malik, *Mudawwana*, 1: 280- 281; *al-Kāfi fī Fiqh Ahl al-Medina*, 1: 414; Shafi'ī, *al-Umm*, 4: 193-194; Khalāl, *Aḥkām Ahl al-Milal*, 62-67; Abū 'Ubayd, *Amwāl*, 566-571; Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 1: 462-466; Ibn Hubayra, *Ifṣāḥ*, 2: 297; Dimashqī, *Raḥmat al-Umma fī*

as trade. These individuals are subsequently known as the *musta'minūn*.²⁹³ We attempt in the following pages to define the term *musta'minūn*.

Amān is an Arabic term that has two interrelated senses, the first being *taṣḍīq* (attestation or approval) and the second *amānā* (loyalty or reliability or honesty), as opposed to *khiyāna* (treason or betrayal). Both *taṣḍīq* and *amānā* lead to *sukūn al-qalb* (tranquility or calm), and hence both terms refer to the assurance of tranquility or peacefulness. The term *amān* therefore describes the state of the person who is granting the assurance of tranquility as opposed to fear, while *isti'mān* is the act of seeking *amān* and the *musta'min* the person who becomes *mu'aman* (protected).²⁹⁴

In their legal definition of the phenomenon, jurists offer a variety of explanations of *amān* and *musta'min* that are basically the same, differing only perhaps in the conditions set. For example, according to Ḥanafī jurists, the *musta'min* is the person who enters a *dār* other than his own under the protection of *amān*, whether he be a Muslim or a *ḥarbī*. This definition of course is not specific as to the homeland or *dār*, and can apply to both.²⁹⁵ The Mālikī jurists defined *amān* as the “removal” or “proscription” of the slavery of the *ḥarbī* at the time of fighting, or at the inception of fighting, when he comes under the Islamic *ḥukm* for a period of time. The *isti'mān* is the assurance given to the *ḥarbī* that he will be allowed to conduct business.²⁹⁶ Shāfi'ī jurists defined *amān* as the abandonment of fighting and

Ikhtilāf al-Umma, 399; Sha'rānī, *al-Mizān al-Kubra*, 2: 185-186; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 1: 61-64.

²⁹³ Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4318.

²⁹⁴ See, Jawharī, *al-Ṣiḥāḥ*, 5: 2072; Mu'jam Maqāyīs al-Lughā, 1: 133-134; Firūzabādī, *Tartīb al-Qāmūs al-Muḥīṭ*, 1: 181; Ibn Manẓūr, *Lisān al-'Arab*, 13: 21; Fayūmī, *al-Miṣbāḥ al-Munīr*, 1: 24-25; Kafawī, *al-Kulliyāt*, 1: 170; *al-Mu'jam*, *al-Wasīf*, 1: 28

²⁹⁵ Ḥaṣkafī, *al-Durr al-Mukhtār*, 4: 166; *Majma' al-Anhur*, 1: 655.

²⁹⁶ See Ḥudūd Ibn 'Arafā with *Sharḥ al-Raṣā'*, 1: 224-226,

especially of fighting with the polytheists.²⁹⁷ The *musta'min*, according to them, is the individual who makes peace through an '*aqd al-jizya, hudna* or *amān*'.²⁹⁸ Lastly, Ḥanbalī jurists define the *musta'min* as the polytheist who is given permission to stay in *dār al-Islām* without having the obligation of paying *jizya*.²⁹⁹

The common *amān* and *isti'mān*, one can conclude that the *musta'minūn* are non-Muslims from the *ḥarbīyyūn* who enter *dār al-Islām* temporarily under safe conduct (*amān*) for the purpose of a specific matter and without being obliged to observe the *aḥkām* al-Islam or the impositions placed on *dhimmīs* in general.

a. The legitimacy of the '*aqd al-amān*:'

The legitimacy of the '*aqd al-amān*' as a device enabling the *ḥarbī* to move unmolested in *dār al-Islām* is founded on the Qur'ān, the traditions of the Prophet and the deeds and practices of the Companions of the Prophet. It was on the basis of these sources that *ijmā'* was reached.

In the Qur'ān, the sixth verse in chapter nine reads,

And if anyone of the *Mushrikūn* (polytheists, idolaters, pagans, disbeliever's in the Oneness of Allah) seeks your protection, so that may hear the Word of Allah (the Qur'ān), and then escort him to where he can be secure, that is because they are men who know not.³⁰⁰

It is interesting to note that the verse preceding this one³⁰¹ commands Muslims to fight whoever denies the Oneness of Allah, which is then followed by the verse cited

²⁹⁷ Ramli, *Mughnī al-Muḥtāj*, 4: 236.

²⁹⁸ *Ḥāshiyat al-Sharqāwī 'alā al-Tahrīr*, 4: 236.

²⁹⁹ Bahūtī, *Kashshāf al-Qinā'*, 3: 100; Rahībānī, *Maṭālib Awlū al-Nuhā*, 2: 577.

³⁰⁰ Q. 9: 6.

³⁰¹ Q. 9: 5,

Then when the Sacred months (the 1st, 7th, and the 12th months of the Islamic

here cautioning the Muslim not to do so. The message is that, should polytheists be neighbors of Muslims and request protection, security and safety to hear the Word of God which is the Qur'ān, then a Muslim's obligation is to grant him this protection and provide him with the message of Islam. If he should accept this, then, well and good; but if even if he does not, the Muslim must ensure his safety until he returns to his own *dār*.³⁰²

Abū Bakr al-Jaṣṣāṣ's commentary on this verse is that the verse countenances extension of the *amān al-ḥarbī*. The word *istajāraka* (asks or seeks to be a neighbor to you) is interpreted by him to mean *ista'amanaka* (asks or seeks your pledge of safety), meaning that it is prohibited to fight the *ḥarbī* because he might be seeking knowledge of the Islamic religion. Therefore, the duty of a Muslim is to educate him and answer his questions and not to pass judgment on him.³⁰³ According to Ibn 'Arabī, writing in his *Aḥkām al-Qur'ān*, the purpose of this verse is to grant the *ḥarbī amān* and this for two reasons: first, to acquire knowledge about the Islamic religion, and second, to put a stop to fighting with him. The word *ajirhu* (grant him safety) places an obligation upon Muslims to grant the *amān*.³⁰⁴ The verse orders Muslims to convey the Word of Allah to the polytheists, then to grant them *amān*. According to certain Ḥanafī jurists, it is not necessary that the polytheist should wish

calendar) have passed, then kill the *Mushrikūn* wherever you find them, and capture them besiege them, and prepare for them each and every ambush. But if they repent and perform *al-Ṣalāt* (*Iqāmat al-Ṣalāt*), and give *Zakāt*, then leave their way free. Verily, Allāh is Oft-Forgiving, Most Merciful.

³⁰² See the following works of Qur'ān commentary with reference to this particular verse, *Tafsīr al-Ṭabarī*, 14: 138; *Tafsīr al-Baghawī*, 4: 14; Zamakhsharī, *Kashshāf*, 2: 140; Ibn Ḥayān, *al-Baḥr al-Muḥīṭ*, 5: 11; Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr*, 15: 237; Suyūṭī, *al-Durr al-Manthūr*, 4: 133; *Tafsīr al-Qurṭubī*, 8: 77; Ibn Humām, *al-Fath al-Qadīr*, 2: 338.

³⁰³ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 83-84.

³⁰⁴ Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 903.

to hear the Word of Allah; rather, it is mainly a justification for granting him protection for the purpose of trading and selling merchandise in Muslim markets, and to stay there at least temporarily. Therefore, the duty of the Muslims was to ease the way for him and not prevent him from conducting his business.³⁰⁵

According to Ibn Kathīr, the intention behind granting *amān* in the above mentioned verse is to convey the Word of Allah, but this does not invalidate employing *amān* for another purpose. For him the purpose of the verse is to allow *ḥarbī* individuals who are willing to enter *dār al-Islām* for the purpose of trading, negotiating a *ṣulḥ* (truce) or *muhādana* (ceasing of hostilities for a temporary period of time or fixed time), or the like, to do so in all safety, and if they request *amān* from the imām or his deputy, they should be granted it until such time as they leave *dār al-Islām* for their own *dār*.³⁰⁶

b. The traditions of the Prophet:

There are many traditions that specifically refer to protecting the *ḥarbī*. The Companions of the Prophet came to seek answers regarding the status of the *ḥarbī*, such as whether it is permissible to grant him *amān* while he is in *dār al-Islām*. The Prophet, in reply, encouraged his Companions to grant the *ḥarbī* the *amān*.³⁰⁷ In the event that one Muslim grants the *ḥarbī* an *amān*, the Prophet indicated that all other Muslims should do so also. This amounts to granting permission to every Muslim to grant *amān* -- whether temporary or everlasting.³⁰⁸

³⁰⁵ ‘Imād al-Dīn al-Ṭabarī al-Harās, *Aḥkām al-Qur’ān*, 4: 25-27; *Tafsīr Abū Su‘ūd*, 2: 385.

³⁰⁶ *Tafsīr Ibn Kathīr*, 2: 338; Zamakhsharī, *Kashshāf*, 2: 140; Ālūsī, *Rūḥ al-Ma‘ānī*, 10: 52; Rashīd Riḍā, *Tafsīr al-Manār*, 10: 214.

³⁰⁷ Abū Yūsuf, *Kharāj*, 223.

³⁰⁸ Shaybānī, *al-Siyar al-Kabīr*, 1: 252-253.

The consensus of jurists regarding the *amān* for the *ḥarbī* is that, if the *musta'min* requests the *amān* to hear the Word of Allah, he should be granted that *amān* fully until he returns to his own *dār*. If a mature, ordinary Muslim grants the *amān* to a *ḥarbī* so as to protect him and his wealth and family while he is conducting his affairs within *dār al-Islām*, then the entire community must respect that safe-conduct while being obligated to provide a safe environment to complete his mission.³⁰⁹

B. The basis of *amān*:

a) Explicit, or verbal expression:

The *lafẓ* (utterance or declaration) of *amān* consists in a phrase implying the granting of *amān*, although it is not necessary that the *musta'min* should hear the declaration in his own language. Similarly, according to Shaybānī, if Muslims call upon the *ahl al-ḥarb* to grant them *amān*, then they are all *musta'minūn* no matter what the language of the declaration. This is derived from the practice of 'Umar ibn al-Khaṭṭāb, who said in writing to the Muslim soldiers in Iraq that they should state to their conquered opponents "do not fear or *matarsi*,"³¹⁰ and to assure them that they had thus come under *amān*, since Allah knows all languages.³¹¹ According to 'Izz b. 'Abd al-Salām, the only *'aqd* that absolutely requires *lafẓ* is the contract of marriage.³¹²

³⁰⁹ Ibn al-Mundhir al-Naysābūrī, *Ijmā'*, 73-74; Ibn Ḥazm, *Marātib al-Ijmā'*, 121; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 25; Ibn Qudāma, *al-Mughnī*, 10: 428; *Mawsū'at al-Ijmā' fī al-Fiqh al-Islāmī*, 1: 142-143.

³¹⁰ *Matarsi* is a Persian word that means: do not fear. See Ibn Hajar, *Fath al-Bārī*, 6: 275.

³¹¹ Shaybānī, *al-Siyar al-Kabīr*, 1: 283; Abū Yūsuf, *Kharāj*, 222; Malik, *Muwatta'*, 2: 448-449;

³¹² 'Izz ibn 'Abd al-Salām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, 2: 91.

b) Implicit, or non-Verbal expression:

If the Muslim uses a sign of *amān* to the polytheist and the latter does not understand that sign, the *ḥarbī* is still under his protection.³¹³ Since the sign was made by a Muslim to indicate *amān*, the purpose of that sign is the *amān*. Muslims moreover are prohibited from deceiving the polytheists under '*aqd al-amān*'. However in the event that polytheist try to deceive Muslims under the '*aqd al-amān*', this '*aqd* will be void.³¹⁴ It was reported that a person came to 'Umar ibn al-Khaṭṭāb and 'Umar asked him to speak. He said "should I speak the speech of the living or the dead? 'Umar chose the former, then ordered that the man be punished. The man asked 'Umar "did your Prophet instruct you to persecute prisoners to whom you have granted *amān*?" 'Umar replied, "when did I grant you the *amān*?" The man said "the moment you asked me to speak live, for the fearful person who is afraid of his life is not alive." Then 'Umar said that he had granted the *amān* and was not aware of it.³¹⁵

c.) The writing of the '*aqd al-amān*':

The writing of the '*aqd* is the process that reflects the acceptance of the '*aqd* of *amān* by the polytheist or *ḥarbī* on the one hand and the Muslim on the other.³¹⁶ The writing of the '*aqd* must be authentic and original since any fabricated document render the *amān* void.³¹⁷

The consensus of scholars regarding the basis for granting the *amān* is agreed that the '*aqd* must contain a declaration of protections such as the words mentioned

³¹³ Shaybānī, *al-Siyar al-Kabīr*, 2: 263-264; Balādhurī, *Futūḥ al-Buldān*, 2: 469; Abū 'Ubayd, *Amwāl*, 133-134; Ibn Hajar, *Fath al-Bārī*, 6: 275.

³¹⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 266.

³¹⁵ Ibid.

³¹⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 359-360; and idem, *Mabsūṭ*, 10: 71.

³¹⁷ Sarakhsī, *Mabsūṭ*, 10: 71

earlier, i.e., *ajartuka* (I accept you as my neighbor), *amantika* (I take you under my protection), *lā takhaf* (do not fear), etc. It should be pointed out that the '*aqd al-amān*' can be devised by the individual concerned or by his representatives.³¹⁸

C. The conditions of '*aqd al-amān*':

The conditions on which the '*aqd al-amān*' rests include the stipulation that it must be a fully authorized person who issues the '*aqd*' and that he be a Muslim who has freely chosen to issue that '*aqd*' for a given period of time. These three conditions - - Islam, free choice and time - - are essential to the validity of an '*aqd al-amān*'.

First, Islam is a condition because every ordinary Muslim is responsible for upholding the Islamic religion and by extension the Islamic community. This means that any mature Muslim, male or female, free or slave is capable of granting *amān* to a non-Muslim.³¹⁹ In the case of the free male Muslim, this may seem obvious, but it is interesting to note that the right extended beyond this class, as demonstrated in the case of free Muslim woman such as Umm Hānī, who granted the *amān* to Ibn Hubayra, in which act the Prophet supported her,³²⁰ and in that of a slave as well. Indeed, it is clear that the primary condition of granting *amān* is that one must be a member of the Islamic community; therefore, since he is a Muslim he meets that condition, thus his

³¹⁸ *Mudawwana*, 2: 42; Dardīr, *Sharḥ al-Ṣaghīr*, 3: 28; Ibn Juzayy, *al-Qawānīn al-Fiqhiyya*, 116; Nawawī, *Rawḍat al-Ṭalībīn*, 10: 278-280; *Mughnī al-Muḥtāj*, 4: 237; Ramī, *Nihāyat al-Muḥtāj*, 8: 80-81; Ibn Qudāma, *Mughnī*, 10: 548-550; Bahūtī, *Kashshāf al-Qinā'*, 3: 98; Ibn Taymiyya, *al-Muḥarrar fī al-Fiqh*, 2: 180; Ibn Miflīh, *al-Mubdi' Sharḥ al-Muqni'*, 3: 390-391; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 253.

³¹⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 253.

³²⁰ Malik, *Mudawwana*, 2: 41.

amān is valid.³²¹ By contrast, a *dhimmī* is not qualified to grant the *amān* to a *ḥarbī*, because of the condition of being Muslim.³²²

Secondly, it must be optional, or given of one's free will, and not made under duress. For example, if a Muslim prisoner in *dār al-ḥarb* is forced to grant *amān* to a *ḥarbī*, his *amān* is not acceptable because his circumstances do not authorize him to grant the *amān*, in view of the fact that he is under pressure or oppression. If he were to grant *amān* to the *ḥarbī*, it could be that he has done so to avoid ill-treatment at the hands of the *ḥarbī*. This type of *amān* need not be accepted by the Muslim community, although he himself is liable to respect that *amān* personally.³²³

Lastly, there is the time limit of the *'aqd al-amān*. As was mentioned earlier, the *'aqd al-amān* is concluded for a fixed period of time. The *musta'min* is, according to Shaybānī, given up to a year of safe conduct in *dār al-Islām*. This gives the *ḥarbī* enough time to transact his business, whether it is for selling, or paying or trade of merchandise. If he exceeds the one year, the imām will ask him to leave; otherwise, if he decides to stay, he will have to pay *jizya* and be treated as a *dhimmī* (non-Muslim who are protected by treaty of surrender) subject to certain *ahkām*.³²⁴

Under some circumstances the imām may forbid Muslims to grant the *amān* to *ḥarbīs*, e.g., in the case of battle or fighting. Since Muslims are obliged to obey the imām, they must not grant the *ḥarbī* an *amān* without the permission of the imām.

³²¹ Abū Yūsuf, *Kharāj*, 222; and idem, *al-Radd 'alā Siyar al-Awzā'i*, 69.

³²² Shaybānī, *al-Siyar al-Kabīr*, 1: 253.

³²³ Sarakhsī, *Mabsūṭ*, 10: 69-71; Abū Yūsuf, *al-Radd 'alā Siyar al-Awzā'i*, 68-70; and idem, *Kharāj*, 222-223; *Mukhtaṣar al-Ṭaḥāwī*, 292; Ibn Humām, *Fath al-Qadīr*, 4: 298; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4319-4320; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 27-30; Samnānī, *Rawḍat al-Qudā'*, 2: 1240-1241; *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 499; *al-Fatāwā al-Hindiyya*, 2: 198-199; *Ḥāshiyat Ibn 'Abidīn*, 4: 136-137.

³²⁴ This matter was discussed earlier in reference to the bases of the *'aqd al-dhimma*.

However, in the event that a Muslim grants the *ḥarbī* an *amān* in spite of the imām's order, the *amān* is still valid and it becomes the obligation of the Muslim community to respect this *amān*.³²⁵

The consensus of scholars regarding the conditions for concluding an '*aqd al-amān*', is that any ordinary Muslim male, female or slave is authorized to conclude one. They agreed that the insane, minors and *dhimmīs* may not grant *amān*, while the *amān* accorded by the prisoner or the captive is also invalid.³²⁶

D. The rights and obligation of the *musta'min*:

The *musta'min* must operate in *dār al-Islām* where he is foreigner and not a resident. Since he is neither encouraged to stay permanently in *dār al-Islām* nor prevented from returning to *dār al-ḥarb* as soon as he is through with his mission, he is not obliged to obey the Islamic ruling, since he enters the *dār* for a specific purpose and will return to his own *dār*. For example, if he commits any wrongdoing, e.g., adultery, he will not be subjected to the Islamic *ḥudūd* (fixed punishments for certain crimes); however he is obliged to respect the *ahkām al-mu'āmalāt* (rulings on mutual conduct) and the laws of contract. Upon his request for the *amān* from a Muslim, the latter is expected to provide a safe environment for him. Hence, under '*aqd al-amān*' he is authorized to enter *dār al-Islām*, be treated as a *dhimmī* in terms of rights and privileges, including protection and safety of himself, his merchandise and wealth, and

³²⁵ Shaybānī, *al-Siyar al-Kabīr*, 2: 576-577; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4318; Mālik, *Mudawwana*, 2: 41-42; Shāfi'ī, *al-Umm*, 4: 110-112; Bahūtī, *Kashshāf al-Qinā'*, 3: 98.

³²⁶ Ibn al-Mundhir al-Naysābūrī, *Ijmā'*, 73-74; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 25-30; Sha'rānī, *al-Mizān al-Kubra*, 2: 176; Khaṭṭābī, *Ma'ālim al-Sunan*, 4: 66-67; Faṭḥ al-Bārī, 6: 273-274; Khallāl, *Ahkām Ahl al-Milal*, 235; Ibn Rushd, *al-Bayān wa al-Taḥṣīl*, 2: 592.

observe certain obligations of the *dhimmī*, though not all.³²⁷ In the following, the rights and obligations of the *musta'min* are outlined, but without reference to the differences between individual and group relations.

a. The rights of the *musta'min*

In the first place, a *musta'min* has the right to practice his/her own religion and belief without any compulsion to later on adopt a new religion. The *musta'min* is like the *dhimmī*, as was mentioned earlier, but with an important exception: the *musta'min* did not enter *dār al-Islām* to become a member of the *dhimmī* community, and so he is not obliged to observe the Islamic *ahkām* as the *dhimmīs* and Muslims are.³²⁸

Second, the granting of *amān* to *musta'mins* and the obligation of Muslims to protect them is indicated in the *lafẓ* (verbal declaration). Thus, the establishment of '*aqd al-amān*' forbids fighting with a *musta'min*, taking him as prisoner or to seizing his wealth.³²⁹ Shaybānī indicates that if a *musta'min* wishes to enter *dār al-Islām* for trade purposes, he should be granted *amān*, because his trade is of benefit to the Muslim.³³⁰

The *imām* is under an obligation to provide a safe environment for the *musta'min* as long as he is within *dār al-Islām*, and he must punish whoever causes any harm to him while he is under his authority. However, the *qaṣās* (punishment or penalty) is applied neither to the *dhimmī* should he kill a *musta'min*, nor to the Muslim. This is because of their inequality in terms of blood value. However, if the *musta'min* kills a *musta'min* while they are in *dār al-Islām*, the *qīṣās* does apply and the heir of the

³²⁷ Shaybānī, *al-Siyar al-Kabīr*, 1: 306, 5: 1790; Sarakhsī, *Mabsūṭ*, 9: 55-56; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4152; Ibn Humām, *Fatḥ al-Qadīr*, 4: 154-156; Karābīsī, *Furūq*, 1: 326.

³²⁸ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1531; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4335-4337.

³²⁹ Kāānī, *Badā'i' al-Ṣanā'i'*, 9: 4320-4321.

³³⁰ Shaybānī, *al-Siyar al-Kabīr*, 2: 515.

persecuted will be compensated. Likewise, if he exceeds his rights in dealing with other *musta'mins*, the *qaṣās* will apply, since they are equal in the eyes of the law.³³¹

There are certain restrictions imposed upon both *amān* and the protection afforded to the *musta'min*. The first affects the provisions that he cannot be arrested or punished except for a short time, and the second affects his right to protection. For example, if the *must'amin* enters *dār al-Islām* for the purpose of trade, he is treated with full protection; however, if he enters *dār al-Islām* for the purpose of promoting or creating innovations among Muslims, then the *imām* has the right to arrest him until he fixes what he has damaged. The *imām* should neither harass nor persecute him, since he is under the '*aqd al-amān*'. The purpose of arresting him is to prevent him from continuing to commit such an act and to prevent him from returning to his own *dār* in order to cause further damage to *dār al-Islām*. At the time of his release, the *imām* will compensate him, should he need any help upon his departure to his *dār*.³³² The agreement is so binding that, should a group of *ḥarbīs* enter *dār al-Islām* under an '*aqd al-amān*' and wish to leave *dār al-Islām* to enter another region of *dār al-ḥarb* for the purpose of fighting Muslims, their Muslim hosts cannot prevent them from doing so.³³³

However, the protection normally granted to the *musta'min*, i.e., protection of his life, does not operate when the latter case applies. Thus, if enemies become aware of their purpose and wage a war against them while they are in *dār al-Islām*, the Muslims are not under any obligation to protect him even if they are capable of doing so. The contrast here with the *ahl al-dhimma* is striking: because the *ahl al-dhimma* are

³³¹ Ibid, 2: 1853.

³³² Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 2: 515-517.

³³³ Ibid., 2: 1873.

considered among *ahl dār al-Islām*, the imām is obligated to protect them as he protects the Muslims. However, the *musta'min* belongs to *dār al-ḥarb*, and is only present in *dār al-Islām* because of the '*aqd al-amān*'. The obligation of the Muslim to prevent any injustice or mistreatment of the *musta'min* is restricted to the *dār al-Islām*.³³⁴

In event that the *musta'mins* are present in *dār al-Islām* under an '*aqd al-amān*' for the purpose of trade and they are subjected to attack from a foreign enemy, Muslims should protect them. Should the *musta'mins* become prisoners of the enemy, then Muslims should try to secure their release, because they were taken prisoners from *dār al-Islām* and under Islamic authority.³³⁵ Similarly if *musta'mins* are granted *amān* by a Muslim and some other Muslims arrange an attack on the *musta'mins* and kill them or take their wealth to divide among themselves, the Muslims who committed the attack are obliged to pay the blood money and compensation for the loss and damage.³³⁶

The consensus of scholars regarding the matter of restricting the obligations of *amān* is that, if the *must'amin* enters *dār al-Islām* under '*aqd al-amān*', he is entitled to all protection and rights, while Muslims are obliged to prevent any harassment or attack on them as well as on their family and wealth. If the *must'amin* decides to leave *dār al-Islām*, the imām is obligated to escort him and protect him on his way out.³³⁷

With respect to the preservation of the wealth and honor of the holder of *amān*, it can be said that the *ḥukm* of the *amān* applies generally; thus the guarding of wealth

³³⁴ Shaybānī, *al-Siyar al-Kabīr*, 5: 1854-1856.

³³⁵ Ibid., 5: 1891, 1858-1859.

³³⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 258-260.

³³⁷ Ṭabarī, *Ikhtilāf al-Fuqahā'*, 34; Ibn Ḥazm, *Marātib al-Ijmā'*, 121; *Mawsū'at al-Ijmā' fī al-Fiqh al-Islāmī*, 1: 141, 144; *Mukhtaṣar Ikhtilāf al-Fuqahā'*, 3: 447; Mālik, *Mudawwana*, 2: 9-11; Shāfi'ī, *al-Umm*, 4: 201; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 244; and idem, *Takmilat al-Majmū'*, 18: 78; Ghazālī, *Wafīz*, 2: 196; Ibn Jamā'a, *Taḥrīr al-Aḥkām*, 237; Bahūtī, *Kashshāf al-Qinā'*, 3: 100; Mardāwī, *al-Inṣāf*, 4: 209; Ibn Mifliḥ, *al-Mubdī'*, 3: 394.

is the responsibility of the Muslim.³³⁸ If a *ḥarbī* requests the *amān* to cover his return to his *dār* and a later return to trade, as long as it is within the *‘aqd*, the *amān* will be granted to him accordingly.³³⁹ The merchandise being traded should not, however, include any kind of weapon that might be used against Muslims, in case the *ḥarbī* wishes to take it with him to his own *dār*.³⁴⁰

Should any accident befall the *musta’min* within *dār al-Islām*, such as sudden, natural death, the Muslim *imām* is under obligation to send an envoy to his family in the *dār al-ḥarb* to come and receive their inheritance.³⁴¹

Another element of the protection of the *musta’min*’s wealth is that if the *ḥarbī* enters *dār al-Islām* for trade purposes through *amān*, the *imām* is expected to protect his wealth as well as prevent any robbery or damages occurring to his merchandise. In that case the *musta’min* is treated on an equal footing with the *dhimmī*. Should the *ḥarbī* indicate in the *‘aqd* that his wealth should remain in *dār al-Islām* while he leaves for his own *dār*, his personal *amān* will be terminated but his wealth will remain under the protection of the *imām*.³⁴²

The consensus of scholars is that it is prohibited to sell the *musta’min* any bad merchandise.³⁴³ The *ḥarbī* is free to purchase commodities that cause no threat to

³³⁸ Shaybānī, *al-Siyar al-Kabīr*, 5: 1895; Kasānī, *Badā’i’ al-Ṣanā’i’*, 9: 4316, 4321, 4330.

³³⁹ Shaybānī, *al-Siyar al-Kabīr*, 2: 453.

³⁴⁰ Ibid., 4: 1242-1243, 5: 1873.

³⁴¹ Sarakhsī, *Mabsūṭ*, 10: 91; Ibn Humām, *Fatḥ al-Qadīr*, 4: 352; *al-Fatāwā al-Hindiyya*, 2: 235; Ṭabarī, *Ikhtilāf al-Fuqahā’*, 52-53.

³⁴² Nawawī, *al-Muḥadhdhab with Takmilat al-Majmū’*, 18: 234; and idem, *Rawḍat al-Ṭalibīn*, 10: 280 and 289; Ibn Jamā’a, *Taḥrīr al-Aḥkām*, 236 and 238; Ibn Qudāma, *al-Mughnī*, 10: 429; Khalāl, *Aḥkām Ahl al-Milal*, 290-291; *al-Furū’*, 6: 250; Mardāwī, *al-Inṣāf*, 4: 208; Ṭabarī, *Ikhtilāf al-Fuqahā’*, 146.

³⁴³ Ṭabarī, *Ikhtilāf al-Fuqahā’*, 144.

Muslims and take them with him to *dār al-ḥarb*. Similarly, as we have seen, his wealth in case of sudden accident belongs to his heirs in *dār al-ḥarb*.³⁴⁴

b. The obligations of the *musta'min*:

First, the *musta'min* must show obedience to the Islamic judicial system in relation to matters of trade intercourse and material interaction. For example, the *musta'min* is prohibited from dealing in *ribā* (usury) within *dār al-Islām*. All of his merchandise and interaction is under the supervision of the Islamic system, while he is dealing with Muslims. In the event that the *musta'min* requests from the *qāḍī* (judge) that he look into any dispute between him and another *musta'min*, while both are in *dār al-Islām* under an '*aqd al-amān*', the *qāḍī* is no under obligation to settle their dispute because the dispute took place while they were in *dār al-ḥarb*, over which he, the *qāḍī*, has no jurisdiction.³⁴⁵

In the case of dispute between one *ḥarbī* and another, or between a *ḥarbī* and a *dhimmī* or between a *ḥarbī* and a Muslim, and where the dispute takes place within *dār al-Islām* under an '*aqd al-amān*', should they take their case or dispute before the *qāḍī*, the latter will look at their case under the terms of Islamic law. Since the dispute took place within *dār al-Islām*, then they are under the Islamic jurisdiction and Islamic *aḥkām* apply to all.³⁴⁶

The consensus of scholars regarding the *ḥarbī*'s obedience to the Islamic judicial system is that, in the event that a dispute takes place between the *ḥarbī* and his

³⁴⁴ Ibid., 48, 50, 52-53.

³⁴⁵ Sarakhsī, *Mabsūṭ*, 10: 93; Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4379; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 56-57, 59-60.

³⁴⁶ Ṭabarī, *Ikhtilāf al-Fuqahā'*, 56-57, 59-60. As regards to the extent to which non-Muslims are subject to the Islamic judiciary system see the following: *Tafsīr al-Baghawī*, 3: 59; *Tafsīr, Qurṭubī*, 6: 184-186; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 2: 434-438; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 632-

own merchants or with Muslim residents, the *qāḍī* is under obligation to settle their dispute and apply the Islamic *aḥkām* if and as necessary.³⁴⁷ The *ḥudūd* (punishment) will be inflicted on the guilty, although not that prescribed for adultery (where the *ḥarbī* is exempt); however the punishment applies to him for theft, though he is not liable to have his hand chopped off. This is because the *ḥarbī* is not a *dhimmī*, and any *‘aqd al-amān* concluded with the *ḥarbī* is not subject to Islamic *aḥkām*.³⁴⁸ In the event that a *ḥarbī* kills a Muslim he will be prosecuted under Islamic law. But should a Muslim oppress a *ḥarbī* or abuse his wealth or honor, he will only be punished by having to compensate the *ḥarbī*. Similarly, if a Muslim commits adultery with a *ḥarbī* woman, the Muslim will be punished, while if a Muslim should steal from a *ḥarbī*, he will have to compensate the *ḥarbī* and return what he stole from him, although he will not suffer the loss of a hand.³⁴⁹

The disagreement among scholars results in some saying that the *ḥudūd* do apply in the above cases. Thus, for Abū Ḥanifa, should a *ḥarbī* commit adultery with a Muslim or *dhimmī* women, the *ḥadd* will not apply to the *ḥarbī* but to the women alone. Abū Yūsuf contends that the *ḥadd* is not applicable to either, but he does say that both should be punished, whereas Shaybānī insists that neither be punished. Abū Yūsuf goes on to say, however, that if the *must’amin* has agreed to obey the Islamic *aḥkām* in terms of mutual trade interactions and the like for the fixed period of the *‘aqd*, then the *dhimmī*’s obligations towards Islamic *aḥkām* will apply to him as well. Therefore, the *ḥarbī* is subject, if he commits adultery, murder or theft, to punishment

633.

³⁴⁷ Ṭabarī, *Ikhtilāf al-Fuqahā*, 56; Karābisī, *Furūq*, 1: 326.

³⁴⁸ Abū Yūsuf, *Kharāj*, 204-205; and idem, *al-Radd ‘alā Siyar al-Awzā’i*, 94; Ṭabarī, *Ikhtilāf al-Fuqahā*, 56-57; *Mukhtaṣar Ikhtilāf al-‘Ulamā*, 3: 450.

according to the Islamic law. The *ḥarbī* is furthermore prevented from purchasing copies of the Qurʾān or Muslim slaves. However, in terms of drinking alcohol, he is not bound by the Islamic prohibition since it is not forbidden in his own faith. Abū Ḥanīfā and Shaybānī disagree with Abū Yūsuf regarding the punishment of the *ḥarbī*, generally speaking however, they are in agreement regarding the drinking of alcohol, insisting also that the *ḥarbī* not be punished.³⁵⁰

Shāfiʿī agrees with Shaybānī's opinion that if a *ḥarbī* enters *dār al-Islām* under an *ʿaqd al-amān* and commits a crime, the punishment that applies to him may be either of two kinds. The first is exclusively the domain of the Almighty Creator on the Day of Judgment; nothing can be done there by the Muslim imām. Amnesty may be granted to him; however, he will be warned that if he commits the same act again, termination of the *ʿaqd al-amān* may result. The second type of punishment is applied in case of murder: if the *ḥarbī* kills someone within *dār al-Islām*, he will be killed in return.³⁵¹

As regards the tax system, i.e., *ʿushūr*, the *mustʿamin* is under obligation to pay this levy on his income from trade in return for protection of his life and wealth while he is within *dār al-Islām*. This is the same treatment that a Muslim can expect upon entering *dār al-ḥarb*, where taxes may be imposed in return for the protection of themselves and their wealth.³⁵² Thus the imposition of *ʿushūr* is regarded as mutual

³⁴⁹ Abū Yūsuf, *Kharāj*, 204-205; Ṭabarī, *Ikhtilāf al-Fuqahāʾ*, 56-57.

³⁵⁰ For further details regarding the opinions of Abū Ḥanīfā, Abū Yūsuf and Shaybānī see the following: Ibn al-Humām, *Fath al-Qadīr*, 4: 154-156; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1852; Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 3: 182-183; Ibn Nujaym, *al-Baḥr al-Rāʾiq*, 5: 19; Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿUlamāʾ*, 3: 450.

³⁵¹ Shāfiʿī, *al-Umm*, 7: 324; Ṭabarī, *Ikhtilāf al-Fuqahāʾ*, 55; Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿUlamāʾ*, 3: 450.

³⁵² Abū Yūsuf, *Kharāj*, 146; Yahyā Ibn Ādam, *Kharāj*, 169; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5:

treatment, *al-mithl bi-l-mithl* (quid pro quo). As was mentioned earlier, the process of ‘*ushūr*, charged once a year, is not imposed upon women, slaves or children if they enter *dār al-Islām* for trade purposes.³⁵³

The *musta’min* is obligated to pay ‘*ushūr* out of revenue from the trade he engaged in while in *dār al-Islām*. It is stated moreover that, even if Muslim merchants enter *dār al-ḥarb* and are charged an amount that is more than the ‘*ashūr*, Muslims should not treat the *ḥarbī* merchants in the same way, since this is known as *ghadr al-amān* (betrayal of the ‘*aqd*).³⁵⁴ Betrayal in Islam is prohibited, just as is failure to respect treaties drawn up according to Islamic principles.³⁵⁵

Among the various rulings on the ‘*ushūr* paid by the *musta’min* is one that states that if a *musta’min* claims that the wealth that he has earned or carrying is not for trade purposes, or it is used to pay his debts or belong to someone else, or pay the ‘*ushūr* to another Muslim deputy, or that the period of time has been less than one year, the ‘*ushūr* is taken from him all the same. This is because if his claim in the first case is true, then the ‘*aqd* would not have been concluded with him in the first place, since it is for trade purposes. If he is in debt, it is not the *imām*’s responsibility; his debt derives from the *dār al-ḥarb*, and stays there. As for the period of time being less than a year, the ‘*aqd al-amān* itself states that he cannot stay in *dār al-Islām* for a whole year, otherwise he would be obligated to pay the *jizya*.³⁵⁶

2135; and idem, *Mabsūṭ*, 2: 199-200.

³⁵³ Abū Yūsuf, *Kharāj*, 143-146; Kasānī, *Badā’i’ al-Ṣanā’i’*, 2: 891; Ibn Humām, *Fatḥ al-Qadīr*, 1: 534; *al-Fatāwā al-Hindiyya*, 1: 84; Zayla’ī, *Tabyīn al-Ḥaqā’iq*, 1: 286; Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-‘Ulamā’*, 1: 462.

³⁵⁴ Sarakhsī, *Mabsūṭ*, 2: 200.

³⁵⁵ *Sharḥ al-Hidāya*, 1: 534; *Ḥaṣhiyat Ibn ‘Abidīn*, 2: 314-315; *al-Fatāwā al-Hindiyya*, 1:184; Damād Afandī, *Majma’ al-Anḥur*, 1: 290.

³⁵⁶ Shaybānī, *Kitāb al-Siyar*, edited by Majid Khadduri, 182; *Kitāb al-Aṣl*, edited by al-Afghānī,

In the event that the *ḥarbī* should spend less time in *dār al-Islām* than was specified in the *‘aqd al-amān*, and while within *dār al-Islām* he has paid the *‘ushūr* and returned to *dār al-ḥarb* and then enters the *dār al-Islām* again, the *‘ushūr* is imposed on him again. For with his departure from *dār al-Islām* to his own *dār*, the *‘aqd al-amān* is terminated.³⁵⁷

The consensus of scholars regarding the *aḥkām al-‘ushūr* and how it is imposed upon the *musta’mīn* differs slightly between the different schools. Maliki jurists indicate that the *‘ushūr* of the *musta’mīn* is taken but reduced by half, unless there are Muslims in special need, and that it is taken each time a *ḥarbī* enters *dār al-Islām* for trade purposes. Shāfi‘ī jurists explain that the *‘ushūr* is taken from the *musta’mīn* as specified in the *‘aqd al-amān* and according to what the *‘aqd* states, and that it is imposed just as a Muslim merchant entering *dār al-ḥarb* for trade purposes would be obligated to pay according to the conditions of an *‘aqd*. Ḥanbalī jurists insist that the *‘ushūr* is taken but not out of consideration of mutual treatment, since Islamic principles obligate Muslims to treat others according to the texts, not according to the way they have been treated. The *‘ushūr* is collected once a year, but should the *musta’mīn* be bringing goods that Muslims greatly need, the tax will not be applied.³⁵⁸

E. The termination of the *‘aqd al-amān*:

Since a major distinction of the *‘aqd al-amān* from the *‘aqd al-dhimma* is the fact that the former has a time limit and the latter is permanent, the *‘aqd al-amān* is

2: 102-103; *al-Jāmi‘ al-Saghīr*, 101; Sarakhsī, *Mabsūṭ*, 2: 200; Abū Yūsuf, *Kharāj*, 144; Kasānī, *Badā‘i‘ al-Ṣanā‘i‘*, 2: 887; Ibn Humām, *Fath al-Qadīr*, 1: 534; *al-Fatāwī al-Hinidyā*, 1: 184; Damād Afandī, *Majma‘ al-Anhur*, 1: 209; *Ḥāshiyat Ibn ‘Abidīn*, 2: 314.

³⁵⁷ Abū Yūsuf, *Kharāj*, 147; Abū ‘Ubayd, *Amwāl*, 570; Shaybānī, *al-Siyar al-Kabīr*, 5: 2141.

³⁵⁸ Jaṣṣaṣ, *Mukhtaṣar Ikhtilāf al-‘Ulamā’*, 1: 462; Sha‘rānī, *al-Mizān al-Kubrā*, 2: 185-186; Mālik, *al-Mudawwana*, 1: 280-281; Shāfi‘ī, *al-Umm*, 4: 281; Ibn Qudāma, *al-Mughnī*, 10: 597-604;

naturally void at the end of its period of application. The person who grants an *amān* to the *ḥarbī* should inform him of the time when his departure from *dār al-Islām* is required. If the *ḥarbī* decides to stay longer than the time limit, then he will no longer be treated as a *ḥarbī* but rather as a *dhimmī* and will be obligated to pay the *jizya*.³⁵⁹

Should the *ḥarbī* not have been informed of the time due for his departure, the imām is obliged to inform him of this date and it is the *imām*'s responsibility to terminate the '*aqd*' for him with his consent.³⁶⁰ The *musta'min* is free to terminate his '*aqd*' in the event he decides to become a Muslim, at which moment he will be treated as a member of the Islamic community, or in the event he decides to become a *dhimmī* and agrees to pay the *jizya* and reside in *dār al-Islām*. In this case he will be a member of the *dār al-Islām* community with all the pertinent rights and obligations. If, however, the '*aqd al-amān*' is violated in one of its conditions then the '*aqd*' is void. Also, if the *ḥarbī* declares war upon Muslims and the imām while he is within *dār al-Islām*, then his '*aqd al-amān*' will be terminated.³⁶¹

According to Shaybānī there are some deeds that do not terminate '*aqd al-amān*', such as if the *ḥarbī* murders a Muslim mistakenly: in this case the '*aqd*' will not be subject to termination, but a punishment will certainly apply. And even if the *musta'min* commits espionage for the enemy, or adultery or theft, these acts do not terminate the '*aqd al-amān*', but they may entail punishment.³⁶²

Khalāl, *Aḥkām Ahl al-Milal*, 62-63.

³⁵⁹ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4321; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1710; *Tafsīr Abī Su'ūd*, 2: 386.

³⁶⁰ Ibid,

³⁶¹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1873; and idem, *Mabsūṭ*, 10: 85-86; Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4334; Ibn Humām, *Fatḥ al-Qadīr*, 4: 381; Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 451; Ibn Nujaym, *al-Baḥr al-Rā'iq*, 5: 111.

³⁶² Shaybānī, *al-Siyar al-Kabīr*, 1: 305, 5: 1690, 2040-2042; Sarakhsī, *Mabsūṭ*, 10: 89; Ibn

As soon as the expiration of the *'aqd* is due, the imām should not force the *musta'min* to depart from *dār al-Islām* on short notice. He should give him enough time so as not to cause any hardship for the *musta'min*. Should he need extra time to finish his business, the imām is to assign a fixed time for the *must'amin* in order to complete his business.³⁶³

The imām is under obligation to escort the *musta'min* to his own *dār*³⁶⁴ with every protection needed to protect him from highway robbery, until he reaches his own *dār*. As long as he is within the borders of *dār al-Islām*, the imām should provide all necessary protection. Should the *musta'min* need extra money to return to his own *dār*, due to some offense that he caused while in *dār al-Islām* and for which he suffered imprisonment, the imām is obligated to give him an amount sufficient to cover his expenses until he reaches his own *dār*. The money given to the *musta'min* under these circumstances will be taken from the *bayt al-māl* (public treasury).³⁶⁵

When one compares how previous civilizations acted with regard to the status of the foreigner within the *dār*, Islam can be seen as quite advanced in its official treatment of aliens. For example, Greeks regarded foreigners as barbarians and slaves, while the Romans maintained a private law governing the relations between Romans and another that governed relations between the indigenous and the foreigners. Those laws did not protect the foreigners; indeed, any foreigner entering Rome could have his wealth seized by any indigenous Roman that caught him first.³⁶⁶

Humām, *Fath al-Qadīr*, 4: 381-382.

³⁶³ Sarakhṣī, *al-Siyar al-Kabīr*, 5: 1867 and 2246; *al-Jāmi' al-Ṣaghīr*, 263; Ibn Humām, *Fath al-Qadīr*, 4: 352; Ḥaṣḥafī, *al-Durr al-Mukhtār*, 4: 168.

³⁶⁴ Sarakhṣī, *Sharḥ al-Siyar al-Kabīr*, 1: 514.

³⁶⁵ Ibid.

³⁶⁶ Ḥamid Ṣulṭān, *al-Qānūn al-Dawī al-'Āmm*, 24-25; also see Goitein, *Jews and Arabs: Their*

Concluding remarks:

The *'aqd al-dhimma*, as well as the definition of the *dhimmī* himself, demonstrates that the Islamic principle of peaceful relations between peoples begins at the heart of the Muslim *umma* itself. Functioning almost like an internal treaty, the *'aqd* regulates relations between communities living side by side within *dār al-Islām*, making co-existence possible in spite of fundamentally different legal and social codes.

The similarities between the *'aqd al-dhimma* and the international Islamic treaty are striking: both are negotiated by representatives of the respective communities/nations; both are formal agreements setting out conditions to be met on either side; and both are intended to create a peaceful environment that favors development and prosperity.

The over-arching concern to prevent hostilities is shown in the ease with which the *'aqd al-dhimma* could be concluded, both in theory and in practice. To ensure peace during the expansion of Islam, the offer of protected status in exchange for payment of the *jizya* seems almost to have been the preferred approach to non-Muslim communities. And while this seems to have been counter-productive to the spread of Islam as a faith, it must be remembered that, while designed to safeguard the religious rights of minorities, the relationship that the *'aqd al-dhimma* entailed served to ensure the spread of Islam by providing an atmosphere of trust and mutual contact.

And yet the *'aqd* is far from a casual arrangement: it is a serious undertaking entered into on a permanent basis, and it binds both parties to responsibilities that are far-reaching in their implications. In this respect it was an even more conclusive

agreement than an international treaty, which is fixed in duration and seems almost realistic in its anticipation that it cannot last. By contrast the *'aqd* aims at an ideal, and the strange thing is that this ideal was as often as not achieved in Islamic history.

Although it resembles in many ways the *'aqd al-dhimma* – with which it shares its origin – the *'aqd al-amān* has a different and very practical purpose in that it facilitates contacts between Muslims and non-Muslims lacking *dhimmī* status. It provides for individual non-Muslims from the *dār al-Islām* freely and without prejudice to their lives or property. In this sense it occupies a sort of median position between *'aqd al-dhimma* and the Islamic international treaty. It anticipates some of the elements of the treaty, while at same time operates at a very personal level: witness the fact that binding *musta'min* status can even be extended, in most cases, by an individual Muslim to an individual non-Muslim.

Again, Islamic international law sets forth strict guidelines for the agreement, assigning rights and obligations on both sides. These guidelines are extremely fair, however, and realistic as well. They are designed to facilitate movement, and especially trade between Muslims and alien non-Muslims. And to make such relations possible, the protections offered are considerable and legally binding – in theory at least, Muslims were obliged in some circumstances to wage war against other Muslims should the lives of *musta'min* be endangered. As some scholars pointed out, Islamic law is unique in the protections offered to aliens.

Chapter Three: International Treaties

Treaties have been among the most important instruments of international relations both in ancient and modern times. Treaties (*mu'āhadāt*) have provided the framework for peaceful relations in the spheres of both internal and external relations between Muslims and non-Muslims. International relations were of particular interest to classical Muslim jurists, chief among them Shaybānī. These jurists constructed a system of drawing up such instruments that covered all aspects of the process, such as the establishment, conclusion, effects and termination of international treaties. Classical Muslim scholars focused on specific aspects of these treaties, in particular the fulfillment of the *'aqd* (contract) and the ramifications of acts of treachery and oppression.

A discussion and analysis of international treaties follows here, examining the philological roots of the term *mu'āhadāt* and its basis for legitimization within the context of the Muslim legal sphere. First, the discussion will examine the definition of the *mu'āhada* and its distinction from other legal terminology and then consider its legitimacy. This discussion is primarily derived from classical literature.

I. Definition of *Mu'āhadāt*:

A. Philological definition:

The root of *mu'āhada* is *'ahd*, which means a promise or commitment. *Mu'āhada* is the verbal noun (*maṣḍar*) of *'ahd*, denoting a covenant between two parties. This will be the working definition for this chapter. *'Ahd* is a covenant, pact, treaty or agreement that requires commitment and fulfillment whenever it is concluded

and enforced.¹ *Ahd* also signifies a firm commitment to observe an agreed-upon contract. The Qur'ānic verses that deal explicitly with the concept of *'ahd* laid the foundations for later interpretation:

And fulfill the Covenant of Allāh (*Bai'a*: pledge for Islam) when you have covenanted.² But if they seek your help in religion, it is your duty to help them except against a people with whom you have a treaty of mutual alliance.³

O you who believe! Fulfill your obligations.⁴

'Ahd also encompasses the concepts of *amān* and *dhimma*, two terms discussed earlier in direct relation to the subject under examination. The *ahl al-'ahd* are the people or the parties who are involved in concluding an *'ahd*. The *mu'āhada* is the constitution or the contract between the parties. Therefore, a *mu'āhada* is the covenant between two individuals or groups.⁵ The *mu'āhada* on an international level is a contract between two or more nations/states designed to normalize relations among them.

Shaybānī uses the term *mu'āhada*, though he often refers to it interchangeably as *muwāda'a* (truce), *'ahd* (contract or pact), *murāwada*, *hudna*, *muṣālaḥa* (mutual peace), *mutāraka* and *musālama* (mutual peace) in his writings.⁶ He specifically uses *muwāda'a* and *mu'āhada* more than any other term. For Shaybānī, a *mu'āhada* is a

¹ Jurjānī, *Ta'rifāt*, 204.

² Q. 16: 91.

³ Q. 8: 72.

⁴ Q. 5: 1.

⁵ *Mu'jam Maqāyīs al-Lughā*, 4: 167-170; Jawharī, *al-Ṣiḥāḥ*, 2: 515-516; Firūzabādī, *Tartīb al-Qāmūs al-Muḥīṭ*, 3: 335-336; *Lisān al-'Arab*, 3: 311-315; Fayūmī, *al-Miṣbāḥ al-Munīr*, 2: 435; Kafawī, *al-Kulliyāt*, 3: 255; Rakkī, *al-Nuẓum al-Musta'dhab*, 1: 156, 2: 340; Maṭrizzī, *al-Mughrib fī Tartīb al-Mu'arab*, 2: 91-92; Jurjānī, *al-Ta'rifāt*, 204; Ibn al-Athīr, *al-Nihāyah fī Gharīb al-Ḥadīth*, 3: 325; Rāghib al-Iṣfahānī, *Mufradāt al-Qur'ān*, 350-351; Nāṣr Sulaymān al-'Umar, *al-'Ahd wa al-Mithāq fī al-Qur'ān al-Karīm*, 17-19; *al-Mu'jam al-Wasīṭ*, 2: 134.

⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 2: 409-419, 461, 5: 1689-1697; and idem, *Mabṣūṭ*, 10: 85; Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4324; Ibn Humām, *Fath al-Qadīr*, 4: 292; Ḥaṣṣakī, *Durr al-Muntaqa*, 1: 638.

muwāda'a between Muslims and non-Muslims for a fixed period of time.⁷ Many Ḥanafī jurists adopted this definition, including the eminent Samarqandī, who defines a *muwāda'a* as the *ṣulḥ* (reconciliation) designed to end physical conflict for a fixed time period, involving the paying of tribute or other conditions.⁸ Kāsānī agrees with Samarqandī and defines *muwāda'a* as a *ṣulḥ* that puts an end to physical conflict for a temporary period.⁹ Other Ḥanafī jurists likewise use different expressions for *mu'āhada*, such as *muwāda'a* and *muqāḍāt*;¹⁰ moreover, jurists sometimes define it as *amān* or *isti'mān*,¹¹ and some refer to it by the term *muhāwada*.¹² Ḥanbalī jurists adopt the same definition as the Ḥanafī jurists do,¹³ for whom some of these expressions are synonymous, such as *muhādana*, *muwāda'a*, *mu'āhada*, *musālama*, *isti'mān* and *ṣulḥ*.¹⁴

It is essential to explain the meanings of certain Islamic legal terms that lie at the heart of our discussion. Firstly, *muwāda'a* (reconciliation) refers to the achievement of *ṣulḥ* (peace or truce); it is a verbal noun designating the cessation of fighting, usually for a specific period of time. *Mutāraka* (suspension of hostilities) is also commonly used, and, where present, the parties involved (in particular *ahl al-ḥarb*) are bestowed with the attribute of *musta'min* by virtue of being granted the *amān*. That is why some of the Ḥanafī jurists describe it as the “appeal for *amān* and abstention from fighting.”¹⁵

⁷ Shaybānī, *al-Siyar al-Kabīr*, 5: 1780.

⁸ Samarqandī, *Tuḥfat al-Fuqahā'*, 3: 507.

⁹ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4324.

¹⁰ Mutarrīzī, *al-Mughrib fī Tartīb al-Mu'arab*, 2: 184.

