The Impact of Ḥudaibiya on Contemporary Treaties: Between Memory and Desire[1]

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Abstract

The treaty of Ḥudaibiya became the backbone of treaties concluded between Muslims and non-Muslims in the pre-modern era. The article discusses the nature of concluded treaties between Muslims and non-Muslims, which were not limited; 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 such as the treaty of Ḥudaibiya 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 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. In the modern period, we observed that some Muslim figures, when concluding a treaty with non-Muslims, cited the Ḥudaibiya treaty to justify their role. This article addresses the ultimate purpose behind the treaty Ḥudaibiya, and its outcome and impact on the Muslim community at large. Furthermore, this article highlights the outcome of the treaty of Ḥudaibiya as a lesson from Prophet Muḥammed, which stands in Islamic history as an enduring masterpiece, revealing and telling of the Prophet's political skill and diplomacy. The ultimate goal of the Ḥudaibiya treaty or any treaty should contribute to ending bloodshed and establishing peace. Without these treaties, the balance of power could never have been maintained and hostilities would have continued.

Keywords: treaty, treaty of *Ḥudaibiya*, Prophet Muḥammed, Modern treaties, *Ṣulḥ*/peace

1. Introduction

The treaty of Ḥudaibiya has captured the attentions of scholars, historians, jurists and politicians in both the past and present. However, each scholar, jurist and politician cited the Ḥudaibiya treaty in support of their claim that the *pacta sunt servanda* principle of Islamic law empowers Muslims in general and Muslim rulers in particular to treat freely any non-Muslim sovereign.[3] In the recent period, one can observe that Muslim leaders, when concluding treaties with non-Muslim countries, indicate that they are following the conduct of Prophet Muḥammed, in particular the pact of Ḥudaibiya. The understanding of the pact of Ḥudaibiya became a practice among Muslim leaders throughout the history of Islam, past and present. We will illustrate cases and examples of treaties that took place throughout the history of Islamic countries in which the pattern of Ḥudaibiya became an example for these leaders upon concluding treaties with non-Muslims. Obviously, there are some differences and outcomes in terms of the content between the Ḥudaibiya and other treaties. The leading point of differences is that the Prophet Muḥammed was personally involved in Ḥudaibiya and has special characteristics as a legislator, politician and statesman, as was described by Montgomery Watt.[4]

2. The Nature of Islamic Treaties

Throughout the history of human civilizations, treaties have been drafted in order to organize relations between nations as well as to establish the rights of each party and to enforce mutually agreed upon terms and conditions.[5] In the process, treaties have become one of the most fundamental elements in organizing the relations of nations at times of peace and 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. The aims behind treaties between nations can differ widely. A treaty may be concluded, for instance, to achieve economic and trade advantages, to affect 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.

In Islamic civilization, too, treaties have been used as a tool to organize the relations between the Islamic state and its neighboring states. 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 the first incarnation of such treaties; only later did states expand the use of treaties to seal the end of fighting, armistice agreements, the spread of peace (*amān*), truce of suspension of fighting (*hudna*), temporary/ceasefire cessation of hostilities (*muwāda'a*), 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.[6]

The purpose of the treaties concluded between Muslims and non-Muslims in the pre-modern era were not limited; 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 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, in order to avoid further conflict and bloodshed (as well as to gain more time for reinforcements and supplies to arrive). The second category is from a position of equilibrium, 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.[7]

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 17/638,[8] and the surrender of Alexandria in 22/642.[9] 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 Abbasid eras.[10] Finally, negotiating from a position of weakness, Muslims often signed treaties with non-Muslims when faced with internal disputes, such as the treaties of Umayyad Caliph 'Abd al-Malik ibn Marwān (r. 65/685-86/705) with Emperor Justinian II of Byzantine (concluded in 70/689) and in the Ayyūbid era during the reign of Malik al-Kāmil (r. 615/1218-636/1238) with Fredrick II, dated 625/1229.[11]

3. A Brief History of Islamic Treaties

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 ceasefire (*hudna*) or covenant of protection (*'aqd al-dhimma*). In the negotiations for these treaties, non-Muslims were given the choice of three options: conversion to Islam, becoming *dhimmi*s, or resuming the hostilities. Among the treaties of *dhimma*, known as a continuous truce (*ṣulḥ*), was the one negotiated by} 'Umar ibn al-Khaṭṭāb with the people of 'Ilyā' (Jerusalem) in 17/638.[12] This treaty granted mutually agreed rights and protection to non-Muslims.[13] 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 (*dhimmī*s' lives and property in return for the payment of the poll tax (*jizya*).[14] Similarly, in 15/636. Khālid 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*.[15] Likewise in early 19/640, Abū 'Ubayda ibn al-Jarrāḥ and the people of Syria concluded another treaty along the same lines.[16]

The Muslims continued to conclude treaties of ceasefire (*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 the Byzantines, non-Muslim nations of the *dār al-ḥarb*. According to the *Futūḥ al-Buldān* of Balādhurī, during the time of Mu'āwiya (r. 41/661-48/680), a great percentage of Byzantine territory was subject to treaties of safe conduct.[17] During the time of hostilities and tensions between Mu'āwiya and 'Alī ibn Abī Ṭālib, Mu'āwiya drafted a treaty of ceasefire (*hudna*) with the Byzantine emperor Constantine II (527-565 C. E.), prior to his battle with 'Alī in 28/658. Then, when he proclaimed himself caliph in 662, he renewed and signed a treaty on his own authority with the Byzantine emperor in which tribute was paid to the latter.[18] In the same way, Caliph 'Abd al-Malik ibn Marwān 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 70/689, he renewed the same ceasefire (*hudna*) again.[19]

