

الدبلوماسية الدينية وبناء السلام:
مقاربة فقهية إسلامية في ضوء منهج أهل السنة والجماعة
Faith-Based Diplomacy and Peacebuilding: An
Islamic Jurisprudential Perspective in Light of the
Methodology of Ahl as-Sunnah wa al-Jama'ah

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الدبلوماسية الدينية وبناء السلام: مقارنة فقهية إسلامية

في ضوء منهج أهل السنة والجماعة

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الملخص:

يهدف البحث إلى: بيان طبيعة العلاقة بين الدبلوماسية الدينية وبناء السلام من منظور الفقه الإسلامي في ضوء منهج أهل السنة والجماعة الذي يعتمده الأزهر الشريف، وموقف الفقه الإسلامي من الحصانات الدبلوماسية، ولتحقيق ذلك، كان من الضروري أن يبدأ البحث بتسليط الضوء على أصل كلمة الدبلوماسية ومغزاها، ومفاهيم الدبلوماسية الدينية وبناء السلام إلى جانب إطلالة متفحصة على الدبلوماسية وممارستها في شبه الجزيرة العربية قبل بزوغ فجر الإسلام.

علاوة على ذلك، ينظر هذا البحث في طبيعة العلاقة المعيارية بين المسلمين وغير المسلمين، ويرجح مذهب أن الأصل في علاقة المسلمين بغير المسلمين هو السلام، وموقع الحصانة الدبلوماسية في الفقه الإسلامي، وهو يركز بشكل أساسي على محاولة تأطير الممارسات الدبلوماسية المتعارف عليها دوليًا لبناء السلام في ضوء المصادر الأصلية للفقه الإسلامي في إطار منهج الأزهر الشريف الوسطي الذي يمثل معقل أهل السنة والجماعة عالميًا.

وقد اعتمد الباحث المنهج الاستقرائي التحليلي والذي كشف عن أن البشرية تعيش في الوقت الحاضر في "قرية عالمية"؛ حيث لا يستطيع أي إنسان أن يعيش في عزلة عما يحدث في أي مكان آخر؛ فإن عالمنا مترابط للغاية لدرجة أن التعايش السلمي أصبح السبيل الوحيد للمضي قُدماً نحو التقدم والاستقرار؛ ففي القرن الحادي والعشرين، لا يزال للدين والإيمان والمقدّسات دورًا محوريًا في تشكيل وعي الناس والتأثير على مواقفهم واتجاهاتهم، على الرغم من الأحداث المؤلمة والمتكررة التي نتجت عن إساءة استخدام التعاليم الدينية المختلفة من قبل بعض أتباعها المزعومين لتبرير العنف أو التحريض عليه؛ وذلك على الرغم من وجود قواسمٍ مشتركةٍ إيجابية بين الشرائع الدينية المختلفة؛ لذلك، فإن الحوار المتحضر الذي يركز على البحث العلمي والممارسات الدبلوماسية التي تحترم القانون هي أدوات أساسية في تحقيق بناء السلام العالمي المنشود.

وهذا البحث هو مساهمة متواضعة لإثراء هذا الحوار من منظور فقهي داخل دين سماوي واسع الانتشار عالمياً، حيث إنه هو الدين الذي يعتنقه ما يقرب من خمس سكان كوكب الأرض؛ وعلى الرغم من ذلك فإنه يُساء فهمه إلى حد كبير أكثر من أي دين آخر، حتى من قبل بعض أتباعه أحياناً.

وقد توصل الباحث إلى عدة مقترحات أهمها: إنشاء مركز الأزهر العالمي لتحليل الصراعات وبناء السلام، وضرورة إدراج مادة العلاقات الدولية ضمن مقررات الأزهر الشريف الجامعية.

الكلمات المفتاحية: الدبلوماسية الدينية · بناء السلام · الحصانة الدبلوماسية · الفقه الإسلامي · الأزهر · أهل السنة والجماعة · علاقة المسلمين بغير المسلمين

Faith-Based Diplomacy and Peacebuilding: An Islamic Jurisprudential Perspective in Light of the Methodology of Ahl as-Sunnah wa al-Jama'ah

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Abstract

Seeking to fathom the nexus between faith-based peacebuilding as well as the stance of Islamic jurisprudence on diplomatic immunities, this paper, through employing a deductive and analytical approach, at the outset, commences with an elucidation of the etymology and significance of the notions of diplomacy, faith-based diplomacy, and peacebuilding as used in the literature of international relations and diplomacy. It provides a critical investigation of the nature of diplomacy in Pre-Islamic Arabia in practical terms through highlighting tangible instances. Subsequently, the essay attempts to explore the multi-faceted nature of the relations between Muslim and non-Muslims. Finally, it provides a set of concluding remarks and recommendations concerning the growing role of the faith-based diplomacy, especially with regards to the institution of Al-Azhar, in shaping the strategies of conflict amelioration and peacebuilding.