¹¹ Raṣṣāḥ al-Mālikī, *Sharḥ al-Ḥudūd Ibn 'Arafā*, 1: 226.

¹² Azharī, *al-Zāhir fī Gharīb Alfāz al-Shāfi'*, 398.

¹³ Murdāwī, *al-Inṣāf*, 4: 211; Bahūtī, *Kashāf al-Qinā'*, 3: 103.

¹⁴ For more details see, Raṣṣāḥ al-Mālikī, *Sharḥ al-Ḥudūd Ibn 'Arafā*, 1: 226.

¹⁵ See, Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4324; *al-Mughrib*, 2: 346; *al-Nuẓum al-Musta'dhab*, 2: 8; Fayūmī, *al-Miṣbāḥ al-Munīr*, 2: 653; *Ḥāshiyat al-Sharqāwī 'alā al-Taḥrīr*, 2: 466; *Ḥāshiyat al-Shalabī 'alā Tabyīn al-Ḥaqā'iq*, 3: 245.

The majority of jurists defined the *mu'āhada* as a *muhādana* (conclusion of a truce). If a peaceful state is reached between the two parties engaged in a battle or dispute under the condition of reconciliation for a period of time to reduce tension and aggression, it is called a *muhādana*.¹⁶ Mālikī jurists define *mu'āhada* as a truce between Muslims and *ḥarbīs* concluded to end physical conflict for a fixed period of time under Islamic law,¹⁷ while Shāfi'ī jurists define it as a contract concluded for the sake of ending fighting for a fixed time period with or without compensation.¹⁸ Ḥanbalī jurists define it as an abstention from fighting for a fixed time period with or without compensation.¹⁹

Muṣālaḥa (the making of peace), refers to the initiative taken by two parties involved in a dispute to reach a peaceful agreement.²⁰ *Muqāḍāt*, or taking legal action is the recourse by which parties seek a *ḥukm* (judgment) in a disputed case.²¹ *Mutāraka*, or the suspension of hostilities, is similar in concept to *muṣālaḥa* (to make peace) or *musālama* (to demand a peaceful agreement).²²

Some scholars try to define further the distinctions between these terms: for example, Abū Hilāl al-ʿAskari indicates that there is a difference between *ʿaqd* and *ʿahd*. According to al-ʿAskari, an *ʿaqd* is more elastic than an *ʿahd*, for when a person or a party reaches an *ʿahd* with another person or party, it means that each is bound to that

¹⁶ Bahūtī, *Kashshāf al-Qināʾ*, 3: 103; Muṭarrizī, *al-Mughrab*, 2: 381; *al-Nuẓum al-Musta'dhab*, 2: 381; *al-Zāhir*, 397-398; *al-Miṣbāḥ al-Munīr*, 2: 636.

¹⁷ Ibn ʿArafa, *Hudūd Ibn ʿArafa*, 1: 226; Dardīr, *al-Sharḥ al-Kabīr*, 2: 206; Wansharīsī, *al-Miʿyār al-Muʿarib*, 2: 209.

¹⁸ See, Zakariya al-Anṣārī, *Sharḥ al-Taḥrīr*, 2: 465-466; *Fatḥ al-Wahhāb and Ḥāshiyat al-Bajīrmī*, 4: 285; Ramī, *Nihayat al-Muḥtāj*, 8: 106; *Mughnī al-Muḥtāj*, 4: 260; *Sharḥ al-Muḥallī ʿalā al-Minhāj*, 4: 237; Ibn Ḥajar, *Fatḥ al-Bārī*, 6: 259.

¹⁹ *Al-Mubdī*, 3: 398; *al-Mughnī*, 9: 509; *Ghayat al-Muntahā* with *Maṭalib ʿAwlū al-Naḥī*, 2: 585-586.

²⁰ Muṭarrizī, *al-Mughrab*, 1: 479.

²¹ Ibn Manẓūr, *Lisān al-ʿArab*, 15: 186.

particular agreement with the other, while in the case of an *'aqd*, the person or party is bound by conditions that can be waived under certain circumstances. The difference between an *'ahd* and a *mīthāq* is that a *mīthāq* is only a confirmation of an *'ahd*.²³

In modern international law, the *mu'āhadā* (treaty or international treaty) is restricted to significant political agreements such as peace treaties or affiliations or alliances between nations or supranational agencies. In the case of economic international treaties, the term *'ahd* or *mīthāq* is normally used in the case of agreements with world organizations such as the International Monetary Fund, the World Bank, the Asian Development Bank, etc.

B. The basis of *mu'āhadāt*:

According to Shaybānī there are two conditions for concluding *mu'āhadāt* with non-Muslims, both of which must consider the *maṣlaḥa* (best interests of Muslims) and maintain their honor, prestige and dignity.

The first condition obtained if the Muslims are in a position of power; in such an instance they should not seek a *muwāda'a* with non-Muslims, especially if it is not in the best interests of the greater Muslim community. This condition is made explicitly in the following Qur'ānic verses:

So do not become weak (against your enemy), nor sad, and you will be superior (in victory) if you are indeed (true) believers.²⁴

Then “So be not weak and ask not for peace (from the enemy of Islam), while you are having the upper hand. Allah is with you, and will never decrease the reward of your good deeds.”²⁵

²² Muṭarrizī, *al-Mughrab*, 1: 104; Fayūmī, *Muṣbāḥ al-Munīr*, 1: 287.

²³ Abu Hilāl al-'Askarī, *al-Furūq al-Lughawiyya*, 42-43; Ibn al-'Arabī, *Aḥkām al-Qur'ān*, 2: 525; Nāsir Suleymān al-'Umar, *al-'Ahd wa al-Mīthāq fī al-Qur'ān al-Karīm*, 44-47; Muḥammad Tal'at al-Ghunaymī, *Aḥkām al-Mu'āhadāt fī al-Sharī'a al-Islāmiyya*, 49-50.

²⁴ Q. 3: 139.

²⁵ Q. 47: 35.

The second condition is obtained when Muslims are not in a position of advantage over non-Muslims, at which time it is permissible to seek a *muwāda'a*, since in these circumstances it may serve the interests of Muslims to do so.²⁶ Further justification of *muwāda'a* is found in the Qur'ān:

But if they incline to peace, you also incline to it, and (put your) trust in Allah. Virally, He is the All-Hearer, the All-Knower.²⁷

This verse validates *muwāda'a* in circumstances where non-Muslims are inclined to propose peace; however, jurists argue that if a *muwāda'a* serves the interests of Muslims, it is permissible for them to take the initiative in cases where it is required or advantageous.²⁸ The other Qur'ānic verse that pertains to this situation is the following:

If he belonged to a people with whom you have a treaty of mutual alliance, compensation must be paid to his family.²⁹

This verse addresses cases in which a Muslim has killed a person with whom a pre-existing treaty or alliance had been established. It encourages the parties to seek redress within the confines of that particular treaty or understanding. The verse also indicates and encourages the concept of *muwāda'a* or *mu'āhada*, referring to it as a *mīthāq* (covenant), i.e., a confirmed contract.³⁰

When the Qur'ān exhorts Muslims to fight, it also stipulates that Muslims not take up arms against those who have established a treaty with the Muslims:

²⁶ Sarakhsi, *Sharḥ al-Siyar al-Kabīr*, 5: 1689; and idem, *Mabsūṭ*, 10: 86; Zayla'ī, *Tabyīn al-Haqā'iq*, 3: 245-246; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 69-70 and 428-429.

²⁷ Q. 8: 61

²⁸ *Tafsīr al-Ṭabarī*, 14: 40; *Tafsīr al-Baghawī*, 3: 373; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 69-70; *Fath al-Bārī*, 6: 275.

²⁹ Q. 4: 92.

³⁰ *Tafsīr al-Baghawī*, 5: 263; *Tafsīr al-Qurṭubī*, 5: 325; Jaṣṣāṣ, *Aḥkām al-Qur'ān* 2: 239; Ibn al-'Arabī, *Aḥkām al-Qur'ān*, 1: 477.

Except those who join a group, between you and whom there is a treaty (of peace), or those who approach you with their breasts restraining from fighting you as well as fighting their own people.³¹

It is clear from this verse that the Qur'an places a restriction upon fighting those with whom a *muwāda'a* has been concluded or with their affiliated parties. This also validates and legitimizes the standing of affiliated parties to the *muwāda'a* as members covered by the agreement.³²

Another source for the institution of *mu'āhada* with non-Muslims arises from the conduct of the Prophet as spelled out in the traditions. When the Prophet Muhammad entered Medina, for instance, he concluded a treaty (strictly speaking, a *muwāda'a*) with the various Jewish tribes living there.³³ This agreement drawn up by the Prophet illustrates the validity of *mu'āhada* with non-Muslims at a time of weakness on the part of Muslims.³⁴ The conduct of the Prophet in this instance became a source for validating a *muwāda'a* under special circumstances.

The Battle of the Trench (5/627) marked another aspect of *muwāda'a*, in that on that occasion the Prophet received an envoy from the non-Muslims, 'Uyyayna ibn Ḥuṣum, who requested that the Prophet hand over all of the produce of Medina for one year and in return for the Meccans' renouncing hostilities. The Prophet consulted two community leaders from the Aws and Khazraj, Sa'd ibn Mu'ādh and Sa'd ibn 'Ubāda, regarding the offer. The Prophet and his two consultants agreed to give half of the

³¹ Q. 4: 90.

³² *Tafsīr al-Ṭabarī*, 9: 24-25; *Tafsīr al-Baghawī*, 2: 260.

³³ Balādu'ī, *Ansāb al-Ashraf*, 1: 286; Shāfi'ī, *Umm*, 4: 124; Abū 'Ubayd, *Amwāl*, 232; Ṭabarī, *Tārīkh*, 2: 479; For the text of the treaty in detail see, Muḥammad Ḥamidullah, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 57-59.

³⁴ *Sharḥ al-Siyar al-Kabīr*, 5: 1690.

produce, and a *ṣulḥ* was concluded.³⁵ However, a *muwāda'a* was not established in this circumstance; rather, only a *murāwaḍa* (to restore relations between parties to a normal condition) was agreed to, since Sa'd ibn Mu'adh and Sa'd ibn 'Ubāda asked the Prophet whether his action had been revealed to him and he replied no. They questioned the grounds of the agreement to hand over half of the produce of Medina, since their opponents had never demanded this from the Medinans before, but had always purchased the produce. At their urging, the Prophet realized the possible effect of the treaty and decided not to change the norms or deny the will of the inhabitant of Medina.³⁶

Another event that provided a precedent for future *muwāda'as* was the *ṣulḥ* of al-Ḥudaybiya concluded between the Prophet and the Meccan chiefs. The *ṣulḥ* came with conditions stipulating a fixed time period for its duration. In the case of Ḥudaybiya, the time period was set at ten years, and imposed a further condition in proscribing theft or betrayal by either party. Whoever left for or escaped to Medina from Mecca after the *ṣulḥ* was concluded would be handed back, even if he or she were a Muslim, whereas whoever left Medina for Mecca would not be returned to the Prophet. The Prophet and the Meccan representatives agreed upon these conditions.³⁷

³⁵ Ibn Sa'd, *al-Ṭabaqāt al-Kubra*, 2: 73; Ibn Ishāq, *Sīra*, 2: 232; Abū Yūsuf, *Kharāj*, 225; Abū 'Ubayd, *Amwāl*, 189-190; Ibn Zanjūwai, *Amwāl*, 1: 399; Wāqidī, *Maghāzī*, 2: 477-479.

³⁶ Ibn Abī Shayba, *al-Muṣannaf*, 14: 420; Haythamī, *Majma' al-Zawā'id*, 6: 132; Wāqidī, *Maghāzī*, 2: 477-479; Maqrīzī, *Imtā' al-Asmā'*, 1: 235.

³⁷ Ibn Ishāq, *Sīra*, 2: 316-317; Ibn Sa'd, *Ṭabaqāt al-Kubra*, 2: 97; Ibn Ḥajar, *Fath al-Bārī*, 5: 343; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 140; Ibn Humām, *Fath al-Qadīr*, 4: 293; Shawkānī, *Nayl al-Awṭār*, 8: 56. Some disagreements evolved among scholars as to the period of effectiveness of the treaty of Ḥudaybiya, with some saying that it was for ten years and others saying four years. Ibn 'Adī in his *al-Kāmil*, and Ibn al-Ḥākim in his *Mustadrak* and Ṭabrānī, *al-Awsaṭ* as well as Abū 'Ubayd in his *Amwāl*, indicate the time period of the *ṣulḥ* that was concluded between the Prophet and the Meccans was four years. However, according to the majority of classical sources the al-Ḥudaybiya *ṣulḥ*, was ten years, as indicated in Ibn Ishāq, *Sīra*, 2: 316-317 and Ibn Sa'd, *Ṭabaqāt*, 2: 92.

Al-Jaṣṣāṣ summarizes the opinions of Ḥanafī jurists with regard to the validity of a *mu'āhada* being concluded under such conditions: the jurists pointed out that the Prophet concluded several *ṣulḥ* contracts with non-Muslim tribes such as the Naḍir, Qaynuqā', and Qurayza, as well as the *ṣulḥ* of Ḥudaybiya, upon his arrival in Medina. All of these *ṣulḥs* were concluded at a time when the Muslims were weak and reduced in number, a fact mentioned also in treatises on *maghāzī* and *siyar*. When the Muslims became stronger and Islam and the Prophet's authority in Medina were recognized, however, agreements with Ahl al-Kitāb were more likely to include a demand for *jizya*. The revelation of two *sūras* (chapters) -- the eighth and ninth -- dealing with fighting and concluding *mu'āhadāt* with non-Muslims. However, the apparent difference in the *ḥukm* in the above-mentioned chapters depends on the political status of Muslims. First, we see encouragement to conclude a *musālama* or *muhādana* with the non-Muslims at a time of weakness for Muslims. The second is the assumption that fighting would resume whenever the Muslims were in a position of power.³⁸

The opinions of Ḥanafī jurists were largely mirrored in consensus among the Mālikī, Shāfi'ī and Ḥanbalī jurists. For example Mālikī jurists indicate that, if *jihād* is obligatory upon all, then the *muwāda'a* is not permissible, in case the *jihād* was a collective duty with an intention to conclude *ṣulḥ* for what is seen as public interest is for Muslim as it is seen by the *imām*. Shāfi'ī jurists gave their opinion that if the *imām* is in a position of strength and the outcome of the *ṣulḥ* does not serve the interests of the Muslim, then it is not permissible to conclude it. Similarly, Ḥanbalī jurists believed that as long as the *ṣulḥ* favors the interests of Muslims, it can be of use in cases where

³⁸ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 69-70.

the Muslims are weak or there is some other necessity; otherwise, it is not permissible.³⁹

Thus *mu'āhadāt* vary according to their status, requirements and conditions. They can be permanent as in the case of an *'aqd al-dhimma*, or temporary, as in the case of *amān*, *hudna* or *muwāda'a*, and they can contain a condition limiting their duration to a fixed period of time. Moreover, in the eyes of Muslims scholars, the *mu'āhada* can be concluded with all types of people regardless of their faith or nationality; for example, it can be a treaty to end a battle or hostilities (such as the *hudna*) or it can relate to matters of trade. It can be a simple bilateral treaty, or a multilateral one with several different signatories affiliated with either of the two main contracting parties, such as occurred in the case of the *ṣulḥ* of al-Ḥudaybiya.⁴⁰ As far as these *mu'āhadāt* are concerned, each one has its own *aḥkām* that depend upon the conditions and status of Muslims stipulated in the document itself, as we shall see when dealing with selected treaties concluded between Muslims and non-Muslims in the final chapter, below.

However, the validity of such treaties depends to a large measure on how they are concluded. A valid treaty should fulfill basic elements and conditions that take place in the process leading up to it. Each party might impose conditions that conform to its interests and that would have to be agreed upon by both parties involved in order for the treaty to be ratified. These elements and conditions fall into four main categories: the basic elements, conditions, the process of its establishment and reservations.

³⁹ Dardīr, *al-Sharḥ al-Kabīr*, 2: 205-206; Wansharīṣī, *al-Mi'yār al-Mu'arib*, 2: 207-208; Shāfi'ī, *Umm*, 4: 108; Nawawī, *al-Muḥadhdhab with the Majmū'*, 18: 221-222; *al-'Azīz Sharḥ al-Wajīz*, 13: 553; Ibn Qudāma, *al-Mughnī*, 10: 509-510; Abū Ya'lā. *al-Aḥkām al-Sulṭāniyya*, 49; *al-Baḥr al-Zakhār*, 6: 446; Shawkānī, *al-Sayl al-Jarrār*, 4: 565; Ibn al-Azraq, *Badā'i' al-Sulḥ fī Ṭabā'i' al-Mulk*, 2: 576-577.

⁴⁰ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1689, 1706-1707, 2016-2017; Mūsṣalī, *al-Ikhtiyār fī Ta'īl*

C. Basic elements of the *mu'āhada*:

The first element of the *mu'āhada* is the *ṣiḡha* (form), which reflects the acceptance and consent of both parties involved as in any other legal contract, according to Islamic jurisprudence. The *ṣiḡha* can be made known both by expression and by indication, while the expression can be either explicit or implicit. The explicit for example is the expression of *muwāda'a*, *mu'āhada*, *musālama* or *muṣālaḥa*.⁴¹ Shaybānī gives as an example of an explicit expression in a hypothetical case where a non-Muslim army lays siege to Muslim territory: if the Muslims fear the siege could lead to the loss of their lives and families, then they can offer the enemy a tribute of ten thousand *dinārs* in return for withdrawing from their territory. If they accept, this type of *ṣulḥ* is an explicit expression of *ṣulḥ*. Another example that he offers is where non-Muslims theoretically impose a condition for their withdrawal from Islamic territory, such as the payment of a tribute of ten thousand *dinārs* and the Muslims accept this. If the Muslims realize that the non-Muslims have broken the treaty prior to their withdrawal, they cannot retaliate until the non-Muslims reach their own territory, for the Muslims' acceptance of paying tribute to the non-Muslims is based on a *ṣulḥ* containing an explicit expression. Should a Muslim retaliate while the *ṣulḥ* is in effect, it would be considered as perfidy, an act forbidden in Islam.⁴²

On the other hand, the non-explicit expression is reflected in the case where Muslims do not specify the amount or type of tribute offered to non-Muslims in exchange for their withdrawal from Muslim territory. This is an indication of *muṣālaḥa*

al-Mukhtār, 4: 191.

⁴¹ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4324.

⁴² Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1711-1712, 2: 418-419.

(conciliation, settlement or peace) and *muwāda'a* (truce) alike, since the impetus to fight may stem from both sides. The non-explicit expression of *ṣulḥ* has, as one of its conditions, the termination of fighting on the part of both sides. This imposes an obligation for a *muwāda'a* to be established, binding on both parties.⁴³ However, where the expression does not indicate any explicit form of *amān*, the 'aqd of *ṣulḥ* is not accomplished and neither party is obligated to terminate the fighting, since non-explicit expression does not impose any type of explicit *amān*.⁴⁴

If any Muslim should give any sign or gesture that might be taken as a sign of *amān* by non-Muslims, then it is a valid *amān* and restricts any Muslim from committing any kind of attack upon them. According to Ḥanafī jurists, even on the battlefield, if any Muslim makes any sign to non-Muslims and they understand this as an indication of *amān*, whether the intention was known or unknown to them, it is still considered as a valid *amān*.⁴⁵

Ibn Taymiyya summarizes the opinions of scholars on the validity of the various forms of 'uqūd, on which he proposes three opinions. First, the 'aqd cannot be valid unless the condition of the consent of both parties is met and this must be made known as an explicit expression. The second is that the 'aqd is made valid by actions taken by both parties according to the interpretations and details of both parties involved in concluding the 'aqd. And third, the 'aqd is concluded in all of its indications by expression or action that is known to the people or customary practice among the

⁴³ Shaybānī, *al-Siyar al-Kabīr*, 5: 1713.

⁴⁴ Ibid.

⁴⁵ Ibn Humām, *Fath al-Qadīr*, 4: 302; see Abū Yūsuf, *Kharāj*, 232; Malik, *Muwaṭṭa'*, 2: 49 and *Mudawwana*, 2: 42, in reference to the conduct of 'Umar ibn al-Khaṭṭāb, and whether it validates the *amān* or not. See also, Abū 'Ubayd, *Amwāl*, 133-134; Balādhurī, *Futūḥ al-Buldān*, 2: 469; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 25; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 279-280.

people. The third opinion is not limited by language or code of law, but varies according to the people involved and their customary practices.⁴⁶

D. The conditions of *mu'āhadāt*:

a. Signatories of the *mu'āhada*

In order for the *mu'āhada* to be genuine and sound it should impose effective conditions that are incumbent upon the signatories or agreeing parties. If any one of the conditions is violated, omitted or disputed by any party, it will terminate the *mu'āhada*.⁴⁷ The conditions may be related to the parties, or the *mu'āhada* itself and the motives that lead to the conclusion of the *mu'āhada*. In the following pages, we examine the conditions of a genuine and sound *mu'āhada*.

The *imām* or his deputy must conclude the *mu'āhada* on behalf of the Muslim community, on the condition that the *mu'āhada* is in the interest of Muslims, for only then is it permissible to pursue it.⁴⁸ According to Shaybānī, if the caliph assigns a deputy, such as the chief of the army, as deputy, and he invites a group of non-Muslims to Islam who accept it, then they are free as Muslims and the obligation to pay *jizya* will be dropped. If they reject this offer the deputy can propose that they become *dhimma*, and then they will be treated according to the rules regulating *ahl al-dhimma*

⁴⁶ Ibn Taymiyya, *al-Qawā'id al-Nawrāniyya al-Fiqhiyya*, 104-114; Malik, *Mudawwana*, 2: 42; Dardīr, *al-Sharḥ al-Ṣaghīr*, 3: 28; Ibn Juzaya', *al-Qawānīn al-Fiqhiyya*, 161; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 279-280; Mughnī *al-Muḥtāj*, 4: 237; *Nihāyat al-Muḥtāj*, 8: 80-81; Ibn Qudāma, *Mughnī*, 10: 548-550; Bahūtī, *Kashshāf al-Qinā'*, 3: 93; *al-Muḥarar fī al-Fiqh*, 2: 180; *al-Mubdi' Sharḥ al-Muqni'*, 3: 390-391.

⁴⁷ The genuine '*aqd*', according to the jurists, is the '*aqd*' that binds its signatories to all of the conditions agreed upon. See for example, Jurjānī, *Ta'rifāt*, 173; Kafawī, *al-Kullīyyāt*, 3: 113; Fayūmī, *al-Maṣbāḥ al-Munīr*, 1: 333; Manāwī, *al-Tawqīf 'alā Muḥimmāt al-Ta'ārīf*, 448; Ibn Najjār, *Sharḥ al-Kawkab al-Munīr*, 1: 467; Amīrbadashāh, *Taysīr al-Taḥrīr*, 2: 234-235; Ghazālī, *al-Mustaṣfā*, 1: 94; Nazīh Ḥammād, *Mu'jam al-Muṣṭalahāt al-Iqtisādiyya fī Lughat al-Fuqahā'*, 172.

⁴⁸ Samarqandī, *Tuḥfat al-Fuqahā'*, 3: 507; Ibn Humām, *al-Hidāyya* with *Faṭḥ al-Qadīr*, 4: 293; Qarāfī, *Furūq*, 1: 106-107; and also Qarāfī, *al-Aḥkām fī Tamyīz al-Fatāwā 'an al-Aḥkām wa*

as indicated earlier. The actions of the chief of the army or deputy here represent the caliph's or the imām's wishes.⁴⁹ Anyone else from the Muslim community who wishes to offer *amān* to non-Muslims must consult the Imām first, since it is obligatory for all Muslims to obey the *imām*.⁵⁰ However there are exceptions to limiting the conclusion of an 'aqd to the *imām* and his deputy. In some circumstances, according to Shaybānī, it is permissible for an ordinary Muslim to conclude *muwāda'a* without the permission of the imām, since no Muslim would conclude any *muwāda'a* without first considering the interests of Muslims. As long as the treaty favors the Muslims at large, it is permissible to conclude it.⁵¹

The opinion of the majority of jurists is at variance with the opinions of Ḥanafī jurists on the question of who is entitled to conclude a *mu'āhada* with non-Muslims. The jurists agree that the only individual who is allowed to negotiate and conclude a *mu'āhada* with the non-Muslims is the *imām* or his deputy. It is unacceptable for anyone besides those vested with authority to conclude a treaty. Hence, in the case where a Muslim has concluded a *hudna* (truce) with a group of people and subsequently they enter *dār al-Islām* based upon that *hudna*, it is not acceptable. Therefore, the Muslim's obligation under these circumstances is limited to securing their departure, because they had entered the *dār al-Islām* under the assumption that they enjoyed full *amān*. However it is permissible for an ordinary individual Muslim to conclude an 'aqd *al-amān* with an individual non-Muslim.⁵²

Taṣarufāt al-Qāḍī wa al-Imām, 24-25; *al-Fatāwā al-Hindiyya*, 2: 196.

⁴⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 2179-2181.

⁵⁰ Shaybānī, *al-Siyar al-Kabīr*, 2: 576.

⁵¹ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4324-4325; *al-Fatāwā al-Hindiyya*, 2: 196; This was also the opinion of the Maliki jurist Sahnūn, as reported by al-Dardīr, *Sharḥ al-Kabīr*, 2: 205-206.

⁵² See, *Hāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr*, 205-206; Ibn Juzayy, *al-Qawānīn al-Fiqhiyya*,

b. The consent:

For the *mu'āhada* to be valid, one of its conditions is that the consent of the two parties involved be expressed, as indicated by the Qur'ānic verse which reads:

O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent.⁵³

This verse is the basis for the principle of the mutual consent of both parties. This applies to all contracts or agreements, in the form of a *muwāda'a*, such as those dealing with trade or reciprocal arrangements.⁵⁴ The Prophet's tradition shows that there is no sale without mutual consent,⁵⁵ illustrated by the *ḥadīth* that specifies the consent of both parties, "Transfer of the wealth of the Muslim is not lawful unless with his consent."⁵⁶ This is extended to include the consent of both parties, translated into action by obligation and acceptance, in the concluding of a *mu'āhada*.⁵⁷

If consent is necessary with reference to trade and other related contracts, then it is *a fortiori* much more necessary in international treaties that are primarily connected with the Islamic state.⁵⁸ Furthermore, if consent is one of the basic conditions of concluding contracts, including *mu'āhadāt*, in the case where there is absence of

163; Ibn Shāsh, *'Aqd al-Jawāhir al-Thamīna*, 1: 496; Shāfi'ī, *al-Umm*, 4: 111; *al-'Azīz Sharḥ al-Wajīz*, 13: 554; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 343; and idem, *al-Muhadhdhab* with *Takmilat al-Majmū'*, 18: 221; Ibn Jamā'a, *Tahrīr al-Aḥkām*, 231; *Mughni al-Muḥtāj*, 4: 260; Ghazālī, *al-Wajīz*, 203; Ibn Qudāma, *al-Mughnī*, 10: 512; Ibn Mifliḥ, *al-Mubdi'*, 3: 398; Bahūtī, *Kashshāf al-Qinā'*, 3: 103; Shawkānī, *al-Sayl al-Jarār*, 4: 564.

⁵³ Q. 4: 29

⁵⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabir*, 2: 584-585.

⁵⁵ This *ḥadīth* can be found in the *Sunan* of Ibn Māja in the trade section under the heading *Bay' al-Khiyār*, 2: 737; Bayhaqī, *Sunan*, 6: 17; Ibn Ḥabbān, *Mawārid al-Damān*, 271.

⁵⁶ Ibn Ḥabān, *Mawārid al-Dhamān*, 271; *Musnad of Aḥmad*, 5: 113; Ṭaḥāwī, *Mashkul al-Āthār*, 7: 251; Haythamī, *Mujama'*, 4: 171; *Talkhīṣ al-Ḥabīr*, 3: 45-46.

⁵⁷ *Tabyīn al-Ḥaqā'iq*, 4: 2; Ibn Humām, *Fatḥ al-Qadīr* with *al-'Aināyya 'alā Sharḥ al-Hidāya*, 5: 73-74; *Ḥāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr*, 3: 2; Nawawī, *al-Majmū' Sharḥ al-Muhadhdhab*, 9: 167; Mardāwī, *Inṣāf*, 4: 265; Jaṣṣaṣ, *Aḥkām al-Qur'ān*, 2: 172-173; Muḥammad Yūsuf Mūsa, *al-Amwāl wa Naẓariyyat al-'Aqd*, 254-257.

⁵⁸ Aḥmad Abū al-Wafā, *al-Mu'āhadāt al-Dawliyya fī al-Sharī'a*, 64; Shaltūt, *al-Islam 'Aqīda wa*

consent because of shortcomings (such as compulsion or blunder), this does not preclude the motive to conclude a treaty, but it does have a negative impact upon the ‘*aqd*, or contractual aspect of the treaty. To Ḥanafī jurists this degrades the ‘*aqd* so that, if the ‘*aqd* is accepted, it will be immediately void in the eyes of the law.⁵⁹ The consent here is not one of the treaty's optional conditions; rather, it is a condition of its soundness as a whole. The contract that deals with money is a compulsory ‘*aqd* for, despite its conclusion, it is degraded since it lacks consent. The condition for soundness of these ‘*uqūd* (contracts) is consent. If the compulsion is removed and the party that had suffered compulsion turned around and consented, the ‘*aqd* would become sound and genuine.⁶⁰

c. The condition of public interest in accomplishing a *mu‘āhada*:

According to Muslim scholars, one of the conditions for concluding a *mu‘āhada* is that it perpetuates the interests of Muslims, and it is never more necessary to do so than in cases where the Muslims are weak and unable to confront the enemy. This also applies, if they fear a legitimate threat to their security, or if the imām wishes to pursue peace with non-Muslims in order to bring them under the category of *dhimmi* or acquire some other benefit or aid to the Muslim state.⁶¹

Sharī‘a, 457.

⁵⁹ Some Ḥanafī jurists reject the option of annulment, since any such objections should have been raised before consent was given. For further details see the following sources, Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 9: 4492-4501; Sarakhsī, *al-Mabsūṭ*, 24: 40-44 and 85-87; *Mukhtaṣar al-Ṭahāwī*, 407-408.

⁶⁰ Sarakhsī, *Mabsūṭ*, 24: 38-39; Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 9: 4503-4504; Ibn Humām, *Fath al-Qadīr*, 5: 74; *Takmilat Fath al-Qadīr*, 7: 293-294; Zayla‘ī, *Tabyīn al-Ḥaqā‘iq*, 5: 192; Bukhārī, *Kashf al-Asrār*, 4: 357; Amīrbādashāh, *Taysīr al-Taḥrīr*, 2: 307; Taftāzānī, *al-Talwīḥ wa al-Tawḍīḥ*, 2: 197-198; Muḥammad Yūsuf Mūsā, *al-Amwāl wa Naẓariyyat al-‘Aqd*, 398-399; ‘Alī Muḥyī al-Dīn, *Mabḍā‘ al-Ridhā fī al-Uqūd*, 2: 1002-1005; *Ḥāshiyat al-Dasūqī ‘alā al-Sharḥ al-Kabīr*, 3: 2-3; *al-Khurshī ‘alā Khālīl* with *Ḥāshiyat al-‘Adawī*, 5: 9; Nawawī, *Rawḍat al-Ṭālibīn*, 8: 56-58; Ibn Qudāma, *al-Mughnī*, 8: 260.

⁶¹ Majīd Khadduri, *Kitāb al-Siyar of Shaybānī*, 165; Sarakhsī, *al-Mabsūṭ*, 10: 86; Kāsānī, *Badā‘i‘*

Shaybānī illustrates that:

The condition of interest for the Muslims in concluding a *muwāda'a* with the non-Muslims. For example, if the Imām is engaged in making peace with non-Muslims in return for the payment of tribute that would benefit the Muslims it is permissible as long as it serves the interests of the Muslims. The Imām should not forget about the duty of Muslims to spread and preach Islam while he is accepting the tribute of others.⁶²

The Qur'ānic verse that encourages Muslims to make peace with others, is as follows:

But if they incline to peace, you also incline to it, and (put your) trust in Allāh. Verily, He is the All-Hearer, the All-Knower.⁶³

For Muslims to preserve the status of the Islamic state in cases where they are the weaker party, it is important to consider their own interests in pursuing a *muwāda'a*.⁶⁴

Similarly, if the non-Muslims ask to conclude a *muwāda'a* with the Muslims for a fixed period of time without paying *jizya*, the imām should take this offer into consideration, especially if the Muslims are in a position of weakness and it is in the interests of Muslims to conclude the *muwāda'a* and accept the offer.⁶⁵

If the above-mentioned interests are dropped from the treaty, which then is no longer in the interest of Muslims, then the *mu'āhada* is not valid. In the case where Muslims realize that the *mu'āhada* is going to cause or lead to further threats to

al-Ṣanā'i', 9: 4324; Ibn Humām, *Fath al-Qadīr*, 4: 293; Zayla'ī, *Tabyyīn al-Ḥaqā'iq*, 3: 245-246; Ibn Nujaym, *al-Baḥr al-Rā'iq*, 5: 85; Abū Yūsuf, *Kharāj*, 224-225; *al-Fatāwā al-Hindiyya*, 2: 196; 'Abd al-Ghanī ibn Ṭālib al-Ghunaymī, *al-Libāb Sharḥ al-Kitāb*, 4: 120; *al-Ikhtiyār li Ta'līl al-Mukhtār*, 4: 189-190.

⁶² Shaybānī, *Al-Siyar al-Kabīr*, 2: 498.

⁶³ Q. 8:61

⁶⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1689 and 1: 190-191; and idem, *Mabsūt*, 10: 86; Zayla'ī, *Tabyyīn al-Ḥaqā'iq*, 3: 246; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 69; *al-Fatāwā al-Hindiyya*, 2: 196-197; *Ḥāshiyat Ibn 'Abidīn*, 4: 133; Ibn Nujaym, *al-Baḥr al-Rā'iq*, 5: 85-86.

⁶⁵ Majid Khadduri, *Kitāb al-Siyar of Shaybānī*, 165.

Muslims, the *imām* should oppose this hidden threat since it will render the *mu'āhada*.⁶⁶ If it appears to the *imām* that the outcome of a *mu'āhada* is different from what was agreed upon, he can terminate the *mu'āhada* by first informing the other parties of his decision prior to the termination of the *mu'āhada*.⁶⁷

Based on the verses above, the consensus of scholars is that if the situation or conditions are not in the interest of Muslims who are about to conclude a *mu'āhada*, then it is not permissible to conclude it.⁶⁸ Among the conditions of interest for a *muwāda'a* is the spread of Islam, its protection and the prevention of any foreign attack.⁶⁹ The obligation of Muslims to address this common interest of Islam has a spiritual dimension, and must be addressed whenever there is a prospect of concluding a *muwāda'a*.⁷⁰

d. The status of *mu'āhada* within the Qur'ān and Sunna:

In order for the *mu'āhada* to be valid it must not contradict the legal rulings of the basic texts, i.e., the Qur'ān and the Sunna. It should fall within the realm of Islamic

⁶⁶ Abū Yūsuf, *Kharāj*, 224; Ibn Humām, *Fath al-Qadīr*, 4: 294; Zayla'ī, *Tabyīn al-Haqā'iq*, 3: 246; *al-Fatāwā al-Hindiyya*, 2: 197; *Hāshiyat Ibn 'Abidīn*, 4: 133; Mīdānī, *al-Libāb Sharḥ al-Kitāb*, 4: 120.

⁶⁷ Jaṣṣās, *Aḥkām al-Qur'ān*, 3: 77; Sarakhsī, *Mabsūt*, 10: 86-87; and idem, *Sharḥ al-Siyar al-Kabīr*, 2: 499. According to Zuḥaylī and Abū Zahra, the act of terminating the *muwāda'a* in any given event is considered as a violation to the emergence of the Islamic principle of loyalty and fulfillment of 'ahd. Zuḥaylī, *Āthār al-Ḥarb fī al-Fiqh al-Islāmī*, 671-672; Muḥammad Abū Zahra, *al-'Ilāqāt al-Dawliyya fī al-Islām*, 80. The Ḥanafī jurists favor the termination of the 'aqd due to the suspicion of outcome. However, the termination of an 'aqd does not necessarily mean a violation of the principle of loyalty and fulfillment that is associated with any given 'aqd. The Prophet and his Companions was to observe a *mu'āhada* until its conclusion unless it was violated by the other side. For further regarding see: al-Jaṣṣās, *Aḥkām al-Qur'ān*, 3: 77; Muṣṭafā Amāl Waṣfī, *Muṣannafāt al-Nuẓum al-Islāmiyya*, 371-372.

⁶⁸ Ibn Humām, *Fath al-Qadīr*, 4: 293; Zayla'ī, *Tabyīn al-Haqā'iq*, 3: 246; *Hāshiyat al-Sharqāwī 'alā al-Taḥrīr fī Fiqh al-Shāfi'iyya*, 2: 266; Ibn Nujaym, *al-Ashbāh wa al-Naẓā'ir*, 109; Zarkashī, *al-Manṭḥūr fī al-Qawā'id*, 1: 125; Amīr Bādashāh, *Taysīr al-Taḥrīr*, 3: 144.

⁶⁹ Qarāfī, *Furūq*, 3: 260.

⁷⁰ Jaṣṣās, *Aḥkām al-Qur'ān*, 2: 294.

law, preventing wrongdoing and encouraging good deeds.⁷¹ Any obligation that is not imposed or mentioned in the Qur'ān that is directly related to the outcome of a *mu'āhada* or the purpose of the *mu'āhadāt*, or does not contradict the Qur'ān and the teachings of the Prophet, it is permissible to pursue.⁷²

One of the Prophet's traditions that refers to this obligation to conform to the Qur'ānic Text at the time of concluding a *mu'āhada*, reads,

Every condition that has no root in the Qur'ān is void.⁷³

This *ḥadīth* is interpreted by Shaybāni thus:

If any member of the *ahl al-ḥarb* requests to make *ṣulḥ* with the Muslims under the condition that if the Muslims conquer a part of their territory they should not prevent the non-Muslims from selling alcohol or pork. Since both alcohol and pork and *ribā* (unlawful interest according to the Islamic law) are prohibited in the Islamic *ahkām* the Imām should not conclude a *ṣulḥ* that is based on these condition because it is a violation of Islamic *ḥukm*.⁷⁴

The Prophet's conduct at Ḥudaybiya, moreover, gives a practical dimension of what is permissible and what is not. For example, one of the conditions that the *ṣulḥ* established was that, whenever a member of the Meccan community escaped to Medina, the Prophet was obliged to return that person to Mecca; the verse that was revealed regarding the matter reads:

If you ascertain that they are true believers, send them not back to the disbeliever.⁷⁵

⁷¹ Shāṭibī, *Muwāfaqāt*, 2: 227, 244-247; Zarkashī, *al-Manthūr fī al-Qawā'id*, 3: 106; Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 285.

⁷² Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 2: 294.

⁷³ This *ḥadīth* distinguishes between Qur'ānic rulings and other rulings such as the *Aḥkām al-Sharī'a* or the Prophet's sayings, as well as other Books that was sent to other people. See the followings, Ibn Qutayba, *Tā'wīl Mukhtalaf al-Ḥadīth*, 84; Ibn al-Āthīr, *al-Nihāya fī Gharīb al-Ḥadīth*, 4: 147; Rāghib, *al-Mufradāt fī Gharīb al-Qur'ān*, 423; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1788.

⁷⁴ *Al-Siyar al-Kabīr*, 4: 1547-1548.

⁷⁵ Q. 60: 10.

This verse imposed a restriction upon Muslims, whereby some of the conditions required of the Muslims were to be fulfilled and honored, while others were declared void and were not to be fulfilled. Therefore, among the duties of the *imām* is the task of looking into what is permissible and what is prohibited and act upon this knowledge.⁷⁶

Shaybānī also indicates that it is not permissible to violate ideas of justice and encourage oppression, just as it is prohibited to conclude an '*ahd*' with such parties, because it is a violation of Islamic rulings. It is also forbidden to conclude an '*ahd*' that justifies oppression because this is a type of determination of oppression, and it is not lawful to fulfill that condition in the event of concluding an *ṣulḥ*.⁷⁷ Shaybānī illustrates this point further by giving an example:

If the monarch of *ahl al-ḥarb* rules over a broad territory where people residing under his realm are treated like slaves and he exercises oppressive means on them, if he has suggested to the Muslims to become *dhimmī* and to pay *kharāj* in return for letting him maintained his oppressive treatment of his own people, it is not acceptable to the principle of *dār al-Islām*. The Muslims should not conclude a *ṣulḥ* with a party which imposes oppressive acts.⁷⁸

According to Sarakhsī the perpetuation of oppression is unlawful. Since a *dhimmī* is bound to respect the Islamic *ahkām* in the case of mutual conduct and interaction, any violation of this can lead to the termination of the '*aqd*'. Even if the king became a Muslim under the condition of resuming his oppressive practices against his own people, it is considered a violation of the principles of the '*aqd*'.⁷⁹

⁷⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1548, 1594-1595; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 437; *Fatḥ al-Qadīr*, 4: 296; Shāfi'ī, *Umm*, 4: 113; Baghawī, *Sharḥ al-Sunna*, 11: 161-162.

⁷⁷ *Al-Siyar al-Kabīr*, 4: 1595; Shāfi'ī, *Umm*, 4: 113. This was the conduct of the Prophet when he concluded the Ḥudaybiya *ṣulḥ* with the Meccans, for afterwards he did not return the women.

⁷⁸ Sarakhsī, *Mabsūṭ*, 10: 85; Shaybānī, *Kitāb al-Siyar*, 162.

⁷⁹ Sarakhsī, *Mabsūṭ*, 10: 85; *Kitāb al-Siyar*, 162.

The same Islamic *ḥukm* applies to prisoners, as in cases where a representative of a party approaches the imām holding Muslim prisoners and seeks to conclude a *ṣulḥ* with the Muslims on the condition that the Muslim prisoners not be released. Under such circumstances the Muslims should not accept this condition. In addition the imām should proclaim that no *ṣulḥ* is possible without the release of the Muslim prisoners. Or the imām can impose conditions whereby an exchange of prisoners occurs. The Muslim is therefore not obligated to fulfill the conditions that are contradictory to Islam.⁸⁰

The consensus of scholars regarding the legal aspects of the *mu'āhada* maintains that any *mu'āhada* that includes conditions that are contradictory to the Islamic *aḥkām* is automatically void. Muslims should look into the Texts (i.e., Qur'ān and Sunna) prior to the conclusion of any treaty, and that treaty should be free of any such conditions that contravene Islamic principles.⁸¹

e. The condition of time:

Among the conditions of the *mu'āhada* is the time period which is designated by the *mu'āhada*.⁸² The designated time period can be short or long, in order to allow for reflection upon the situation of the *mu'āhada* and its obligations. This condition is founded on the understanding that both parties are aware of the time period.⁸³ The *mu'āhada* can either be temporary, limited to a specific time period, or it can be a

⁸⁰ *Sharḥ al-Siyar al-Kabīr*, 5: 1813-1814; Shāfi'ī, *al-Umm*, 4: 114.

⁸¹ Shāfi'ī, *al-Umm*, 4: 110-111; Nawāwī, *Rawḍat al-Ṭālibīn*, 10: 334; Ibn Jamā'a, *Tahrīr al-Aḥkām fī Tadbīr Ahl al-Islam*, 233; Ibn Qudāma, *Mughnī*, 10: 510-511; Ṭabarī, *Ikhtilāf al-Fuqahā*, 18-19; *Fatāwā al-Shaykh 'Alīsh*, 1: 391; Bayḍawī, *al-Ghāya al-Quswā*, 2: 961.

⁸² Dāmād, *Majma' al-Anhur Sharḥ Multaqā al-Abḥur*, 1: 637.

⁸³ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1782; an exception is the *'aqd al-dhimma*, which, as we saw earlier, is not limited to time period. It is a permanent *'aqd* as far as the Muslims are concerned, but it is subject to termination by the *ahl al-dhimma* in the event that they decide to become Muslim.

permanent treaty that is not restricted to any time period. This condition is explored at greater length in the following section.

II. The duration of the *mu'āhada*:

Among the conditions of *mu'āhada* is the stipulation that the *mu'āhada* should be conditioned by a time period of fixed duration.⁸⁴ Whether the time period is long or short, it must be precisely indicated in order for the *mu'āhada* to be recognized as binding by both parties. The *mu'āhada* cannot be concluded unless this condition of time period is indicated, so as to determine the length of effectiveness of its provisions.⁸⁵ This time period can be temporary or permanent, as long as this is indicated in the clearest of terms.

a. The permanent *mu'āhada*:

According to the consensus of scholars, the permanent *mu'āhada* is one that is concluded with non-Muslims, with the exception of idol worshipers and the *muṣālahat* Ahl al-Kitāb. Islamic *ahkām* stipulate that a treaty cannot be forever,⁸⁶ since it must be immediately void should the Muslims become capable of fighting them.⁸⁷

⁸⁴ See Dāmād al-Ḥanāfī, *Majma' al-Anhur Sharḥ Multaqā al-Abḥur*, 1: 637.

⁸⁵ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*.

⁸⁶ Rāghib al-Aṣḥānī in his *Mufradāt al-Qur'ān*, 8; Jurjānī in his *Ta'rifāt*, 21; Jawharī, in his *Siḥāḥ*, 2: 439.

⁸⁷ Ṭabarī, *Ikhtilāf al-Fuqahā*, 14; Shawkānī, *al-Sayl al-Jarār*, 4: 565; Ibn al-Murtaḍā, *al-Baḥr al-Zakhkhar al-Jāmi' li Madhāhib 'Ulamā' al-Amṣār*, 6: 448; *Fatāwā al-Shaykh 'Alīsh*, 11: 392; Wansharīṣī, *al-Mi'yār al-Mu'rib*, 2: 208; Some modern scholars, such as al-Zuḥaylī in his *Āthār al-Ḥarb fī al-Fiqh al-Islāmī*, 675, indicate that the consensus of scholars is that no *muhādana* is valid without the designation of a time period. See, Abu Zahra, *al-'Alāqāt al-Dawliyya fī al-Islām*, 78-79; 'Alī Maṣṣūr, *al-Sharī'a al-Islāmiyya wa al-Qānūn al-Dawli*, 375-379; Zuḥaylī, *Āthār al-Ḥarb*, 359.

Shaybānī indicate that a *muwāda'a* can be permanent and not subject to annulment by Muslims on the occasion of a renewed capacity to fight, even if they are able to redeem all the pledges or obtain the consent of the other party.⁸⁸

b. The temporary *mu'āhada* that is restricted to a fixed time period:

It is in the nature of any *mu'āhada* that it contain explicit reference to its duration, for the prevention of fighting demands that the period of suspension of hostilities be specified.⁸⁹ A typical, temporary *mu'āhada* is thus effective for a time period such as one to three years or less -- even for a few months.⁹⁰ The classical jurists derived their opinion from the conduct of the Prophet, again demonstrated in the treaty of Ḥudaybiya, where the specification of the time period was fixed by the two parties, i.e., the Prophet and the Meccan representative. They consented to terminating fighting between the two parties for a period of ten years.⁹¹

However, the time period specified in the case of Ḥudaybiya is not, according to Abū Ḥanifa, Abū Yūsuf and Shaybānī, a precedent that must be followed in all *mu'āhadāt*; rather, it is left to the *imām* to determine the time period, based on the interests and needs of Muslims. Furthermore, the specified time limit should stand to benefit Muslims in the event it was exceeded, or is deemed subject to extension. On the

⁸⁸ Shaybānī, *al-Siyar al-Kabīr*, 5: 1758-1759.

⁸⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 2: 486, 5: 1713; Zarkashī, *al-Manthūr fī al-Qawā'id*, 1: 240, Zarkashī indicates that any '*aqd*' specifying a time period is a temporary '*aqd*', such as contracts of rent or lease, sharecropping and armistice or truce; Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 282-283.

⁹⁰ *Sharḥ al-Siyar al-Kabīr*, 5: 1713-1714, 1780.

⁹¹ Ibid.; 5: 1780; Ibn Ishāq, *Sīra*, 2: 316-317; Ibn Sa'd, *Ṭabaqāt*, 2:97; Ibn Ḥajar, *Fath al-Bārī*, 5: 343; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 140; Ibn Humām, *Fath al-Qadīr*, 4: 293; Shawkānī, *Nayl al-Awṭār*, 8: 56.

other hand, if it does not serve the interests of Muslim it is not permissible for the *imām* to renew or extend the *mu'āhada's* duration.⁹²

Since the Qur'ān does not implicitly specify the time period, and even permits and encourages Muslims to seek *muwāda'a* and *mu'āhada* with others⁹³ without imposing a specific duration, the Prophet's decision to agree to a ten year treaty in the case of Ḥudaybiya was made on the understanding that the *'illa* (cause or reason)⁹⁴ determining the necessary duration must be sought in each case whenever other *mu'āhadāt* or *muwāda'āt* are being negotiated. For the *ṣulḥ* terminating fighting and putting an end to all hostilities can often serve the interests of the Muslim.

For example, Maliki jurists indicate that the period of effectiveness of a *mu'āhada* is not restricted, but is left to the *imām* to determine according to the community's needs. However it is suggested that it not exceed four months, unless there is an unexpected shortfall in the Muslim ability to perform *jihād*. Here we see Muslim interests equated with the time period, which is determined by what serves the greater public interest.⁹⁵

This was also the opinion of Khaṭṭābī and Ibn Ḥajar of the Shāfi'ī school, as well as of al-'Aynī of the Ḥanafī school and Shawkānī, who all insist that, in the event of a *muḥādana* being agreed, there is no restriction on the time limit. This will be based on the needs of Muslims and will be left to the *imām* to decide on along with the

⁹² Ibid.

⁹³ "But if they incline to peace, you also incline to it." Q. 8: 61,

⁹⁴ *Uṣūl al-Sarakhsī*, 2: 158-162; *Kashf al-Asrār*, 3: 389-390; *Taysīr al-Taḥrīr*, 4: 5-6; *Mizān al-Uṣūl*, 630; *Sharḥ al-Kawkab al-Munīr*, 4: 52-53; *al-Mustaṣfā*, 2: 345.

⁹⁵ See for example, *Jawāhir al-Ikhlāṣ*, 1: 269-270; *al-Khurashī 'alā Khalīl*, 3: 151; *Fatāwā al-Shaykh 'Ulish*, 1: 390; Wansharīṣī, *al-Mi'yār al-Mu'rib*, 6: 208; *al-Qawānīn al-Fiqhiyya*, 163; *'Iqd al-Jawāhir al-Thamīna*, 1: 497; Dardīr, *al-Sharḥ al-Kabīr*, 2: 206; Ibn 'Abd al-Barr, *al-Kāfi*, 1: 404; Baghawī, *Sharḥ al-Sunna*, 11: 161; Bayḍāwī, *al-Ghāya al-Quṣwā*, 2: 961.

learned scholars. However, the time period must be specified, however long or short it may be.⁹⁶

The Shāfiʿī scholars distinguished between two cases, the first being one where the *imām* retains full authority, and where he can see that some interests can be served through agreeing to a *hudna*. He may in this case conclude that *hudna* for four months or less. The time limit is derived from both the Qurʾān⁹⁷ and the Prophetic tradition.⁹⁸ Here the *imām* is not allowed to agree to a *hudna* of more than four months' duration because, according to these scholars, any period chosen requires the *jizya* to be imposed at its termination, and Muslims should not be under any obligation to do so. According to al-Māwardī, the time may be extended to between more than four months and under one year, but there are two opinions on this, one of which insists that it is not permissible.⁹⁹

The second case according to the Shāfiʿī school is where the *imām* or the Islamic state is weak or developing his/its strength, but only slowly. To strengthen his authority, it is permissible for the *imām* to conclude a *hudna* in order to fend off any outside attacks in the meantime. The *hudna* is to be limited to ten years, as we saw in the case of Ḥudaybiya, and it should not exceed that time period. If the *imām* needs to extend the ten year period in line with Muslim interests, then he may conclude or renew

⁹⁶ Khaṭṭābī, *Maʿālim al-Sunan*, 4: 80; Ibn Ḥajar, *Fath al-Bārī*, 6: 282; Aynī, *Umdat al-Qārī*, 15: 105; Baghawī, *Sharḥ al-Sunna*, 11: 161; Shawkānī, *al-Sayl al-Jarār*, 4: 565.

⁹⁷ Q. 9: 1 and 2,

"Freedom from (all) obligations (is declared) from Allah and His Messenger to those of the *Mushrikūn* (polytheists, pagans, idolaters, disbelievers in the Oneness of Allah), with whom you made treaty" "So travel freely (O *Mushrikūn*) for four months (as you will) throughout the land."