During the Abbasid period, the political relationships between Muslims and Byzantines followed the pattern set by their predecessors. In fact this political trend became more marked under the rule of al-Manṣūr, the second 'Abbasid caliph (r. 136/754-158/785), when in 148/765 the exchange of ambassadors was resumed. These political or diplomatic 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 Byzantines, mutual interests were more easily accommodated: for example, trade barriers were lifted. This process is also clearly seen in the exchange of gifts, letters, and representatives between Hārūn al-Rashīd (r. 170/786-194/809) and Charlemagne, who in 187/802 arranged a treaty of friendship and alliance after establishing diplomatic ties.[20]

The Faṭimids and the Mamlūks followed the lead of the 'Abbasids by concluding treaties with non-Muslims. Their relations extended to Europe and to Central and East Asia.[21] Furthermore, during the Crusades, political relations between eastern and western ruling powers in general, and in particular between Ṣalāḥ al-Dīn al-Ayyūbī (r. 1169-93) and Richard the Lionheart, were further developed. A treaty was concluded between the two leaders in 1192.[22] 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.[23] During the Ottoman period, a friendly treaty was concluded between Suleiman the Magnificent (152-1566) 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."[24]

4. Significance and Outcomes of Islamic Treaties

The purpose of the following discussion, therefore, is to examine certain treaties in greater depth 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, achieving, 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 hostilities would have continued.

In the following discussion, the intention is to highlight the significance and outcome of all Islamic treaties, but especially of the Ḥudaibiya treaty. The Ḥudaibiya treaty has long been considered by classical and modern historians and jurists as a model and the most influential document in the Islamic history of treaty-writing. Historians and jurists agree that the validity of later treaties was usually measured according to the standard set by Ḥudaibiya. Although some of the Prophet's Companions were not in favor of the treaty when it was being negotiated, among them 'Umar b. 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.

4.1 The Ḥudaibiya Treaty [25]

To understand the background that led to the conclusion of Ḥudaibiya, 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, where all of the attending small and large tribes made a covenant that, as God was their witness, they would forever stand on the side of the victims of injustice.[26] Through participation in this event, the Prophet gained early experience of negotiation. The Prophet is supposed to have said,

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.[27]

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.[28]

The treaty of Ḥudaibiya[29] was concluded between the Prophet Muḥammed and Suhayl b. 'Amr, a representative of the Quraysh tribe of Mecca. The treaty, as noted before, became in the eyes of Muslim scholars the model for all subsequent Islamic treaties, mainly because of the Prophet's role in negotiating its terms and conditions.[30] 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.

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 Ḥudaibiya 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, which rendered the Muslim position or status in Medina secure enough to allow them to turn their attention toward Mecca.[31] 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 1/622 and 6/628, several skirmishes and three major 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 2/624 was a victory for the Muslims of Medina, the battle of Uḥud in 3/625 a victory for the Meccans, and the battle of the Trench in 5/627, where the Meccans broke off their siege of Medina without either reaching victory or admitting defeat, a draw.[32] After the battle of the Trench, the Meccans remained strong and decided to protect their city from any attempt at invasion by the Muslims of Medina.[33]

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, invasion of Mecca must have seemed an unwise choice at the time. The outcome would probably have been disastrous to the nascent Muslim community.[34] Therefore, for the best interest of the Muslim community, an alternative course of action was sought. At this point, the Prophet realized that the Islamic cause would be better served by a peaceful settlement with the Meccans. It was also then that the Prophet declared that the Ka'ba (the chief religious shrine in Mecca) was sacred to the Muslims.[35]

In 6/628, 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 pilgrimage (*ḥajj*). As the Prophet approached Mecca, he dispatched several peace emissaries to assure the Meccans of his peaceful intentions and his desire to reach an agreement with them through negotiations.[36] 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.[37]

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 'Amr 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 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.[38] Yet despite the fact that Suhayl was alone, no one harmed him; indeed, the Muslims treated him with respect and in keeping with the Islamic ruling that messengers should not be mistreated or killed.[39] 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.[40] (see below the Treaty of Ḥudaibiya Appendix, articles 1-5).

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 Ḥudaibiya 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 theḤ udaibiya treaty served as an example to his fellow Muslims, and it became the principal model of a treaty to the following generations of Muslims.[41] (see below the Treaty of Ḥudaibiya Appendix, articles 5-8).

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 Ḥudaibiya 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 Ḥudaibiya treaty was signed, the Muslims took advantage of Khaybar's weakness and defeated this powerful Jewish tribe.[42]

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.[43]

The treaty of Ḥudaibiya of 6/628 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 blood spilled, thus paving the way for the peaceful Islamization of the entire Arabian Peninsula.[44] In reality, the treaty of Ḥudaibiya 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.[45]

4.2 Post-Ḥudaibiya Treaties

In the writings of classical Muslim historians and scholars, the treaty of Ḥudaibiya 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 udaibiya did. In their case, only scant details are furnished. In this section, we will discuss and bring forward some of the opinions of Muslim scholars regarding these treaties.

