



Theory of International Relations in Islam

*Labeeb Ahmed Bsoul, Ph.D.
Qatar University*

HISTORY OF INTERNATIONAL RELATIONS IN ISLAM¹

In international relations, known in Arabic as “Mu‘amalat”, or in Islamic law as *Siyar* (Islamic international law) evolved in the second half of the second century and became a branch of Islamic law. *Siyar* deals with the mutual relations between Muslims and non-Muslims. Since the opinion of classical scholars covers these issues of mutual relations, it is important to rely on their interpretation and the conclusion they draw from those historical experience teaches us that what are important are the classical scholar’s interpretations. Equally important is the way these interpretations evolve over time.

In order to discuss the nature of the modern understanding of international relations along with the role Muslims have played in the last two decades it is essential to discuss the early evolution of relations between Muslims and non-Muslims. Since the collapse of the Soviet Union, the notion of an Islamic threat to world peace and security has become even more highlighted. In general, this sentiment has been perpetuated by Western Orientalist writers who continuously misconstrue many Islamic precepts. A good example of one of these precepts would be the idea that a Muslim bears a religious duty to kill any unbeliever when jihad breaks out.⁵ Furthermore, Western writers argue that Islam was spread by brute force and compulsion.⁶ On the contrary, some other Western scholars, who have a deep appreciation for Islamic thought and teaching, argue that European scholars’ claim that Islam is a religion of violence spread by the sword is a distortion. The aim of this study is to reflect upon the idea of misconceptions about Islam and Muslims by some Western Orientalist scholars⁷ and illustrate that some Western scholars’ opposition to idea of misconception.⁸ For example, Sir Thomas Arnold argues that the expansion of Islamic religion has transpired through peaceful methods, particularly preaching.⁹ The views of scholars who adopt a fair understanding and interpretation of Islam have become a minority within Western scholarship and popular views of Islam. Bernard Lewis has propagated these views throughout



the Western world and have used them as a hegemonic tool to reflect on Islamic faith.¹⁰ They are identified as the 'oriental' schools of thought that are responsible for the fabrication of facts and misinterpretations of Islam and Muslims.¹¹ The number of Western scholars who misinterpret Islam is steadily increasing as Islam has garnered more attention since September 11. The works of the late Edward Said on Orientalism; *Covering Islam and Culture Imperialism*¹² extensively dealt with this phenomenon or idea and there is no need to repeat the themes and the focus of his work, except to say that the driving force behind this misinterpretations of Islam is precisely and implicitly anti-Islamic and the political interest of a right wing Judeo-Christian claim.

Since Islam is perceived by a number of prominent Western scholars as a religion of violence and the sword, it is essential to examine the other viewpoint: how Muslims see their relations with non-Muslims. According to Islamic sources and traditions, Islam demonstrates the principle of international relations among nations in terms of relations between *mu'minun* (believers), and *mu'abidun* or between *mu'minun* and people without 'abd (covenant).¹³ Furthermore, these relations are divided into three categories, *muharibin*, (people in constant war), *abl al-'abd* (people in covenant with Islam) and, *abl dhimma* (the tolerated, respected, and protected) non-Muslim subjects under Islamic authority who are offered protection and peaceful relations in exchange for acceptance of the Muslim authority and payment of *jizya* (poll-tax).¹⁴ Based on the above categories, Muslim scholars divide the world into two, known as *dar la-Islam* (abode of Islam) and *dar al-harb* (abode of war or non-Muslim territory hostile to Muslims). A question might arise as a result of the Muslim division of the world into two worlds. The simple answer to this type of question is that, since Islam is a universal message and its rulings cover and refer to all people without distinction and without favoring one group or race over. Islamic law aims to establish one society under one system. Yet, the Islamic ruling did not reach all the parts of the world nor did it have a permanent authority over the globe. Therefore, Islamic law was not able to prevail in all places except in its own territory, know as *dar al-Islam* whilst the places the Muslim law did not reach was known as *dar al-harb*.¹⁵

RELATIONS BETWEEN MUSLIMS AND NON-MUSLIMS¹⁶

After thirteen years of hardship, torture, agony and collective and individual suffering on the part of the Muslims in Mecca, the Prophet decided to emigrate in order to protect his followers from harassment



and persecution. The place he chose as refuge turned out to be Yathrib (later called Medina), where the Prophet and his followers began to conduct their lives in accordance with the political and religious edicts of Islam.¹⁷

Islam establishes the contentious foundation of relations between people on the basis of whether they are believers or non-believers.¹⁸ It has been stated by 'Abdullah ibn 'Abbas that the unbelievers in Yathrib were divided into two categories in terms of their relations with the Prophet and the believers. In the first category were the *mushriki ahl harb* (unbelievers from among the people in conflict), while in the second group were the *mushriki ahl 'ahd* (unbelievers from among the people of truce). Essentially, the division was between those who fought the Prophet and those who did not.¹⁹

Ibn Qayyim, in his *Zad al-Ma'ad*, indicates that relations between the Prophet and the unbelievers remained ill-defined until a portion of *surat* "al-Tawba", (Q. 9: 1-4) in the Qur'an was revealed,²⁰ dividing unbelievers into three groups: *muharibun* (those in a state of war with Muslims), *ahl al-'ahd* (people in a treaty relationship with Islam), and *ahl al-dhimma* (non-Muslims who are protected by a treaty of surrender). In essence, therefore, the non-Muslim opposition to the nascent Islamic state could be divided into two: the *ahl al-'ahd* and *ahl al-dhimma*, who had reached an agreement with the Muslims on the one hand, and the *muharibun* who maintained hostile relations with the Prophet on the other. Hence, the Prophet always had three groups of people to deal with: believers who accepted him as Messenger of Allah, known as Muslim *mu'minun* (believing Muslims), those who were *musalim amin* (those who were not Muslims but were securely at peace), and the *kha'if muharib* (fearful combatants).²¹

