

**Labeeb A. Bsoul<sup>1</sup>**  
Khalifa University  
United Arab Emirates

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## THE ISLAMIC EPISTEME OF POLITICS DEVELOPMENT IN INTERNATIONAL AFFAIRS

### Abstract

This paper illustrates the contributions of Islamic law to the development of transnational socio-political organisations that transcend racial and geopolitical fixations. Those are best enshrined in the premise of the unity of believing community and humanity led to the Shari'ah/Islamic law. Islam advocates the development and consolidation of communities. This study discusses the concept of 'ummah' (community of believers) according to the tradition of Prophet Muhammad and surveys its development throughout the Islamic caliphates, sultanates, and imamates up until colonialism and modern 'nation-state' system. The article argues that there are ontological, epistemological, and normative differences spanning the divide between Muslim and Western worldviews especially concerning the development and management of their polities.

**Keywords:** Islamic International Law/Siyar, Legal provisions, Politics, Muslim Jurists, Justice, State

### Introduction

The Islamic religion should enhance people's lives, while defining the limits of 'free-living' according to the Shari'ah/Islamic law.<sup>2</sup> This is derived from several aspects. The first is the origin or theoretical foundation of religion from which the conduct, behaviour, and purpose of existence are related to God and creation. This is known as *'ilm al-'aqidah* or *usul al-din*. The second pertains to the system, which defines the conduct of man in accordance with this *'ilm* in terms of social relations, finance and human interaction. This aspect falls under the domain of Islamic law by which Muslims have an obligation to abide.<sup>3</sup> *'Ilm al-shara'i' wal-ahkam* is defined as the knowledge of *ahkam al-shar'iyyah* (Legal Provisions)

1 Associate Professor at the Department of Humanities and Social Sciences at Khalifa University, College of Arts and Social Sciences, Abu Dhabi, UAE. Contact E-mail: [labeeb.bsoul@gmail.com](mailto:labeeb.bsoul@gmail.com)

2 Abu Ishaq al-Shatibi, *al-Muwafaqat fi Usul al-Shari'ah*, Dar al-Kutub al-'Ilmiyyah, Beirut, 2009, pp. 50-53.

3 'Ala' al-Din Abu Bakr al-Samarqandi, *Mizan al-Usul* ed. Muhammad Zaki 'Abd al-Barr, Matabi' al-Doha, Doha, 1984, pp. 9-10; Ibn Khaldun 'Abd al-Rahman, *al-Muqaddimma*, Dar al-Kitab al-'Arabi, Beirut, 1981, p. 780; Subhi Mahmasani. *al-Qanun wal-'Ilalat al-Duwal'iyyah fi al-Islam*, Dar al-'Ilm lil-Malayin, Beirut, 1982, pp. 12-14; Ja'far 'Abd al-Sallam. *Qawa'id al-'Ilalat al-Duwal'iyyah fu al-Qanun al-Duwal'i wal-Shari'ah al-Islamiyyah*, Maktabat al-Salam al-'Alamiyyah, Cairo, 1982, p. 30; Ibn 'Abdin, Muhammad Amin, *Hashiyat, Radd al-Muhtar 'ala al-Darr al-Mukhtar*, Matba'at Mustafa al-Halibi, Cairo, 1966, p. 79.

which is derived from *ijtihad* (Independent legal reasoning).<sup>4</sup> These practical provisions are organised into ritual provisions such as prayer, pilgrimage and alms-giving meant to span man and Creator, and mutual provisions (*Ahkam al-mu'amalat*) such as contracts, penalties, and crimes referring to assigned forms of relationships with individuals, groups, or nations.<sup>5</sup>

*Ahkam al-Mu'amalat* address the preaching and spreading of Islam, in addition to *al-Jihad* and the provisions for prisoners, sacrifice, *al-Dhimma*, *al-jizya*, tribute, amnesty and spoils as matters pertaining to Muslim relationships with others during times of peace and war. In modern legal terminology, this is understood as General International Law. In this respect, 'Abd al-Razaq al-Sanhuri asserts that general and legislative law have always existed in Islamic jurisprudence, though classically it distinguished between the rights of the divine and man.<sup>6</sup>

Islamic jurisprudence is geared towards addressing public interests and emerging events. In *Al-Muwafaqat*, al-Shatibi indicated that Islamic legal provisions aim to achieve people's present and future interests.<sup>7</sup> For al-Shafi'i, the sources of Islamic jurisprudence ensure that people's needs are met as legal provisions exist within the Qur'an for all matters.<sup>8</sup> Aside from explicit textual provisions found within the Qur'an or Prophetic tradition, *ijtihad* is in itself a source of the origins of Islamic law, and an instrument for the comprehensive scope and sustainability of the *al-Shari'ah/Islamic law*. Jurists highlight its significance concerning the application of provisions and the methods by which they are derived.<sup>9</sup> In this regard, jurists compiled comprehensive works to address new cases, and delved into a range of issues such as *al-jihad* (striving especially in the religious path), *al-maghazi* (incursions), *al-khiraj* (tax on agricultural land), *al-siyasah al-shar'iyyah* (legal governmental administration and *siyar* (account of Muslim external achievements; juristic source for Muslim law of nations), in a manner strikingly similar to modern international law.<sup>10</sup> It is not identical to the modern understanding of international as *al-siyar* differs in that it addresses Muslim com-

4 Abu Baker Ahmad ibn 'Ali al-Khatib al-Baghdadi, *al-Faqih wal-Mutafaqih*, Isma'il al-Ansari (ed.), Dar al-Kutub al-Ilmiyyah, Beirut, p. 54.

5 See for example the work of Ibn Jazzi a Maliki jurist works *al-Qawanin al-Fiqhiyya*, Mu'asassat al-Kutub al-Thaqafiyah, Beirut, 2009, pp. 3-4, in which the latter organized the jurisprudential subjects into two branches, the one branch on ritual *al-badat* and the other on mutual relations *mu'amalat*.

6 'Abd al-Razaq al-Sanhuri. *Fiqh al-Khilafah wa Tatawuruha li-Tisbihi 'Ummah Sharqiyya*, al-Hay'ah al-Masriyyah al-'Ammah, Cairo, 1989, pp. 58-59.

7 Abu Ishaq al-Shatibi, *al-Muwafaqat fi Usul al-Shari'ah*, 2009, pp. 6-7.

8 Muhammad Idris Shafi'i, *al-Risalah*, Ahmad Shakir (ed.), Dar al-Turath, Beirut, 1979, pp. 20-25, p. 477.

9 Abu Ishaq al-Shatibi, *al-Muwafaqat fi Usul al-Shari'ah*, Vol. 4, 2009, pp. 89-105.

10 Mahmasani Subhi, *Falsafat al-Tashru' fi al-Islam: Muqadimah fi Dirasat al-Shari'ah al-Islamiyyah 'la Dawu' Madhahibuha al-Mukhtalifah wa-Dawu' al-Qawanun al-Haduthah*, p. 25; 'Abd al-Karim Zaydan. *Majmu'at Buhuth Fiqhiyyah*, Maktabat al-Quds, Baghdad, 1982, pp. 12-16; Ja'far 'Abd al-Salam, *Qawa'id al-'Ilaqat al-Duwaliyyah fi al-Qanun al-Duwali wal-Shari'ah al-Islamiyyah*, p. 31.

mitments towards non-Muslims in its various forms.<sup>11</sup>

In addition to the lexical meaning of *al-sirah*, which refers to a path or authority, it also connotes the Prophet's (*sirah*) or (*maghazi*), and the narration of events that took place from the birth of the Prophet until his death, along with the lives of the companions and the early spread of Islam.<sup>12</sup> The term came into dominance through its use by jurists to refer to issues of *al-maghazi*, *al-jihad*, and the Muslim treatment of non-Muslims, including infidels, aggressors, and others such as *al-musta'manin*/foreigners promised security by Muslims, apostates, and *ahl al-dhimma*/non-Muslim subjects of the Islamic state, whether in times of peace or war.<sup>13</sup> It also included the practices by the Rightly Guided Caliphs. In his *Sirah*, Ibn Hisham cites a Prophetic tradition regarding the content of this term. As narrated by Ibn Ishaq, when the Prophet ordained Bilal ibn Rabah to transfer authority of the Muslim brigade to 'Abd al-Rahman ibn 'Awf during the Duwmat al-Jandal battle (5/626), he commanded combat against those who disbelieved but without deception over spoils of war, betrayal, mutilation or the killing of children.<sup>14</sup>

According to Ibn Sa'd's *Tabaqat al-Kubra* and Ibn Qayyim al-Jawziyya's *Zad al-Ma'ad*, the Prophet (pbuh) appointed al-'Ala' Ibn al-Hadrami as governor of Bahrain in the 7<sup>th</sup> century. Al-Mundhir Ibn Sawa al-Tamimi (d. 11/632), responded inquiring as to the fate of the Magians and Jews who lived under his government.<sup>15</sup> The Prophet (pbuh) instructed that Muslims be allowed to practice their religion, and that non-Muslims should be left free and made to pay *jizya*/poll tax.<sup>16</sup> Abu Jarir al-Tabari in his *Tarakh al-Tabari* asserts that during the reign of the second Caliph 'Umar ibn al-Khattab, he gave judges high salaries to avoid bribery in order to reach unbiased and just verdicts. Judges were mandated with the public interest. In addition, he issued codes of conduct to be followed in courts that regulate the tasks of judges regardless of status. The same approach was adopted by the third Caliph 'Uthman ibn 'Afan at the beginning of his tenure as

11 Mustafa Kamal Wasfi, *al-Mashru'iyah fi al-Nizam al-Islami*, Matba'at al-Amanah, Cairo, 1970, p. 50.

12 Munir Muhammad al-Ghadban, *Fiqh al-Sirah al-Nabawiyah* Mecca: Ma'had al-Buhuth wa l-hya' al-Turath al-Islami, 1990, p. 13; Mustafa al-Suba'i, *al-Sunnah wa Makanatuha fi al-Tashru' al-Islami*, al-Maktab al-Islami, Beirut, 1985, p. 47; Muhammad 'Abd al-Ghani Hasan, *al-Tarajim wal-Siyar*, Dar al-Ma'arif, Cairo, 1955, pp. 30-31; and also by the same author Muhammad 'Abd al-Ghani Hasan, *Al-Tarikh 'and al-Muslimun*, Dar al-Ma'arif, Cairo, 1977, pp. 11-17; Muhammad Hamidullah, *Majmu'at al-Watha'iq al-Siyasiyyah lil-'Ahd al-Nabawi wal-Khilafah al-Rashidah*, Dar al-Nafa'is, Beirut, 2009, pp. 41-368.