⁹⁸ The Prophet concluded armistice or truce with Ṣafwān Ibn Amayya for four months. References to this may be found in: Malik, *Muwattaʿa*, 2: 543-544; Shāfiʿī, *Umm*, 4: 112; Ibn ʿAbd al-Barr, *Tamhīd*, 12: 19.

⁹⁹ Mawārdī, *al-Aḥkām al-Sulṭāniyya*, 151.

the previous *hudna* for a time period that should not itself exceed ten years; otherwise, according to the Shāfi'ī jurists, the *hudna* would be null and void.¹⁰⁰

For Ḥanbalī and Zaydī jurists, the *hudna* is not permissible unless the time period is determined, whatever its length, as long as it is determined by the *imām* in considering the interests of the Muslim community. Since the maximum permissible term for a *hudna* is theoretically ten years, acknowledged that the length seen in the '*aqd al-ijāra* (lease contract), by which it is meant that an '*aqd* reflects the interests of the parties, has its parallel in the *mu'āhada*, which is also about the best interests of the parties to it. The welfare of the Muslim state may indeed be answered through *ṣulḥ* more than by war. As long as the community's interest is served better by peace it is permissible to conclude a *mu'āhada* for a ten years period and extend it as necessary as long as this may serve the interest of the community.¹⁰¹

c. The *mu'āhada* that is not limited by time

According to Shaybānī, this particular *mu'āhada* is permissible in certain circumstances, though it is neither permanent nor temporary. It is a type of *mu'āhada* in which the condition of time is not a factor, and in this sense it is better termed a *muwāda'a*. For example, in a situation where non-Muslims are willing to surrender to one of the Muslim territories, and the Muslims fear their continued threat, they can

¹⁰⁰ See for example: Shāfi'ī, *al-Umm*, 4: 110, and *Aḥkām al-Qur'ān*, 2: 62-64; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 15-17; Nawāwī, *Rawḍat al-Ṭālibīn*, 10: 335; and idem, *al-Muhadhdhab* with *Takmilat al-Majmū'*, 18: 221-222; Ghazālī, *al-Wajīz*, 2: 240; *al-'Azīz Sharḥ al-Wajīz*, 13: 556-559; *Mughnī al-Muhtāj*, 4: 260-261; Ibn Jamā'a, *Tahrīr al-Aḥkām*, 232; Māwardī, *al-Aḥkām al-Sultāniyya*, 151; *Hāshiyat al-Bujrīmī 'alā al-Manhaj*, 4: 258-259; Baghawī, *Sharḥ al-Sunna*, 11: 161; Ibn Ḥajar, *Fath al-Bārī*, 5: 343; Shawkānī, *Nayl al-Awṭār*, 8: 56.

¹⁰¹ Ibn Qudāma, *al-Mughnī*, 10: 509-510; Ibn Taymiyya, *al-Muḥarrar*, 2: 182; Mardāwī, *al-Inṣāf*, 4: 212; Ibn Mifliḥ, *al-Mubdi'*, 3: 398; Bahūtī, *Kashshāf al-Qinā'*, 3: 104; *Ḥadā'iq al-Azhār* with

make an offer of *ṣulḥ* with the enemy offering them, for example, ten thousand *dīnārs*, in order to persuade them to withdraw from their territory and return to their own.¹⁰² Sarakhsī describes this *muwādaʿa* as conditional on withdrawal. Here withdrawal means an enemy leaving a territory formerly under their control and returning to their original *dār*, which in the case of the non-Muslims is *dār al-ḥarb* and in the case of the Muslims is *dār al-Islām*.¹⁰³ This is what Ḥanafī and some Mālikī (as well as some Ḥanbalī) jurists declare to be their opinion.¹⁰⁴

However, various Shāfiʿī and other Ḥanbalī, Mālikī and Zaydī jurists advance the opinion that a *muwādaʿa* is not permissible without being conditioned by a definite period of time. In the case where a *muwādaʿa* is concluded without a definite time limit, it may be considered null and void.¹⁰⁵ Should the *muwādaʿa* have been concluded according to some trustworthy Muslim or a group of scholars, it is permissible for him or them to terminate it on the ground that, by concluding the *muwādaʿa* according to the wishes of a non-Muslim party, it would give the latter authority over Muslims.¹⁰⁶ That such an outcome is regarded as anathema is reflected in the Prophetic tradition which reads “Islam is superior but nothing rises over it.”¹⁰⁷

Sharḥ al-Sayl al-Jarār, 4: 564-565; Ibn al-Murtaḍā, *al-Baḥr al-Zakhār*, 6: 448.

¹⁰² Shaybānī, *al-Siyar al-Kabīr*, 5: 1711-1712.

¹⁰³ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1712.

¹⁰⁴ Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 9: 4327; Ibn ʿArabī, *Aḥkām al-Qurʾān*, 4: 1789; Ibn Hubayrā, *Ifṣāḥ*, 2: 296; *Mukhtaṣar al-Muzanī* in the margin of *al-Umm*, 3: 399-400.

¹⁰⁵ Shāfiʿī, *Umm*, 4: 110-111; Nawawī, *al-Muḥadhdhab* with *Takmilat al-Majmūʿ*, 18: 222; and idem, *Rawḍat al-Ṭālibīn*, 10: 335-336; *al-Sharqāwī ʿalā al-Taḥrīr*, 3: 467; Ghazālī, *al-Wajīz*, 2: 204; Ibn Qudāma, *al-Mughnī*, 10: 509; Ibn Mifliḥ, *al-Mubdīʿ*, 3: 399; Mardāwī, *al-Inṣāf*, 4: 212-213; Bahūtī, *Kashshāf al-Qināʾ*, 3: 104; Ibn Hubayrā, *al-Ifṣāḥ*, 2: 296; Ibn Murtaḍā, *al-Baḥr al-Zakhār*, 6: 449.

¹⁰⁶ Nawawī, *al-Muḥadhdhab* with *Takmilat al-Majmūʿ*, 18: 222, Shāfiʿī, *Umm*, 4: 110-111; *Sunan al-Bayhaqī*, 9: 224.

¹⁰⁷ Abū ʿUbayd, *Amwāl*, 149; Ṭaḥāwī, *Maʿānī al-Āthār*, 3: 257; *Fath al-Bārī*, 3: 220; *Irwāʾ al-Ghāfil*, 5: 106-109.

Some scholars acknowledged the validity of the *'aqd al-muwāda'a* and *hudna* without a definite time period, among them Ibn Taymiyya and Ibn Qayyim al-Jawziyya. These two scholars indicate that whatever is consistent with the Qur'ānic text, such as the obligation to fulfill and honor the *'aqd*, or conforms to the practice of the Prophet, is allowable. The Muslim should under no circumstances fight against those with whom they have concluded a *muwāda'a* or *hudna* unless the non-Muslims are the ones who first violate that *'aqd*. As long as the *'aqd* that was concluded between the two parties is respected, and irregardless of whether the condition of a time limit is indicated or not, it is a permissible and valid *'aqd*.¹⁰⁸

Some modern scholars favor the opinion of concluding a *mu'āhada* without indication of the time period. Some go so far even as to approve the concept of such a *mu'āhada*, which in a sense is an extension the concept of *'aqd al-dhimma*, in order to establish goodwill and friendly relationships and a peaceful environment in which to spread the teachings of Islam. According to them, a permanent or ever-lasting *ṣulḥ* with non-Muslims has its origin in the basic principle of Islam, i.e., that the external affairs of Muslims consist in peace, not war. They realize that the rulings or opinions of classical scholars were based on their own personal *ijtihād* (or discretion) and that it is permissible for the rulers to override them.¹⁰⁹

¹⁰⁸ *Majmū' Fatawā Ibn Taymiyya*, 29: 140; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 2: 476-490; and idem, *Zād al-Ma'ād*, 3: 146; Ba'ī, *al-Ikhtiyārāt al-Fiqhiyya*, 542; *Mukhtaṣar al-Muzanī* within the margin of *al-Umm*, 3: 399-400.

¹⁰⁹ See, for example: Abū Zahra, *al-'Alāqāt al-Dawliyya fī al-Islām*, 78, and his preface to Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 96; 'Alī Maṣṣūr, *al-Sharī'a al-Islāmiyya wa al-Qānūn al-Duwalī*, 377-378; Subḥī Maḥmaṣānī, *al-Qānūn wa al-'Alāqāt al-Dawliyya*, 144-145; Wahbi al-Zuhaylī, *Āthār al-Ḥarb fī al-Fiqh al-Islāmī*, 678-680, and his *'Alāqāt al-Dawliyya fī al-Islām*, 139; Muḥammad Kamāl Imām, *al-Ḥarb wa al-Silm fī al-Fiqh al-Islāmī*, 136.

This opinion, voiced mainly by modern scholars, is not however accepted by Ghunaymī. He insists that to follow the example of others instead of that of the Prophet, who concluded the al-Ḥudaybiya *ṣulḥ*, makes no sense, because the Prophet concluded that *ṣulḥ* under political circumstances to accomplish specific needs.¹¹⁰ Ja‘far Abd al-Salām states that the emphasis on concluding an ‘*aqd*’ such as a *muwāda‘a* or a *hudna* should be conditional on a fixed time period, since the permanent *mu‘āhada* or everlasting ‘*aqd*’ with non-Muslims contradicts the reality of a world that has never seen a *mu‘āhada* that lasted for a long period of time.¹¹¹

d. The *mu‘āhada* should be free of unsound conditions:

According to the majority of scholars from both the Maliki and Shāfi‘ī schools, one the conditions of the *mu‘āhada* or *muhādana* is that it should be imposed free of unsound conditions. What they mean by unsound conditions is that it is not permissible to conclude a *mu‘āhada* or *muhādana* for the return of Muslims who escaped from *dār al-ḥarb* to *dār al-Islām*, whether they be male or female.¹¹² This is a legally established

¹¹⁰ *Aḥkām al-Mu‘āhadāt fī al-Sharī‘a al-Islāmiyya*, 97, *Qānūn al-Salām fī al-Islām*, 511. He labels these scholars as imitators, and criticizes *al-fiqh al-Islāmī* for the same fault, stressing the need to follow logically in the footsteps of the Prophet indicated by the Qur’ānic verse “You have the Prophet as the right example”.

¹¹¹ *Qawā‘id al-‘Alāqāt al-Dawliyya fī al-Qānūn al-Dawī wa al-Sharī‘a al-Islāmiyya*, 393, and *Sharḥ Baqā’ al-Shay’ ‘alā Ḥālih*, 403; It is worth mentioning that a recent Maliki jurist, Muḥammad ‘Alīsh, in his *Fatḥ al-‘Alī al-Malik fī al-Fatwā ‘ala Madhhab al-Imām Mālik*, 1: 190, states a similar opinion. Other modern scholars, such as Muḥammad ‘Alī Ḥasan in his book *al-‘Alāqāt al-Dawliyya fī al-Qur’ān wa Sunna*, 360, indicates that the early scholars were in no disagreement (*ikhtilāf*) over the fact that a *mu‘āhada* not conditioned by time period is impermissible. He insists furthermore that there is no text in either the Qur’ān or the Sunna that approves the *mu‘āhada* without fixed timing, but that one can find evidence of what makes it null. He also indicates that the everlasting *mu‘āhadāt* is subject to the mutations of time and the determination of place.

¹¹² The majority of scholars are in agreement on not returning female Muslims and disagree over whether to return Muslim males. Ḥanbalī and Malikī jurists allowed the latter under severe circumstances, while Abū Ḥanīfā and some Malikī jurists did not permit it because it was a null condition; thus, should the Muslim not fulfill this condition, the *mu‘āhada* would resume and remain accurate and valid. Some Shāfi‘ī jurists permitted it only should the male Muslim have some family to protect him within *dār al-ḥarb*. For full details of the above see the followings:

ḥukm and cannot be made subject to a condition, just as it is not permitted to conclude a *mu'āhada* with the condition of ransoming Muslim prisoners, or on the condition of leaving empty territory to the non-Muslims, or on that of arbitration between Muslim and non-Muslims on the basis of non-Muslims rulings or of permitting non-Muslims to reside in the Arab peninsula or to drink alcohol within *dār al-Islām* freely or to build a place of worship within the Arab peninsula.¹¹³

According to Shaybānī, should the other party make it a condition to return to it a Muslim who had escaped to *dār al-Islām*, the condition is automatically void, and there is no need or obligation to fulfill that particular condition.¹¹⁴ In case the representative of the other party brings up the ransom of prisoners and imposes a condition upon the Muslims that, they cannot agree to, the latter should not accept this condition. Shaybānī says that this is because the *ahl al-ḥarb* torture their Muslim prisoners, and there is no point in returning them to that *dār* once their release has been secured. Since they cannot accept this condition, or still less honor it, it is prohibited to give promise of fulfillment. In the event that the negotiations fail, this is not a violation

Sharḥ al-Siyar al-Kabīr, 4: 1594-1595; Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-Fuqahā'*, 3: 45, and idem, *Aḥkām al-Qur'ān*, 3: 437; *al-Fatāwā al-Hindiyya*, 2: 197; *al-Bayān wa al-Taḥṣīl*, 3: 46-48; *'Aqd al-Jawāhir al-Thamīna*, 1: 397-398; *Ḥāshiyat al-Dasūqī*, 2: 206; *Ḥāshiyat al-Ṣāwī 'alā al-Sharḥ al-Saghīr*, 2: 64; Nawawī, *al-Muḥadhdhab* with the *Majmū'*, 18: 225; Māwardī, *Aḥkām al-Sultāniyya*, 52; Ibn Ḥajar al-Haythamī, *al-Fatāwā al-Kubrā al-Fiqhiyya*, 4: 249; Ibn Qudāma, *al-Mughnī*, 5: 517; Mardāwī, *al-Inṣāf*, 4: 214; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 140-141; Shawkānī, *al-Sayl al-Jarār*, 4: 566-567; Shāfi'ī, *Aḥkām al-Qur'ān*, 2: 66, 68; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 4: 1789; Ibn Ḥajar, *Fath al-Bārī*, 5: 345.

¹¹³ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1536, 1594; *al-Dasūqī 'alā al-Sharḥ al-Kabīr*, 2: 206; *al-Qawānīn al-Fiqhiyya*, 163; Shāfi'ī, *al-Umm*, 4: 110-111; *al-'Azīz Sharḥ al-Wajīz*, 13: 555; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 334-335; Ibn Jamā'a, *Taḥrīr al-Aḥkām*, 233; Mardāwī, *al-Inṣāf*, 4: 213-214; Ibn Taymiyya, *al-Muḥarrar fī al-Fiqh*, 2: 182; Ibn Mifliḥ, *al-Mubdi'*, 3: 400; Ibn Murtada, *al-Baḥr al-Zakhkhār al-Jāmi' li 'Ulamā al-Amṣār*, 6: 448; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 18-19; Ibn Ḥajar, *Fath al-Bārī*, 6: 276; Qalqashandī, *Ṣubḥ al-A'shā*, 14: 7-8.

¹¹⁴ *Al-Fatāwā al-Hindiyya*, 2: 197; Abū Yūsuf, *Kharāj*, 224; Khawārizmī, *Mufīd al-'Ulūm wa Mubīd al-Humūm*, 344.

of any *‘ahd*. It is more important to keep Muslim prisoners safe in *dār al-Islām*, even if this might cause or lead to further dispute.¹¹⁵

The majority of scholars are in agreement with the termination of a *mu‘āhada* in the event that one of the conditions is defective or is no longer applicable.¹¹⁶ If the *mu‘āhada* was concluded on the condition of paying money to enemies, this is not permissible except in cases of dire necessity, for example, fear of threat or attack which might lead to the killing of Muslims; therefore, paying money in that specific instance in order to survive is permissible.¹¹⁷ This opinion constituted a consensus among most scholars. They countenanced the conclusion of a *muwāda‘a* that calls for paying money to ensure their safety and survival only under the most severe of circumstances.¹¹⁸ Ḥasan Ibn Ziyād, a Ḥanafī jurist, does not agree with the policy of agreeing to a *muwāda‘a* with non-Muslims that stipulates giving the latter money every year, because this amounts to a form of *jizya*. Therefore, they should neither accept this condition nor conclude a *muwāda‘a* in these circumstances.¹¹⁹

¹¹⁵ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1788, 1813-1814, 4: 1594-1595; and idem, *al-Mabsūt*, 10: 88; *al-Fatāwā al-Hindiyya*, 2: 197; Ibn Nujaym, *al-Baḥr al-Rā‘iq*, 5: 86.

¹¹⁶ Ibn Shāsh, *‘Aqd al-Jawāhir al-Thamīna*, 1: 497; *al-Sharḥ al-Kabīr* with *Hāshiyat al-Dasūqī*, 2: 206; Ghazālī, *al-Wajīz*, 2: 203; Nawāwī, *Rawḍat al-Ṭālibīn*, 10: 334-335; Ibn Qudāma, *al-Mughnī*, 10: 517-519; and idem, *al-Sharḥ al-Kabīr*, 10: 568-569; Ibn Mifliḥ, *al-Mubdi‘*, 3: 400-401.

¹¹⁷ *Al-Fatāwā al-Hindiyya*, 2: 196; *Fatḥ al-Qadīr*, 4: 296; *Hāshiyat Ibn ‘Ābidīn*, 4: 133; Zayla‘ī, *Tabyīn al-Ḥaqā‘iq*, 3: 246; Damad Afandī, *Majma‘ al-Anḥur*, 1: 637; Mūṣalī, *al-Ikhtiyār li Ta‘līl al-Mukhtār*, 4: 191; Ṭabarī, *Ikhtilāf al-Fuqahā‘*, 19.

¹¹⁸ *Al-Kharshī ‘alā Khallīl*, 2: 449; Ibn Rushd, *Bidāyat al-Mujtahid*, 1: 388; and idem, *al-Bayān wa al-Taḥṣīl*, 3: 80; Wansharīsi, *al-Mi‘yār al-Mu‘rib*, 2: 210-211; Ibn Shāsh, *‘Aqd al-Jawāhir al-Thamīna*, 1: 497; Shāfi‘ī, *al-Umm*, 4: 110-111; *al-‘Azīz Sharḥ al-Wajīz*, 13: 555-556; Nawāwī, *Rawḍat al-Ṭālibīn*, 10: 335; and idem, *al-Muhadhdhab* with *Takmilat al-Majmū‘*, 18: 223; Suyūṭī, *al-Ashbāḥ wa al-Nazā‘ir*, 491; Ibn Jamā‘a, *Taḥrīr al-Aḥkām fī Tadbīr Ahl al-Islām*, 233; Ibn Qudāma, *al-Mughnī*, 10: 511; Ibn Taymiyya, *al-Muḥarrar fī al-Fiqh*, 2: 182; Mardāwī, *al-Inṣāf*, 4: 211; Bahūtī, *Kashshāf al-Qinā‘*, 3: 104; Ibn Murtaḍā, *al-Baḥr al-Zakhār al-Jāmi‘ li Madhāhib ‘Ulamā‘ al-Amṣār*, 6: 447; Ṭabarī, *Ikhtilāf al-Fuqahā‘*, 171-172; Ibn ‘Arabī, *Aḥkām al-Qur‘ān*, 2: 876; Ibn Ḥazm, *Marātib al-Ijmā‘*, 122; Ibn Ḥajar, *Fatḥ al-Bārī*, 6: 276.

¹¹⁹ Ṭabarī, *Ikhtilāf al-Fuqahā‘*, 19-20; ‘Abd al-Satār Ḥamid, *al-Ḥasan Ibn Ziyad wa Fiqhihi*, 624-626; the Maliki jurist al-Māzri adopted a similar opinion, *Badā‘i‘ al-Sulūk*, 2: 577

On the other hand, should the non-Muslim suggest a condition stipulating that money be paid to Muslims, it is permissible to conclude the *mu'āhada*. The amount of money that is to be paid by the non-Muslim under the *mu'āhada* is subject to the same rules as *kharāj* and *jizya*.¹²⁰ According to the majority of scholars it is permissible to conclude a *mu'āhada* with non-Muslims by accepting an amount of money every year from them.¹²¹

III. The Process of drafting *mu'āhadāt* and their conclusion:

The entire *mu'āhada* has to go through a specific process that cannot be avoided, for it is crucial to the validity of the document. Therefore, a certain measure of caution was taken and careful calculations made by the parties involved prior to the conclusion of the *mu'āhada*. In the following section an attempt is made to analyze the process that is involved when the prospective *mu'āhada* is taking shape. This includes the negotiation process, the writing down of the draft, verification or consent, the exchange of verifications and the implementation of what was agreed upon by the parties.

A. Negotiation Process:

Some scholars describe the negotiation elements as *murāwada*¹²² (to habituate or accustom); in any event, it is the first and one of the most essential steps in establishing

¹²⁰ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1690-1691; and idem, *Mabsūṭ*, 10: 87; Ibn Humām, *Fath al-Qadīr*, 4: 295.

¹²¹ Ibn Ḥazm, *Marātib al-Ijmā'*, 122; Ṭabarī, *Ikhtilāf al-Fuqahā'*, 20-21; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 51; *Nihāyat al-Muḥtāj*, 8: 108; Ibn Shāsh, *'Aqd al-Jawāhir al-Thamina*, 1: 497; Nawāwī, *al-Muḥadḍhab* with *Takmilat al-Majmū'*, 18: 222-223; Karābīsī, *Furūq*, 1: 334.

¹²² *Murāwadha* means humoring or complying with someone's moods or willingness to please them and eventually double deal him in terms of trade or negotiation a contract of all kind. For further details see the followings: *al-Mughrab fī al-Tartīb al-Mu'arib*, 1: 353; *al-Nihāya fī Gharīb al-Ḥadīth wa al-Āthār*, 2: 276; Ibn Mandūr, *Lisān al-'Arab*, 7: 164; *Sharḥ al-Zarqānī 'ala al-Muwaṭṭa'*, 3: 282.

the grounds on which to conclude the *mu'āhada*. It is at this stage that a willingness to interact and express opinions vis-a-vis the subject of the *mu'āhada* and its conditions is most evident. It can help the parties reach agreement on all pre-requisites, whether the negotiation takes a long or a short period of time, or whether it is an easy or a hard task to undertake.

Some jurists devote an entire chapter of their treatises to the subject of *murāwāḍa 'alā al-amān*, such as Shaybānī in his *al-Siyar al-Kabīr*, where he describes the negotiations between the Muslim army and the *ahl al-ḥarb* in the case of one conquering the other's territory, leading to an agreement to negotiate an *amān* under consent to certain conditions.¹²³ Shaybānī indicates in his *Siyar* the conditions for *muwāḍa'a*, al-Ḥudaybiya where he refers to the negotiation that took place during the *ṣulḥ* of Ḥudaybiya between the Prophet and the people of Mecca.¹²⁴ The process of negotiation undertaken at the Battle of Trench (*Khandaq*) (5/627) in the wake of Ḥudaybiya was conducted very carefully. For example, they followed a procedure that incorporated delays and carefully avoided any elements of the *'aqd* that might delay the process or favor one party over another. The Prophet tolerated many issues at the time of concluding the *'ahd* with the Meccans. However, the Prophet's indulgence gave him an advantage in the long run. By concluding the *ṣulḥ* al-Ḥudaybiya with the Meccans, the Prophet was officially recognized as leader of the Muslim community by his opponents. This eased the way for Muslim adherents to preach the message of Islam, without the interruptions and persecution that had hindered them before.¹²⁵

¹²³ *Sarakhsī, Sharḥ al-Siyar al-Kabīr*, 2: 461-463.

¹²⁴ *Ibid.*, 5: 1780-1881.

¹²⁵ Najīb Armazānī, *al-Shar' al-Dawli fī al-Islam*, 146; Ja'far 'Abd al-Salam, *Qawā'id al-'Alāqāt al-Dawliyya*, 386-388.

Shaybānī indicates that at the time of negotiating a *mu'āhada*, the Muslim must take into account what compromises may be offered at the beginning in order to reach the goal of a completed *mu'āhada*. This is to say, he must demand more in order to obtain less than what he expects to get.¹²⁶ The writer of the *mu'āhada* should begin by identifying the most significant and most important demands by the other party in case they disagree on a condition, which may be subject to omission. This is because it is much easier to omit something at the time of negotiation than to add some element to it. Should the *ahl al-ḥarb* not be prepared to accept any but the most drastic conditions, the writer should be aware of this. If they readily accept the conditions offered, the Muslims can drop whatever conditions they wish.¹²⁷ This process of negotiation is derived from the time of the Prophet and his conduct in the Ḥudaybiya treaty and during the battle of the Trench and the negotiations that took place between the Prophet and 'Uynā ibn Ḥiṣn al-Fazārī, where 'Uynā demanded all of the produce of Medina that year. The Prophet negotiated a reduction in that demand by offering one third, before they eventually agreed to half of the produce only.¹²⁸

B. The writing and editing of the *mu'āhada*

The process of writing the *mu'āhada* is counted as an important element in its construction, since this amounts to certifying its authenticity. Although the writing of a *mu'āhada* is not one of the conditions for making a valid *'aqd* in Islamic law (nor it is

¹²⁶ Aḥmed Abū al-Wafā, *al-Mu'āhadāt al-Dawliyya fī al-Sharī'a al-Islamiyya*, 29.

¹²⁷ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1798.

¹²⁸ Ibn Sa'd, *Ṭabaqāt al-Kubrā*, 2: 73; Ibn Ishāq, *Sīra*, 2:223; Abū Yūsuf, *Kharāj*, 225; Abū 'Ubayd, *Amwāl*, 189-190; Wāqidī, *Maghāzī*, 2: 477-478; Shaybānī, *al-Siyar al-Kabīr*, 5: 1693-1694.

obligatory), it is a valuable attestation, reference, evidence and assertion of the dispute in which the parties are involved.¹²⁹

Shaybānī emphasizes that it is important to write down the *muwāda'a* along with its conditions. Should the Muslims conclude a *muwāda'a* with the non-Muslims for a fixed time, they have to write it down, since some conditions of the *'aqd* may be subject to continuity or renewal.¹³⁰ Indeed, this recording conditions of a fixed-term of *muwāda'a* is ordained by the Qur'ān. The verse reads,

O you who believe! When you contract a debt for fixed period,
write it down.¹³¹

The writing of the *muwāda'a* is also acknowledged to be useful, especially in view of the fallibility of memory. The verse goes on to say:

You should not become weary to write it (your contract),
whether it be small or big, for a fixed term, that is more just
with Allah; more solid as evidence, and more convenient to
prevent doubts among yourselves, save when it is a present
trade which you carry out on the spot among yourselves, then
there is no sin on you if you do not write.¹³²

The implication of this verse is that anything that is subject to continuity or renewal must be written down.¹³³

Sarakhsī indicates that the Prophet instructed Muslims to conduct their affairs at the time of dealing with non-Muslims in writing, since there was a benefit to having the facts set down on paper. It was in the best interest of one's wealth and rights,

¹²⁹ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 1: 484.

¹³⁰ The *'aqd* that is conditioned by a time period, such as in leasing where the gain of benefits established along the time period, the process of implementation is subject to continuity, renewable or rotating. See: Muḥammad Yūsuf Mūsa, *al-Amwāl wa Naẓariyat al-'Aqd*, 485; Zarkashī, *al-Manthūr fī al-'Aqā'iq*, 1: 240; Suyūṭī, *al-Ashbāh wa al-Naḍā'ir*, 282-283.

¹³¹ Q. 2: 282.

¹³² Q. 2: 282 .

¹³³ Shaybānī, *al-Siyar al-Kabīr*, 5: 1780.

whether matters went for or against them, since it is a record of the dispute should any misunderstanding or conflict arise. The written document would help in any attempt to judge and arbitrate between the people in order to prevent misinterpretation. It helps provide justice to all, and guards against the infraction of the *'aqd*, whatever its nature, since some may not understand the causes that can make an *'aqd* null. It will also eliminate the fears of the parties in the short or long term in that it spells out the obligations along with the rights that each has to honor and fulfill, even in the case of sudden death or inheritance. As soon as one refers to the written text of the *'aqd*, all anxieties will disappear.¹³⁴

The majority of scholars reached a consensus regarding the significance of writing down the *mu'āhada*. Nawawī explains that it is obligatory upon the imām, at the time of concluding *'aqd al-hudna*, to write it down and to have it witnessed so that his successor will understand what the *'aqd* requires of him.¹³⁵

The language used in writing the *mu'āhada* is instrumental in indicating the purpose and validity of the *'aqd*. It is not however conditional for the *mu'āhada* to be written in any specific language. For example, the *amān* is valid no matter what language it is expressed in; Arabic is not a requisite. Nor is there any specification of the language of the written text in the Qur'ān. However, Muslims prefer Arabic as a vehicle for addressing people or dealing with matters of mutual concern, since it has such prestige with them. And any community that has prestige, this in turn is reflected upon their own language.¹³⁶ Most probably the original draft of a *mu'āhada* always, was

¹³⁴ Sarakhsī, *Mabsūṭ*, 30: 167-168.

¹³⁵ Nawawī, *Rawḍat al-Ṭālibīn*, 10: 337; Shāfi'ī, *Umm*, 4: 103-104, 118; Ibn Qudāma, *al-Mughnī*, 10: 610-611.

¹³⁶ *Majmū' Fatawā Ibn Taymiyya*, 29:12; Ibn Qayyim al-Jawziyya, *A'lām al-Muwaqī'in*, 2: 4;

written in Arabic, and the copy given to the non-Muslim party was translated into the tongue of that party as well as certified by a notary public (*kātib 'adl*).¹³⁷ According to Shaybānī, should the Muslims call to the *ahl al-ḥarb* and grant them *amān* they will be all under the *amān* whatever the language they heard it in, whether Arabic, Persian, Greek or Coptic, to name only a few.¹³⁸

Accuracy and circumspection in writing the *mu'āhada* and its editing has a significant impact upon its outcome and implementation. For instance, Shāfi'ī emphasizes that the accuracy of the writing of the document is as important as its conditions.¹³⁹ The importance of the accuracy of writing down the *mu'āhada* is reflected in the notaries' concerns to prevent any contamination by either of the parties involved. This is derived from the Qur'ānic verse that read,

Let a scribe write it down in justice between you. Let not the scribe refuse to write as Allah has taught him, so let him write. Let him who incurs the liability dictate, and he must fear Allah, his Lord, and diminish not anything of what he owes. But if the debtor is poor understanding, or weak, or is unable himself to dictate in justice.¹⁴⁰

The scribe should write the *mu'āhada* down in terms that cannot cause injustice to anyone.¹⁴¹ Al-Jaṣṣāṣ stresses that the purpose of writing down the *mu'āhada* in a completely accurate manner is to avoid any misconception; justice is achieved where all of the conditions are be listed and applied according to *shar'*. Furthermore, the

Shams al-Dīn Muḥammad ibn Aḥmad al-Minhājī al-Suyūṭī, *Jawāhir al-Uqūd wa Mu'īn al-Quḍāt wa al-Muwaqī'īn wa al-Shuhūd*, 1: 12.

¹³⁷ Najib Armazānī, *al-Shar' al-Dawli fī al-Islam*, 148.

¹³⁸ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 283-284; Abū Yūsuf, *Kharāj*, 222-223.

¹³⁹ Shāfi'ī, *Umm*, 4: 118-119; *Jawāhir al-Uqūd*, 1: 12; For modern scholars who emphasize on the accuracy of writing of *mu'āhada* see the followings: Maḥmūd Shaltūt, *al-Islam 'Aqīda wa Sharī'a*, 457; Wahbi al-Zuhaylī, *al-'Alāqāt al-Dawliyya fī al-Islam*, 141-142; Aḥmad Abū al-Wafā, *al-Mu'āhadāt al-Dawliyya*, 39-41.

¹⁴⁰ Q. 2: 282.

¹⁴¹ Shaybānī, *al-Siyar al-Kabīr*, 5: 1781, 1785.

mu'āhada must be written in a language that expresses all of the obligations and rights in a way that is understandable to both parties. The language of the *mu'āhada* should be precise so as to prevent jurists from questioning its content. The writer or the scribe should be a trustworthy and learned individual, while his version of the *mu'āhada* should indicate the consent of both the parties listed to what was dictated to him. In the event he leaves out any one of the conditions, the *mu'āhada* is void. Therefore, he must write down all of the conditions in a clear and sound manner that contributes to the validity of the *mu'āhada*.¹⁴² The *mu'āhada* should include all of the conditions and their clarifications as discussed and negotiated and consented to by the parties.¹⁴³

The specification of the time period must be included, and the effectiveness of the *mu'āhada* indicated by beginning and end dates. Therefore, according to Shaybānī, the parties who have concluded the *mu'āhada* must indicate the dates by year and month - - the start date by month and then year, and the end date by month, followed by the year.¹⁴⁴ The dates written in the *mu'āhada* must follow the calendar established by 'Umar ibn al-Khaṭṭāb and agreed to by the Companions, i.e., the Hījri calendar, which begins with the year of the Prophet's *hijra* (migration) to Medina and whose first month is the month of *Muḥarram*.¹⁴⁵ The *mu'āhada* will be dated first according to the time of its signing, and will indicate the time period by its beginning and end date. That this is known to all of the parties is guaranteed by the signatures of witnesses, and this helped to avoid any dispute regarding the length of the *mu'āhada*'s effectiveness.¹⁴⁶

¹⁴² Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 1: 484.

¹⁴³ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1782-1783, 1798.

¹⁴⁴ Ibid., 5: 1784; Ṭabarī, *Tārīkh al-Ṭabarī*, 2: 389-392; Ibn al-Jawzī, *Talqīḥ Fuhūm Ahl al-Āthār*, 7; Qalqashandī, *Ṣubḥ al-A'shā*, 6: 240-242.

¹⁴⁵ Ibid.

¹⁴⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1782-1784.

The *mu'āhada* includes several parts and divisions. The body of the *mu'āhada* is headed by the name of the Imām or Caliph, who is listed as the one responsible for the *mu'āhada*, *muwāda'a* or *hudna* along with the individuals with whom he is affiliated, along with the names of any others party accompanying him.¹⁴⁷ The Prophet, at the time of his *ṣulḥ* with the people of Mecca in the year of Ḥudaybiya, assigned 'Alī to write down ("in the Name of Allāh the Most Merciful") what had been agreed on, but then the Meccan representative Suhayl ibn 'Amr voiced objections and the Prophet had again to assign 'Alī to write what had been agreed to between Muḥammad and Suhayl regarding the people of Mecca, etc. Then he wrote the year and the month in which the agreement would come into effect, and that each party had to fulfill its obligations and honor what they had sworn to.¹⁴⁸ Finally he listed the names of the witnesses, as the Prophet did with all of his *ṣulḥ* agreements. In this case the Prophet asked Abu Bakr, 'Umar ibn al-Khaṭṭāb, 'Abd al-Raḥmān ibn 'Awf, 'Abd Allah ibn Suhayl ibn 'Amr, Sa'd ibn Abī Waqqāṣ, Muḥammad ibn Maslama and Makraz ibn Ḥaṣṣ to witness the Ḥudaybiya agreement.¹⁴⁹ He also followed this procedure in his agreement with the people of Najrān.¹⁵⁰

C. Verification or endorsement and the exchange of the copies of the *mu'āhada*

The endorsement represents the final step in the *mu'āhada* process, where the obligation of each party to fulfill and apply the content of the *mu'āhada* is made

¹⁴⁷ See for example, "Sulḥ al-Ḥudaybiya" format in appendix (A); Sarakhsī, *Mabsūṭ*, 30-168-179.

¹⁴⁸ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1783, 1798; and idem, *Mabsūṭ*, 10: 8.

¹⁴⁹ Ibn Sa'd, *Ṭabaqāt al-Kubrā*, 2: 97; Maqrīzī, *Imtā' al-Asmā'*, 1: 298

¹⁵⁰ Ibn Humām, *Fath al-Qadīr*, 5: 296; Muḥammad Ḥamidullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 75.

official. Since this is final, neither party is allowed to back out of the *mu'āhada* at this stage.¹⁵¹ The imām and his deputy are in charge of this process.¹⁵²

At the time of concluding the Ḥudaybiya the Prophet ordered that two copies be drawn up, one for himself and the other for the people of Mecca.¹⁵³ This was a common practice, because each party had to have its own copy to prevent misunderstanding.¹⁵⁴ The exchange of the *mu'āhadāt* became a common practice where each party received its own copy.¹⁵⁵

Finally, the implementation of the *mu'āhada* is obligatory, and each party is held responsible by the other for enforcing and honoring each condition or article agreed upon. Once the *mu'āhada* becomes binding, no violation can be tolerated. Indeed, if either party breaks one of the conditions of the *mu'āhada*, the *mu'āhada* will automatically be terminated, and if there were any hostilities prior to the conclusion of the *mu'āhada*, these may resume failing any explanation or compensation for the violation by the offending party.¹⁵⁶

D. Reservation (*taḥaffuẓ*) of *mu'āhadāt*:

This subject is not accorded its own chapter in juristic treatises; however, the reservation of *mu'āhadāt*, i.e., a precautionary measure against making errors while the *mu'āhada* is in progress so as to prevent its failure,¹⁵⁷ was usually dealt with by jurists under a separate heading in the chapter on the conditions of the *'aqd* as we saw earlier

¹⁵¹ Aḥmed Abū al-Wafā, *al-Mu'āhadāt al-Dawliyya*, 44.

¹⁵² Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 2180.

¹⁵³ Ibn Sa'd in his *Ṭabaqāt*, explains that 'Alī wrote one copy for the Prophet and the other for Suhayl ibn 'Amr. See *Ṭabaqāt al-Kubrā*, 2: 97; Maqrīzī, *Imtā' al-Asmā'*, vol.1: 298.

¹⁵⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1780-1781.

¹⁵⁵ Najīb Armazānī, *al-Shar' al-Duwalī fī al-Islam*, 148.

¹⁵⁶ Sarakhsī, *Mabsūṭ*, 13: 25; and idem, *Uṣūl al-Sarakhsī*, 2: 310; Ghazālī, *Mustaṣfā*, 1: 93-94; Shāṭibī, *Muwāfaqāt*, 1: 143; Bukhārī, *Khashshaf al-Asrār*, 4: 171.

in the case of the *'aqd al-dhimma*. There the concept of reservation is expressed on the *al-shurūt al-ja'liyya*, i.e., the conditions imposed by the parties upon each other.¹⁵⁸ The subjects discussed under these conditions are the legally valid conditions determining what is acceptable to the *'aqd* and what is not. In the *Siyar al-Kabīr* of Shaybānī, and especially in his long chapter on the conditions of the *muwāda'a* and other treaties,¹⁵⁹ he outlines the significance of conditions imposed on the *mu'āhada* and the obligation to fulfill these obligations, as well as the conditions that are not suitable for the *'ahd* or *'aqd al-mu'āhada* as imposed by the participants. This is very similar to what is known as the reservation of *mu'āhada* in modern international law.¹⁶⁰

The conditions imposed on the contracts generally speaking are known as valid (*shart ṣaḥīḥ*), irregular (*shart fāsīd*) and void (*shart bātil*) conditions. According to the Ḥanafī jurists Abū Yūsuf and Shaybānī, valid conditions (*shart ṣaḥīḥ*), are essential conditions that are required to make the *'aqd* certain and that contribute to the *'aqd*'s validity. As long as these described conditions conform with the *'aqd* the *'aqd* is valid. Void conditions on the other hand are those not connected or related to the *'aqd*, and are not customary. An example of such a condition is one that might benefit one party but harm the other. If such a condition is included in an *'aqd* of compensation, it can render the *'aqd* void, while if it forms part of an *'aqd* that does not deal with compensation, the *'aqd* may still be valid despite the condition being void, since this

¹⁵⁷ Ibn Manẓūr, *Lisān al-'Arab*, 7: 441; Zamakhsharī, *Asās al-Balāghā*, 1: 184.

¹⁵⁸ *Mu'jam Maqāyīs al-Lughā*, 3: 260; Kaffawī, *Kulliyāt*, 3: 64; Jurjānī, *Ta'rīfāt*, 166; Samarqandī, *Mīzān al-Uṣūl*, 616-617.

¹⁵⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1780.

¹⁶⁰ 'Abd al-Ghanī Maḥmūd, *al-Taḥaffūz 'alā al-Mu'āhadāt al-Dawliyya*, 17; Ghunaymī, *Qānūn al-Salām fī al-Islām*, 522, 526 and 530; and idem, *Aḥkām al-Mu'āhadāt fī al-Sharī'a al-Islamiyya*, 109, 111-112; Aḥmad Abū al-Wafā, *al-Mu'āhadāt al-Dawliyya*, 89; 'Abd al-Ghanī Maḥmūd, *al-Taḥaffūz 'alā al-Mu'āhadāt*, 136-139.

does not have any negative impact upon the *'aqd* itself. The irregular condition (*sharṭ fāsīd*) is a condition that is neither required nor necessary to the final shape of the *'aqd*. Furthermore, an irregular condition entails no benefits for any party. For example, if someone were to sell his camel and impose a condition upon the buyer not to use it, this condition would be an irregular one, and it has no effects on the *'aqd* or its validity.¹⁶¹

The disagreement of jurists from various schools regarding the liberty of contracts and specifically the imposing of conditions on the *'aqd* in terms of their validity or irregularity is wide ranging. The Ḥanbalīs were more tolerant and open than others, whereas Zāhirī jurists were among the most strict and firmly opposed to the conditions of contracts.¹⁶²

According to Shaybānī, the *'aqd al-muwāda'a* is not among the *'uqūd* that deal with compensation; therefore, if it incorporates any irregular conditions it will not have any effect on the validity of the *mu'āhada*. Similarly, Shāfi'ī jurists indicate that any *'aqd* that does not deal with material aspects from the point of view of the participants is an *'aqd al-hudna*, as long as both parties agree to honor the principle of what they have agreed upon.¹⁶³ Should the *'aqd* come under the heading of an *'aqd al-mu'āwada* (compensational *'aqd*), then this *'aqd* will be affected by any irregular condition,

¹⁶¹ Sarakhsī, *Mabsūṭ*, 13: 13; Ibn Humām, *Fath al-Qadīr*, 5: 215-216; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 4: 57-59 and 131-134; *Hāshiyat Ibn 'Abidīn*, 5: 84-88; Ibn Qāḍī Simāwinā, *Jāmi' al-Fuṣūlayn*, 2: 4; Ibn Nujaym, *al-Baḥr al-Rā'iq*, 6: 194; *al-Fatāwā al-Hindiyya*, 4: 396.

¹⁶² See the opinions of the school given in detail in the following: Ibn Shāsh, *'Aqd al-Jawāir al-Thamīna*, 2: 422; Ibn Rushd, *Bidāyat al-Mujtahid*, 2: 116-164; *Hāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr*, 3: 65; *al-Kharashī 'alā Mukhtaṣar Khalīl*, 3: 175; (Māliki) Manjūr, *Sharḥ al-Manhaj al-Muntakhab ilā Qawā'id al-Madhhab*, 313; (Shāfi'ī) Nawawī, *al-Majmū' Sharḥ al-Muhadhdhab*, 9: 404-420; and idem, *Rawḍat al-Ṭālibīn*, 3: 403-410; Ibn Qudāma, *Mughnī al-Muḥtāj*, 2: 33-36; (Ḥanbalī) *al-Mughnī* and the *Sharḥ al-Kabīr*, 4: 309-312, 10: 517-519; Bahūfī, *Kashshāf al-Qinā'*, 3: 177-184; (Zāhirī) Ibn Ḥazm, *al-Muḥallā*, 8: 412-420; (modern scholars) Abū Zahra, *al-Mulkiya wa Nazariyat al-'Aqd*, 272-283; Muḥammad Yūsuf Mūsa, *al-Amwāl wa Nazariyat al-'Aqd*, 410-433; Ḥasan al-Shādhilī, *al-Sharḥ fī al-'Aqd*, 177.

¹⁶³ Zarkashī, *al-Manthūr fī al-'Uqūd*, 2: 402.

possibly leading to its termination.¹⁶⁴ The bottom line is that the conditions must be directly related to the *'aqd* in order for it to be effective.¹⁶⁵ Where an irregular condition was proposed prior to the conclusion of the *'aqd* and the *'aqd* was established notwithstanding the presence of this irregular condition, it will definitely affect the outcome of the *'aqd*.¹⁶⁶

The valid conditions must be honored and fulfilled by all of the participants. This is what the *muwāda'a* stands for. Thus, in the event that a Muslim offers *amān* to a *ḥarbī* upon his entrance into *dār al-Islām*, and the *ḥarbī* requests from the Muslim that he be made exempt from *'ushūr* in return for the same treatment being extended to the Muslim on his entrance to *dār al-ḥarb*,¹⁶⁷ and as long as this condition was agreed upon by the parties prior to the conclusion of the *'aqd*, it must be honored and fulfilled. For example, the signatories may agree to a release of prisoners of both parties; they have to respect this condition and release them. It cannot be a valid condition if one party requests the release of its prisoners and keeps the prisoners of the other parties. The condition should be reciprocal in order to make the *mu'āhadat* effective and sound.¹⁶⁸

IV. *Āthār*¹⁶⁹ (effects and impacts) of *mu'āhadāt*:

The impacts of *mu'āhadāt* upon the participants, in terms of their having to honor and fulfill their obligations toward one another, may be divided into five

¹⁶⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 2: 584-585.

¹⁶⁵ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 214.

¹⁶⁶ Ibn Qāḍī Simāwma, *Jāmi' al-Fuṣūlayn*, 2: 221-222; *Ḥāshiyat Ibn 'Abidīn*, 5: 84; Nawawī, *al-Majmū'*, 9: 18; and idem, *Rawḍat al-Tālibīn*, 10:410-411; Bahūtī, *Kashshāf al-Qinā'*, 3: 177; *al-Furū'*, 4: 56.

¹⁶⁷ Shaybānī, *al-Siyar al-Kabīr*, 5: 1790.

¹⁶⁸ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*.

¹⁶⁹ *Āthār* is the plural of *athar*, which means effect, influence or bearing such as something that affects the *mu'āhadat* and its sound existence. See the following: Jurjānī, *Ta'rifāt*, 23; Tahānawī, *Kashshāf Iṣṭilāḥāt al-Funūn*, 1: 95; Rāhgib al-Iṣfahānī, *Gharīb al-Qur'ān*, 9.

categories. In the following pages an attempt is made to discuss these elements accordingly.

A. The fulfillment and honoring of the *'ahd* and the precautions against treachery or faithlessness

The concept of honoring and fulfilling the *'ahd*¹⁷⁰ is derived from the Qur'ān, where it is explicitly ordained that the Muslims honor their covenants:

O you who believe! Fulfill [your] obligations.¹⁷¹

The term obligations here applies, among other things, to the *'aqd* and what has been agreed upon in the *'aqd*. This obviously includes all types of *'uqūd*, such as those of partnership, sale, and purchase and leasing, as well as the *'aqd al-dhimma* and *al-amān*.¹⁷²

In addition to the particular obligations imposed by the *mu'āhada*, the Qur'ān insists that the *'ahd* must be respected to the fullest and warns of the consequence of any violation of this principle:

Except those of the *Mushrikūn* with whom you have treaty, who have not subsequently failed you in ought, nor have supported anyone against you. So fulfill their treaty to them to the end of their term. Surely Allāh loves the Muttaqīn [the pious].¹⁷³

Despite the hardships with which Muslims were confronted during the early period of Islam, the Qur'ān urges and motivates them to obey its commandments with regard to

¹⁷⁰ The term used for fulfillment in Arabic is usually *wafā'*, which means to honor fully what has been agreed upon without violations fully. See the following: Ṭabarī, *Tafsīr*, 9: 455; Raghīb al-Asfahānī, *al-Mufradāt fī Ghariḥ al-Qur'ān*, 528; Fayruzabādī, *Baṣā'ir Dhawī al-Tamyīz*, 5: 244-245.

¹⁷¹ Q. 5: 1.

¹⁷² Jaṣṣās, *Aḥkām al-Qur'ān*, 2: 293-294; Ṭabarī, *Tafsīr*, 9: 449-454; *Tafsīr al-Qurṭubī*, 10: 169; *Tafsīr al-Baghawī*, 3: 5-6; *Tafsīr Ibn Kathīr*, 3: 4; *Majmū' Fatāwā Shaykh al-Islām Ibn Taymiyya*, 29: 145-151.

¹⁷³ Q. 9: 4.

the fulfilling of the *'ahd*, as we have seen in Q. 16: 91-92 and Q. 17: 34.¹⁷⁴ These verses coincide precisely on the subject the fulfillment of *'uhūd* and with the spirit and principles of Islamic teaching on how to conduct oneself in a society and in the world, as well as in such matters of interpersonal dealings as trade and business transaction. The Qur'ān's verses indicate this by a variety of approaches, including explicit commands, reports on ideal behavior, or by warning of the consequences of failing to fulfill such obligations. Indeed, it ranks those who fulfill the *'ahd* as demonstrating qualities and attributes that are characteristic of the ideal conduct of believers.¹⁷⁵

As we stated above, the Qur'ān does not just command Muslims to obey and honor the *'uhūd*, it also provides warnings against betrayal of *'uqūd*, breaking or violation of *'uqūd*, breach of trust and lack of observance. For example, there is a verse that reads:

Verily, the worst of moving (living) creatures before Allah are those who disbelieve, so they shall not believe. They are those with whom you made covenant every time and they do not fear Allah. So if you gain the mastery over them in war, punish them severely in order to disperse those who are behind them, so that they may learn a lesson.¹⁷⁶

Along the same lines we find another verse that refers to the consequences for violators of an *'ahd*:

Is it not (the case) that every time they make covenant, some party among them throw it aside? Nay! The truth is most of them believe not.¹⁷⁷ But if they violate their oaths after their covenant, and attack your religion with disapproval and criticism then fight (you) the leaders of disbelief (chief of Quraish-pegans of Mecca) – for surely their oaths are nothing

¹⁷⁴ See also Jaṣṣās, *Aḥkām al-Qur'ān*, 2: 190.

¹⁷⁵ Nāṣr Sulaymān al-'Umar, *al-'Ahd wa al-Mithāq fī al-Qur'ān al-Karīm*, 153; Quṭb, *Fī Zilāl al-Qur'ān*, 4: 2190-2193.

¹⁷⁶ Q. 8: 55-57.

¹⁷⁷ Q. 2: 100.

to them – so that they may stop (evil action). Will you not fight a people who have violated their oaths and intended to expel the Messenger, while they did attack you first? Do you fear them? Allah is more right that you should fear Him, if you are believers.¹⁷⁸

As for the Prophet's own teaching on these matters, he took a wider perspective in terms of the obligation of fulfillment of *'uhūd* and the prohibition of betrayal and or violation of the same. There are many *ḥadīths* dealing specifically with the obligation to fulfill the *'ahd*.¹⁷⁹ Among them is one narrated by Abu Hurayra in which the Prophet is reported to have said:

Carry out the trust with respect to those trusted you and act of treacherously or perfidiously toward those even if they betray you.¹⁸⁰

Muslims should not demand anything from non-Muslims above and beyond what they agreed to have included in the *'aqd al-ṣulḥ*. Hence it is obligatory for them to fulfill and obey the *'ahd*, otherwise this will be an act of treachery, which is expressly prohibited by the Qur'ān and the Prophet's teaching.¹⁸¹

Abū Yūsuf indicates that, when Abu 'Ubayda ibn al-Jarrāḥ concluded the *ṣulḥ* with the people of Syria, each party imposed conditions upon the other. One of the conditions included was that the Syrian Christians be allowed one day of the year to celebrate a feast with the crosses displayed in the street. This condition was honored, and the Muslim fulfillment of this *'ahd* and the respect they gained from the *ahl al-*

¹⁷⁸ Q. 9: 12-13.

¹⁷⁹ See for example the following: Ibn al-Athīr, *Jāmi' al-Uṣūl*, 2: 647-656 and 8: 458-459; al-Mundhirī, *al-Targhīb wa al-Tarhīb*, 4: 3-13; Baghawī, *Maṣābiḥ al-Sunna*, 3: 92-94.

¹⁸⁰ Ibid.