Keywords: Faith-Based Diplomacy – Peacebuilding – Diplomatic Immunity · Islamic Jurisprudence – Al-Azhar – Ahl as-Sunnah wa al-Jama'ah – Muslim and non-Muslim Relations

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Introduction

Humanity lives nowadays in a “global village,” where no people can afford to live in isolation from what goes on elsewhere. Our globe is so interconnected and so interdependent that peaceful coexistence has become the only way forward. In the 21st century, faith still plays a pivotal role in shaping people’s attitudes and influencing their stances. Despite flagrant occurrences of abuse of various faith traditions by some of their claimed followers to justify or instigate violence, there are positive common themes in these faith traditions. Therefore, academic dialogue and law-abiding diplomatic practices are essential tools in accomplishing a much-needed worldwide peacebuilding. This research paper is a humble contribution to that dialogue from a jurisprudential perspective within a major world faith that is the professed faith of nearly one-fifth of the human family; one that is largely misunderstood than any other faith, sometimes, even, by some of its adherents.

Moreover, this paper examines the nature of the normative relationship between Muslims and non-Muslims and the position of diplomatic immunity in Islamic jurisprudence. It is grounded primarily on an attempt to contextualize the established diplomatic practices for peacebuilding in light of the primary sources of Islamic jurisprudence. To achieve this, it is necessary, to start with fathoming the etymology and significance of diplomacy, the concepts of faith-based diplomacy

and peacebuilding along with an overview of diplomacy in pre-Islamic Arabia.

The Etymology and Significance of Diplomacy

Linguistically, the term diplomacy is derived via French from the ancient Greek *diplōma*, composed of *Diplo*, meaning “folded in two,” and the suffix *-ma*, meaning “an object.” The folded document conferred a privilege – often a travel permit – on the holder, and the term came to denote documents through which princes granted such favours. Later it applied to all solemn documents issued by chancelleries, especially those containing agreements between sovereigns. Diplomacy later became associated with international relations, and the direct link to documents lapsed. In the 18th century, the French term *diplomate* (“diplomat” or “diplomatist”) came to refer to a person authorized to negotiate on behalf of a state (Freeman *et al*, 2018).

A good starting point for an inquiry into the position of the essence of diplomacy in Islamic jurisprudence is to ponder how it is commonly understood. The Oxford English Dictionary defines diplomacy as “The management of international relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys (Simpson *et al*, 1989, p385)”. Noteworthily, diplomacy is very much perceived to be associated with peaceful activities in managing international relations (Barston, 2006; Bull *et al*, 2012).

From an Islamic jurisprudential perspective, a great significance and precedence are attached to diplomatic practices and particularly diplomatic envoys. In the case of dispute, Muslim envoys sought negotiation, mediation, arbitration, and truce, as such practices were both advocated and enforced by Prophet Muhammad (Masud, 1977). One example of this occurred in Mecca when a fight almost started over which clan would have the honor of replacing the Black Stone in its normal position after renovating the Ka'ba (Ibn Hishām *et al*, 1997). Since Islam prohibits any form of aggressive war, Islamic jurisprudence highly urges utilizing mediation to resolve disputes and nip wars in the bud. Hence, diplomacy is not an Arabic term, yet it is in line with Islamic jurisprudence in essence and practice.

The Concept of Faith-Based Diplomacy

In simple terms, faith-based diplomacy refers to incorporating faith-related affairs and concerns into the practice of international relations and politics. Even more simply put, it means making faith part of the solution in some of the intricate, identity-based conflicts that exceed the grasp of traditional diplomacy (Johnston, 2006).

Both academic researchers and foreign policymakers tend to agree on the understanding that faith-based or religious-minded actors and leaders have been significantly and fruitfully contributing to both national and international conflict transformation and peacebuilding. (Boutros-Ghali, 1992; Gopin,

1997; Johnston, 2008; Lederach, 1997; Mabon *et al*, 2016; Mani, 2012). Religious actors can be defined, according to the renowned historian of religion Appleby as “people who have been formed by a religious community and who are acting with the intent to uphold, extend, or defend its values and precepts” (Appleby, 2000, 9).