13 Qassim Qawnawi, *Anis al-Fuqaha'*, Ahmad 'Abd al-Razaq al-Kubisi (ed.), Dar al-Wafa', Jadda, 1986, p. 181; Muhammad 'Ali al-Faruqi Tahanawi, *Kashaf Istilahat al-Funun*, Lutfi 'Abd al-Badi' (ed), Dar Sadir, Beirut, 1962, p. 170; Kamal al-Din Muhammad Ibn Hamam, *Fath al-Qadir 'ala al-Hidayyah*, Dar al-Fikir, Beirut, 1977, Vol. 4, p. 277; al-Kufawu, Abu al-Baq'a' Ayub ibn Musa al-Husayni, *al-Kuliyat: Mu'jam fi al-Furuq wal-Mustalahat al-Lughawiyya*, Adnan Darwish and Muhammad al-Masri (eds.), Dar al-Kitab al-Islami, Cairo, 1992, p. 38; Shaykh Zadah Damad Afandi, 'Abdullah ibn Muhammad ibn Sulayman, *Majma' al-Anhur Sharh Multaqa al-Abhur*, Dar l-hya' al-Turath al-'Arabi, Beirut, 1960, p. 631.

14 Abu Muhammad 'Abd al-Malik Ibn Hisham, *al-Sirah al-Nabawiyah*, Mustafa al-Saqa (ed.), Dar al-Khayr, Beirut, 1996, Vol. 4, pp. 210-211.

15 Ibn Kathir, Isma'el ibn 'Umar, *al-Bidayah wa'l-Nihayah*. Beirut: Maktabat al-Ma'arif, 1977, Vol. 6: 327; Muhammad Jarir Tabari, *Tarikh al-Tabari*, Muhammad Abu al-Fadl Ibrahim (ed.), Dar al-Ma'arif, 1979, Vol. 2: 285.

16 Muhammad Ibn Sa'ad, *Al-Tabaqat al-Kubra*, Dar Sadir, Beirut, 1980, p. 238.

Caliph, where he instructed governors to serve as shepherds to their flock, and not tax-collectors. He campaigned for Muslims and non-Muslims alike in defence of their dues.<sup>17</sup>

### ***Al-Siyar* in the idiom of classical jurists**

Among the first scholars in the field of *al-siyar* are 'Amir ibn Sharahil al-Sha'abi (d. 103/721),<sup>18</sup> Abu 'Umro 'Abd al-Rahman al-Awza'i (d. 157/774),<sup>19</sup> Sufyan al-Thawri (d. 161/778),<sup>20</sup> and Ibrahim ibn Muhammad al-Fazari (d. 186/802).<sup>21</sup> Abu Hanifa and his disciples acted as precursors in the field.<sup>22</sup> Their interest predominated *al-siyar* and *al-maghazi*, with a focus on military campaigns led by the Prophet (pbuh) and his appointed military commanders. Their main concern was deriving the principles of legitimacy based on recorded military campaigns. Some sought to explore the principles of the Shari'ah/Islamic law and its application in formalising relations with other nations. This became a permanent fixture in terms of new interpretations of *al-siyar* which transformed the historical narrative into a standard fundamental approach.<sup>23</sup> As evidenced by this meaning of *siyar*, it is essential to delve into the jurists' definitions of *siyar* in classical and modern eras, taking into account the historical order to demonstrate their views. Classical jurists in this respect include al-Sarakhsi (d. 483/1090), al-Nasafi (d. 537/1143), al-Kassani (d. 587/1191), al-Mutrizi (d. 610/1213), al-Nawawi (d. 776/1374), al-'Ayani (d. 855/1451), and al-Tahanwi (d. 12<sup>th</sup> century).

Al-Sarakhsi defined *al-siyar* as a plural of *sirah* (conduct), and it is on such a premise that the work of Abu Hasan al-Shaybani (d. 189/904) was titled *Kitab al-Siyar al-Saghir*. It shed light on the conduct of Muslims in their interactions with infidels during war, including people of the covenant such as *al-musta'minin* (foreigners) and *ahl al-dhimma*, and with *al-mutadin* (apostates), *ahl al-baghi* (people of oppression) and so on.<sup>24</sup> Najm al-Din ibn Hafs al-Nasafi defined *al-siyar* as matters pertaining to affairs of war. Al-Kassani, in turn, asserted that it was possible for the book *Kitab al-Siyar* to address the methods of warriors, and their organisation within the limits of the permissible and prohibited in the course of

17 Muhammad Jarir Tabari, *Tarikh al-Tabari*, Muhammad Abu al-Fadl Ibrahim (ed.), Dar al-Ma'arif, 1979, Vol. 4, pp. 244-245; Muhammad Hamidullah, *Majmu'at al-Watha'iq al-Siyasiyyah lil-'Ahd al-Nabawi wal-Khilafah al-Rashidah*, p. 528.

18 See his biography in: Ibn Sa'ad's, *Tabaqat al-Kubra*, Vol. 6, pp. 246-256.

19 Ibidem, Vol. 7, p. 488.

20 Ibidem, Vol. 6, pp. 371-374.

21 Shams al-Din Muhammad ibn Ahmad Dhahabi, *Tadhkirat al-Hufaz*, 'Abd al-Rahman al-Mu'alimi (ed.), Dar Ihya' al-Turath, Beirut, 1970, pp. 273-274.

22 According to Muhammad Abu Zahrah, the first scholars precede to compile about the field of *al-siyar* was Abu Hanifah al-Nu'man. See the introductory of Muhammad Abu, Zahrah *Sharh al-Siyar al-Kabir*, p. 33.

23 Majid Khaddouri, *al-Qanun al-Duwali al-Islami Kitab al-Siyar lil-Shaybani*, al-Dar al-Mutahidah lil-Nashir, Beirut, 1975, pp. 52-54.

24 Abu Baker Muhammad ibn Ahmad al-Sarakhsi, *al-Mabsut*, Dar al-Ma'rifah, Beirut, 1986, Vol. 10, p. 2.

battle, reminiscent of modern 'rules of engagement'.<sup>25</sup> Al-Mutrizi defined *al-sirah* as the process of marching. His discourse was dominated by *jihad al-kufar* (struggle against the infidels).<sup>26</sup> Al-Nawawi, however, defined *al-siyar* as a plural of *sirah*. He defined it as a path or conduct deriving provisions from the conduct and traditions of the Prophet in his battles and conquests.<sup>27</sup> These works discussed *al-jihad* and its provisions, and some of these jurists titled their works *Kitab al-Jihad*.<sup>28</sup> A number included a dedicated chapter in their books under *Bab Qital a-Mushrikin* (Chapter of War against Infidels).<sup>29</sup>

Other scholars expanded their definitions of *al-siyar* to include *siyar al-sahabah* (conducts of companions), as found in al-'Ayani's reflection upon the meaning of *al-siyar* as a plural of *sirah* and the path. Such was the case with *Sirat al-'Umarayn* Abu Baker and 'Umar, meaning their path, approach or conduct. Furthermore, *al-siyar* compiled the *siyar* of the Prophet (pbuh) and his conduct in battles and conquests along with *siyar al-Sahabah* which included narrations attributed to them on this topic.<sup>30</sup> *Kitab al-Siyar* includes Muslim conduct and interactions with others, encompassing *al-Siyar fi al-Mu'amalat* (the conduct and relationships with non-Muslims). The *maghazi* was so termed given the pre-emptive first move was to march towards the enemy, and *Kitab al-Jihad* was so titled given the conceptual struggle against enemies to preach the word of God and destroy the rule of idolaters.<sup>31</sup> A similar approach was adopted by al-Tahanwi (d. 12<sup>th</sup>/18<sup>th</sup>) assessing the conduct of the leader and his conducts with invaders, supporters, and infidels.<sup>32</sup>

### ***Al-Siyar* in the idiom of modern jurists**

Contemporary scholars addressed the definition of *al-siyar* in their works. Muhammad Abu Zahra referred to *al-siyar* as provisions for jihad and war; prohibitions; provisions for reconciliation and truces to end hostilities; conditions for extending safety; provisions for booty, ransom and slavery; and other matters that may occur during war or its aftermath. In general, it is a chapter on the structure of international relations between Muslims and non-Muslims during the course of peace and war, though most of this discussion predominately focused

25 'Ala al-Din Abu Bakr ibn Mas'ud Kassani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Zakariya 'Ali Yusuf, Beirut, 1970, Vol. 9, p. 429.

26 Abu al-Fatih Nasir al-Din Mutrizi, *al-Mughrib fi Tartib al-Mu'rib*, Mahmud Fakhuri and 'Abd al-Hamid Mukhtar (eds.), Maktabat 'Usamah ibn Zayd, Aleppo, 1979, p. 427.

27 Abu Zakariya Muhyi al-Din Nawawi, *Tahdhub al-Asma' wal-Lughat*, Dar al-Kutub al-'Ilmiyya, Beirut, 1970, p. 159.

28 Abu Ishaq Ibrahim ibn 'Ali al-Shirazi, *al-Tanbih fi al-Fiqh*, 'Alam al-Kutub, Beirut, 1983, p. 134.

29 'Abd al-Karim ibn Muhammad Rafi'i, *Al-'Aziz Sharh al-Wajiz* (known by *al-Sharh al-Kabir* also), Dar al-Kutub al-'Ilmiyyah, Beirut, 1997, Vol. 11, p. 337.

30 Badr al-Din Mahmud ibn Ahmad 'Ayani, *Umdat al-Qari' Sharh Sahuh al-Bukhari*, Dar al-Fikir, Beirut, 1980, Vol. 15, p. 78.