¹⁸¹ Shawkānī, *Nayl al-Awṭār*, 8: 69; Ibn 'Abd al-Barr, *al-Tamhīd*, 2: 124.

dhimma as a result paid off for them in the long run in the form of assistance to the Muslims in their battle against Byzantium.¹⁸²

Muslim jurists dwell at length in their treatises on the nobility of fulfilling *'ahds* and the importance of avoiding treachery. Among these jurists is Shaybānī, who in his *Siyar al-Kabīr* insists that Muslim are obligated to fulfill the *'ahd* or *mīthāq* with non-Muslims in all situations. Should there exist an *'ahd* between Muslims and non-Muslims, the Muslims should honor that *'ahd* to the fullest, and as long as it is in effect.¹⁸³ With reference to this the Qur'ān says:

But if they seek your help in religion, it is your duty to help them except against a people with whom you have a treaty of mutual alliance, and Allah is the Seer of what you do.¹⁸⁴

The Muslim is therefore obligated to fulfill all of the conditions imposed in the *'ahd*. Thus, for example, if the *ahl al-ḥarb* impose a condition upon the Muslims such as not to drink from their river, the Muslims must respect this condition.¹⁸⁵ Moreover, whether the conditions are among the articles within the *'ahd* or only related to them, they must be fulfilled. For instance, Shaybānī holds that if the non-Muslims impose a condition upon the Muslims such as not to eat from their crops or not to have access to their fodder, the Muslims by extension are prohibited from burning or ruining their cultivated land. Similarly, if they impose a condition that Muslims not take prisoners from them,

¹⁸² Abū Yūsuf, *Kharāj*, 149-151; Balādhurī, *Futūḥ al-Buldān*, 1: 162; Muḥammad Ḥamīdullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 470; Muḥammad Rashīd Riḍa, *Tafsīr al-Manār*, 10: 349; Thomas Arnold, *Preaching of Islam*, 73.

¹⁸³ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1667; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 75-76; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 875; *Tafsīr al-Ṭabarī*, 14: 82-83; *Tafsīr Abū Su'ūd*, 2: 377.

¹⁸⁴ Q. 8: 72.

¹⁸⁵ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 299; *al-Fatāwā al-Hindiyya*, 2: 303.

Muslims should neither violate that condition nor kill any non-Muslims, since killing people is more severe than taking prisoners.¹⁸⁶

The consensus of jurists is that all the conditions imposed within the *mu'āhada* be fulfilled as long as it is in force.¹⁸⁷ Ibn Ḥazm indicates that jurists were in agreement on the fulfillment of *'uhūd* that respected what the Qur'ān defines as permissible and obligatory. They agreed also on the fact that it is incumbent upon Muslims to fulfill the conditions of the *mu'āhada* and to respect these as long as they are in effect.¹⁸⁸

B. The basic protection of the rights of the *mu'āhidūn* (covenanters)

The signatory of a *mu'āhada* is automatically granted *amān*, and this entails guaranteed protection of the wealth, families and personal well-being of the *musta'min*, and protection of their holy practices and sacred places as well.¹⁸⁹ Should a Muslim kill one of the people to whom *amān* has been granted, the Muslim is under obligation to pay the blood money or wergild. This is explicitly indicated by the Qur'ānic verse which reads:

If the deceased belonged to a people at war with you and he was a believer; the freeing of a believing slave (is prescribed), and if he belonged to a people with whom you have a treaty of mutual alliance, compensation (blood money –*Diyya*) must be paid to his family, and a believing slave must be freed.¹⁹⁰

¹⁸⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 302-304; 2: 499, 582-583, 4: 1520-1521 and 5: 1856-1858; *al-Fatāwā al-Hindiyya*, 2: 203.

¹⁸⁷ Ibn Shāsh, *'Iqd al-Jawāhir al-Thamīna*, 1: 498; *al-Dasūqī 'ala Sharḥ al-Kabīr*, 2: 206; Ghazālī, *al-Wajīz*, 2: 204; Baydāwī, *al-Ghāya al-Quswā*, 2: 962; *Nihāyat al-Muhtāj*, 8: 108; Nawāwī, *Rawḍat al-Tālibīn*, 10: 337; *Tahrīr al-Aḥkām*, 233; Ibn Qudāma, *al-Mughnī*, 10: 513; Ibn Miflīh, *al-Mubdi'*, 3: 401.

¹⁸⁸ Ibn Ḥazm, *Marātib al-Ijmā'*, 123.

¹⁸⁹ Shaybānī, *al-Siyar al-Kabīr*, 5: 1786; Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4325; Sarakhsī, *al-Mabsūṭ*, 10: 89; Abū Yūsuf, *Kharāj*, 42.

¹⁹⁰ Q. 4: 92.

It is among the duties of the *imām* to provide protection and safety to them and to prevent any kind of injustice from being inflicted upon them. The *imām* should prevent and protect them from oppression as long as they reside within *dār al-Islām*, much in the same way that provided to the *ahl al-dhimma*.¹⁹¹

The *mu'āhada* must continue to function despite changes in status on the part of either side. For example, if the Muslims give *amān* to detachment of the *ahl al-ḥarb* in return for payment of five hundred dinārs, and then another detachment joins the first detachment, the Muslims cannot do battle with them unless they return the money they took from them. Since there was an *amān* granted to them for a specific time and under certain specific conditions, the Muslims are obligated to fulfill this *amān*.¹⁹²

Furthermore, should the *imām* or his deputy be replaced by someone else for any of a variety of reasons, the successors are obliged to fulfill any agreement that was concluded by the former *imām*. Thus a *mu'āhada* will continue to function in spite of changes in leadership.¹⁹³ This was the practice of the four Rightly Guided Caliphs, and that of successive Islamic dynasties as well. The case of the caliph Hārūn al-Rashīd, when he consulted Shaybānī on a similar question regarding the Christians of Taghlib, provides a good example. Since the earlier caliphs had concluded a *ṣulḥ* with them, Hārūn al-Rashīd took over and maintained the same policy as his predecessors.¹⁹⁴ The opinions of other jurists on how the agreements in a *mu'āhada* are affected by incidents such as the death of a caliph basically conform in holding that his successor must not

¹⁹¹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1853-1854 and 1856-1857.

¹⁹² Shaybānī, *al-Siyar al-Kabīr*, 2: 481-482; *al-Fatawā al-Hindiyya*, 2: 197; Aḥmad Abū al-Wafā, *al-Mu'āhadāt al-Dawliyya*, 156.

¹⁹³ Abu Yūsuf, *Kharāj*, 77-81; Balādhurī, *Futūḥ al-Buldān*, 1: 76-81

¹⁹⁴ For more details see the following: Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 2: 174; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 95.

terminate the *mu'āhada* but rather carry on with it and fulfill it accordingly.¹⁹⁵ One question that might be asked is how the liabilities and obligations of *mu'āhadāt* were overseen.¹⁹⁶ The Qur'ān, as we have seen, is explicit as to the necessity of attestation and registration of *'uqūd* and *mu'āhadāt*. In reality, as we saw earlier, the process consisted of four components: the writing, the testimony of witnesses, the *rahn* (pledge) and the *amānah* (trust or deposit). The first two were discussed earlier, and so in the following we will discuss the remaining two components:

C. a. *Amāna* (trust or religious sanction)

Islam ordains that Muslims be bound by the Qur'ān and the Prophet's teachings; thus, because according to the texts Muslims are obliged to honor their commitments, Islamic doctrine expects Muslims to respect treaties of every kind.¹⁹⁷ We have seen the Qur'ānic verses that command Muslims to fulfill the *'uhūd*, and not to breach the trust. Khadduri indicates in his book *War and Peace in Islamic Law* that, in the past, Islamic authorities considered the conduct of treaties as part of their religious obligation; therefore, it was not an option to do otherwise. As long as the *mu'āhada* stands, it must be honored and implemented, at least until the end of its term.¹⁹⁸ To symbolize this commitment the participants make a promise to fulfill what they have agreed upon, using such oaths as *'ahd Allāh*, *mīthāqīhi*, *dhimmat Allāh wa Rasūlih* and *dhimmat al-*

¹⁹⁵ Shāfi'ī, *al-Umm*, 4: 103-104; Nawawī, *al-Muhadhdhab* with the *Takmilat Majmū'*, 18: 226; and idem, *Rawḍat al-Ṭalībīn*, 10: 337; Ibn Qudāma, *al-Mughnī*, 10: 513 and 611; Mardāwī, *al-Inṣāf*, 4: 217; Bahūtī, *Kashshaf al-Qinā'*, 3: 103-104; Qarāfī, *al-Aḥkām fī Tamyīz al-Fatāwā 'an al-Aḥkām*, 18-20.

¹⁹⁶ Q. 2: 282.

¹⁹⁷ See for example Shātibī, *Muwāfaqāt*, 2: 58-62; Ibn Ḥazm, *al-Aḥkām fī Uṣūl al-Aḥkām*, 4: 453; Zarqānī, *Manāhil al-'Arfān fī 'Ulūm al-Qur'ān*, 1: 289-337.

¹⁹⁸ Majid Khadduri, *War and Peace in the Law of Islam*, 293-294.

Masīḥ (Jesus) Ibn Maryam. What these oaths represent is confirmation of a *muwāda'a* by different expressions of commitment.¹⁹⁹

b. *Rahā'in*²⁰⁰ (pledging):

It was a custom for the *rahīna* (pledge) to be offered by both parties or by only one of them. This practice was known to ancient civilizations prior to Islam. As the *mu'āhada* in the past may well have required various *rahā'in* for the purpose of fulfilling the conditions of the *mu'āhada* by both participants, this custom was respected in Islamic law, while honor dictated that each party to a *mu'āhada* be obligated to return the *rahā'in* without their having suffered harm.²⁰¹

However, the type of pledge permissible was debated by scholars. After all, the concept of *rahn* was not among the Islamic *ahkām*, though because it was a custom of the early and surrounding environment, Islam had to deal with it as an existing practice as well as a principle of mutual treatment. Modern international law on the other hand forbids the practice of taking *rahā'in*.²⁰² Since the *rahn* is not among the Islamic *ahkām*, it may be of interest how it became a practice under Islam and how Islam or Muslim scholars dealt with this subject.

¹⁹⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1782-1783.

²⁰⁰ *Rahn* single *Rahā'in* plural, is an Arabic term referring to valuable that can be deposited as surety for a debt. According to the jurists, '*aqd al-rahn*' is the amount of money that can be deposited as a guarantee that some task will be completed. For the purposes of the above discussion, the *rahn* means hostages on whom the parties might impose conditions in order for the *mu'āhada* to be respected, such as by giving individuals from both sides for guarantee or surety to fulfill the *mu'āhada* on the understanding that, as soon as the period of time is over the parties will give these *rahā'in* back. See for more details the following: *Tartīb al-Qāmūs al-Muḥīṭ*, 2: 403-404; Ibn Manẓūr, *Lisān al-'Arab*, 13: 188-190; Raghib, *al-Mufradāt fī Gharīb al-Qur'ān*, 204; Jurjānī, *Ta'rīfāt*, 150; Kafawī, *Kullīyyāt*, 2: 394;

²⁰¹ Majid Khaddurī, *al-Ḥarb wa al-Silm fī Shar'iyyat al-Islam*, 291; Najib Armazāni, *al-Sar' al-Dawli*, 141; Muḥammad Ṭal'at al-Ghunaymī, *Qānūn al-Salām fī al-Islam*, 515; Subḥi Maḥmaṣṣānī, *al-Qānūn*

Shaybānī explains that it is prohibited for Muslims to give *rahn* to the polytheists, because it violates the principle of the protection of Muslims and invites harm or humiliations to their persons. For example, if the non-Muslims party to a *muwāda'a* were to require that Muslim men be given as *raha'in* in exchange for some of their own men, this is not permissible and Muslims should not accept their request unless there is a necessity.²⁰³ Sarakhsī furnishes a justification in his analysis, explaining that this is because polytheists do not preserve the rights and obligations of Muslims.²⁰⁴ The prohibition derives from the fear of killing -- unless there is a necessity.²⁰⁵ It does become permissible, however, as long as the non-Muslims guarantee to treat the Muslims as Muslims would treat them, and that whoever shows disloyalty to the condition will be punished. The *imām* must provide for the protection of Muslims wherever they are; therefore, he should emphasize and discuss this matter with the non-Muslims at the time of concluding the *muwāda'a*.²⁰⁶ The only case where the *imām* is permitted to accept the condition of giving Muslim men as *rahn* is if it can benefit the Muslim community or if the *imām* has no choice but to conclude the *ṣulh* to prevent further threat to Muslims. This is permitted on the basis of the idea of sacrificing the *rahn* for the safety of all, as a lesser evil.²⁰⁷

wa al-'Alāqāt al-Dawliyya, 148.

²⁰² Muhammad Ṭal'at al-Ghunaymī, *Qānūn al-Salām fī al-Islam*, 515

²⁰³ Shaybānī, *al-Siyar al-Kabīr*, 5: 1750.

²⁰⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1758. History records, as G. Lubin points out in his *Islamic Civilization*, many instances of the killing of Muslim prisoners, 330-331; Muhammad 'Abdallāh 'Anān, *Diwān al-Taḥqīq wa al-Muḥākamāt al-Kubrā*, 23. The situation for Muslims in Spain under Ferdinand (1452-1516) and Isabella (1451-1504) was particularly dire in this regard.

²⁰⁵ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1663 and 5: 1750.

²⁰⁶ *Ibid.*, 4: 1663-1664; 5: 1758.

²⁰⁷ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 87-88; Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 87; Ahmad al-Zarqā, *Sharḥ al-Qawā'id al-Fiqhiyya*, 147 and 149.

In case the non-Muslims betray the Muslims by killing the *rahā'in*, the Muslims are prevented from doing the same to their *rahā'in*. Despite the condition of mutual treatment, the Muslims should not treat their *rahā'in* in the same way, a principle alluded to in the Qur'ānic verse which reads:

And no bearer of burdens shall another's burden, and if heavily laden calls another to (bear) his load, nothing of it will be lifted even though he be near of kin.²⁰⁸

Also, the condition that contradicts or violates the Islamic *ḥukm* is a void condition.²⁰⁹ The *imām* should not take revenge and he should treat his prisoner with dignity and respect. He should keep them within *dār al-Islām* as *musta'minūn*, although he must prevent them from returning to their own *dār*. Furthermore, they can become *ahl al-dhimma* and, should they agree to this condition, they are subject to *jizya*.²¹⁰

Even if a condition is emphasized in the *muwāda'a* to the effect that, if one side violates the *muwāda'a* conditions, their pledge should be killed and vice versa, and even if the non-Muslims should kill their Muslim *rahā'in* in accordance with the condition, the Muslims are not permitted to kill theirs; indeed, they are even prohibited to do so.²¹¹ This was the ruling that emerged from an event that took place during the time of 'Abbasid caliph Abū Ja'far al-Manṣūr, who consulted legal scholars on the matter.²¹² When the Byzantines violated the *ṣulḥ* with Mu'āwiya and another *ṣulḥ* was concluded, in accordance with which the Byzantines were given money in exchange for hostages, and the Byzantines violated the second *ṣulḥ*, Mu'āwiya nevertheless refused to kill their

²⁰⁸ Q. 35: 18.

²⁰⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 1664 and 1753.

²¹⁰ Ibid., 5: 1769-1770; 4: 1664-1665; *Mabsūṭ*, 10: 129.

²¹¹ Shaybānī, *Aṣl "Kitāb al-Siyar"*, 232.

²¹² Shaybānī, *al-Siyar al-Kabīr*, 4: 1664-1665; Sarakhsī, *Mabsūṭ*, 10: 129; see also Ibn Jamā'a, *Tahrīr al-Aḥkām*, 234; Abū Ya' lā, *al-Aḥkām al-Sulṭāniyya*, 48-49; Abū 'Ubayd, *Amwāl*, 190;

prisoners, and instead released them, telling them to be loyal and fulfill their obligation rather than to exchange disloyalty with disloyalty (*wafā' bi al-'ahd khayr min ghadr bi ghadr*).²¹³ There was also a ruling that, should a Muslim kill anyone of the *rahā'in*, the Muslims would have to pay *diyya* (blood money) out of the Bayt al-Māl (public treasury), and that it should be reserved as a *waqf* (endowment) until the non-Muslims pay the *diyya* of the Muslim killed in exchange.²¹⁴ This was the opinion of Awzā'ī, Malik, Shāfi'ī and Ibn Ḥanbal.²¹⁵ They agreed that the Muslim should not kill the *rahn* in response to betrayal by the polytheists. Furthermore, they refer to the principle of fulfilling and honoring the *'uhūd* and of preserving the trust and the example of Mu'āwiya.²¹⁶

However, in event that non-Muslims propose to give the *diyya* to the imām, he should accept it (or the murderers themselves); this is an act of fairness on their behalf. He should choose what is best for the interests of the Muslim community.²¹⁷ Should both the non-Muslims and the Muslims agree to give *rahā'in*, and they do not provide for the expenses of the *rahā'in*, the Muslims are nonetheless obligated to cover their expenses from the Bayt al-Māl as long as they remain *rahā'in*.²¹⁸

The *imām* should look after the *rahā'in*'s interest as long as they are still under his authority. Whenever the period of *muwāda'a* is officially over, he is obligated to

Maṭālīb Awlū al-Nuhā, 3: 589.

²¹³ 'Abū 'Ubayd, *Amwāl*, 190; Balādhurī, *Futūḥ al-Buldān*, 1: 188; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 51.

²¹⁴ Ibid.

²¹⁵ 'Abū 'Ubayd, *Amwāl*, 190; *al-Kharāshī 'alā Mukhtaṣar Khalīl*, 2: 449; Ibn Jamā'a, *Taḥrīr al-Aḥkām*, 234; Abū Ya'lā, *al-Aḥkām al-Sulṭāniyya*, 48-49.

²¹⁶ Ibid.

²¹⁷ Shaybānī, *al-Siyar al-Kabīr*, 4: 1762-1764.

²¹⁸ Ibid., 5: 1777.

return the *rahā'in* to the other party.²¹⁹ In the event that a war breaks out between Muslims and polytheists, the Muslims should release the *rahā'in* first and return them to their *dār*, even if the other party refuses to release the Muslim *rahā'in* and proceeds to war.²²⁰ In some cases the Muslims are under no obligation to return the *rahā'in*. These cases include the situation where *rahīna* becomes Muslim and a part of the Muslim community, but then asks to be returned as a non-Muslim to *dār al-ḥarb*, in such an instance the *imām* should not permit them to go back. Even if the non-Muslims announce that, if the *imām* refuses to return the *rahā'in*, they will kill his Muslim *rahā'in* in revenge, he should not return them.²²¹ In some cases the *rahā'in* may prefer to stay within *dār al-Islām*, becoming *dhimmīs*; then the *imām* is not permitted to return them unless they request this. If the non-Muslims demand that the *rahā'in* who would like to stay in *dār al-Islām* be returned, and the non-Muslims announce that, if they are accepted as *dhimmīs*, the Muslim *rahā'in* will be killed or made slaves; then the *imām* must not accept the *rahā'in* as *dhimma* and return them to their own *dār* in exchange for releasing the Muslim *rahā'in* and their safe return. From the Muslim perspective, as the *imām* had not concluded an '*aqd al-dhimma*' with them, this was valid. Should he have concluded an '*aqd al-dhimma*' with them, however, he would be committing a violation of the '*aqd al-dhimma*' in returning them, which is forbidden according to Islamic law.²²²

²¹⁹ Ibid., 5: 1778.

²²⁰ Ibid., 4: 1666; Māwardī, *al-Ahkām al-Sulṭāniyya*, 51-52; Abū Ya'lā, *al-Ahkām al-Sulṭāniyya*, 49.

²²¹ Shaybānī, *al-Siyar al-Kabīr*, 5: 1753-1754; Ibn Shāsh, '*Iqd al-Jawāhir al-Thamīna*', 1: 498; *Hāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr*, 2: 206-207; *al-Khurashī 'alā Khafīl*, 2: 449; Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, 3: 449.

²²² Shaybānī, *al-Siyar al-Kabīr*, 5: 1753-1756.

In case the non-Muslims refuse to return the Muslim *rahā'in* after the time period of the *mu'āhada* is expired, then the *imām* will not return their *rahā'in* until they return his. The *imām* should write to them and express his demand and in case they refuse, he is permitted to keep the *rahā'in* and offer them the chance to become a *dhimmī*, and if they refuse to become a *dhimmī*, return them to their *dār* with their consent.²²³

V. The Termination of *mu'āhadāt*

a. By consent

As was mentioned earlier, consent of the participants will make this *mu'āhada* an official agreement, binding each party to fulfill and apply the conditions accordingly. In the following pages, an attempt is made to discuss the sorts of the reasons that may lead to the termination of the *mu'āhada*. The termination of the *mu'āhada* in this discussion does not refer to the expiry date that was agreed upon by the parties,²²⁴ since this is not a termination that needs much discussion. Furthermore, the termination of the *mu'āhada* does not refer to whether the *mu'āhada* is valid or not, since if it is not valid and based on Islamic law, it will not be concluded.²²⁵

Kāsānī explains the reasons for terminating the *mu'āhada*, and points out that it can be terminated for two reasons: first, due to the expiry of the period of effectiveness of the *mu'āhada*, and second, for a reason that is not limited to time periods. The latter can be terminated for two subsidiary reasons, i.e., on the basis of the *naṣṣ* (text) or

²²³ Ibid., 5: 1778; 4: 1666-1667.

²²⁴ See the meaning of the Arabic word for termination (*ibtāl* or *ilgā'*) in the following: *Lisān al-'Arab*, 15: 186; *al-Mu'jam al-Wasīṭ*, 2: 743.

²²⁵ See the opinions of scholars regarding the null and void are the same meaning whether in both cases *mu'āmalāt* (mutual conduct) or *'Abādāt* (ritual practices). al-Jaṣṣāṣ, *Uṣūl*, 2: 169; Samarqandī, *Mizān al-Uṣūl*, 39-40 and 223-248; Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 18; Bukhārī, *Khashshaf al-Asrār*, 1: 258; Bādashāh, *Taysīr al-Tahrīr*, 2: 376; Ghazālī, *al-Mustaṣfā*, 2: 24; *Sharḥ al-Kawkab al-Munīr*, 3: 84-95; *Takhrīj al-Furū'* 'alā al-Uṣūl, 168-171.

dalāla (intention). Termination on the basis of the text usually involves the (*naqd*) violation of any of the conditions agreed upon by both parties, although the violation must be evident to both parties. The *dalāla* (intention) which accommodates the clarification of the parties decision relates to the termination of the *mu'āhada* with respect to both parties consent without offence. Should the *mu'āhada* be concluded for a fixed time period, it will terminate on the expiry date without the need of any excuse for its termination.²²⁶ If members of an *ahl al-'ahd*, however, enter *dār al-Islām* through a temporary *muwāda'a* and the period of effectiveness of the *muwāda'a* expires while they are still in *dār al-Islām*, their safety is automatically guaranteed under an *amān* until they return to their territory. This is because the act of interference with him may be perceived as treachery. Therefore, the Muslim should be very careful about measuring the length of a treaty's effectiveness and should also avoid any violation of the *ṣulḥ* while it is in progress,²²⁷ therefore, as long as the *'aqd* remains in effect, mutual respect should apply.²²⁸

Abū Su'ūd reminds the reader of the command to the *mu'āhidūn* to be true to the provisions of a treaty is contained in the Qur'ānic verse which reads,

Except those with whom you made covenant near al-Masjid al-Ḥaram (at Mecca)? So long, as they are true to you, stand you true to them. Verily, Allāh loves *al-Muttaqūn* (the pious).²²⁹

Compliance with the rights granted by the *'ahd* is obligatory as long as the time period specified has not expired, according to another verse,

Except those of the *Mushrikūn* with whom you have a treaty, and who have not subsequently failed you in aught, not have

²²⁶ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4327.

²²⁷ *Al-Fatawī al-Hindiyya*, 2: 197

²²⁸ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 304.

²²⁹ Q. 9: 7.

supported anyone against you. So fulfill their treaty to them to the end of their terms.²³⁰

The above verses make it clear that there is an obligation to respect the time period that is imposed by the *mu'āhada*, without any restriction.²³¹

b. The termination of the *mu'āhada* with the consent of both parties

The *mu'āhada* that is not associated with a time period is subject to termination with the consent of both sides, as was indicated by Kāsānī. The *naṣṣ* must indicate the reason for termination of the *mu'āhada*,²³² such as the *iqāla*²³³ (dismissal) of a contractual agreement. Scholars distinguish between the acts of *faskh* and *mufāsakha* (both meaning cancellation): *faskh* is cancellation by one party without the other,²³⁴ while *mufāsakha* is cancellation that occurs by the choice of both parties.²³⁵

Shaybānī indicates that, if one of the two parties proposes to the other party that they should make *ṣulḥ* and the other party gives up arms in exchange for a thousand *dīnārs* and leaves the theatre of war, the Muslim party cannot go back to fighting until it has fulfilled its part of the bargain. This is facilitated by an exchange of *amān*. Should one party want to change its commitment to the *amān*, it cannot do so until the other party receives back the money it paid or the weapons it surrendered. As long as they

²³⁰ Q. 9: 4.

²³¹ *Tafsīr Abī Su'ūd, Irshād al-'Aql al-Salīm 'alā Mazāyā al-Kitāb al-Ḥakīm*, 2: 386.

²³² Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4327.

²³³ *Iqāla* is dismissal or discharge as to say to forgive or to reward someone's offense or lapse as undone or to raise someone from a fall. According to the *fuqahā'*, *iqāla* is the dismissal of the 'aqd with the consent of both parties involved. See Kafawī, *al-Kuliyāt*, 1: 259; Tahanāwī, *Khashshāf Iṣṭilāḥāt al-Funūn*, 3: 1211; *al-Tawqīf 'alā Muḥimmāt al-Ta'ārīf*, 81; Nazīh Ḥammād, *Mu'jam al-Muṣṭalahāt al-Iqtisādiyya fī Lugat al-Fuqahā'*, 64.

²³⁴ According to Ibn al-Subkī and Ibn Nujaym the *faskh* is the breaking up of the 'aqd. See Zarkashī, *al-Manthūr fī al-Qawā'id*, 3: 42; Ibn Nujaym, *al-Ashbāh wa al-Naẓā'ir*, 338.

²³⁵ The *mufāsakha* is the agreement of both parties to cancel the 'aqd, some 'uqūd is accept the subject of cancellation with the agreement of both parties. See Fayūmī, *al-Miṣbāḥ al-Munīr*, 2: 472; Ibn Maḍqūr, *Lisān al-'Arab*, 3: 44-45; Nazīh Ḥammād, *Mu'jam al-Muṣṭalahāt al-Iqtisādiyya fī Lughat al-Fuqahā'*, 218.

agree to return what they took from each other, then the termination is valid, although should the non-Muslims refuse to give back what they took, it is permissible to terminate the *ṣulḥ* without there being any obligation to return what was taken from the non-Muslims.²³⁶

c. Termination of the *mu'āhada* when it is violated by the other party

The *mu'āhada* can be terminated should one of the parties violate its content by committing a deed that is against the *mu'āhada*, or perhaps by violating the conditions of the *mu'āhada* or by failing to fulfill a condition. Should the non-Muslims break the '*ahd*' it is permissible for the Muslims to resume fighting without breaking the '*ahd*' or giving previous notification. Since dismissing or renouncing the '*ahd*' may be interpreted to mean violating the '*ahd*', it has to be made clear what the differences are. When the non-Muslims violate the '*ahd*' by committing treachery, the '*ahd*' cannot be violated after that.²³⁷ In fact the Muslim is commanded by the Qur'ān to terminate the '*ahd*' after its having been violated by the non-Muslims:

How can there be a covenant with Allah and with His Messenger for the *Mushrikūn* (polytheists, idolaters, pagans, disbeliever in the Oneness of Allāh).²³⁸

Shaybānī explains that the non-Muslims can violate the '*ahd*' either by sending soldiers to fight Muslims, or by sending a messenger to convey the termination of the '*ahd*' to the *imām*.²³⁹ The reaction of the Muslims at a violation of the Ḥudaybiya treaty

²³⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1712 and 1715.

²³⁷ Kasānī, *Badā'i' al-Ṣanā'i'*, 9: 4362-4327; Ibn Humām, *Fath al-Qadīr*, 4: 294; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 3: 246; Ibn Nujaym, *al-Baḥr al-Rā'iq*, 5: 86; *Hāshiyat Ibn 'Abidīn*, 4: 134; *al-Fatāwā al-Hindiyya*, 2: 197; Damād Afandī, *Majma' al-Anhur*, 1: 638; Jaṣṣāṣ. *Aḥkām al-Qur'ān*, 3: 85.

²³⁸ Q. 9: 7; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 600.

²³⁹ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1698 and 1708.

provided a pattern: the people of Mecca, having agreed not to help the enemies of the Muslims or their allies, chose to assist the tribe of Bakr over Khuzā'a, which tribe had formed an alliance with the Prophet. The Prophet retaliated without giving any notification.²⁴⁰

The consensus of the scholars is based on similar instances. Shāfi'ī explains that the Prophet retaliated against the raid of Banū Qurayza when the latter violated the *sulh* that had been concluded with them.²⁴¹ The same opinion is voiced by both al-Layth ibn Sa'd and Sufyān ibn 'Uyayna with regard to the violation of the '*ahd*' by the people of Cyprus.²⁴²

Muslims can terminate the *mu'āhada* by their own initiative from fear of treachery, as ordained by the Qur'ānic verse,

If you (Muḥammad) fear treachery from any people throw back (their covenant) to them (so as to) on equal terms (that there will be no more covenant between you and them). Certainly Allah likes not the treacherous.²⁴³

According to al-Jaṣṣāṣ, Muslims can break or terminate the '*ahd*' prior to the expiry date as long as they first notify the other parties of the forthcoming termination of the '*ahd*'. This is permissible in the case of fear of treachery or betrayal (in case the non-Muslims plan their treachery secretly). In such case, Muslims should retaliate openly, or, if there is a condition in the '*ahd*' to this effect, then it is up to the Muslims

²⁴⁰ Ibn Ishāq, *Sīra*, 2: 394-395; Ṭabarī, *Tārīkh*, 3: 43-45; Wāqidi, *Maghāzī*, 2: 795-796; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 394; Maqrīzī, *Imtā' al-Asmā'*, 1: 357.

²⁴¹ Shāfi'ī, *al-Umm*, 4: 107; Kiyā Hurāsī al-Ṭabarī, *Aḥkām al-Qur'ān*, 3: 412; Baghawī, *Sharḥ al-Sunna*, 11: 167; *Tahrīr al-Aḥkām fī Tadbīr Ahl al-Islam*, 233; *Mughnī al-Muḥtāj*, 4: 262; Ibn Qudāma, *al-Mughnī*, 10: 513; Mardāwī, *al-Inṣāf*, 4: 216; Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 136-138; Nawawī, *Rawḍat al-Ṭālibīn*, 10: 337; *Nihāyat al-Muḥtāj*, 8: 109.

²⁴² See the opinion of these scholars in the works of Abū 'Ubayd, *Amwāl*, 200-204; Balādhurī, *Futūḥ al-Buldān*, 1: 184-186.

²⁴³ Q. 8: 58; See *Tafsīr al-Ṭabarī*, 14: 25; *Zād al-Masīr fī 'ilm al-Tafsīr*, 3: 373; Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 77; Ibn 'Arabī, *Aḥkām al-Qur'ān*, 2: 871-872; Kiyā Hurāsī al-Ṭabarī, *Aḥkām al-Qur'ān*, 3:

to break the '*ahd*' if they feel there is a need to do so. This is not an act of treachery or a failure to meet an obligation on the part of Muslims, since it is not a violation of loyalty to or failure to fulfill the '*ahd*'. Only if the Muslims terminate the '*ahd*' without previous notification, it may be considered treachery or a faithless act.²⁴⁴

The *mu'āhada* may be terminated by Muslims for two reasons. The first is due to the impracticability of fulfilling it or certain of the *mu'āhada*'s conditions, while the second is due to changing circumstances, such as when the interests that originally favoured the conclusion of the *mu'āhada* change.

- d. The termination of the *mu'āhada* because of the impracticability of the condition under the Islamic law.

The *mu'āhada* cannot be concluded with the presence or occurrence of conditions that constitute a violation of the *ahkām al-shar'* (Islamic rulings). Should the *mu'āhada* be concluded it is necessary for the Muslims to terminate it. Shaybānī offers the following illustration: should the representative or messengers of the non-Muslims have Muslim prisoners and offer to hand them over in exchange for a concession, but try to impose a condition that, should the concession not be fully met, the prisoners would have to be returned to them, then the Muslims cannot conclude the *mu'āhada* even if they agreed to this condition. This is because non-Muslims were supposedly cruel in their treatment of prisoners and there was no point in returning prisoners once they had been released. This explanation derived from the Prophet Sunna which read,

Any condition that has no bases in the Kitāb Allah²⁴⁵ (Qur'an) is invalid.²⁴⁶

412; *Tafsīr al-Qurṭubī*, 8: 31-32.

²⁴⁴ Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3: 77

²⁴⁵ For further details see the following: Ibn Qutaybā, *Ta'wīl Mukhtalaf al-Ḥadīth*, 94; Ibn Athīr, *al-Nihāya fī Gharīb al-Ḥadīth*, 4: 147; Raghīb al-Iṣbahānī, *al-Mufradāt fī Gharīb al-Ḥadīth*, 423.

²⁴⁶ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1788; Shāfi'ī, *Umm*, 4: 114.

e. The termination of the *mu'āhada* due to changes of circumstance.

As mentioned earlier, one of the basic elements to determining the validity of a *mu'āhada* is that it suit the interest of Muslims. The consensus of the scholars was that, in order for the *mu'āhada* to be valid, it had to meet this basic condition. Some scholars explained that at the time of concluding the *mu'āhada* the interest must be met. Other scholars, such as the Ḥanafis, indicated that Muslim interests must be respected for the duration of the *mu'āhada*.²⁴⁷

The *'aqd* is not a necessary element of the *mu'āhada* or *muwāda'a* it can be potentially revoked. If the *'aqd* is revoked the *imām* might break the treaty out of fear from treachery or breach of trust.²⁴⁸ As was stated earlier regarding the Qur'ānic verse,²⁴⁹ Shaybānī illustrates that if the *muwāda'a* does not suit the interest of the Muslim it is valid. As demonstrated by the following Qur'ānic verse:

So be not weak and ask not for peace (from the enemies of Islam), while you are having the upper hand.²⁵⁰

Unless the *muwāda'a* reflects a good deed and an outcome that will benefit the Muslim, the *muwāda'a* has the potential to lead to an injustice. It is permissible to, then, to break

²⁴⁷ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 190-191 and 5: 1689; Ibn Rushd, *Bidāyat al-Mujtahid*, 1: 388; Ibn Juzay'i, *al-Qawānin al-Fiqhiyya*, 163; Ibn Shāsh, *'Iqd al-Jawāhir al-Thamīna*, 1: 496-497; Shāfi'ī, *al-Umm*, 4: 110-112; Ghazālī, *Wajīz*, 2: 203; *al-'Azīz Sharḥ al-Wajīz*, 13: 554; Nawāwī, *Rawḍat al-Tālibīn*, 10: 334; Māwardī, *al-Aḥkām al-Sulṭāniyya*, 52; Ibn Jamā'a, *Taḥrīr al-Aḥkām*, 231; Ibn Taymiyya, *al-Muḥarrar fī al-Fiqh*, 2: 182; Ibn Qudāma, *al-Mughnī*, 10: 509; Bahūtī, *Kashshāf al-Qinā'*, 3: 103; Mardāwī, *al-Inṣāf*, 4: 212; *Majmū' Fatāwā Ibn Taymiyya*, 15: 174; *Sharḥ al-Nawāwī 'alā Ṣaḥīḥ Muslim*, 11: 135; Shawkānī, *al-Sayl al-Jarār*, 4: 564; Bayzāwī, *al-Ghāyya al-Quṣwā*, 2: 961; Ibn Murtaḍā, *al-Baḥr al-Zakhār*, 6: 446-447.

²⁴⁸ Kāsānī, *Badā'i' al-Ṣanā'i'*, 9: 4326.

²⁴⁹ Q. 9: 58

If you (Muḥammad) fear treachery from any people throw back (their covenant) to them (so as to) on equal terms (that there will be no more

the treaty. If the injustice appears towards the end of the treaty, the obvious result would be its termination.²⁵¹ It is not permissible for the Muslim to retaliate unless the Muslim informs them of the treaty's termination in advance. If this was not done, it would be considered an act of treachery and this is prohibited by both the Qur'ān and Sunna.²⁵²

f. The significance of termination of the *mu'āhada* by the Muslim side:

Muslims should not terminate or break a *mu'āhada* unless this intention is made known to the entire people with whom they concluded the *mu'āhada* in the first place. After breaking the *mu'āhada*, the Muslims are prohibited of fighting or raiding the non-Muslims until giving them a period of time to spread the termination of the *mu'āhada*. Even if some of them were out of their *dār*, the Muslim should wait until all of them have returned, and give them extra time to establish themselves as they were before. This conduct of the Muslims is in order to avoid treachery, especially in the case of those whom they were granted *amān* within *dār al-Islām*. The Muslim should not exhaust them with their effort to be secured, they should eased the way and be certain of there safety departure and arrival to their own *dār*. In case the *mu'āhada* was concluded in exchange of compensation the Muslim should return that amount back in full at the time of termination. The termination of the *mu'āhada* should achieve the interest of the Muslim and should be conducted openly. Finally, the Imām should not break the *mu'āhada* as an act of permissible not obligatory and that is determined in accordance with what is

covenant between you and them). Certainly Allah likes not the treacherous.

²⁵⁰ Q. 47: 35.

²⁵¹ Dabūsī, *Ta'sīs al-Nazar*, 49.

²⁵² Sarakhsī, *al-Mabsūt*, 10: 86-87; and idem, *Sharḥ al-Siyar al-Kabīr*, 2: 499; Ibn Humām, *Fath al-Qadīr*, 4: 294; Zayla'ī, *Tabyīn al-Ḥaqā'iq*, 3: 246; *Murqāt al-Mafātīḥ*, 8: 21.

suitable and necessary act.²⁵³ This illustration is not limited to the Ḥanafī jurists but is shared by Malikī jurists such as Ibn Mājishūn, Ibn Abī Zayd al-Qarawānī Abū Bakr Ibn ‘Arabī and some of the Shāfi‘ī such as al-Khaṭṭābī and Suyūṭī.²⁵⁴

Scholarly consensus regarding the conclusion of a *mu‘āhada* depicts it as a necessary act. The obligation for fulfilling the terms of treaty, as ordained by the Qur’ānic verses and the Prophetic *ḥadīth*, are important, but in certain situation, as previously mentioned, this cannot always take place. It is up to the *imām* to make known the breaking of the *mu‘āhada* by notification or, in the case of a proven act of treachery, notification is not permissible, since the treachery was started by the other party.²⁵⁵

Concluding remarks:

The model Islamic treaty – as outlined in the foregoing - - possesses all the legal validity assigned to any agreement in Islamic law. Essentially a contract, its conclusion demands all the preconditions and insists on the same formalities as found in every other form of legal undertaking. In the eyes of the law, it is for this reason surrounded by obligations and sanctions that guarantee its status according to the Sharī‘a.

²⁵³ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 2: 287 and 499, 5: 1697-1713; and idem, *Mabsūṭ*, 10: 86-87; Abū Yūsuf, *Kharāj*, 224; Ibn Humām, *Fath al-Qadīr*, 4: 294; Zayla‘ī, *Tabyīn al-Ḥaqā‘iq*, 3: 246; *Hāshiyat Ibn ‘Abidīn*, 4: 133; *al-Fatāwā al-Hindiyya*, 2: 197.

²⁵⁴ See for example, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, 2: 876; Muḥammad ‘Alish, *Fath al-‘Alī al-Mālik*, 1: 392; Suyūṭī, *al-Ashbāh wa al-Nazā‘ir*, 527; Khaṭṭābī, *Ma‘ālim al-Sunan*, 4: 64; Ibn Qayyim al-Jawziyya, *Aḥkām Ahl al-Dhimma*, 2: 478; Khawārisimī, *Mufīd al-‘Ulūm wa Mubīd al-Humūm*, 344.

²⁵⁵ Ibn Shāsh, *Iqd al-Jawahir al-Thamīna*, 1: 498; *al-Sharḥ al-Kabīr* by al-Dardīr with *Ḥashiyat al-Dasūqī*, 2: 206; Shāfi‘ī, *al-Umm*, 4: 107; Nawawī, *al-Muhadhdhab* with *Takmilat al-Majmū‘*, 18: 225-226 and 232; and idem, *Rawḍat al-Tālibīn*, 10: 338-339; Ibn Qudāma, *al-Mughnī*, 9: 513-514; Mardāwī, *al-Inṣāf*, 4: 216; Bahūṭī, *Kashshāf al-Qinā‘*, 3: 103; Ibn Hubayra, *al-Ifṣāḥ*, 2: 296; Dimashqī, *Raḥmat al-Umma fī Ikhtilāf al-‘Imma*, 398; Sha‘rānī, *al-Mizān al-Kubrā*, 2: 185.

Strict adherence to the treaty is thus ensured, from the Muslim side, not by vague notions of international convention or ethical considerations, but by the full force of Islamic law itself. Violating any of the conditions or even the spirit of a treaty is tantamount to violating the law as set down in the Qur'ān and Sunna. The writers surveyed in this chapter are in agreement on this, and make an exception only in the case where the non-Muslim party violates a treaty's conditions. In such an instance, Muslims are entitled to break the legal accord, but even here strict legal provisions demand that formal notice be given to the other side – yet another indication that the Islamic treaty is no document of political convenience.

Chapter Four: Selected Treaties

This chapter discusses and analyses the five selected treaties mentioned earlier, all of which were drawn up between Muslims and non-Muslims at various times in the course of the period of pre-modern Islamic history. These treaties are: the Treaty of Ḥudaybiya, from the lifetime of the Prophet, dated to 6/628; the treaty of ‘Abd al-Malik ibn Marwān (r. 65/685-86/705), from the Umayyad period, concluded in 70/689; the treaty of Hārūn al-Rashīd (r. 170/786-193/809), from the ‘Abbasid era, drawn up in 187/802; the treaty of al-Malik al-Kāmil (r. 615/1218-636/1238), from the Ayyūbid era, dated 625/1229; and the treaty of Sulṭān Sulaymān al-Qānūnī (r. 926/1520-974/1566), from the Ottoman era, concluded in 942/1535. The basic elements and definitions of their components, as well as the literature directly related to the treaties, has been introduced in earlier chapters. Therefore, the following discussions will concentrate on the practical elements of the selected treaties, which are essential to understanding the nature of international treaties in Islam. Furthermore, this chapter attempts to illustrate the practical necessities and the special circumstances that compelled the Muslim state, at various points in its history, to negotiate and conclude treaties with non-Muslims.

This chapter will also analyze the selected treaties for the purpose of elaborating upon key points made in the previous chapters, especially with regard to the three approaches that determined the status of Muslims in a time-period when such agreements were concluded with non-Muslims.

Throughout the history of human civilizations, treaties have been drafted in order to organize the relations between nations as well as to establish the rights of each party and honor the terms and conditions mutually agreed upon. In the process, the treaties have become one of the most fundamental elements in organizing the relations of nations at times of peace or war.

Treaties have been drawn up in order to stop bloodshed and to crown efforts at achieving peace. Furthermore, under the terms of these treaties, the status of prisoners of war has been determined, booty distributed, and the sovereignty and territory of states established and recognized.

In Islamic civilization, too, treaties have been used as a tool to organize the relations between the Islamic state and its neighboring states. And yet, in Islam, treaties were not limited to the state alone; indeed, they came to be a means of settling matters between tribes, individuals and groups of individuals. The *'aqd al-dhimma* was in fact its first incarnation; only later did states expand the use of treaties to seal the end of fighting, armistice agreements, the spread of peace (*amān*), *hudna* (truce of suspension of fighting), *muwāda'a* (temporary cessation of hostilities), etc. Under these treaties, the spread of religious practices and the terms of trade were established. The treaty became a way of honoring these sorts of agreements and organizing and summarizing political relations among nations.¹

The aims behind the treaties concluded between nations can differ widely. A treaty may be concluded, for instance, to achieve economic and trade advantages, to effect exchange of embassies in order to improve political relations, or simply to end hostilities and deal with the issue of prisoners of war. Other treaties deal with educational or other social purposes.

The purpose of the treaties concluded between Muslims and non-Muslims in the pre-modern era were not limited, either; rather, it was left to the Islamic state to determine, evaluate and decide the potential advantages for the Muslims in the short or long terms. Treaties have sometimes been essential to safeguarding Muslims from outside threats to their faith and property. Indeed, if the conclusion of a treaty does no harm or damage to the interests

¹ *Sharḥ al-Siyar al-Kabīr*, 5:1780; *Badā'i' al-Ṣanā'i'*, 7:108; Māwardī, *al-Ḥāwī*, 19:113; Ramī, *Nihāyat al-*

of the Muslim community at large and does not contradict and violate Islamic teachings, Islamic law encourages the Muslim state or its representatives to proceed and make the commitments necessary to conclude it.

It is important to note the circumstances under which Muslim rulers or statesmen resorted to concluding a treaty with non-Muslims. These circumstances may be divided into three categories: The first is from a position of power, and in order to avoid further conflict and bloodshed (sometimes as well as to gain more time for reinforcements and supplies). The second category is from a position of equilibrium, and in order to settle differences for which a military solution is not desirable. The third category is from a position of weakness, where the object is to make the best of adverse circumstances and perhaps to gain time for planning and readjustments for potential future conflict.²

Instances of the first category, in which Muslims negotiated from a position of power, are many and diverse. They include, for example, the talks concerning the capitulation of Jerusalem in 638 A.H.³ and the surrender of Alexandria in 642.⁴ As for the second category (from the position of equilibrium of power), Muslims frequently concluded treaties with the Byzantines in connection with their frontier wars in Asia Minor during both the Umayyad and 'Abbāsid eras.⁵ Finally, negotiating from a position of weakness, Muslims often signed treaties with non-Muslims when faced with internal disputes, as we shall see below in the treaties of 'Abd al-Malik ibn Marwān and Malik al-Kāmil.⁶

Muhtāj, 8: 106; Ibn Qudāma, *al-Mughnī*, 8: 459; *Fatḥ al-Qadīr*, 4: 293.

² Hanna, Sami, ed. *Medieval and Middle Eastern Studies*. (Leiden: E. J. Brill, 1972) 51-52.

³ Ṭabarī, *Tārīkh*, 3: 608-609; Muḥammad Ḥamīdullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 268-269.

⁴ Ṭabarī, *Tārīkh*, 4: 104-109.

⁵ Balādhurī, *Futūḥ al-Buldān*, 159-160; Mas'ūdī, *Murūj al-Dhahab*, 5: 224; Ibn al-Farrā', *Rusul al-Mulūk*, 106, 152, 155.

⁶ Balādhurī, *Futūḥ al-Buldān*, 159; Ibn Farrā', *Rusul al-Mulūk*, 152.

The practice of concluding Islamic treaties was initiated by the Prophet and continued during the time of the four Rightly Guided Caliphs. The treaties negotiated between these early caliphs (or their representatives) and their adversaries were limited to establishing peaceful relations or alliances; these agreements took the form of treaties of *hudna* or '*aqd al-dhimma*'. In the negotiations for these treaties, non-Muslims were given the choice of three options: conversion to Islam, becoming *dhimmīs*, or resuming the fighting. Among the treaties of *dhimma*, known as continuous *ṣulḥ* (peace), was the one negotiated by 'Umar ibn al-Khaṭṭāb with the people of 'Ilīā' (Jerusalem) in 638 A. H.⁷ This treaty granted mutually agreed rights and protection to non-Muslims.⁸ It also asserted the right of movement, freedom of practice and beliefs, the choice to stay in or leave the territory, and finally, the protection of their (*dhimmīs*') lives and properties in return for the payment of the *jizya*.⁹ Similarly, in 636 A.H. Khālīd ibn al-Walīd concluded a treaty with the people of Damascus, granting them protection of their properties and churches in return for their paying *jizya*.¹⁰ Likewise around early 640 A.H. Abū 'Ubayda ibn al-Jarrāḥ and the people of Shām (Syria) concluded another treaty along the same lines.¹¹

The Muslims continued to conclude treaties of *hudna* and *dhimma* with non-Muslims after the era of the four Rightly Guided Caliphs, following the conduct of the Prophet and his immediate successors. For example, under the Umayyad dynasty, many treaties were concluded between Muslims and non-Muslim nations of the *dār al-ḥarb*. According to the *Futūḥ al-Buldān*

⁷ For the text of this treaty see Muḥammad Ḥamīdullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 345.

⁸ 'Umar was asked to perform his prayer inside the church but he refused to do so because he was afraid that the Muslims would later claim this church for their own on that basis. He believed that this might also lead to a common practice among Muslims of taking over churches.

⁹ Muḥammad Ḥamīdullāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 345-346; Balādhurī, *Futūḥ al-Buldān*, 2: 383; Abū 'Ubayd, *Amwāl*, 97-98.

¹⁰ Ibid., 340.

¹¹ *Majmū'at al-Wathā'iq al-Siyāsiyya*, 341, 418, 474, 487-488; Abū Yūsuf, *Khiraḥ*, 42-45; Balādhurī,

of Balādhurī, during the time of Mu'āwiya, a great percentage of Byzantine territory was subject to treaties of *amān*.¹² During the time of hostilities and tensions between Mu'āwiya and 'Alī ibn Abī Ṭālib, Mu'āwiya drafted a treaty of *hudna* with the Byzantine emperor Constans II, prior to his battle with 'Alī in 658 A.H. Then he renewed and signed a treaty on his own authority with the Byzantine emperor in which tribute was paid to the latter, this at the time when he proclaimed himself caliph in 662.¹³ In the same way Caliph 'Abd al-Malik ibn Marwān (685-705) was obliged to conclude a peace treaty with the Byzantines while he was fighting insurgents and rebels in Iraq. At the beginning of his reign he sent money and gifts to the Byzantine emperor Justinian II (685-695), released all Byzantine prisoners, and paid weekly tribute thereafter. In 689/70, he renewed the same *hudna* again.¹⁴

During the 'Abbasid period, the political relationships between Muslims and non-Muslims followed the pattern set by their predecessors. In fact this trend became more marked under the rule of al-Manṣūr, the second 'Abbasid caliph (r. 136/754-158/785), when in 765 the exchange of political representatives, such as ambassadors, was resumed. These types of relations were not limited to negotiating treaties but also entailed exchanges of gifts and the release of prisoners. Because of the improvement in the relations between Muslims and non-Muslims, mutual interests were more easily accommodated: for example, trade barriers were lifted. This process at work is also clearly seen, as well, in the exchange of gifts, letters, and representatives between Hārūn al-Rashīd and Charlemagne, who in 802 arranged a treaty of friendship and alliance after establishing diplomatic ties.¹⁵

Futūḥ al-Buldān, 1: 28.

¹² Balādhurī, *Futūḥ al-Buldān*, 197.

¹³ Ibid., 159; Ibn al-Farrā', *Rusul al-Mulūk*, 152; Sarakhsī, *Sharḥ al-Siyar al-Kabir*, 1: 97; and idem *Mabsūṭ*, 10: 92; Abū 'Ubayd, *Amwāl*, 290.

¹⁴ Mas'ūdī, *Murūj al-Dhahab*, 5: 224; Balādhurī, *Futūḥ al-Buldān*, 160.

¹⁵ Ibn al-Farrā', *Rusul al-Mulūk*, 106; 155; F. W. Buckler, *Harun 'l-Rashid and Charles the Great*

The Fatimids and the Mamluks followed the lead of the 'Abbasids by concluding treaties with non-Muslims. Their relations extended to Europe and to Central and East Asia.¹⁶ Furthermore, during the Crusades, political relations between eastern and western ruling powers in general, and in particular between Ṣalāḥ al-Dīn al-Ayyūbī and Richard the Lionheart, were further developed. A treaty was even concluded between the two leaders in 1192.¹⁷ Toward the end of the Crusades in 1258, an exchange of embassies between Western and Islamic countries took place in an effort to re-establish and resume political and trade connections.¹⁸ During the Ottoman period, a friendly treaty was concluded between Sulaymān the Magnificent and the King of France, Francis I. The treaty was known as the "Treaty of Amity and Commerce: The Ottoman Empire and France, February 1535."¹⁹

The purpose of the following discussion, therefore, is to deal in greater depth with certain treaties so as to illustrate in detail how Muslims dealt with non-Muslims in neighboring countries in the process of concluding treaties. The art of negotiation and the purpose of concluding treaties often led to compromises between Muslims and their enemies, but they all achieved, even if only temporarily, the ultimate goal of ending bloodshed and establishing peace. Without these treaties, the balance of power could never have been maintained and the hostilities would have continued.

(Cambridge: The Mediaeval Academy of America, 1931) 43-47.

¹⁶ Majid Khadduri, *War and Peace in the Law of Islam*, 234.

¹⁷ James Brundage, *The Crusaders: A Documentary History* (Milwaukee: Marquette University Press, 1962) 185-186; Carole Hillenbrand, *The Crusaders: Islamic Perspectives* (Edinburgh: Edinburgh University Press, 1999) 310, 392-397; al-Maqrīzī, *Tārīkh al-Duwal wa al-Mulūk*, see also, P. M. Holt, "Bybars Treaty with the Lady of Beirut in 667/1269", in *Crusade and Settlement*, ed. P.W. Edbury (Cardiff, 1984) 255; al-Qalqashandī, *Subḥ al-A'shā*, 14: 40-42.

