The Islamic Episteme of Development of Polities in International Affairs

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Abstract: The articlediscusses Islamic legal contributions to the development of socio-political organizations that are transnational and transcend racial and geopolitical fixations. This is best enshrined in the premise that humanity is one and unitarily aided through God's guidance so the believers may be led to the SharÊ'ah (etymology: path or way) and know human brotherhood as revealed in the Holy Qur'Én. The epistemological difference between Islamic and non-Islamic polities, particularly in the West, is found in the social sciences. Islam advocates the build-up and consolidation of communities, while the West emphasizes sanctity of individuality. The focal point of this study is the concept of 'Ummah' (community of believers), whose notion is surveyed throughout its utilization by the leadership of the Prophet, the establishment of caliphates, sultanates, and imamates up to colonial impositions of the so-called modern 'nation-state' system. The article argues that there are ontological, epistemological, and normative differences spanning the divide between Muslim and Western worldviews especially through the development and management of their polities.

I. Introduction

The Islamic religionshould enhance people's lives, while defining limits for life according to the SharÊ'ah.[1] This is derived from two aspects.The first is the origin or theoretical foundation of religion, from which conduct, behavior andpurpose of existence are related to God and creation. This is known as *'ilm al-'aqÊdah* or *uÎËl al-dÊn*. 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 and is related to jurisprudence by which humans abide.[2] *'Ilm al-shara'i' wal-aÍkÉm*isdefinedas the knowledge of *aÍkÉm al-shar'Êyyah*,which is derived from *ijtihÉd*.[3]

These practical provisions are organized into two groups.The first is represented by ritual provisions such as prayer, pilgrimage and alms-giving meant as a bridge betweenman and the Creator.The second is related to mutual provisions (*AÍkÉm al-Mu'ÉmalÉt)*, such as contracts, penalties and crimes, and refers to relationshipsbetween individuals, groups or nations.[4]

AÍkÉm al-Mu'ÉmalÉt (mutual provisions)specifically addresses preaching and spreading Islam and all matters pertaining to Muslims' relationships with others during peace and war, as found throughout books of jurisprudential literature *such as al-Siyar* (the Islamic International Law), *al-JihÉd* (excretion especially in the religious path) and *al-MaghÉzÊ*(conduct of battles);examples include*al-jihad* and the provisions for prisoners, sacrifice, *al-dhimma*(a covenant of protection of the People of the Book, while living in the Abode of Islam), *al-jizya* (poll tax), tribute, amnesty and spoils.In modern legal terminology, this is understood as General International Law. In this respect, 'Abd al-RazÉq al-SanhËrÊ asserts that general and legislative lawhave always existed in Islamic jurisprudence, though in the classical period it distinguished between the rights of the Divine and the rights of man.[5]

Islamic jurisprudence is,moreover,geared towards addressing public interests and contemporaryevents. In his *al-MuwafaqÉt,* al-ShÉÏibÊ indicates that Islamic legal provisions do not separate the people's present needs and interests from their future needs and interests.[6] For al-ShÉfi'Ê, the sources of Islamic jurisprudence ensured the development of people needs; thus, according to him,a legal provision exists within the Qur'Én for all matters.[7]Aside from explicit textual provisions found within the Qur'Én or Prophetic tradition, according to*ijtihÉd*(independent legal reasoning, engaged by a *mujtahid*)isitselfa source of the origins of Islamic law, and an instrument for comprehensiveness and sustainability of *al-SharÊ'ah*. Jurists highlight its significance concerning applications of provisions or generalities and specifications of external incidents by using primary sources to derive a needed provision.[8]In this manner, Jurists engaged in new cases and compiled comprehensive works to address those cases, delving into a range of issues such as *al-jihÉd*, *al-maghÉzÊ*, *al-kharÉj*(land tax levied on lands deeded to be owned by the state but left in the possession of individuals), *al-siyÉsah al-*

shar'iyyah(administrative state organizations and public institutions) and *siyar*, in a manner strikingly similar to modern international law.[9]It is not identical to the modern understanding of international law, however,for *al-siyar*addresses Muslims' commitments toward non-Muslims, even if they are individuals residing within dÉr al-IslÉm.[10]

In addition to the dictionary definition of *al-sÊrah*(pl. of *siyar*, conduct of the state),which refers to a path or authority, the word also connotes the Prophet'ssÊrahor maghÉzÊand the narration of events that took place from the birth of the Prophet until his death, along with the lives of thecompanions and the spread of Islam.[11]The term came into dominance throughjurists' use of it to refer to issues of *al-maghÉzÊ*and*al-jihad*, and Muslims' treatments of non-Muslims, including infidels, aggressors and others such as *al-musta'manin* (aliens promised security by Muslims), apostates and *ahl al-dhimma* (non-Muslims subjects of the Islamic state), whether in times of peace or war.[12]It also included the practices by the Rightly Guided Caliphs. In his *SÊrah*,Ibn Hisham cites a prophetic tradition regarding the meaning of this term, as narrated by Ibn Ishaq, when the Prophet ordained Bilal ibn Rabah to transfer authority to 'Abd al-RaÍmÉn ibn 'Awf during the Duwmat al-Jandal battle (5/626), commandingcombat against non-Muslims, butwith fairness over spoils of war and forbidding betrayal, mutilation or the killing of children.[13]

Similarly, according to Ibn Sa'd'sÙabaqÉt al-Kubra and Ibn Qayyim al-Jawziyya'sZÉd al-Ma'Éd, the Prophet's delegate al-'Ala' Ibn al-Hadramiin the 7/628 visited then governor of province of Bahrain (the territory of Bahrain is the region extending from what is now Kuwait to Jalfar, the old name of Ras Al Khaimah)in the 8th century, Al-MundhirIbn Sawa (d. 11/633), who responded by inquiring as to the fate of the Magians (Zoroastrians) and Jews who lived within his domain. The Prophet responded by allowing him to keep his post, requesting that Muslims be allowed to practice their religion and that non-Muslims should be left free and made to pay *jizya* (polltax).[14]

AbËJarÊr al-ÙabarÊ, in his *TÉrÊkh al-ÙabarÊ*,assertsthat the second Caliph, 'Umar ibn al-KhaÏÏÉb, gave judges high salaries to avoid bribery, thus promoting unbiased and just verdicts. Judges were mandated to work toward the public interest. In addition, he issued codes of conduct to be followed in courts regardless of judges' status, whether they berich or poor.

The same approach was adopted by the third Caliph, 'UthmÉn ibn 'AfÉn, at the beginning of his tenure, when he instructed governors to serve as shepherds to their flock, and not tax-collectors,and to campaign for Muslims and non-Muslims alike.[15]

*al-Siyar*in theEra ofClassical Jurists

Among the first scholars in the field of *al-siyar*are'Amir ibn Sharahil al-Sha'abi (d. 103/721),[16]AbË 'Umro 'Abd al-RaÍmÉn al-AwzÉ'Ê (d. 157/774),[17]SufyÉn al-ThawrÊ (d. 161/778),[18]and Ibrahim ibn MuÍammad al-FazarÊ (d. 186/802).[19]AbË×anÊfa and his disciples acted as precursors in the field.[20]

These scholarsemphasized *al-siyar*and *al-maghazi*, with a focus on the military campaigns of the Prophet and on military commanders in their struggles for the sake of Allah. Their main concern was deriving the principles of legitimacy, based on recorded military campaigns. Some sought to explore the principles of SharÊ'ah and its applicationsin formalizing relations with other nations, which became an effectively permanent aspectof new interpretations of *al-siyar*, transforming the historical narrative into a standard fundamental approach.[21]

As evidenced by this relatively newer meaning of *siyar*, it is essential to delve into the jurists' definitions of *siyar*in classical and modern eras, taking into account historical chronology. Classical jurists in this respect include al-SarakhsÊ (d. 483/1090), al-NasafÊ (d. 537/1143), al-KassÉnÊ (d. 587/1191), al-MuÏrizÊ (d. 610/1213), al-NawawÊ (d. 776/1374), al-'AyanÊ (d. 855/1451) and al-ÙaÍÉnwÊ (d. 12th century).

Al-SarakhsÊ defined *al-siyar*as a plural of *sirah* (conduct), and it is on such a premise that the work of AbË×asan al-ShaybÉnÊ(d. 189/904) was titled *Kitab al-Siyar al-ØaghÊr*, as it shed light upon the conduct of Muslims in their interactions with infidels during war. Thisincludedpeople of the covenant such as *al-musta'minin* and *ahl al-dhimma*, *al-mutadin* (apostates), *ahl al-baghÊ* (people of oppression)and so on.[22]Najm al-DÊn ibn ×afÎ al-NasafÊ defined *al-siyar*as matters pertaining to affairs of war. Al-KassÉnÊ, in turn, asserted that the book *KitÉb al-Siyar*couldbe said to address the methods of warriors and their organization within the limits of what was permissible and what was prohibited in the course of battle, reminiscent of modern 'rules of engagement'.[23] Al-MuÏrizÊ defined *al-sÊrah*as the process of marching; however, his discourse was dominated by *jihÉd al-kufar* (struggle against the infidels).[24]Al-NawawÊ,however,defined *al-siyar*as a plural of *sirah*(path or conduct),referring to the conduct and traditions of the Prophet in his battles and conquests.[25] The discussions within these works were geared to *al-jihÉd* and its provisos, and some of these jurists titled their works*KitÉb al-JihÉd*.[26]A number of these books included chapters dedicated to war against infidels: *Bab QitÉl a-MushrikÊn* (Chapter of War against Infidels).[27]