All faith traditions, Appleby has noted, have strong injunctions for peacebuilding and peaceful coexistence. Additionally, Appleby states, over the past couple of decades, one can encounter several cases of mediation, reconciliation, and peacebuilding spearheaded by religious actors all over the world (2000). Examples comprise: the most inspiring and frequently cited case is the successful mediation endeavored by the Rome-based Community of Sant’Egidio to help stop the civil war in Mozambique in 1992. Moreover, a robust model of religious actors in peacebuilding can be traced in the context of Northern Ireland. In South Africa, numerous churches and Muslim communities were at the forefront of the struggle against apartheid and the peaceful transition. (Hertog, 2010; Philpott, 2012; Powers, 2010; Sandal, 2011; Toft *et al*, 2011).

In this context, numerous faith leaders and political savants across the globe, on numerous occasions, have spoken about Islam. In the recent past, Prince Charles spoke about Islam at a lecture at the Oxford Center for Islamic Studies on 27 October 1993. In his lecture, the Prince stated: “Islam is part of our past and our present, in all fields of human endeavour. It has

helped to create modern Europe. It is a part of our own inheritance, not a thing apart. More than this, Islam can teach us today a way of understanding and living in the world (Charles, 1993).”

The Concept of Peacebuilding

Peacebuilding is essentially an institution that is mostly explicated than defined. Conceivably this is because it is conducted by a wide variety of actors whose strengths and capacities enable them to build peace in various ways. Back in the 1960s, Galtung started to explicate peacebuilding as the practical implementation of peaceful social change through socio-economic reconstruction and development (1975). Since then, Galtung has developed the notion that peacebuilding involves a radical change to overcome contradictions that lie at the root of conflict (1996).

The focus on root causes and structural transformation has been a consistent aspect of examinations of peacebuilding. Stephen Ryan, however, has observed that Galtung’s approach to peacebuilding suffers from the lack of a relational dimension. Ryan has highlighted the need to transform negative conflict attitudes in society; specifically, he focuses on the grassroots level (1995). Bringing together Galtung and Ryan’s analysis, Lederach has characterized peacebuilding as a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships (1997). Consequently, he has

made a strong place in the discourse for peacebuilding that addresses the structural, relational, and cultural aspects and causes of conflict.

In this context, two recent reports have been published by the United Nations augmented the conventional wisdom that an ounce of prevention is worth a pound of cure. The UN has often been criticized for not managing to respond to conflicts adequately. One such criticism has to do with the timeliness of its interventions which must be proactive rather than reactive. This has led to accusations that in some contexts earlier measures could have prevented war eruption (Institute for Security Studies, 2015; Security Council Report, 2015).

The eagerly awaited peace-focused reports were published on the 16th and 29th of June 2015. These reports have triggered a mind shift through placing preventive peacebuilding in the heart of all UN programs and initiatives. This mind shift means replacing terms like 'post-conflict peacebuilding' and 'peacebuilding architecture' with 'sustainable peace' or 'peacebuilding' to become the common thread running through all UN activities. It is an umbrella concept that covers the entire conflict resolution spectrum, from mediation and peacemaking to peacekeeping. It refers to addressing the root causes of conflicts rather than employing quick-fix solutions (Barnett, 2007). Therefore, in practical terms, this means the UN and other peacebuilding institutions have to function more

holistically and update the old-fashioned approaches. (Institute for Security Studies, 2015; Security Council Report, 2015).

Regarding faith-based peacebuilding, faith has been explicitly contributing to post-conflict transformations such as the recovery of post-apartheid South Africa and the peaceful transitions from authoritarianism to democracy that occurred in East Germany, Poland, and the Philippines (Barash, 1999). More recently, more than 1,000 representatives of transnational as well as indigenous faith traditions gathered for the UN Millennium Summit of World Religious Leaders, which reflected the global community's unprecedented recognition of faith-based peacebuilding (Little *et al*, 2004).

Pre-Islamic Arab Diplomacy

The pre-Islamic Arabs engaged in diplomacy despite their constant desire for fighting, and revenge, as well as their inherited and generations-long animosities. One reason for this cultural characteristic was to protect their dependents, livestock, and crops. Peaceful settlements were customarily reached by virtue of inter-tribal negotiations to oblige those who wanted to engage in such activities to accept a suitable amount of compensation, which was most commonly in the form of blood money.