31 See: Badr al-Din Mahmud ibn Ahmad 'Ayani, *al-Bidayah Sharh al-Hidayah*, Dar al-Fikir, Beirut, 1990, Vol. 5, p. 624.

32 Muhammad 'Ali al-Faruqi Tahanawi, *Kashaf Istilahat al-Funun*, Lutfi 'Abd al-Badi' (ed.), al-Mu'assasah al-Masriyyah al-'Ammah, Cairo, 1962, pp. 170-171.

on times of war.<sup>33</sup> Mustafa Kamal Wasfi refers to *al-siyar* as the science examining the relations of Muslims with other nations, meaning Muslim relations with others in terms of war, treaties, safe conduct and *ahl al-dhimma* (non-Muslims subject to the rule of the Islamic state).<sup>34</sup> In his approach, Wasfi balances between *al-siyar* and modern international law. Originally, *al-siyar* addresses Muslim commitment to non-Muslims, even if they are individuals residing within *dar al-Islam* (abode of Islam). It was not limited to matters of international relations.<sup>35</sup>

From the aforementioned, it is possible to summarise the meanings of the science of *al-siyar* as the regulations of relationships with non-Muslims in both the abodes of *dar al-Islam* and *dar al-harb* during times of war and peace<sup>36</sup>. The rulings concerning international relations in Islam derive from the sources of Islamic law as with any branch of Islamic jurisprudence. The primary and secondary sources include the Noble Qur'an, Prophetic Sunna, *ijma'* (consensus), *al-qiyas* (analogy), and other sources. In this respect, there is no difference between the sources of law in Islam whether they be internal or external laws, as they are equally subject to primary sources, i.e. the Noble Qur'an and Prophetic traditions.<sup>37</sup> As such, the sources of Islamic international law differ from modern international law in terms of epistemology and sources.<sup>38</sup>

The Qur'an cites, for instance, the *usul al-'ilaqat al-Duwaliyyah* (the origin of international relations) in cases of peace and war, along with Muslim treatment of non-Muslims in both abodes (within the Muslim territory and abroad). All matters pertaining to natural relations, treaties, trustworthiness, *jihad* and its consequent effects may be found in the principles of the Shari'ah/Islamic law and the pillars of religion as found in the Qur'an. This is followed by the Prophetic Sunna, *al-Sunna al-Qawliyya* (verbal Sunna), *al-Sunna al-'Amaliyyah* (the active Sunna), and *al-Sunna al-Taqririyya* (confirmative Sunna).<sup>39</sup> Such sources provide rich accounts

33 See: Abu Zahra's introduction to the work of Muhammad ibn Hasan al-Shaybani, *al-Siyar al-Kabir* with Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Sarakhsi*, Mustafa Zayd (ed.) along with the commentaries of Muhammad Abu Zahrah, *Matba'at Jami'at Cairo*, Cairo, 1958, p. 33.

34 Mustafa Kamal Wasfi, *Musanafat al-Nuzum al-Islamiyyah: al-Disturiyyah wal-Idariyyah wal-Iqtisadiyyah wal-Ijtima'iyyah*, Maktabat Wahbah, Cairo, 1977, p. 280.

35 Mustafa Kamal Wasfi, *al-Mashru'iyyah fi al-Nizam al-Islami*, Matba'at al-Amanah, Cairo, 1970, p. 49

36 The author is in agreement with the contemporary modern scholars definitions and reflections of *al-siyar*, to avoid repetitions, I simply state the works of these scholars: Muhammad Hamidullah's, *Dawalat al-Islam wal-'Alam*, tr. 'Uthman Fathi, Silsalat al-Thaqafah al-Islamiyyah, Cairo, 1962, pp. 14-21; Ja'far Abd al-Sallam, *Qawa'id al-'Ilaqat al-Duwaliyyah fi al-Qanun al-Duwali wal-Shari'ah al-Islamiyyah*, p. 31; 'Abd al-Karim Zaydan, *Majmu'at Buhuth Fiqhiyyah*, p. 16; Najib Armnazi, *al-Shar' al-Duwali fi al-Islam*, Matba'at Ibn Zaydun, Damascus, 1930, p. 44; Muhammad Tal'at al-Gunnu'imi, *Qanun al-Salam fi al-Islam*, Mansha'at al-Ma'arif, Alexandria, 1988, pp. 75-77; Majid Khadouri, *Al-Harb wal-Silm fi Shar'at al-Islam*, al-Dar al-Mutahida, Beirut, 1973, p. 17, 71; Subhi Mahmasani, *Falsafat al-Tashru' fi al-Islam: Muqadimah fi Dirasat al-Shari'ah al-Islamiyyah 'la Dawu' Madhahibuha al-Mukhtalifah wa-Dawu' al-Qawanun al-Haduthah*, pp. 17-18; 'Abd al-Wahhab Khalaf, *'Ilm Usul al-Fiqh*, 1988, pp. 20-22.

37 Muhammad ibn Ahmad al-Fatuhi Ibn al-Najjar, *Sharh al-Kawkab al-Munir*, pp. 2-7.

38 See: Abi Ishaq al-Shatibi, *al-Muwafaqat fi Usul al-Shari'ah*, pp. 8-25.

39 The establishment of the probativeness of this order to follow the Prophet's Sunna is tantamount to establishing the probativeness of all the different kinds of the Sunna such as the verbal Sunna (*al-Sunna al-Qawliyya*), the active Sunna (*al-Sunna al-Fi'liyya*), and the confirmative Sunna (*al-Sunna al-Taqririyya*). See: 'Abd al-Wahhab Khalaf, *'Ilm al-Usul al-Fiqh*, 1988, pp. 36-

of its origins and the establishment of new rules,<sup>40</sup> as indicated in the works of prominent classical scholars in the field of international relations, which included various headings such as *al-jihad*, *al-siyar*, *al-maghazi*, *al-aman*, and *al-jizya*. Even the field of *al-siyar* was so named by studying the conduct of the Prophet (pbuh) in terms of his dealings with others.

As for secondary sources, jurists made use of *al-ijma'* (consensus) which signifies the consensus of scholars of the community on issues following the death of the Prophet (pbuh),<sup>41</sup> and *al-qiyas* (legal decision-making), which is essentially argumentation by means of analogy.<sup>42</sup> Both these secondary sources must be based on legitimate evidence from the Qur'an or Sunna, culminating in what is known as *Mustand al-Ijma'* (views based on validly acknowledged legal proofs).<sup>43</sup> For this reason, the *mujtahid* cannot exceed proscribed limits, and has no right to form provisions, as this was the exclusive domain and right of the Almighty Lawgiver alone, while the authority of the *mujtahid* did not encompass more than a few matters. As for issues found in texts, their efforts could not exceed the understanding of the text. In case the issue could not be found in the text, their efforts should not exceed the established rules of jurisprudence when applying *al-qiyas* regarding what was apparent in the text, or the application of rules of the Shari'ah/Islamic law and general axioms, or as established by the Shari'ah/law by means of inference from evidence.<sup>44</sup> These rules apply when using *al-istihsan* (to deem something good or issue juristic preferences),<sup>45</sup> *al-Istishab* (presumption of continuity, or presuming the continuation of the *status quo ante*),<sup>46</sup> and taking into account *al-'Arf* (custom),<sup>47</sup> *al-istislah* or *al-masalih al-mursalah* (consideration of public interest).<sup>48</sup>

### The Basis of Commitment in Islamic International Law

The Islamic system of law self-abides by rules of international relations, which is integrated into domestic law, without treaty or international custom,

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37; Abu Zahrah Muhammad, *Usul al-Fiqh*, p. 106; Mustafa al-Siba'i, *al-Sunna wa Makanatuha fi al-Tashri'*, al-Maktab al-Islami, Beirut, 1985, pp. 47-48.

40 Muhammad Idris Shafi'i, *al-Risalah*, p. 73; Mustafa al-Suba'i, *al-Sunna wa Makanatuha fi al-Tashru'*, p. 125.

41 Jamal al-Din 'Abd al-Rahim al-Isnawi, *Nihayat al-Sul Sharh Minhaj al-Usul*, Muhammad Bakhit al-Muti'i (ed.), al-Matba'ah al-Salafiyyah, Cairo, 1975, pp. 237-239.

42 Ibn al-Najjar, Muhammad ibn Ahmad al-Fatuhu, *Sharh al-Kawkab al-Munir*, Vol. 4, p. 6.

43 Jamal al-Din 'Abd al-Rahim al-Isnawi, *Nihayat al-Sul Sharh Minhaj al-Usul*... pp. 307-314.

44 Khallaf 'Abd al-Wahhab, *Ilm Usul al-Fiqh*, 1988, p. 48, pp. 216-217.

45 'Ala' al-Din 'Abd al-'Aziz Bukhari, *Kashf al-Asrar 'an Usul al-Bazdawi*, Dar al-Kitab al-'Arabi, Beirut, 1974, Vol. 4, pp. 3-4.

46 See: Abu Hamid Muhammad ibn Muhammad al-Tusi al-Ghazali, *Kitab al-Mustasfa min 'Ilm al-Usul* 'Umar Sulayman al-Ashqar (ed.), Dara l-Risalah al-'Alamiyya, Beirut, 2012, pp. 219-222.

47 *Al-'Arf* custom is what settled in the souls and minds and received by sound minds with acceptance. See: Muhammad Amin Ibn 'Abdin, *Majmu'at Rasa'il Ibn 'Abdiddin*, Mu'asassat Fu'ad, Beirut, 1970, p. 144.

48 It is a method employed by Muslim jurists to solve problems that find no clear answer in sacred religious texts. It is related to the term *maslaha*, or "public interest". See: Abi Ishaq al-Shatibi, *al-Muwafaqat fi Usul al-Shari'ah*, pp. 8-12.

and entirely apart from Islamic sovereignty and its ability to level force against other countries. Islamic international law is, therefore, based on the will of the Islamic state, similar to any other Islamic law in the country. Obligations imposed under bilateral or multilateral international treaties share the same basis. A self-commissioning legitimate cause brings it about, also taking into consideration that the provisions of the Shari'ah/Islamic law are binding on Muslims. The provisions in *al-siyar*, as any other legitimate base of decision-making, are structured on the legitimate rules from *al-wujib* (obligation), *al-nadib* (assigned), *al-ibahah* (permissible), *al-karaha* (penance or expiation), and *al-tahrim* (prohibition).<sup>49</sup> For instance, if the enemy requested *aman* or *al-dhimma*, they should be answered on the basis of the Qur'anic text, which stipulates granting protection and peace should they request it, Q. 9:6, 8:61.