Other scholars expanded their definitions of *al-siyar*to include *siyar al-ÎaÍÉbah*(conduct of companions), as found in al-'AyanÊ'sreflection upon the meaning of *al-siyar* as a plural of *sÊrah*(path), and as

with the*SÊrat al-'Umarayn*AbËof Baker and 'Umar, meaning their path, way or conduct. Furthermore, *al-siyar*compiled the *siyar*of the Prophet and his conduct in battles and conquests, along with *siyar al-Sahabah* and what was narrated regarding them in this matter.[28]*KitÉb al-Siyar*includes Muslims' conduct and interactions with others, encompassing *al-Siyar fi al-Mu'amalat* (the conduct of relations with non-Muslims). The term*maghÉzÊ*refers to the preemptive first move to march towards the enemy, and *KitÉb al-JihÉd*refers to the conceptual struggle against enemies to preach the word of Allah and destroy the rule of idolaters.[29] A similar approach was adopted by al-ÙaÍÉnwÊ (d. 12th/ 18th) in assessingleaders' conduct with invaders, supporters and infidels.[30]

*al-Siyar*in the Era ofModern Jurists

Contemporary scholars also address the definition of *al-siyar* in their works. For example, Muhammad Abu Zahra refersto *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, he discusses the structure of international relations among Muslim and non-Muslims during the course of peace and war, focusing moreon times of war.[31]

MuÎÎafÉKamÉlWaÎfÊ refers to *al-siyar*as the science examining the relations of Muslims with other nations, meaning the conduct of Muslims with othersin terms of war, treaties, safe conductand *ahl al-dhimma* (non-Muslims subject to the Islamic state).[32]In his approach, WaÎfÊ balances*al-siyar*and modern international law. Originally,*al-siyar* addressed Muslims' commitment to non-Muslims, even if they were individuals residing within *dÉr al-IslÉm*(abode of Islam), and therefore was not limited to matters of international relations only.[33]

Thus,it is possible to summarize the meaning of the science of *al-siyar* as the regulations of relations with non-Muslims in both the abodes (*dÉr al-IslÉm*and*dÉr al-Íarb*)during war and peacetime.[34]

We can assume that the rulings of international relations in Islam derive from sources of Islamic law, as with any other branch of Islamic jurisprudence, chiefly primary and secondary sources such as the Noble Qur'Én, Prophetic Sunna, *ijmÉ'* (consensus), *al-qiyÉs*(analogy)and other sources. In this respect, there is no difference between internal and external sources of law in Islam, as they are equally subject to primary sources, i.e., the Noble Qur'Én and Prophetic traditions.[35]In terms of epistemology and derived sources, sources of Islamic international law are different from modern international law.[36]The Qur'Éncites, for instance,the uÎÉl al-'ilÉqÉt al-Duwaliyyah (the origin of international relations) in cases of peace and war, along with Muslims' treatment of non-Muslims in both abodes. All matters pertaining to international relations, treaties, trustworthiness and*jihÉd* and its effects may be found in the principles of Sharia and pillars of religion found in the Qur'Én. This is followed by the Prophetic Sunna, al-Sunna *al-Qawliyya* (verbal Sunna), *al-Sunna al-'Amaliyyah*(the active Sunna) and *al-Sunna al-TaqrÊriyya* (confirmative Sunna).[37]Such sources provide rich accounts of the establishment of new rules,[38] as indicated earlier in the works of prominent classical scholars in the field of international relations, using various headings such as *al-jihÉd*, *al-siyar*, *al-maghÉzÊ*, *al-amÉn* and*al-jizya*. Even the field of *al-siyar*itself was so named by studying the conduct of the Prophet in 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,[39]and *al-qiyÉs*(legal decision-making), essentially argumentation by means of analogy.[40] Both of these secondary sources must be based on legitimate evidence from the Qur'Én or Sunna, culminating in what is known as *Mustand al-IjmÉ'* (views based on validly acknowledged legal proofs).[41]For this reason, the *mujtahid* could not exceed proscribed limits, and had no right to form provisions, as this was the exclusive domain and right of God alone, while the authority of the *mujtahid*was limited.As for issues found within the texts, their efforts could not exceed the textual evidence. If an issue could not be found in the text, their efforts could not exceed rulesderived through the application of *al-qiyÉs*, regarding what was apparent in the text, or the application of rules of Shari'ah (law)and general axioms, or as established by Shari'ahby means of inference from evidence,[42]as with *al-istiÍsÉn* (to deem something good or issue juristic preferences),[43]*al-IstisÍÉb* (presumption of continuity, or presuming the continuation of the *status quo ante*),[44]and taking into account *al-'Arf* (custom),[45]*al-istiÎlÉÍ*or *al-maÎÉliÍ al-mursalah*(consideration of public interest).[46]

The Basis of Commitment in Islamic International Law

Islamic law abides by rules of international relations which are integrated into domestic law, regardless oftreaties, international custom,and 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. Even obligations imposed under bilateral or multilateral international treaties fall under this obligation. At the same time, the provisions of Islamic Shari'ahlaw are equally binding on Muslims. Islamicinternational lawoffers provisions and rules within the scope of *al-siyar*as a legitimate base of decision-making. Commitment derives from legitimate rulesof *al-wujËb*(obligation), *al-nadib* (assigned), *al-*

ibÉÍah(permissible), *al-karÉha* (penance or expiation) and *al- taÍrÊm*(prohibition).[47] For instance, if the enemy requested *amÉn*or *al-dhimma*, the response should bebased on Qur'Énic text, which stipulates granting protection, escort and peace should enemies request it,Q. 9:6, 8:61.

According to the Prophetic tradition, the eternal message of Islam is to be preached through peaceful channels.Historically, prior to engaging in battles,Muslims would first preach Islam.If their opponents declined to accept their message, Muslims would propose alternativessuch as tribute payment or *jizya* (poll tax),[48]which they would accept and then leave them be.[49]

Moreover, 'aqd al-amÉn*was obligatory for Muslims only and noother parties. As such, Muslims could not take advantage 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, nor could they act with perfidy, even if they had been betrayed.[50] This special commitment subjected Muslims to provisions of the law while excludingpolytheists and the People of the Book; this is a matter of debate even among Muslim scholars. When the Islamic state was at the height of its power, sovereignty and strength, it nonetheless committed itself to all ethics of Islam in warfare and treaties.[51]It moreover did not engage in fightingenemiesunless justified by the Shari'ah as a response to comparable aggression.[52]

As al-GhazÉlÊ indicated, obedience to Allah also required obedience tothe authority whomAllah commanded Muslims to obey.[53]Classical scholars argued that the *al-ÍÉkim* (ruler) is the one addressed in obedience, since rule is a form of declamation and speech, the ruleris each speaker who without condition brings about the issuance of the letter of God. However,the influence and rule only belongs to the Divine who controls creation and command, while the rule of force is subject to the landlord. As there is no landlord except the Lord, consequently,there is no judgment or commandment except to Him when obeying the commands of rulers.[54]This was emphasized further by al-'Azz ibn 'Abd al-SallÉm in his work *QawÉ'id al-AÍkam fi MaÎÉliÍ al-AnÉm*, in which he discussed who may be obeyed and who must notbe obeyed, such as Prophets, scholars, judges, religious figures, governors, fathers, mothers, spouses, elders, and laborers; those who do not obey those who should be obeyedshowedisobedience to the Creator and cause corruption in society in both *dÉr al-IslÉm* or *dÉr al-Íarb*.[55]

Based on this, the Islamic state's will is subject to Islamic SharÊ'ah. Should its actions stray outside Islamic rulings, its legitimacy is effectively voided. As such, it cannot oblige another to abide by a treaty that is prohibited according to Islamic law, such as preventing the release of Muslim prisoners, or allowing the consumption of alcohol in *dÉr al-IslÉm*; this type of condition would void the treaty because it permits what is prohibited in Islam, and therefore, the contract is voidedfor including a prohibited condition.[56]This view was reflected by MuÍammad ibn ×assan al-ShaybÉnÊ (d. 189/804),who asserted that what could not be fulfilled religiously could not be the basis for a covenant, and in case it was, such a covenant should be invalidated, because the conditionswould violate the SharÊ'ah.[57]

As explained earlier, rulings of international relations in Islam are derived from the Qur'Én and Prophetic Sunnah.Specialized jurists devote themselves torulings derived from these primary sources and their applications.This providesconsistency and stability, for 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'Én itself emphasizes 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.[58]

Stability is established by the unique characteristics that govern the principles of international relations in Islam. For instance, the respect of human dignity during the times of peace and war essentially preservesthe rights of non-Muslims in *dÉr al-IslÉm*(the abode of peace), and further ensures justice by a Muslim government in its dealings with Muslims and non-Muslims alike, obliging it to fulfill its promises and covenants even with enemies,preventing treachery even in circumstances of betrayal, underlining the virtue of ethics in transactions, and emphasizing the universal Islamic call to humanity. The fact that relationships between Muslims are based on bondsoffaith,does not mean loyalty and trust should not exist between Muslims and infidels or unbelievers, and does not prevent righteousness and kindness in interactions.

Such stability is greatlyconducive to contentment and security. Moreover, the principles of justice and order extend to all residents of *dÉr al-IslÉm*(abode of Islam), including foreign residents in the Islamic state. This leads to confidence, prosperity and the best conditions for social and economic progress, stable international relations, rule of ethics, morality and virtue due to foreknowledge of due rights, eliminating the root causes of conflict, exploitation and treachery, and other factors that result from weak systems of law and justice.

Stabilitydoes not, however,implyjurisprudential rigidity or an inability to cope with new realities or meet the needs of the nation.[59]Rather, Islamic legislation represents flexibility and capacity, and is incompatible with stagnancy.The provisions forinteractions and international relations derive from Qur'Énic texts, the general principles of which do not vary from one environment to another and are required to be followed in every nation by rulers in a capacity fitting the situation. Religious texts are thusnot confined to an understanding of aphrase

or text, but rather follow the spirit of reasonable understanding, hence the meaning of the operative (*dalÉlÉt al-mantËq*) and the concept of significance (*daÉlÉt al-mafhËm*).[60]Furthermore, while legislative texts are not abstracts of the initial causes and interests,nonetheless, theyare explicitly associated with the *al-'illa* (effective cause or *ratio legis*) of a particular ruling or indication.This opens the activity of *al-qiyÉs* (legal decision-making and argumentation by the means of analogy) before the *al-mujtahidÊn*(independent legal reasoning), followed by *al-ijmÉ'*(consensus and collective *ijtihad*) along with the other sources of legislation,[61] including flexibility and scalability to meet the needs, facts, developments and lives of peoplesof all ages and places. Such general principles allowed for rapid change and development without limiting rightsor preventing growth, and encouraged correct rulings to multiple domains. It is perhaps for this reason that the Prophet deliberately did not specify Abu Bakr as his successor in spite of his positionover other companions. Moreover, we find the same in the *al-shËra*(consultation) as a basis for the Islamic political system. An obligation or duty must be issued even if the process was unspecified by religious texts. Rather, it must be selected asan optimal sphere for establishing*shËra* (consultation).