Another event that provided a precedent for future *muwāda'a*s was the *ṣulḥ* of al-Ḥudaibiya concluded between the Prophet and the Meccan chiefs. The *ṣulḥ* came with conditions stipulating a fixed duration. In the case of Ḥudaibiya, 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* 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.[46]

However, the time period specified in the case of Ḥudaibiya is not, according to Abū Ḥanifā (d. 150/767), Abū Yūsuf (d. 182/798) and Shaybānī (d. 189/804), a precedent that must be followed in all treaties (*mu'āhadāt*); rather, it is left to the Imam 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 is exceeded, or is deemed subject to extension. If it does not serve the interests of Muslims, it is not permissible for the Imam to renew the treaty or extend its duration.[47]

Al-Jaṣṣāṣ (d. 370/980) summarizes the opinions of Ḥanafī jurists with regard to the validity of a *mu'āhada* being concluded under such circumstances. The jurists pointed out that the Prophet concluded several *ṣulḥ* contracts with non-Muslim tribes such as the Naḍīr, Qaynuqā', and Qurayẓa, as well as the *ṣulḥ* of Ḥudaibiya, upon his arrival in Medina. All of these *ṣulḥ*s 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 is an evident of encouragement to conclude agreement in order to eliminate and avoid further fighting. However, the apparent difference in the legal effect in these chapters depends on the political status of Muslims. In the first, we see encouragement to conclude a *musālama* or *muhādana* with the non-Muslims at a time of weakness for Muslims. In the second is the assumption that fighting should resume whenever the Muslims are in a position of power.[48]

The opinions of Ḥanafī jurists were largely mirrored in consensus among the Mālikī, Shāfi'ī and Ḥanbalī jurists. For example Mālikī jurists hold 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 truce/*ṣulḥ* for what is seen as public interest is for Muslim as it is seen by the Imam. Shāfi'ī jurists gave their opinion that if the Imam is in a position of strength and the outcome of the truce/*ṣulḥ* does not serve the interests of Muslims, then it is not permissible to conclude it. Similarly, Ḥanbalī jurists believed that as long as the truce/*ṣulḥ* favors the interests of Muslims, it can be of use in cases where the Muslims are weak or there is some other necessity; otherwise, it is not permissible.[49]

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 Ḥudaibiya of 6/628. 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 revolve around this issue, and most of the reactions are 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 decisions of such legal import. Of course, the Muslim sources consulted 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.

All of the post-Ḥudaibiya treaties, namely the treaties concluded during the reigns of 'Abd al-Malik ibn Marwān, Hārūn al-Rashīd, Malik al-Kāmil and Suleiman 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 Sharī'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. Contemporary jurists generally agreed 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 favor 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.

The nature of relations between Muslims and non-Muslims cannot, 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 safe conduct from Muslims, this safe conduct was 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 where 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. While it is true that public interest was never far from the minds of Muslims when 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 the 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, including law. As seen in the works of the scholars from this period consulted throughout this study, the sources of Islamic jurisprudence and rulings were the essential elements from which they derived their opinions regarding any given matter, despite some errors. 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), al-Awzā'ī (d. 157/774), al-Thawrī (d. 161/778), Fazārī, (d. 180/796) and others strove to elaborate the matters necessary to establishing sound relations with non-Muslims. The field of *siyar*

encompasses such concepts 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 contractual obligation 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 suited to Christian nations.[50] Many modern Muslim and non-Muslim scholars, such as Khadduri, Krousa, Christopher Ford, Perry Smith, Muḥammad Ḥamīdullah, Kruse Hans, and Boregitshal, admit many of the elements of modern international law were derived from the works of Muslim jurists, in particular the *Siyar* of Shaybānī.[51] They even agree that Shaybānī deserves the title of the "father" of modern public International law.[52]

4.3 Modern Treaties

With respect to the modern treaties that were concluded between Muslim countries and non-Muslim countries, i.e., Egypt and "Israel" in the late 1970s and the Oslo agreement between the Palestinians and the "Israelis" and between Jordan and "Israel". The commonality of these treaties is that three Arab Muslim countries concluded treaties with a non-Muslim party, "Israel", a de facto country that imposed conditions on the three Muslim countries that did not necessarily fit the circumstances, when the Muslim rulers/representatives resorted to concluding a treaty with non-Muslims. The three categories of the Ḥudaibiya and the post Ḥudaibiya are the positions of power, position of equilibrium, and the position of weakness.

The Camp David Peace Accord was an open-ended peace negotiation and process, unlike the truce of Ḥudaibiya, which was a specified time period (some scholars indicated for two years and others 10 years). In addition, the Camp David Accord was signed between the parties as a peace treaty, while the truce of Ḥudaibiya was signed as a cease fire. Furthermore, the truce of Ḥudaibiya constituted Quraysh's tribe recognition of the Muslim community at large; however, the Camp David Accord singled out Arab recognition of the Israelis. (see below the Treaty of Ḥudaibiya Appendix, articles 6-7).