According to the Prophetic tradition, the eternal message is to preach the message of Islam through peaceful channels. Historically, prior to engaging in battles, Muslims would first preach Islam, and if their opponents declined to accept, they proposed alternatives such as payment of tribute or *jizya* (poll tax),<sup>50</sup> and if they agreed, they would accept it from them and leave them be.<sup>51</sup> Moreover, *'aqd al-aman* was obligatory upon Muslims alone, and not obligatory upon other parties. As such, Muslims could not take the chance of another party's weakness to be rid of them, and it was not permissible for a Muslim to kill a boy or woman in war. Moreover, they could not act with perfidy, even if they had been betrayed.<sup>52</sup> This sort of special commitment originating towards Muslims subjected Muslims to provisions of the law and excluded polytheists and the people of the book who did not fall within its legal address. This was a matter of debate even among Muslim scholars. Muslim adherence to such terms was a genuine commitment arising from their subordination to Almighty God in all their actions. When the Islamic state was at the height of its power, sovereignty and strength, it committed itself to the ethics of Islam in warfare and treaties.<sup>53</sup> It did not engage in fighting enemies unless justified in the Shari'ah/Islamic law as a response to comparable aggression.<sup>54</sup>

As al-Ghazali indicated that obedience to God was also obedience of the authority whom God has commanded Muslims to obey.<sup>55</sup> Classical scholars argued

49 Majid Khadouri, *al-Harb wal-Silm fi Shar'at al-Islam*, p. 68.

50 *Jizya* is a tax which imposed only upon male, mature, financial capable non-Muslim individuals once a year in the value of one dinar per month, in return for protection and safeguard property, protection of family and rights.

51 *Abu al-Wafa' al-Afghani*, Muhammad ibn Hassan al-Shaybani (ed.), *Matba'at Idarat al-Qur'an*, Karachi, n.d., p. 93.

52 This practice is based on the Prophetic *hadith* which reads: Fulfill the trust of those to whom they are due, and do not be treacherous to the one who betrays you. See: Abu Dawud Ibn al-Ash'at al-Sajistani, *Sunnan Abi Dawud*, Dar al-Hadith, Hims, 1974, Vol. 5, p. 185.

53 Ahmad ibn Yahya ibn Jabir Buladhuri, *Futuh al-Buldan*, Salah al-Munjid (ed.), *Matba'at Lajnat al-Bayan al-'Arabi*, Cairo, 1956, p. 519.

54 See for example: Muhammad Hamidullah, *Muslim Conduct of the State*, p. 14. Subhi Mahmasani, *al-Qanun wal-'Ilaqat al-Duwal-iyah fi al-Islam*, p. 38; 'Abd al-Karim Zaydan, *Majmu'at Buhuth Fiqhiyyah*, p. 19.

55 Abu Hamid Muhammad al-Tusi al-Ghazali, *Kitab al-Mustasfa min 'Ilm al-'Usul*, p. 63.

that the *al-hakim* (ruler) is the addressee, since a rule is a form of declamation and speech. The actor is each speaker who, without condition, brings about the issuance of the letter of God, where the entitlement to influence and rule belong exclusively to the divine who controls creation and command, while the rule of force is subject to the landlord, and there is no landlord except the Lord. Consequently, there is no judgement or commandment except by Him.<sup>56</sup> This was emphasised further by al-'Azz ibn 'Abd al-Sallam in his work *Qawa'id al-Ahkam fi Masalih al-Anam*, in which he discussed the matter of who may be obeyed and who must not, such as Prophets, scholars, judges, religious figures, governors, fathers, mothers, spouses, elders, labourers. Not to obey them would be disobedience of the Creator, which is likened to those who cause corruption in society in both *dar al-Islam* or *dar al-harb*.<sup>57</sup>

Based on this, the level of authority of the Islamic state is subject to the Shari'ah/Islamic law, and does not possess the right to violate its precepts. Should its actions stray outside Islamic rulings, its legitimacy is effectively voided. As such, if a part of a treaty is prohibited according to Islamic law, such as preventing the release of Muslim prisoners, or allowing the consumption of alcohol in *dar al-Islam*, this type of condition would void the treaty because it permits what is prohibited in Islam, and therefore, the contract is voided for including a prohibited condition.<sup>58</sup> This view was reflected upon by Muhammad ibn Hassan al-Shaybani (d. 189/804) who asserted that what could not be fulfilled religiously, was not permissible in a covenant, and in case it was, such a covenant should be invalidated, because this condition would violate the Shari'ah/Islamic law.<sup>59</sup>

As explained earlier, the rulings governing international relations in Islam are derived from the Qur'an and Prophetic Sunnah, and specialised jurists adhere to deriving rulings from these primary sources, which is what provides such ruling with consistency and stability. Even if rulers or regimes change, the legal provisions are not linked to a ruling authority, but to the Islamic religion itself, which does not change and is not altered. The Qur'an emphasises the inimitability and originality of its verses, Q. 15:9, 30:30, and commands believers not to alter the religion of God in any way or form.<sup>60</sup>

The stability of the Islamic provisions concerning international relations is established by the unique characteristics that govern the principles of international relations in Islam. For instance, the respect of human dignity during times of peace and war preserve the rights of non-Muslims in *dar al-Islam* (the abode of peace), and ensures justice by a Muslim government in its dealings with Muslims

56 Abu al-Hasan Sayf al-Din al-Amidi, *al-Ihkam fi Usul al-Ahkam*, p. 76.

57 Abu Muhammad 'Abd al-'Aziz al-'Azz Ibn 'Abd al-Sallam, *Qawa'id al-Ahkam fi Masalih al-Anam*, Maktabat al-Kuliyat al-Azhariyyah, Cairo, 1968, pp. 157-158.

58 Abu al-'Abbas Ahmad ibn Idris al-Qarafi, *al-Ihkam fi Tamyuz al-Fatawa 'an Ahkam wa Tasarufat al-Qadi wal-Imam*, Mahmud 'Armus (ed.), Dar al-Basha'ir al-Islamiyyah, Beirut, 1995, pp. 36-37; 'Abd al-Karim Zaydan, *Majmu'at Buhuth Fiqhiyyah*, p. 19.

59 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Sarakhsi*, p. 788.

60 Abu Ja'far Muhammad ibn Jarir al-Tabari, *Jami' al-Bayan 'an Ta'wil Ayi al-Qur'an or Tafsir al-Tabari*, Dar al-Ma'arif, Cairo, p. 41.

and non-Muslims alike. It obligates it to fulfil its promises and covenants even with enemies, prevents treachery even in circumstances of betrayal, underlines the virtue of ethics in transactions, and emphasises Islam's universal call to humanity. That the relationships between Muslims are based on bonds of faith does not mean that loyalty and trust should not exist between Muslims, infidels and unbelievers, and does not prevent them from righteousness and kindness in interactions.

Such stability is beneficial as it is conducive to contentment and security. Moreover, the clarity of the principles of justice and order extend to all residents of *dar al-Islam* (abode of Islam) and foreign residents in the Islamic state. It fosters confidence and prosperity, and produces the fertile conditions for social and economic progress, stable international relations, and ethics, morality and virtue. It eliminates the root causes of conflict, exploitation and treachery, and other factors often exploited by criminals due to weakness of law and justice. The stability of rulings, however, does not reflect jurisprudential rigidity and an inability to cope with new realities or meet the needs of the nation.<sup>61</sup> Rather, the sources of Islamic legislation represent flexibility, fertility and capacity, and are incompatible with stagnancy. The provisions concerning international relations derive from Qur'anic texts which indicate basic provisions and general principles that do not vary from one environment to another. The implication is that religious texts are not confined to an understanding of the phrase or text, but rather the spirit of reasonable understanding as exemplified by the operative meaning (*dalalat al-mantiq*) and conceptual meaning (*daalat al-mafhim*) in Islamic law.<sup>62</sup>

Furthermore, legislative texts are not abstracts of the effective causes and interests for which the provisions were initiated. Nonetheless, they associate explicitly with the *al-'illa* (effective cause or *ratio legis*) of a particular ruling or indication, consequently opening the activity of *al-qiyas* (legal decision-making and argumentation by the means of analogy) before the *al-mujtahidin* (independent legal reasoning).<sup>63</sup> This involves flexibility and scalability to meet needs and face facts and developments, as necessary to regulate the lives of peoples of all ages and places. This was designed in order to issue correct rulings to multiple domains. Such general principles allowed for rapid change and development without limiting rights or preventing growth. It is perhaps for this reason that the Prophet (pbuh) did not deliberately specify Abu Bakr as his successor in spite of his grace over other companions. Such is also the case in *al-shura* (consultation) as a basis for the Islamic political system, and an obligation/duty must be issued even if the process was unspecified by religious texts, or not limited to a single means.

61 'Ali Jarishah, *al-Mashru'iyah al-Islamiyya al-'Ulya*, Maktabat Wahbi, Cairo, 1979, pp. 190-191.

62 Muhammad Adib Salih, *Tafsir al-Nusus fi al-Fiqh al-Islami: Dirasah Muqaranh li-Manahij al-'Ulama' fi Istinbat al-Ahkam min Nusus al-Qur'an wal-Sunnah*, al-Maktab al-Islami, Beirut, 1984, pp. 591-599.

63 Zayn al-Din Ibrahim Ibn Nujaym, *Fath al-Ghfar bi Sharh al-Manar*, Matba'at Mustafa al-Halibi, Cairo, 1936, pp. 30-32.

*Al-Ijtihad* also specifies the manner of dealing with other countries in terms of financial, social and political aspects in war and peace within a fixed legitimate framework. Needless to say, it should be emphasised that such flexibility does not in any way indicate a departure from constant legal judgement, whether in whole or part, as it is governed by accurate controls, so that development does not lead to distortion and degradation away from the provisions issued by God to human beings. In this respect, flexibility and development differ radically from destruction and actions without limits, as witnessed in some contemporary trends in social and legal life.<sup>64</sup>

### **International Relations *Ahkam* restricted by Islamic legitimacy and based on Real Justice**

All Islamic rulings are subject to Islamic legitimacy, which includes the implementation of God's commands, and preventing what God forbids. It effectively enjoins unity on the basis of divine proof for the purpose of enjoining good and preventing transgression and evil, Q. 3:103-104, 5:2. Hence, the provisions of international relations and international Islamic organisations are characterised by modern international law, as Islam is built on the precept of solidarity. The unity of the Islamic nation which inhabits *dar al-Islam* exists as a coherent unit, enforced by forbidding war between Muslims, and upholding the word of God. Thus, it is not permissible to wage war on another with a view towards economic enrichment, opening markets, securing transportation or otherwise. Fighting for the sake of God cannot be for hypocrisy or for other than establishing the word of God as supreme.<sup>65</sup> This legitimacy leads to subjecting the provisions of international relations on true justice to ensure Muslim rulers are not acting to pursue their selfish interests and in doing so perpetuate injustice. This rule applies to such an extent that even when interactions with enemies are concerned, it is not permissible to endure hostility and enmity in order to establish justice. The law of God is the charter of absolute truth and justice, and in this regard, the Qur'an mandates justice for all and the return of trusts as a condition of piety, Q. 4:58, 5:8, 42.