These relationships lay at the heart of the system of relations that the Prophet was developing, and that emerged in subsequent decades as the bipartite division of the world into *dar al-Islam* (the territory of the Islamic state) and *dar al-harb* (enemy territory). At the same time it had to address the status of people who did not fully belong to either territory. This points to the special character of *siyar*, for the Islamic law of nations applies both within and without *dar al-Islam*. According to Muslim tradition, Islam is a truly universal religion that addresses all the peoples, and its rulings should apply to all regardless of their tribe, nation or race. The goal of the Shari'a is to establish one human society ruled by one system.²² This goal, however, has never been attained, since Islam has never had any control over other nations, nor has the



Shari'a become the religious code of the entire world. Given existing political and social circumstances, the Shari'a could only be applied in places where Islam was the dominant religion, or where the majority of the people follow Islam and accept its rulings.²³

On that basis Muslim scholars divided the world into two "worlds," one known as the *dar al-Islam*, encompassing all of the *bilad al-Islam* (Muslim world), where the rulings of the Shari'a apply, and the other made up of all the nations where law is based on rulings other than those of the Shari'a, called *dar al-harb* (territory of war) in recognition of the state of hostility that characterized Muslim non-Muslim relations in the first centuries of Islam.²⁴ The legal term *dar* in Islam refers to a territory or region, or the states that form part of these according to the constitutional and international law.²⁵ Ibn 'Abidin, for one, defined *dar* as a specific territory that is subjugated by Islam after being wrested from unbelievers. At the same time, it does not necessarily mean a territory where mainly Muslims reside.²⁶

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

A. Dar al-Islam (The Territory of the Islamic State)

i. Definition of dar applied by early scholars to dar al-Islam:

Since Shaybani is the chief architect of *siyar*, I intend to rely on his work regarding the reference to legal definitions of technical terms that serve the objective of this study. According to Shaybani, *dar al-Islam* can be *dar* that comes under Islamic authority, or one where the *zukur* (emergence) of Islamic rulings apply,²⁷ or one where Muslims live in a state of protection. This allows for cases where non-Muslims reside in Muslim territory (the *ahl al-dhimma*), retaining their identity but constantly live in a full state of conquest.²⁸

Following Shaybani's explanation in his *Siyar al-Kabir* and the commentary of Sarakhsi on that work, we observe that *dar al-harb* can become *dar al-Islam* under any one of the following three conditions: i), if the people in a city at war with Islam become Muslims, and yet remain residents of that city — in which case the city would become a part of *dar al-Islam*;²⁹ ii), if this city or territory within the confines of *dar al-*



harb comes under the authority of *dar al-Islam* and the people remain non-Muslims — in which case the city will yet again become part of *dar al-Islam*; iii), if the city was under the influence of *dar al-Islam*, but came under the influence of *dar al-harb*, and then the Muslims redeem it.³⁰

Thus basically, if Muslims conquer any territory in the course of war and declare the authority of Islam and apply its rulings there, that territory becomes part of *dar al-Islam*,³¹ although the territory of war does not become *dar al-Islam* if the authority or influence of *dar al-harb* is not fully dismantled.³² In *dar al-Islam*, furthermore, when the rulings of Islam apply, "People of the Book" or non-Muslims who possess a scripture (*abl al-Kitab*)³³ become *abl al-dhimma*, and Islamic rulings apply to them.³⁴ Thus, a territory can become *dar al-Islam* regardless of the status of its inhabitants. Shaybani takes the extreme position and insists that a territory is defined as *dar al-Islam* even if all of its inhabitants were non-Muslim, as long as the authority belonged to Muslims and Islamic rulings were applied. Shaybani gives the example of a situation where a Muslim army enters the *dar al-harb*, with the permission of the caliph, and in taking possession of a city, finds that the inhabitants refuse to accept Islam. In this case the caliph will ask them to pay the *jizya* (poll-tax), and if they accept, then they may demand a *'abd* (covenant) allowing them to stay in their homes without any fear of threat or attack. If Muslims reside along with them in the same place in order to continue fighting with *abl al-harb* and the inhabitants of that place do not intervene, then there is no penalty if the commander changes their status to *abl al-dhimma*. As long as they accept the condition of application of Islamic rulings, their place, city or territory will become an Islamic city. In the event that a Muslim commander cannot apply the principles of Islamic rulings without the cooperation of the *abl al-dhimma*, then the commander should not or cannot sign or conclude an agreement, i.e., *'aqd al-dhimma*.³⁵ For if the Muslims are not capable of applying the rulings without the acceptance of the *abl al-dhimma*, then the territory or the city cannot be considered as *dar al-Islam*.³⁶

If Muslims are subjugated by the *dar al-harb*, after having lived under *dar al-Islam*, this does not change the status of the territory. Shaybani explains in his *Kitab al-Siyar* that this *dar* cannot become *dar al-harb*. Even if the *abl al-dhimma* violate the *'abd*, declare war against Muslims and conquer *dar al-Islam*, the Islamic rulings state that this *dar* does not become *dar al-harb* as long as the Muslims are protected as they would be under *dar al-Islam*.³⁷

Sarakhsi, for his part, comments that any place where Muslims



are subjected to a threat is a part of *dar al-harb*, since *dar al-Islam* designates a locality, place or post under the Muslim control and influence, the inference is that authority or influence is necessary for Muslims to feel secure.³⁸