According to Ibn Khaldūn, relations between Arabian tribes were frequently dominated by wars as a result of their rivalry over water resources and pasture, in conjunction with their propensity to become the hegemon tribe. Blood relations and

loyalties, however, were the root causes for most of these fights. This bitter reality made it incumbent on merchants to forge and sustain relationships of Ilaaf with other tribes and communities to ensure the safety of their commercial caravans and their lives. Ilaaf refers to a safe route that allows merchants to move around to pursue their trading interests (Rabi', 1967). The initial sprouts of diplomacy and its foremost buds of growth could be traced to commerce relationships constituted by businessmen. The Qurayshi tribal leader Hashim ibn 'Abd Manāf (d. 497 AD), for instance, headed the preliminaries and negotiations of multilateral treaties that allowed the Meccan merchants to send annual summer caravans to the Levant, and annual winter caravans to Yemen and Ethiopia. As a matter of fact, it is safe to say that prominent merchants were the torchbearers in conducting diplomatic practices such as communication, negotiations, and peaceful solutions.

Apart from this, the Arabian Peninsula's calendar comprised four inviolable months (namely, Dhu'l-Qi'dah, Dhu'l-Hijjah, Muharram, and Rajab) during which all acts of warfare were forbidden so that all tribes could safely visit Mecca and perform the pilgrimage to the Kaaba according to their rituals and traditions. Moreover, such short-term cessation of hostilities made it possible of Arabs to make arrangements for peaceful reconciliations by examining the relevant issues and forging tighter ties with other tribes; and to engage in commercial

activities, feasts, listening to poetry and other forms of literature, and other entertaining activities (Salibi *et al*, 1980).

The pre-Islamic tribal Arabs recognized dispatching envoys as a means of external communication. They used to send emissaries to neighboring tribes to represent the tribe regarding issues of peace following the end of wars. 'Umar, for instance, was recognized as the representative of the Banū 'Uday clan, a subunit of the Meccan tribe of Quraysh. Such mechanisms were considered one of Mecca's standard practices. This was one of the most salient features of social life among the pre-Islamic Arabs, who were extremely keen on matters of blood relations and allegiances (Ibn al-Athir *et al*, 1965). Henceforth, it is imprecise to think that the relations of peninsular Arabs with their neighboring tribes and sovereigns were merely based on either long-standing hostilities or ostracization.

Peace is the Principle in Muslim – non-Muslim Relations

As far as the issue of the governing principle (Al-Asl) in the relationship between Muslims and non-Muslim sovereigns and communities is concerned, the prevailing maintained stance among the sweeping majority of both early and contemporary Muslim jurists is that it is peace and nothing but peace (Al-Zuhayli, 1981; At-Tayyib, 2014). In other words, peace is the basis and the norm of Muslim/non-Muslim relations. Many contemporary Muslim Jurists support this understanding, among them, the current Grand Imam of Al-Azhar, Ahmad At-Tayyib, Muhammad 'Abduh, Mahmud Shaltut, Muhammad

Abu Zahra and Wahbah Al-Zuhayli who have confirmed that such a relationship was always based on peace. According to Al-Zuhayli, the origin of international relations in Islam is peace, except in cases of necessity, such as the attack on the country, the sanctity of Islam or Muslims. If this is the case, then war is only allowed for self-defense (1981).

This research paper would not be complete without broadly addressing some commonly decontextualized and misunderstood quotes from the Noble Qur'an and Sunna. For this reason, the following paragraphs briefly highlight the juridical basis for the peaceful norm of Muslim – non-Muslim relations while simultaneously refuting the claim that the basis is conflict as proposed by Huntington (1998):

- 1- The reality of Islam and its Prophet's message is encapsulated in the following Qur'anic verse: "O Muhammad, We have not sent you, except as a mercy to all the worlds." [Al-Anbiyaa' 21:107]. To remove any limitation of this mercy, Prophet Muhammad explained, "He who is not merciful to others, will not be treated mercifully" (At-Tirmidhi, 2018). Clearly, Muslims are not the only inhabitants of the globe. Hence, the command to be merciful applies to all beings.
- 2- The basic rule governing the relationship between Muslims and non-Muslims is that of global peaceful coexistence, justice, and compassion. The following two key verses embody that general rule: "As for non-Muslims

who do not fight you on account of your faith, or drive you forth from your homelands, Allah does not forbid you to show them berr (kindness, love, and respect) and to deal with them with equity, for Allah loves those who act equitably. Allah only forbids you to turn in friendship with those who fight against you because of your faith and drive you forth from your homelands or aid others in driving you forth." [Al-Mumtahanah 60:8-9] These verses make it a Muslim's obligation to treat peacefully coexisting individuals with equity and berr. The term berr and its derivatives are the same expressions used in the Qur'an and Hadith to refer to one's relationship with their parents.