Al-IjtihÉd also specifies the manner of the Islamic state's dealing with other countries in terms of financial, social and political aspects of war and peace within a fixed, legitimate framework. Needless to say, flexibility does not in any way indicate a departure from constant legal judgment, whether in whole or in part, so that development does not lead to distortion and degradation away from the provisions issued by God to humans. In this respect, flexibility and development differ radically from destruction and un-bounded actions, as witnessed in some contemporary trends in social and legal life.[62]

International Relations (*AÍkÉm*), Islamic Legitimacy, and Real Justice

All Islamic rulings are subject to Islamic legitimacy, which includes implementation of Allah's commands and preventing what Allah forbids, effectively enjoining unity on the basis of divine proof and preventing transgressionand evil,Q. 3:103-104, 5:2.

Hence, the provisions of international relations and international Islamic organizationsare in line with modern international law,as Islam is built on the precept of solidarity. The Islamic nation which inhabits*dÉr al-IslÉm*is mandated to exist as a coherent unit. War between Muslims is forbidden except for the purpose of upholding the word of God. Thus, it is not permissible to wage war on another for economic enrichment, opening markets, securing transportation or otherwise. Fighting for the sake of Allah cannot be for the sake ofhypocrisy or for other than establishing the word of God as supreme.[63]

This legitimacy leads to subjecting the provisions of international relations totrue justice, and aims to achieve the fairest possible path of Muslim rulers in the field of international relations, far from considerations of selfishness, injustice and the struggle for self-interest.Even in interaction with enemies, it is not permissible to use 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'Én mandates justice for all and the return of trust as a condition of piety, Q. 4:58, 5:8,42.

This is reflected in historical reality. For example,as reported during the reign of 'Umar ibn 'Abd al-'AzËz (91/717-101/720), elders of the people of Samarqand complained in a letter to the Caliph that the conduct of the Muslim commander Qutaybah ibn Muslim al-BahilÊwas contrary to the teachings of Islam.The caliph read the letter and wrote on its back a response that assigned a judge and commanded restitution if necessary.[64]

The letter held a strong Muslim army commanderaccountable. The Caliph's deputy SulaymÉn ibn Abi al-SirrÊ immediately fulfilled the caliph's instruction by appointing the judge Hadir ibnJumay' in Samarqand, whereupon the judge issueda 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 came during his conquest, when hehad failed to call the people to Islam or to offer them the opportunity of*jizyah*.[65] Another example is whenAbË 'Ubaydah returned the *jizya*and *khirÉj*to *ahl al-dhimma*in the Levant, when he realized he could not provide their required security after observing the gathering Roman army.[66]

This is in sharp contrast to colonial powers of the past and modern eras, so characterized by the narcissistic exploitation of vulnerable peoples and the selfish depletion of their resources, giving birth to conflict, justifying treachery, spreadinginjustice, and justifying favoritism with no thought given to the damage caused to third parties.[67]

An Islamic state that encompassesmonotheistic believers in Allah would establish rightness and 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 a specific religion.They are free to choose the faith they desire, after having become subjectsto the authority of Islam and the rule of its provisions, and after obstacles are removed from the call to Islam.[68] Therefore, Islam forms the basis for international relations among peoples on the assumption that they are either *mu'minËn* (believers), *mu'ahadËn* (people with contracts) or people without shared covenants.[69]

Ibn Qayyim al-Jawziyyah (d. 751/1351) indicated that the status of the infidels was settled by the Prophet in the revealed chapter of *'Bara'ah'*or *"Tawbah"* (Repentance)whichdefined three categories:the *muÍÉribÊnlahu*(warriors against him), *ahl 'ahd*(people of the covenant) and *ahl-dhimma*(non-Muslims subject to Islamic State). In turn, this became *ahl al-'ahd* (people of the covenant) and *ahl al-ÎulÍ* (magistrates fallen to Islam), which consequently became two parts:*muÍÉribÊnlahu*(warriors against him) and *ahl-dhimma* (non-Muslims subject to the Islamic State). The *muharibinlahu*(fear of him) category became three parts:*Muslim mu'minbihi* (Muslimswith belief in him), *musalimluhuamin*(thoseinoffensive to him), and *khÉ'ifmuÍÉrib*(warrior fearful of him).[70]

As for *musÉlimÉnaminÉn*, or foreign non-Muslims residing within *dÉr al-IslÉm*or the Islamic state, they held permanent or temporary residence on the basis of *'aqd al-dhimma* or *'aqd al-amÉn*. They included *ahl al-muwÉda'ah*(people of peaceful treaty)and consisted ofpeople of the abode of war and disbelief.[71] The *sharÊ'ah*singled them out for special treatment, and morality cannot be recognizeduntil treatment of foreigners in the various systems preceding the Prophet Muhammad callsto Islam is balanced with the systems that followed andcontemporary systems.[72]

Islam is a universal call to all humankind, and,therefore, its provision address all peoples, without favoring one race, gender or region over another. Consequently, Islamic *sharÊ'ah*aims to establish a single human society, 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, SharÊ'ah demarcates areas where the law does not apply, grantingexceptionsto countries subjected to Islamic authority, which in fact constitutes a regional approach applied to states subject to Muslim authority.

As such, jurists considered this fact and divided the world into two parts.The first included all regions subject to Islam, named *dÉr al-IslÉm*(the abode of Islam), and the second includedother regions,termed *dÉr al-Íarb*(the abode of war).The first is an area in which Islamic law must apply, while the second is a region in which Islamic law would not be possible to apply.[73]On this basis, the term *dar*in Islamic jurisprudence refers to 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 *dÉr al-IslÉm* versus *dÉr al-Íarb*.[74]In this matter, in the words of the great scholar Ibn 'AbiddÊn, "the intended meaning of *al-dÉr*is the competing region which conquers or vanquishes the property of Islam, or that of *kufr* (disbelievers), and is not intended to mean residential home or abode."[75]

Muhammad Ibn ×assan al-ShaybÉnÊ (d. 189/804) addressed this division within the *dÉr*s and its effects on legal provisions. To al-ShaybÉnÊ the *dÉr*is thatwhich falls under Muslim authority, in which provisions of Islam apply, and in which Muslims are safe and secure. This applies equally to all populations living within its territory, whether they are Muslims, or non-Muslims under Islamic State authority such as the *dhimmis*, or both Muslims and *dhimmis*.[76] Most jurists in agreement with the ×anafÊschool's position regarding the status of the *dÉr*, such as al-KassÉnÊ (d.578/1191), as indicated in his work *BadÉ'i' al-ØanÉ'i'*,agreethat there is no disagreement among the ×anafi companions regarding the transformation of *dÉr al-kufur*into *dar al-Islam* whenever Islamic provisions appear and are applied.[77]MalikÊ's jurists defined *dÉr al-Islam* as the *dÉr*in which Islamic provisions are applied.[78]Shafi'i jurists defined *dar*as a land in which Islam emerged without coercionand without the giving of *jizya* (poll tax), and moreover where Muslim provisions are implemented on the people of *dhimma*, in the case that dhimmi live among them, and heretics (*ahl al-bid'a*) are not more powerful compared to the people of Sunnah.[79] The ×anbalÊ jurists defined *dÉr*similarlyto other Sunni schools, as AbËYa'lÉ indicated in his work *al-Mu'tamad fi UÎÉl al-DÊn*,in which he defined*dÉr*as prevailing in implementing provisions of Islam without infidelity.[80]Moreover, in his reflections on *dÉr*,Ibn al-Qayyim asserted that the *dÉr*which had been known as *dÉr al-Hijrah*at the time of the Prophet should be known as *dÉr al-IslÉm*. When the people of a region became Muslim, such lands effectively become the *bilÉd al-Islam* (land of Islam).[81]

Among contemporary scholarssuch as 'Abd al-QÉdir 'Udah, *dÉr al-IslÉm*includes the country in which provisions of Islam are implemented on the population, all or most of which are Muslims, or a country with governsMuslim 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 they do not have what prevents them from manifesting provisions of Islam.[82] 'Abd al-WahÉbKallÉf says that in the view of the majority scholars,*dÉr al-Islam* is a *dÉr* that exists underthe provisions of Islam and is characterized by the safetyof anyone under the protection of Muslims, whether Muslimor dhimmi.[83] Muhammad AbËZahrah defines*dÉr al-IslÉm* as the state with authority to governMuslims and devoted to developing the energies and strengthsof Muslims.[84]Lastly, Muhammad RashÊdRiÌÉ'sdescription of*dÉr al-IslÉm*is closest to the majority of jurists, asthe country which falls under the authority of Islam, and has implemented its provisions and established its rituals.[85]

With respect to *dÉr al-Íarb*, MuÍammad ibn ×assan al-ShaybÉnÊ submits that it is the country in which provisions of polytheism are predominant, and therein are found the people of war (*ahl al-Íarb*).[86]Al-SarakhsÊ

indicates that if the *dÉr*is that of *ahl al-Íarb*, Muslims may permit its people not to apply Muslim provisions, as this*dar*is *dÉr al-Íarb*;for the condition of a *dÉr*to become *dÉr al-IslÉm*,the commands of Islamic provisions must be applied.[87]

The Origin (*al-aÎl*) of the Relationship between Dar al-Islam and Dar al-×arb

It is important to bear in mind the origin of the relationship between the two abodes, or the relationship between Muslims and non-Muslims, through opinions of prominent classical jurists alongside the views of other jurists, includingcontemporary jurists. First,we begin with the juridical meaning of the term'sorigin. According to jurists and traditionalists, the origin is from the Qur'Én and Prophetic Sunnah, which meansthat its substantiation and the origin of the legality of *'aqd al-amÉn*(peaceful treaty) with the *Íarbis* is based in the Qur'Én, which stipulates extending protection to the enemy should they surrender or request it, Q. 9:6.