¹⁸ E. Ashtor, *A Social and Economic History of the Near East in the Middle Ages* (London, 1976); D. Abulafia, "The Role of Trade in Muslim-Christian Contact During the Middle Ages", in *The Arab Influence in Medieval Europe*, eds. D. A. Agius and R. Hitchcock (Reading 1994) 1-24.

¹⁹ J. C. Hurewitz, *The Middle East and North Africa in World Politics: A Documentary Record, 1 European Expansion, 1535-1914* (New Haven and London: Yale University Press, 1975) 1-5.

In the following survey of the selected treaties, the intention is to highlight the significance and outcome of all of them, but especially that of the Ḥudaybiya treaty. The Ḥudaybiya treaty has long been considered by classical and modern historians and jurists as a landmark as well as the most influential in the history of treaty -- writing in Islam history, since it has so frequently served as a model for later treaties. Both historians and jurists are in agreement that the validity of later treaties was usually measured according to the standard set by Ḥudaybiya. Although some of the Prophet's companions were not in favor of the treaty when it was being negotiated, among them 'Umar ibn al-Khaṭṭāb, they eventually realized that the Prophet would not make concessions at the expense of Muslims unless it entailed a major gain in the long term. What became evident in hindsight was that the Muslims gained much more than they lost due to any concessions they were forced to make.

A. The Ḥudaybiya Treaty:²⁰

To understand the background that led to the conclusion of Ḥudaybiya, it is essential to note here that the Prophet, before embarking on his mission, had attended the formation of the confederacy of the Fuḍūl in (ca. 580) ²¹ in which all of the small and large tribes present at the gathering made a covenant that, as God was their witness, they would forever stand on the side of the victims of injustice.²² Due to his participation in this event, the Prophet gained early experience of negotiation and justice. The Prophet is supposed to have said that:

²⁰ See Appendix (A) for the full text of this treaty. Muḥammad Ḥamīdullāh, *Majmū'at al-Wathāiq al-Siyāsiyya*, 57; and idem, the *Muslim Conduct of State*, 265-268.

²¹ Ch. Pellat, "Hilf al-Fuḍūl", *Encyclopaedia of Islam*, new edition, 3: 389.

²² Muḥammad Ḥusayn Haykal, *The Life of Muḥammad (Ḥayāt Muḥammad)*, translated by Ismā'il R. Fārūqī (Indianapolis: American Trust Publications, 1976) 57-56; W. Montgomery Watt, *Muḥammad at Mecca* (Oxford: Clarendon Press, 1952) 13-16; Ibn Hishām, *Sīra*, 1: 133-135; Ibn Sa'd, *Ṭabaqāt*, 1: 42;

I uphold the pact concluded in my presence when Ibn Jud‘ān gave us a great banquet. Should it ever be invoked, I shall immediately rise to answer the call.²³

The Arabs in the pre-Islamic era were thus used to concluding peace treaties with neighboring societies and this tradition of negotiation and treaty-making likewise had an impact on those who later converted to Islam. Their past experience and background, or that of their ancestors, contributed to the formulation of future treaties that took place under Islam.²⁴

The treaty of Ḥudaybiya²⁵ was concluded between the Prophet Muḥammad and Suhayl ibn ‘Umr, a representative of the Quraysh tribe of Mecca. The treaty, as was noted before, became in the eyes of Muslim scholars the model for all of subsequent Islamic treaties (as well as the foundation for all international treaties),²⁶ mainly because of the Prophet’s role in negotiating its terms and conditions. Another reason for its fame is the circumstances that faced the Prophet while drafting this agreement: characteristically, his determination and personal qualities allowed him to achieve peace, despite the harsh demands and conditions imposed by the other party.

²³ Muḥammad Ḥusayn Haykal, *The Life of Muhammad (Ḥayāt Muḥammad)* 57; Ch. Pellat, “Ḥilf al-Fuḍūl”, *Encyclopaedia of Islam*, new edition, 3: 389.

²⁴ For more details on the peace treaties drawn up by the Arabs in the pre-Islamic era, see Irfan Kavar, “The Arabs in the Peace Treaty of A. D. 561”, *Arabica*, 3, (1982?) 181-213; regarding the Muslims who participated in or heard about Ḥilf al-Fuḍūl in the pre-Islamic era, see W. Montgomery Watt, *Muhammad at Mecca* (Oxford: Clarendon Press, 1952).

²⁵ Ḥudaybiya is a valley a short day’s journey (in that era) from Mecca. This valley was the center of a local cult with a well and sacred tree. A modest village afterwards arose here as the center of the surrounding lands, which were rich in subterranean water. For further details see the *Encyclopaedia of Islam*, 1913-1936 3, (1987) 328-329; Ibn Sa’d, *Ṭabaqāt al-Kubrā*, 2: 95-96. The Ḥudaybiya treaty is referred to by several names in the treatises of jurisprudence and the *Maghāzī*, sometimes being described as a *muwāda‘a*, or as a *musālama* or as a *hudna*, etc. See Ibn Qudāmā, *al-Mughnī*, 10: 522; Ibn Humām, *Fath al-Qadīr*, 5: 466; al-Ramī, *Nihāyat al-Muḥtāj*, 8: 102.

²⁶ Ibn Ḥajar al-‘Asqalānī, *al-Iṣābā*, 1: 94; Wāqidī, *al-Maghāzī*, 2: 61-112; Ibn Sa’d, *Ṭabaqāt*, 2: 95; Ibn Hishām, *Sīra*, 3: 332.

Another point of consideration is the political status of the Muslim community in Medina and its relations with the neighboring tribe of Quraysh in Mecca prior to the Ḥudaybiya treaty. Within Medina, the Prophet made an alliance in 622 between himself (as the representative of the Muslims) and the non-Muslims (chiefly Jews) of Medina,²⁷ which rendered the Muslim position or status in Medina secure enough to allow them to turn their attention toward Mecca. Mecca was a very strategic and important city to Muslims, since it is the birthplace of the Prophet and many of the Companions, as well as being a religious, economic and historical center of long standing. Between the years 622 and 628, several skirmishes and three main battles took place between the Muslims of Medina and the Meccans, resulting in a stalemate where neither side could really claim absolute victory over the other. For example, the battle of Badr in 624 was a victory for the Muslims of Medina,²⁸ the battle of Uhud in 625 a victory for the Meccans,²⁹ and the battle of Khandaq (the Trench) in 627, where the Meccans broke off their siege of Medina without either reaching victory or admitting defeat, a draw.³⁰ After the battle of Khandaq, the Meccans remained strong and decided to protect their city from any attempt at invasion by the Muslims of Medina.³¹

At this stage, the Muslims knew the strength of their Meccan enemy and there was a general awareness that Muslims could not take Mecca through military invasion. In view of this situation, and considering as well the threat from hostile tribes within Medina itself,

²⁷ Muḥammad Ḥusayn Haykal, *The Life of Muhammad (Ḥayāt Muḥammad)* 179-183.

²⁸ See the following for additional information and details: W. Montgomery Watt, *Muhammad Prophet and Statesman* (London: Oxford University Press, 1961) 124-126; *Muhammad At Medina* (London: Clarendon Press, 1966) 10-16; Muḥammad Ḥusayn Haykal, *The Life of Muhammad (Ḥayāt Muḥammad)* 216-241; Antonie Wessels, *A Modern Arabic Biography of Muḥammad* (Leiden: E. J. Brill, 1972) 162-164.

²⁹ Muḥammad Ḥusayn Haykal, *The Life of Muhammad (Ḥayāt Muḥammad)* 242-284.

³⁰ *Ibid.*, 299-316.

³¹ *Ibid.*, 317-318.

invasion of Mecca must have seemed an unwise choice at the time. The only possible outcome would have been disastrous to the nascent Muslim community.³² Therefore, for the sake of the best interest of the Muslim community, an alternative course of action had to be sought. It was at this point the Prophet realized how the Islamic cause would be better served and greatly enhanced by a form of peaceful settlement with the Meccans. It was also then that he (Prophet) declared that the Ka'ba (the chief religious shrine in Mecca) was sacred to the Muslims too.³³

In 628, during the pilgrimage season, the Prophet, with an estimated fourteen hundred Muslims accompanying him, traveled to the Ka'ba to perform the religious duty of *hajj* (pilgrimage). As the Prophet came gradually nearer to the Ka'ba, he dispatched several peace emissaries to assure the Meccans of his peaceful intentions and his desire to reach an agreement with them through negotiations.³⁴ He sent 'Uthmān ibn 'Affān, among others, as a delegate on his behalf to inform the Meccans of his intended pilgrimage. The Meccans acknowledged the efforts and intentions of the Prophet and also dispatched their own delegations to the Prophet to negotiate a settlement.³⁵

The negotiation process between the Muslims and the Meccans was at first a failure. However, a final agreement was eventually reached by their representatives - - Suhayl ibn 'Umr on behalf of the polytheist Meccans, and the Prophet on behalf of the Islamic community. The treaty was moreover concluded at a time when the Muslims were in a position of power: thus, in the course of negotiating this agreement, they were able to reject conditions that many of the

³² Ibid.

³³ Ibid., 340-343.

³⁴ Ibn Hishām, *Sīra*, 2: 314-315; Ibn Sa'd, *Ṭabaqāt*, 2: 96-97; Maqrīzī, *Imtā' al-Asmā'*, 1: 289-291; Ṭabarī, *Tafsīr*, 29: 86.

³⁵ Ibn Sa'd, *Ṭabaqāt*, 2: 96-97; Maqrīzī, *Imtā' al-Asmā'*, 1: 289-291; Ṭabarī, *Tafsīr*, 29: 86; Muḥammad Ḥusayn Haykal, *The Life of Muḥammad (Ḥayāt Muḥammad)*, 345-353.

companions of the Prophet strongly disapproved of, though they remained calm and trusted the Prophet to negotiate on their behalf. Moreover, in the course of the discussions,, the Meccan representative insulted the Prophet in the presence of fifteen hundred Muslims.³⁶ Yet despite the fact that Suhayl was alone, no one harmed the Meccan representative; indeed, the Muslims treated him with respect and in keeping with the Islamic ruling that messengers should not be mistreated or killed.³⁷ The Prophet in particular tolerated his words patiently in order to proclaim publicly to the Meccans that, indeed, the ultimate objective of Islam is to avoid bloodshed and let peace and understanding prevails.³⁸

It would seem as though the Prophet saw an importance in the treaty that went beyond its immediate purpose, for at the time of the negotiation and conclusion of the Ḥudaibīyya treaty there were, in fact, internal disputes within the nascent Muslim community. In some respects, the Prophet concluded the treaty despite their objections in order for it to serve as a lesson to his Companions and oblige them to fulfill the treaty conditions. From this perspective, the events surrounding the Ḥudaibīyya treaty served as an example to his fellow Muslims and, to the following generations of Muslims, it becoming the model of how best to conduct a treaty.³⁹

³⁶ Ibn Qayyim al-Jawziyya, *Zād al-Ma'ād*, 3: 287.

³⁷ Ṭaḥāwī, *Muskkil al-Athār*, 7: 302; Shawkānī, *Nayl al-Awṭār*, 8: 35; Ghazālī, *Wajīz*, 2: 196; 'Aqd al-Jawāhir al-Thamīna, 1: 480; *Kashshāf al-Qinā'*, 3: 99-100; *al-Mubdi'*, 3: 393; Shāfi'ī, *al-Umm*, 4: 201; *al-Muhadhdhab wa al-Majmū'*, 18: 87; *al-Mughnī*, 10: 595; according to al-Ṭabarī, there were a consensus among scholars regarding the status of the emissaries. They have to be well treated, respected and welcomed by their host in order to maintain the process of negotiations. If the emissaries were harmed or poorly treated, this might cause further hardship throughout the negotiations. Therefore, Muslims have to take that into consideration while there are negotiations, even if the emissaries insult the Muslims. An example of this is when the Prophet received a messenger from the Meccans; the latter insulted the Prophet, and the Prophet's companions were very angry at his words. They were about to react to his statements, then the Prophet commanded them to honor and welcome the messenger without any harm for the sake of reaching an agreement with the Meccans. This became the customary practice among Muslims in their treatment of the emissaries. Ṭabarī, *Ikhtilāf al-Fuqahā'*, 32.

³⁸ Ibid.

³⁹ See Aḥmad Bashmīl, *Ṣulḥ al-Ḥudaybiya*, 280-200.

By the sixth year of *hijra*, the Prophet faced two powerful enemies: from the north, the formidable Jewish colony of Khaybar, and from the south, the Quraysh. It seemed it was merely a matter of time before the two forces might join together in an alliance against the Prophet in Medina. The Prophet realized that a possible alliance between the two enemies would pose a major threat to the Muslims in Medina and elsewhere. The treaty of Ḥudaybiya was thus only one aspect of a major political and security initiative undertaken by the Prophet, designed to secure the southern frontier with the Meccans. The situation in the north, however, was another matter. Fifteen days after the Ḥudaybiya treaty was signed, the Muslims took advantage of Khaybar's weakness and defeated this powerful Jewish tribe.⁴⁰

The Prophet's peace initiative, in the context of the diplomatic and political dynamics of the strategic environment of the time-period, permitted the Muslims to eliminate the dangers posed by enemies both more or less powerful than they were. As a result, the Muslims managed to attain a greater degree of security and strength and were able to build on this foundation.⁴¹

The treaty of Ḥudaybiya of 628 stands in Islamic history as an enduring masterpiece, revealing and telling of the Prophet's political skill and statesmanship. As a result of the agreement, within a period of two years, the Muslim community was able to win over from the ranks of the Meccans more converts to Islam through the peaceful demonstration of their faith than they had during all the preceding years of contention and strife. Within two years the time was ripe for the Muslims to capture Mecca without a single blow being struck or one drop of

⁴⁰ Ibn Kathīr, *al-Bidāya wa al-Nihāyya*, 4:210-214; Ṭabarī, *Tārīkh*, 2: 620-644; Ya'qūbī, *Tārīkh*, 2: 35-37; Imran N. Hosein, "Diplomacy in Islam." *Muslim Education Quarterly*, 3, 3 (1986), 70.

⁴¹ Ṭabarī, *Tārīkh*, 2: 620-644; Ya'qūbī, *Tārīkh*, 2: 35-37; Imran N. Hosein, "Diplomacy in Islam." *Muslim Education Quarterly*, 3, 3 (1986), 70; in addition to the classical historical sources that deal with the conduct of the Prophet during his lifetime, see the following: Montgomery Watt, *Muhammad: Prophet and Statesman* (London: Oxford University Press, 1961); and idem, *Muhammad at Medina* (Oxford, England: Clarendon Press, 1956); Muhammad Husayn Haykal. *The Life of Muhammad (Ḥayāt Muḥammad)*, translated by Ismā'īl R. Fārūqī (Indianapolis: American Trust Publications, 1976).

blood spilled, thus paving the way for the peaceful Islamaization of the entire Arabian Peninsula.⁴² In reality, the treaty of Ḥudaybiya was a genuine victory for the Muslims over the Meccans, which ultimately enabled the Prophet to be recognized as leader of the Muslim community by the neighboring non-Muslim tribes and kings. This was a major accomplishment for the Muslims, for it enabled them to preach Islam beyond the Arabian Peninsula. As Haykal explains:

Indeed, the treaty even made it possible two months later for Muḥammad to begin to address himself to the kings and chiefs of foreign states and invite them to Islam.⁴³

In the writings of classical Muslim historians and scholars, the treaty of Ḥudaibīyya is paid very careful attention, and accorded a high degree of prominence, with many details and commentary provided. Most of the details of the actual treaty and the historical background are identical in their presentation, with the exception of a few minor differences, such as the number of Muslims who accompanied the Prophet and the duration of the treaty. Later treaties did not receive the same measure of recognition by the classical Muslim historians as Ḥudaybiya did. In their case, only minor details are often furnished. In this section, we will discuss and bring forward some of the opinions of Muslim scholars regarding these treaties.

B. The second treaty selected for analysis is the one negotiated by the fifth Umayyad caliph ‘Abd al-Malik Ibn Marwān with the Byzantine Empire. ‘Abd al-Malik had assumed the caliphate in 685 at a time when revolts against the Umayyads were raging in almost every major section of the Islamic Empire, with the exception of Egypt.⁴⁴ According to al-Mas‘ūdī (d.

⁴² Muḥammad Ḥusayn Haykal, *The Life of Muhammad (Ḥayāt Muḥammad)* 400-408.

⁴³ Ibid., 356.

⁴⁴ Mas‘ūdī, *Murūj al-Dhahab*, 3: 42. ‘Abd al-Malik brother ‘Abd al-‘Aziz ruled Egypt forcefully and suppressed the rebellions.

346/956), writing in his *Murūj al-Dhahab*, the political situation during the rule of ‘Abd al-Malik ibn Marwān was as follows:

While ‘Abd al-Malik was leading an army of Syrians, he halted at Ṭanān in order to receive the latest news of Ibn Ziyād (his commander of Iraq). The news came heralding his (Ibn Ziyād’s) murder and the murder of those who were with him, as well as the defeat of the army during the night. At the same time, ‘Abd al-Malik received the news of the capture of Palestine by Bahl ibn Qays, a commander of Ibn al-Zubayr, and the march of Muṣ‘ab ibn al-Zubayr from Medina to Palestine. Then he received the news of the king of Byzantine ... and his capture of the town of Miṣṣiṣa on the way to Syria. Then he received the news that the mobs of Damascus (capital of the Umayyad Empire) had rioted and begun to loot the property of the habitants...⁴⁵

‘Abd al-Malik was very disappointed but not troubled by these discouraging reports from all sides. He handled the news with extreme caution and forethought.⁴⁶ A very clever politician, he knew very well that the conflicting factions inside Iraq, such as the Shī‘ites and the Khārijites, would rise in the meantime against Ibn al-Zubayr.⁴⁷ He therefore turned his attention from Iraq to the Byzantine Empire’s borders in Asia Minor. His political insights were accurate, for Ibn al-Zubayr’s forces in Iraq were weakened by the rebellions, especially in Baṣra and Kūfa, and were as a result unable to resist a fresh attack. ‘Abd al-Malik was thus able to restore Palestine and Iraq to Umayyad rule.⁴⁸

‘Abd al-Malik’s success or victory over the rebels was carefully measured and calculated. In order for him to protect himself against the rebellions and protect his empire, he first sent tribute (money) and gifts to the Byzantine Emperor. He turned the Byzantine

⁴⁵ Mas‘ūdī, *Murūj al-Dhahab*, 5: 226.

⁴⁶ H. A. R. Gibb, “‘Abd al-Malik Ibn Marwān,” *Encyclopaedia of Islam*, new edition, 1 (1960) 76.

⁴⁷ Mas‘ūdī, *Murūj al-Dhahab*, 11: 299

⁴⁸ Mas‘ūdī, *Murūj al-Dhahab*, 5: 225-226; H. A. R. Gibb, “‘Abd al-Malik Ibn Marwān,” *Encyclopaedia of Islam*, new edition, 1 (1960) 76-77.

Emperor's mind away from war and made a truce with him (*hādanahu*). Then he marched against Palestine.⁴⁹

In referring to the events of 691 A.H., and especially the truce with the Byzantine emperor, al-Ṭabarī (d. 310/ 923) records the following:

During these years the Byzantines launched an attack against the Muslim inhabitants of Syria. 'Abd al-Malik, therefore, made a peace with (*ṣālaḥa*) the king of Byzantium on the condition that 'Abd al-Malik should pay him one thousand *dīnārs* every Friday.⁵⁰

The duration of that truce was concluded for ten years, beginning in 69/689.⁵¹

Judging by what we are told by Mas'ūdī and Ṭabarī, it can easily be inferred that 'Abd al-Malik sent emissaries to the Byzantine court with instructions to negotiate a truce on the best possible terms.⁵² Apparently out of concern for the best interests (*maṣlaḥa*) of the Muslim community, 'Abd al-Malik agreed not only to negotiate with a non-Muslim head of state, but to pay tribute to him as well.⁵³ 'Abd al-Malik's conduct also reflects some aspects of the Ḥudaybiya treaty. In the first place, 'Abd al-Malik realized the dangers of confronting directly the rebellions in Iraq, just as the Prophet perceived the disasters that might befall to the Muslims in Medina. Secondly, 'Abd al-Malik saw that he needed a free hand to rescue the Umayyad Empire from the rebellion. He therefore shifted his attention to the Byzantines and concluded a truce with them, before trying to reclaim the territory captured by Ibn al-Zubayr's commanders. The Prophet similarly waited for a limited period of time to restore order and gain

⁴⁹ Ṭabarī, *Tārīkh*, 6: 150; Mas'ūdī, *Murūj al-Dhahab*, 11: 299; Balādhurī, *Futūḥ al-Buldān*, 160.

⁵⁰ Ṭabarī, *Tārīkh*, 6: 150; see also Mas'ūdī, *Murūj al-Dhahab*, 11: 299; Nuwayrī, *Nihāyat al-Arab*, 11: 77, 109; Sir William Muir, *The Caliphate: Its Rise Decline and Fall* (Oxford: The Religious Society, 1891) 353. The phrase "every *jum'a*" cannot mean "every Friday" and hence every week. It can only mean a specific "*jum'a*", perhaps a specific one in a month, or occasion of some other "gathering."

⁵¹ Mas'ūdī, *Murūj al-Dhahab*, 11: 299; H. A. R. Gibb, "'Abd al-Malik Ibn Marwān," *Encyclopaedia of Islam*, new edition, 1, 76.

⁵² Mas'ūdī, *Kitāb al-Tanbīh wa al-Ishrāf*, 312-317.

⁵³ Nuwayrī, *Nihāyat al-Arab*, 21: 109.

local support and made alliances with the non-Muslims of Medina prior to his march toward Mecca. Through diplomatic efforts and negotiations, therefore, ‘Abd al-Malik regained power and accomplished his mission, saving the Empire from both local rebellion as well as an outside attack by the Byzantines, just as the Prophet did with the Meccans. The main differences between the Ḥudaibiyya treaty and ‘Abd al-Malik’s conduct lay in his decision to pay tribute to non-Muslims. Yet there is no record to indicate that Muslim jurists or theologians ever held this precedent against ‘Abd al-Malik. On the contrary, Shaybānī and many other leading jurists are in agreement with the action of ‘Abd al-Malik, which they say was done for the sake of *maṣlaḥa* (interest) and thus permissible according to the Shaṛī‘a.⁵⁴

Needless to say, when ‘Abd al-Malik restored the rebellious regions of the Empire to Umayyad rule in 72/692, he stopped paying any tribute money to the Byzantine Emperor and, instead, resumed the yearly border attacks against Asia Minor. Thus he proved himself not only a capable administrator, but also a far-sighted statesman. It is no wonder that while Mu‘āwīya is considered in Islamic history as the founder of the Umayyad dynasty, ‘Abd al-Malik is credited with consolidating the regime and placing it on a firm foundation.⁵⁵ The last years of his reign were, on the whole, years of prosperity and peaceful unity.⁵⁶

‘Abd al-Malik ibn Marwān’s treaty with the Byzantine Emperor proved to fit the Islamic criteria for concluding a treaty with non-Muslims. According to Muslim jurists, its provisions, far from causing any harm to the Muslim community, actually worked in its best

⁵⁴ Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 5: 1689; and idem, *Mabsūṭ*, 10: 86; Kasānī, *Badā’i‘ al-Ṣanā’i‘*, 9: 4324; *Faṭḥ al-Qadīr*, 4: 293; *Tabyīn al-Ḥaqā’iq*, 3: 245-246; *al-Baḥr al-Rā’iq*, 5: 85; Abū Yūsuf, *Kharāj*, 224-225; *al-Fatāwā al-Hindiyya*, 2: 196; Jaṣṣāṣ, *Aḥkām al-Qur’ān*, 3: 69; Ghazālī, *Wajīz*, 2: 203; Shāfi‘ī, *al-Umm*, 4: 110-112; Mawārdī, *Aḥkām al-Sulṭāniyya*, 52.

⁵⁵ Mas‘ūdī, *Murūj al-Dhahab*, 5: 224-226; Sir William Muir, *The Caliphate: Its Rise Decline and Fall* (Oxford: The Religious Society, 1891) 354.

⁵⁶ Mas‘ūdī, *Murūj al-Dhahab*, 5: 224-226; H. A. R. Gibb, “‘Abd al-Malik Ibn Marwān,” *Encyclopaedia of Islam*, new edition, 1 (1960 77).

interest. ‘Abd al-Malik’s treaty met all of the requirements and conditions that Muslim rulers had to observe in negotiating terms with non-Muslims.

C. The next treaty that we shall examine is one that was drawn up in the ‘Abbasid period during the reign of Hārūn al-Rashīd (764-809), one of the most powerful caliphs of that dynasty. For the purposes of this analysis, we shall attempt neither to study the reign of Hārūn al-Rashīd in terms of its political or social aspects nor compare him with other ‘Abbasid or Umayyad caliphs, but to focus on a specific period of time during his caliphate that led him to conclude truces with the neighboring non-Muslim states: the Byzantine Empire under the Empress Irene (known in the Muslim sources as Ughusta or Aghusta) and the Emperor Nicephorus I (known in the Muslim sources as Naqfūr), and the holy Roman Empire under Charles the Great.⁵⁷

Again, there is no record of the details of the treaty drawn up between al-Rashīd and the Byzantine emperors. However, there are a few references in the classical literature dealing with this particular event. The information presented below is thus derived from the works of such prominent historians as Ṭabarī, Ya‘qūbī, Ibn Kathīr, Balādhurī, Mas‘ūdī and others, as well as the works of classical jurists who lived under his reign and commented upon his actions.

It is useful to recall what al-Dhahabī says about Hārūn al-Rashīd in his *Siyar A‘lām al-Nubalā’*:

The news about al-Rashīd is too long, his good deeds many, yet in spite of his good actions he [Hārūn al-Rashīd] has a bad reputation

⁵⁷ The work of F. W. Buckler, regarding the relationships between Hārūn al-Rashīd and Charles the Great is well documented. Because it is so thorough, in fact, we will not repeat all the details here. For additional information on these relations see, F. W. Buckler, *Harūn al-Rashīd and Charles the Great* (Cambridge: The Mediaeval Academy of America, 1931) 1-42.

because of [his predilection for] music and enjoyment as well as pleasurable times, God forgive him.⁵⁸

Indeed, the general prosperity that persisted during his reign earned him this reputation. With the prices of commodities so low, economic well being prevailed, as well as a tendency to enjoy its advantages. In fact the personal indulgence of the caliph was also commented upon. Many attributed the eruption of disobedience and heresy during this age to his lifestyle.⁵⁹ As a direct response to these disturbances, and in reply to a request from the caliph himself, Abū Yūsuf wrote his work entitled *Kharāj*, in which he calls for reforms in the Muslim community including enforcement of the payment of *kharāj* (land tax) and '*ushūr*'.⁶⁰ On the other hand, Suyūfī describes the reign of Hārūn al-Rashīd as one of great achievement, prosperity and development. Trade came from all places, the public treasury was full and its resources were distributed to all. Suyūfī goes so far as to say:

The days of al-Rashīd were full of great deeds, they seemed like a wedding because they were full of enjoyment.⁶¹

The first period (132/750-232/844) of the 'Abbasid dynasty was a golden one, especially Hārūn al-Rashīd's reign. Though some historians have accused him of being a drunkard and alcoholic, Ibn Khaldūn rejects this claim:

This accusation has no evidence. If his critics assumed this, then how was he [al-Rashīd] able to run his caliphate justly and according to the Shari'a? He associated himself with the scholars and jurists and engaged in debate with them ... al-Ṭabarī and al-Mas'ūdī's works defend al-Rashīd from his critics ...⁶²

⁵⁸ Al-Dhahabī, *Siyar A'lām al-Nubalā'*, 9: 290.

⁵⁹ See al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, 1: 119; and 1: 70.

⁶⁰ Abū Yūsuf, *Kharāj*, 48-49, 93-94, 114-119, 142-148.

⁶¹ Suyūfī, *Tārīkh al-Khulafā'*, 286.

⁶² Ibn Khaldūn, *Muqaddima*, 1: 26-29.

Albert Hourani indicates moreover that the stories which make up the Thousand and One Nights (or Arabian Nights), have no relation to Hārūn al-Rashīd. The stories were written between the tenth and twelfth centuries C. E. and most likely expanded upon further in Cairo during the Mamlūk period. These were then attributed to Baghdad during the time of the ‘Abbasid caliph Hārūn al-Rashīd. Some of the stories from this work were translated into European languages in the nineteenth century but do not even appear at all in the earliest manuscripts.⁶³

Hence, if these stories and accusations made against Hārūn al-Rashīd are reliable, then how come classical scholars, such as Abū Yūsuf, Ṭabarī, al-Mas‘ūdī, Suyūṭī, Ibn Khaldūn and many modern scholars alike questioned their authenticity, as may be seen in such works as *al-Aghānī*, *al-‘Iqd al-Farīd*, and *al-Tāj fī Akhlāq al-Mulūk*? One might also ask, if it is true that the caliph was so corrupt, how come the first period of the ‘Abbasid caliphs witnessed such a surge in knowledge and the emergence of so many scholars during that time? The ‘Abbasid caliphs in the first period favored knowledge over enjoyment, not otherwise.⁶⁴ Indeed, the majority of the prominent scholars cited above admired the first part of the ‘Abbasid period and claimed it was a period of history free of all the accusations attributed to them. This position is summarized by Suyūṭī as follows:

I have not seen or known a King that has valued knowledge or the search for knowledge as al-Rashīd; he took his two sons al-Amīn and al-Ma’mūn to study Mālik’s *Muwāṭṭa’*. Al-Rashīd, Manṣūr and al-Mahdī narrated many *ḥadīths* from the Prophet’s traditions.⁶⁵

⁶³ Albert Hourānī, *A History of the Arab Peoples* (Cambridge: Harvard University Press, 1991) 196.

⁶⁴ See Mas‘ūdī, *Murūj al-Dhahab*, 3: 275-278; Ṭabarī, *Tārīkh*, 8: 63; Ibn Khaldūn, *Muqaddima*, 1: 26-29; Aḥmad Amīn, *Ḍuḥā al-Islām*, 2: 104.

⁶⁵ Suyūṭī, *Tārīkh al-Khulafā’*, 266-276, 270-271, 287-297, 283, 293-297; *Tanwīr al-Ḥawālik*, 1: 11; *Sharḥ al-Zarqānī ‘alā al-Muwāṭṭa’*, 1: 6.

The above account is meant only to clarify a misconceptions regarding the early ‘Abbasid caliphs, and especially Hārūn al-Rashīd, who, like his predecessors and successors, developed a basis for international relations with neighboring empires, such as Byzantium and Persia. Drawing on his considerable knowledge and skills as a statesman, he took the initiative to represent the Muslim community during his reign and concluded several treaties with Byzantine emperors.⁶⁶

The treaty that was concluded between Hārūn al-Rashīd and Empress Irene was a very significant one. This is because Irene demanded a peace treaty with the Muslims out of consideration for the *maṣlaḥa* (best interests) of her own empire. During her reign (181/797-186/802), Irene was faced with internal problems, and especially the conflict with the Bulgarians. At the same time, the Byzantines were fending off attacks by Hārūn al-Rashīd against their frontier.⁶⁷ Classical Muslim historians all agree that the caliph was thereby fulfilling one of his most important duties: attacks and counter attacks occurred regularly, almost annually.⁶⁸

The content of the treaty that was agreed to by Hārūn al-Rashīd and Empress Irene can be found in al-Ṭabarī’s *Tārīkh*, in a passage that reads as follows:

In the year 195/812, after al-Rashīd’s triumph in the battle against the Byzantine forces ... al-Rashīd’s forces reached Constantinople. The Byzantine Emperor at that time was Uqusta (Irene), the wife of Alyūn; her son was young and his father had lost his life while he was with her. Negotiations took place between herself and Hārūn ibn al-Mahdī, an exchange of envoys and messengers was made for the demand of *ṣulḥ* and *muwāda’a* and ransom of prisoners. Hārūn accepted those offers from her. Hārūn also imposed a condition of fulfillment and honoring what they has agreed upon, in addition to opening the avenues of her markets and trade. In case he [Hārūn] was

⁶⁶ F. W. Buckler, *Harun’l-Rashid and Charles the Great* (Cambridge: The Mediaeval Academy of America, 1931) 14-15, 17.

⁶⁷ *Ibid.*, 32.

⁶⁸ *Ibid.*, 17

confronted with threats [i.e., civil war or outside attacks] by [other] Muslims, she should cooperate with him. They agreed to conclude the *ṣulḥ* for the payment of tribute of ninety or seventy thousand *ḍinārs* for the beginning of April and June annually, and he accepted. She opened the markets to him and she furnished him with gifts of silver and gold as well as envoys and ambassadors. The duration of the treaty was agreed upon for three years. Ransom and prisoners were released and the *jizya* enforced.⁶⁹

Irene was therefore compelled to demand a peace treaty from Hārūn al-Rashīd in order to restore stability within the Byzantine Empire and to safeguard her reign. Al-Rashīd at first refused the offer, but subsequently accepted it.⁷⁰ The *maṣlaḥa* that motivated Irene was similar to that which Muslims had taken into consideration in the past. Her other concern was to preserve the throne for her son, who was still quite young at that time. The people of the Byzantine Empire were not in favor of her decision however, and they resented her. As a result they transferred their support to her deputy, who succeeded her as emperor with the title Nicephorus I. When Nicephorus's reign was fully established, and he was confident of his position, he violated the treaty of his predecessor, which had lasted only thirty two-months.⁷¹ He then wrote a letter to al-Rashīd, which read,

From Nicephorus the emperor of Byzantine to Hārūn al King of the Arabs. Irene has parted with the castle, and contented herself with the pawn. She had paid you money, the double of which thoroughly should have been paid to her. It was but a woman's weakness. Wherefore, return what you have taken from her or the sword shall decide. And Salaam.⁷²

As soon as this letter reached al-Rashīd, the latter replied with a letter addressed to Nicephorus I, which read,

⁶⁹ Ṭabarī, *Tārīkh*, 3: 504 and 8: 152-153; see also Ibn Kathīr, *al-Bidāya wa al-Nihāya*, 10: 147

⁷⁰ Mas'ūdi, *Murūj al-Dahab*, 4: 287-414; *al-Aghānī*, 17: 44; Ṭabarī, *Tārīkh*, 6: 510-512; Nuwayrī, *Nihāyat al-Arab*, 22: 151-152; F. Omar, "Hārūn al-Rashīd" *Encyclopaedia of Islam*, new edition, 3 (Leiden: E. J. Brill, 1971) 232-234.

⁷¹ Ibn Kathīr, *al-Bidāya wa al-Nihāya*, 10: 150.

⁷² Nuwayrī, *Nihāyat al-Arab*, 22: 151-152; Sir William Muir, *The Caliphate: Its Rise Decline and Fall*

In the Name of Allah, the Most Gracious, the Most Merciful, from the servant of Allah Hārūn, Commander of the Faithful (*amīr al-mu'minīn*) to Naqfur (Nicephorus), Byzantine dog. I have read the letter, son of an unbelieving mother. The answer is for your eye to see, not for your ear to hear.⁷³

Nuwayrī relates what followed:

As soon as al-Rashīd's letter reached Nicephorus I he became worried and consulted his deputies until al-Rashīd attacked the Byzantine Empire and occupied part of its territory, where he fought the Byzantine army and took booty and prisoners until he reached Constantinople. Then Nicephorus I commanded his army to set the road on fire, but this did not stop al-Rashīd from his goal: he went through it along with his followers. The news reached Nicephorus I and he [instead] sent him gifts and obeyed his order and paid him personal tribute. Then al-Rashīd withdrew after Nicephorus I resumed payment of what had been given to al-Rashīd by Empress Irene ... As soon as Nicephorus I felt secure, however, he took advantage of that *hudna* and violated the treaty as he did earlier ... As soon as the news reached al-Rashīd he engaged in a difficult battle with the Byzantine forces until he won by using heavy machinery, such as the *manjanīq*, and the people demanded *amān* from him, which he granted them.⁷⁴

The details of these treaties between the Hārūn al-Rashīd and the Byzantine emperors Irene and her successor Nicephorus I are not described in much detail or even in chronological order in the sources consulted. A survey of the works of historical writers shows that their main interest was to reflect on what had caused these treaties to be concluded as well as the consequences for those who violated them. Therefore, although historians report that al-Rashīd took the same diplomatic path as the Prophet during the negotiations over the Ḥudaybiya treaty, especially in terms of accepting gifts and making peace with non-Muslims in the vicinity, there were differences. In the Prophet's case the Meccans recognized the

(Oxford: The Religious Society: 1891) 474.

⁷³ Sir William Muir, *The Caliphate: Its Rise Decline and Fall* (Oxford: The Religious Society: 1891) 474.

⁷⁴ Nuwayrī, *Nihāyat al-Arab*, 22: 155-157; *al-Aghānī*, 17:44; Ṭabarī, *Tārīkh*, 8: 308 and 3: 696; Aḥmad Zakī Ṣafwat, *Jamharat Rasā'il al-'Arab fī 'Uṣūr al-'Arabiyya al-Zāhira*, 3: 275-276; Sir William Muir, *The Caliphate: Its Rise Decline and Fall*, (Oxford: The Religious Society, 1891) 474.

seriousness of the Muslims' demand to make the pilgrimage to Mecca, and therefore, no blood was spilled. In the case of al-Rashīd on the other hand, a serious challenge was posed to him by Nicephorus I in contrast to the arrangements mutually agreed upon by al-Rashīd and Irene. The challenges, and especially the violation of the treaty by Nicephorus I, led to a major battles that cost many lives on both sides. In the end, the Muslims defeated Nicephorus's forces and claimed victory. The Byzantines then asked for *amān* and this was granted to them on their terms. Therefore, al-Rashīd won out on the battlefield, whereas the Prophet succeeded using the diplomatic approach; hence, while the outcome of both treaties was almost the same, one resulted in the loss of many lives, and the other did not.

According to al-Ṭabarī, Nicephorus, after agreeing to the treaty between himself and Hārūn al-Rashīd, wrote a letter himself to the latter,

asking him to escort his son's future wife, to whom he was engaged, one of the bondwomen (*jāriyya*) or young girls from Byzantine territory (under Hārūn's authority). If you can assist me, then let it be. In addition Naqfūr send Hārūn a gift (*surādiq*). Hārūn al-Rashīd replied to his request endowing that young woman with perfume and sent along with Naqfūr's messenger special scents, dates, antidote and raisins. In return Naqfūr sent him heavy load of Islamic *darāhim* (fifty thousand) and a hundred garments and two hundred draperies and twelve tailors and four hunting dogs and three workhorses. They exchanged promises and conditions not to cause any hostilities or damages to Hirqila ...⁷⁵

D. The third treaty (or treaties) chosen for examination is the series of treaties drawn up during the reign of the Ayyūbid dynasty, in particular the treaty agreed to by the fourth Ayyūbid Sulṭān, Malik al-Kāmil, and the Crusaders. It is important to mention also that the well known Ṣalāḥ al-Dīn al-Ayyūbī (Saladin, 1169-93),⁷⁶ had concluded a peace treaty in 1191

⁷⁵ Ṭabarī, *Tārīkh*, 8: 321-322.

⁷⁶ In Egypt, the Fatimids continued to rule until 1171, but they were then replaced by Ṣalāḥ al-Dīn al-

with Richard the Lionhearted (1157-1199), by which Jerusalem itself, the most respected city of the Crusaders, was officially surrendered to the Muslims forces, who in turn promised to allow unarmed Christian pilgrims to perform their religious duties unmolested.⁷⁷ This peace agreement failed to end the hostilities in the area; the Crusaders engaged in further military action to liberate Jerusalem from Ayyūbid rule. A fifth Crusade by King Andrew of Hungary in response to a call by Pope Innocent sailed not directly toward Jerusalem, but rather for Damietta in Egypt.⁷⁸ This was a carefully studied strategy by the Crusaders aimed at defeating the Ayyūbids in their home first and then proceeding to Jerusalem. In this way Jerusalem could be captured without any actual combat or bloodshed.⁷⁹

The Crusaders' strategy was very successful in the initial stages. In 1218, they landed near Damietta⁸⁰ and started military operations against the city.⁸¹ Al-Kāmil suspected, however, that the Crusaders might attempt to capture Damietta (which they did after a siege that lasted two years),⁸² and then possibly march toward Cairo afterwards, which if they did so,

Ayyūbi, a military leader of Kurdish origin. The change of rulers brought with it a change of religious alliance. The Fatimids belonged to the Ismā'īlī branch of the Shī'is, but Ṣalāh al-Dīn was a Sunnī, and he was able to mobilize the strength and religious fervour of Egyptian and Syrian Muslims in order to defeat the European Crusaders who had established Christian states in Palestine and on the Syrian coast at the end of the eleventh century. The Ayyūbid dynasty founded by Ṣalāh al-Dīn, ruled Egypt from 1169-1252, Syria to 1260 and part of western Arabia to 1229. Albert Hourani, *A History of the Arab Peoples*, 84.

⁷⁷ James Brundage, *The Crusaders: A Documentary History* (Milwaukee: Marquette University Press, 1962) 185-186; for more details see, *The Crusade of Richard the Lionhearted*, ed. and trans. by John L. LaMonte (New York: Columbia University Press, 1941).

⁷⁸ Nuwayrī, *Nihāyat al-Arab*, 29: 98.

⁷⁹ For more details regarding the status of Jerusalem and the Crusaders, see Carole Hillenbrand, *The Crusaders: Islamic Perspectives* (Edinburgh: Edinburgh University Press, 1999); R. C. Smail, *The Crusaders in Syria and Holy Land* (New York and Washington: Praeger Publication, 1973).

⁸⁰ Damietta: is an old and strategic coastal city near the East Side of the Nile river. It was strategically important because it provided the ideal position for the French and Byzantine to attack Egypt. The non-Muslims in 467 A. H., during the rule of Malik al-Ashraf, first occupied Damietta. Al-Zāhir Baybars was the one who prevented the French from passing through Damietta. Malik al-Kāmil redeemed Damietta from the French occupation. For more details regarding the geographical status and brief history of Damietta, see, *Mu'jam al-Buldan*, 2: 314-315; Ibn 'Abd al-Dhāhir, *al-Rawḍ al-Zāhir*, ed. A. A. al-Khuwaytir (Riyadh, 1976) 386-387; P. Thorau, *The Lion of Egypt*, trans. P.M. Holt (London: Longman, 1992) 207.

⁸¹ Qalqashandī, *Ṣubḥ al-A'shā*, 5: 389-392.

⁸² Nuwayrī, *Nihāyat al-Arab*, 29: 94; Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 79.

might end Ayyūbid rule in Egypt.⁸³ Al-Kāmil quickly realized that a good way to distract the Crusaders' attention from Damietta was to offer to make peace and cede to them Jerusalem on the condition that they withdraw from Egyptian soil. The Crusaders however rejected al-Kāmil's peace initiative and pressed their military initiative against Damietta, which eventually surrendered in 1219.⁸⁴ Al-Kāmil reportedly pleaded again with the Crusaders to spare Egypt and offered to cede other territories in Palestine.⁸⁵ The Crusaders rejected his pleas and marched toward Cairo, leaving no room to make any sort of peaceful settlement.⁸⁶

Al-Kāmil, left with no choice except to fight the battle, was forced to meet his opponents, the Crusaders. In the summer of 1221, as the Crusaders neared al-Manṣūra,⁸⁷ al-Kāmil, desperately desiring to avoid engaging his forces in a battle that could be ruinous not only to his own regime but also to the entire household of Islam, had a brilliant idea.⁸⁸ He ordered all dikes and dams on the Nile to be broken so that the yearly flood would inundate the enemy and cut off its supply lines.⁸⁹ His plan was a great success and the Crusaders, who had earlier left no room for compromise, had to retreat in disarray.⁹⁰ Al-Kāmil's plan and its outcome led to the withdrawal of the Crusaders from Egypt in defeat. As well, they lost their sole opportunity to restore Jerusalem to Christian rule.⁹¹ The Crusaders demanded *amān* from al-Kāmil and they agreed to the *hudna* (peace agreement) on the basis of the abstention of the parties concerned from hostilities against each other.⁹²

⁸³ Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 88.

⁸⁴ Ibid., 94-95.

⁸⁵ Qalqashandī, *Ṣubḥ al-A'shā*, 5: 389-390.

⁸⁶ Ibid., 92.

⁸⁷ Qalqashandī, *Ṣubḥ al-A'shā*, 5: 389.

⁸⁸ Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 79.

⁸⁹ Qalqashandī, *Ṣubḥ al-A'shā*, 5: 390; Ibn Kathīr, *al-Bidāya wa al-Nihāyya*, 13: 76.

⁹⁰ Qalqashandī, *Ṣubḥ al-A'shā*, 5: 390; Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 79.

⁹¹ Qalqashandī, *Ṣubḥ al-A'shā*, 5: 389-390.

⁹² Nuwayrī, *Nihāyat al-Arab*, 29: 113-114; Qalqashandī, *Ṣubḥ al-A'shā*, 5: 390; Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 79.

Information on the *hudna* (peace agreement) concluded between the French and Malik al-Kāmil is scattered throughout the sources. However, Ibn Iyās provides a summary of what the both parties agreed upon:

When the French realized their defeat, they sent a messenger to al-Malik al-Kāmil to seek *amān* on the condition that they would leave Damietta and withdraw from it to their own lands. Both parties agreed on the conditions to leave with each other *rahā'in* from among their relatives. Both agreed to release all the prisoners that were taking *asrā* (prisoners of war) since the time of al-Nāṣir Ṣalāḥ al-Dīn Yūsuf ibn Ayyūb. Both swore upon these conditions. The *ṣulḥ* was concluded and signed by Malik al-Kāmil and the French. The French king sent twenty kings as a *rahn* to al-Malik al-Kāmil and Malik al-Kāmil sent his son prince Najm al-Dīn along with a group of princes to the French king. Upon this the French handed back the city of Damietta to the Muslims and released all of the prisoners, as they had agreed, from since the time of al-Malik al-Nāṣir Ṣalāḥ al-Dīn Yūsuf, while Malik al-Kāmil released all of the French prisoners.⁹³

The duration of this *ṣulḥ* is not mentioned in Ibn Iyās; however, in the work of al-Nuwayrī, it is stated that it was to last for eight years.⁹⁴ When news of the defeat of the French in Damietta reached Europe, Frederick II of Germany agreed in 624/1227 to lead an army into the region to regain Jerusalem from the Muslims and to rid the Crusaders of the shame of the previous defeat. Frederick II reached Acre in September, 624/1228,⁹⁵ and proceeded toward Jaffa.⁹⁶ During that time Malik al-Kāmil found himself confronted with

⁹³ Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 79-80.

⁹⁴ Nuwayrī, *Nihāyat al-Arab*, 29: 117.

⁹⁵ Ibid., 117-118; Some scholars claim that the relationship between Malik al-Kāmil and Frederick was well-established. According to the sources, Frederick was very interested in philosophy, mathematics and geometry. Once he sent a mathematical problem to al-Kāmil, seeking an answer. Malik al-Kāmil passed this problem to his advisor Shaykh 'Alām al-Dīn Qaysar ibn Abū al-Qāsim, they resolved it, and sent the solution to Frederick. He was please with their solution. It has been said that he was very interested in Islamic civilization. This is perhaps because he grew up in Sicily and was exposed to Islam more than any other of the Crusader rulers. For more details on the relations between Frederick and Malik al-Kāmil see the following: Maqrīzī, *Tārīkh al-Duwal wa al-Mulūk*, ed. M.F. al-Shayyal, (1986) 1-2; Ibn Wāṣil, *Muffarrij al-Kurub*, iv: 242; D. Abulafia. *Frederick II: A Medieval Emperor* (London, 1988) 439.

⁹⁶ Nuwayrī, *Nihāyat al-Arab*, 29: 150; al-Dhahabī, *Tārīkh al-Islam wa Wafiyāt al-Mashāhīr wa al-Ā'lām*, 4:17-18.

the rebellions against his rule led by his brother al-Malik al-Ashraf in Syria. Now he was faced with the threat of Frederick II. Fearing a possible alliance between his brother and the Crusader forces in Syria that might cost him his regime in Egypt, he immediately asked to negotiate a peace settlement with Frederick.⁹⁷

Frederick II was fully informed of the abilities of Malik al-Kāmil, demonstrated in the 618/1221 battle to defend Damietta from French occupation that lasted a year, ten months and twenty-four days.⁹⁸ Because the outcome was not certain, he did not create too many difficulties in the course of accepting the settlement that was offered to him by Malik al-Kāmil. Frederick II simply demanded the restoration of Jerusalem and also several other cities that the Muslims had previously captured from the Christians.⁹⁹ Malik al-Kāmil agreed to the conditions demanded by Frederick and they signed a *hudna* (peace agreement) for a duration of ten years.¹⁰⁰ The agreement between the two leaders was thus concluded successfully.¹⁰¹

The decision of Malik al-Kāmil to negotiate a settlement with the Crusaders may be viewed as a sign of weakness on the part of a weak sultān who in doing so betrayed the Islamic cause. According to what has been presented in the previous chapters, the *imām* is the chief representative and spokesman of the Muslims, and responsible for safeguarding the Muslim community from any threat or foreign attacks. In this case, Malik al-Kāmil, having responsibility for the Muslim community in Egypt and faced with current political and

⁹⁷ Ibid., 4: 18; Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 80; Qalqashandī, *Ṣubḥ al-A'shā*, 5: 390; Ibn al-Athīr, *al-Kāmil fī al-Tārīkh*, 12: 320-321; Manṣūrī, *Tārīkh*, 73; *Dhayl al-Rawḍatayn*, 102; *Tārīkh al-Zamān*, 252; *Mufarīj al-Kurūb*, 1: 254-257; *Bidāya wa al-Nihāya*, 13: 76-77; Maqrīzī, *Kitāb al-Sulūk li Ma'rifat Duwal al-Mulūk*, 1: 186-187.

⁹⁸ Ibn Iyās, *Kitāb Tārīkh Miṣr*, 1: 80.

⁹⁹ Nuwayrī, *Nihāyat al-Arab*, 29: 150-151.

¹⁰⁰ Ibid., 151.

¹⁰¹ Ibn Wāṣil, *Mufḥarrīj al-Kurub*, ed., J. al-Shayyāl (Cairo, 1953-7) 4:242-245; Ibn Nafīz al-Ḥamawī, *al-*

military threats, made a tactical decision to seek a peace-settlement with the Crusaders. In so doing he preserved Egypt from a serious threat that might have been fatal to his regime and Muslim interests. A number of jurists of the classical period in fact approved of this action, and one finds a consensus supporting Malik al-Kāmil's decision.¹⁰² In this respect, Malik al-Kāmil deserves credit for having made a wise decision; one which saved the Ayyūbid regime from a possible collapse during his reign. His decision to sign a treaty in which he agreed to hand over Jerusalem for ten years might be viewed from a number of perspectives, but, in reality, al-Kāmil perpetrated this act out of political expediency: since he feared hostilities from his Syrian relatives, and above all his brother, al-Kāmil needed Frederick's military support. And although Jerusalem's religious status was far from uppermost in al-Kāmil's mind,¹⁰³ many classical and contemporary scholars support Malik al-Kāmil's decision and refer to him as one of the leading Ayyūbid rulers.¹⁰⁴ In addition, this treaty owed a debt to the Ḥudaybiya agreement, though there are notable differences. Malik al-Kāmil's political decision to seek peace-agreement with non-Muslims was in accordance with divine legislation and permitted by the existing legal precedents.¹⁰⁵ Taking the circumstances of the day into consideration, Malik al-Kāmil did not stray from the principle of Islamic teachings, as taught to later Muslim generations.

Tārīkh al-Mansūrī, ed. A. Dūdu (Damascus, 1982) 176-177.

¹⁰² Ṭabarī, *Ikhtilāf al-Fuqahā'*, 14-21; Abū Yūsuf, *Kharāj*, 207-214; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 4: 2-86; Shāfi'ī, *al-Umm*, 4: 103-124; Kasānī, *Badā'i' al-Ṣanā'i'*, 7: 108-110; Majid Khaddurī, *Islamic Law of Nations. Shaybānī Siyar* (a portion of *Kitāb al-Aṣl*) (Baltimore: Johns Hopkins University Press, 1966) chapter 5; Hans Kruse, "al-Shaybānī on International Instruments," *Journal of Pakistan Historical Society*, 1 (1953) 90-100.

¹⁰³ D. P. Little, "Jerusalem under the Ayyūbids and Mamlūk 1197-1516 A.D.", in *Jerusalem in History*, ed. K. J. Asali (London, 1989) 180.