Scholarly consensus sided with Shaybani regarding the definition of *dar al-Islam*. For example, Kasani indicates that there was no disagreement among his fellow Hanafi jurists (*ashab*) on the question of whether *dar al-kufr* (abode of polytheist) (Kasani sometimes uses this term in preference to *dar al-harb*) might become *dar al-Islam* whenever Islamic rulings are enforced or implemented there.³⁹ The Maliki jurists similarly define *dar al-Islam* as the *dar* where Islamic rulings are enforced and practiced.⁴⁰ Shafi'i jurists express a similar definition, saying that *dar al-Islam* is where Islamic principles are applied without *ghafir* (guards), grants of *mujir* (asylum) and without paying *jizya*. Furthermore, if the principles of Islamic rulings are implemented with respect to the *abl al-dhimma*, and as long as the *ahl al-bid'a* (people of heterodoxy) do not apply compulsion on the *abl al-Sunna* (people of tradition), then it is *dar al-Islam*.⁴¹ Lastly, any place where Muslims can implement the principles of Islamic rulings without any kind of fear becomes *dar al-Islam*.⁴² The Hanbali jurists defined *dar al-Islam* as the *dar* where the majority of rulings were Islamic in nature, as opposed to rulings of *kufr* (unbelief).⁴³ Thus Ibn Qayyim al-Jawziyya says that the *dar* of migration in the time of the Prophet was *dar al-Islam*, and that when the inhabitants of that place became Muslim, the entire territory became *bilad al-Islam* (Islamic territory).⁴⁴ He also indicates that *dar al-Islam* is the *dar* where Muslims reside and Islamic rulings are applied, and that if the rulings of Islam are not implemented, then that *dar* is not considered *dar al-Islam*. This is so even in the case of a neighboring city, such as Ta'if, which was close to Mecca when it came under Muslim rule but did not become part of *dar al-Islam* until some time later.⁴⁵ In the Zaydi school, *dar al-Islam* is defined in terms of the implementation of the promotion of Islamic principles and rulings under Islamic authority, along with the acceptance of other rulings such as those regarding *dhimma* and *aman*.⁴⁶

ii. *Definitions applied by modern Muslim scholars to dar al-Islam:*

According to 'Abd al-Qadir 'Awdah, *dar al-Islam* includes the territories where the principles of Islamic rulings are enforced or where Muslims are able to practice the legal rulings of Islam.⁴⁷ Thus any place or territory populated by a majority of Muslim residents, or any place that is conquered by Muslims and ruled by them (even if the majority of



its inhabitants are non-Muslim), as well as any place that is conquered and ruled by non-Muslims and where the Muslim residents are free to implement Islamic rulings, is *dar al-Islam*.⁴⁸ 'Abd al-Wahhab Khallaf, on the other hand, defines *dar al-Islam* as the *dar* where Islamic rulings are enforced on all its residents and the protection of Islam is extended to them, i.e., Muslims or *dhimmiyyun*.⁴⁹ Abu Zahra defines *dar al-Islam* as a state that is ruled by Islamic authorities and that maintains the full capacity to enforce or forbid all orders or rulings.⁵⁰ Finally, Muhammad Rashid Rida defines *dar al-Islam* as whatever territory is encompassed by the Islamic realm and where Islamic rulings are implemented and practiced.⁵¹

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

B. *Dar al-Harb (Enemy Territory)*

i. *Definitions Applied by Early Scholars to Dar al-Harb:*

According to Shaybani, *dar al-harb* (enemy territory) is the territory where the rulings, based on non-Islamic principles, are authoritatively implemented and enforced.⁵² Shaybani, furthermore, says that, even if a *dar* was part of the *dar al-harb* and the Muslims living there came to an agreement with the non-Muslims to the effect that the rulings of the *dar al-harb* would not apply to them, it would still be considered *dar al-harb*.⁵³ Sharakhshi, on the other hand, maintains that, in this case, the *dar* would become *dar al-Islam* only if the Islamic rulings are applied within the framework of the *dar*. Hence, if the Islamic rulings are not applied, then the *dar* would continue to be *dar al-Harb*, based as it is on a non-Islamic legal structure.⁵⁴

The safety of Muslims is a very important consideration in determining the type of *dar*, according to Muslim scholars. Shaybani explains that if the place of residence is not safe for Muslims then it is to be considered *dar al-harb*, since the only place that a Muslim may feel safe and protected is a territory under Muslim control.⁵⁵ Whenever a place where Muslims reside comes under threat, and where rulings based on



polytheism or a non-Islamic system are imposed, then, according to the majority of the Hanbali jurists, that place is defined as *dar al-harb*.⁵⁶

The scholars of all the other schools reached *ijma* (consensus) regarding the definition of *dar al-harb*. For example, Malik asserts that at the time when Muslims were living in Medina, prior to the capture of Mecca, Mecca was considered *dar al-harb*, because the system of law there was based on *jabiliyya* (pre-Islamic) customs.⁵⁷ Malik expresses himself vehemently on the question of whether relations with the people of *dar al-harb* are allowed, and maintains that Muslims should not visit of have commercial dealings with them in order to prevent the rulings of *dar al-harb* from being applied to their transactions.⁵⁸ This is also the opinion of Abu al-Walid Muhammad ibn Ahmad ibn al-Rushd (d.520/1122), who defines *dar al-harb* as the *dar* where the dominant rulings are based on polytheism.⁵⁹

The Shafi'i jurists took the same approach to the definition of *dar al-harb*, with Abu Mansur al-Baghdadi (d.429/1037) defining *dar al-harb* as the *dar* in constant opposition to *dar al-Islam*. Further, he says that *dar al-harb* is the *dar* where Muslims are prevented from practicing their faith freely and where they cannot enforce the Islamic rulings on *dhimmis* if there was a *dhimmi* presence among them.⁶⁰ The Hanbali jurists also define *dar al-harb* as a *dar* where the rulings of polytheism prevail.⁶¹ They, in fact, hold an extreme view of *dar al-harb*, defining it as the *dar al-taba'ud wa al-baghdad* (territory of separation and hatred), taking the word *harb* (war) in its most literal sense.⁶²

ii. *The Definition Applied by Contemporary Muslim Scholars to Dar al-Harb*

'Abd al-Qadir 'Awdah defines the *dar al-harb* as the *dar* that includes all non-Islamic territories that are governed by non-Muslims and where the laws enforced within that territory are based on non-Islamic sources. According to 'Awdah, whether these territories are governed by single or multi-party systems, and regardless of whether or not non-Muslims reside there, this territory is part of *dar al-harb* as long as the Muslims living there are incapable of enforcing Islamic rulings.⁶³ 'Abd al-Wahhab Khallaf, another modern scholar, for his part, defines *dar al-harb* as the *dar* in which Islamic laws are not enforced.⁶⁴ Yet, he also defines the *dar al-harb* as the *dar* that has peaceful relations with the *dar al-Islam*, acknowledging perhaps that the word *harb* should no longer be taken literally in modern definitions of the term.⁶⁵ Abu Zahra, nevertheless, claims that there is a difference of opinion among scholars in terms of defining the *dar al-harb*. One opinion, according to him,