This is reflected in historical reality as reported for instance during the reign of 'Umar ibn 'Abd al-'Aziz (91/717-101/720), where the elders of the people of Samarqand complained in a letter to the Caliph that the conduct of the Muslim commander Qutaybah ibn Muslim al-Bahili was contrary to the teachings of Islam. The Caliph read the letter and wrote on its back in response by assigning a

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64 Mustafa Kamal Wasfi, *al-Mashru'iyah fi al-Nizam al-Islami*, 1970, pp. 29-31; Sayyed Qutub, *Khasa'is al-Tasawur al-Islami wa-Muqawimatus*, Dar al-Shuruq, Cairo, 2007, pp. 85-90.

65 Ibn Hajar, *Al-Jami' al-Bukhari*, with *Fath al-Bari*, al-Matba'ah al-Salafiyyah, Cairo, 1960, Vol. 6, pp. 27-28; and by Imam Muslim under the subject "*al-Imarah*", Muslim ibn al-Hajjaj al-Qushayri, *Sahih Muslim*, Muhammad Fu'ad 'Abd al-Baqi (ed.), Matba'at 'Issa al-Halibi, Cairo, 1955, pp. 1512-1513.

judge and commanding restitution if necessary.<sup>66</sup> The letter was enough to hold a strong Muslim army commander accountable. The Caliph's deputy Sulayman ibn Abi al-Sirri immediately fulfilled the Caliph's instruction by appointing the judge Hadir ibn Jumay' in Samarqand, whereupon the judge issued a sentence calling for the Muslim army under Qutaybah ibn Muslim al-Bahili to withdraw from Samarkand, as his conduct was contrary to the teachings of Islam. The violation was due to his failure to call the people of Samarqand to Islam or to offer *jizyah*.<sup>67</sup> Another unique incident is found in Abu 'Ubaydah, when he returned the *jizya* and *khiraj* to *ahl al-dhimma* in the Levant, as these were conditioned upon provision of safety and security, and he realised he could not provide this protection after observing the gathering of the Roman army.<sup>68</sup>

This is in sharp contrast to the colonial powers of the past and modern eras, which are characterised by the narcissistic exploitation of vulnerable peoples and selfish depletion of their resources. Their approach bred conflict, justified treachery, spread injustice, and justified favouritism with no thought given to the selfish nature of interests or the damage caused to third parties. Moreover, the reality of international relations reflects this.<sup>69</sup> An Islamic state that encompasses monotheistic believers in God would establish justice among people, calling for equity and fairness. Its objectives are not to seek glory or extension of control and influence, nor the compulsion of people to religion, as they are free to choose the faith they desire.<sup>70</sup> Islam forms the basis for international relations among peoples on the assumption that they are either *mu'minun* (believers), *mu'ahadun* (people with contracts), or people without shared covenants.<sup>71</sup>

Ibn Qayyim al-Jawziyyah (d. 751/1351) indicated that the status of the infidels

66 Muhammad Jarir Tabari, *Tarikh al-Tabari*, Muhammad Abu al-Fadl Ibrahim (ed.), Dar al-Ma'arif, 1979, pp. 568-569.

67 According to Isma'il ibn Hamad al-Jawhari, *Taj al-Lughah wa Sihah al-'Arabiyyah*, Ahmad 'Abd al-Ghafur 'Atta (ed.), Dar al-'Ilm lil-Malayin, Beirut, 1982, pp. 2302-2303; The Hanafite, Maliki, Shafi'ite and Hanbalite agree in terms of the legal definition of *al-jizya*, as a per capita tax levied on a section of an Islamic State's non-Muslims. The tax is and was to be levied on able-bodied males of military age (with specific exemptions). Muslim rulers viewed *jizya* as material proof of non-Muslims' acceptance of subjection to the state and its laws. In return, non-Muslim subjects are permitted to practice their faith, enjoy a measure of communal autonomy, are entitled to the Muslim state's protection from outside aggression, and are exempted from military service and the *zakat* tax levied upon Muslim citizens. During Mohammed's time, the *jizya* rate was one dinar per year imposed on male dhimmis in Medina, Mecca, Khaybar, Yemen, and Nejrān, a rate that was never permanently fixed, though the payment usually depended on wealth. *Kitab al-Khiraj* of Abu Yusuf sets the amounts at 48 dirhams for the richest (e.g. money-changers), 24 for those of moderate wealth, and 12 for craftsmen and manual laborers. See: Ya'qub ibn Ibrahim Abu Yusuf, *Kitab al-Khiraj*, Dar al-Ma'rifa, Beirut, n.d., pp. 122-126; A. S. Tritton, *Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of Umar*, Routledge, New York, 2007, p. 204.

68 Ya'qub ibn Ibrahim Abu Yusuf, *al-Khiraj*, Taha 'Abd al-Ra'uf Sa'd, Muhammad Sa'd Hasan (eds.), al-Maktabah al-Azhariyya lil-Turath, Cairo, 1999, pp. 149-150.

69 Muhammad Hamidullah, *Dawalat al-Islam wal-'Alam*, 1962, p. 30; Mustafa Kamal Wasfi, *al-Mashru'iyah fi al-Nizam al-Islami*, 1970, p. 49; Mustafa Kamal Wasfi, *Musanafat al-Nuzum al-Islamiyyah: al-Disturiyyah wal-Idariyyah wal-Iqtisadiyyah wal-Jtima'iyyah*, 1977, pp. 43-46, 158-160, 280.

70 Majd al-Din al-Mubarak ibn Muhammad Ibn al-Athir, *Al-Nihayah fi Gharub al-Haduth wal-Athar*, Tahir Ahmad al-Zawi and Mahmud Muhammad al-Tanahi (eds.), Da Ihyā' al-Kutub al-'Arabiyyah, Cairo, 1965, p. 263.

71 Abu Baker Muhammad ibn Ahmad al-Sarakhsi, *al-Mabsut*, pp. 84-86; Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, p. 306

was settled by the Prophet (pbuh) after the revealed chapter of 'Bara'ah' or "Tawbah"/Repentance which defined three categories, the *muharibin lahu* (warriors against him), *ahl 'ahd* (people of the covenant) and *ahl-dhimma* (non-Muslims subject to the Islamic State). In turn, this became *ahl al-'ahd* (people of the covenant) and *ahl al-sulh* (magistrates fallen to Islam), who consequently became *muharibin lahu* (warriors against him) and *ahl-dhimma*. The *muharibin lahu* (fear of him) category became three parts, *Muslim mu'min bihi* (Muslims with belief in him, *musalim luhu amin* (inoffensive to him), and *kha'if muharib* (warrior fearful of Him).<sup>72</sup> As for *musalimun aminun*, or foreign non-Muslims residing within *dar al-Islam* or the Islamic State, they held permanent or temporary residence on the basis of *'aqd al-dhimma* or *'aqd al-aman*. They included *ahl al-muwada'ah* (people of peaceful treaty), and consisted of people of the abode of war and disbelief.<sup>73</sup> The *Shari'ah/Islamic law* has singled them out with special treatment, and cannot recognise a state of morality until it balances treatment of foreigners with the treatment of Muslims.<sup>74</sup>

Islam is a universal call to all humankind, and, therefore, its provisions address all peoples, without favouring one race, gender, or region over another. Consequently, the *Shari'ah/Islamic law* aims to establish a single human society that is subject to one system. However, when the law and its provisions do not extend to all parts of the world, or when it does not have actual sovereignty over the world, the *Shari'ah* establishes conditions which demarcates areas where the law does not apply, giving exception to countries subjected to Islamic authority over any other country. This constitutes a regional approach applied to states subject to Muslim authority.

Jurists took this fact into consideration and divided the world into two. The first refers to all regions subject to Islam, named *dar al-Islam* (the abode of Islam) and the second includes other regions termed *dar al-harb* (the abode of war). The first region is an area in which Islamic law must apply, while the second is a region in which it is not possible to apply Islamic law.<sup>75</sup> On this basis, the term *dar* in Islamic jurisprudence refers to the region constituting an element of the State in constitutional and international law. What modern state jurists refer to as *al-dar*, the Islamic state refers to as *dar al-Islam* versus *dar al-harb*.<sup>76</sup> On this matter, Ibn 'Abiddin says: "The intended meaning of *al-dar* is the competing region which conquers or vanquishes the property of Islam, or that of *kufir/disbelievers*, and is

72 Ibn Qayyim al-Jawziyya, *Zad al-Ma'ad fi Huda Khayr al-'Ibad*, p. 160.

73 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*. . . p. 1699.

74 Sultan Hamid, *Ahkam al-Qanun al-Duwali fi al-Shari'ah al-Islamiyyah*, 1986, p. 217; *al-Qanun al-Duwali al-'Amm Waqt al-Silm*, Jami'at al-Qahirah, Cairo, 1977, pp. 484-490.

75 'Abd al-Qadir 'Udah, *al-Tashri' al-Jina'i al-Islami Muqaranan bal-Qanun al-Wad'i*, 1977, pp. 274-275; Muhammad Hafiz Ghanim, *Mabadi' al-Qanun al-Duwali al-'Amm*, 1967, p. 25; Mustafa Kamal Wasfi, *Musanafat al-Nuzum al-Islamiyyah: al-Disturiyyah wal-Idariyyah wal-Iqtisadiyyah wal-Ijtima'iyyah*, 1977, pp. 285-286.