As was mentioned earlier, throughout history, Muslims were encouraged to conclude treaties with non-Muslims, for the safety, interest, and benefit of the Muslim community at large. In the Ḥudaibiya, Muslims used all possible loopholes to benefit the Muslim cause, such as the runways from Mecca to settle outside Medina and raid Quraysh caravans. In the case of the Camp David Peace Accord, the equivalent could be thought of as Sadat making a cease-fire with the Israelis to facilitate their activities against the Palestinian resistance.[53] The invasion of Lebanon in 1982 and the massacres of Sabra and Shatila took place right after Camp David, which limits the Egyptian authority to prevent aggression against both the Lebanese and the Palestinians.[54] In the truce of Ḥudaibiya, the Muslims used this treaty to increase their numbers and strength. For instance, the total size of the Muslim armies prior to Ḥudaibiya was 1, 400, and after the truce of Ḥudaibiya, the size increased to 10,000. As a result, the Meccan was isolated from much of Arabia and much of Arabian public opinion. In the case of Camp David, Sadat perhaps could claim that Camp David was an attempt to win western support for the Arab cause. If so, it was a dismal and predictable failure. Instead, in the aftermath of the Camp David Peace Accords, the Arabs became more divided and Egypt lost the support and trust of the Arab world. However, the Israelis used Camp David to build up their military strength incalculably. The Egyptian army was prevented from being in the Sinai peninsula and only the border guards the police can be present; however, these restrictions was not imposed on the Israelis, only on the Egyptian forces.[55] In spite of the peace initiative and the purposes stand for, there have been many attempts to violate the Accord since 1979 by the Israelis against Egypt, such as planting a spy unit in Egypt to capture Egyptian secret policy; the spies were then released.[56] To equate the Israelis with the Quraysh is not a valid comparison simply because the Quryashi were indigenous and inhabitants of Mecca, unlike the Israelis who were the occupiers and oppressors of the Palestinians.

The second contemporary treaty under examination is the Oslo peace process, which took place between the PLO/Palestinian representatives and the Israelis in 1993, during which a reference to the Ḥudaibiya treaty was made by PLO Chairman Yasser Arafat.[57] While Arafat was attending Nelson Mandela's inauguration, he delivered a speech in a Johannesburg mosque on May 10th, 1994. According to the available sources, Arafat indicated that the peace treaty with the Israelis was similar to that of Prophet Muhammed on the Quraysh trip.[58] I have traced most of international newspapers to find Arafat's Johannesburg speech, but none except the Israeli newspapers and pro-Israel sites mentioned that he used the language of "treaty breaking" in his speech, as was written by Daniel Pipes.[59] Sometimes one would wonder why a source would go into a mosque to spy and tape-record a speech, without knowing the impact of the speech on future generations.[60] The claim that Arafat intended to imitate the Ḥudaibiya pact is misleading.

If we take Arafat's hypothesized speech seriously, still the comparison is not valid. The people of Medina are a mixture of both indigenous people known as *Anṣār* and immigrants/*muhajrūn*, from which Prophet Muhammed established a state and mobilized the Islamic community. This is unlike the Palestinians, who were in exile and representing Palestine, without representation of Palestinians in the West Bank and Gaza. Secondly, the people of Quraysh were all indigenous and inhabitants of Mecca, unlike the Israelis who are occupiers and do not represent the well-being of the indigenous people or inhabitants of the land. Furthermore, signing the Oslo Accord led to the assassination of the Israeli Prime Minister Rabin by a fanatic Jew.[61] In addition, the apartheid wall/fence, which segregated many families, damaged the lives of the Palestinian people, and destroyed arable land, was condemned on 9th of July 2004 by the International Court of Justice.[62] Moreover, the outcome of Ḥudaibiya is not in line with the outcome of Oslo. Since 1993 to the present, meaning after 17 years, the outcome of Oslo failed to produce peace. The Ḥudaibiya not only produced peace but also unified the entire Arabia without war, hostilities, confrontations, or further threat. It was very successful because all of Mecca accepted Islam. Modern political activities convey the intention and reality on the ground; there is no intention to resolve this matter from the Israeli representatives of several governments since the time of signing the Oslo treaty up to the present. Delaying the process and creating additional obstacles, such as imprisonment, illegal settlements, provocation of the Palestinians to apply different tactics versus new, sophisticated arms and machinery, and imposing further sanctions and conditions upon the Palestinians are an indication of lack of desire to resolve this matter and reach a peaceful co-existence or one-state solution to end all of the tensions. Further, the new generation differs from the old generation, and planting the hope to reach a peace is more useful than maintaining the status quo that furthers tensions and a miserable life for both communities. (see below the Treaty of Ḥudaibiya Appendix, article 7).

5. Conclusion

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. Furthermore, according to the Islamic sources that were consulted for this study, Muslim nations observed their treaties, unless the other party had first broken a pledge.

Early Muslim scholars and jurists set the pattern for later jurists and rulers[63] 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 Ḥudaibiya treaty should be seen as the underlying model for all later treaties. In order for a treaty to be finalized, it has to pass through certain stages, beginning with the determination 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. These processes must be pursued in a spirit of reconciliation; if any 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. The fulfillment of all of the elements in 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. Q. 8: 61

In spite of the parties coming from a position of weakness, their rights must be acknowledged and enforced in order to reach a speedy and positive outcome and to avoid further hostilities, casualties, frustrations, and loss of trust. Therefore, the consensus among Muslim classical and modern scholars is to conclude treaties with non-Muslims as long as these treaties secure the safety and well-being of the Muslim community. Islam advocates peaceful resolutions that are based on genuine justice and mutual respect and understanding, as shown in the treaty of Ḥudaibiya.[64] The lessons from the conduct of Prophet Muḥammed during Ḥudaibiya is a great one, which led to peace and coexistent with those known is the past as the enemy but who became brothers in faith. This outcome of Ḥudaibiya paved and eased the preaching of Islam outside the Arabia Peninsula and is still on the road in our days.[65]

Appendix
The Treaty of Ḥudaibiya[66]

1. With Thy Name Oh God!

2. This is what was agreed upon between Muḥammed, son of 'Abdullah and Suhayl, 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 Muḥammed, comes to Mecca on Ḥajj or 'Umra (pilgrimage), or in quest of the bounty of God, (i.e. commerce) en route to Yemen or Ṭā'if, 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 Muḥammed 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 Muḥammed, 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 Muḥammed 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 Muḥammed 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 (Muḥammed) 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 udaibiya) and thou shall not conduct them to us (in Mecca).