defines *dar al-harb* as the *dar* exclusive of Islamic authority and therefore outside the reach of Muslim rulers. This *dar* has no covenant with Muslims. The second opinion, he says, is the lack of authority on the part of Muslim rulers does not automatically make a territory *dar al-harb*. There are three conditions that need to be met before one can declare a place *dar al-harb*: 1) if the power and authority belong to non-Muslims; 2) if the territory is settled by Muslims, but there is an expectation of enemy attack; and 3) if the Muslims, or *dhimmis* who continue to reside in the *dar* lack the protection that was accorded when the territory was part of *dar al-Islam*. Abu Zahra favors the second opinion over the first, and further explains that the third condition of the second opinion is meaningless since, in origin, the relations between Muslim and non-Muslim are supposed to be peaceful.⁶⁶

iii. Rules on how the Category of Dar al-Islam may be Changed

Dar al-harb can become *dar al-Islam* when the Muslims conquer it and impose Islamic law.⁶⁷ As was mentioned earlier, there is a consensus among scholars in both the early and modern periods regarding the condition of *dar al-Islam*: a *dar* becomes *dar al-Islam* whenever Islamic rulings are applied and enforced.⁶⁸ A question remains. Can part of *dar al-Islam* become *dar al-harb* in the event that Islamic authority is lifted? It would appear, at first glance, that there are three conditions under which such a change of designation may take place, and there are: 1) if the *dar al-harb* defeat Muslims and take full control of their territory; 2) if the people apostatize from Islam and take full control of their territory and apply the laws of polytheism (*kufur*); and 3) if the *ahl al-dhimma* abolish an already existing covenant and are victorious in their struggle against Muslim authority.⁶⁹

We will begin with the opinion of Shaybani first. Shaybani and Abu Yusuf share the same opinion regarding when the *dar al-Islam* may become *dar al-harb*. According to both these Hanafi jurists, this may take place whenever non-Islamic laws are applied and enforced in a given territory. This is the case whether or not the territory is physically connected with *dar al-harb* or whether or not Muslims or *dhimmis* remain there.⁷⁰

Furthermore, both Abu Yusuf and Shaybani maintain, wherever the rulings of polytheism are enforced, the authority in that particular place has by definition come under a non-Islamic system and the place becomes *dar al-harb*, in the same way a place becomes *dar al-Islam* as wherever the authorities enforce Islamic law.⁷¹

Both jurists base their opinions on the legal device known as *qi-*



yas (analogy).⁷² Since *dar al-harb* becomes *dar al-Islam* whenever the Islamic *ahkam* (rulings) are enforced there, regardless of the presence of polytheists or whether that *dar* is connected with *dar al-Islam* or not, the same thing should by analogy, be true of *dar al-Islam*.⁷³

Along the same lines, Kasani, another Hanafi jurist, argues that the original concept of the two *dars* is derived from the true determination and reflection in the fullest sense of what Islam and polytheism stand for. Any distinction between the two comes down to the types of rulings each *dar* implements. Whether it is 'Islam' or 'harb' that specifies it, as Abu Yusuf and Shaybani point out, it is the conditions or phenomena associated with the type of *dar* that define it. Kasani offers a few examples to illustrate his point. He equates *janna* (paradise) with *dar al-salam* (house of peace) — because of the safety and security that are associated with it, and then contrasts this with *nar*, called *dar al-bawar* (hellfire) because of the perdition that characterizes the latter. Similarly, the presence of Islam or disbelief reflects the rulings that are enforced in a particular place. If the laws of a *dar* are derived from polytheism then it becomes *dar al-kufr* or *dar al-harb*, thereby validating the categorization, just as a *dar* will become *dar al-Islam* if it implements and observes genuine Islamic rulings.⁷⁴

The above-mentioned opinions of Hanafi jurists came into play later when jurists of that school engaged in *ifta'* (the exercise of issuing a *fatwa*, or legal opinion of a *mufti* regarding the Mongols' conquests of Islamic territory in the 13th century. Ibn Nujaym indicates that in his days, after the *fitna* (turmoil or socio-religious strife) of the Mongols, certain provinces of *dar al-Islam*, such as Khawarizm, Transoxiana, and Khurasan and its surroundings, were regarded as having become *dar al-harb* because they were governed under the Mongol law *yasa*,⁷⁵ even though the majority of the population was still Muslim.⁷⁶

The opinion of Abu Hanifa is recorded by Shaybani in his work *Ziyadat*.⁷⁷ According to the former, a *dar* becomes *dar al-harb* under three collective conditions. The first condition is the imposition of a legal system that leaves Muslims without recourse to Islamic judges, that prorogues Islamic laws and imposes non-Islamic law on Muslims. Furthermore, the rulings that are applied will, in this situation, be contradictory to Islamic principles. For example, Islam forbids *riba* (usury or unlawful interest proscribed by the Shari'a law), whereas the predominant law in *dar al-harb* permits it. This situation is similar to one where the Qur'an condemns *zina* (sexual intercourse outside a valid marriage contract) while the new law of the land may permit it. The same thing



may be said of laws on consuming alcohol, eating pork and gambling. However, according to Ibn 'Abidin, if the rulings (*ahkam*) of both Islam and polytheists become permissible, the *dar* may not be considered *dar al-harb*.⁷⁸

The second condition, according to Abu Hanifa, is where the *dar* is adjacent to or somehow connected with part of the *dar al-harb*, without any Islamic province separating them and capable of coming to the aid of their fellow Muslims in the *dar* in question. Thus geographical communication with *dar al-Islam* can be a mitigating factor.⁷⁹ Moreover, if a non-Islamic territory or province surrounds an Islamic territory and yet has no *sultan* (supreme ruler or sovereign) set over it, the Islamic territory will not be considered *dar al-harb*.⁸⁰ Ibn 'Abidin indicates furthermore that the sea is not considered a barrier, nor can the sea be under the authority of *dar al-harb*, because it cannot be physically subjugated.⁸¹