76 Isma'il ibn Hamad al-Jawhari, *Taj al-Lughah wa Sihah al-'Arabiyyah*, pp. 659-660.

not intended as the residential abode."<sup>77</sup>

Muhammad Ibn Hassan al-Shaybani (d. 189/804) addresses this division within the *dar* and arranged its effects in the legal provisions. For al-Shaybani, the *dar* is the *dar* which falls under Muslim authority, in which the provisions of Islam appear, and Muslims are safe and secure. This applies equally to populations living on its territory, whether they are Muslims or non-Muslims, under the Islamic State authority such as the *dhimmis*.<sup>78</sup> Most jurists are in agreement with the Hanafi school's position regarding the status of the *dar*. Al-Kassani (d.578/1191) indicated in his work *Bada'i' al-Sana'i'* that there is no disagreement among the Hanafi companions regarding the transformation of *dar al-kufur* into *dar al-Islam* whenever Islamic provisions appear and are applied.<sup>79</sup> Maliki jurists defined *dar al-Islam* as the *dar* in which Islamic provisions are applied.<sup>80</sup> Shafi'i jurists defined *dar* as a land in which the call of Islam emerged by Muslims without sentry or endorsement and without the giving of *jizya*/tribute, and where Muslim provisions are implemented on the people of *dhimma*.<sup>81</sup> The Hanbali jurists defined the *dar* similarly to other Sunni schools. Abu Ya'la defined *dar* in his work *al-Mu'tamad fi Usul al-Din* as the place which has prevailed in implementing the provisions of Islam without provisions of infidelity.<sup>82</sup> Moreover, in his reflections on *dar*, Ibn al-Qayyim asserted that the *dar* which had been known as *dar al-Hijrah* at the time of the Prophet should be known as *dar al-Islam*. When the people of a region became Muslim, such lands effectively become the *bilad al-Islam* (land of Islam).<sup>83</sup>

Among contemporary scholars such as 'Abd al-Qadir 'Udah, *dar al-Islam* includes the country in which the provisions of Islam are implemented on a country's population, all or most of which are Muslims, or a country with governed Muslim subjects even if the majority of the population is non-Muslim, or a country ruled by non-Muslims so long as the provisions of the population are Muslim or appear Muslim and are not prevented from implementing the provisions of Islam.<sup>84</sup> 'Abd al-Wahab Kalaf says that, in the view of the majority of scholars concerning *dar al-Islam*, it is a *dar* that exists under the provisions of Islam and is characterised by safety for all those who fall under its domain.<sup>85</sup> Muhammad Abu Zahrah defined *dar al-Islam* as the state with the authority to govern Muslims,

77 Muhammad Amin Ibn 'Abdin, *Hashiyyat, Radd al-Muhtar 'ala al-Darr al-Mukhtar*, p. 166.

78 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, pp. 249-250.

79 'Ala' al-Din Abu Baker ibn Mas'ud Kassani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Vol. 9, p. 4374.

80 Abu al-Walid Ibn Rushd, *al-Muqadimat al-Mumahidat*, al-Mukhtar al-Talili (ed.), Dar al-Gharb al-Islami, Beirut, 1987, p. 153.

81 Abu Mansur 'Abd al-Qadir Tahir al-Tamumi Baghdadi, *Usul al-Din*, Madrasat al-Ilahiyat, Istanbul, 1927, p. 270.

82 Muhammad ibn al-Husayn al-Fara' Abu Ya'la, *Al-Mu'tamad fi Usul al-Din*, Wadi 'Zaydan Hadad (ed.), Dar al-Mashriq, Beirut, 1974, p. 276.

83 Shams al-Din Muhammad Ibn Qayyim al-Jawziyya, *Ahkam Ahl Dhimma*, Subhi Salih (ed.), Dar al-'Ilm lil-Malayin, Beirut, 1981, p. 51, 366.

84 'Abd al-Qadir 'Udah, *al-Tashri' al-Jina'i al-Islami Muqaranan bal-Qanun al-Wadh'i*, 1977, pp. 275-276, while pointing to the work of al-Kassani's *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*.

85 Khallaf 'Abd al-Wahhab, *al-Siyasah al-Shar'iyyah wa Nizam al-Dawlah al-Islamiyyah fi al-Shu'un al-Disturiyyah wal-Kharjiyyah wal-Maliyyah*, Dar al-Ansar, Cairo, 1977, p. 71.

and develop the energies and strengths of Muslims.<sup>86</sup> Lastly, Muhammad Rashid Rida, in expressing the view of *dar al-Islam*, described the view closest to the majority of jurists, where *dar al-Islam* is the country which falls under the authority of Islam, and has implemented its provisions and established its rituals.<sup>87</sup>

With respect to *dar al-harb*, Muhammad ibn Hassan al-Shaybani submits that it is the country in which the provisions of polytheism are predominant and is home to your warring enemies (*ahl al-harb*).<sup>88</sup> Al-Sarakhsi indicated that if the *dar* of the abode is that of *ahl al-harb*, Muslims may permit its people to not apply Muslim provisions, as this *dar* is *dar al-harb*. For a *dar* to become *dar al-Islam*, the Islamic provisions must be applied.<sup>89</sup>

### **The origin (*Al-Asl*) of the Relationship between Dar Al-Islam and Dar Al-Harb**

It is important to bear in mind the origin of the relationship between the two abodes, or the relationship between Muslims and non-Muslims. We begin with the juridical meaning of the term's origin. According to the jurists and traditionalists, the origins of this relationship is derived from the Qur'an and Prophetic Sunnah, which means that its substantiation and the origin of the legality of *'uqūd al-aman* (peaceful treaty) with the *harbis* is based on the Qur'an, which stipulates extending protection to the enemy should they surrender or request it, Q. 9:6.

*Al-Asl* could mean 'the more correct' (*al-arjah*) in the sense of priority given to a matter, where for instance the origin of speech is the truth.<sup>90</sup> Among other meanings of *al-asl* is 'continuous rule'. It should be noted that the word *al-asl* in its meanings does not mean that it is commissioned by a provision' of obligation or sanctity. It is more accurate to say that the *asl* of relations between Muslims and non-Muslims is war, peace or preaching, and does not mean that we are commissioned to issue a ruling on this relationship as an obligatory duty. Nevertheless, the intention here is to demonstrate only the general rule which defines the on-going relationship and links between Muslims, other nations and non-Muslim states.<sup>91</sup>

The view of Muhammad ibn Hasan al-Shaybani of the *asl al-'ilaqat* (origin of relations) between Muslims and non-Muslims is found in his masterpiece *al-Siyar al-Kabir*. He notes that in the case where Muslims encounter infidels, if such infidels are among those who were not informed about Islam, the Muslims should

86 Muhammad Abu Zahrah, *al-'Ilaqat al-Duwalīyya fi al-Islam*, Dar al-Fikir al-'Arabi, Cairo, 1970, p. 53.

87 Muhammad Rashid Rida, *Tafsir al-Qur'an al-Karim* known as *Tafsir al-Manar*, Maktabat al-Qahirah, Cairo, 1954, Vol. 10, p. 371.

88 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, p. 251.

89 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, Vol. 5, p. 2165.

90 Jalal al-Din 'Abd al-Rahman Suyut<sup>1</sup>, *al-Ashbah wal-NaDa'ir fi Qawa'id wa Furu' al-Shafi'iyyah*, pp. 53-54; Zayn al-Din Ibrahim Ibn Nujaym, *al-Ashbah wal-Naza'ir*, Mu'asassat al-Halibi, Cairo, 1968, pp. 59-61.

91 Muhammad ibn Ahmad al-Fatuhi Ibn al-Najjar, *Sharh al-Kawkab al-Munir*, pp. 38-40.

not fight them until they have been invited and informed about Islam. In case they are informed about Islam, and the Muslims are not aware whether *jizya* (tribute) should be accepted from them, Muslims should not fight them until their status concerning the *jizya* is clarified. The Prophet ordained Muslim commanders to resort to fighting as a last measure, as the Qur'anic verse reads, Q. 9:29.

Unless they were people within the realm of Islam, the tribute should not be accepted from apostates<sup>92</sup> or idolaters.<sup>93</sup> For such groups, it is either Islam or the sword. If they decline to accept Islam, they should be fought without offers of giving *jizya*.<sup>94</sup> This practice is based on Islam serving as a universal call and general message to all mankind, and derived from Prophet Muhammad's conduct, after first preaching to tribes during the season of pilgrimage and inviting them to Islam.<sup>95</sup> He then migrated to Yathrib, later-day Madina, and formed the Islamic state. Thereafter, he began sending envoys, letters to kings, princes and world leaders inviting them to Islam. These included Hercules a great Byzantine emperor,<sup>96</sup> the Persian king Xerxes,<sup>97</sup> Negus of Abyssinia,<sup>98</sup> Sirius king of Egypt and Alexandria,<sup>99</sup> in addition to letters and envoys sent to other kings and leaders.<sup>100</sup> The Prophet informed them of the call in accordance with Qur'anic injunctions of openly calling all people to the religion of God, and promoting monotheism in the face of disbelief and polytheism, Q. 2:105, 15:94, 12:108, 5: 67.

In the same vein, the first verse God revealed to his Prophet and ordained him to recite was "Read! In the Name of your Lord, Who has created (all that exists)", Q. 96: 1. This presents evidence and a conclusive argument that Islam came as an invitation to all mankind, as it was directed for humanity, and in this respect all are equal. The Prophet (pbuh) continued to make this call, giving effect to the command of his Lord until people entered the religion of God in masses. His successors carried on the message following him.<sup>101</sup> Relations between Muslims and

92 A consensus among scholars the *jizya* is not acceptable form the apostates nor established 'aqd *dhimma* with. See: Abu Baker Muhammad ibn Ahmad al-Sarakhsi, *al-Mabsut*, Vol. 10, p. 7, 77; Abu al-Walid Ibn Rushd, *al-Muqadimat al-Mumahidat*, p. 376.

93 The majority of scholars of the four Sunni schools, indicated that the tribute should not be accepted form the idolaters of the Arabs. See: 'Ala' al-Din Abu Baker ibn Mas'ud Kassani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*.

94 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, Vol. 5, pp. 75-77.

95 Abu Muhammad 'Abd al-Malik Ibn Hisham, *Al-Sirah al-Nabawiyah*, Mustafa al-Saqa and Ibrahim al-Abyari, 'Abd al-Hafiz Shalabi and Mu'ruf Zuriq (eds.), Dar al-Khayr, Beirut, 1996, pp. 231-233.

96 Muhammad Hamidullah, *Majmu'at al-Watha'iq al-Siyasiyyah lil-Ahd al-Nabawi wal-Khilafah al-Rashidah*, 2009, pp. 107-115.