*Al-AÎl*could mean 'the more correct' (*al-arjaÍ*) in the sense of priority given to a matter:for instance,the origin of speech is the truth.[88]Among other meanings of *al-asl* is the 'continuous rule'. Note that the word *al-aÎl*in its meanings does not mean that it is commissioned by obligation or sanctity. It is more accurate to say that the *aÎl*of relations between Muslims and non-Muslims is war, peace or preaching; itdoes not mean that we are commissioned to issue a ruling on this relationship as an obligatory or forbidden duty, for example. Nevertheless, the intention here is to demonstrate only the general rule which defines the ongoing relationship and links between Muslims, other nations and non-Muslim states.[89]

MuÍammad ibn ×asan al-ShaybanÊ's view of the *aÎl al-'ilaqÉt*(origin of relations)between Muslims and non-Muslims is found in his masterpiece *al-Siyar al-KabÊr*, in which he notes that in the case of Muslims encountering infidels, if such infidels are among those who were not informed about Islam, then Muslims should not fight them until they have been invited and informed about Islam. If they indeed were informed about Islam, and the Muslims are not aware whether *jizya*(tribute)should be accepted from them,Muslims should not fight them until they are informed about the *jizya*. This is as the Prophet ordains Muslim commanders, to fight only as a last measure, as the Qur'Énic verse reads, Q. 9:29.

Unless they were people within the realm of Islam, the tribute should not be accepted from them if they are apostates,[90]or idolaters;[91] rather,what is accepted from them may beeither Islam or the sword.If they declineto accept Islam, they should be fought without the opportunity togive*jizya*.[92]

This practice is based on Islam's serving as a universal call and general message to all mankind, and is derived from Prophet Muhammad's conduct, as he preached to tribes during the season of pilgrimage and others by inviting them to Islam.[93]He then migrated to Yathrib, latter-day MadÊna, and formed the Islamic state.Thereafter, he began sending envoys and letters to kings, princes and world leaders, inviting them to Islam,such as to Hercules,a great Byzantine emperor;[94] the Persian king Xerxes;[95] Negus of Abyssinia;[96]Sirus king of Egypt and Alexandria;[97]as well as to other kings and leaders.[98]The Prophet preached to them in accordance with Qur'Énic injunctions of openly calling all people to the religion of Allah and 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 strong evidence that Islam came as an invitation to all mankind. It was directed for humanity, and, in this respect,all are equal. The Prophet continued to make this call until people entered the religion of Allah in masses, and his successors carried on the message following him.[99]

This is critical, as the nature of relations between Muslims and other nations existed in spite of their faith, languages, culture or skin color. The basis of relationshipwas, in truth, from the beginning, not war butpeaceas the original intention, and, moreover,wasa relationship of *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 borders and barriers are geographic, political, ethnic or linguistic, thus opening the doors of heaven to the mercy of the people of the earth as a whole.[100]

The relationship becomesone of peace or war only after other nations choose to accept or reject Islam's call. As stated by al-Ghunaimi, the Islamic state's relation with any countries in conflict depends on the country's policy toward the Islamic state; this is the nature of relationshipsbetween nation-states or world politics. If the approach is one ofpeaceful treaty and contract to stop hostilities, known as *muwÉda'ah*; the rule is subject to a Qur'Énic injunction emphasizing justice even with former adversaries for the sake of equity, Q. 60:8.

Consequently, Muslims cannot legally exercise coercion on those who deal with them fairly, as equity is incompatible with coercion.[101] Even during war, combat cannot be used as compulsion to accept religion.However, if the *dÉr*rejected Islam's call with hostility and a warlike stance, the ruling is decided by the verse followed the one noted above, which decrees that befriending transgressors following their rejection of peace encouragesevil, Q. 60:9.

According to al-ShaybÉnÊ, when Muslims encounter infidels on a battlefield who were not informed about Islam, Muslimsshould not fight them until they are invited them Islam, for accountability requires first having received an invitation to faith, Q. 17:15.The Prophet enjoined his army's commanders to "Invite them to the testimony that there is no god but Allah".[102]The rationale behind this is to counter the likely non-Muslim perception that Muslims fight in anticipation of their captivity and that of their wives and their offspring. Alternatively, if they knew that Muslims fight them for the sake of religion, they could respondto itwithout the need for war. Thus, Muslims should begin by presenting Islam to them for the sake of Allah, by means of wisdom and good advice.[103]

According to AbËQÉssim al-Simanani al-×anafi (d. 499/1106), in the prophetic Sunnah, anyone who has not received the call of Islam should first be made aware of what the invitation means, withdemonstrationsof Islamic laws, statutes and provisions. Ifthey accept Islam, Muslims should leave them as they were, calling on them to join *dÉr al-IslÉm* and reside in it. If they abstain from the call of Islam, Muslims should ask for *jizya/* (tribute), and, if the assigned tribute is paid, they should be left in peace. The last resort of warfare exists only if they rejectthe previous conditions.[104]

According to al-KassÉnÊ(d. 587/1191), if the call for Islam does not reach non-Muslims, Islamic preachers should invite them to Islam in person, through wisdom and fair, rational preaching, Q. 16:125.This invitation should be extended first, because fighting was not intended to impose belief. The call to Islam takes two forms, one through fighting only as a last resort, and the second through direct communication.The latter is greater than the former, because fighting risks spirits, soul and wealth,whilecommunication risks none of that.[105]

The above conduct refers to the origin of relations between Muslims and others, namely people of war, whose basis under these circumstances is peace. The nature of relations remains the same when the message of Islam has reached them, but they do not know that they can pay*jizya*(tribute)tocompletethe contract of *dhimma*. Thus, the Prophet ordered Muslim army commanders to enforce these issues first, prior to waging any war; as invitation must be presented to them first in case they were not previously informed.[106]

Such relations may turn into relations of war, as when nationsoffer *jizya* (tribute)that cannot be accepted, such as that from apostates and Arab idolaters. In this case,nothing can be accepted except Islam or the sword. If they have refused Islam, they should be fought without offering them the chance to give tribute.[107] Likewise, for those from whom *jizya*(tribute)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 that of war.[108]

Regarding the origin of relations of Muslims with non-Muslims, the opinion of the majority of jurists is that when non-Muslims refrain from Islam or *jizya*, thiscall for war; in this case, peace is only a truce for preparing for the resumption of fighting.[109]A peace treaty should be established to end *muwÉda'ah*(hostilities) with polytheists so as to end the fighting if Muslims are in a position of power.[110]Al-ShÉfi'Ê is among classical jurists who sided with the view of fighting idol worshippers until they surrendered, and for the People of the Book to pay tribute (*jizya*)if they declined to accept Islam.[111]

The majority of scholars are in agreement that *al-jihÉd*isa struggle to uphold the word of Allah, and to fight infidels who abstained from Islam and tribute is a duty of Muslims every year. If the call for war is needed more than once a year, Muslims must receive an answer. However, this may not take the form of a truce with the enemy, as a truce is absolute and not restricted by the duration of time.[112]In addition, the permanenceof a truce would lead to the abandonment of *jihÉd*altogether, and this is not permissible.[113]

In accordance with al-ShaybÉnÊ in his *al-Siyar al-KabÊr*, *al-jihÉd* is obligatory upon all Muslims. However, if it is during a time of need and hardship, the Qur'Én mandates the full extent possible of thestruggle to achieve peace, justice and the ability to perform religious duties, Q. 22:78.

If Muslims gather together to abandon *jihad*, they participate in sin, and under these circumstances, the Muslims' representatives must look into the cause, asthey are appointed to address this concern and not disrupt it. The representativesare mandated to motivate Muslims to engage in *al-jihÉd*, and should extend an invitation to Islam or the provision of tribute, if the Muslims are capable of it.[114]

Later jurists such as al-ShawkÉnÊ (d. 1250/1834) indicated that the invasion of infidels and the disbelieving, calling them to Islamor to providetribute or to war,is a religious necessity. For this reason, the Almighty sent His messengers and revealed His sacred texts. In this regard, the Messenger of Allah followed this mission to his death, making this matter one of hisgreatest and most important purposes, as made evident in the Qur'Én and the Prophetic Sunnah.[115]

In this respect, MuÏÏafÉKamÉlWaÎfi asserts that even if it not based on Islamic interests, relations between Muslims and non-Muslims must nonetheless ensure Muslims' prestige in order to enforce legal provisions. Since the application of Islamic provisions in the international arena requires tribute, dignity and prestige, it shall call for tolerance and be characterized by flexibility of impact in terms of good advocacy and good representation of Muslims. Otherwise, Islamic pride is treated lightly, and other states might take advantage of Muslims' status, as occurred during the treaty capitulations of the Ottomanswhile they were at the height of their power, and which were the first sign of their weakness and decline.[116]

The Sources of the Origin of Relationship between Dar al-Islam and Dar al-×arb

The majority of jurists are in agreement regarding reference to Qur'Énic verses and the Prophetic Sunnah and the practical nature in which the Prophet conducted his mission. Most Qur'Énic verses directed toward *al-jihÉd* and the battlefield did not restrict Muslim's obligationwhen infidels began war against Muslims. As ordained by a Qur'Énic verse, Jihad is obligatory against the transgressors, without transgression of limits, and must be waged until transgressions cease,Q. 2: 190-193.