The third condition is where the *dar* offers no protection to Muslims or *dhimmis* and where the only protection is that afforded by polytheist rulings. Polytheist protection of both Muslims and *dhimmis* is unstable, and besides, the loyalties of these continue to belong to the Islamic state. They only continue to reside within the *dar al-harb* under the covenant of the government of *dar al-Islam*. Hence their loyalties are not determined by their residence, even though they may dwell in territory outside of *dar al-Islam*.⁸²

In his work Sarakhsi addresses some of the disagreements between Abu Hanifa and his disciples, especially Abu Yusuf and Shaybani, regarding the criteria to be used in determining the status of a *dar*. The latter had categorized the status of the *dar* on the basis of whether or not the authority of Islam had been established. However, Abu Hanifa placed great importance on the nature of this authority. This is because he believed that, once a territory was part of the Islamic realm, nothing could dismantle that achievement without one of three conditions coming into play. For example, if the territory is not connected with *dar al-harb*, and its residents are subjugated because they are surrounded by Muslims from all sides. This is true if the residents be they Muslim or *dhimmi* were granted protection, which does not indicate whether they were fully subjugated by them. Similarly if they took the wealth of a Muslim in *dar al-Islam* which is impossible since it could not accomplished authority or protection that in their *dar* because the subjugation is not present.⁸³ Abu Hanifa's opinion regarding the status of the *dar* is based on a theoretical rather than an actual model. This is because he considers it possible for Muslims or *dhimmis* to remain in *dar al-harb*



where the law enforced is non-Islamic. For him there is no reason why, by remaining residents of that dar (whether Muslim or dhimmi), they will be forced to abandon the religious practices they observed before their dar become *dar al-harb*. According to Abu Hanifa, the dar will remain under the authority of *dar al-Islam*.⁸⁴

A *fatwa* was issued by Hafiz al-Din al-Bazzazi, known as Ibn Bazzaz al-Kardari (d. 827/1423), based on the opinion of Abu Hanifa, at the time when the Mongols took over some of the Muslim territories.⁸⁵

*The fatwa expressed the opinion of Abu Hanifa, which was that the occupied territories remained part of dar al-Islam. This fatwa, issued in the fifth century (A.H.) by Hanafi jurists at the time of Mongol invasion, defined the occupied territories as still Islamic since they had no connection with the dar al-harb (enemy territory) and because polytheist rulings did not prevail there. Another consideration was the fact that the judges there continued to be Muslim, just as the people under Mongol control remained Muslim. Muslim governors were even put in charge of the civil government, despite the fact that necessary obedience had to be shown to the Mongols. Muslims were furthermore allowed to perform their religious duties, while any obedience to polytheists was defined as maslaha (self-preservation) or dissemblance. Thus, as Abu Hanifa indicated, as long as any part of an 'illa (effective reasoning) remained in force and the territories did not become part of dar al-harb, a territory's status as dar al-Islam would prevail. In this case, since the Muslims were capable of conducting their affairs according to Islamic principles, the dar could not be called dar harb.*⁸⁶

A similar approach was adopted by 'Abd al-'Aziz al-Hulwani (d. 448 H.), one of the leading Hanafi scholars of his time. He indicated that a dar would become *dar al-harb* if polytheist rulings were implemented and none of its rulings were based any longer on Islamic law (apparently acknowledging by this that Islamic law can only partially be imposed, and yet still be said to create the conditions for *dar al-Islam*). Furthermore, if the dar was connected with the *dar al-harb* where neither Muslims nor *dhimmis* remained under the protection of Islamic law, the dar would become *dar al-harb*. The dar would, however, remain a part of *dar al-Islam* if any one of the conditions set out by Abu Hanifa were not met in the case of subjugation by non-Muslims.⁸⁷

According to Hanafi jurists, furthermore, once a dar becomes a part of *dar al-harb*, the *hudud* (legal punishments prescribed by the



Shari'a law), would no longer be enforced. However, their application would resume once the territory reverted to *dar al-Islam*. In the event that Muslim judges are assigned to enforce Islamic rulings and should Muslims receive a guarantee of protection, then the *dar* will be considered *dar al-Islam*.⁸⁸ Shaybani's opinion regarding this situation is that, whenever polytheists conquer Muslim territories, these territories will become part of the polytheist *dar*.⁸⁹ Malik, Shafi'i, and Ibn Hanbal favored Shaybani and Abu Yusuf's opinions over those of other jurists, i.e., that the *dar* would only become polytheist, should polytheist laws come to override the Islamic rulings.⁹⁰

However, some Maliki jurists, such as Muhammad ibn 'Arafa al-Dasuqi (d. 1230 H.), insist that a *dar* cannot become a polytheist *dar* if Islamic rulings continued to be applied. Indeed, the simple fact of polytheists taking over the government is not enough for it to be considered *dar al-harb*. Regardless of whether some, all, or none of the Islamic rulings were applied, the *dar* would still not become *dar al-harb*.⁹¹ A similar stance was taken by some Shafi'i jurists, who argued that a *dar* with a Muslim population conquered by polytheists who enforced their own laws would remain part of *dar al-Islam* and this would not change its status. Zakariyya al-Ansari (d. 926/1520), one of the Shafi'i jurists who advanced this opinion, states that Muslims should continue residing in a *dar* after it is conquered by polytheists and that Muslims are prohibited from leaving that *dar* regardless of the type of rulings applied so as to maintain the status of that *dar* as *dar al-Islam*.⁹² Ibn Hajar al-Haythami (d. 974 H.) indicates that whenever a *dar* becomes *dar al-Islam*, it can never again become a polytheist *dar*, even if it were conquered and controlled by polytheists.⁹³