- 3- The sanctity of human life is stressed in the Qur'an "Do not take life, which Allah has made inviolable, except for just cause." [Al-Israa' 17:33]. The Qur'an confirms God's revelation to previous prophets that "If anyone slays a human being, unless it be punishment for murder, or for spreading mischief on earth, it shall be as though he had slain all humankind; whereas, if anyone saves a life, it shall be as though he had saved the lives of all humankind." [Al-Ma'idah 5:32]. Besides, the Qur'an confirms "Indeed, We (Allah) have conferred dignity on the children of Adam." [Al-Israa' 17:70]. It is notable that this verse encompasses all humans, irrespective of their faith.

- 4- The principal Qur'anic verses regarding the permissibility of recouring to combative fighting are the following: "And fight back in Allah's cause against those who wage war against you, but do not commit aggression, for, verily, Allah does not love the aggressors. And fight them wherever you may encounter them, and drive them away from wherever they drove you away, for oppression is even worse than killing. And fight not against them near the Sacred Mosque until they fight against you first, but if they fight against you, fight them back: such is the recompense of the rejecters of truth. However, if they desist from aggression, behold, Allah is Most Forgiving, Most Merciful. So fight against them until there is no more oppression and religion belongs to God (i.e., until people can worship Allah without fear of persecution), but if they desist, then all hostility shall cease, except against those who commit injustice"[Al-Baqarah 2:190-194]. Obviously, the only two justifications of the combative fighting are to repel aggression and stop oppression. The prerequisite for ceasing fighting is not embracing Islam, but to end aggression and oppression (At-Tayyib, 2014).
- 5- There are a few Quranic verses that allow fighting. These verses, however, when seen in their textual and historical context, explicitly deal with war situations and shall not be generalized. The characterization of the belligerent or

instigator as rejecters of faith or polytheists people does not mean that they are to be fought against for being non-Muslims. Historically, these aggressors happened to be non-Muslims. In fact, the Qur'an allows fighting against fellow Muslims if they are aggressors and peaceful means of restoring justice and peace have collapsed. "And if two parties among the believers should fight, then make settlement between the two. However, if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. So if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly". [Al-Hujurat 49:8-9]. Therefore, clearly, the issue is allowing fighting in the presence of aggression, not a difference of faith, belief, creed, or religion.

- 6- Historically, Prophet Muhammad sent envoys with peaceful and respectful messages and gifts to the Emperors and Kings of Byzantine, Egypt, Persia, and Ethiopia.
- 7- Any claim of *naskh* (supersession or abrogation) of the Quranic verses that urge showing peace to non-Muslims must be meticulously scrutinized. The whole Qur'an is unequivocally authentic and constitutes organic unity. Thus, any claim of *naskh* must be decisive, not out of mere speculation. Noteworthily, earlier Muslim jurists used the term *naskh* to also refer to Takhses or specifying

and limiting the ruling than abrogating it (Al-Shafi'I, 1961).

- 8- The categorization of the world, by some classical jurists, into Dar al-Islam (Land of Islam) and Dar al-Harb Abode of War (Land of War) was merely a matter of intervening Ijtihad (Independent Legal Reasoning) justified by the circumstances back in time. It is changeable depending on the higher interests of the Muslim community. Hence, some Muslim jurists introduced a third category, namely, Dar al-*Ahd* (Abode of Covenant) (Al-Azhar Portal, 2017). The Noble Qur'an and Sunna confirm that maintaining peace is the best interest for all Muslims.

Accordingly, the well-established foundational principle in Islamic jurisprudence, as far as external or international relations are concerned, is peace and combative defensive fighting is only permitted as a last resort after exhausting all the diplomatic means to avoid it. Hence, the points above constitute a solid foundation for a peaceful relationship and coexistence with all, irrespective of their faith-related choices, as well as that employing the means and practices to maintain peace is per se an Islamic objective, which could be best achieved through diplomacy.