Allah has ordered war against infidels and polytheists who hold an agenda against and plan to fight Muslims,because fighting was never forbidden, even when otherwise prohibited if those who want to fight you do not respond to facts and instead insist on war. This is supported by the Qur'Énic 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.

Women, boys and monks are not obligated to fight,and their killing is prohibited, lest it be an act of aggression. Those who initially offered tribute, the People of the Book and the *al-majus*(Magi), and who desist from polytheism, disbelief in Godand fighting the Muslims, accepting Islam or agreeing to be subject to its provisions and renewing their commitment to tribute and *'aqd al-dhimma*, Allah forgives what they have done prior to thatmoment. This was ordained by Allah Almighty in fighting infidels who were fighting Muslims in order to eliminate *shirk* (to attribute associates or partner of Allah in His creation and rule, i.e., to be polytheist, anidolater). This was reflected by Ibn 'AbbÉs, 'Umar ibn 'Abd al-'AzÊz, MujÉhidAbË al-×ajÉj (d. 104/722), QatÉdah, and was also the view of Ibn JarÊr al-ÙabarÊ (d. 310/922) and the opinion favored by the majority of classical exegetists.[117]

Al-JaÎÎÉsmakes 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 Allah.[118] According to the Qur'Én, this had been revealed to the Jews and Christians, but was rejected,Q. 3:19.

With reference to the above Qur'Énic statement by al-ShawkÉnÊ (d. 1250/1834), it is indicated that fighting the infidels is for the purpose of avoiding ordeals (*fitnah*).[119]

ContemporaryScholars' Views

Some contemporary scholars believe that relations between Muslims and non-Muslims should be based on peace, such as 'Abd al-WahÉbKhallÉf in his *al-SiyÉsah al-Shar'iyyah*, 'Abd al-RaÍmÉn 'AzzÉm in his *al-RisÉlah al-KhÉlidah*, MuÍammad 'Abdullah DarÉz, MuÍammadAbËZahrah, in his *al-'Ilaqat al-Duwaliyyah*, Muhammad Shaltut, in his *al-Islam wal-'Ilaqat al-Duwaliyyah* and *al-Islam 'AqidahwaShari'ah*, as well as Hamid Sultan, and Muhammad Salam Madkur.[120] According to Muhammad Hafiz Ghanim, some contemporary scholars, in oppositiontoleading classical jurists, argue that relations between the Muslims and others should be peaceful, and is an opposing view of some contemporaries contrary to the view of earlier scholars, with the exception of Zafir al-Qasimi in his work *al-Jihad wal-Huquq al-Duwaliyyah*.[121]

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[1] AbÊIsÍÉq al-ShÉÏibÊ (d. 790/1388).*al-MuwafaqÉt fi UÎÏl al-SharÊ'ah*. Beirut: Dar al-Kutub al-'Ilmiyyah, 2009:50-53.

[2] al-SamarqandÊ, 'AlÉ' al-DÊn (d. 539/1144). *MizÉn al-UÎÏl* ed. Muhammad Zaki 'Abd al-Barr, Doha: Matabi' al-Doha, 1984: 9-10; 'Abd al-RaÍman, Ibn KhaldËn (d. 808/1405). *al-Muqaddimma*, Beirut: Dar al-Kitab al-'Arabi, 1981, vol. 2: 780;SubÍÊ MaÍmaÎÉnÊ. *al-Qan�Ën wal-'IlÉqÉt al-Duwaliyyah fi al-Islam*, Beirut: Dar al-'Ilm lil-Malayin, 1982:12-14; Ja'far 'Abd al-SallÉm. *Qawa'id al-'IlÉqÉt al-Duwaliyyah fÊ al-QanËn al-Duwali wal-SharÊ'ah al-Islamiyyah* Cairo: Maktabat al-Salam al-'Alamiyyah, 1982: 30; Ibn 'AbdÊn, MuÍammad (d. 1252/1836). *Hashiyyat, Radd al-MuÍtÉr 'ala al-Darr al-MukhtÉr,* Cairo: Matba'at Mustafa al-Halibi, 1966, vol. 1: 79.

[3] al-KhaÏÏÊb al-BaghdÉdÊ, AÍmad ibn 'AlÊ (d. 463/1071). *al-Faqih wal-Mutafaqih*, ed. Isma'il al-Ansari Beirut: Dar al-Kutub al-'Ilmiyyah, vol. 1:54.

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[4] See for example the work of Ibn JazzÊ (d. 741/1340), a Maliki jurist, *al-QawÉnÊn al-Fiqhiyya*, Beirut: Mu'asassat al-Kutub al-Thaqafiyyah, 2009, pp. 3-4, in which the latter organized the jurisprudential subjects into two branches, one branch on ritual/*al-'badat*and the other on mutual relations/*mu'amalÉt*.

[5] 'Abd al-RazÉq al-SanhurÊ. *Fiqh al-Khilafah wa Tatawuruha li-TisbiÍu 'Umam Sharqiyya* Cairo: al-Hay'ah al-Masriyyah al-'Ammah, 1989: 58-59.

[6] AbË IsÍÉq al-ShÉÏibÊ (2009). *al-MuwafaqÉt fi UÎËl al-SharÊ'ah*,vol. 2: 6-7.

[7] ShÉfi'Ê, MuÍammad IdrÊs (d. 204/819). *al-RisÉlah* ed. Ahmad Shakir Beirut: Dar al-Turath, 1979: 20-25 and p. 477.

[8] AbËIsÍÉq al-ShÉÏibÊ(2009). *al-MuwafaqÉt fi UÎËl al-SharÊ'ah*,vol. 4: 89-105.

[9] SubÍiMaÍmaÎÉnÊ. *Falsafat al-TashrÊ' fi al-Islam: Muqadimah fi Dirasat al-SharÊ'ah al-IslÉmiyyah 'la Dawu' MadhÉhibuha al-Mukhtalifahwa-Dawu' al-QawÉnÊn al-×adÊthah*, p. 25; 'Abd al-Karim ZaydÉn. *Majmu'atBuÍËthFiqhiyyah* Baghdad: Maktabat al-Quds, 1982, pp. 12-16; Ja'far 'Abd al-Salam. *QawÉ'id al-'IlaqÉt al-Duwaliyyah fi al-QanÊn al-Duwaliwal-SharÊ'ah al-IslÉmiyyah*, p. 31.

[10] MuÎÏafaKamÉlWaÎfÊ. *al-Mashru'iyyah fi al-NizÉm al-IslÉmÊ*Cario: Matba'at al-Amanah, 1970, p. 50.

[11] MunÊrMuÍammad al-GhadbÉn.*Fiqh al-Sirah al-Nabawiyyah* Mecca: Ma'had al-BuhuthwaIhya' al-Turath al-Islami, 1990, p. 13; MuÎÏafÉ al-SubÉ'Ê. *al-Sunnah waMakanatuha fi al-TashrÊ' al-IslÉmÊ* Beirut: al-Maktab al-Islami, 1985, p. 47; MuÍammad 'Abd al-GhanÊ×asan.*al-Tarajimwal-Siyar* Cairo: Dar al-Ma'arif, 1955, pp. 30-31; and also by the same author MuÍammad 'Abd al-GhanÊ×asan. *Al-Tarikh 'and al-MuslimÊn* Cairo: Dar al-Ma'arif, 1977, pp. 11-17; MuÍammadHamidullah. *Majmu'at al-WathÉ'iq al-SiyÉsiyyahlil-'Ahd al-NabawÊwal-Khilafah al-Rashidah* Beirut: Dar al-Nafa'is, 2009, pp. 41-368.

[12] QawnÉwÊ, QÉssim (d. 978/1570). *AnÊs al-FuqahÉ'* ed. Ahmad 'Abd al-Razaq al-KubisiJadda: Dar al-Wafa', 1986, p. 181; TahÉnÉwÊ, MuÍammad 'AlÊ al-FÉrËqÊ(d. 12ᵗʰ century).*KashaftIÎÏilÉÍÉt al-FunËn* ed. Lutfi 'Abd al-Badi' Beirut: Dar Sadir, 1962, vol. 1: 170; Ibn HamÉm, KamÉl al-Din MuÍammad (d. 861/1457). *FatÍ al-QadÊr 'ala al-Hidayyah* Beirut: Dar al-Fikir, 1977, vol. 4:277; al-KufawÊ, Abu al-BaqÉ' AyËb ibn MusÉ al-×usaynÊ (d. 1094/1683). *al-KuliyyÉt: Mu'jam fi al-FurËqwal-MuÎÏalaÍÉt al-Lughawiyya ed.* 'Adnan Darwish, and Muhammad al-Masri Cairo: Dar al-Kitab al-Islami, 1992, vol. 3: 38; ShaykhZadahDamÉdAfandÊ, 'Abdullah ibn MuÍammad ibn Sulayman (d. 1081/1670) . *Majma' al-AnhurSharhMultaqÉ al-AbÍur* Beirut: Dar Ihya' al-Turath al-'Arabi, 1960, vol. 1: 631.

[13] Ibn HishÉm, 'Abd al-MÉlik. (d. 218/833). *al-Sirah al-Nabawiyyah* ed. Mustafa al-Saqa Beirut: Dar al-Khayr, 1996, vol. 4: 210-211.

[14] Ibn Sa'ad, MuÍammad (d. 230/845). *Al-ÙabaqÉt al-KubrÉ* Beirut: Dar Sadir, 1980, vol. 1: 238.

[15] ÙabarÊ, MuÍammad JarÊr (d. 310/922). *TarÊkh al-TabarÊ* ed. MuÍammad AbÊ al-FaÌl Ibrahim Dar al-Ma'arif, 1979, vol. 4: 244-245; MuÍammad ×amidullah. *MajmË'at al-WathÉ'iq al-SiyÉsiyyah lil-'Ahd al-NabawÊ wal-KhilÉah al-Rashidah*, p. 528.

[16] See his biography in Ibn Sa'ad's*ÙabaqÉt al-Kubra*, vol. 6: 246-256.