(Probably seal of Muḥammed and seal of Suhayl).

10. Witnesses of the Peace (*Ṣulḥ*).

Muslims side: Abu Bakr, 'Umar, 'Abd al-Raḥman ibn 'Awf, 'Abdallah ibn Suhayl ibn 'Amr, Sa'd ibn Abī Waqqās, Maḥ mūd ibn Maslama, etc.

Quraysh side: Mikrāz ibn Ḥafs and Ḥuwaiṭib (both clansmen of Suhayls)

Scribe: 'Alī ibn Abī Ṭālib.

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[1] See Appendix for the full text of this treaty. Muḥammad Ḥamīdallāh, *Majmū'at al-Wathāiq al-Siyāsiyya*, 57; and idem, the *Muslim Conduct of State*, 265-268.

[2] Labeeb Ahmed Bsoul, Associate Professor in the Department of Humanities and Social Sciences at Khalifa University, Abu Dhabi, the United Arab Emirates. Author of *International Treaties (Mu'āhadāt) in Islam: Theory and Practice in the Light of Siyar (Islamic International Law)*. University Press of America, 2008; *Formation of Islamic jurisprudence: From the Time of the Prophetic to the Middle of the 4th century*. New York: Palgrave Macmillan, 2016; and *Islamic History and Law: From the 4th to the 11th Century and Beyond*. New York: Palgrave Macmillan, 2016. A recent book entitled *Medieval Islamic World: An Intellectual History of Science and Politics* is in progress and accepted for publication by Peter Lang Publishing Inc., (forthcoming).

[3] Saba Habashy, *Property, Right, and Contract in Muslim Law, Columbia Law Review*, Number 62, 450, 461, (1960).; Christopher A. Ford in his "Siyar-zation and its discontent: International law and Islam's

Constitutional Crisis" *Texas International Law Journal*, vol. 30, Number 3, Summer (1995), p. 519; Perry S. Smith

[4] Watt, M. "Al-Ḥudaibiya", *The Encylopeadia of Islam* (new Edition), vol. 3:539; Watt, W. Montgomery. *Muhammad at Mecca*. Oxford: Clarendon Press, 1953; and *Muhammad at Medina*. Oxford: Clarendon Press, 1956. The two volumes are abridged as one in *Muhammad: Prophet and Statesman*. London: Oxford University Press, 1961; also the work of Muhammad Husayn Haykal. *Hayāt Muḥammad*, (Cairo: Maktabat al-Nahḍa al-Miṣriyah, 1986), 363-427.

[5] See Toscano, Mario, *The History of Treaties and International Politics: An introduction to the history of treaties and international Politics: the documentary and memoir sources*, Volume 1. (Baltimore: Johns Hopkins University Press, 1966).

[6] See Bsoul, Labeeb Ahmed *International Treaties (Muʿahadat) in Islam: Theory and Practice in the Light of Siyar (Islamic International Law)*. (University Press of America, 2008).

[7] Sami, Hanna, ed. *Medieval and Middle Eastern Studies* (Leiden: E. J. Brill, 1972), 51-52.

[8] Ṭabarī, Abū Jarīr Muḥammad ibn Jarīr, *Tarīkh al-Umam wal-Mulūk*, (Beirut: Dār al-Maʾārif, 1979), 3: 608-609; Muḥammad Ḥamīdallāh, *Majmūʿat al-Wathāʾiq al-Siyāsiyya*, (Beirut: Dār al-Irshād, 1969), 268-269.

[9] Ṭabarī, *Tārīkh*, 4: 104-109.

[10] Balādhurī, *Futūḥ al-Buldān*, 159-160; Masʿūdī, *Murūj al-Dhahab*, 5: 224; Ibn al-Farrāʾ, *Rusul al-Mulūk*, 106, 152, 155.

[11] Balādhurī, Aḥmad b. Yaḥya al-Jābir, *Futūḥ al-Buldān*, (Beirut: Dār al-Kutub al-ʿIlmiyya, 1977),, 159; Ibn Farrāʾ, Abū Yaʿalā Muḥammad b. Ḥusayn, *al-Aḥkām al-Sulṭāniyya*, (Beirut: Dār al-Kutub al-ʿIlmiyya, 1983),152.

[12] For the text of this treaty see Muḥammad Ḥamīdallāh, *Majmūʿat al-Wathāʾiq al-Siyāsiyya*, 345.

[13] ʿUmar 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.

[14] Muḥammad Ḥamīdallāh, *Majmūʿat al-Wathāʾiq al-Siyāsiyya*, 345-346; Balādhurī, *Futūḥ al-Buldān*, 2: 383; Abū ʿUbayd, al-Qāsim ibn Sallām, *Amwāl*, (Doḥa: Shaykh ʿAbdallah al-Anṣārī, 1987), 97-98.

[15] Ibid., 340.