Diplomatic Immunity

Diplomatic immunity, in international law, refers to protections conferred upon foreign states or international organizations and their official representatives from the

jurisdiction of the hosting country (Dembinski, 1988; Denza, 1998). Since time immemorial most civilizations have acknowledged the significance of granting inviolable status to diplomatic delegates. To ensure exchanges of information and to maintain contact, most societies – even preliterate ones – provided representatives with a safe-conduct. This inviolability has been reinforced by religion, emboldened by customary practice and invigorated by the principle of reciprocity. Moreover, over time, these sanctions became incorporated into national legal systems and widely accepted international practices. (Frey *et al*, 2018).

The Juristic Basis for Diplomatic Immunity

The two primary sources of Islamic jurisprudence, the Noble Qur'an and the Sunna, and the consistent practice of Muslim heads of state (Khulafa), a secondary source (Hallaq, 2009), unequivocally establish the immunities of diplomats in legal theory and practice. There exist numerous references in both the Qur'an and the Sunna to the immunity of diplomats, their staff, and accompanying individuals. According to these sources, diplomats have the right to immunity from prosecution, convenient treatment and protection, and freedom from arbitrary arrest and detention (Abusulayman, 1993; Al-Abyari, 1955).

Apart from this, Islamic jurisprudence authorizes the head of state (the Khalifa or Imam) to join legally binding treaties. In this context, the 1961 Vienna Convention on Diplomatic

Relations (Denza, 1998) and the 1963 Vienna Convention on Consular Relations (Aceves, 1998) confer upon diplomatic envoys absolute immunity from arrest and prosecution. More to the point, the immunities provided in the 1961 Convention on Diplomatic Relations are, *inter alia*:

- (1) Article 29, the inviolability of diplomats, including their arrest and detention;
- (2) Article 31, immunity from criminal prosecution of the diplomats;
- (3) Article 37, immunity from criminal prosecution of the administrative and technical personnel of the mission; and
- (4) Articles 22, 24, and 27, on the inviolability of the diplomatic premises and the correspondence and archives.

In Articles 41 and 43, the 1963 Convention on Consular Relations stipulates immunity to consular officers and employees concerning activities done regarding their job description. Pursuant to these immunities, the 1961 Convention on Diplomatic Relations obliges a signatory state under Article 29 to take "all appropriate steps" and to employ "all practical means" to safeguard diplomats. The stipulations as mentioned earlier are in harmony with Islamic jurisprudence and binding upon Muslim states (those who declare themselves to be Islamic). Consequently, any violation to them constitutes a violation not only of conventional international law but also of Islamic jurisprudence (Averroës, 1996).

Numerous verses in the Quran emphasize the notion of Amaan, or safe conduct, which comparatively constitute the basis of diplomatic immunity. For instance, verse (91) in the chapter (16) reads: “O believers, fulfill the covenant of Allah when you have taken it, and do not break oaths after their confirmation while you have made Allah, over you, a witness. Indeed, Allah knows what you do”. The diplomatic envoy is the recipient of safe conduct which is a legally binding entitlement that requires the hosting state to safeguard the envoy till leaving its lands. The hosting state cannot under any circumstances dishonour the Amaan. However, it may repudiate it and oust the envoys (Dembinski, 1988). Even though some commentators argue that there is a limitation to the categorical immunity if they are involved in one of the Hudud offenses (Fixed-punishment offenses), there is no particular declaration in the Quran nor the Sunna regarding that alleged limitation (Averroës, 1996). Hence, Hudud offenses do not stand as an issue in this context.

The Qur’an in Chapter An-Naml [27, 22-44] validates that thesis in its narration of the exchange of emissaries between the Prophet Sulaiman (Solomon) (992-952 B.C.) and Bilqis, Queen of Sheba. The latter is reported to have dispatched emissaries with gifts to the former, who deemed it an attempt to bribe him and therefore a flagrant insult. Hence, the gifts were rejected, and the delegation was permitted to depart. According to the Qur’an, the reply of Sulaiman was as follows: "Do you

provide me with wealth? But what Allah has given me is better than what He has given you. Rather, it is you who rejoice in your gift. Return to them, for we will surely come to them with soldiers that they will be powerless to encounter." {27:36-37}. Evidently, even when Prophet Sulaiman was resentful, he only asked the return of the emissaries to their sending land.