[17] Ibid, vol. 7: 488.

[18] Ibid, vol. 6: 371-374.

[19] DhahabÊ, Shams al-Din (d.748/1347).*Tadhkirat al-×ufÉÎ*ed. 'Abd al-Rahman al-Mu'alimi Beirut: Dar Ihya' al-Turath, 1970, vol. 1: 273-274.

[20] According to MuÍammad Abu Zahrah, the first scholar who proceeded to compile the field of *al-siyar* was Abu Hanifah al-Nu'man. See the introduction of Muhammad AbËZahrah*SharÍ al-Siyar al-KabÊr*, p. 33.

[21] Majid Khaddouri. *al-Qanun al-Duwali al-IslamiKitab al-Siyarlil-ShaybÉnÊ* Beirut: al-Dar al-Mutahidahlil-Nashir, 1975, pp. 52-54.

[22] al-SarakhsÊ, AbË Baker MuÍammad ibn Ahmad (d. 483/1090). *al-MabÎuÏ* Beirut: Dar al-Ma'rifah, 1986, vol. 10:2.

[23] KassÉnÊ, 'AlÉ' al-Din (d. 587/1191). *Bada'i' al-Sana'i' fi Tartib al-Shara'i'* Cairo: Zakariya 'Ali Yusuf, 1970, vol. 9:429.

[24] Mutrizi, AbË al-FÉtiÍ (d. 610/1213). *al-Mughrib fi TartÊb al-Mu'rib* ed. Mahmud Fakhuri, 'Abd al-Hamid Mukhtar Aleppo: Maktabat 'Usamah ibn Zayd, 1979, vol. 1: 427.

[25] NawawÊ, MuÍyÊ al-Din (d. 676/1277). *TahdhÊb al-AsmÉ' wal-LughÉt* Beirut: Dar al-Kutub al-'Ilmiyya, 1970, vol. 3: 159.

[26] al-ShirÉzÊ, Ibrahim ibn 'AlÊ (d. 467/1083). *al-TanbÊh fi al-Fiqh* Beirut: 'Alam al-Kutub, 1983, p. 134.

[27] Rafi'Ê, 'Abd al-KarÊm (d. 632/1235). *Al-'AzÊz SharÍ al-WajÊz* (known by *al-SharÍ al-KabÊr* also) Beirut: Dar al-Kutub al-'Ilmiyyah, 1997, vol. 11: 337.

[28] 'Ayani, Badr al-Din (d. 855/1451). *'Umdat al-Qari' SharÍ SaÍÊÍ al-BukhÉrÊ* Beirut: Dar al-Fikir, 1980, vol. 15: 78.

[29] See 'Ayani, Badr al-Din (d. 855/1451). *al-Binayah SharÍ al-Hidayah* Beirut: Dar al-Fikir, 1990, vol. 5: 624.

[30] TahÉnÉwÊ, MuÍammad 'AlÊ. *Kashaf IÎÏilÉÍÉt al-FunËn* ed. Lutfi 'Abd al-Badi' Cairo: al-Mu'asassah al-Masriyyah al-'Ammah, 1962, vol. 3: 170-171.

[31] See AbË Zahra's introduction to to the work ofMuÍammad ibn ×asan al-ShaybÉnÊ (d.189/804). *al-Siyar al-KabÊr*with SarakhsÊ, MuÍammad ibn AÍmad (d. 483/1090). *SharÍal-SarakhsÊ*, ed. Mustafa Zayd along with the commentaries of Muhammad AbËZahrah Cairo: Matba'atJami'at al-Qahirah, 1958, p. 33.

[32] MuÏÏafaKamÉlWaÎfÊ(1977). *MuÍanafÉt al-NuÐum al-Islamiyyah:al-Disturiyyahwal-Idariyyahwal-IqtiÎadiyyahwal-IjtimÉ'iyyah* Cairo: MaktabatWahbah, p. 280.

[33] MuÏÏafaKamÉlWaÎfÊ(1970). *al-Mashru'iyyah fi al-Nizam al-IslamÊ*Cairo: Matba'at al-Amanah, p. 49

[34] 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:MuÍammad×amidullah's*Dawalat al-Islam wal-'Alam*, tr. 'Uthman Fathi Cairo: Silsalat al-Thaqafah al-Islamiyyah, 1962, pp. 14-21; Ja'farAbd al-SallÉm. *QawÉ'id al-'IlÉqÉt al-Duwaliyyah fi al-QÉnËn al-Duwaliwal-SharÊ'ah al-Islamiyyah*, p. 31; 'Abd al-Karim Zaydan*MajmË'atBuÍËthFiqhiyyah*, p. 16; NajibArmnazi.*al-Shar' al-DuwalÊ fi al-Islam* Damascus: Matba'at Ibn Zaydun, 1930, p. 44; MuÍammadÙal'at al-Gunu'imi. *QÉnËn al-SalÉm fi al-Islam* Alexandria: Mansha'at al-Ma'arif, 1988, pp. 75-7; Majid Khadouri. *Al-×arb wal-Silm fi Shar'at al-Islam* Beirut: al-Dar al-Mutahida, 1973, pp. 17 and 71; SubhiMahmasani. *Falsafat al-TashrÊ' fi al-Islam: Muqadimah fi DirasÉt al-SharÊ'ah al-Islamiyyah 'la Dawu' Madhahibuha al-Mukhtalifahwa-Dawu' al-QawÉnÊn al-×adÊthah*, pp. 17-18; 'Abd al-WahhabKhalaf (1988). *'IlmUsul al-Fiqh*, pp. 20-22.

[35] Ibn al-NajjÉr, MuÍammad (d. 972/1565).*SharÍ al-Kawkab al-MunÊr*, vol. 2: 2-7;

[36] See AbËIsÍÉq al-ShaÏibÊ (d. 790/1388). *al-MuwafaqÉt fi UÎËl al-SharÊ'ah*, vol. 2: 8-25;.

[37] 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-TaqrÊriyya*).See the 'Abd al-WahhabKhalaf (1988). *'Ilmal-ÕÎËl al-Fiqh*, pp. 36-37; Abu Zahrah Muhammad (d. 1394/1974) *UÎÉl al-Fiqh*, p. 106; MuÏÏafa al-SubÉ'i. *al-Sunna waMakanatuha fi al-Tashri'* Beirut: al-Maktab al-Islami, 1985, pp. 47-48.

[38] ShÉfi'Êlah, MuÍammadIdrÊs (d. 204/819).*al-RisÉlah*, p. 73; MuÏÏafa al-SubÉ'Ê*al-Sunna waMakanatuha fi al-TashrÊ'*, p. 125.

[39] al-IsnÉwÊ, JamÉl al-Din 'Abd al-RaÍÊm (d. 772/1370). *Nihayat al-Sul SharÍ MinhÉj al-UÎËl*, ed. Muhammad Bakhit al-Muti'i, Cairo: al-Matba'ah al-Salafiyyah, 1975, vol. 3: 237-239.

[40] Ibn al-NajjÉr, MuÍammadibnAÍmad al-FatËÍÊ (d. 972/1565). *SharÍ al-Kawkab al-MunÊr*, vol. 4: 6.

[41] al-Isnawi, Jamal al-Din 'Abd al-Rahim (d. 772/1370). *NihayÉt al-Sul SharÍMinhÉj al-UÎËl*, vol. 3: 307-314.

[42] 'Abd al-WahhÉbKhallÉf (1988). *'IlmUÎËl al-Fiqh*, pp. 48 and 216-217.

[43] BukhÉrÊ, 'Ala' al-Din 'Abd al-'AzÊz (d. 730/1330). *Kashf al-AsrÉr 'anUÎËl al-BazdÉwÊ*Beirut: Dar al-Kitab al-'Arabi, 1974, vol. 4:3-4.

[44] See al-GhazÉlÊ, AbË ×amÊd (d. 505/1111).*KitÉb al-MusÏaÍfÉ min 'Ilm al-UÎËl*, vol. 1: 219-222

[45] *Al-'Arf* custom is what settled in the souls and minds and received by sound minds with acceptance. See Ibn 'AbddÊn, MuÍammadAmÊn (d. 1252/1839). *MajmË'atRasÉ'il Ibn 'AbddÊn* Beirut: Mu'asassatFu'ad, 1970, vol. 2: 144.

[46] 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 *maÎlaÍa*, or "public interest. AbËIsÍÉq al-ShÉÏibÊ (d. 790/1388).*al-MuwafaqÉt fi UÎËl al-SharÊ'ah*, vol. 2: 8-12.

[47] Majid Khadouri. *al-Harbwal-Silm fi Shar'at al-Islam*, p. 68.

[48] The *Jizya*/poll tax was imposed upon male, mature, financial capable non-Muslim individuals once a year of one dinar per month in return for protection and safeguarding of property and protection of family and rights.

[49] MuÍammadibn Hassan al-ShaybÉnÊ (d. 189/804). *Al-AÎl or "al-MabasËÏ"*, ed. Abu al-Wafa' al-Afghani, Karachi: Matba'at Idarat al-Qur'an, n.d., p. 93

[50] This practice is based on the Prophetic *hadith* which reads as follows: Fulfill the trust of those to whom they are due, and do not be treacherous to the one who betrays you. See AbËDawËd, Ibn al-Ash'at al-SajistÉnÊ (d. 275/888). *Sunnan Abi DÉwËd*×imÎ: Dar al-Hadith, 1974, vol. 5: 185.

[51] BulÉdhurÊ, AÍmad ibn YaÍyÉ (d. 279/892). *FutËÍ al-BuldÉn* ed. Salah al-Munjid, Cairo: Matba'atLajnat al-Bayan al-'Arabi, 1956, vol. 3:519.

[52] See for example, MuÍammad×amidullah. *Muslim Conduct of the State*, p. 14 SubÍÊMaÍmasani.*al-QanÉnwal-'IlÉqÉt al-Duwaliyyah fi al-Islam*, p. 38; 'Abd al-Karim Zaydan*MajmË'atBuÍËthFiqhiyyah*, p. 19.