Shams al-Din al-Ramli (d. 1004 H.) expresses a similar opinion to that of his fellow Shafi'i jurists. He indicates that, for example, when a non-Muslim becomes a Muslim in the polytheist *dar* and manages to separate himself from the *harbis* (those who belong to *dar al-harb*), and yet cannot obtain Muslim aid and assistance to emigrate, then his status is acceptable, because the territory he is currently residing becomes *dar al-Islam*. However, if he were to leave that place, then it would become *dar al-harb*. Ramli states furthermore, in regard to a similar situation, that if in any place the same residents abstain from and do not affiliate with *harbis*, the place becomes *dar al-Islam*. He supports his opinion by referring to a *hadith* which reads, "al-Islam ya'la wa la ya'u'la"⁹⁴ (Islam is superior but nothing rises over it). This particular *hadith* was used and referred to whenever the jurists ran into a case similar to the conditional



status of the *dar*. Many jurists from all schools favored the opinion that a *dar* would remain *dar al-Islam*, despite its coming under the control of the polytheists. These included Abu Hanifa, Kasani, Rafi'i, Ramli and others. Al-Ramli defended these scholars by saying that, when they referred to *dar* as *dar al-harb*, that *dar* does not necessarily become *dar al-harb*, *ipso facto*.⁹⁵ Ramli's fatwa refers to the case of the Muslims in Andalusia (Spain) when the Christians took over Muslim territory. He states that it was then prohibited to leave that territory because the people who would replace them were not Muslim, and because, if they were to leave, then the existing *dar al-Islam* would become *dar al-harb*.⁹⁶

Rafi'i al-Qazwini (d. 632/1226) sets forth three categories for defining the status of the *dar al-Islam*: 1) that the *dar* must be populated by Muslims; 2) that it must be conquered by Muslims; and 3) that the *dar* must have been populated by Muslims who evacuated, so that it then came under the control of the polytheists. According to him, any one of these will render a *dar* as a part of *dar al-Islam*, even the third category, over which some of the earlier and later jurists differed. However, he narrows the third category by setting some conditions. For example, he explains that, if the polytheists prevent Muslims from staying in the territory under their control, then it will become a *dar al-harb*. However, if they do not force the Muslims to leave, then the *dar* will remain *dar al-Islam* despite the fact that the political control of the *dar* has been passed on to non-Muslims.⁹⁷

C. DAR AL-'AHD AND MUWADA'Á (TERRITORY IN A TREATY RELATION WITH ISLAM):

As was mentioned earlier, the *dar* that accepts and enforces the Islamic *ahkam*, and is under Islamic authority, is considered *dar al-Islam*, according to the opinion of the majority of Muslim scholars. These same scholars hold that the status of *dar al-Islam* can be attained in any of the four following ways: 1) the residents of a territory become Muslim and remain in their territory; 2) the territory is captured by force, but the government allows the Muslim to practice and enforce Islamic rulings; 3) the non-Muslim residents accept Islamic law under Muslim protection by becoming *ahl al-dhimma*; and 4) if the territory is conquered under a peaceful agreement where Muslims are allowed to settle and apply the *kharaj* (land-tax). In all other circumstances, the *dar* will remain *dar al-harb*. Furthermore, Muslim scholars have agreed that the world can only be divided into two parts, i.e., *dar al-Islam* and *dar al-harb*; there is no third type of *dar*.⁹⁸



However, the status of *dar al-harb* can further be modified as a result of whether or not a covenant or agreement exists with Muslim authorities. Early jurists, such as Shaybani and some contemporary scholars and jurists, thus distinguish between *dar al-harb*, *dar al-'abd* (territory in treaty relation with Islam), or *dar al-muwada'a* (territory in a temporary peaceful treaty relation with Islam for a fixed time).⁹⁹ Shaybani was among the first jurists to discuss this matter in his writings, though he sees *abl al-muwada'a* not as an independent *dar*, but as part of *dar al-harb*. In his commentary on Shaybani's work Sarakhsi endorses the latter opinion.

Shaybani maintains that, if any part of *dar al-harb* reconciles with Muslims by paying them a yearly *kharaj*, or a fixed tribute, in exchange for not applying the Islamic *ahkam* and for not imposing *dhimma* status on them, and if one of its residents enters *dar al-Islam* with considerable wealth, then according to that reconciliation agreement, he should be granted *aman* (safely or protection). Sarakhsi justifies the opinion of Shaybani by saying that in this case, whoever enters *dar al-Islam*, is safe and does not become a *dhimmi*, as long as he/she is not a *harbi* because the Islamic *ahkam* are not applicable to the people (*abl*) of *muwada'a*. Moreover, the *dar* does not become *dar al-Islam* under the terms of this reconciliation because it does not enforce the Islamic *hukm*, and thus remains *dar al-harb*.¹⁰⁰ Shaybani adds that if someone party to a *muwada'a* kills another party to the same in the *dar al-muwada'a*, he will not be subjected to *qisas* (legal punishment), although this would apply if he kills a *musta'min* (anyone who has been given the promise of security or safe-conduct by Muslims) in *dar al-Islam*. This is because, according to Sarakhsi, the *abl al-muwada'a* have no commitment to Islamic *ahkam* under the reconciliation agreement, so their *dar* is considered *dar al-harb*.¹⁰¹

Most contemporary scholars claim that *dar al-'abd* is an independent *dar* and that it is distinguished from the other *dars*, i.e., *dar al-harb* and *dar al-Islam*, and is, thus, a third type of *dar*, although some scholars claim that Shaybani and Shafi'i, in his *al-Umm*, indicate that *dar al-'abd* is a distinctive type of *dar*. Among contemporary scholars, Najib Armanzani¹⁰² insists that the relations between Muslim and non-Muslim nations are to be based on the *dar al-'abd*. Muhammad Abu Zahra, by contrast, maintains that the *dar al-'abd* is primarily a theoretical construct, but that it has existed in reality. He cites the examples of certain tribes and nations that did not submit fully to Islamic rulings and on whom these were not subsequently applied, because an *'abd* had been concluded and respected.¹⁰³ All of these scholars ultimately base their



opinions on the position of the Hanbali jurist Abu Ya'la.¹⁰⁴ However, other jurists claim that the *dar al-'ahd* should be considered *dar al-Islam*, because the Muslims never concluded any contract while they were in a position of power and strength.¹⁰⁵