¹⁰⁴ Hasan Ibrāhīm Ḥasan and Aḥmad al-Ṭanṭāwī, *Tārīkh al-'Uṣūr al-Wuṣṭā*, 183-184.

¹⁰⁵ Q. 8: 63.

If they incline to peace, you also incline to it, and (put your) trust in Allāh. Verily,

E. The last treaty that we will examine here is one that was negotiated by the Ottoman ruler Sulaymān al-Qānūnī or al-Kānūnī (926-74/1520-1566) - - known in the West as Sulaymān the Magnificent - - and the King of France, Francis I. This treaty was known as the Treaty of Amity and Commerce, and it was signed 1535.

Sulaymān had an enigmatic personality but he was an able administrator; during his reign the Ottoman Empire experienced its golden age and ranked foremost among world powers in terms of both military and political influence. He ruled the Empire for a remarkably long reign of forty-six years, between 1520-1566.¹⁰⁶ He was a brilliant strategist and an acclaimed legislator.¹⁰⁷ He was surnamed Qānūnī “lawgiver”, because he showed wisdom as a legislator, not in the sense of an innovator, but as a regulator and restorer of balance.¹⁰⁸ He was also known as “*ghāzī*” (“conqueror”), and assured success by leading his army in person.¹⁰⁹ During his reign, he initiated ten campaigns against Europe and three others in Asia.¹¹⁰ He also grasped the strategic importance of Hungary, which became the scene of numerous clashes

He is the All-Hearer, the All-Knower.

¹⁰⁶ Roger Bigelow Merriman, *Suleiman the Magnificent: 1520-1566* (New York: Cooper Square Publication, 1966) 27-48; Albert Howe Lybyer, *The Government of the Ottoman Empire in the time of Suleiman the Magnificent* (Cambridge: Harvard University Press, 1913) 26-28, 56-58; Halil Inalcik, *The Ottoman Empire: The Classical Age, 1300-1600*, translated by Norman Itzkowitz and Colin Imber (London: Weidenfeld and Nicolson, 1975) 23-34; M.A. Cook, eds. V.J. Parry, H. Inalcik, A. N. Kurat and J.S. Bromley, *A History of the Ottoman Empire to 1730* (Cambridge: Cambridge University Press, 1976) 91-92, 101-102 and 159; Norman Itzkowitz, *Ottoman Empire and Islamic Tradition* (Chicago and London: The University of Chicago Press, 1980) 34-36; G. Veinstein, “Suleyman,” *The Encyclopaedia of Islam*, new edition, 9: 832-842.

¹⁰⁷ Albert Howe Lybyer, *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*, 26-27, 32, 159-161; Roger Bigelow Merriman, *Suleiman the Magnificent: 1520-1566*, 147-148, 157-165.

¹⁰⁸ Ibid.

¹⁰⁹ Halil Inalcik, *The Ottoman Empire: The Classical Age 1300-1600*, trans. Norman Itzkowitz and Colin Imber (London: Weidenfeld and Nicolson, 1973) 57-58; Norman Itzkowitz, *Ottoman Empire and Islamic Tradition* (Chicago and London: The University of Chicago Press, 1980) 34-35.

¹¹⁰ Roger Bigelow Merriman, *Suleiman the Magnificent: 1520-1566*, 210-219, 220-223, 275-276; Norman Itzkowitz, *Ottoman Empire and Islamic Tradition* (Chicago and London: The University of Chicago Press, 1980) 35.

between the Ottoman Empire and Europe.¹¹¹ Under his reign, the imperial borders of the Ottoman Empire were extended to their furthest limits.¹¹²

Among the sources that provide a record of this treaty is the work *Middle East and North Africa in World Politics: A Documentary Record*, by J. C. Hurewitz. This book contains a translation of the French text of the official treaty, which is comprised of sixteen articles.¹¹³ The aim in this section is to discuss and analyze this particular treaty and to evaluate its validity according to the Islamic tradition in general and its relation to the Ḥudaybiya treaty.

Sulaymān's reign was marked by extraordinary historical events, not the least of which was the 1535 treaty with France. The question that imposes itself, however, is: How did relations between the French and the Ottoman Empire in the time of Sulaymān's reign develop?

In 1519, the Habsburg Charles V and Francis I of France were candidates for the throne of the Holy Roman Empire, with both candidates promising to mobilize all of Europe's forces against the Ottomans.¹¹⁴ When the electors chose Charles V for the position in 1521, the two European rulers went to war with each other. While Europe was thus divided, Sulaymān took advantage and marched his forces toward Belgrade, which was the gateway to Central Europe;¹¹⁵ indeed the Ottoman sources frequently refer to Belgrade as

¹¹¹ Roger Bigelow Merriman, *Suleiman the Magnificent: 1520-1566*, 257-259, 262-264, 267-268, 272-273.

¹¹² Albert Howe Lybyer, *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*, 93-95; Roger Bigelow Merriman, *Suleiman the Magnificent: 1520-1566*, 210-223; G. Veinstein, "Suleyman," *The Encyclopaedia of Islam*, new edition, 9: 832-842; Norman Itzkowitz, *Ottoman Empire and Islamic Tradition* (Chicago and London: The University of Chicago Press, 1980) 34-35; *The Middle East and North Africa 1995*. (London: Europa, 1995) 909.

¹¹³ J. C. Hurewitz, *The Middle East and North Africa in the World Politics: A Documentary Record*, I, European expansion, 1535-1914 second edition, (New Haven and London: Yale University Press, 1975). 1.

¹¹⁴ Halil Inalcik, *The Ottoman Empire: The Classical Age 1300-1600*, trans. Norman Itzkowitz and Colin Imber, 35.

¹¹⁵ *Ibid.*

“the gate to Hungary.”¹¹⁶ Belgrade fell to Sulaymān’s troops on the 29th of August 1521. It is important to note here that Sulaymān, as a brilliant politician, had seized an opportunity, as he was convinced that it was not in the interest of the Ottoman Empire that Europe should be dominated by single power.¹¹⁷ In January of the following year Sulaymān captured Rhodes, the key to the eastern Mediterranean, from the Knights of St. John, but he was forced to abandon this territory after a long and terrible siege.¹¹⁸ When in 1525 Charles V took Francis prisoner, the latter, through his ministers, turned to the Ottoman Empire for help, believing that the only power capable of guaranteeing the independence of the European states against Charles V lay in a French-Turkish alliance.¹¹⁹ In 1526, Francis’s ambassador informed Sulaymān that if Francis were to accept Charles’s conditions, the Holy Roman Emperor would become the “ruler of the world.”¹²⁰

This prospect did not appeal to Sulaymān, and so he decided to oppose Charles’s ambitions by mobilizing his large forces and advancing towards Hungary. On August 28th, 1526, he occupied Buda and Srem, and forced the Hungarian Diet to elect his candidate John Zapolya as King. In the following year, the Hungarian partisans of the Habsburgs responded by electing Charles V’s brother Archduke Ferdinand as King of Hungary; he in turn occupied Buda and expelled John Zapolya. In September 1529, Sulaymān once more invaded Hungary and again enthroned John Zapolya in Buda as an Ottoman vassal. Zapolya agreed

¹¹⁶ Colin Imber, *Ebu’s-Su’ud: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997) 4.

¹¹⁷ Ibid.

¹¹⁸ Ibid.; Colin Imber, *Ebu’s-Su’ud: The Islamic Legal Tradition*, 4.

¹¹⁹ Norman Itzkowitz, *Ottoman Empire and Islamic Tradition* (Chicago and London: The University of Chicago Press, 1980) 34-35; Halil Inalcik, *The Ottoman Empire: The Classical Age 1300-1600*, trans. Norman Itzkowitz and Colin Imber, 35.

¹²⁰ Halil Inalcik, *The Ottoman Empire: The Classical Age 1300-1600*, trans. Norman Itzkowitz and Colin Imber, 35.

to pay an annual tribute and accepted a Janissary garrison in the citadel.¹²¹ When Ferdinand again entered Hungary in 1531 and besieged Buda, Suleyman responded the following year by leading a large army into Hungary, which advanced as far as Guns, some sixty miles from Vienna. This was the military strategy adopted by Sulaymān by which he hoped to force Charles V into battle.¹²²

Charles recognized Sulaymān's military strategy for what it was, and ordered his admiral Andrea Doria to take Coron in the Morea from the Ottomans. Sulaymān countered this with an attempt to open a second front in the Mediterranean, and placed all of his Ottoman naval forces under the command of the famous Turkish corsair and conqueror of Algeria, Khayruddīn Barbarossa, appointing him *kapudanī deryā* (grand admiral) with orders to cooperate with the French.¹²³ Thus, beginning in 1531, French-Ottoman cooperation against a common enemy began to emerge, although a formal alliance was not forged until later in his rule. During that time the French were granted friendly nation-status by Sulaymān and freedom of trade within the Empire. Both parties, represented by their ambassadors, agreed orally on the military and political details of the alliance, which was kept secret.¹²⁴ Their strategy to defeat Charles V was to consist in a French maneuver matched by a complementary action undertaken by Sulaymān's forces: in 1537 the French were to invade Italy from the north while Ottoman forces attacked from the south. During that year in fact Sulaymān's forces reached Valona in Albania and besieged the Venetian-held ports there on the island of Corfu, where a French fleet assisted the Ottomans.¹²⁵ In 1538 the French concluded a peace treaty with Charles V, although Francis maintained his

¹²¹ Ibid., 36.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

secret policy of alliance with the Ottomans. This gave Charles an opportunity to resume his siege of Tunis, which was captured in 1535; however, in 1538, Khayruddin Barbarossa defeated a fleet under Charles's admiral Andrea Doria at Preveza, leaving him undisputed master of the Mediterranean.¹²⁶

In the interim John Zapolya had died and Ferdinand once again invaded Hungary. Sulaymān responded by sending forces again into Hungary with the aim of bringing Hungary under Ottoman rule – indeed, he intended to make it an Ottoman province under a *beylerbeyi* (governor-general of a province). Around two years later, in the year 1543, Sulaymān sent a fleet of 110 galleys under the command of Barbarossa to assist Francis. The combined Franco-Ottoman fleet besieged Nice and the Ottoman fleet wintered in the French port of Toulon. A small French artillery unit also joined the Ottoman army in Hungary. However, this cooperation was not effective, especially because of worsening relations with the Safavids in Iran. Therefore, Sulaymān decided that the best policy would be to establish a state of peace on his western front. In 1547, he concluded an armistice with Ferdinand, which also included Charles V and to which France was also a party. The treaty allowed Ferdinand to keep part of Hungary, which would remain in his possession in return for a yearly tribute of thirty thousand ducats paid to the Ottoman state.¹²⁷

In the years 1547-1555, wars broke out again in Europe, and these events led to the assassination of Ferdinand by the Ottomans. Then, in expanding his control over Transylvania, Sulaymān established a new *beylerbeyilik* (governor-general of a province) of Temesvar, in southern Transylvania. The new king of France, Henry II, came to the throne,

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid., 37.

and he realized the need for maintaining an Ottoman alliance against Charles the Fifth. At the same time, Sulaymān found a natural ally in the collectivity of German Protestant princes, who also opposed Charles V. This semi-coalition led to the official recognition of Protestantism by the Habsburgs. Sulaymān wrote a letter to the German princes, urging them to support France and in which he also demanded that, if the Ottoman army entered Europe, they should be granted amnesty. In this letter, Sulaymān indicated the similarities between Protestantism and Islam.¹²⁸

Sulaymān's intention resembles that of the earlier al-Malik al-Kāmil, in that both sought to maneuver the diplomatic situation for both religious and political gains. His political ambition was to keep Europe divided and prevent the potential of a united crusade against the Ottomans. On the religious plane, Sulaymān sought to shift all the battles to outside Muslim-dominated territory, in order to protect its inhabitants from the ravages of war. However, his political motives come across as being much stronger than the religious ones, since upon securing the western front he immediately sent troops to the northern front, which was under threat from Iran. His quick reaction prevented war from breaking out, and he was able to conclude a treaty with the Shi'ī sects of Iran. We noted above, on the basis of Donald Little's observation, that Malik al-Kāmil's decision to cede Jerusalem in a treaty was a sign that religious considerations were not his prime concern at the time. The same may be said of Sulaymān's political stance towards Europe, though ultimately all his actions may be seen as a defence of Islamic territory. Needless to say, after his death in 1566 the Ottoman Empire began to decline and suffered an acute loss of status on the international stage. Halil Inalcik states that "up to 1595 there was no question of international politics,

¹²⁸ Ibid.

which did not somehow involve the Ottomans.”¹²⁹ Indeed, the Ottoman Empire during the reign of Sulaymān was recognized as one of the most powerful participants in international affairs.

The question that can then be raised is: If Sulaymān was more of a politician than a religious leader, then to what extent did Islamic jurisprudence or Muslim jurists impact on his decision regarding the welfare of the community? According to both modern and medieval sources, Sulaymān was a leader who functioned as both a statesman and a servant of the Sacred Law.¹³⁰ According to Colin Imber, who has written a special study of the career of Abū Su‘ūd, chief minister to Sulaymān, this can clearly be seen in the case of the annexation of Hungray upon the death of its king in 1541. Sulaymān converted it into a province under direct Ottoman *beylerbeyilik* (governor-general of a province) and subject to Ottoman law.¹³¹ Since Ottoman land tenure and taxation rules emerged gradually in different Ottoman provinces, such as Rumelia (where Abū Su‘ūd occupied the post of military judge for eight years),¹³² it came into existence through custom and “piecemeal” legislation. Since there was no uniform practice or complete account of its underlying norms, there was a need for legislation to be introduced into the system. In this matter, Sulaymān consulted Abū Su‘ūd, who in earlier cases, such as in Buda, provided the material for Sulaymān’s New Qānūn in the “Law Book,” for enactment as an Imperial decree.¹³³

There is no doubt that Sulaymān recognized the importance of the Muftī’s position during his reign; therefore, in granting any concessions to *ḥarbīs*, he always considered to

¹²⁹ Ibid., 35.

¹³⁰ Albert Howe Lybyer, *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*, 212.

¹³¹ Colin Imber, *Ebu’s-Su’ud: The Islamic Legal Tradition*, 122.

¹³² Ibid., 12

¹³³ Ibid., 122

prescriptions of *fiqh* (jurisprudence) of the Ḥanafī school.¹³⁴ The Muftī that occupied the position during the reign of Sulaymān was Abū Su‘ūd, one of the most distinguished intellectuals in the history of the Ottoman Empire.¹³⁵ Abū Su‘ūd even became a close personal friend of Sulaymān, and during the latter’s reign held the two most important if not the highest ranking legal offices. The first post was that of military judge of Rumelia in 1537, and the second the most important and highest rank in legal tradition, that of Shaykh al-Islām, in 1545. Furthermore, he was always close by Sulaymān both in the capital and on military campaigns.¹³⁶

The treaty between the Ottoman Empire and France allowed Sulaymān to gain more time to accomplish his desire of keeping Europe divided. Furthermore, this treaty contributed to his success in preventing additional warfare with the neighboring Safavids. Sulaymān was aware of the circumstances that might emerge if he did not conclude a treaty with France. Therefore, this treaty had a great impact and led to both political and economic success and accomplishments during his reign.¹³⁷ When the new King of France, Henry II, came to the throne, he maintained the Ottoman alliance because it was of vital importance, especially against Charles V.¹³⁸ The French alliance was the cornerstone of Ottoman foreign policy in Europe.¹³⁹

Although the treaty remained a draft only, it was observed in practice. Further discussions on its capitulation provisions were carried on between the French ambassador, J.

¹³⁴ Halil Inalcik, “Imtiyāzāt,” *The Encyclopaedia of Islam*, new edition, 3: 1179-1199.

¹³⁵ Albert Howe Lybyer, *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*, 212; see also, Uriel Heyd, “Some Aspects of the Ottoman *Fetva*,” *Bulletin of the School of Oriental and African Studies*, no. 32 (1969) 35-56.

¹³⁶ Colin Imber, *Ebu’s-Su’ud: The Islamic Legal Tradition*, 11 and 15.

¹³⁷ Halil Inalcik, “Imtiyāzāt,” *The Encyclopaedia of Islam*, new edition, 3: 1179-1199.

¹³⁸ Halil Inalcik, *The Ottoman Empire: The Classical Age 1300-1600*, trans. Norman Itzkowitz and Colin Imber, 37.

de. La Forest, and Ibrahim Pasha.¹⁴⁰ Because Ibrahim Pasha carried out these negotiations over the treaty without Sulaymān's consent, however, he was executed.¹⁴¹ This draft treaty, as finally drawn up by de la Forest, bears the imprint of a treaty concluded between two equal parties. This was the sole example of such a "treaty" among "capitulation" (all the others of which were granted as unilaterally conceded '*ahdnāmes*').¹⁴² This draft treaty of capitulation contains conditions and serves the interest of both parties. In substance, it embodies a fair and just spirit, that power is distributed equally among both parties. It is likewise fair in terms of religious matters, since it acknowledges both parties' religious beliefs and legal systems; for example, this is best seen in the cases where it stipulates that if someone of either party commits a violation, he will be persecuted in accordance with his own judicial system and then duly punished. It granted merchants the freedom to advertise their merchandise with only limited restrictions. This treaty set forth the opportunities for both parties to participate in the exchange economic goods. Both parties benefited from the revenues that were derived as a result of this treaty. As well, to a certain degree, it allowed both cultures to learn about each other and undoubtedly contributed to a better understanding between the Ottoman Empire and the European powers.¹⁴³

In the long run, there were both positive and negative results of this treaty that affected the Empire itself. For once it opened its markets to Europe, the Ottoman Empire gradually lost its significance and political impact over the years especially during the reign

¹³⁹ Ibid.

¹⁴⁰ Ibid., 137; Halil Inalcik, "Imtiyāzāt," *The Encyclopaedia of Islam*, new edition, 3: 1179-1199.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Halil Inalcik, "Imtiyāzāt," *The Encyclopaedia of Islam*, new edition, 3: 1179-1199; see below, appendix (B) regarding this matter.

of Safim III (ca. 1798). The Ottoman Empire gradually slipped into a decline, until the Empire itself was abolished and became a republic in 1924.¹⁴⁴

Concluding remarks:

What is demonstrated in the treaties surveyed above is a pattern of consistency in resolving international disputes and facilitating international contract, despite the specific circumstances in each case. Much of this consistency is owed to the model provided by the treaty of Ḥudaibiyya of 628. Both the letter and the spirit of this agreement informed all subsequent pacts, determining what conditions could be set as well the justifications needed for either agreeing to or breaking them.

Although some of the actual details of the treaties agreed to in the period under study are sketchy in terms of details, they can be seen to fulfill in each case the limits and demands put forward by theorists of Islamic law. Thus, in addition to satisfying the rules on contracts, they also obeyed the prime directive of *maṣlaḥa*, i.e., that whatever is agreed to in a treaty must be in the best interests of the Muslim community. Much of the discussion by contemporary and later critics of individual treaties can be seen in fact to revolved around this issue, and most of reaction is positive – an indication in itself that these documents conformed to legal precedent.

The different attitudes on the part of Muslim and non-Muslim states towards treaties during this period are illustrated by almost casual violations of agreements by the Byzantines and other European powers, and the carefully justified responses by the various Muslim rulers, who took pains to consult experts in Islamic law before making

¹⁴⁴ Halil Inalcik, "İmtiyāzāt," *The Encyclopaedia of Islam*, new edition, 3: 1179-1199.

decisions of such legal import. Of course, the Muslim sources consulted do take pains to outline these justifications, but one cannot imagine them approving a decision based on utilitarian considerations – a common enough motive for treaty breaking in European history.

Conclusion:

The evolution of *'ilm al-siyar* owes much to the work of prominent jurists beginning in the second half of the second century Hijra, in particular those of the Ḥanafī school, among whom Abū Ḥasan al-Shaybānī was the outstanding contributor. Shaybānī's era coincided with the period of *tadwīn al-fiqh* (codification of jurisprudence), which saw the appearance of treatises that provided guidance to later jurists. In addition, he was among the leading jurists to combine the approaches of both the Medina and Kufa schools, especially in the spheres of *ḥadīth* and *ra'y*.

Shaybānī was also the first jurist to incorporate *'ilm al-siyar* as a branch of *fiqh*, since the roots of the former are derived from and based on revelation. Among the characteristics of *siyar* is its stability as well as flexibility in dealing with new developments that confront Muslims. As a part of *fiqh*, *siyar* has often been employed in order to deal with significant issues, such as the conduct of Muslims and their relations with non-Muslims, with the *dār al-Islām* and *dār al-ḥarb*. It ensures that the relations between the two *dārs* (or between Muslim and non-Muslim powers) are not solely based on war or peace, but on the principle that *da'wā* (conveying the message of Islam) be given prime consideration. For Shaybānī these relations determined acceptance or rejection of *da'wā*, or submission to it.

Siyar also determines the status of the *ahl al-dhimma* as part of *dār al-Islām* under the terms of an everlasting *amān*, even though the agreement stops short of bestowing Muslim identity and full membership in the Muslim community on the *dhimmī*. On the other hand, *dhimmīs* are granted full rights, such as the right to practice their own faith freely, and full respect, honor and protection. At the same time, certain obligations were required of them, such as payment of *jizya*. By contrast, the *musta'min* who resides within *dār al-Islām*

on a temporary basis do not enjoy the status of *dhimmī*. Their rights and obligations are based on agreements that most of the time come under the purview of Islamic law, such as business transactions, or commercial law, etc., but even these are extremely fair. Criminal acts by the by *musta'min* are deferred, since they are under the temporary agreement or *amān*, as long as the *'aqd* is valid. And even if the *musta'min* status of an individual should expire, Muslims are urged to assist them should they need additional time to fulfill their obligations within *dār al-Islām*.

With regard to the *mu'āhadāt* between Muslims and non-Muslims, works on *siyar* (and in particular those of Shaybānī) devote much attention to the problem of their conclusion, duration, validity, conditions and whatever might render them void. What makes a treaty, or *mu'āhada*, valid according to *siyar* is the consideration of the *maṣlaḥa* (interest) of *dār al-Islām* and the nature of its relations with *dār al-ḥarb*. The most noticeable issue is the emphasis on honoring and fulfilling the conditions of the *mu'āhada* and the warning against disgrace, treachery and oppression. Moreover, in the event that hostilities take place between Muslims and non-Muslims, Muslims must always observe the pronouncements and conduct of the Prophet in his battles, meaning that they have to follow his example and thus should not be the first to open hostilities. In keeping with this principle, fighting should be considered as a last resort, especially when *jizya* can be imposed in order to avoid bloodshed or continued hostilities. Every effort must be made by the commanders of the opposing parties to reach an arrangement or agreement that leads to a temporary cessation of hostilities, an armistice, a cease-fire, covenant or pledge.

All of the post-Ḥudaibiyya treaties examined in the previous chapters, namely the treaties concluded during the reigns of 'Abd al-Malik ibn Marwān, Hārūn al-Rashīd, Malik

al-Kāmil and Sulaymān the Magnificent, were drawn up in consultation with jurists. Their legal opinions were vital to these caliphs, who were bound to follow the commands of the Shari'a and Islamic tradition. Without seeking legal advice regarding their conduct, their legitimacy as rulers would have been in question. Therefore, as long as Muslim leaders followed Islamic teachings along with the consultation and support of jurists, their conduct could be regarded as valid. The consensus of scholars during the time-period of each ruler was generally in agreement with the need for Muslims to maintain peaceful relations with their fellow human beings, including non-Muslim communities. As long as relations between Muslims and non-Muslims favour the respective interests of both parties, they should be cherished, honored and followed in this world. This lesson from the past can still contribute to improving relations between nation states, whether they are Muslim or non-Muslim.

Part of my motivation in undertaking this study was my own concern that good relations between individuals and nation states are no longer an important factor in our daily lives or considerations. For this reason the study of the past can certainly have an impact on the future. Human beings, who are capable of making war and threatening one another, are no less capable of producing a better life for themselves and future generations. Furthermore, treaties based on mutual respect and understanding, and conducted in a correct way, are the kind that need to be followed and learned from the most. This has special relevance, especially when we are witnessing such tragic events in the Middle East and elsewhere. Peace is what this world needs most, not technological and military advancement. This is the essential message of the Qur'an and the Prophet's teaching which seeks to provide a better environment for all mankind. There is ample evidence of this in Muslim scripture, which promises rewards if one obeys the command to seek peace and create an environment

free of injustice and threats, as well as hostilities. Relations between Muslims and non-Muslims should be based on peaceful co-existence and genuine peace, not war, for the general benefit of society at large. A state of genuine, peaceful co-existence creates prosperity and productive environments for all, whether Muslims or non-Muslims. As is stated in the Qur'ān:

If anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land-it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind.¹⁴⁵

The peaceful agreements concluded in the early period of Islam, such as the treaty of Ḥudaibiyya, accomplished many of these goals. Therefore, study of their genesis and content can shed considerable light on what is lacking in the present day. The efforts and energy of both leaders and ordinary people should be concentrated on creating an environment where peaceful agreements can lead to positive development, whereas war can only result in disaster. The difficulties of achieving genuine peace in the present day among nation states or the result of conditions in the past that led to many hardships and did not take into account what damage they caused. Therefore, genuine peace is the assurance that is needed most in order to overcome all of these difficulties and obstacles in today's world.

The nature of Muslim - non-Muslim relations can not however be defined solely as based on the circumstances of peace or war, since the types of relationship that Muslims have with others depend on the conditions and status of non-Muslims and their reactions to Islam. Since the essential purpose of Islamic preaching is to introduce Islam to non-Muslims free of any compulsion, it is up to the non-Muslims to accept or reject the faith. Only if the non-Muslim is determined to reject Islam and at the same time demonstrate a hostile

attitude towards Islam will the relations be based on retaliation and the outcome of that retaliation will determine the norm of the subsequent relations.

The Islamic treaties concluded between Muslims and non-Muslims were meant to exemplify the principles of fairness, justice and protection. Ever since the time when the Islamic state was in a position of power and non-Muslims were obliged to demand *amān* from Muslims, these *amāns* were granted without setting any precondition that the non-Muslims had to change their religion. Muslims were obligated to provide a peaceful environment for the non-Muslims whether *musta'min* or *ahl al-dhimma*, in terms of their lives, belongings and religious practices. Treaties in Islam were one of the most important instruments to establish such relations with non-Muslims. This was in fact the early practice of the Prophet, whose treaties with non-Muslims were implemented, honored and respected in all of their conditions, without any betrayal, deceit or violation. Concluding treaties between Muslims and non-Muslims thus became a common practice throughout Islamic history. And while it is true that *maṣlaḥa* (interest) was never far from the minds of Muslims who concluding their treaties with non-Muslims, this was achieved without any deception as it was addressed and made known to the other party of the treaty through the negotiation process. This was common practice among Muslim leaders and representatives of Islamic community who strove to serve the interests of Islam first in addition to safeguarding the well being of Muslims in general.

The Muslim scholars responsible for the evolution of the Islamic legal system, such as Shaybāni, lived mostly during the 'Abbasid period. It is commonly accepted among modern scholars that this was the golden age of all the fields of Islamic science. As seen in

¹⁴⁵ Q. 5: 32.

the works of the scholars from this period consulted throughout this study, the sources of Islamic jurisprudence and rulings (*ahkām*) were the essential elements from which they derived their opinions regarding any given matter, despite the error of some. This is not because they intended to introduce restrictions; rather they searched for a solution to any giving problem by exercising *ijtihād*. Shaybānī, the master architect of the branch of *siyar* (Muslim conduct of public law), along with other scholars such as al-Awzā'ī, al-Thawarī and Fazārī, was devoted to illustrating all of the matters necessary to establishing sound relations with non-Muslims, such as *dār al-Islām* and *dār al-ḥarb*. The field of *siyar* encompasses such agreements as *ahl al-dhimma*, *'aqd al-dhimma*, *amān*, *musta'min*, *ṣulḥ*, *muwāda'a*, *dār al-Islām*, *dār al-ḥarb* and *mu'āhada*, each of which contains regulations on the validity, duration and violation of conditions in conformity with its purposes. At the core of all these elements is the relation between *dār al-Islām* and *dār al-ḥarb*. Essential to the success of the above types of treaties was loyalty to the *'ahd* and avoidance of betrayal, treachery and oppression.

Islamic literature on treaties contains much material that can contribute to improving the relations among nations, as well as being useful in avoiding bloodshed, hatred and mistrust among present-day nation states. Modern international law, which evolved largely in the sixteenth century under the guiding hand of Grotius, known as the father of international law, was a law developed in suited to Christian nations.¹⁴⁶ Many modern non-Muslim scholars, such as Khadduri, Krousa and Boregitshal, admit on the roots of modern international that many elements of the latter system were derived from the works of

¹⁴⁶ Majid Khadduri, *War and Peace in the Law of Islam*, 276.

Muslim jurists, in particular, the *Siyar* of Shaybānī. They even agree that Shaybānī deserves the title of the “father” of modern public International law.¹⁴⁷

In closing, it may be useful to recall that, since ancient times, nations have employed contracts known as treaties for a variety of purposes, and Islam is no exception. Treaties are an essential aspect of Islamic international law, for they help Muslim nations to regulate the many different aspects of their relations with non-Muslim states. Since an Islamic nation is a part of the world community, this entails maintaining productive contracts with other members of the international community. Muslim jurists active in the field of *siyar* realize that evidence from both the Qur’ān and the Sunna of the Prophet favored co-existence and peaceful relations with non-Muslims were of prime importance in their texts; hence, as we have seen in this study of the historical evolution of treaties, Muslims were commanded by the sacred text to adhere to all treaty pledges. According to the Islamic sources that were consulted for this study, furthermore, Muslim nations observed all their treaties in full, unless the other party had first broken a pledge.

Early Muslim scholars and jurists set the pattern for later jurists and rulers¹⁴⁸ to follow, stipulating the conditions that are needed to conclude any type of treaty with non-Muslims. The consensus of Muslim jurists throughout Islamic history was that the Ḥudaibīyya treaty should be seen as the underlying model for all latter treaties. In order for a treaty to be finalized, it has to pass through certain stages, beginning with the determination

¹⁴⁷ See Marcel A. Boisard, “On the Probable Influence of Islam on Western Public and International Law,” *International Journal of Middle Eastern Studies*, (1980) 11: 429-450, and *Humanism in Islam*, 149; D. de Santillana, *Law and Society in the Legacy of Islam*, eds., Thomas Arnold and Alfred Guillaume, 310; Muhammad Ṭal ‘aat Ghunaymī, *The Muslim Conception of International Law and the Western Approach*, 85; Hans Kruse, “The Foundation of Islamic International Jurisprudence,” *Journal of the Pakistan Historical Society*, 1955: 3: 231 and “The Islamic Doctrine of International Treaties,” *Islamic Quarterly* (1954) 1: 152-158; Muḥammad Ḥamidullāh, *The Emergence of Islam*, 105-107.

¹⁴⁸ See Wael B. Hallaq, *A History of Islamic Legal Theory: An Introduction to Sunnī Uṣūl al-Figh*, 9.

by one of two (or more) parties involved in a dispute (or a related matter) to pursue a treaty. Once they have agreed to talk then the process of determination of the conditions of that treaty will be the subject of their negotiations. If they are able to agree on conditions, then the two parties proceed to the actual drafting of that treaty. Finally, signatures, the date and the name of witnesses should be affixed, after which both parties must strive to put the treaty into practice. As was indicated earlier, the various processes and stages of a treaty process must be pursued in a spirit of reconciliation and, if any treaty is based on compulsion or defect, the treaty will be rendered void.

Muslim jurists stated that the core of making a treaty is a question of honor and the fulfillment of all of the elements within the treaty to their fullest is imperative. This is the attitude that is needed in today's world, since many recent treaties lack any balance between the parties involved; indeed, the more powerful party will determine the conditions and the role for the other party. Therefore, the treaties concluded in the modern world should be based on the Islamic model which honors, respects and fulfills the interests of both parties involved. Modern international law can learn much from the Islamic model, which would improve the relations between treaty-making states in the world today.

The Qur'ān, as always, is the ultimate reference that Muslims look to for guidance. Therefore, let the final words in this study be the Qur'anic passages that embody the core purpose of this study:

But if they incline to peace, you also incline to it, and [put your] trust in Allah.¹⁴⁹

¹⁴⁹ Q. 8: 61.

I hope this study contributes to a new understanding of the conduct of treaties in early Islamic history and that it may shed some light on the nature of treaties among nation-states in the contemporary period. It is to be hoped that it will lead to deeper reflection on the ongoing disputes and hostilities in many parts of this world; especially the Middle East, and in particular the Palestinian-Israeli dispute.

Appendix (A)
The Treaty of Ḥudaybiya¹⁵⁰

1. With Thy Name Oh God!
2. This is what was agreed upon between Muḥammad, son of ‘Abdullah and Suhail, son of ‘Amr.
3. They both agreed to put down fighting on the part of the people for ten years, during which period the people were to enjoy peace and refrain from fighting with each other
4. And whereas whoever of the companions of the Muḥammad, comes to Mecca on Hajj or ‘Umra (pilgrimage), or in quest of the bounty of God, (i.e. commerce) en route to Yeman or Tāif, such shall be in security regarding his person and property. And whoever comes to Medina, from among the Quraysh, en route to Syria or Iraq seeking bounty of God, such shall be in security regarding his person and property.
5. And whereas whoever comes to Muḥammad from the Quraysh without the permission of his guardian, he (i.e. the Prophet) will hand him over to them; and whoever comes to the Quraysh from amongst those who are with Muḥammad, they will not hand him over to him.
6. And that between us is a tied-up breast (i.e. bound to fulfill the terms), and that there shall be no secret help violating neutrality and no acting unfaithfully.
7. And that whoever likes to enter the league of Muḥammad and his alliance, may enter into it; and those whose likes to enter the league of Quraysh and their alliance, may enter it. And thereupon sparge the tribe of Khuzā’ah and said: We are in the league with Muḥammad and his alliance; and up sprang the tribe of Banu Bakr and said: We are in the league with the Quraysh and their alliance.
8. And that thou (Muḥammad) shall return from us (Quraysh) in this year and enter not in our midst; and that when it is the coming year, we shall go out from thee and thou shall enter with thy companions and stay three nights, with thee being the weapon of the rider: having swords at the side, thou shall not enter with what is other than them (swords).
9. And that the animals of sacrifice (brought by thee) will be slaughtered where we found them (i.e. in Ḥudaybiya) and thou shall not conduct them to us (in Mecca). (Probably seal of Muḥammad and seal of Suhail).
10. Witnesses of the Peace (*Ṣulh*).
Muslims side: Abu Bakr, ‘Umar, ‘Abd al-Raḥman ibn ‘Awf, ‘Abdullah ibn Suhail ibn ‘Amr, Sa’d ibn Abi Waqqās, Maḥmuod ibn Maslama, etc.
Quraysh side: Mikrās ibn Ḥafs and Ḥuwaitib (both clansmen of Suhails)

Scribe: ‘Alī ibn Abi Talib.

¹⁵⁰ The entire text of the treaty was derived from and its English translation of the ten articles of the treaty cited directly from both works of Muḥammad Ḥamīdullāh, *Majmū’at al-Wathāiq al-Siyāsiyya*, 57 and the *Muslim Conduct of State*, 265-268.

Appendix (B)

DRAFT TREATY OF AMINITY AND COMMERCE: THE OTTOMAN EMPIRE AND FRANCE

February 1535¹⁵¹

- I. They have negotiated, made, and concluded a valid sure peace and sincere concord in the name of the above Grand Signior and the King of France during their lives and for the kingdoms, dominions, provinces, castles, cities, ports, harbors, seas, islands, and all other places they hold and possess at present or may possess in the future, so that all subjects and tributaries of said sovereigns who wish may freely and safely, with their belongings and men, navigate on armed or unarmed ships, travel on land, reside, remain in and return to the ports, cities, and all other places in their respective countries for their trade , and the like shall be done for their merchandise.
- II. Likewise, the said subjects and tributaries of the said monarchs shall, respectively be able to buy, sell, exchange, move, and transport by sea and land from one country to the other all kinds of merchandise not prohibited, by paying only the ordinary customs and ancient dues and taxes, to wit, the Turks, in the dominions of the King, shall pay the same as Frenchmen, and the said Frenchmen in the dominions of the Grand Signior shall pay the same as the Turks, without being obliged to pay any other new tribute, impost, or storage due.
- III. Likewise, whenever the King shall send to Constantinople or Pera or other places of this Empire a bailiff—just as at the present he has a consul at Alexandria—the said bailiff and consul shall be received and maintained in proper authority so that each one of them may in his locality, and without being hindered by any judge, cadı, soubashi, or other, according to his faith and law, hear, judge, and determine all causes, suits, and differences, both civil and criminal, which might arise between merchants and other subjects of the King. Only in case the orders of the said bailiff and consuls should not be obeyed and that in order to have them executed they should appeal to the soubashi or other officer of the Grand Signior, the said soubashis or other officers shall lend them the necessary aid and compulsory power. But the cadı or other officers of the Grand Signior may not try any difference between the merchants and the subjects of the king, even if the said merchants should request it, and if the perchance the said cadıs should hear a case their judgement shall be null and void.
- IV. Likewise, in a civil case, against Turks, tributaries, or other subjects of the Grand Signior, the merchants and subjects of the King can not be summoned, molested, or tried unless the said Turks, tributaries, and subjects of the Grand Signior produce a writing from the hand of the opponent, or a "heudjet" (document) from the cadı, bailiff, or consul, outside of which writing or heudjet no other testimony of a Turk, tributary, or other person shall be valid nor received in any part of the States and dominions of the

¹⁵¹ The complete text of this appendix (B) was adopted from the work of J. C. Hurewitz, *The Middle East and North Africa World Politics: A Documentary Record*, second edition, I, European expansion, 1535-1914 (New Haven and London: Yale University Press, 1975) 3-5; A substance of this particular treaty could be found in Halil İnalcık, "İmtiyâzât," *The Encyclopaedia of Islam*, new edition, 3: 1179-1199, where detail sources for the documents of this particular treaty can be found in the bibliography of İnalcık article.

Grand Signior, and the cadis, soubashis, or other persons may not hear or try the said subjects of the King without the presence of their dragoman.

- V. Likewise, in criminal cases the said merchants and other subjects of the King may not be called before the cadi or other officers of the Grand Signior by Turks, tributaries, or others, and said cadis may not try them, but must immediately refer them to the Sublime Porte (the official residence of the Grand Vizier) and in the absence of the Porte, to the principal lieutenant of the Grand Signior, where the testimony of the subject of the King and of the tributary of the Grand Signior shall be valid one against the other.
- VI. Likewise, as regards religion, it has been expressly promised, concluded, and agreed that the said merchants, their agents, and servants, and all other subjects of the King shall never be molested nor tried by the cadis, sandjak-beys, or soubashis, or any person but the Sublime Porte only, and they can not be made or regarded as Turks (Mohammedans) unless they themselves desire it and profess it openly and without violence. They shall have the right to practice their own religion.
- VII. Likewise, when one or more subjects of the King, having made a contract with a subject of the Grand Signior, taken merchandise, or incurred debts, afterwards depart from the State of the Grand Signior without giving satisfaction, [neither] the bailiff, consul, relatives, factor, nor any other subject of the King shall for this reason be in any way coerced or molested, nor shall the King be held responsible. Only His Majesty shall cause full justice to be done to the plaintiff as regards the person and goods of the debtor if they be found within his Kingdom and dominions.
- VIII. Likewise, the said merchants, their agents, and servants, and other subjects of the King, their ships, boats, or other equipments, artillery, ammunition, and mariners shall not be seized, coerced, or used by the Grand Signior or other person against their pleasure and desire for any service or duty either on sea or land.
- IX. Likewise, all merchants and subjects of the King in all parts of the Empire of the Grand Signior shall be allowed to freely dispose of their property by testament, and having died either a natural or violent death, all their effects--money as well as other goods--shall be distributed according to the testament; if they die intestate, the effects shall be turned over to the heir or his representative by and with the authority of the bailiff or consul at places where there may be one or the other, and where there is neither bailiff nor consul the said effects shall be protected by the cadi of the locality under authority of the Grand Signior, having first of all made an inventory in the presence of witnesses; but where said bailiff or consul are present no cadi, beitulmaldji, or other person shall take possession of the effects, and if they should be in the hands of one of them and the bailiff or consul should demand them [here a line is apparently missing in the text] they must at once and without contradiction be entirely turned over to the said bailiff or consul or their representative, to be later handed to whom they belong.
- X. Likewise as soon as the present treaty shall have been ratified by the Grand Signior and the King, all persons and subjects shall be set free and liberated who may, respectively, be bought slaves, prisoners of war, or otherwise detained, both in the hands of the said sovereigns or of their subjects, galleys, ships, and all other places and countries owing allegiance to the said sovereigns, on the demand and statement of the ambassador,

bailiff, or consul of the King, or persons delegated by them; and if any of the said slaves should have changed his faith and religion he shall nevertheless be free. And, especially, henceforth reciprocally neither the Grand Signior nor the King, their captains, soldiers, tributary subjects, or mercenaries, shall or may in any manner, on sea or land, take, buy, sell, or detain as a slave any prisoner of war. But if a pirate or other person of the country of one of the said sovereigns should attempt to capture or destroy the goods or persons owing allegiance to the other sovereign, the sovereign of the country where the malefactor is found must and should be obliged to punish him as a disturber of the peace and to make an example to others, and also to return to the injured party whatever may be found to have been taken from him by the malefactor. If the said malefactor should escape without being caught and punished at once, he shall be banished from his country with his accomplices, and all their goods shall be confiscated by the sovereign, who shall also cause the malefactor and his companions to be punished if they should ever be in his power; and out of the said confiscation shall be paid the damages, and the injured party shall to that end have recourse to the protectors of the present peace, who shall be the Serasker on the part of the Sultan, and the "grand-maitre" of France on the part of the King.

- XI. Likewise when the navies of the said Grand Signior and King, respectively, meet vessels of the subjects of the other, they shall be obliged to lower the sails and hoist the flags of their ruler, in order to be recognised thereby and not be detained or otherwise molested by said navy or any unit thereof; but if any wrong or damage be inflicted upon them, the ruler to whom the navy belongs shall be obliged to make immediate reparation. When private ships of the subjects of said rulers meet they shall each hoist the flag of its ruler, salute each other by firing one gun, and reply truthfully when asked who they are. But after having spoken and recognised each other one shall not forcibly enter or visit the other, nor hinder it under any pretext whatsoever.
- XII. Likewise, when the vessel belonging to subjects of the King arrives, by accident or otherwise, in the ports or on the coasts of the Grand Signior, it shall receive food and other necessaries against a reasonable payment, without being obliged to discharge and pay duties, and it shall be allowed to go wherever it pleases; and having come to Constantinople, it shall be ready to leave after having obtained and paid for the heudjet (permit) of the emin (official), and having been searched and visited said emin, they must not be visited other place, except the castles of the straits Gallipoli, without, however, paying anything there or elsewhere, in the name of the Grand Signior or his officers, for the departure.
- XIII. . Likewise if any ship belonging to the subjects of one of the said sovereigns should, by accident or otherwise, suffer shipwreck within the dominions and the jurisdiction of the other sovereign all persons escaping from such danger shall remain free and be allowed to collect all their belongings; if all should have died in the shipwreck the goods which shall have been saved shall be consigned to the said bailiff, or consul, or their representative, to be returned to whom they may belong, and the captain general of the sea, the sandjak-bey, soubashi, cadî, or other officer or subject of the Grand Signior shall not, under penalty of punishment, take or claim anything, and they must give facilities and the to those who shall be charged with the recovery of the goods.
- XIV.. Likewise if a subject of the Grand Singnior should lose a slave who has escaped, such subject, claiming that the slave had lived and served on a ship or in a house of a subject

of the King, can not force the subject of the King, can not force the subject of the King to do anything but search his ship or house, and if the slave should be found there, the person who received him should be duly punished by his bailiff or consul and the slave returned to his master. If the slave was neither in their ship nor in their house, said subjects of the King shall not and cannot be molested in this connection.

- XV. No subject of the King who shall not have resided for 10 full continuous years in the dominions of the Grand Signior shall can be forced to pay tribute. Kharadj, Avari, Khassabiye, nor to guard neighbouring land, storehouses of the Grand Signior, work in arsenal, nor perform any other forced service. In the dominions of the King reciprocal rights shall be granted to the subjects of the Grand Signior.

The king of France has proposed that His Holiness the Pope, the King of England, his brother and perpetual ally, and the King of Scotland should be entitled to adhere to his treaty of peace, if they please, on condition that when desirous of doing so they shall within eight months from date send their ratification to the Grand Signior and obtain his.

- XVI. Likewise, the Grand Signior and the King of France shall within six months exchanged the confirmation of the present treaty in valid and due form, with the promise to observe it, and the order to their lieutenants, judges, officers, and subjects to observe it without bad faith and in all its points; and in order that nobody should plead ignorance, this treaty, after the confirmations have been exchanged, shall be published at Constantinople, Alexandria, Marseille, Narbonne, and other principal cities and ports of jurisdiction, kingdoms, and states of the said sovereigns.

Glossary

Aḥkāṁ (sing. <i>ḥukm</i>):	rulings, regulations, legislation
Ahl al-Dhimma:	non-Muslim subjects of the Islamic state
Ahl al-ḥarb:	subjects of enemy territory
Ahl al-Kitāb:	non-Muslims who possess a scripture
Al-mithl bi al-mithl:	quid pro quo
Amān:	pledge of security, safe conduct, peaceful relationship, temporary safety
‘Aqd:	contract
‘Aqd al-amān:	pact of safeguard
Bāṭil:	void; invalid
Baghī (pl. Bughāt):	dissenter, rebel
Bayt al-māl:	public treasury
Ḍamān:	responsibility; liability; suretyship
Dār:	house; abode; territory
Dār al- ‘Ahd:	territory in covenant with Islam
Dār al-ḥarb:	territory of war (enemy territory)
Dār al-Islām:	territory of Islam
Dār al-ṣulḥ:	territory at peace with Islam
Da‘wa:	invitation to adapt to Islam; claim
Dhimma:	protection (care as a duty of conscience obligation)
Dhimmi:	non-Muslim who are protected by a treaty of surrender
Dirham:	silver unit of the Arab monetary system during most of the Islamic Middle Ages
Diya:	financial compensation (cash payment or some form or transferred wealth) for wounds or loss of life, blood money for voluntary or involuntary homicide which can be paid by a convict to the relative of the victim as satisfaction
Fatwā:	legal opinion by a Muftī or <i>mujtahid</i> pronounced on specific points often as a result of petition or inquiry

Fay':	booty, spoil of war acquired from the enemy without actual fighting
Fidya:	ransom payment of cash for relinquishing of entitlement to debt, e.g. a wife's giving up offer dowry in exchanged of divorce
Ghāzi:	warrior
Ghanīma:	booty, spoil of war
Ghazwa:	raiding, invasion, military expedient or campaign
Ḥadd (pl. ḥudūd):	fixed penalties for certain crimes
Ḥaqq:	right and obligation
'Ibādāt:	religious observance
Ijmā':	general consensus in the matters of Shari'a laws of the people of the first three successive generations after the death of the Prophet, it is the third source in Islamic jurisprudence
Ijtihād:	exercise of legal reasoning (<i>ra'y</i>) for the derivation of an independent judgment (<i>ḥukm</i>)
Ikhtilāf:	differences of opinion among jurists
'illa:	effective reasoning employed in the exercise of <i>ra'y</i> (legal opinion) in the four schools of thought in Islamic jurisprudence in various forms
Imām:	leader, caliph, supreme authority of the state
Imān:	faith, beliefs
Isnād:	ascription, racing the chain of authorities in a <i>ḥadīth</i>
Istajāraka:	asks or seeks your protection or refuge
Ista'manaka:	asks or seeks your pledge of safety, to seek assurance or protection
Jizya:	poll tax
Kāfir:	infidels, unbeliever
Kātib 'Adl:	notary public
Kharāj:	land tax levied on lands deemed to be owned by the state but left in the possession of individuals
Khiyāna:	embezzlement, treason, betrayal
Khums:	a twenty- percent levy imposed on certain types on wealth
Maghāzī:	conduct of battles

Maṣlaḥa:	an element of public interest which permits deviation of the applicable legal principles; what is beneficial or expedient
Maṣlaḥa al-Mursala:	not explicitly supported by the text (<i>naṣṣ</i>)
Mīthāq:	covenant
Mu‘āhada:	treaty, conclusion of truce
Mu‘āmalāt:	mutual relations (of Muslims with other nations)
Muftī:	jurisconsult, learned person appointed to give authoritative answers on questions of law and casuistry
Muhādana:	peace agreement
Muḥaddith:	(pl. <i>muḥaddithūn</i>), <i>ḥadīth</i> collectors
Murtadd:	apostate
Muqāḍāt:	institution of legal proceedings (against)
Mushrik:	(pl. <i>mushrikūn</i>) polytheist, unbeliever
Musta‘min:	an enemy alien who has been given (<i>amān</i>), the promise of security or safe conduct given to an enemy or alien by Muslims
Muwāda‘a:	peaceful treaty and contracts to stop the hostilities
Naṣṣ:	text (Qur’ān), also used for texts (wordings) of <i>ḥadīth</i> and <i>fiqh</i>
Qāḍī:	judge
Qāṭi‘:	certain
Qisās:	penalty, punishment
Qitāl:	fighting, battle
Qiyās:	doctrine of systematic reasoning which seeks the ‘illa (effective reasoning) in a given judgment (<i>ḥukm</i>) on the basis of the Qur’ān, Sunna, <i>ijmā‘</i> and <i>qiyās</i>
Rahn:	security, hostage
Rasūl:	emissary, messenger, apostle
Sharī‘a:	laws in Islamic jurisprudence based on four sources, the Qur’ān, Sunna, <i>ijmā‘</i> and <i>qiyās</i>
Sharṭ (pl. <i>shurūṭ</i>):	stipulations in contract or treaty or in a given judgment (<i>ḥukm</i>)
Sharṭ ṣaḥīḥ:	valid condition

Sharṭ fāsid:	irregular condition
Sharṭ bāṭil:	invalid or null condition
Sīra (pl. <i>siyar</i>):	biography; course; conduct of the state
Siyāsa al-shar‘iyya:	administrative state organizations and public institutions
Ṣulḥ:	peace treaty, agreement
Sunna:	custom of precedent based on the Prophet’s acts and sayings
Ṭabaqāt:	biographies of jurists arranged by “classes” or generations, subject of special works
Ta’wīl:	individual interpretation of a religious or legal doctrine
‘Ushr:	tithe, tax levied on lands held in absolute ownership duties
Wadī‘a:	deposit
Wathīqa	(pl. <i>wathā’iq</i>), document
Zakāt:	legal alms

Bibliography

A. Primary Sources:

- Abū Barakāt, Majd al-Dīn (d. 625/1228). *Al-Muḥarrar fī al-Fiqh ‘alā Madhhab Aḥmad ibn Ḥanbal*. With *al-Nukat wa Fawā'id al-Sunna ‘alā Mushkil al-Muḥarrar* of Shams al-Dīn Muḥammad Ibn Mifliḥ al-Maqdisī (d. 762). Eds. Muḥammad Ḥasan Ismā'īl and Aḥmad Muhrawwī. Riyadh: Maktabat al-Ma'ārif, 1985.
- Abū al-Nu'aym, Aḥmad ibn 'Abdullāh ibn Aṣḥabānī (d. 430/1038). *Ḥilyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'*. Beirut: Dār al-Kitāb al-Ārabī, 1400/1979.
- Abū Su'ūd, Muḥammad ibn Muḥammad al-'Imādī al-Ḥanafī (d. 982/1574-5). *Irshād al-'Aql al-Salīm ‘alā Mazāyā al-Kitāb al-Ḥakīm*. Beirut: Dār al-Fikr, 1400/1979.
- Abū 'Ubayd, al-Qāsim ibn Sallām (d. 224/837). *Al-Amwāl*. Ed. Muḥammad Khālil Harās. Doḥa: al-Shaykh 'Abdallah al-Anṣārī, 1987.
- Abū Ya'lā, Muḥammad ibn al-Ḥusayn ibn Muḥammad al-Farrā' al-Baghdādī (d. 458/1066). *Al-Aḥkām al-Sultāniyya*. Ed. Muḥammad Ḥāmid al-Fiqlī. Cairo: Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī, 1356/1937.
- _____. *Al-Mu'tamad fī Uṣūl al-Dīn*. Ed. Wadī' Zaydān Ḥaddād. Beirut: Dār al-Mashriq, 1394/1974.
- _____. *Rusul al-Mulūk wa man Yaṣluḥ lil-Risāla wa al-Sifāra*. Ed. Ṣalāḥ ibn al-Dīn al-Munajjid. Cairo: Maṭba'at Lujnat al-Ta'līf wa al-Tarjama wal Nashr, 1366/1947.
- Abū Yūsuf, Ya'qūb ibn Ibrāhīm ibn Ḥabīb al-Anṣārī (d. 182/798-9). *Al-Āthār*. Ed. Abū al-Wafā' al-Afghānī. Cairo: Dār al-Kutub al-'Ilmiyya, 1355/1936.
- _____. *Ikhtilāf Abī Ḥanīfa wa Ibn Abī Layla*. Ed. Abū al-Wafā' al-Afghānī. Cairo: Maṭba'at al-Wafā', 1358/1939.
- _____. *Al-Kharāj*. Medina: al-Maṭba'a al-Salafiyya, 1392/1972.
- _____. *Al-Radd ‘alā Siyar al-Awzā'i*. Ed. Abū al-Wafā' al-Afghānī. Cairo: Lajnat Ihya' al-Ma'ārif al-Nu'māniyya, 1357/1938.
- 'Alī ibn Abū Ṭālib Caliph (d. 61/661). *Nahj al-Balāgha*. Ed. Muḥammad 'Abduh. Beirut: Dār al-Balgha, 1405/1985.
- Ālūsī al-Kerḫr, Abū al-Faḍl al-Shihāb Maḥmūd Ibn 'Abdullah al-Dīn al-Baghdādī (d. 1270 H.). *Rūḥ al-Ma'ānī fī Tafsīr al-Qur'ān wa al-Sab' al-Mathānī*. Ed. 'Alī Bārī 'Aṭiya. Beirut: Dār al-Kutub al-'Ilmiyya, 1994-1996.
- Āmidī, Sayf al-Dīn Abū al-Ḥasan 'Alī ibn Abū 'Alī (d. 631/1233). *Al-Iḥkām fī Uṣūl al-Aḥkām*. Cairo: Mu'assasat al-Ḥalabī, 1378/1958.