Consequently, the abovementioned verses unequivocally illustrate that exchange of emissaries was the normally employed mechanism for official diplomatic communication between Muslim and non-Muslim heads of state. Moreover, emissaries were not held accountable for the messages or acts conducted by their sending state and even were provided with immunity from the iron fist of the host state. Accordingly, the Qur'an stipulates two-part mandate that every Muslim state (especially those who declare themselves to be Islamic) must abide by; safety must be conferred upon diplomatic envoys, and the only plausible measure to be taken against them is seeking their safe departure. Additionally, such a mandate is explicitly manifested in the authentic Sunna as will be explained in the following lines.

Prophet Muhammad signed the treaty of Hudaibiya with the Meccan Quraysh tribe in A.D. 628. During the negotiations with Quraysh, Prophet Muhammad employed two envoys who were sent to Mecca on consecutive missions to pave the way for the conclusion of the treaty. One of them was 'Uthman ibn Affan, who later became the third Khalifa. When the news reached the Prophet that 'Uthman was murdered, the

negotiations were deemed broken, and the Muslim troops were declared in a position to attack. (Ibn Hishām *et al*, 1997) Obviously, the murder of the diplomatic envoy 'Uthman was deemed a *casus belli* or an act that provokes or is used to justify war. However, shortly after that Quraysh declared that 'Uthman was alive and his status as an envoy was observed. This led to the resumption of the negotiations between the two parties. Subsequently, Quraysh dispatched to Muslims their negotiator, Suhayl ibn 'Amr, who was received as an envoy and granted Amaan (Ibn Hishām *et al*, 1997).

The treaty of Hudaibiya afterward was ratified by Prophet Muhammad and Suhayl (Ibn Hishām *et al*, 1997). Noteworthily, Ali ibn Abi-Taleb, who was the scribe of the treaty, also signed it as a witness. Ali became the fourth Khalifa after Prophet Muhammad and he is the companion that Shia Muslims believe to be the legitimate heir to the Prophet (Jafri, 1979). The incident of the treaty of Hudaibia, as well as its preliminary course of negotiations unequivocally, exemplify the inviolable status of diplomatic envoys. This incident, moreover, clearly demonstrates that Islamic jurisprudence recognizes the principle of *pacta sunt servanda* “treaties shall be complied with” and it has been faithfully adhered to in practice by Prophet Muhammad and his companion

s. Furthermore, the fact that the treaty of Hudaibiya and its preliminary negotiations were witnessed and explicitly approved by the Prophet and his companions makes them of

great significance to all Muslims. Subsequently, the precedent of the sanctuary, analogous to that of nowadays embassies, was established when Muslims returned to Mecca. Before opening Mecca, it was announced: "O people of Quraysh! He who enters Abu-Sufyan's house is safe and he who remains in his home is safe and he who enters the Mosque is safe". Prophet Muhammad afterward declared forgiveness for all Meccans who had fought and persecuted him and early Muslims (Ibn Hishām *et al*, 1997). In addition to that envoys were allowed to express and practice their religion freely, as was the case with the delegation of Christians of Najraan who were reported to have held their services in the mosque of the prophet in Medina, which is believed to be the second holiest mosque for Muslims (Ibn Hishām *et al*, 1997).

Notably, Al-Tabari, in his encyclopedic study of History, points out that solely under exigent circumstances envoys may be seized (Fishbein, 1997). The incident referred to here is the seizure, yet without any physical harm, of the envoys of Mecca during the negotiations on the treaty of Hudaibiya because the Meccans had reportedly seized the Muslim envoys. Recourse was only made to that to guarantee the liberation of Muslim envoys. This is evidenced by the fact that the Meccan envoys were released once the Muslims were too (Ibn Hishām *et al*, 1997). Prophet Muhammad observed these conducts at a point of time when violations against emissaries were not so uncommon in the Arabian Peninsula.

Above all, Prophet Muhammad upheld this model even in the case of Wahshi, the Abyssinian ambassador who had previously killed one of the Prophet's uncles. When Wahshi's letter of credence was exhibited, the Prophet announced that foreign envoys should be accorded the same treatment as Muslim envoys (Ibn Hishām *et al*, 1997). This announcement evidently establishes the sanctity of even those envoys who have committed acts of transgression. The Prophet's statements and deeds unequivocally affirm the principle of diplomatic immunity and do not in any way place an exception on it, which is in total conformity with the Qur'an. The works of several reliable Muslim jurists confirm that envoys from as well as to Muslim heads of states have been plentiful across the centuries. These diplomats were afforded immunity as well as for their families, assistants, and staff. Hamidullah concludes: "Envoys, along with those who are in their company, enjoy full personal immunity: they must never be killed, nor be in any way molested or maltreated (1973, 139)."