[53] al-GhazÉlÊ, AbË ×amidMuÍammad (d. 505/1111). *Kitab al-MusÏasfa min 'Ilm al-UÎËl*, vol. 1:83.

[54] al-AmadÊ, AbË al-×asan (d. 631/1234). *al-IÍkÉm fi UÎËl al-AÍkÉm*, vol. 1: 76.

[55] al-'AzzIbn 'Abd al-SallÉm, 'Abd al-'AzÊz (d. 660/1262). *QawÉ'id al-AÍkÉm fi MaÎÉliÍ al-AnÉm* Cairo: Maktabat al-Kuliyyat al-Azhariyyah, 1968, vol. 1: 157-158.

[56] al-QarÉfÊ, Abu al-'AbbÉsAÍmad (d. 684/1285). *al-IÍkÉm fi TamyÊz al-Fatawa 'anAÍkÉmwaTasarufÉt al-QÉÈÊ wal-ImÉm* ed. Mahmud 'Arnus Beirut: Dar al-Basha'ir al-Islamiyyah, 1995, pp. 36-37; 'Abd al-Karim Zaydan*Majmu'atBuhuthFiqhiyyah*, p. 19.

[57]SarakhsÊ, Abu BakrMuÍammad (d. 483/1090). *SharÍ al-SarakhsÊ*, vol. 3: 788.

[58]al-ÙabarÊ, Abu Ja'farMuÍammad (d. 310/922). *JÉmi' al-BayÉn 'anTa'wÊlAyi al-Qur'Én*or*TafsÊr al-ÙabarÊ*, Cairo: Dar al-Ma'arif, vol 2: 41.

[59]Jarishah, 'AlÊ (1979). *al-MashrË'iyah al-IslÉmiyya al-'Ulya* Cairo: MaktabatWahbi, pp. 190-191.

[60]MuÍammadAdibØÉliÍ. *TafsÊr al-NuÎÎ fi al-Fiqh al-IslamÊ: DirasahMuqaranh li-ManÉhij al-'Ulama' fi IsÏinbÉÏ al-AÍkÉm min NuÎÊÎal-Qur'Énwal-Sunnah* Beirut: al-Maktab al-Islami, 1984, vol. 1: 591-599.

[61]IbnNujaym, Zayn al-DinIbrÉhÊim (d. 969/1562).*FatÍal-GhafÉrbiSharÍ al-ManÉr* Cairo: Matba'atMustafa al-Halibi, 1936, vol. 3: 30-32.

[62]MuÎÏafaKamÉlWaÎfÊ (1970). *al-MashrË'iyyah fi al-NiÐÉm al-IslamÊ*, pp. 29-31; SayyedQutub (2007). *KhaÎÉ'is al-TaÎawur al-Islamiwa-Muqawimatuhu*Cairo: Dar al-Shuruq, pp. 85-90.

[63]Ibn ×ajar *Al-JÉmi' al-BukhÉri*with*FatÍ al-BÉrÊ*, Cairo: al-Matba'ah al-Salafiyyah, 1960, vol. 6: 27-28; and by Imam Muslimunderthesubject*"al-Imarah"*, Muslimibn al-HajjÉj al-Qushayri (d. 261/875). *SahihMuslim* ed. MuÍammadFu'Éd 'Abd al-BÉqÊ Cairo: Matba'at 'Issa al-Halibi, 1955, vol. 3: 1512-1513.

[64]ÙabarÊ, MuÍammadJarÊr (d. 310/922). *TÉrÊkh al-ÙabarÊ*ed. Muhammad Abu al-Fadl Ibrahim Dar al-Ma'arif, 1979, vol. 6: 568-569.

[65]According to al-Jawhari, Isma'ilibn ×amad (d. around 393/1003). *Taj al-LughahwaØiÍÉÍ al-'Arabiyyah*, ed. Ahmad 'Abd al-Ghafur 'Atta Beirut: Dar al-'Ilmlil-Malayin, 1982, vol. 6: 2302-2303; The Hanafite, Malikite, Shafi'ite and Hanbalite agree in terms of the legal definition of *al-jizya*, as aper 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 *jiyza* rate was one dinar per year imposed on male dhimmis in Medina, Mecca, Khaibar, Yemen, and Nejran, a rate that was never permanently fixed, though the payment usually depended on wealth. *KitÉb al-KharÉj* of Abu YusÉf sets the amounts at 48 dirham for the richest (e.g. moneychangers), 24 for those of moderate wealth, and 12 for craftsmen and manual laborers. See Abu Yusuf, Ya'qub ibn Ibrahim (d. 183/799). *KitÉb al-KharÉj* Beirut: Dar al-Ma'rifah, n.d., pp. 122-126; A. S. Tritton (2007). *Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of Umar* New York: Routledge, pp. 204.

[66]AbËYusÉf, Ya'qËb ibn Ibrahim (d. 182/798).*al-KharÉj*ed. Taha 'Abd al-Ra'uf Sa'd, Muhammad Sa'd Hasan, Cairo: al-Maktabah al-Azhariyya lil-Turath, 1999, pp. 149-150.

[67] MuÍammad ×amidullah (1962). *Dawalat al-Islam wal-'Alam*, p. 30; MuÎÏafa KamÉl WaÎfÊ (1970). *al-Mashru'iyyah fi al-NiÐÉm al-IslÉmÊ*, p. 49; MuÎÏafa KamÉl WaÎfÊ(1977). *MuÎanafÉt al-NuÐum al-IslÉmiyyah:al-DistÊriyyah wal-IdÉriyyah wal-IqtiÎÉdiyyah wal-IjtimÉ'iyyah*, pp. 43-46, pp. 158-160, and p. 280.

[68] Ibn al-AthÊr, Majd al-Din al-Mubarak (d. 606/1209). *Al-NihÉyah fi GharÊb al-×adÊth wal-AthÉr* ed. Tahir Ahmad al-Zawi, Mahmud Muhammad al-Tanahi Cairo: Da Ihya' al-Kutub al-'Arabiyyah, 1965, vol. 1: 263.

[69] al-Sarakhsi, Abu Baker Muhammad (d. 483/1090). *al-Mabsut*, vol. 10: 84-86; Sarakhsi, Abu Bakr Muhammad ibn Ahmad (d. 483/1090). *Sharhal-Siyar al-Kabir*, vol. 1: 306

[70] Ibn Qayyim al-Jawziyya, (d. 751/ 1350). *ZÉd al-Ma'Éd fi Huda Khayr al-'IbÉd*, vol. 3: 160.

[71] SarakhsÊ, Abu Bakr MuÍammad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 5: 1699.

[72] SulÏÉn ×amid (1986). *AÍkÉm al-QanÉn al-DuwalÊ fi al-SharÉ'ah al-IslÉmiyyah*, p. 217; Idem *al-QanÉn al-Duwali al-'Ómm Waqt al-Silm*, Cairo: Jami'at al-Qahirah, 1977: 484-490.

[73] 'Abd al-QÉdir 'Udah (1977). *al-TashrÉ' al-Jina'i al-IslamÊ Muqaranan bal-QanÉn al-Wad'i* , vol. 1: 274-275; MuÍammad ×afiz GhanÊm (1967). *MabÉdi' al-QanÉn al-Duwali al-'Ómm*, p. 25; MuÎÏafa KamÉl WaÎfÊ (1977). *MuÎanafÉt al-NuÐum al-IslÉmiyyah:al-DistÊriyyah wal-Idariyyah wal-IqtiÎÉdiyyah wal-IjtimÉ'iyyah*, pp. 285-286.

[74]al-JawharÊ, IsmÉ'Êl ibn ×amad (d. around 393/1003). *Taj al-LughahwaØiÍÉÍ al-'Arabiyyah*,vol. 2: 659-660.

[75]Ibn 'AbdÊn, MuÍammadAmin (d. 1252/1836). *Hashiyyat, Radd al-MuÍtar 'ala al-Darr al-MukhtÉr*, vol. 4:166.

[76]SarakhsÊ, Abu BakrMuÍammadibnAÍmad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 1: 249-250.

[77]KassÉnÊ, 'AlÉ' al-Din (d. 587/1191). *BadÉ'i' al-ØanÉ'i' fi TartÊb al-Shara'i'*, vol. 9: 4374.

[78]IbnRushd, Abu al-Walid (d. 520/1126). *al-Muqadimat al-Mumahidat* ed. al-Mukhtar al-Talili Beirut: Dar al-Gharb al-Islami, 1987, vol. 2: 153.

[79]BaghdÉdÊ, 'Abd al-Qadir al-TamÊmÊ (d. 429/1038). *UÎÉl al-Din*Istanbul: Madrasat al-Ilahiyat, 1927, p. 270.

[80]AbËYa'la, Muhammad al-FarÉ' (d. 458/1066). *Al-Mu'tamad fi UÎÉl al-Din* ed. Wadi ' Zaydan Hadad Beirut: Dar al-Mashriq, 1974, p. 276.

[81] Ibn Qayyim al-Jawziyya, (d. 751/ 1350). *AÍkÉm Ahl –Dhimma* ed. Subhi Salih Beirut: Dar al-'Ilm lil-Malayin, 1981, vol. 1: 51, 366.

[82] 'Abd al-Qadir 'Udah (1977). *al-TashrÊ' al-JinÉ'i al-IslamÊ Muqaranan bal-QÉnËn al-WaÌ'Ê* , vol. 1: 275-276, while pointing to the work of al-Kassani's *Bada'i' al-Sana'i' fì Tartib al-Shara'i'*.

[83]'Abd al-WahhÉb KhallÉf (1977). *al-SiyÉsah al-Shar'iyyah wa NiÐÉm al-Dawlah al-IslÉmiyyah fi al-Shu'Ën al-DistËriyyah wal-KhÉrijiyyah wal-MÉliyyah* Cario: DÉr al-Ansar, p. 71.