97 Ibidem, pp. 139-140

98 Ibidem, pp. 100-104.

99 Ibn Qayyim al-Jawziyya, *Zad al-Ma'ad fi Huda Khayr al-'Ibad*, p. 691.

100 Ibidem, pp. 692-697.

101 Orientalists who studied the biography of the Prophet deny the universality of Islam, such as William Muir, who claims that the universality of Islam came later, despite the fact that the Qur'anic verses and the Prophetic traditions supported it. To Muir, the Prophet's universality of Islam was intended for the Arab world and the spread of Islam, even if it had been concocted was due more to circumstance than plan. See: William Muir, *The Life of Mahomed*, Smith, Elder and Co., London, 1861, pp. 1-7. In his work on the *History of Islam/Annali dell' Islam*, Italian orientalist Leone Caetani, also denies universality, although he expresses the fact that Islam spread peacefully, and was tolerance to other monotheistic religions, i.e. Christianity and Judaism, and did persecute any members of other faith. See: Arnold Thomas Walker, *The Preaching of Islam: A History of the Propagation*

other nations existed despite differences in faith, language, culture or colour. The basis of relations is in truth not war, as peace is the origin of human relations and the basis of the Islamic *da'wah* (invitation). The Muslim nation is a nation engaged in a global call of faith, which transcends all borders and barriers, and ends in uniform principles, whether these geographic borders and barriers are political, ethnic or linguistic. It opens the doors of heaven to the mercy of the people of the earth as a whole.<sup>102</sup>

This relationship becomes peaceful or antagonist depending on how nations react to the call of Islam. As stated by al-Ghunaymi's work, the Islamic state's relations with any country in conflict, depends on the country's policy towards the Islamic State. This was the nature of relationships between nation-states or world politics. The approach of a peaceful treaty and contract to stop hostilities is known as *muwada'ah*. The Qur'anic injunction emphasises justice even with former adversaries for the sake of equity (Quran. 60:8). Consequently, Muslims cannot exercise coercion legally on those who deal with equity, as equity is incompatible with coercion.<sup>103</sup> Even during war, combat cannot compel the acceptance of religion, and war takes place only if the *dar* violates Islam's call with hostility and a warlike stance. In this case, the divine decree is that befriending transgressors following their rejection of peace is enjoining evil, Q. 60:9.

According to al-Shaybani, in case Muslims encounter infidels on a battlefield who were not informed about Islam, they should not fight them until they invite them to Islam, as accountability requires having received an invitation to faith first, Q. 17:15. The Prophet (pbuh) enjoined his army's commanders, and said, "Invite them to the testimony that there is no god but God".<sup>104</sup> The rationale behind this is to counter the likely non-Muslim perception that Muslims fight them in anticipation of their captivity, their wives and offspring. Alternatively, if they knew that Muslims fight them for the sake of religion, they could respond to it without the need for war. Thus, Muslims should begin by presenting Islam to them by means of wisdom and good advice.<sup>105</sup>

According to Abu Qassim al-Simanani al-Hanafī (d. 499/1106), in the prophetic Sunnah, anyone who has not received the call of Islam should first be made aware of what he/she is invited to, and have Islamic laws, statutes and provisions demonstrated to them. If they accept Islam, Muslims should leave them be, calling on them to join *dar al-Islam* and reside therein. In case they abstain from the

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*of the Muslim Faith*, Constable, London, 1913. This was a model of Orientalist methods towards Islamic history. The question that arises is how the idea of Islamic universality emerged afterword in spite of the actual practical revelation of the message of Islam? Moreover, the same question should be regarding whether the king Xerxes, Negus of Abyssinia, Cyrus of Egypt and Alexandria were Arabs for the Prophet's Arab universality to have been preached to them.

102 Ahmad Mahmud al-Ahmad, *Ma hiya 'Ilaqat al-Ummah al-Muslimah bil-Umam al-Ukhra*, al-Maktab al-Islami, 1977, pp. 7-8.

103 Muhammad Tal'at al-Gunu'imi, *Qanun al-Salam fi al-Islam*, p. 105.

104 Abu al-Mu'ayad Muhammad ibn Mahmud Khawarizmi, *Jami' al-Masanid: Majmu'at al-Ahadith wal-Athar* (consisting of 15 *Masanid* of Abu Hanifa al-Nu'man), al-Maktabah al-Islamiyyah, Lahore, 1976, pp. 291-292.

105 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, pp. 75-76.

call of Islam, Muslims should ask for *jizya*/tribute, and should they accept and fulfil the payment of the tribute assigned to them, they should be left in peace. The last resort of warfare is if they abstain from the previous conditions.<sup>106</sup> According to al-Kassani (d. 587/1191), in case the call to Islam does not reach non-Muslims, Muslim preachers should invite them to Islam in person through wisdom and fair preaching, Q. 16:125. This invitation should be extended first as fighting is not intended to impose belief. The call to Islam should be through direct communication, because the risks of fighting are high while communication is comparatively much easier.<sup>107</sup>

The above conduct refers to the origin of relations between Muslims and others during times of war. The nature of relations remains the same in case the message of Islam has reached them but they do not know that Muslims can accept tribute/*jizya* and conclude the contract of *dhimma*. Therefore, they should be fought only when invited to such matters first. The Prophet (pbuh) ordered the Muslim military commanders to enforce these issues prior to waging war.<sup>108</sup> For the apostates or Arab idolaters, they are offered either Islam or the sword. If they refuse Islam, they should be fought without offering them the chance to give tribute.<sup>109</sup> Likewise, for those from whom tribute/*jizya* is accepted, if they are offered Islam and refused, and offered the option of tribute, and they neither accepted nor abided by it, then relations with them are defined by war.<sup>110</sup>

The opinion of the majority of jurists is that those who refrain from Islam or *jizya* are subject to war, and that peace is only a truce for preparing for the resumption of fighting.<sup>111</sup> A peace treaty should be established to end hostilities/*muwada'ah* with polytheists if Muslims are in a position of power, because Islam encourages peace over fighting.<sup>112</sup> Al-Shafi'i is among the classical jurists who sided with the view of fighting idol worshippers until surrender, and for the Peo-

106 Abu al-Qassim 'Ali ibn Muhammad Simanani, *Rawdat al-Qutab wa Tariq al-Najah*, Salah al-Din al-Nahi (ed.), Mu'asassat al-Risalah, Beirut, 1984, p. 1237.

107 'Ala' al-Din Abu Baker ibn Mas'ud Kassani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Vol. 9, pp. 4304-4305.

108 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, p. 76.

109 Ibidem, 76-77, 189.

110 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, Vol. 5, p. 1708.

111 Uafir al-Qasimi. *al-Jihad wal-Huquq al-Duwalyya al-'Amma fi al-Islam*, Dar al-'Ilm lil-Malayin, Beirut, 1980, pp. 160-164. The majority of classical jurists for the above view, yet the modern scholars, even though they cited Sufyan al-Thawri's, views regarding the defensive *jihad* and that Muslims should not start the fight if the non-Muslims do not like fight us. The only point is highlighted by al-Thawri is negate the necessity to start the fight, however he did not prohibit *al-jihad*. al-Thawri view was taking out of content. Such as: 'Abd al-Wahab Khalaf, *al-Siyasah al-Shar'iyyah*; 'Abd al-Rahman 'Azzam, in his *al-Risalah al-Khalidah*; Muhammad 'Abdullah Darraz; Muhammad Abu Zahrah, *al-'Ilaqat al-Duwalyyah fi al-Islam*; Muhammad Shaltut, *al-Islam wal-'Ilaqat al-Duwalyyah* and in his *al-Islam 'Aqidah wa Shari'ah*; Hamid Sultan, Muhammad Salam Makur, *Ma'alim al-Dawlah al-Islamiyyah*, p. 20; and Wahbi Zuhayli in his work *Athar al-Harb fi al-Fiqh al-Islami*, although all of the modern scholars in agreement that war in Islam is Defensive. As indicated by the work of modern scholar Muhammad Hafiz Ghanim, stated that the views of the majority of modern Muslim scholars views the origin of relations between Muslims and non-Muslims is peace, this is the view of the contemporary scholars not necessary the view of the classical jurists. See: *Mabadi' al-Qanun al-Duwal al-'Amm*, p. 54.

112 Zafir al-Qasimi, *al-Jihad wal-Huquq al-Duwalyya al-'Amma fi al-Islam*, p. 160.

ple of the Book to pay tribute (*jizya*) in case they declined to accept Islam.<sup>113</sup> The majority of scholars agree that *al-jihad* is a struggle to uphold the word of God, and to fight infidels who abstained from Islam and paying the tribute. In case the call for war is needed more than once a year, Muslims must answer. However, this may not take the form of a truce with the enemy, as a truce is absolute, and not restricted by time.<sup>114</sup> Since it assumes a permanent basis, which would lead to the abandonment of *jihad* altogether, it is not permissible.<sup>115</sup>

Al-Shaybani noted that *al-jihad* is obligatory upon all Muslims. During times of need, the Qur'an mandates the full extent of a struggle to achieve peace, justice and the ability to perform religious duties, 22:78. Muslim leaders are mandated to motivate Muslims to engage in the conduct of *al-jihad*, and should not threaten infidels without an invitation to Islam or the provision of tribute.<sup>116</sup> Later jurists such as al-Shawkani (d. 1250/1834) indicate that calling non-Muslims to Islam, providing tribute, or going to war are religious necessities. For this reason, the Almighty sent His messengers and revealed His sacred texts. In this regard, the Messenger of God followed this mission to his death, making this matter one of the greatest and the most important purposes of affairs, as made evident in the Qur'an and the Prophetic Sunnah.<sup>117</sup>

In this respect, Mustafa Kamal Wasfi asserts that since the application of Islamic provisions in the international arena requires tribute, dignity and prestige, it shall call for tolerance, and be characterised by flexibility of impact in terms of good advocacy and good representation of Muslims. Without it, the dignity of Islam is treated lightly, and states might take advantage of their status. This was the case for the treaties of privilege given by the Ottomans while they were at the height of their power, and which was the first sign of their weaknesses and decline.<sup>118</sup>

### The origin of Relationship Sources

The majority of jurists are in agreement regarding reference to Qur'anic verses and the Prophetic Sunnah and the practical nature in which the Prophet conducted his mission. Most Qur'anic verses directed towards *al-jihad* and bat-

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113 Muhammad Idris al-Shafi'i, *Ahkam al-Qur'an*, 'Abd al-Ghani 'Abd al-Khaliq (ed.), Dar al-Kutub al-'Ilmiyya, Beirut, 1980, p. 56; *al-Umm*, Muhammad Zuhdi al-Najjar (ed.), Dar al-Ma'rifah, Beirut, 1973, Vol. 4, pp. 155-156.