- ‘Arāqī, Zayn al-Dīn Abū al-Faḍl ‘Abd al-Rahīm ibn al-Ḥusayn (d. 806/1404). *Takhrīj Ahādīth Ihyā’ ‘Ulūm al-Dīn*. Along with *Takhrīj al-Zubaydī and al-Subkī*. Riyāḍ: Dār al-‘Āṣima, 1408/1987.
- Aṣḥāḥānī, Shams al-Dīn Abū al-Thana’ Maḥmūd ibn ‘Abd al-Rahmān ibn Aḥmad (d. 749/1349). *Bayān al-Mukhtaṣar Sharḥ Mukhtaṣar ibn al-Ḥājib*. Ed. Muḥammad Muẓaffar Baqā. Mecca: Markaz al-Baḥṭh al-‘Ilmī bi Jāmi‘at Umm al-Qurā, 1406/1985.
- ‘Ayāḍ Ibn Mūsa, Abū al-Faḍl ‘Iyāḍ ibn Mūsa al-Yaḥsubī al-Mālikī (d. 544/1149). *Mashāriq al-Anwār ‘alā Ṣiḥāḥ al-Āthār*. Cairo: Dār al-Turāth, 1977.
- ‘Aynī, Badr al-Dīn Abū Muḥammad Maḥmūd ibn Aḥmad al-Ḥalabī (d. 855/1451). *Al-Bināyya Sharḥ al-Hidāyya*. Beirut: Dār al-Fikr, 1400/1979.
- _____. *‘Umdat al-Qārī’ Sharḥ Ṣaḥīḥ al-Bukhārī*. Beirut: Dār al-Fakr, n.d.
- _____. *Kashf al-Qinā’ ‘an Muḥimmāt al-Asāmī wa al-Kunā’*. Ed. Aḥmad Muḥammad Nimr al-Khaṭīb. Jidda: Markaz al-Nashr al-‘Ilmī, 1994.
- Azharī, Muḥammad ibn Aḥmad (d. 370/980-1). *Al-Zāhir fī Gharīb Alfāz al-Shāfi‘ī*. Ed. Samīḥ Abū Maghlī, Majdī Ālī al-Ash‘arī. Āmman: Dār al-Fikr, 1999.
- Bābartī, Kamal al-Dīn Muḥammad ibn Maḥmūd (d. 786/1384). *Al-‘Ināya ‘alā al-Hidāya*, with the margin of Ibn Humām. *Faṭḥ al-Qadīr, Ḥāshiyat Sa‘dī Chalaḥī*, Qāḍī Zādā. *Natā’ij al-Afkār fī Kashf al-Rumūz wa al-Asrār*. Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1970.
- Ba‘ī, Badr al-Dīn Muḥammad ibn ‘Alī al-Ḥalabī (d. 777/1375). *Mukhtaṣar al-Fatāwā al-Maṣriyya li Ibn Taymiyya*. Ed. ‘Abd al-Majid Saḥīm. Cairo: Maṭba‘at al-Sunna al-Muḥamadiyya, 1368/1948.
- Ba‘ī, Abū ‘Abdallāh Muḥammad Shams al-Dīn ibn Abū al-Fatāḥ al-Ḥanbalī (d. 709/1309). *Al-Muṭṭali’ ‘alā Abwāb al-Muqni’*. Along with *Mu‘jam Alfāz al-Fiqh al-Ḥanbalī* by Muḥammad Bashīr al-Idlibī. Beirut: al-Maktab al-Islāmī, 1981.
- Baghawī, Muḥyī al-Sunna Abū Muḥammad al-Ḥusayn ibn Mas‘ūd al-Farrā’ al-Shāfi‘ī (d. 510/1117). *Ma‘ālim al-Tanzīl*. Eds. Muḥammad al-Nimr, ‘Uthmān Jum‘a Ḍamīriyya, Sulaymān al-Ḥursh. Riyadh: Dār al-Ṭiba, 1414/1993.
- _____. *Maṣābiḥ al-Sunna*. Ed. ‘Abd al-Rahmān Mar‘ashlī. Beirut: Dār al-Ma‘rifa, 1407/1986.
- _____. *Sharḥ al-Sunna*. Ed. Shu‘ayb al-Arna‘ūṭ, Beirut: al-Maktab al-Islāmī, 1403/1982.
- Bahūtī, Manṣūr ibn Yūnis ibn Idrīs (d. 1051/1641-2). *Kashshāf al-Qinā’ ‘ala Matn al-Iqnā’*. Mecca: Maṭba‘at al-Ḥukūmiyya, 1394/1974.
- Bājī, Abū al-Walīd Sulaymān ibn Khalaf ibn Sa‘d ibn Ayyūb al-Andalusī (d. 494/1081). *Al-Muntaqā Sharḥ al-Muwatta’*. Beirut: Dār al-Kitāb al-‘Arabī, 1331/1912.

- _____. *Al-Ta'dīl wa al-Tajrīh li-man Kharraja 'anhu al-Bukhari fi al-Jami' al-Ṣaḥīḥ*. Ed. Aḥmad Labzar. Rabat : al-Mamlakah al-Maghribiyah, Wizarat al-Awqaf waal-Shu'un al-Islāmiyya, 1991.
- Balādhurī, Aḥmad ibn Yahya ibn Jābir (d. 279/892-3). *Futūḥ al-Buldān*. Ed. Ṣalāḥ al-Dīn Munajjid. Beirut: Dār al-Kutub al-'Ilmiyya, 1398/1977.
- Bayḍāwī, Nāṣir al-Dīn Abū al-Khayr 'Abdullah ibn 'Umar al-Shīrāzī (d. 685/1286-7). *Anwār al-Tanzīl wa Asrār al-Ta'wīl*. Beirut: Dār al-Fikr, 1305/1887.
- _____. *Al-Ghāya al-Quṣwā fi Dirāyat al-Fatwā*. Ed. 'Alī Muḥyī al-Dīn al-Qira Daghlī. Dammam [Saudi Arabia]: Dār al-Islāh, 1982.
- Bayhaqī, Abū Bakr Aḥmad ibn al-Ḥusayn ibn 'Alī (d. 458/1066). *Al-Sunan al-Kubrā*. Ed. Muḥammad 'Abd al-Qādir. Beirut: Dār al-Ma'rifa, 1346/1927.
- _____. *Al-Sunan al-Ṣuḡhrā*. Ed. Bahjat Yūsuf Aḥmad Abu al-Ṭayib. Beirut: Dār al-Jil, 1995.
- Bujayramī, Sulaymān ibn 'Umar ibn Muḥammad (d. 1221/1806-7). *Ḥāshiyat al-Bujirimī 'alā al-Minhāj*, Cairo: n.p., 1309/1891.
- Bukhārī, 'Alā' al-Dīn 'Abd al-'Azīz ibn Aḥmad (d. 730/1330). *Kashf al-Asrār 'an Uṣūl Abū al-Ḥasan 'Alī ibn Muḥammad ibn Ḥasan al-Bazdawī*. Ed. Muḥammad al-Mu'taṣim bi-Allah al-Baghdādī. Beirut: Dār al-Kitāb al-'Arabī, 1997.
- Dabūsī, 'Ubaydallah ibn 'Umar ibn 'Isā (d. 430/1038). *Ta'sīs al-Nazar*. Cairo: Nahs Zakāriyya 'Alī Yūsuf, Maṭba'at al-Imām, 1972.
- Dāmād Afandī, Shaykh Zādah 'Abd al-Raḥmān ibn Muḥammad ibn Sulaymān (d. 1078/1667). *Majma' al-Anhur fi Sharḥ Multaqā al-Abḥur*. In the margin of Ḥaṣḥkī. *Durr al-Muntaqā fi Sharḥ al-Multaqā*. Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1986.
- Dardīr, Abū al-Barakāt Aḥmad ibn Muḥammad ibn Aḥmad al-'Adawī al-Mālikī (d. 1201/1786-7). *Al-Sharḥ al-Ṣaḡhīr 'alā Aqrab al-Masā'il*. With the margin of *Ḥāshiyat al-Ṣāwī*. Cairo: Maṭba'at 'Isā al-Ḥalabī, n.d.
- _____. *Al-Sharḥ al-Kabīr 'alā Mukhtaṣar Khalīl*. With *Ḥāshiyat al-Dasūqī*; and *Taqirāt al-Shaykh 'Alīsh*. Cairo: Maṭba'at 'Isā al-Ḥalabī, n.d.
- Dhahabī, Abū 'Abdullah Shams al-Dīn Muḥammad ibn Aḥmad ibn 'Uthmān (d. 748/1347-8). *Al-Muntaqā min Minhāj al-I'tidāl*. Ed. Muḥib al-Dīn Khaṭīb. Cairo: al-Maṭba'a al-Salafiyya, 1374/1954.
- _____. *Siyar A'lām al-Nubalā'*. Ed. Shu'īb al-Arnāuṭ. Beirut: Muassasat al-Risāla, 1402/1981.
- _____. *Tadhkirat al-Ḥuffāz*. Ed. 'Abd al-Raḥmān al-Mu'lamī. Beirut: Dār Iḥyā' al-Turāth, n.d.
- _____. *Tārīkh al-Islām wa Wafīyyāt al-Mashāḥīr wa al-A'lām*. Ed. 'Abd al-Salām Tadmurī. Beirut: Dār al-Kitāb al-'Arabī, 1411/1990.

- Dusūqī, Muḥammad ibn Aḥmad ibn ‘Arafa (d. 1230/1815). *Ḥāshiyyat al-Dasūqī ‘alā Sharḥ al-Kabīr li-Abī al-Barakāt Aḥmad al-Dardīr*. Cairo: Maṭba‘at ‘Issā al-Ḥalabī, 1800.
- Fashnī, Aḥmad ibn Hijāzī Shihāb al-Dīn (d. 978/1570). *Mawāhib al-Ṣamad fī Hall Alfāz al-Zubad*. Ed. ‘Abdullah Ibrāhīm al-Anṣārī. Doḥa: al-Shu‘ūn al-Dīniyya, 1400/1979.
- Fayyūmī, Abū al-‘Abbās Aḥmad ibn Muḥammad al-Muqrī (d. 770/1368). *Al-Miṣbāḥ al-Munīr fī Gharīb Sharḥ al-Kabīr lil Rānī*. Ed. ‘Abd al-‘Adhīm al-Shinnāwī. Beirut: Dār al-Kutub al-‘Ilmiyya, 1978.
- Firūzābādī, Majd al-Dīn Muḥammad ibn Ya‘qūb al-Shīrāzī (d. 817/1414-5). *Baṣā‘ir dhawī al-Tamyīz fī Latā‘if al-Kitāb al-‘Azīz*. Ed. Ālī al-Najār. Cairo: Maṭba‘at al-Nahḍa, 1405/1984.
- _____. *Al-Qāmūs al-Muḥīṭ*. Ed. Ṭāhir Aḥmad al-Zāwī. Beirut: ‘Ālam al-Kutub, 1971.
- Ghazālī, Abū Ḥamīd Muḥammad ibn Muḥammad al-Ṭūsī (d. 505/1111). *Ma‘ārij al-Quds fī Madārij Ma‘rifat al-Nafs*. Ed. Maḥmūd Bijū. Damascus: Dār al-Albāb, 1989.
- _____. *Al-Wajīz fī Madhhab al-Imām al-Shāfi‘i*. Beirut: Dār al-Ma‘rifa, 1399/1978.
- Hājī Khalīfa, Muṣṭafa ibn ‘Abdullah (d. 1067/1656-7). *Kashf al-Zunūn ‘an Asāmī al-Kutub wa al-Funūn*. Baghdād: Maktabat al-Muthnā, n.d.
- Hākim, Abū ‘Abdullah Muḥammad ibn ‘Abdullah al-Naysābūrī (d. 405/1014). *Ma‘rifat ‘Ulūm al-Ḥadīth*. Ed. al-Sayyid Mu‘azzam Ḥusayn. Medina: al-Maktaba al-‘Ilmiyya, 1397/1976.
- Haṣṣkī, ‘Alā’ al-Dīn Muḥammad ibn ‘Alī (d. 1088/1677-8). *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*. With *Ḥāshiyyat Ibn ‘Ābidīn*. Cairo: Dār al-Ṭibā‘a, 1328/1910.
- Haṭṭāb, Abū ‘Abdullah Muḥammad ibn Muḥammad al-Mālikī (d. 954/1547). *Taḥrīr al-Kalām fī Masā’il al-Iltizām*. Beirut: Dār al-Gharb al-Islāmī, 1404/1983.
- Haythamī, Aḥmad ibn Muḥammad ibn Ḥajar al-Makī (d. 974/1547). *Al-Fatāwā al-Kubrā*. With the margin of *Fatāwā al-Ramī* of Shams al-Dīn Muḥammad ibn Aḥmad ibn Ḥamza (d. 1004). N.p.: Maṭba‘at al-Mashhad al-Ḥusīnī, 1392/1972.
- _____. *Tuḥfat al-Muḥtāj Sharḥ al-Minhāj*. Beirut: Dār Ṣādir, n.d.
- Haythamī, Nūr al-Dīn ‘Alī ibn Abū Bakr (d. 807/1405). *Mawārid al-Zamān ‘alā Mawārid Sawā’id Ibn Hibbān* (d. 965). Ed. Shu‘ayb al-Arnaūṭ, Muḥammad Ridwān ‘Irqūsī. Beirut: Mu’assasat al-Risāla, 1993.
- Ḥuṣnī, Taqī al-Dīn Abū Bakr ibn Muḥammad al-Ḥusaynī (d. 829/1427). *Kifāyat al-Akhyār fī Hall Ghāyat al-Ikhtiṣār*. Ed. ‘Abdullah Ibrāhīm al-Anṣārī. Doḥa: al-Shu‘ūn al-Dīniyya, n.d.
- Ibn ‘Abd al-Zāhir, Muḥyī al-Dīn. *Al-Rawḍ al-Zāhir fī Sīrat al-Malik al-Zahīr*. Ed. A. A. al-Khawwaytir. Riyadh: n.p., 1976.

- Ibn 'Ābidīn, Muḥammad Amīn ibn 'Umar al-Dimashqī al-Ḥanafī (d. 1252/1836-7). *Ḥāshiyat Radd al-Muḥtār 'alā al-Durr al-Mukhtār*. Cairo: Maṭba'at Muṣṭafa al-Ḥalabī, 1386/1966.
- Ibn 'Abd al-Barr, Abū 'Amr Yūsuf ibn 'Abdullah ibn Muḥammad 'Abd al-Barr ibn 'Aṣim al-Numrī al-Qurṭubī (d. 463/1070-1). *Al-Durrar fī Ikhtisār al-Maghāzī wa al-Siyar*. Ed. Shawqī Dayf. Beirut: Dār al-Ma'ārif, 1403/1982.
- _____. *Al-Istī'āb fī Ma'rifat al-Aṣḥāb*. Ed. 'Alī al-Bajāwī. Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1328/1910.
- _____. *Al-Kāfī fī Fiqh Ahl al-Medina*. Ed. Muḥammad Walīd Mādīk. n.p.: Maṭba'at al-Hudā, 1399 /1978.
- _____. *Al-Tamhīd limā fī al-Muwaṭṭa' min al-Ma'ānī wa al-Asānīd*. Ed. Muṣṭafa ibn al-'Alawī. Morocco: Wizārat al-Awqāf, 1387/1967.
- Ibn 'Abd Rabbih Abū 'Amr Aḥmad ibn Muḥammad (d. 940/1564). *Kitāb al-'Aqd al-Farīd*. Eds. Aḥmad Amīn, Aḥmad al-Zayyār and Ibrāhīm al-Abyārī. Beirut: Dār al-Kitāb al-'Arabī, 1982.
- Ibn 'Abd al-Salām, Abū Muḥammad, 'Abd al-'Azīz (d. 660/1263). *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*. Cairo: Maktabat al-Kuliyyāt al-Azhariyya, 1388/1968.
- Ibn Abī Ḥātim, 'Abd al-Raḥmān ibn Muḥammad ibn Idrīs al-Tamīmī ibn Mundhir al-Ḥanzalī al-Rāzī. *Kitāb al-Jarḥ wa al-Ta'dīl*. Beirut: Dār al-Kutub al-'Ilmiyya, 1980.
- Ibn Abū al-'Azz, Ṣadr al-Dīn 'Alī ibn Muḥammad ibn 'Alī al-Dimashqī (d. 792/1355-6). *Sharḥ al-'Aqīda al-Taḥāwiyya*. Ed. Shu'ayb al-Arnā'ūṭ. Beirut: Mu'assasat al-Risāla, 1408/1987.
- Ibn Abī Shayba, 'Abdullah ibn Muḥammad (d. 235/848). *Al-Muṣannaf fī al-Aḥādīth wa al-Āthār*. Ed. Muḥammad 'Abd al-Sallām Shāhīn. Beirut: Dār al-Kutub al-'Ilmiyya, 1995.
- Ibn Ādam, Yahyā ibn Sulaymān al-Qarashī (d. 203/802-3). *Al-Kharāj*. Ed. Aḥmad Muḥammad Shākir. N.p.: al-Maktaba al-Salāfiyya, 1384/1964.
- Ibn al-'Arabī, Abū Bakr Muḥammad ibn 'Abdullah ibn 'Arabī al-Ishbīlī (d. 543/1148). *Aḥkām al-Qur'ān*. Ed. 'Alī Muḥammad al-Bajāwī, Cairo: Maṭba'at 'Issā al-Ḥalabī, 1394/1974.
- _____. *Qānūn al-Ta'wīl*. Ed. Muḥammad al-Sulaymānī. Beirut: Mu'assasat 'Ulūm al-Qur'ān, 1406/1985.
- Ibn 'Arafa, Muḥammad ibn 'Arafa al-Warghamī al-Tūnisī (d. 803/1400). *Mukhtaṣar ibn 'Arafa*. With *Sharḥ al-Raṣāṣ al-Ātī*. Beirut: Dār al-Gharb al-Islāmī, 1993.
- Ibn 'Asākir, Abū al-Qāsim 'Alī ibn Ḥasan ibn Hibālāh (d. 573/1177). *Tārīkh Madīnat Dimashq*. Ed. 'Umar Gharāma al-'Umarī. Beirut: Dār al-Fikr, 1417/1996.

- Ibn al-Athīr, ‘Alī ibn Muḥammad ibn Muḥammad (d. 630/1232-3). *Usd al-Ghāba fī Ma‘rifat al-Ṣaḥāba*. Ed. Muḥammad Ibrāhīm al-Banā. Beirut: Dār al-Sha‘b, 1970.
 ———. *Al-Kāmil fī al-Tārīkh*. Beirut: Dār al-Kitāb al-‘Arabī, 1400/1979.
 ———. *Al-Nihāya fī Gharīb al-Ḥadīth wa al-Āthār*. Cairo: al-Maṭba‘a al-Khayriyya, 1322/1904.
- Ibn ‘Aṭiyyā, ‘Abd al-Ḥaqq ibn ‘Aṭiyyā al-Andalusī (d. 548/1154). *Al-Muḥarrar al-Wajīz fī Tafsīr al-Kitāb al-‘Azīz*. Eds. ‘Abdullah Ibrāhīm al-Anṣārī, and al-Fārūqī. Dūḥa: Tubī‘a ‘alā nafaqat al-Shaykh Khalifah ibn Ḥamād al-Thani 1398/1977.
- Ibn al-Azraq, Abū Muḥammad ‘Abdullah ibn al-Azraq al-Andalusī (d. 896/1492). *Badā‘i‘ al-Silk fī Ṭabā‘i‘ al-Mulk*. Ed. Muḥammad ‘Abd al-Karīm. Tunisia: al-Dār al-‘Arabiyya lil-Kitāb, 1400/1979.
- Ibn al-Bazzāz, Ḥāfiẓ al-Dīn Muḥammad ibn Muḥammad al-Kardārī al-Ḥanafī (d. 827/1424). *Al-Fatāwī al-Bazzāziyya*. With the margin of *al-Fatāwā al-Hindiyya*. Cairo: Ṭab‘at Būlāq, 1310/1892.
- Ibn al-Dayba‘, Wajīh al-Dīn ‘Abd al-Raḥmān ibn ‘Alī (d. 944/1536). *Ḥadā‘iq al-Anwār wa Maṭālī‘ al-Asrār fī Sīrat al-Nabī al-Mukhtār*. Ed. ‘Abdullah ibn Ibrāhīm al-Anṣārī. Doha, Maṭba‘at M. H. al-Kutūbī, 1979.
- Ibn Farḥūn, Burhān al-Dīn Ibrāhīm ibn ‘Alī (d. 799/1396). *Tabṣirat al-Ḥukkām fī Uṣūl al-Aqdiya wa Manāhij al-Aḥkām*. Cairo: Maktabat al-Kuliyyāt al-Azhariyya, 1406/1985.
- Ibn Fāris al-Qazāwīnī, Abū al-Ḥusayn Aḥmad ibn Fāris ibn Zakariyya (d. 395/1004). *Majāmi‘ Maqāyīs al-Lughā*. Ed. ‘Abd al-Salām Muḥammad Ḥārūn. Beirut: Dāt al-Fikr, 1979.
- Ibn al-Ghars, Badr al-Dīn Muḥammad ibn Khafīl al-Maṣrī (d. 894/1489). *Al-Fawākih al-Badriyya fī al-Aqdiyya al-Ḥukmiyya*. Printed with its *Sharḥ al-Majānī al-Zahriyya* of Muḥammad Ṣāliḥ ibn ‘Abd al-Fattāḥ al-Jārim. Cairo: Maṭba‘at al-Nīl, 1326/1908.
- Ibn Ḥabīb, Abū Ja‘far Muḥammad ibn Ḥabīb ibn ‘Amr al-Hāshimī al-Baghdādī (d. 245/859-60). *Al-Muḥabbar*. Beirut: Dār al-Āfāq al-Jadīda, n.d.
- Ibn Ḥajar, Aḥmad ibn ‘Alī ibn Muḥammad al-‘Asqalānī (d. 852/1449). *Fath al-Bārī fī Ṣaḥīḥ al-Bukhārī*. Eds. ‘Abd al-‘Azīz ibn Bāz and Muḥammad Fu‘ad ‘Abd al-Bāqī. Beirut: al-Maṭba‘a al-Salāfiyya, n.d.
 ———. *Al-Iṣāba fī Tamyiz al-Ṣaḥāba*. Ed. ‘Alī Muḥammad al-Bajāwī. Cairo: Maktabat al-Nahdha, 1392/1972.
 ———. *Tahdhīb al-Tahdhīb*. Beirut: Dār al-Fikr, 1404/1983.
- Ibn Ḥanbal, Aḥmad ibn Muḥammad ibn Ḥanbal al-Shaybānī (d. 241/855-6). *Fadā‘il al-Ṣaḥāba*. Ed. Waṣiyuallah ‘Abbas. Mecca: Markaz al-Baḥth al-‘Ilmi, n.d.
 ———. *Musnad*. Cario: al-Maktab al-Islāmī, 1405/1984.

Ibn Ḥayyān, Abū ‘Abdullah Muḥammad ibn Yūsuf (d. 654/1246). *Tafsīr al-Baḥr al-Muḥīṭ*. Cairo: Maṭba‘at al-Sa‘āda, 1328/1911.

Ibn Ḥazm, Abū Muḥammad ‘Alī ibn Aḥmad ibn Sa‘īd (d. 456/1064). *Al-Iḥkām fī Uṣūl al-Aḥkām*. ed. ‘Abd al-‘Azīz Aḥmad ibn Aḥmad. Cairo: Maktabat ‘Āṭif, 1978.

_____. *al-Fiṣal fī al-Milal wa al-Ahwā’ wa al-Niḥal*. Eds. Muḥammad Ibrāhīm Naṣr, ‘Abd al-Raḥmān ‘Amīra. Riyadh: Sharikat Maktabāt ‘Akādh, 1402/1981.

_____. *Marātib al-Ijmā’*. With Ibn Taymiyya *Naqd Marātib al-Ijma’*. Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.

_____. *Al-Muḥallā*. Ed. Aḥmad Muḥammad Shākir. Beirut: Dār al-Turāth, 1392/1972.

Ibn Hishām, Abū Muḥammad ‘Abd al-Malik ibn Hishām ibn Ayyūb al-Ḥimyarī (d. 218/833). *Al-Sīra al-Nabawiyya*. Ed. Muṣṭafa al-Saqqā. Cairo: Maktabat al-Kuliyyāt al-Azhariyya, 1391/1971.

Ibn Hubayrā, Abū al-Muzaḥḥar Yaḥyā ibn Muḥammad (d. 560/1169). *Al-Ifṣāḥ ‘an Ma‘ānī al-Ṣiḥāḥ*. Riyadh: al-Mu’assasa al-Sa‘īdiyya, n.d.

Ibn Humām, Kamāl al-Dīn Muḥammad ibn ‘Abd al-Wāḥid al-Sīwāsī (d. 861/1456-7). *Faṭḥ al-Qadīr ‘alā al-Hidāya*. With the margin of *Ḥāshiyat Qāḍī Zādah*. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1986.

Ibn al-‘Imād, ‘Abd al-Ḥayy ibn ‘Imād al-Ḥanbalī (d. 1089/1678-9). *Shadharāt al-Dhahab fī Akhbār man Dhahab*. Beirut: Dār Iḥyā’ al-Turāth, n.d.

Ibn Ishāq, Muḥammad ibn Ishāq ibn Yasār al-Muṭṭalibī (d. 151/786). *Sīrat Ibn Ishāq al-Mubtada’ wa al-Mab‘ath wa al-Maghāzī*. Ed. Muḥammad Ḥamidullah. Rabāṭ [Marocco]: Ma‘had al-Dirasāt wa al-Abḥāth lil-Ta‘rīb, 1976.

Ibn Iyās, Muḥammad ibn Aḥmad al-Ḥanafī al-Miṣrī (d. 930/1524). *Kitāb Tārīkh Miṣr*. Cairo: al-Maṭba‘a al-Kubrā al-‘Amīriyya, n.d.

Ibn Jamā‘a, Badr al-Dīn (d. 733/1332-3). *Taḥrīr al-Aḥkām fī Tadbīr Ahl al-Islām*. Ed. Fu‘ad ‘Abd al-Mun‘im. Doha: Maṭbū‘at Ri‘āsat al-Maḥākīm al-Shar‘iyya, 1407/1986.

Ibn al-Jawzī, Abū al-Faraj ‘Abd al-Raḥmān ibn ‘Alī al-Qurashī al-Baghdādī (d. 597/1201). *Sīrat ‘Umar ibn al-Khaṭṭāb*. Cairo: al-Dār al-Qawmiyya li Ṭibā‘a wa al-Nashr, n.d.

Ibn Juzayy, Muḥammad ibn Aḥmad al-Gharnāṭī (d. 741/1342). *Al-Qawānīn al-Fiqhiyya* “Qawānīn al-Aḥkām al-Shar‘iyya”. Eds. Ṭāha Sa‘d and Muṣṭafa al-Ḥamawwī. Cairo: ‘Ālam al-Fikr, 1395/1975.

Ibn Kathīr, Abū al-Fidā’ ‘Imād al-Dīn Ismā‘īl (d. 774/1372). *Al-Bidāya wa al-Nihāya*. Riyadh: Maktabat al-Ma‘āṭif, 1966.

_____. *Tafsīr al-Qur‘ān al-‘Azīm*. Beirut: Dār al-Fikr, 1400/1979.

- _____. *Tuhfat al-Ṭālib bi Ma'rifat Ahādīth Mukhtaṣar Ibn al-Ḥājib*. Ed. 'Abd al-Ghanī ibn Ḥmīd al-Kibīsī. Mecca: Dār Ḥarā', 1406/1985.
- Ibn Khaldūn, 'Abd al-Raḥmān al-Maghribī (d. 808/1406). *Al-Muqaddima*, "Muqaddimat Tārīkh Ibn Khaldūn". Beirut: Dār al-Kitāb al-Lubnānī, 1981.
- Ibn Khallikān, Abū al-'Abbās Shams al-Dīn Aḥmad ibn Muḥammad (d. 681/1282). *Wafīyyāt al-A'yān wa Anbā' Abnā' al-Zamān*. Ed. Muḥammad Muḥyī al-Dīn 'Abd al-Majīd. Cairo: Maktabat al-Nahdha al-Maṣriyya, 1367/1948.
- Ibn Mājā, Muḥammad ibn Yazīd al-Qazwīnī (d. 275/886-7). *Sunan Ibn Mājā*. Ed. Muḥammad Fu'ād 'Abd al-Bāqī. Beirut: Maṭaba'at 'Issā al-Ḥalabī, 1972.
- Ibn Mammatī, Sharaf al-Dīn Abū al-Makārim ibn Abū Asa'd ibn al-Muhadhadhab (d. 606/1209). *Kitāb Qawānīn al-Dawawīn*. Ed. Azīz Suryāl Aṭīyya. Cairo: Maktabat Madbūfī, 1991.
- Ibn Manẓūr, Abū al-Fadhl Jamāl al-Dīn Muḥammad ibn Mukarram al-Anṣārī (d. 711/1311). *Lisān al-'Arab*. Beirut: Dār Ṣādir, 1992.
- Ibn Mifliḥ al-Maqdisi, Abū 'Abdullah Shams al-Dīn Muḥammad (d. 763/1362). *Al-Ādāb al-Shar'iya wa al-Minaḥ al-Mar'iyya*. Eds. Shu'ib al-Arnā'ūṭ and 'Umar al-Qayyām. Beirut: Mu'assasat al-Risāla, 1996.
- _____. *Al-Furū'*. Ed. 'Abd al-Laṭīf Muḥammad al-Subkī. Beirut: 'Ālam al-Kutub, 1981.
- Ibn Mifliḥ, Abū Ishāq Burhān al-Dīn Ibrāhīm ibn Muḥammad (d. 884/1479-80). *Al-Mubdi' Sharḥ al-Muqni'*. Beirut: Dār al-Kutub al-'Ilmiyya, 1997.
- Ibn al-Mundir, Abū Bakr ibn Ibrāhīm al-Naysābūri (d. 318/930). *Al-Ijmā'*. Ed. Abū Ḥamād Ḥanīf. Riyadh: Dār al-Ṭība, 1402/1981.
- Ibn Murtaḍā, Aḥmad ibn Yahyā al-Yamānī (d. 840/1437). *Al-Baḥr al-Zakhkhār al-Jāmi' li Madhāhib 'Ulamā' al-Amṣār*. Beirut: Dār al-Kitāb al-Islāmī, n.d.
- Ibn al-Nadīm, Muḥammad ibn Ishāq ibn Muḥammad al-Shī'ī (d. 438/1046). *Al-Fihrist*. Beirut: Dār al-Ma'rifa, n.d.
- Ibn al-Najā, Muḥammad ibn Aḥmad ibn 'Abd al-'Azīz al-Fatūhī (d. 972/1536-7). *Sharḥ al-Kawkab al-Munīr*. Eds. Muḥammad al-Zuhīlī, Nazīh Ḥamād. Mecca: Markaz al-Baḥth al-'Ilmī, 1408/1987.
- Ibn Nujaym, Zayn al-Dīn Ibrāhīm al-Ḥanafī (d. 969/1563). *Al-Ashbāh wa al-Nadhā'ir*. Cairo: Mu'assasat al-Ḥalabī, 1378/1958.
- _____. *Al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq*. Beirut: Dār al-Ma'rifa, 1311/1893.
- _____. *Rasā'il Ibn Nujaym*. Ed. Khalīl al-Mīs. Beirut: Dār al-Kutub al-'Ilmiyya, 1400/1979.

- Ibn Naʿīm, Aḥmad ibn ʿAbdullah al-Aṣḥabānī (d. 430/1039). *Ḥilyat al-Awliyāʾ*. Beirut: Dār al-Kitāb al-ʿArabī, 1400/1979.
- Ibn Qāḍī Samāwna, Maḥmūd ibn Ismāʿīl (d. 823/1440-1). *Jāmiʿ al-Fuṣūlayn*, with the margin of “Ḥāshiyat al-Fawāʾid al-Khayriyya”. Cairo: al-Maṭbaʿah al-Azhariyya, 1300/1882.
- Ibn al-Qāṣ, Abu al-ʿAbbās Aḥmad ibn Abū Aḥmad al-Ṭabarī (d. 335/946). *Adab al-Qāḍī*. Ed. Ḥusayn al-Jabūrī. Ṭāʾaf [Saudi Arabia]: Maktabat al-Ṣidīq, 1409/1988.
- Ibn Qaṭlūbgha, Abu al-Fidāʾ Zayn al-Dīn Qāsim al-Ḥanafī (d. 879/1471). *Tāj al-Tarājim*. Ed. Muḥammad Khayr Yūsuf. Damascus: Dār al-Qalam, 1413/1992.
- Ibn Qayyim al-Jawziyya, Shams al-Dīn Muḥammad ibn Abū Bakr al-Zarʿī al-Dimashqī (d. 751/1350-1). *Aḥkām Ahl al-Dhimma*. Ed. Ṣubḥī al-Ṣāliḥ. Beirut: Dār al-ʿIlm lil-Malāyyīn, 1401/1980.
- _____. *Aʿlām al-Muwaqīʿin ʿan Rab al-ʿĀlamīn*. Ed. Muḥammad Muḥyī al-Dīn ʿAbd al-Majīd. Beirut: Dār al-Saʿāda, 1374/1954.
- _____. *Zād al-Maʿād fī Hudā Khayr al-ʿAbād*. Eds. Shuʿīb and ʿAbd al-Qādir al-Arnāʾūṭ. Beirut: Muʾasasat al-Risāla and Dār al-Fikr, 1392/1972.
- Ibn Qudāma, Abū Muḥammad Muwafaq al-Dīn ʿAbdullah ibn Aḥmad (d. 630/1233-4). *Al-Kāfi fī Fiqh al-Imām Aḥmad ibn Ḥanbal*. Beirut: al-Maktab al-Islāmī, 1399/1979.
- _____. *Al-Mughnī Sharḥ Mukhtaṣar al-Kharqī*. With *Sharḥ al-Kabīr*. Beirut: Dār al-Fikr, 1404/1983.
- Ibn Qudāma, Shams al-Dīn ʿAbd al-Raḥmān ibn Abū ʿOmar (d. 682/1256). *Al-Sharḥ al-Kabīr*. Beirut: Dār al-Fikr, 1404/1983.
- Ibn Qutayba, Abū Muḥammad ʿAbdullah ibn Muslim al-Dīnūrī (d. 286/891-2). *Uyūn al-Akhbār*. Beirut: Dār al-Kitāb al-ʿArabī, 1343/1925.
- Ibn Rafʿā, Abū al-ʿAbbās Najm al-Dīn al-Anṣārī (d. 710/1310). *Al-Idhāḥ wa al-Tibyyān fī Maʿrifat al-Mikyyāl wa al-Mizān*. Mecca: Manshūrāt Markaz al-Naḥṭh al-ʿAlmī, 1400/1979.
- Ibn Rajab, Abū al-Faraj ʿAbd al-Raḥmān (d. 795/1392-3). *Al-Qawāʾid fī al-Fiqh*. Ed. Ṭāha ʿAbd al-Raʾūf Saʿd. Cairo: Maktabat al-Kuliyat al-Azhariyya, 1392/1972.
- Ibn al-Rushd, Abū al-Walīd Muḥammad ibn Aḥmad ibn Rushd [grand father] (d. 520/1122). *Al-Bayān wa al-Taḥṣīl*. Eds. Muḥammad Ḥajjī and ʿAbdullah ibn Ibrāhīm al-Anṣārī. Beirut: Dār al-Gharb al-Islāmī, 1404/1983.
- _____. *Al-Muqadimāt al-Mumahidāt li-Bayān ma Iqtadathu Rusūm al-Mudawwana min al-Aḥkām al-Sharʿiyya*. Ed. Muḥammad Ḥajjī. Beirut: Dār al-Gharb al-Islāmī, 1408/1987.
- Ibn al-Rushd, Muḥammad ibn Aḥmad ibn Rushd al-Qurṭubī [grand son] (d. 595/1198). *Bidāyat al-Mujtahid*. Beirut: copied from Ṭabʿat Mustafā al-Ḥalabī, 1401/1980.

- _____. *Al-Khashf 'an Manāhij al-Adilla fī 'Aqā'id al-Millā*. Printed within *Faṣl al-Maqāl*. Ed. Muḥammad 'Amāra. Cairo: Dār al-Ma'ārif, 1977.
- Ibn Sa'd, Muḥammad ibn Sa'd (d. 230/844-5). *Al-Ṭabaqāt al-Kubra*. Beirut: Dār Ṣādir, 1377/1958.
- Ibn Ṣalāh, Abū 'Umr 'Uthmān ibn 'Abd al-Raḥmān al-Shahrazūrī (d. 643/1245). *'Ulūm al-Ḥadīth*. Ed. Nūr al-Dīn 'Atir. Beirut: Dār al-Fikr, 1404/1983.
- Ibn Ṣan'ā'ī, Muḥammad ibn Ismā'īl (d. 1132/1721). *Subul al-Sallām*. Cairo: Maṭba'at al-Ḥalabī, 1950.
- Ibn Shāsh, Jalāl al-Dīn 'Abdullah ibn Najm (d. 616/1219). *'Aqd al-Jawāhir al-Thamīna fī Madhabb 'Alim al-Medina*. Ed. Muḥammad Abū al-Ajfan. Beirut: Dār al-Gharb al-Islāmī, 1415/1994.
- Ibn al-Ṣidiq, Aḥmad ibn Muḥammad Gumārī al-Husaynī (d. 1380/1960). *Al-Hidayya bi Takhrīj Aḥādīth Bidāyat al-Mujtahid*. With *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* of Ibn Rushd. Ed. al-Mar'ashlī. Beirut: 'Alam al-Kutub, 1407/ 1986.
- Ibn Ṭāhir al- Baghdādī, Abū Maṣṣūr 'Abd al-Qāhir ibn Ṭāhir al-Tamīmī al-Baghdādī (d. 429/1037). *Uṣūl al-Dīn*. Istanbul: Madrasat al-Ilāhiyyāt, 1346/1927.
- Ibn Taymiyya, Aḥmad ibn 'Abd al-Ḥalīm ibn 'Abd al-Sallām (d. 728/1327-8). *Majmū' Fatāwī Shaykh al-Islām Ibn Taymiyya*. Ed. 'Abd al-Raḥmān ibn Qāsim. Ribāṭ [Morocco]: Maktabat al-Ma'ārif, 1400/1979.
- _____. *Nazariyat al-'Aqd*. Ed. Muḥammad Ḥamid al-Fiql. N.p: Maṭba'at al-Sunna al-Muḥamadiyya, 1368/1948.
- _____. *Al-Siyāsa al-Shar'iyya fī Iṣlāh al-Rā'ī wa al-Ra'iyya*. Ed. Muḥammad al-Mubārak. Beirut: Dār al-Kutub al-'Arabiyya, 1368/1948.
- Ibn Wasil, Jamāl al-Dīn Muḥammad (d. 1298/1882). *Mufārrij al-Kurūb fī Akhbār banī Ayyūb*. Ed. J. al-Shayyāl., Cairo: Maṭba'at Idārat Iḥyāh al-Turāth al-Qadīm, 1953.
- Ibn Zanjūwīh, Ḥamid ibn Zanjūwīh al-Ārtdhī al-Nisā'ī (d. 251/866). *Al-Amwāl*. Ed. Shākir Dhīb Fayādh. Riyād: Markaz al-Malik Fayṣal lil-Buḥūth wa al-Dirāsāt al-Islāmiyya, 1406/1985.
- Ilkiya Harāsī, 'Alī ibn Aḥmad (d. 504/1110). *Aḥkām al-Qur'ān*. Eds. Musa Muḥammad 'Alī and 'Azat 'Aṭiya. Cairo: Dār al-Kutub al-Ḥadītha, 1974.
- Jaṣṣāṣ, Abū Bakr Aḥmad ibn 'Alī al-Rāzi (d. 370/980). *Aḥkām al-Qur'ān*. Cairo: Dār al-Fikr, 1980.
- _____. *Mukhtaṣar Ikhtilāf al-'Alamā' of Ṭaḥāwī*. Ed. 'Abdullah Nadhīr Aḥmad. Beirut: Dār al-Bashā'r al-Islāmiyya, 1416/1995.

- _____. *al-Fuṣūl fī al-Uṣūl*. Ed. 'Aḥīl al-Nashmī. Kuwait: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya, 1405/1984.
- Jawharī, Ismā'il ibn Ḥamād (d. 393/1003). *Tāj al-Lughā wa Ṣiḥāḥ al-'Arabiyya*. Ed. Aḥmad ibn 'Abd al-Ghāfūr 'Aṭār. Beirut: Dār al-'Ilīm lil-Malayīn, 1979.
- Jurjānī, al-Sayyid 'Alī ibn Muḥammad ibn 'Alī al-Sharīf (d. 816/1416). *Al-Ta'rīfāt*. Ed. Ibrāhīm al-Abyārī. Beirut: Dār al-Kitāb al-'Arabī, 1405/1984.
- Juwaynī, Abū al-Ma'ālī 'Abd al-Malik ibn 'Abdullah [Imām al-Ḥaramīn] (d. 478/1089). *Ghiyāth al-Umam fī al-Ilṭiyāth al-Zulām*. Ed. 'Abd al-'Azīm al-Dhīb. Doha: Ṭab' al-Shu'ūn al-Dīniyya, 1400/1979.
- Kafawī, Abū al-Baqā' Ayyūb ibn Mūsā al-Ḥusaynī (d. 1094/1675). *Al-Kuliyāt*. Eds. 'Adnān Darwīsh, Muḥammad al-Maṣrī. Damascus: n.p, 1982.
- Karābīsī, As'ad ibn Muḥammad ibn al-Ḥasan al-Naysābūrī (d. 245/860-1). *Al-Furūq*. Ed. Muḥammad Ṭamūm. Kuwait: Wizārat al-Shu'ūn al-Islāmiyya, 1402/1981.
- Kasānī, 'Alā' al-Dīn Abu Bakr ibn Mas'ūd al-Ḥanafī (d. 587/1191). *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*. Beirut: Dār al-Kutub al-'Ilmiyya, 1406/1968.
- Khaṭṭīb al-Baghdādī, Abū Bakr Aḥmad ibn 'Alī (d. 463/1072). *Tārīkh Baghdād*. Beirut: Dār al-Kitāb al-'Arabī, n.d.
- Khaṭṭabī, Abū Ḥamad ibn Muḥammad ibn Ibrāhīm (d. 338/942). *Gharīb al-Ḥadīth*. Ed. 'Abd al-Karīm al-'Aazbāwī. Mecca: Markaz al-Buḥūth al-'Ilmiyya, 1402/1981.
- Khalāl, Abū Bakr Aḥmad ibn Muḥammad (d. 311/923). *Aḥkām Ahl al-Milal min al-Jāmi' li Masā'il al-Imām Aḥmad*. Ed. Sayyid Kasūrī. Beirut: Dār al-Kutub al-'Ilmiyya, 1414/1993.
- Khaṣṣāf, Abū Bakr Aḥmad ibn 'Umro al-Shaybānī (d. 261/873-4). *Adab al-Qāḍī*. With *Sharḥ al-Jaṣṣāṣ*. Ed. Farḥāt Ziyāda, Cairo: American University, 1978.
- Khuwārizmī, Abū al-Mu'ayyad Muḥammad ibn Maḥmūd (d. 665/1238-9). *Jāmi' al-Masānīd, Masānīd Abū Ḥanīfa*. Ed. 'Alī al-Qārī'. Beirut: Dār al-Kutub al-'Ilmiyya, 1405/1984.
- Khuwārizmī, Jamāl al-Dīn Abū Bakr. *Mufīd al-'Alūm wa Mubīd al-Humūm*. Cairo: Maṭba'at al-Sa'āda, 1330/1910.
- Kurdarī, Ḥāfiẓ al-Dīn ibn Muḥammad (d. 827/1018-9). *Manāqib Abū Ḥanīfa*. Beirut: Dār al-Kitāb al-'Arabī, 1401/1980.

- Laknawī, Muḥammad ‘Abd al-Ḥay ibn Muḥammad ‘Abd al-Ḥalīm (d. 1304/1887). *Al-Nāfi‘ al-Kabīr liman Yuṭālī‘ al-Jāmi ‘al-Ṣaghīr*. Karachi: Idarat al-Qurʾān wa la-ʿUlūm al-Islāmiyya, 1987.
- _____. *Al-Ta‘līq al-Mumajjad ‘alā Muwaṭṭa’ Muḥammad*. Damascus: Dār al-Qalam, 1412/1991.
- _____. *Al-Fawā‘id al-Bahiya fī Tarājim al-Ḥanafīyya*. With *Kitāb A‘lām al-Akhyar* of Kafawī Maḥmūd ibn Suleyman. Banaros: Maktabat Nadwat al-Amrīf, 1967.
- Mālik ibn Anas (d. 179/795). *Al-Mudawwana. Riwayāt Ṣaḥnūn*. Beirut: Dār Ṣādir, from Maṭba‘at al-Sa‘āda, 1323/1905.
- Manjūr, Aḥmad ibn ‘Alī (d. 995/1587). *Sharḥ al-Muntakhab ‘ilā Qawā‘id al-Madhahab*. Ed. Muḥammad al-Shanqīṭī. Cairo: Dār Iḥyā’ al-Kutub al-‘Arabiyya, n.d.
- Maqrīzī, Taqī al-Dīn Aḥmad ibn ‘Alī (d. 845/1441-2). *Imtā‘ al-Asmā’*. Ed. Maḥmūd Muḥammad Shākir. Doha: al-Shu‘ūn al-Dīniyya, 1401/1981.
- _____. *Al-Khiṭaṭ al-Maqrīziyya, al-Mawā‘iz wa al-I‘tibār bi Dhikr al-Khiṭaṭ wa al-Āthār*. Beirut: Dār al-‘Arfān, n.d.
- _____. *Al-Sulūk li Ma‘rifat Duwal al-Mulūk*. Ed. Muṣṭafa Ziyāda. Cairo: Lujnat al-Ta’līf wa al-Tarjama wa al-Nashr, 1958.
- Mardāwī, Abū al-Ḥasan ‘Alī ibn Sulaymān (d. 885/1480-1). *Al-Inṣāf fī Ma‘rifat al-Rājiḥ min al-Khilāf*. Ed. Muḥammad Ḥamid al-Fiḳī. Beirut: Dār Iḥyā’ al-Turāth al-Islāmī, 1400/1980.
- Marghinānī, Burḥān al-Dīn ‘Alī ibn Abū Bakr (d. 593/1196-7). *Al-Hidāyya Sharḥ Bidāyat al-Mubtadi*. With *Fatḥ al-Qadīr*. Cairo: Maṭba‘at wa Maktabat al-Bābī al-Ḥalabī, 1315/1897.
- Mas‘ūdī, Abū al-Ḥasan ‘Alī ibn Ḥasan (d. 346/957-8). *Murūj al-Dhahab wa Ma‘ādin al-Jawhar*. Ed. Muḥammad Muḥyī al-Dīn ‘Abd al-Ḥamid. Cairo: Maktaba al-Tijāriyya al-Kubra, 1373/1958.
- _____. *Al-Tanbīh wa al-Ishrāf*. Beirut: Dār al-Hilāl, 1981.
- Māwardī, Abū al-Ḥasan ‘Alī ibn Muḥammad ibn Ḥabīb al-Baṣrī (d. 450/1058). *Adab al-Qāḍī*. Ed. Muḥyī Hilāl Sarḥān. Baghdād: Maṭba‘at al-‘Ānī, 1392/1972.
- _____. *Al-Aḥkām al-Sulṭāniyya*. Cairo: Maṭba‘at Muṣṭafā al-Babī al-Ḥalabī, 1393/1973.
- _____. *Al-Ḥawī al-Kabīr*. Eds. Maḥmūd Maṭrijī, Yasīn Nāṣir Maḥmūd al-Khaṭīb, ‘Abd al-Raḥmān al-Aḥdal... et al. with “Bahjat al-Ḥawī,” Arjuwzat al-Wardī, vol. 18. Beirut: Dār al-Fikr, 1414/1995.
- _____. *Qawānīn al-Wizāra wa Siyāsāt al-Mulk*. Beirut: Dār al-Ta’līf, 1993.
- Midānī, ‘Abd al-Ghanī ibn Ṭalīb al-Ghunīmī al-Dimashqī (d. 1298/1884). *Al-Libāb Sharḥ al-Kitāb*. Damascus: Dār al-Ḥadīth, n.d.

- Muḥaḍī, Jalāl al-Dīn Muḥammad ibn Aḥmad (d. 864/1360-1). *Sharḥ Minhāj al-Ṭālibīn*. Cairo: Maṭba‘at al-Ḥalabī, 1375/1955.
- Munāwī, Muḥammad ibn ‘Abd al-Ra’ūf (d. 1031/1621). *Faydh al-Qadīr Sharḥ al-Jāmi‘ al-Ṣaghīr*. Beirut: Dār al-Ma‘rifa, 1398/1977.
- _____. *Al-Tawqīf ‘alā al-Muhimāt al-Ta‘ārīf*. Ed. Muḥammad Ridhwān al-Dāyya. Beirut: Dār al-Fikr, 1410/1989.
- Mundhurī, Abū Muḥammad Zakī al-Dīn ‘Abd al-‘Azīm ibn ‘Abd al-Qawī (d. 656/1258). *Al-Tarḥīb wa al-Tarḥīb min al-Ḥadīth al-Sharīf*. Ed. Muṣṭafa ‘Imāra. Beirut: Dār al-Kutub al-‘Ilmiyya, 1986.
- Muṣaḍī, Abū al-Fadhl ‘Abdullah ibn Maḥmūd ibn Wadūd (d. 683/1286). *Al-Ikhtiyār li Ta’līl al-Mukhtār*. Cairo: Maṭba‘at Muṣṭafa al-Ḥalabī, 1371/1951.
- Muslim, ibn al-Ḥajāj al-Qushīrī al-Nīsābūrī (d. 261/875). *Ṣaḥīḥ Muslim*. Ed. Muḥammad Fu‘ād ‘Abd al-Bāqī. Beirut: Maṭba‘at ‘Issā al-Ḥalabī, 1374/1954.
- Muṭarrīzī, Abū al-Fatīḥ Nāsir al-Dīn (d. 610/1213-4). *Al-Mughrab fī Tartīb al-Mu‘rab*. Eds. Maḥmūd Fākhūrī, ‘Abd al-Ḥamīd Mukhtār. Aleppo: Maktabat Osāma ibn Zayd, 1399/1978.
- Nasafī, Najm al-Dīn ‘Umar ibn Muḥammad ibn Aḥmad Abū Ḥafṣ (d. 537/1143). *Ṭalabat al-Ṭalba*. Ed. Khaḍīl al-Mīs. Beirut: Dār al-Qalam, 1406/1985.
- Nawawī, Abū Zakariyya Muḥyī al-Dīn Yaḥyā ibn Sharf (d. 676/1277-8). *Al-Majmū‘ Sharḥ al-Muḥadḍab*. Beirut: Dār al-Fikr, 1405/1975.
- _____. *Rawḍat al-Ṭālibīn*. Damascus: al-Maktab al-Islāmī, 1405/1984.
- _____. *Sharḥ Ṣaḥīḥ Muslim*. Beirut: Dār al-Kitāb al-‘Arabī, n.d.
- _____. *Tahdhīb al-Asmā’ wa al-Lughāt*. Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.
- Nidhām al-Dīn (d. 1070/1658-9). *Al-Fatāwī al-Hindiyya fī Madhahab al-Imām Abū Ḥanīfa*. Cairo: al-Maktabah al-Islāmiyya, 1310/1892.
- Nuwayrī, Abū al-‘Abbās Aḥmad ibn ‘Abd al-Wahāb ibn Muḥammad Shihāb al-Dīn (d. 733/1332-3). *Nihāyat al-Arab fī Funūn al-Adab*. Ed. ‘Alī Muḥammad al-Najāwī. Cairo: al-Hay‘a al-Maṣriyya al-‘Āma lil Kitāb, 1396/1976.
- Qāḍī Khān, Fakhr al-Mula Ḥasan ibn Manṣūr al-Uzjandī al-Farghānī (d. 592/1196). *Al-Fatāwī al-Khāniyya of Qāḍī Khān*. Printed with the margin of *al-Fatāwī al-Hindiyya*. Iṣṭanbūl: al-Maktaba al-Islāmiyya, n.d.
- Qalqashandī, Abū al-‘Abbās Aḥmad ibn ‘Alī (d. 821/1418-9). *Ṣubḥ al-Ā‘shā fī Ṣinā‘at al-Inshā’*. Cairo: Wizarat al-Thaqāfa wa al-Irshād, n.d. and Beirut: Dār al-Kutub al-‘Ilmiyya, 1407/1987.