[16] *Majmūʿat al-Wathāʾiq al-Siyāsiyya* , 341, 418, 474, 487-488; Abū Yūsuf, Yaʿqūb b. Ibrāhīm b. Ḥabīb al-Anṣārī *Kharāj*, (Madina: al-Maṭbaʿah al-Salafiyya, 1972), 42-45; Balādhurī, *Futūḥ al-Buldān*, 1: 28.

[17] Balādhurī, *Futūḥ al-Buldān*, 197.

[18] Ibid., 159; Ibn al-Farrāʾ, *al-Aḥkām al-Suṭāniyya*, 152; Sarakhsī, *Sharḥ al-Siyar al-Kabīr*, 1: 97; and idem *Mabsūṭ*, 10: 92; Abū ʿUbayd, *Amwāl*, 290.

[19] Masʿūdī, *Murūj al-Dhahab*, 5: 224; Balādhurī, *Futūḥ al-Buldān*, 160.

[20] Ibn al-Farrāʾ, *al-Aḥkām al-Sulṭāniyya*, 106; 155; F. W. Buckler, *Harun'l-Rashid and Charles the Great* (Cambridge: The Mediaeval Academy of America, 1931) , 43-47.

[21] Majid Khadduri, *War and Peace in the Law of Islam*, 234.

[22] 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, "Baybars Treaty with the Lady of Beirut in 667/1269", in *Crusade and Settlement*, ed. P.W. Edbury (Cardiff, 1984), 255; al-Qalqashandī, Abū al-ʿAbbāss Aḥmad b. ʿAlī, *Subḥ al-Aʿshā*, (Beirut: Dār al-Kutub al-ʿIlmiyya, 1987),14: 40-42.

[23] 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.

[24] 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.

[25] See Appendix (A) for the full text of this treaty. Muḥammad Ḥamīdallāh, *Majmūʿat al-Wathāiq al-Siyāsiyya*, 57; and idem, the *Muslim Conduct of State*, 265-268.

[26] Ch. Pellat, "Hilf al-Fuḍūl", *Encyclopaedia of Islam*, new edition, 3: 389, Muḥammad Ḥusayn Haykal, *The Life of Muhammad (Ḥayāt Muḥammad)*, translated by Ismāʿil R. Fārūqī (Indianapolis: American Trust Publications, 1976) 57-56; W. Montgomery Watt, *Muhammad at Mecca* (Oxford:

Clarendon Press, 1952), 13-16; Ibn Hishām, Abū Muḥammad 'Abd al-Mālik *al-Sīra al-Nabawiyya*, Cairo: Maktabat al-Kuliyyāt al-Azhariyya, 1971), 1: 133-135; Ibn Sa'd, Muḥammad *Ṭabaqāt*, (Beirut: Dār Ṣādir, 1958), 1: 42;

[27] Muḥammad Ḥusayn Haykal, *The Life of Muhammad* (*Ḥayāt Muḥammad*) 57; Ch. Pellat, "Hilf al-Fuḍūl", *Encyclopaedia of Islam*, new edition, 3: 389.

[28] For more details on the peace treaties drawn up by the Arabs in the pre-Islamic era, see Irfan Kawar, "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).

[29] Ḥudaibiya was a valley a short day's journey from Mecca. This valley was the center of a local cult with a well and a sacred tree. A modest village afterwards arose here surrounding by lands rich in subterranean water. 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 terms in jurisprudence and the *Maghāzī* literature, being described as a *muwāda'a*,*musālama, hudna*, etc. See Ibn Qudāma, *al-Mughnī*, 10: 522; Ibn Humām, *Fatḥ al-Qadīr*, 5: 466; al-Ramlī, *Nihāyat al-Muḥtāj*, 8: 102.

[30] Ibn Ḥajar al-'Asqalānī, *al-Iṣāba*, (Cairo: Maktabat al-Nahḍa, 1972),1: 94; Wāqidī, Abū al-Ḥasan 'Alī b. Aḥmad al-Naysabūri, *al-Maghāzī*,(London: Oxford University Press, 1966), 2: 61-112; Ibn Sa'd, *Ṭabaqāt*, 2: 95; Ibn Hishām, *Sīra*, 3: 332.

[31] Muḥammad Ḥusayn Haykal, *The Life of Muhammad* (*Ḥayāt Muḥammad*) 179-183.

[32] 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*, 216-241, 242-248, and 299-316; Antonie Wessels, *A Modern Arabic Biography of Muḥammad* (Leiden: E. J. Brill, 1972), 162-164, Ibid., 299-316.

[33] Ibid., 317-318.

[34] Ibid.

[35] Ibid., 340-343.

[36] Ibn Hishām, *Sīra*, 2: 314-315; Ibn Sa'd, *Ṭabaqāt*, 2: 96-97; Maqrīzī, *Imtā' al-Asmā'*, 1: 289-291; Ṭabarī, *Tafsīr*, 29: 86.

[37] Ibn Sa'd, *Ṭabaqāt*, 2: 96-97; Maqrīzī, *Imtā' al-Asmā'*, 1: 289-291; Ṭabarī, *Tafsīr*, 29: 86; Muḥammad Ḥusayn Haykal, *The Life of Muhammad* (*Ḥayāt Muḥammad*), 345-353.

[38] Ibn Qayyim al-Jawziyya, Shams al-Dīn Muḥammad b. Abū Bakr al-Dimashqī, *Zād al-Ma'ād*, (Beirut: Dār al-Fikr, 1972), 3: 287.