114 Some jurist such as al-Shafi'i, might be permissible, however Abu Hanifa indicated that this not required but permissible, since it can be terminated at any time, without accountability. See: Ibn Qayyim al-Jawziyya, Shams al-Din Muhammad, *Ahkam Ahl -Dhimma*, 1981, pp. 476-490.

115 See: Abu Baker Muhammad ibn Ahmad al-Sarakhsi, *al-Mabsut*, Vol. 10, pp. 2-3, 27.

116 Abu Bakr Muhammad ibn Ahmad Sarakhsi, *Sharh al-Siyar al-Kabir*, pp. 187-189.

117 Muhammad 'Ali Shawkanu, *al-Sayl al-Jarar al-Mutadafiq 'ala Hada'iq al-Azhar*, Mahmud Ibrahim Zayid (ed.), Dar al-Kutub al-'Ilmiyya, Beirut, 1985, Vol. 4, pp. 158-159.

118 Mustafa Kamal Wasfi, *Musanafat al-Nuzum al-Islamiyyah: al-Disturiyyah wal-Idariyyah wal-Iqtisadiyyah wal-Ijtima'iyyah*, 1977, pp. 339-341.

tlefield did not restrict the obligatory reaction to infidels beginning war against Muslims. As ordained by a Qur'anic verse, jihad is obligatory against the transgressors, without transgression of limits, and must be waged until transgression ceases, Q. 2: 190-193. God has ordered war against infidels and polytheists who plan to fight the Muslims due to their aggressive stance. This is supported by the Qur'anic elaboration on fighting during the Sacred Months, which is seen as a lesser transgression than not protecting the practice of Islam and its holy sites, Q. 2:217. Those who fight are not liable, such as women, boys and monks; and their killing is prohibited, lest it be an act of aggression. The aggressors who must be fought are those who initially offered tribute from the people of the book and the Magi/*al-majus*. Nevertheless, if they desist from polytheism, disbelief in God and fighting the Muslims, and accept Islam or agree to be subject to its provisions and renew their commitment to tribute and *'aqd al-dhimma*, God forgives what they have done prior to that moment. This was ordained by God Almighty in fighting infidels who are fighting Muslims in order to eliminate *shirk* (to attribute associates or partner of God in His creation and rule, i.e. to be polytheist, an idolater). This was reflected by Ibn 'Abbas, 'Umar ibn 'Abd al-'Aziz, Mujahid Abu al-Hajaj (d. 104/722), Qatadah, and was also the view of Ibn Jarir al-Tabari (d. 310/922) and the opinion favoured by the majority of classical exegetists.<sup>119</sup>

Al-Jassas makes this case by referring to a verse which mandates the killing of infidels until they leave infidelity and polytheism, Q. 2:193. The term *fitnah* in this verse refers to *al-shirk*, while *al-kufur* refers to *fitnah*, or perdition and discord, and *al-din* (religion) is obedience to God.<sup>120</sup> According to the Qur'an, this had been revealed to the Jews and Christians, but was rejected, Q. 3:19. With reference to the above Qur'anic statement by al-Shawkani (d. 1250/1834), fighting infidels is for the purpose of avoiding ordeals (*fitnah*).<sup>121</sup>

## Conclusions

The Islamic State, like other political entities, maintains external relations, joins international organisations, and abides by international law and general principles as norms governing its relations with others. In the modern world, it is impossible to isolate itself from external contacts politically and economically. Even those who are hostile to the West or non-Muslims, if they come to power, will find themselves forced to establish external relations and conclude treaties and agreements with non-Muslim countries. State administration cannot rely on revolutionary slogans or abstract thoughts, not even on religious fervor, but, realistically, must deal with the modern times and requirements of the society that

119 Abu Ja'far, Muhammad Ibn Jarir, *Jami' al-Bayan 'an Ta'wil Ayi al-Qur'an*, Muhmud Shakir (ed.), Dar al-Ma'arif, Cairo, pp. 561-574.

120 Abu Baker Ahmad ibn 'Ali al-Jassas, *Ahkam al-Qur'an*, pp. 260-261.

121 Muhammad 'Ali Shawkani, *Fath al-Qadir: al-Jami' bayn Fani al-Riwayyah wal-Dirayyah min 'Ilm al-Tafsir*, 'Abd al-Rahman 'Amirah al-Mansurah (ed.), Dar al-Wafa', 1997, p. 191.

runs its affairs.

Since the 1930s, Muslim countries have begun to join international organisations beginning with the League of Nations, then the United Nations and its agencies. The participation of Muslim countries in the world order can be considered a remarkable phenomenon in the recent history of Islamic countries. This phenomenon has historical roots when the Muslim world has had close relations with the West since the Middle Ages. These relations spanned centuries and included different forms and dimensions. Each side has influenced each other in all fields and activities politically, economically, culturally, legally and scientifically. There was mutual influence between the parties. The jurists themselves tried to bring the juristic and legal points of view between the Western thought and the Islamic reality of Islamic systems and governments and the giving of Muslim thinkers and philosophers.

Islam is a religion of faith and action, and its texts in the Qur'an and Sunnah are sufficiently clear for establishing principles and adhering to objectivity in human relations, regardless of expressions. Islamic law is a flexible law that allows the legitimacy of systems and laws that violate its principles. Islamic jurisprudence has spared no effort to theorise practical behaviours in the field of international relations under theoretical principles, which may differ in their formulation from the theories of the twentieth century, which was characterised by the wide field of peaceful international relations. The test of the legitimacy of modern formulations of international principles lies not in the apparent analogy of Islamic jurisprudence theories, but rather the objective measurement of the principles of Islamic religion and the foundations of legitimacy therein.

The yardstick of legitimacy of modern formulations of international principles lies not in the apparent analogy of Islamic jurisprudence theories, but rather it is related to objective measurement of the principles of the Islamic religion and the foundations of Islamic law. International law in Islam has always been part of common law. Its mandatory prescription was never in doubt. The jurists al-Shaybani and Abu Yusuf discuss topics of international law sometimes in the field of *siyar* under different terminologies, i.e., *ahl al-dhimma*, *khiraj*, *maghazi*, *dar al-Islam*, *dar al-harb*, *jihad*, *booty*.

International Islamic law is part of the domestic law of the Islamic State, and this is its first characteristic. The internal law of the Islamic State is the only Islamic law and nothing else. It regulates all its relations regardless of the nature of these relations and the subject and descriptions of the parties, whether the relationship between individuals or between them, or between them and other countries. Generally speaking, these relations are regulated by domestic law, i.e. Islamic law. Their relations with other countries are governed by Islamic law and, more precisely, the aspect of this type of relationship.

The Islamic State does not deviate from its Islamic law, otherwise it will lose its Islamic character. This is why jurists define *dar al-Islam* as the abode on which

the provisions of Islam are conducted, and Muslims and dhimmis are safe. *Dar al-'Ahd* is the abode of non-Muslims who were associated with Muslims under the era of general temporary security. *Dar al-Harb* is where Islam does not govern, and does not provide security to Muslims similar to what *dar al-Islam* provides to its non-Muslim residents.

The religious characterisation of international law - whether Islamic or Christian – gives it a divine character. It divides the world into opposite international groups on a religious basis. Nevertheless, it should be noted that religious pluralism is not incompatible with universal human unity. In addition, the rules of international law, including jurisprudence, are a mental factor, even if based on the provisions of Islamic law. Islamic jurisprudence has been ingenious in the jurisprudence of transactions between states and groups, but there were many differences between the great Muslim jurists on a number of rules of peace and war.

The view of some contemporary scholars is that relations between Muslims and non-Muslims should be based on peace, such as 'Abd al-Wahab Khallaf in his *al-Siyasah al-Shar'iyyah*, 'Abd al-Rahman 'Azzam in his *al-Risalah al-Khalidah*, Muhammad 'Abdullah Daraz, Muhammad Abu Zahrah, in his *al-'Ilaqat al-Duwal'iyyah*, Muhammad Shaltut, in his *al-Islam wal-'Ilaqat al-Duwal'iyyah* and *al-Islam 'Aqidah wa Shari'ah*, as well as Hamid Sultan, and Muhammad Salam Madkur.<sup>122</sup> According to Muhammad Hafiz Ghanim, some contemporaries scholars went on to say the opposite of what has been initially said by leading classical jurists. They decided that the relations between the Muslims and others should be one of peace. It is a view opposing other contemporaries and is contrary to the view of earlier scholars, with the exception of Zafir al-Qasimi in his work *al-Jihad wal-Huquq al-Duwal'iyyah*.<sup>123</sup>

122 See: Muhammad Hafiz Ghanim, *Mabadi' al-Qanun al-Duwal al-'Amm*, 1967, p. 54

123 Muhammad Hafiz Ghanim, *Muhadarat fi al-Mujtama'at al-Duwal'iyyah al-Iqlimiyah*, Jami'at al-Duwal al-'Arabiyyah, Cairo, 1958, p. 32.

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**Лабиб Бсул**

## **ИСЛАМСКА ЕПИСТЕМА РАЗВОЈА ПОЛИТИКА У МЕЂУНАРОДНИМ ОДНОСИМА**

### **Сажетак**

Овај рад се бави доприносом исламског права развоју транснационалних друштвено-политичких организација који надилази трансцендентне расне и геополитичке фиксације. То се најбоље види из премисе јединства верујуће заједнице и човечанства вођене од стране шеријатског права. Ислам заговара развој и консолидацију заједница. Овај рад се посебно бави концептом уме (заједнице верника) у складу са традицијом пророка Мухамеда и истражује њен развој за време исламских калифата, султаната и имамата, све до колонијализма и увођења система модерних нација – држава. Овај чланак закључује да постоје онтолошке, епистемиолошке и нормативне разлике које чине разлику између муслиманског и западњачког погледа на свет, посебно у светлу развоја и примене њихових политика.

**Кључне речи:** исламско међународно право, правне одредбе, политике, исламски правници, правда, држава

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