Contemporary Immunity-related Legal Issues

The detention of foreign diplomats constitutes a violation of Islamic jurisprudence, and conventional international law. Additionally, their detention constitutes an offense under Islamic criminal jurisprudence due to the absence of any legal grounds (Abdel Haleem, 2003). The detention of diplomats and individuals entitled to diplomatic immunity constitute an international crime under the provisions of the 1972 convention

on the prevention and punishment of crimes against internationally protected persons, including diplomatic staff (Härter, 2012). Moreover, the detention breaches the principles encapsulated in the 1978 draft Convention on the Prevention and Suppression of Torture (Ledwidge, 2006). The authorities hold the unshrinkable responsibility to prevent and deter such crimes, and their failure to do so constitutes a violation of Islamic criminal jurisprudence and international criminal law.

Furthermore, any emerging state that aspires to be recognized and become a member of the international community is expected to observe the established various international conventions on the protection of human rights, including the 1948 Universal Declaration of Human Rights (Tābandah, 1970) and the 1966 International Covenant on Civil and Political Rights (Joseph *et al*, 2000). These instruments prohibit states from committing "arbitrary arrest and detention," and oblige them to observe fundamental human rights. These and other instruments are to be abided by Islamic states (those who declare themselves to be Islamic) under conventional international law without distinction as to whether the state is engaging in a commission or intentional omission (Bassiouni, 1980).

Apart from that, the signing of amity treaties between an Islamic state and any other state renders the latter and its citizens to be deemed as allies or *Hulafaa* (Tritton, 1970). In this regard, Prophet Muhammad has stated: "Whoever enters into a pact

with a people should neither breach its terms nor transgress against them until it expires or it is returned to them in reciprocity." (Al-Bukhari) Consequently, the citizens of allies are thus entitled to the fulfillment of the stipulations of any treaty in force and shall not be subjected to any treatment contrary to it, even in the case of the treaty's cancellation or renunciation as long as they have not been safely returned to their country of origin. Espionage, which is commonly invoked as a pretext to legitimize the detention of a foreign state's diplomats, in any of its possible meanings is a Taazir offense according to Islamic criminal jurisprudence, i.e., a discretionary crime of which its prosecution is waivable (Bassiouni, 1982). Needless to say, abiding by the norms of diplomatic immunity is, per se, essential for peacebuilding as it ensures maintaining diplomatic relations.

Conclusion and Recommendations for Further Research:

The above study shows that even though diplomacy is not an Arabic term, there is an incontestable harmony between the ultimate objectives of diplomacy and those of Islamic jurisprudence, and there exists evident essential resemblance between the established diplomatic practices and the recommended acts in Islamic jurisprudence for building just and lasting peace.

Moreover, this research paper concludes that the normative principle in Islamic jurisprudence, as far as external relations are concerned, is peace and combative defensive fighting is only permitted as a last resort after exhausting all the

diplomatic means to avoid it. Additionally, it concludes that Islamic jurisprudence as such, based on its primary and secondary sources, recognizes and acknowledges diplomatic immunities and privileges. Therefore, this chapter establishes that any self-claimed entity, state or group, that proclaim to be acting in the name of Islam while violating such foundational principles is automatically delegitimized in attributing its violation to Islamic jurisprudence.

In light of the previous extrapolation, it is safe to state that there exists a dire and urgent need for a serious academic discussion of the management of external relations, in general, and diplomacy, in particular, in Islamic jurisprudence. Given the richness of the Islamic jurisprudential literature on conducting external affairs, contemporary Muslim scholars bear the responsibility to exercise Ijtihad (Independent Legal Reasoning) to contribute to the richness and development of the disciplines of International Relations and Diplomacy. The lack of contemporary and modern systematic study of the management of external relations in light of the salient maxims of Islamic jurisprudence has led to the misinterpretation and manipulation of the core objectives of the Islamic jurisprudence by extremist groups that claim to be acting in the name of Islam and Muslims. Clearly, Al-Azhar represents such a stronghold of Ahl as-Sunnah wa al-Jama'ah that continues to stand against misconceptions and clarifies the right and bright injunctions of the Noble Islamic Sharia. For this, I highly recommend the establishment of Al-

Azhar Global Centre for Conflict Analysis and Peacebuilding, as well as the incorporation of the study of International Relations into the curricula of Al-Azhar University.

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