[39] Ṭaḥāwī, Abū Ja'far Aḥmad b. Muḥammad b. Salāma, *Muskhil al-Āthār*, (Cairo: Maṭba'at al-Answār, 1967),7: 302; Shawkānī, Muḥammad b. 'Alī, *Nayl al-Awṭār*, (Cairo: Maṭba'at Muṣṭafā al-Ḥalabī, 1971),8: 35; Ghazālī, Abū Ḥāmid Muḥammad al-Ṭūsī, *Wajīz fī Madhhab al-Imām al-Shāfi'ī*, (Beirut: Dār al-Ma'ārif, 1978), 2: 196; Jalāl al-Dīn, 'Abdullah b. Najm, *'Iqd al-Jawāhir al-Thamīna*, (Beirut: Dār al-Gharb al-Islāmī, 1995),1: 480; 'Aynī, Badal-Dīn Maḥmūd b. Aḥmad, *Kashshāf al-Qinā'*, (Jadda: 'Abd al-'Azi.z University, Markaz al-Nashr al-'Ilmī, 1994), 3: 99-100; Ibn Mifliḥ, Abū Isḥāq Burhān al-Dīn Ibrāhīm, *al-Mubdi'*, (Beirut: Dār al-Kutub al-'Ilmiyya, 1994),3: 393; Shāfi'ī, Muḥammad ibn Idrīs, *al-Umm*, (Cairo: Maṭba'at al-Sha'ab, 1903), 4: 201; Nawawī, Abū Zakariyā Muḥyī al-Dīn Yaḥyā, *al-Muhadhdhab wa 'l-Majmū'*, (Beirut: Dār al-Fikr, 1975),18: 87; Ibn Qudāma, Muwaffaq al-Dīn 'Abdullah b. Aḥmad, *al-Mughnī*, (Beirut: Dār al-Fikr, 1983),10: 595. According to al-Ṭabarī, there was consensus among scholars regarding the status of emissaries. They must be well treated, respected and welcomed by their host in order to maintain the process of negotiations. If the emissaries are harmed or mistreated, this might cause further hardship throughout the negotiations. Therefore, Muslims must consider this while there are negotiations, even if the emissaries insult them. 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 emissaries. Ṭabarī, *Ikhtilāf al-Fuqahā'*, (Beirut: Dār al-Kutub al-'Ilmiyya, 1980), 32.

[40] Ibid.

[41] See Aḥmad Bashmīl, *Ṣulḥ al-Ḥudaybiya*, (Beirut: Dār al-Fikr, 1970), 280-200.

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[42] Ibn Kathīr, Abū al-Fidā ʿImād al-Dīn, *al-Bidāya wa al-Nihāya*, (Riyad: Maktabat al-Maʿārif, 1966), 4:210-214; Ṭabarī, *Tārīkh*, 2: 620-644; Yaʿqūbī, Aḥmad b. Isḥāq b. Jaʿfar, *Tārīkh*, (Beirut: Dār al-Kutub al-ʿIlmiyya, 1999), 2: 35-37; Imran N. Hosein, "Diplomacy in Islam," *Muslim Education Quarterly* 3, 3 (1986), 70.

[43] Ṭabarī, *Tārīkh*, 2: 620-644; Yaʿqūbī, *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); idem, *Muhammad at Medina* (Oxford, England: Clarendon Press, 1956); Muhammad Husayn Haykal. *The Life of Muhammad*.

[44] Muḥammad Ḥusayn Haykal, *The Life of Muhammad*, 400-408.

[45] Ibid., 356.

[46] Ibn Isḥāq, *Sīra*, 2: 316-317; Ibn Saʿd, *Ṭabaqāt al-Kubrā*, 2: 97; Ibn Ḥajar, *Fatḥ al-Bārī*, 5: 343; Ibn Qayyim al-Jawziyya, *Zād al-Maʿād*, 3: 140; Ibn Humām, *Fatḥ 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 Ḥudaibīya, with some saying that it was for ten years and others saying four years. Ibn ʿAdī in his *al-Kāmil*, Ibn al-Ḥākim in his *Mustadrak*, Ṭabarānī in *al-Awsaṭ* and Abū ʿUbayd in his *Amwāl* indicate the time period of the *ṣulḥ* concluded between the Prophet and the Meccans was four years. However, according to the majority of classical sources, the al-Ḥudaibiya *ṣulḥ* was ten years, as indicated in Ibn Isḥāq, *Sīra*, 2: 316-317 and Ibn Saʿd, *Ṭabaqāt*, 2: 92.

[47] Ibid.

[48] Jaṣṣāṣ, Abū Bakr Aḥmad b. ʿAlī al-Rāzī, *Aḥkām al-Qurʾān*, (Beirut: Dār al-Fikr, 1980), 3: 69-70.

[49] Dardīr, *al-Sharḥ al-Kabīr*, 2: 205-206; Wansharīshī, *al-Miʿyār al-Muʿrib*, (Beirut: Dār al-Gharb al-Islāmī, 1981),2: 207-208; Shāfiʿī, *Umm*, 4: 108; Nawawī, *al-Muhadhdhab* with *the Majmūʾ*, 18: 221-222; Ibn Qudāma, *al-Mughnī*, 10: 509-510; Abū Yaʿlā, *al-Aḥkām al-Sulṭāniyya*, 49; Ibn al-Murtaḍā, Aḥmad b. Yaḥya, *al-Baḥr al-Zashkhār*, (Beirut: Muassasat al-Risālah, 1975), 6: 446; Shawkānī, Muḥammad b. ʿAlī b. Muḥammad, *al-Sayl al-Jarrār*, (Beirut: Dār al-Kutub al-ʿIlmiyya, 1984), 4: 565; Ibn al-Azraq, Abū Muḥammad ʿAbdullah al-Andalusī, *Badāʾiʿ al-Sulk fī Ṭabāʾiʿ al-Mulk*, Tunisia: al-Dār al-ʿArabiyya lil-Kutub, 1979), 2: 576-577.