The divergence in opinion between modern and early scholars regarding the status of the *dar al-'ahd* invites certain observations. First, as was mentioned earlier, scholars in the early period divided the world into two *dars*: *dar al-Islam* and *dar al-harb*, while later scholars (particularly in the twentieth century) identify a third, independent *dar*, namely *dar al-'ahd*. The early scholars, if they recognized a *dar al-'ahd* at all, saw it as falling within the *dar al-Islam*, based on the view that there must either be an agreement making the *abl-dhimma* a subject population. Otherwise, that population is simply no longer a part of *dar al-Islam* and is by definition part of *dar al-harb*.¹⁰⁶

Secondly, modern scholars claim that Shafi'i, in his *al-Umm*, saw the *dar al-'ahd* as an independent *dar*, but this is not strictly accurate. He does refer to a *dar al-sulb* in this work,¹⁰⁷ but his reference to it is not in the context of the division of *dars*. Rather he refers to this concept in discussing the conditions of the *abl al-sulb*, namely whether or not its non-Muslim residents were to pay *jizya* and become a part of *dar al-Islam*, subject to Islamic rulings. In such a case, he claims that their *dar* would become a *dar abl al-dhimma*. But if they submitted to Islamic rulings and authority they would become part of *dar al-Islam*. The intention of Shafi'i in stating this case has not been fully understood by modern scholars.¹⁰⁸

Thirdly, modern scholars repeat the same claim to *dars* and ascribe it to the followers of Shafi'i. This claim is given special attention by al-Mawardi in his *Abkam*.¹⁰⁹ There, Mawardi refers to the division of territory conquered by Muslims, and he keeps to the standard definitions. In fact, he refers to the possession of territory without mentioning any type of *dar* division.¹¹⁰

Fourth, the claim by modern scholars regarding the opinions of early scholars such as Abu Ya'la in one of his treatises¹¹¹ is spurious, as the latter does not see a third *dar* existing alongside *dar al-Islam* and *dar al-harb*. However, modern scholars' appeal to earlier secondary sources is an effort to fit today's realities, for the Muslim world after all has to deal with non-Muslims in terms of foreign relations, trade and boundaries that are no longer the same as they were during the earlier period of Islam. For example, there has been an increase in the literature of *ijtihad* (independent legal reasoning engaged in by a mujtahid) on how



to deal with new cases that have emerged in today's world and what the role of Islam is in this new cases.¹¹²

Lastly, the claim made that Shaybani was one of the initiators of the third type of *dar* has no ground in evidence since the commentator on his treatises, al-Sarakhsi, indicates that the existence of *muwada'a* with non-Muslims does not necessarily illuminate the nature of *dar al-harb*: for *dar al-muwada'a* is *dar al-harb*, simply because Islamic rulings do not apply there. The opinion of Abu Zahra, who regards the United Nations as an example of *dar al-'abd*, contradicts his own basic claim that *dar al-'abd* is an independent *dar*. As was mentioned above, the third *dar* did not exist and it is only a product of modern scholars' personal interpretations. The only two *dars* that were recognized by early scholars were the *dar al-harb* and *dar al-Islam*, while the third *dar* is modern scholars' invention.¹¹³

Western scholars' definitions of *dar al-Islam* and *dar al-harb* make no reference to the possibility of a third independent *dar al-'abd*, although the latter is discussed, and usually in terms of particular early scholars' opinions. *Dar al-'abd* was considered as a temporary and often intermediate territory between *dar al-Islam* and *dar al-harb*.¹¹⁴

D. THE ORIGIN OF RELATIONS BETWEEN *DAR AL-ISLAM* AND *DAR AL-HARB*:

The origin of Muslim relations with non-Muslims regardless of religion, color, race or language is based on peaceful, not hostile relations. According to Ghunaymi a modern Muslim scholar, the relationship between Muslim and other nations is based on how the other nations perceive Islam.¹¹⁵ If these nations have the intention of arriving at a peaceful agreement with Muslims such as a *muwada'a*, then this would determine the type of mutual relations. Upon the establishment of such relations with given nations, Muslims are prohibited from taking any type of offensive action against them.¹¹⁶ According to the Qur'an:

*Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your home. Verily, Allah loves those who deal with equity.*¹¹⁷

As this verse states, *ikrah* (hatred) and *iqsat* (equity) are contradictory states. Therefore, in order for Muslims to gain eternal reward, they have to abide by the command of God.¹¹⁸ There should be no more hatred in religion than there should be compulsion.¹¹⁹ According to Shaybani, if Muslims meet with non-Muslims who are ignorant of Islam,



Muslims should not consider fighting with them until the message of Islam has been conveyed to them first.¹²⁰ That is also what the Prophet ordained to the Muslim army generals:

*Whenever there was a battle between Muslims and non-Muslims the Muslim general had first to convey the message of Islam, because Muslim's ultimate goal is to convey the message of Allah. The unbelievers should realize that the Muslim's intention in fighting is not desire for wealth or to capture booty.*¹²¹

The primary object was seen therefore as informing the "infidels" about the message of Islam, and if this was accepted, then the need for battle and loss of life and property would be obviated. Prior to all of this, Muslims should direct and conduct their *du'a'* (prayers) or preaching with others under the article of faith, i.e., *hikma, wa mar'iza al-hasana* (wisdom and fair preaching).¹²²

According to the Hanafi jurist Abu al-Qasim al-Simnani (d. 499/1105), whoever is invited to Islam should know why he was invited and understand its rulings and principles. If he becomes a Muslim, then he will enjoy freedom of movement, though he should be invited to live in *dar al-Islam*. In case he refuses to adopt the faith, he will be asked to pay *jizya*, and if he accepts that arrangement he will be left alone, unmolested. But in the event that he refuses to pay *jizya*, he will be fought against, which is truly the last resort.¹²³