- Qarāfi, Abū al- ‘Abbās Aḥmad ibn Adrīs (d. 684/1285-6). *Al-Aḥkām fī Tamyīz al-Fatāwī ‘an al-Aḥkām wa Taṣarufāt al-Qāḍī wa al-Imām*. Ed. Maḥmūd ‘Arnūs. Rabāt [Marocco]: Wizarat al-Awqāf li-Shuūn al-Dīniyya, 1974.
- _____. *Al-Furūq*. With the margin of *‘Umdat al-Muḥaqqiqīn* of Ibn al-Shāṭ. Beirut: Dār al-Ma‘rifa, n.d.
- _____. *Sharḥ Tanqīḥ al-Fuṣūl*. Cairo: Maktabat al-Kuliyyāt al-Azhariyya, 1393/1973.
- Qināwī, Qāsim (d. 978/1570). *Anīs al-Fuqahā’*. Ed. Aḥmad ‘Abd al-Razāq al-Kubīsī. Jidda: Dār al-Wafā’, 1406/1985.
- Qirwānī, Abū Muḥammad ‘Abdullah ibn Abū Zayd (d. 386/986). *Al-Risāla al-Fiqhiyya*. Ed. Al-Hādī Ḥamū. Qatar: Dār Iḥyā’ al-Turāth al-Islāmī, 1406/1985.
- Qurṭubī, Abū ‘Abdullah Muḥammad ibn Aḥmad al-Anṣārī (d. 671/1273). *Al-Jāmi‘ li Aḥkām al-Qur’ān*. Cairo: Dār al-Kutub al-Maṣriyya, 1369/1950.
- Quṭub, Sayyid ibn Ibrāhīm (d. 1387/1966). *Fī Dhilāl al-Qur’ān*. Beirut: Dār al-Shurūq, 1397/1976.
- Rāfi‘ī, ‘Abd al-Karīm ibn Muḥammad al-Qazwīnī (d. 623/1226). *Fatḥ al-‘Azīz Sharḥ al-Wajīz*. Beirut: Dār al-Fikr, 1417/1996.
- Rāghib, Abū al-Qāsim Ḥusīn ibn Muḥammad al-Aṣfahānī (d. 502/1108-9). *Mufradāt al-Qur’ān*. Ed. Muḥammad Sayyid Kilānī. Cairo: Maṭba‘at Muṣṭafa al-Ḥalabī, 1381/1961.
- Raḥībānī, Muṣṭafa ibn Sa’d al-Dimashqī (d. 1243/1827). *Maṭālib Awlū al-Nuhā fī Sharḥ Ghāyat al-Muntaha*. Damascus: al-Maktab al-Islāmī, 1380/1960.
- Rakbī, Baṭāl ibn Aḥmad ibn Sulaymān (d. 633/1235-6). *Al-Nuẓum al-Musta’dhab fī Tafsīr Gharīb Alfāẓ al-Muhadhab*. Ed. Muṣṭafa ‘Abd al-Ḥafīz Sālīm. Mecca: al-Maktaba al-Tijāriyya, 1408/1987.
- Ramli, Khayr al-Dīn (d. 1081/1614). *Al-Fatāwī al-Khayriyya li Naf’ al-Bariyya*. Ed. Ibrāhīm ibn Sulaymān. Iṣṭanbūl: al-Maṭba‘a al-‘Utthmāniyya, 1311/1893.
- Raṣā’, Abū ‘Abdullah Muḥammad al-Anṣārī (d. 894/1489). *Sharḥ Hudūd ibn ‘Arafa* “al-Hidāya al-Kāfiyya al-Shāfiyya”. Ed. Muḥammad Abū al-Ajfan. Beirut: Dār al-Gharb al-Islāmī, 1993.
- Rāzī, Fakhr al-Dīn Muḥammad ibn Dhuyā’ al-Dīn (d. 604/1208). *Mafātīḥ al-Ghayb*. Beirut: Dār al-Fikr, 1405/1984.
- _____. *I’tiqādat Firaq al-Muslimīn wa al-Mushrikīn*. Cairo: Maktabat al-Nahḍa, 1356/1938.
- Riḍā, Muḥammad Rashīd (d. 1354/1935). *Tafsīr al-Manār*. Cairo: Maktabat al-Qāhira, 1373/1953.

- Sabṭ ibn Jawzī, Abū al-Mudhafar Yūsuf ibn Fur'aḥī (d. 1257/1841). *Āthār al-Inṣāf fī Āthār al-Khilāf*. Ed. Naṣir al-'Alī al-Khalīfī. Cairo: Dār al-Salām, 1408/1987.
- Ṣafadī, Ṣalāḥ al-Dīn Khalīl ibn Aybak (d. 764/1363). *Al-Wāfi bi al-Wafīyyāt*. Berlin [Germany]: Das arabsche Buch, 1999; Damascus: Dār Sa'd al-Dīn, 1999.
- Ṣaḥnūn, 'Abd al-Salām ibn Sa'īd al-Tanūḥī (d. 240/854). *Al-Mudawwana of Mālik*. Beirut: Dār Ṣādir, 1323/1905.
- Sakhāwī, Muḥammad ibn 'Abd al-Raḥmān Shams al-Dīn (d. 903/1497). *Al-I'ṭān bi al-Tārīkh li-man Dhamma al-Tārīkh*. Ed. Franz Rosenthal, translated into 'Arabic by Ṣāliḥ Aḥmad Ālī. Beirut: Mu'assasat al-Risāla, 1986.
- Sam'ānī, Abū Sa'd 'Abd al-Karīm ibn Muḥammad ibn Manṣūr al-Tamīmī (d. 562/1168). *Al-Ansāb*. Ed. Muḥammad 'Awāma. Beirut: Shirkat al-Fajr al-'Arabī, 1396/1976.
- Samnāwī, Abū al-Qāsim 'Alī ibn Muḥammad ibn Aḥmad al-Raḥabī (d. 499/1106). *Rawḍat al-Qudā wa Ṭarīq al-Najā*. Ed. Ṣalāḥ al-Dīn al-Nāḥī. Amman: Dār al-Furqān, 1404/1983.
- Samarqandī, 'Alā' al-Dīn Abū Bakr Muḥammad ibn Aḥmad (d. 539/1143). *Mizān al-Uṣūl*. Ed. Muḥammad Zakī 'Abd al-Bar. Doḥa: Maṭābi' al-Dohā, 1404/1983.
- _____. *Tuḥfat al-Fuqahā'*. Ed. Muḥammad Zakī 'Abd al-Barr. Beirut: Dār al-Kutub al-'Ilmiyya, 1405/1984.
- Ṣan'ānī, Abu al-Bakr 'Abd al-Razzāq Ibn Hamām ibn Nafi' (d. 211/827). *Al-Muṣanaf fī al-Ḥadīth*. Along with *Kitāb al-Jāmi'* of Mu'amar ibn Rashīd al-Azaḍī, riwayat 'Abd al-Razzaq al-San'ānī. Ed. Naṣr al-Dīn al-Aḥar. Beirut: Dār al-Kutub al-'Ilmiyya, 2000.
- Sarakhsī, Abū Bakr Muḥammad ibn Aḥmad ibn Sahl (d. 483/1090). *Al-Mabsūṭ*. Beirut: Dār al-Ma'rifa, 1324/1906.
- _____. *Al-Nukat Sharḥ Ziyādāt al-Ziyād at of Imām Muḥammad ibn Ḥasan*. With *Sharḥ al-'Atīfī*. Beirut: 'Alam al-Kutub, 1406/1985.
- _____. *Sharḥ al-Siyar al-Kabīr*. Ed. Muṣṭafa Zayd with the commentary of Muḥammad Abū Zahra. Cairo: Maṭba'at Jāmi'at al-Qāhira, 1958.
- _____. *Sharḥ al-Siyar al-Kabīr*. Eds. Ṣalāḥ al-Munajjid and 'Abd al-'Azīz Aḥmad. Cairo: Maṭba'at Shirkat al-I'ṭānāt al-Sharqiyya, 1971.
- _____. *Uṣūl al-Sarakhsī*. Ed. Abū al-Wafā' al-Afghānī. Karachi: Lujnat Iḥyā' al-Ma'ārif al-Nu'māniyya, 1372/1952.
- Shāfi'ī, Muḥammad ibn Idrīs (d. 204/819-20). *Aḥkām al-Qur'ān*. Ed. 'Abd al-Ghanī 'Abd al-Khālīq. N.p.: Nashr 'Azat al-'Aṭār al-Ḥusnī, 1371/1951.
- _____. *Musnad al-Shāfi'ī*. Ed. 'Azat al-'Aṭār. Beirut: Dār al-Kutub al-'Ilmiyya, 1980.
- _____. *Al-Risāla*. Ed. Aḥmad Shākir. Beirut: Dār al-Turāth, 1399/1978.
- _____. *Al-Umm*. With *Mukhtaṣar al-Muznī* (d. 264 H.). Cairo: Maṭba'at al-Sha'b, 1321/1903.

- Shaharastānī, Muḥammad ‘Abd al-Karīm (d. 548/1153). *Al-Milal wa al-Niḥal*. On the margin of Ibn Ḥazm, *al-Faṣl fī al-Milal wa al-Niḥal*. Cairo: al-Maṭba‘a al-Adabiyya, 1317/1888.
- Sha‘rānī, ‘Abd al-Wahāb ibn Aḥmad ibn ‘Alī (d. 973/1565). *Al-Mizān al-Kubra*. Cairo: Maṭba‘at Muṣṭafa al-Ḥalabī, 1359/1940.
- Sharqāwī, ‘Abdullah ibn Ḥijāzī (d. 1237/1812). *Ḥāshiyyat al-Sharqāwī ‘alā al-Tahrīr*. Cairo: al-Maṭba‘a al-‘Āmira, 1290/ 1873.
- Shāṭibī, Abū Ishāq Ibrāhīm ibn Musa al-Ghurnāṭī (d. 790/1388). *Al-Muwāfaqāt fī Uṣūl al-Sharī‘a*. Ed. ‘Abdullah Darāz. Beirut: Dār al-Ma‘rifa, n.d.
- Shawkānī, Muḥammad ibn ‘Alī b. Muḥammad (d. 1250/1834). *Irshād al-Fuḥūl ‘ilā Ṭahqīq al-Haqq min ‘Ilm al-Uṣūl*. Cairo: Maṭba‘at Muṣṭafa al-Ḥalabī, 1356/1937.
- _____. *Nayl al-Awṭār Sharḥ Muntaqā al-Aḥbār*. Cairo: Maṭba‘at Muṣṭafā al-Ḥalabī, 1391/1971.
- _____. *Al-Sayl al-Jarār al-Mutadafiq ‘alā Ḥadā’iq al-Azhār*. Ed. Muḥmūd Ibrāhīm Zayid. Beirut: Dār al-Kutub al-‘Ilmiyya, 1405/1984.
- Shaybānī, Muḥammad ibn Ḥasan (d. 189/804). *Al-Aṣl “Mabsūṭ”*. Ed. Abū al-Wafā’ al-Afghānī. Karātshī: Maṭba‘at Idārat al-Qur’ān, n.d.
- _____. *Al-Ḥuja ‘alā Ahl al-Medina*. Ed. Mahdi al-Kilāni. Beirut: ‘Ālam al-Kutub, 1385/1965.
- _____. *Al-Jāmi‘ al-Kabīr*. Ed. Abū al-Wafā’ al-Afghānī. Cairo: Nashr Lujnat al-Iḥyā’ al-Ma‘ārif al-Nu‘māniyya, n.d.
- _____. *Al-Jāmi‘ al-Ṣaghīr*. With the margin of *al-Nāfi’ al-Kabīr* of Abū al-Ḥusnāt al-Laknawī. Karātchi: n.d.
- _____. *Kitāb al-Siyar of Shaybānī* (chapters of “Siyar” form “Kitāb al-Aṣl”). Ed. Majid Khadduri. Beirut: al-Dār al-Mutaḥida li al-Nashr, 1975.
- _____. *Al-Siyar al-Kabīr*, with the commentary of Sarakhsī. Ed. Ṣalāḥ al-Dīn al-Munajjid. Cairo: Maṭba‘at Shirkat al-I‘lānāt al-Sharqiyya, 1391/1971.
- _____. *Al-Siyar al-Ṣaghīr*, within *al-Mabsūṭ* of Sarakhsī. Beirut: Dār al-Ma‘rifa, 1406/1985.
- _____. *Ziyādāt al-Ziyādāt*. With the margin of *Sharḥ al-Sarakhsī and al-‘Atābī*. Beirut: ‘Ālam al-Kutub, 1406/1985.
- Shīrāzī, Abū Ishāq Ibrāhīm ibn ‘Alī. (d. 476/1080). *Al-Muhadhab fī Fiqh al-Imām al-Shāfi‘ī*. Beirut: Dār al-Ma‘rifa, 1379/1959.
- _____. *Ṭabaqāt al-Fuqahā’*. Baghdād: al-Maktaba al-‘Arabiyya, 1356/1937.
- Subkī, Abū al-Ḥasan ‘Alī ibn ‘Abd al-Kāfi (d. 756/1355). *Fatāwī al-Subkī*. N.p.: Maktabat al-Qudsī, 1356/1937.
- _____. *Al-Jāmi‘ al-Ṣaghīr min Ḥadīth al-Bashīr al-Nadhīr*. With *Faydh al-Qadīr*. Beirut: Dār al-Ma‘rifa, 1391/1971.
- _____. *Takmilat al-Majmū‘ Sharḥ al-Muhadhab*. Printed with Nawawī, *Majmū‘*. Cairo: Maṭba‘at al-‘Āṣima, 1966.

- Suyūṭī, Jalāl al-Dīn ‘Abd al-Raḥmān ibn Abū Bakr (d. 911/1505). *Al-Ashabāh wa al-Nadhā’ir fī Qawā’id wa Furū’ al-Shāfi’iyya*, Cairo: Maṭba‘at Muṣṭafa al-Ḥalabī, 1378/1958.
- _____. *Al-Durr al-Manthūr fī al-Tafsīr bi al-Ma’tḥūr*. Beirut: Dār al-Fikr, 1403/1982.
- _____. *Al-Ḥawī Fatawī*. Cairo: Maṭba‘at al-Sa‘āda, 1378/1958.
- _____. *Al-Itqān fī ‘Alūm al-Qur’ān*. Ed. Muḥammad Abū al-Faḍl. Cairo: al-Hay’a al-Maṣriyya al-‘Āma, 1974.
- _____. *Ṭabaqqāt al-Mufasssīrīn*. Ed. ‘Alī Muḥammad ‘Umar. Cairo: Maktabat Wahba, 1976.
- _____. *Tārīkh al-Khulafā’*. Ed. Muḥyī al-Dīn ‘Abd al-Majīd. Cairo: Maṭba‘at al-Sa‘āda, 1371/1952.
- Ṭabarī, Abū Ja‘far Muḥammad ibn Jarīr (d. 310/923). *Ikhtilāf al-Fuqahā’*, “Kitāb al-Buyū’”. Ed. Fredrick Kern. Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.
- _____. *Ikhtilāf al-Fuqahā’* “Kitāb al-Jihād wa al-Jizya wa Ahkām al-Muḥāribīn”. Ed. Joseph Shacht. Leiden, 1933.
- _____. *Tārīkh al-Umam wa al-Mulūk*. Ed. Muḥammad Abū al-Faḍl. Beirut: Dār al-Ma‘ārif, 1979.
- Taftazānī, Sa‘d al-Dīn Mas‘ūd ibn ‘Umar (d. 793/1390). *Al-Talwīh ‘alā al-Tawḍīh Sharḥ al-Tanqīh*. Cairo: Maṭba‘at Ṣubīḥ, 1377/1957.
- Tahānāwī, Muḥammad ‘Alī al-Fārūqī (fl. 1745). *Kashshāf Iṣṭilāḥāt al-Funūn*. Ed. Luṭfi ‘Abd al-Baḍī’. Beirut: Dār Ṣādir, 1382/1962.
- Ṭahāwī, Abū Ja‘far Aḥmad ibn Muḥammad ibn Salāma (d. 321/933). *Mukhtaṣar al-Ṭahāwī*. Ed. Al-Afghānī. Beirut: Maṭba‘at Dār al-Kitāb al-‘Arabī, 1370/1950.
- _____. *Sharḥ Ma‘ānī al-Āthār*. Ed. Muḥammad Sayyid Jād al-Ḥaq. Cairo: Maṭba‘at al-Anwār, 1387/1967.
- Ṭarabulsī, ‘Alī ibn Khaḷīl (d. 844/1437-8). *Mu‘īn al-Ḥukām fima Yataradad Bayn al-Khiṣmayn min al-Aḥkām*. Cairo: Maṭba‘at Muṣṭafa al-Ḥalabī, 1393/1973.
- ‘Uthmānī, Abū ‘Abdullah Muḥammad ibn ‘Abd al-Raḥmān al-Dimashqī (d. 780/1376) *Raḥmat al-Umma fī Ikhtilāf al-Ā’imma*. Eds. ‘Alī Sharabji and Nūrī Qāsim. Beirut: Mu’assasat al-Risāla, 1994.
- Wāḥidī, Abū al-Ḥasan ‘Alī ibn Aḥmad al-Wāḥidī al-Naysābūrī (d. 468/1074). *Asbāb al-Nuzūl*. Ed. Aḥmad Ṣāqir. Jidda: Dār al-Qubla li Thaqāfa al-Islāmiyya, 1407/1986.
- Wāqidī, Abū ‘Abdallah Muḥammad ibn Wāqid al-Islāmī al-Madanī (d. 207/822). *Kitāb al-Maghāzī*. Ed. Marsden Jones. London: Oxford University Press, 1966.
- Wansharaīzī, Abū al-‘Abbās Aḥmad ibn Yahya (d. 914/1508). *Al-Mi‘yār al-Mu‘arab ‘an Fatawī Ilama’ Afriqya wa al-Maghrib*. Ed. Muḥammad Ḥajī. Beirut: Dār al-Gharb al-Islāmī., n.d.

- Yāfi'ī, Abū Muḥammad 'Abdullah ibn As'ad al-Yamānī (d. 768/1309). *Mir'āt al-Jinān wa 'Abrat al-Yaqdhān*. Beirut: Mua'ssasat al-'Alāmi, n.d.
- Ya'qūbī, Aḥmad ibn Ishāq ibn Ja'far ibn Wahāb ibn Wadhī' al-Ya'qūbī al-Baghdādī (d. 292/905). *Tārīkh al-Ya'qūbī*. Ed. Khafīl al-Manṣūr. Beirut: Dār al-Kutub al-'Ilmiyya, 1419/1999.
- Yāqūt, Shihāb al-Dīn Abū 'Abdullah Yāqūt al-Ḥamawī al-Rūmi al-Baghdādī (d. 626/1229). *Mu'jam al-Buldān*. Beirut: Dār Ṣādir, 1376/1956.
- Zamakhshārī, Abu al-Qāsim Jārrallah Maḥmūd ibn 'Umer (d. 538/1144). *Asās al-Balāgha*. Beirut: Dār Ṣādir, 1385/1965.
- _____. *Al-Khashshāf 'an Ḥaqā'iq al-Tanzīl wa 'Yūn al-Aqāwīl fī Wujūh al-Ta'wīl*. Cairo: al-Bāb al-Ḥalabī, 1367/1948.
- Zarkashī, Badr al-Dīn Muḥammad ibn 'Abdullah (d. 794/1395). *Al-Burhān fī 'Ulūm al-Qur'ān*. Ed. Muḥammad Abū al-Fadhl Ibrāhīm. Cairo: Maṭba'at 'Issā al-Ḥalabī, 1391/1971.
- _____. *Al-Burhān fī 'Ulūm al-Qur'ān*. Beirut: Dār al-Ma'rifa, 1391/1972.
- _____. *Al-Mu'tabar fī Takhrīj Aḥādīth al-Minhāj wa al-Mukhtaṣar*. Ed. 'Abd al-Majīd al-Salafī. Kuwait: Dār al-Arqam, 1404/1983.
- _____. *Al-Manthūr al-Qawā'id*. Ed. Taysīr Fā'iq. Kuwait: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya, 1402/1981.
- Zarqānī, Muḥammad ibn 'Abd al-Bāqī ibn Yūsuf al-Maṣrī (d. 1122/1710-1). *Sharḥ Muwaṭṭa' Mālik*. Beirut: Dār al-Ma'rifa, 1398/1977.
- Zayd ibn 'Alī, Imām Abū al-Ḥasan Zayd ibn 'Alī ibn Ḥusayn ibn 'Alī ibn Abū Ṭalib (d. 122/740). *Majmū' fī al-Fiqh*, edited by Eugenio Griffine under the title "Corpus Iurus di Zayd Ibn 'Ali. Milano: Libreria Della Real Cassia, 1919.
- _____. *Musnad al-Imām Zayd*. Ed. 'Abd al-'Azīz ibn Ishāq al-Baghdādī. Beirut: Dār al-Kutub al-'Ilmiyya, 1981.
- Zayla'ī, Fakhr al-Dīn 'Uthmān ibn 'Alī (d. 743/1340-1). *Tabyīn al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq*. with the margin of *Ḥāshiyat al-Shalabī*. Cairo: n.p., 1313/1895.
- Zubidī, Muḥammad Murtadha (d. 1205/1790). *'Uqūd al-Jawāhir al-Munīfa fī Adillat al-Imām Abū Ḥanīfa*. Ed. 'Abdullah Hāshim al-Yamānī. Cairo: Maṭba'at al-Shubukshi, n. d.
- _____. *Tāj al-'Arūs*. Beirut: Maktabat al-Ḥayā, n.d.

B. Secondary Sources:

- ‘Abd al-Baġī, Muḥammad Fu‘ād. *Al-Mu‘jam al-Mufahras li-Alfādh al-Qur‘ān al-Karīm*. Cairo: Maṭābi‘ al-Sha‘b, 1378/1958.
- ‘Abd al-Qādir, ‘Alī Ḥasan. *Nazra ‘Amma fī Tārīkh al-Fiqh al-Islāmī*. Cairo: Maktabat al-Qāhira al-Ḥadītha, 1956.
- ‘Abd al-Salām, Ja‘far. *Qawā‘id al-‘Alāqāt al-Dawliyya fī al-Qānūn al-Duwalī wa al-Sharī‘a al-Islāmiyya*. N.p.: Maktabat al-Salām al-‘Ālamiyya, 1401/1980.
- _____. *Sharṭ Baqā’ al-Shay’ ‘alā Ḥālīh*. Beirut: Dār al-Kitāb al-‘Arabī, 1970.
- Abel, A. “Dār al-Ḥarb,” *The Encyclopaedia of Islam*, new edition, vol. 2. Leiden: E. J. Brill, 1965: 126.
- _____. “Dār al-Islam,” *The Encyclopaedia of Islam*, new edition, vol. 2. Leiden: E. J. Brill, 1965: 127-128.
- _____. “Dār al-Sulḥ” *The Encyclopaedia of Islam*, new edition, vol. 2. Leiden: E. J. Brill, 1965: 131.
- Abū Ḥabīb, Sa‘dī. *Mawsū‘at al-Ijmā‘ fī al-Fiqh al-Islāmī*. Damascus: n. p., 1996.
- Abū Zahra, Muḥammad Muḥammad (d. 1394 H.) *Al-Jarīma wa al-‘Aqūba fī al-Fiqh al-Islāmī*. Beirut: Dār al-Fikr al-‘Arabī, 1976.
- _____. *Al-‘Alāqāt al-Dawliyya fī al-Islam*. Cairo: Dār al-Qawmiyya li-Ṭibā‘ā, 1964.
- _____. *Al-Mulkiyya wa Nadhiriyyat al-‘Aqd fī al-Sharī‘a al-Islāmiyya*. Beirut: Dār al-Fikr, 1977.
- _____. *Uṣūl al-Fiqh*. Cairo: Dār al-Fikr al-‘Arabī, 1377/1957.
- Alūsī, Muḥammad Shukrī. *Bulūgh al-‘Arab fī Ma‘rifat Aḥwāl al-‘Arab*. Beirut: Dār al-Kutub al-‘Ilmiyya, 1304/1886.
- Albānī, Muḥammad Nāṣir al-Dīn. *Irwā’ al-Ghālīl fī Takhrīj Aḥādīth Manār al-Sabīl*. Beirut: al-Maktab al-Islāmī, 1979.
- Amīn, Aḥmad. *Dhuḥā al-Islām*, Beirut: Dār al-Kitāb al-‘Arabī, 1388/1966.
- Armazānī, Najīb. *Al-Shar‘ al-Duwalī fī al-Islām*. Damascus: Maṭba‘at ibn Zaydūn, 1349/1930.
- Arnold, Thomas. *Al-Da‘wa ila al-Islam*. Translated by Ḥasan Ibrāhīm. Cairo: Maktabat al-Nahḍa al-Maṣriyya, 1390/197 [translation of *Preaching of Islam*].
- ‘Askarī, Abū Hilāl al-Ḥasan ibn ‘Abdullah. *Al-Furūq al-Lughawiyya*. Ed. Muḥammad Bāsīl ‘Uyūn al-Sūd. Beirut: Dār al-Kutub al-‘Ilmiyya, 2000.
- Asyūfī, Muḥammad Ibn Aḥmad al-Munḥājī. *Jawāhir al-‘Uqūd wa Mu‘īn al-Quḍa wa al-Shuhūd*. n.p.: Maṭba‘at al-Sunna al-Muḥamadiyya, 1374/1954.

- Dennett, Daniel C. *Conversion and the Poll Tax in Early Islam*. Cambridge: Harvard University Press, 1950.
- Disuqī, Muḥammad. *Al-Imām Muḥammad ibn al-Ḥasan al-Shaybānī wa Atharhu fī al-Fiqh al-Islāmī*. Doḥa [Qaṭar]: Dār al-Thaqāfa, 1987.
- Fahd, T. “Ṣābi’a,” *The Encyclopaedia of Islam*, new edition, vol. 8. Leiden: E. J. Brill, 1993: 675-678.
- Faranjiyya, Najīb, Albert Rīḥānī. *Al-Mawsū’a al-‘Arabiyya*. Beirut: Dār al-Rīḥānī, 1955.
- Gaber, Moḥamed Ḥosny. *The Early Islamic State with Special Reference to the Evolution of the Principle of Islamic International Law*. Unpublished Ph. D. dissertation, Political Science, International Law and Relations. Washington: The American University, 1962.
- Ghadhbān, Munīr Muḥammad. *Fiqh al-Sīra al-Nabawiyya*. Mecca: Ma‘had al-Buḥūth wa Iḥyā’ al-Turāth al-Islāmī, 1410/1989.
- Ghānim, Muḥammad Ḥāfiz. *Mabādi’ al-Qānūn al-Duwalī al-‘Ām*. Cairo: n.p., 1964.
- Ghathīth, Muḥammad ‘Alī. *Al-Sharq wa al-Gharb min al-Ḥurūb al-Ṣalībiyah ilā Ḥarb al-Suwīs*. Cairo: al-Dār al-Qawmiyya li Ṭibā’a wa al-Nashr, n.d.
- Ghunaymī, Muḥammad Ṭal‘at. *Aḥkām al-Mu‘āhadāt fī al-Sharī‘a al-Islāmiyya*. Alexandria: Munsha’at al-Ma‘ārif, 1977.
- _____. *Qānūn al-Salām fī al-Islam*. Alexandria: Munsha’at al-Ma‘ārif, 1988.
- _____. *The Muslim Conception of International Law and the Western Approach*. The Hague: Martinus Nijhoff, 1968.
- Gibb, H. A. R. “‘Abd al-Malik B. Marwān,” *The Encyclopaedia of Islam*, new edition, vol. 5. Leiden: E. J. Brill, 1960: 76-77.
- Goitein, Shlomo Dov. *Jews and Arabs: Their Contacts through the Ages*. New York: Schocken Books, 1964.
- Gottschalk, H. L. “Al-Kāmil,” *The Encyclopaedia of Islam*, new edition, vol. 4. Leiden: E. J. Brill, 1960: 520-521.
- Haig, T. W. “Al-Malik al-Kāmil,” *The Encyclopaedia of Islam*, new edition, vol. 1. Leiden: E. J. Brill, 1987: 204-205.
- Ḥājj, ‘Abd al-Ḥamīd. *Al-Nuẓum al-Duwaliyya wa al-Sharī‘a al-Islāmiyya*. N.p.: Ma‘had al-Dirāsāt al-Islāmiyya, 1395/1975.
- Hallaq, Wael B. *A History of Islamic Legal Theory: An Introduction to Sunnī Uṣul al-Fiqh*. Cambridge: Cambridge University Press, 1997.

- Ḥamād, Nazīh. *Mu'jam al-Muṣṭalahāt al-Iqtisādiyya fī Lughat al-Fuqahā'*. Virginia: al-Ma'had al-'Ālamī lil Fikr al-Islāmi, 1414/1993.
- Ḥamawī, Muḥammad Ibn 'Alī. *Al-Tārīkh al-Manṣūrī: Talkhīṣ al-Khashf wa al-Bayān fī Hawādith al-Zamān*. Ed. A. Dudu. Damascus: Majma' al-Lugha al-Arabiyya, 1982.
- Ḥamīdullah, Muḥammad. *Dawlat al-Islam wa al-'Ālam*, translated into Arabic by Fathī 'Athmān. Cairo: Silsilat al-Thaqāfa al-Maṣriyya, 1382/1962.
- _____. *The Emergence of Islam*. Ed. and trans. by Afzal Iqbal. Islamabad: Islamic Research Institute, 1993.
- _____. *Majmū'at al-Wathā'iq al-Siyāsiyya li 'Ahd al-Nabawī wa al-Khilāfa al-Rāshida*. Beirut: Dār al-Irshād, 1969.
- _____. *The Muslim Conduct of the State*, third edition. Lahore: Islamic Research Institute, 1954.
- Hanna, Sami. Ed. *Medieval and Middle Eastern Studies: In Honour of Aziz Suryal Atiya*. Leiden: E. J. Brill, 1972.
- Ḥasan, 'Abd al-Fatāh. *Mithāq al-Umam wa al-Shu'ūb fī al-Islām*. Kuwait: Maktabat al-Manār, 1966.
- Ḥasan, Ibrāhīm Ḥasan. *Tārīkh al-Islam al-Siyāsī wa al-Dīnī wa Thaqāfī wa al-Ijtīmā'ī*. Beirut: Dār al-Jalīl, 1411/1990.
- Ḥasan, Muḥammad 'Abd al-Ghanī. *Al-Mu'āhadat wa al-Mu'āhadāt fī Tārīkh al-'Arab*. Cairo: Maktabat Miṣr, 1966.
- _____. *Al-Tarājim wa al-Siyar*. Cairo: Dār al-Ma'ārif, 1955.
- Haykal, Muḥammad Ḥusayn. *The Life of Muḥammad*, translated by Ismā'īl Rāgī A. al-Fārūqī. Indianapolis: American Trust Publications, 1976.
- Heyd, Uriel. *Ottoman Documents on Palestine: 1552-1615*. Oxford: Clarendon Press, 1960.
- _____. *Studies in Old Ottoman Criminal Law*. Oxford: Clarendon Press, 1973.
- Hilālī, Muḥammad Taqī al-Dīn and Muḥammad Muḥsin Khān. *Interpretation of the Meaning of the Noble Qur'ān in the English Language*. Riyadh: Dār al-Salām, 1996.
- Hillenbrand, Carole. *The Crusaders: Islamic Perspectives*. Edinburgh: Edinburgh University Press, 1999.
- Holt, P. M. *Early Mamluk Diplomacy (1260-1290) Treaties of Baybars and Qalāwūn with Christian Rulers*. Leiden: E. J. Brill, 1995.
- Ḥomoud, Moḥammad 'Alī Naṣīr. *Diplomacy in Islam*. Jaipur: Printwell, 1994.

- Hosein, Imrān N. "Diplomacy in Islam: Treaties and Agreements an Analysis of the Treaty of Hudaibiyah," *Muslim Education Quarterly*, 3, 3 (Spring, 1986) 67-85.
- Hourani, Albert. *A History of the Arab Peoples*. Cambridge: Harvard University Press, 1991.
- Humphreys, R. Stephen. *Islamic History: A Framework for Inquiry*. Princeton: Princeton University Press, 1991.
- _____. *From Saladin to the Mongols: The Ayyubids of Damascus, 1193-1260*. New York, 1977.
- Hurewitz, J. C. *Al-Maghāzī al-Awūla wa Mu'alifūha*, translated by Ḥusayn Naṣar. Cairo: Maṭba'at Muṣṭafa al-Ḥalabī, 1369/1949.
- _____. *The Middle East and North Africa in World Politics: A Documentary Record*, vol. 1, European Expansion, 1535-1914. New Haven and London: Yale University Press, 1975.
- Imām, Muḥammad Kamāl. *Al-Ḥarb wa al-Salām fī al-Fiqh al-Duwalī al-Islāmī*. Cairo: Dār al-Ṭibā'a al-Muḥamadiyya, 1399/1978.
- Imber, Colin. *Ebu's-Su'ūd: The Islamic Legal Tradition*. Stanford: Stanford University Press, 1997.
- Inalcic, Khalil. "Dār al- 'Ahd," *The Encyclopaedia of Islam*, new edition, vol. 2. Leiden: E. J. Brill, 1965: 116.
- _____. "Imtiyāzāt," *The Encyclopaedia of Islam*, vol. 3. Leiden: E. J. Brill, 1971: (1197-1189).
- _____. *The Ottoman Empire: The Classical Age 1300-1600*, translated by Norman Itzkowitz and Colin Imber. London: Weidenfeld and Nicolson, 1973.
- Ismā'īl, Pasa. *Idah al-Maknūn fī al-Dhayl 'alā Kashf al-Zunūn*. Ed. Kātip Cebli. Baghdād: Maktabat al-Muthannā, 1945-1972.
- _____. *Hadiyat al-'Ārifīn, Asmā' al-Mū'liḥīn wa Āthār al-Muṣanifīn*. Baghdād: Maktabat al-Muthanna, 1951.
- Itzkowitz, Norman. *Ottoman Empire and Islamic Tradition*. Chicago and London: The University of Chicago Press, 1972.
- Jabūrī, 'Abdullah Muḥammad. *Fiqh al-Imām al-Awzā'ī*. Baghdād: Maṭaba'at al-Irshād, 1397/1976.
- Jurīsha, 'Alī. *al-Mashrū'iyya al-Islāmiyya al-'Alyā*. N.p.: Maktabat Wahbī, 1396/1976.
- Kassim, Husian. "Treaties (Muwāda'a) and Mutual Relations (Mu'āmalāt) of Muslims with other Nations," *The American Journal of Islamic Social Sciences*, vol. 5, no.2 (1988).
- Kawar, Irfan. "The Arab in the Peace Treaty of A. D. 561," *Arabica*, vol. 3. Leiden: E. J. Brill, 1956: 181-213.

- Kawtharī, Muḥammad Zāhid ibn Ḥasan. *Bulūgh al-Amānī fī Sīrat al-Imām Muḥammad ibn Ḥasan al-Shaybānī*. Cairo: Maktabat Dār al-Hidāyya, 1985.
- Khaddūrī, Majīd. "Hudna," *The Encyclopaedia of Islam*, new edition, vol. 6. Leiden: E. J. Brill, 1971: 246--247.
- _____. *The Islamic Law of Nations*. Baltimore: The Johns Hopkins Press, 1966.
- _____. "Maṣlaḥa," *The Encyclopaedia of Islam*, new edition, vol. 6. Leiden: E. J. Brill, 1971: 738-740.
- _____. *al-Qānūn al-Duwalī al-Islāmī* "Kitāb al-Siyar li Shaybānī". Beirut: al-Dār al-Mutahida li Nashr, 1975.
- _____. *War and Peace in the Law of Islam*. Baltimore: The Johns Hopkins Press, 1955.
- _____. and Herbert J. Liebesny. *Law in the Middle East: Origin and Development of Islamic Law*. Washington, D. C.: Middle East Institute, 1955.
- Khafif, 'Alī. *Mukhtaṣar Aḥkām al-Mu'āmalāt al-Shar'iyya*. Cairo: Maṭba'at al-Sunna al-Muḥamadiyya, 1949.
- _____. *Al-Dhamān fī al-Fiqh al-Islāmī*. Cairo: Jāmi'at al-Duwal al-'Arābiyya, 1970.
- Khalāf, 'Abd al-Wahāb. *Al-Siyāsa al-Shar'iyya*. Beirut: Dār al-Anṣār, 1397/1976.
- Khamīs, Ibrāhīm...et al. *Al-Mu'jam al-Wasīf*. Beirut: Dār Iḥyā'al-Turāth al-Ārabī, n.d.
- Kruse, Hans. "The Islamic Doctrine of International Treaties," *Islamic Quarterly*, vol. 1 (1954) 152-158.
- _____. "The Notion of Siyar," *Journal of Pakistan Historical Society*, vol. 2 (1954) 16-25.
- _____. "Al-Shaybānī on International Instruments," *Journal of Pakistan Historical Society*, (1953) vol. 1: 90-100.
- LaMonte, John L. *The Crusade of Richard the Lionhearted*. Ed. and trans. New York: Columbia University Press, 1941.
- Landau, J. M. "Mu'āhada," *The Encyclopaedia of Islam*, new edition, vol. 7. Leiden: E. J. Brill, 1993: 250-253.
- Lapidus, Ira M. *A History of Islamic Societies*. Cambridge: Cambridge University Press, 1988.
- Lewis, Bernard. *The Middle East: 2000 Years of History from the Rise of Christianity to Present Day*. New York: Scribner, 1995.
- Little, D. P. "Jerusalem under the Ayyūbids and Mamlūks, 1197-1516 AD". In *Jerusalem in History*. Ed. Kāmil Jamil Asali (London: Kegan Paul International, 1989) 177-200.
- Lybyer, Albert Howe. *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*. Cambridge: Harvard University Press, 1913.

Lyons, M. C. and David Jackson. *Saladin: The Politics of the Holy Land*. Cambridge: Cambridge University Press, 1982.

Madkūr, Muḥammad Salām. *Madkhal al-Fiqh al-Islāmī*. Cairo: Dār al-Nahḍa al-‘Arabiyya, 1976.

_____. *al-Fiqh al-Islāmī: Madkhal wa al-Amwāl wa al-Ḥuqūq wa al-Mulkiyya wa al-‘Uqūd*. Cairo: Dār al-Nahḍa al-‘Arabiyya, 1959.

Maḥmaṣānī, Subḥī. *Falsafat al-Tashrī’ al-Islāmī*, “The Philosophy of Jurisprudence in Islam,” translated by Farhat J. Ziadeh. Lieden: E. J. Brill, 1961.

_____. *Al-Qānūn wa l-‘Alāqāt al-Dawliyya fi al-Islam*. Beirut: Dār al-‘Ilīm lil Malāyyin, n.d.

Maḥmūd, ‘Abd al-Ghanī. *al-Taḥaffuḍ ‘alā al-Mu‘āhadāt al-Dawliyyah fi al-Qānūn al-Duwali al-‘Amm wa-al-Sharī‘a al-Islāmiyya*. Cairo: n.p., 1986.

Manṣūr, ‘Alī ‘Alī. *Al-Sharī‘a al-Islāmiyya wa al-Qānūn al-Duwali al-‘Amm*. n.p.: al-Majlis al-‘Alā li Shu‘ūn al-Islāmiyya, 1395/1974.

Mar ‘ashlī, Nadīm and Asāma. *Al-Ṣiḥāh fi al-Lugha wa al-‘Alūm*. Beirut: Dār al-Ḥadhāra al-‘Arabiyya, 1395/1981.

Marqas, Sulaymān. *Nazariyat al-‘Aqd*. Cairo: Dār al-Nashr lil Jam‘iyyāt al-Khayriyya, 1956.

Maraghī, ‘Abdullah Muṣṭafa. *Al-Tashrī‘ al-Islāmī li-ghayr al-Muslimīn*. Cairo: Dār al-Adab, 1900.

Merriman, Roger Bigelow. *Suleiman the Magnificent, 1520-1566*. New York: Cooper Square Publishers, 1966.

Muḥammad, Abū al-Faḍl Ibrāhīm, and ‘Alī Muḥammad al-Bajī. *Ayām al-‘Arab fi al-Islam*. Beirut: Dār al-Jalīl, 1408/1988.

Muḥammad, Aḥmad Abū al-Wafā. *Al-Mu‘āhadāt al-Duwaliyya fi al-Sharī‘a al-Islāmiyya*. Beirut: Dār al-Nahḍa al-‘Arabiyya, 1410/1989.

Munjjid, Ṣalāḥ al-Dīn. *Al-Nudhum al-Diplomāsiyya fi al-Islam*. Beirut: Dār al-Kitāb al-Jadīd, 1983.

Muir, William. *The Caliphate: Its Rise Decline and Fall*. Oxford: The Religious Society, 1891.

Mūsā, Muḥammad Yūsuf. *Al-Amwāl wa Nadhariyyat al-‘Aqd fi al-Fiqh al-Islāmī*. Beirut: Dār al-Kitāb al-‘Arabī, 1952.

_____. *Al-Tashrī‘ al-Islāmī wa Atharuhu fi al-Fiqh al-Gharbī*. Beirut: Dār al-Qalam, 1960.

- Muṣṭafa, Nadia Muḥammad. *Al-Muqaddima al-‘Āmma li-Mashrū‘ al-’Alāqāt al-Dawliyya fī al-Islam*. Cairo: al-Ma‘had al-‘Ālamī lil-Fikr al-Islamī, 1996.
- Mutwālī, ‘Abd al-Ḥamīd. *Al-Islām wa Mabādi’ Nizām al-Ḥukm*. Alexandria: Mansha‘at al-Ma‘ārif, 1976.
- An-Na‘im, Abdullahi Ahmed. *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. New York: Syracuse University Press, 1990.
- Nāṣr, Ḥasan. *Nash‘at al-Tadwīn al-Tārīkh ‘and al-‘Arab*. Cairo: Maktabat al-Nahḍa al-Maṣriyya, n.d.
- Omar, F. “Hārūn al-Rashīd” *Encyclopaedia of Islam*, new edition, vol. III. Leiden: E. J. Brill, 1971: 232-234.
- Parry, V. J., H. Inalcik, A. N. Kurta and J. S. Bromley. *A History of the Ottoman Empire to 1730*, edited with an Introduction by M. A. Cook. Cambridge: Cambridge University Press, 1976.
- Pellat, Ch. “Ḥilf al-Fuḍūl,” *the Encyclopaedia of Islam*, new edition, (Leiden: E. J. Brill, 1971) 3: 389.
- Qāsim, ‘Awn al-Sharīf. *Nash‘at al-Dawla al-Islāmiyya ‘ala ‘Ahd Rasūlallāh: Dirāsa fī Wathā’iq al-‘Ahd al-Nabawī*. Beirut: Dār al-Kitān al-Lubnānī, 1981.
- Rabbāṭ, Idmun. *Al-Wasīṭ fī al-Qānūn al-Dusturī al-‘Amm: Min Ajil Nadhariyya fī al-Qānūn al-Duwalī al-Islāmī*. Beirut: Dār al-‘Ilīm lil-Malāyīn, 1965.
- Rahbī, ‘Abd al-‘Azīz ibn Muḥammad. *Fiqh al-Mulūk wa Muftāḥ al-Ritāj al-Murṣad ‘alā Khizānat Kitāb al-Khirāj*. Baghdād: Ri‘āsat Dīwān al-Awqāf, 1973.
- Rīs, Muḥammad Ḍuyā’ al-Dīn. *Al-Khirāj wa al-Nuḍum al-Māliyya li Dawlat al-Islam*. N.p.: Dār al-Anṣār, 1977.
- Rustum, Assad. *Muṣṭalah al-Tārīkh ‘and al-Muslimīn*. Beirut: al-Maktaba al-‘Aṣriyya, 1966.
- Ṣa‘īdī, Ḥāzim ‘Abd al-Muta‘ālī. *Al-Naḍariyya al-Islāmiyya fī al-Dawla*. Beirut: Dār al-Nahḍal-‘Arabiyya, 1397/1976.
- Safar, Ḥasan Muḥammad. *Al-Madhāhib al-Fiḥhiyya al-Islāmiyya: Nash‘at al-Madhāhib wa Manahij Fiqh Rijālatuhu wa Maṣādiruhum wa Dawruhum*. N.p. [Saudi Arabia]: Dār al-Ittiḥād al-‘Arabī, 1992.
- Ṣafwat, Aḥmad Zakī. *Jamharat Rasā’il al-Arab fī ‘Aṣūr al-‘Arabiyya al-Zāhira*. Cairo: Maṭba‘at Muṣṭafa al-Bābī al-Ḥalabī, 1356/1937.

- Salem, Elie. "Arab Reforms and the Reinterpretation of Islam," *The Muslim World*, (October, 1965) 311-320.
- Sanhūrī, Nadya and Tawfīq 'Abd al-Razāq Shāwī. *Fiqh al-Khilāfa wa Taṭawurhā li Tuṣbiḥ 'Aṣbat Umam Sharqiyya*. Cairo: al-Hay'a al-Maṣriyya al-'Amma, 1989.
- Sanūsī, Aḥmad Ṭaha. *Fikrat al-Jinsiyya fi al-Tashrī' al-Islāmī*. Cairo: Miṣr al-Mu'āṣira, 1957.
- Schacht, Joseph. "Abu 'L-Su'ūd," *The Encyclopaedia of Islam*, new edition, vol. 1. Leiden: E. J. Brill, 1960: 152.
- _____. "Amān," *The Encyclopaedia of Islam*, new edition, vol. 1. Leiden: E. J. Brill, 1960: 429-430.
- _____. *An Introduction to Islamic Law*. Oxford: Clarendon Press, 1964.
- _____. *The Origins of Muḥammadan Jurisprudence*. Oxford: Clarendon Press, 1953.
- Shabīr, Muḥammad 'Othmān. *Aḥkām al-Khirāj fi al-Fiqh al-Islāmī*. Kuwait: Dār al-Arqam, 1406/1985.
- Shaltūt, Maḥmūd. *Al-Islam 'Aqīda wa Sharī'a*. Beirut: Dār al-Shurūq, n.d.
- Shanqīṭī, Aḥmad ibn Muḥammad al-Mukhtār al-Jaknī. *Mawāhib al-Jalīl*. Ed. 'Abdallah Ibrāhīm al-Anṣārī. Doha: n.p., 1403/1982.
- Sharīf, Ja'far 'Alī al-Qurayshi. *The Customs of Mussulmans of India*, trans. Gerhard Andreas Herklots. New Delhi: Asian Education Service, 1991.
- Sezgīn, Fu'at. *Tārīkh al-Turāth al-'Arabī*, trans. Maḥmūd Fahmī Hījāzī. Riyadh: Ṭab' Idārat al-Thaqāfa wa al-Nashr Jāmi'at al-Imām Muḥammad ibn Su'ūd, 1403/1982.
- Smail, R. C. *The Crusaders in Syria and Holy Land*. New York and Washington: Praeger Publication, 1973.
- Subā'ī, Muṣṭafa Ḥusnī. *Al-Sunna wa Makānatuha fi al-Tashrī' al-Islāmī*, second edition. Beirut: al-Maktab al-Islāmī, 1398/1977.
- Sufyānī, 'Abīd ibn Muḥammad. *Aḥkām al-Diyār: Dār al-Islam wa Dār al-Kufur*. Iṣṭanbūl: al-Maktaba al-Islamiyya, n.d.
- Sulṭān, Ḥamid. *Aḥkām al-Qānūn al-Duwali fi al-Sharī'a al-Islāmīyya*. Cairo: Dār al-Nahdha al-'Arabiyya, 1986.
- Tabātabā'ī, Houssein Nodarressi. *Kharāj in Islamic Law*. London: Anchor Press, 1983.
- Ṭahāwī, Sulaymān. *Al-Sulṭāt al-Thalāth fi al-Dasātīr al-Mu'āṣira fi al-Fikr al-Islāmī*. Beirut: Dār al-Fikr, n.d.

- The Cambridge Encyclopaedia of the Middle East and North Africa*, Cambridge: Cambridge University Press, 1988.
- Thorau, Peter. *The Lion of Egypt: Sultan Baybars I and the Near East in the Thirteenth Century*. trans. P.M. Holt. London; New York: Longman, 1992.
- Ṭurayqi, ‘Abdullah ibn Ibrāhīm ibn ‘Alī. *Al-Isti‘āna bi-ghayr al-Muslimīn fī al-Fiqh al-Islāmī*. Riyadh [Saudi Arabia]: Mu’assasat al-Risāla, 1993.
- ‘Umar, Nāṣir Suleyman. *Al-‘Ahd wa al-Mithāq fī al-Qur’ān al-Karīm*. Riyadh: Dār al-‘Āṣima, 1992.
- Veinstein, G. “Sulaymān,” *the Encyclopaedia of Islam*, new edition, vol. 9. Leiden: E.J. Brill, 1997: (832-842).
- Waṣfī, Muṣṭafā Kamāl. *Al-Mashrū‘iyya fī al-Nizām al-Islāmī*. Cairo: Maṭba‘at al-Amāna, 1390/1970.
 _____. *Muṣanafat al-Nuḏum al-Islāmiyya*. N.p.: Maktabat Wahbī, 1397/1976.
- Watt, Montgomery. *Muhammad Prophet and Statesman*. Oxford: Oxford University Press, 1961.
 _____. *Muhammad at Mecca*. Oxford: Clarendon Press, 1968.
 _____. *Muhammad at Medina*. Oxford: Clarendon Press, 1962.
- Wessels, Antonie. *A Modern Arabic Biography of Muḥammad*. Leiden: E. J. Brill, 1972.
- Ye’or, Bat. *Islam and Dhimmitude: Where Civilization Collide*. New Jersey: Fairleigh Dickson University Press, 2002.
- Zarkafī, Khayr al-Dīn ibn Maḥmūd ibn Muḥammad al-Dimashqī (d. 1396 H.). *Al-A‘lām*. Beirut: Dār al-‘Ilīm lil Malāyīn, 1408/1986.
- Zarqā, Aḥmad. *Sharḥ al-Qawā‘id al-Fiqhiyya*. Beirut: Dār al-Gharb al-Islāmī, 1403/1982.
- Zarqānī, Muḥammad ‘Abd al-‘Azīm. *Manāhil al-‘Arfān fī ‘Ilūm al-Qur’ān*. Beirut: Dār al-Fikr, n.d.
- Zaydān, ‘Abd al-Karīm. *Aḥkām al-Dhimiyyīn wa al-Musta‘manīn fī Dār al-Islam*. Beirut: Mu’assasat al-Risāla, 1396/1976.
 _____. *Majmū‘at Buḥūth Fiqhiyya*. Beirut: Muassasat al-Risāla, 1402/1981.
- Zuḥaylī, Wahba. *Āthār al-Ḥarb fī al-Fiqh al-Islāmī*. Beirut: Dār al-Fikr, 1401/1981.
 _____. *Al-‘Alāqāt al-Dawliyya fī al-Islam*. Beirut: Dār al-Fikr, 1403/1984.