[50] Majid Khadduri, *War and Peace in the Law of Islam*, 276.

[51] Hans Kruse, "The Foundation of Islamic International Jurisprudence," *Journal of the Pakistan Historical Society* 3 (1955): 231 Christopher A. Ford in his "Siyar-zation and its discontent: International law and Islam's Constitutional Crisis" *Texas International Law Journal*, Summer (1995), p.499-504.

[52] 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; *Humanism in Islam*, 149; D. de Santillana, *Law and Society in the Legacy of Islam*, eds., Thomas Arnold and Alfred Guillaume, 310; Muhammad Ṭalʿat 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* 3 (1955): 231 and "The Islamic Doctrine of International Treaties," *Islamic Quarterly* (1954) 1: 152-158; Muḥammad Ḥamidallāh, *The Emergence of Islam*, 105-107.

[53] Lesch, Ann Mi., and Mark Tessler (eds.). *Israel, Egypt and the Palestinians: From Camp David to the Intifada*. Bloomington: Indiana University Press, 1989.

[54] Gerner, Deborah J. *One Land. Two Peoples: The Conflict Over Palestine*. 2nd ed. Boulder, Colo.: Westview Press, 1994:124-128; Shibley, Telhami *Power and leadership in International Bargaining: the path to the Camp David accords*. New York: Columbia University Press, 1990; Graham Usher. *Dispatches from Palestine: the rise and fall of the Oslo peace process*. London; Sterling, Va.: Pluto Press, 1999: 2-3.

[55] William B. Quandt *The Middle East: ten years after Camp David*, Washington, D.C.: Brookings Institution, 1988.

[56] According to Islamic law the contract must be fulfill and this obligation derived from the Qurʾān and Sunna. Furthermore, the contract is not merely a seculars undertaking it constitutes "both religious and legal obligation." If we look at the content of both Camp David Peace Accord and Oslo, we realized that the Israeli the one who breach the contract whether directly or indirectly intentional or intentionally, The Israeli the one who violate the principle of treaties especially when they assumed the distrust of the other parties. The case of the Egyptians P.O.W. was not part of the Camp David Peace Accord, although it is an essential demand on behalf of the Egyptian families…, Yet Egypt went along and signed the treaty with Israel, this was not enough the Israeli mobiles their secret agents and stationed them in Egypt for further

inelegancy. As indicated by Christopher A. Ford in his "Siyar-zation and its discontent: International law and Islam's Constitutional Crisis" *Texas International Law Journal*, Summer (1995), p. 519. "*Al- 'Aqd Sharī'at al-Muta'āqdīn//* the contract is the Sharī'h of parties. Based on the practical actions of each party, the intentions, conduct and outcomes are defiantly measured.

[57] Edzard, Eberhard Lutz, *Language as a Medium of Legal Norms: Implications of the Use of Arabic as a Language in the United Nations System*, Berlin: Duncker & Humblot, 1998:11; Rodan, S. "Arafat implies agreement with Israel only temporary", *The Jerusalem Post*, May 23, 1995; Heberman, C. "Israel Demands Arafat Reaffirm Peace Accord", *The New York Times*, May 24, 1994; Guy Bechor. "Between Hudaibiya and Gaza-Jerich," *H'ARETZ*, May 23, 1994, p. A 2.

[58] Smith, P. S. "Of War and Peace: The Hudaibiya Model of Islamic Diplomacy." *Florida Journal of International Law*, vol. 18; Number 1, 2006: 135.

[59] Daniel, Pipes, "Al-Ḥudaybiya and Lesson from the Prophet Muhammad's Diplomacy", *Middle East Quarterly*, vol. vi: Number 3: September 1991: 65-72.

[60] The issue of authenticity and the weight is given to Arafat speech by the Israelis should not be dismissed or ignored.

[61] All international newspapers and news channels cover this incident on Nov. 4 1995.

[62] Matthew Taylor, "International court rules against Israel's wall," *Guardian*, 9 July 2004; Aluf Benn, "ICJ: West Bank fence is illegal, Israel must tear it down; urges UN Security Council to consider action to stop fence," *HAARETS*, July 9, 2004; see David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (SUNY, Albany, 2002), 33-4.

[63] See Wael B. Hallaq, *A History of Islamic Legal Theory: An Introduction to Sunnī Uṣūl al-Fiqh*, (Cambridge: Cambridge University Press, 1997), 9.

[64] Smith, P. S. "Of War and Peace: The Hudaibiya Model of Islamic Diplomacy." *Florida Journal of International Law*, vol. 18; Number 1, 2006: 135-168

[65] Haykal, Muhammad Husayn. *The Life of Muhammad*, 342-345.

[66] The text of the treaty and its translation are taken Muḥammad Ḥamīdallāh, *Majmū'at al-Wathā'iq al-Siyāsiyya*, 57; idem, *The Muslim Conduct of State*, 265-268.