[84] AbË Zahrah MuÍammad (d. 1394/1974). *al-'IlÉqÉt al-Duwaliyya fi al-Islam*, Cairo: Dar al-Fikir al-'Arabi, 1970, p. 53.

[85] RiÌÉ, MuÍammad RashÊd (d. 1354/1935). *TafsÊr al-Qur'Én al-KarÊm* known as *TafsÊr al-ManÉr* Cairo: Maktabat al-Qahirah, 1954, vol. 10: 371.

[86] SarakhsÊ, MuÍammad ibn AÍmad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 1: 251, vol. 4: 2070.

[87] SarakhsÊ, MuÍammad ibn AÍmad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 5: 2165; Idem *al-Mabsut*, vol. 10: 114.

[88] SuyËÏÊ, Jalal al-Din 'Abd al-RaÍmÉn (d. 911/1505). *al-AshbÉh wal-NaÐÉ'ir fi QawÉ'id wa FurË' al-ShÉfi'iyyah*, pp. 53-54; Ibn Nujaym, Zayn al-Din Ibrahim (d. 969/1562). *al-AshbÉh wal-NaÐÉ'ir* Cairo: Mu'asassat al-Halibi, 1968, pp. 59-61.

[89] Ibn al-NajjÉr, MuÍammad al-FatËÍÊi (d. 972/1565). *SharÍ al-Kawkab al-MunÊr*, vol. 1: 38-40.

[90] A consensus among scholars the *jizya* is not acceptable form the apostates nor established *'aqddhimma* with. See al-Sarakhsi, Muhammad ibn Ahmad (d. 483/1090). *al-MabsËÏ*, vol. 10: 7, and 77; Ibn Rushd, AbË al-WalÊd (d. 520/1126). *al-MuqadimÉt al-MumahidÉt*, vol. 1: 376.

[91] The majority of scholars of the four Sunni schools, indicated that the tribute should not be accepted form the idolaters of the Arabs. SeeKassÉnÊ, 'AlÉ' al-Din Abu Baker ibnMas'ud (d. 587/1191). *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*.

[92]SarakhsÊ, MuÍammadibnAÍmad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 5: 75-77.

[93]IbnHishÉm, AbËMuÍammad 'Abd al-Malik (d. 218/833). *Al-Sirah al-Nabawiyyah* ed. Mustafa al-Saqa, Ibrahim al-Abyari, 'Abd al-Hafiz Shalabi and Mu'rufZuriq Beirut: Dar al-Khayr, 1996, vol. 1: 231-233.

[94]MuÍammad ×amidullah (2009).*MajmË'at al-WathÉ'iq al-SiyÉsiyyahlil-'Ahd al-Nabawiwal-Khilafah al-Rashidah*, pp. 107-115.

[95]Ibid, pp. 139-140

[96]Ibid, pp. 100-104.

[97]IbnQayyim al-Jawziyya, (d. 751/ 1350). *ZÉd al-Ma'Éd fi HudaKhayr al-'IbÉd*, vol. 3:691.

[98]Ibid, vol. 3:692-697.

[99]Some Orientalists who have 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 Qur'Énic verses and Prophetic traditions. To Muir, the Prophet's universality of Islam was intended for the Arab world and the spread of Islam, even if the idea of universality originated more from circumstance than plan. William Muir (d. 1905). *The Life of Mahomed* London: Smith, Elder and CO., 1861, vol. 4: 1-7. In his work on the *History of Islam/Annali dell' Islam*,Italian orientalist Leone Caetani (d. 1926) also denied universality, although he argued that Islam spread peacefully and showed tolerance to other monotheistic religions (i.e., Christianity and Judaism), and did not persecute any members of other faiths. See Thomas Walker Arnold, *The Preaching of Islam:A History of the Propagation of the Muslim Faith* London: Constable, 1913. This was a model of Orientalist approaches towards Islamic history. The question that arises is how the idea of Islamic universality emerged afterward in spite of the actual and practical revelation of the message of Islam? Moreover, the same question can be asked regarding whether the king Xerxes, Negus of Abyssinia, and Cyrus of Egypt and Alexandria were exposed to the idea of Arab universality.

[100]AÍmadMaÍmËd al-AÍmad.*Ma hiya 'IlÉqÉt al-Ummah al-Muslimahbil-Umam al-UkhrÉ*, al-Maktab al-Islami, 1977, pp. 7-8.

[101]Muhammad Ùal'atal-Gunu'imi.*QÉnËn al-SalÉm fi al-IslÉm*, p. 105.

[102]KhawÉrizmÊ, Abu al-Mu'ayadMuÍmmad ibn MaÍmËd (d. 665/). *JÉmi' al-MasÉnid: MajmË'at al-AÍÉdÊthwal-AthÉr*(consisting of 15 *Masanid* of AbË ×anifa al-Nu'mÉn), Lahor: al-Maktabah al-Islamiyyah, 1976, vol. 1: 291-292.

[103]SarakhsÊ, MuÍammad ibn AÍmad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 1: 75-76.

[104] Simanani, Abu al-Qassim ‘Ali ibn MuÍammad (d. 499/1106). *RawÌat al-QuÌÉt wa ÙarÊq al-Najah* ed. Salah al-Din al-Nahi Beirut: Mu'asassat al-Risalah, 1984, vol. 3: 1237.

[105]KassÉnÊ, ‘AlÉ’ al-DinAbË Baker ibnMas‘Ëd (d. 587/1191). *BadÉ’i‘ al-ØanÉ’i‘ fi TartÊb al-Shara’i‘*, vol. 9: 4304-4305.

[106]SarakhsÊ, MuÍammadibnAÍmad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 1:76.

[107]Ibid, 1:76-77,189.

[108]Ibid, vol. 5: 1708.

[109]ÚÉfir al-QÉsimÊ. *al-JihÉdwal-×uqËq al-Duwaliyya al-‘Amma fi al-Islam* Beirut: Dar al-‘Ilmlil-Malayin, 1980, pp. 160-164. The majority of classical jurists agree with the above view, yet the modern scholars, eventhough they cited Sufyan al-Thawri's (d. 161/778), 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-ThawrÊ is negate the necessity to start the fight; However he did not prohibits *al-jihad*. al-Thawri view was taking out of content. Such as ‘Abd al-WahabKhalaf.*al-Siyasah al-Shar‘iyyah*; ‘Abd al-Rahman ‘Azzam, in his *al-Risalah al-Khalidah*; Muhammad ‘Abdullah Darraz; Muhammad Abu Zahrah, *al-‘Ilaqat al-Duwaliyyah fi al-Islam*; Muhammad Shaltut, *al-Islam wal-‘Ilaqat al-Duwaliyyah* and in his *al-Islam ‘AqidahwaShari‘ah*; Hamid Sultan, Muhammad Salam Makur, *Ma‘alim al-Dawlah al-Islamiyyah*, p. 20; and WahbiZuhayli 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 view 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. *Mabadi' al-Qanun al-Duwali al-‘Amm*, p. 54.

[110]Zafir al-Qasimi.*Al-Jihad wal-Huquq al-Duwaliyya al-‘Ammafi al-Islam*, p. 160.

[111]al-ShÉfi‘Ê Muhammad Idris (d. 204/820). *AÍkÉm al-Qur’Én* ed. ‘Abd al-Ghani ‘Abd al-Khaliq, ‘Beirut: Dar al-Kutub al-‘Ilmiyya, 1980, vol. 2: 56; idem, *al-Umm* ed. Muhammad Zuhdi al-Najjar Beirut: Dar al-Ma‘rifah, 1973, vol. 4: 155-156.

[112] 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. Ibn Qayyim al-Jawziyya, Shams al-Din MuÍammad (d. 751/ 1350).*AÍkÉmAhl –Dhimma*, 1981, vol. 2: 476-490.

[113] See al-SarakhsÊ, MuÍammad ibn AÍmad (d. 483/1090). *al-MabsËÏ*, vol. 10:2-3 and 27.

[114]SarakhsÊ, MuÍammad ibn AÍmad (d. 483/1090). *SharÍal-Siyar al-KabÊr*, vol. 1: 187-189.

[115]ShawkÉnÊ, MuÍammad ‘Ali (d. 1250/1835).*al-Sayl al-JarÉr al-Mutadafiq ‘ala Hada’iq al-AzhÉr* ed. Mahmud Ibrahim Zayid Beirut: Dar al-Kutub al-‘Ilmiyya, 1985, vol. 4: 158-159.

[116]Mustafa Kamal Wasfi (1977).*MuÍanafÉt al-NuÐum al-Islamiyyah:al-DistËriyyahwal-IdÉriyyahwal-IqtiÎÉdiyyahwal-IjtimÉ‘iyyah*, pp. 339-341.

[117]IbnJarir, Abu Ja‘far, Muhammad (d. 310/922). *Jami‘ al-Bayan ‘anTa’wilAyi al-Qur’Én* ed. MuhmudShakir, Cairo: Dar al-Ma‘arif, vol. 3: 561-574.

[118] al-JaÎÎÉs, AÍmadibn ‘AlÊ (d. 370/980). *AÍkÉm al-Qur’Én*, vol. 1: 260-261.

[119]ShawkÉnÊ, MuÍammad ‘Ali. *FatÍ al-QadÊr: al-JÉmi‘ bÊynFani al-Riwayyahwal-DirÉyyah min ‘Ilm al-TafsÊr* ed. ‘Abd al-Rahman ‘Amirah al-Mansurah: Dar al-Wafa’, 1997, vol. 1:191.

[120]SeeMuÍammad ×ÉfizGhÉnim (1967). *MabÉdi' al-QanËn al-Duwali al-Ómm*, p. 54

[121]MuÍammad ×ÉfizGhÉnim (1958). *MuÍaÌarÉt fi al-Mujtama‘Ét al-Duwaliyyah al-IqlÊmiyah*, Cairo: Jami‘at al-Duwal al-‘Arabiyyah, p. 32.