A similar explanation is given by the Hanafi scholar al-Kasani (d. 587/1191), who indicates that the relations between Muslim and non-Muslims should be based on fair preaching first. Muslims should not fight against or attempt to conquer any territory without first inviting the people of that territory to accept Islam and preaching its message fairly "by the tongue".¹²⁴ It is quite essential, according to Kasani, that Muslims should not initiate or go to war without proper and fair preaching beforehand. Preaching according to him is divided into two kinds: one is *binan* (fight) and the second is *bayan* (tongue); the latter is far preferable since the consequences are less severe for both parties.¹²⁵

These types of relations are subject to transformation in a war. Where the opponents are those who have rejected *jizya*, or if they are apostates or idol worshipers, then their only choice is to accept Islam. If they refuse, then they are subjected to war.¹²⁶ According to Shaybani, Abu Yusuf was in favor of the explanation that from the Arab idol worshipers, nothing is acceptable, except conversion to Islam or war.¹²⁷



CONCLUDING REMARKS

This survey of the evolution of *siyar* and of its key concepts *dar al-harb* and *dar al-Islam* shows how highly complex legal structures evolved out of a very localized effort at dealing ethically with the enemies of the nascent Islamic state. The simplicity of the bipartite world view belies the work that went into developing an ideal of co-existence that had at its core the preservation of Muslims' freedom to pre-set and ensure fair dealings with other sovereign nations and national groups.

Indeed, a constant refrain in the debate over *dar al-harb* and *dar al-Islam* is the over-riding concern for "protection" or safeguarding Muslim territory and communities of *dhimmis* with whom Muslim leaders had entered into agreements. That such a commitment should have been paramount in the face of constant conflict and shifting boundaries (even if the discussion is largely theoretical) is testimony to the respect in Islamic law and culture for contractual obligations.

From my own understanding of the classical and contemporary literature, the question of authority is based on three issues: (1) the tradition that justifies leadership in the Islamic community should be from Quraysh (Mecca); (2) on Jihad; (3) blood relationship. These observations are based on an examination of Islamic literature. The issue of power or authority is justified by the ruler, and the rulers use Islam to justify their position and role. One other authority is that of scholars, i.e., jurists who justify their position and role within the caliphate or state the limit of the power of the ruler in religious issues. At the same time, they cannot challenge the authority of the ruler. They have to cater to his authority. This has been the situation in the past and, in my view, is still practiced. It exists today in a different fashion but remains the same politics.

ENDNOTES

- ¹ Draft of this paper was presented to the World Congress of Middle East Studies-2 (WOCMES-2) June 11-16-2006 in Amman, Jordan
- ² See al-Ghazali in *al-Iqtisad fi al-I'tiqad* (Modernization in Belief), translated in Marmmuna, Michael. "Ghazali's Chapter on Divining Power in the Iqtisad". *Arabic Science and Philosophy*, vol. 4 (1994), 273-315; al-Ghazali, Abu Hamid. *al-Iqtisad fi al-I'tiqad*. ed. Muhammad Mustafa Abu al-'Ula. Cairo: Maktabat al-Jindi, 1972: 95
- ³ Q. 2: 256. Interpretation of most verses of the Qur'an in this work derived from *The Interpretation of the Meaning of the Noble Qur'an* by Muhammed Taqi-ud-Din



Al-Hilali and Muhammad Muhsin Khan. Riyad: Dar al-Salam Publication. Often, the interpretations of the Quranic verses appearing in this paper are taken from the same sources.

- ⁴ See Hamidulah, Muhammd. *Majmu'at al-Watha'iq al-Siyasiyya lil 'Ahd al-Nabawi wa al-Khilafa al-Rashida*. Beirut: Dar al-Irshad, 1969.
- ⁵ Farooq Hassan. *The Concept of State and Law in Islam*. New York: University Pres of America, 1981: 202.
- ⁶ Bernard Lewis. *The Political Language of Islam*. Chicago: The University of Chicago Press, 1988: 73. Other Western scholars who propagate this distorted image, as well as Islam as a militant religion and its adherents, are fanatical warriors who are engaged in spreading their faith and their law by armed might, are Max Weber who adopt the same approach as B. Lewis. See Bryan S. Turner. *Weber and Islam: A Critical Study*. London: Routledge, and Kegan Paul, 1984: 34. See also the most recent remarks by the head of the Roman Catholic church, Pope Benedict XVI on the Prophet. Benedict repeated comments by a 14th century Byzantine emperor who had criticised the Prophet Muhammad for bringing "evil" to the world and had accused Muslims of using the sword to spread their religion. September 16, 2006.
- ⁷ *Ibid.*
- ⁸ Thomas Arnold. *The Preaching of Islam: A History of Propagation of the Muslim Faith*. Lahore, Pakistan: Muhammad Ashraf Publications: 1961: 115-119. See also Montgomery Watt. *The Influence of Islam on Medieval Europe*. Edinburgh: The University Press, 1972: 72-84; See also Marcel A. Biosard. *Jihad: A Commitment to Universal Peace*. American Trust Publication and by same author, *Humanism in Islam*. Atlanta: Islamic Book Trust, 2003.
- ⁹ *Ibid.*
- ¹⁰ Bernard Lewis. *The Jews of Islam*. Princeton: Princeton State University Press, 1984: 10; Lewis argues that under Islam Jews and Christians were offered a choice between "Islam, death and submission."; Lewis is not alone in his views. William Murir, in *The Life of Mohomet*. (London: Smith, Elder and Co., 1878: 251, 334-335), argued the same approach and conduct. Yohanan Friedman argued that Muslims were intolerant towards other religious in his work, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition*. Cambridge: Cambridge University Press, 2003: 90.
- ¹¹ Such as Samuel Huntington, Daniel Pipes and Bernard Lewis, for further information see Fred Halliday. *Islam and the Myth of Confrontation: Religion and Politics in the Middle East*. London I.B. Tauris and Company Ltd.: 1996: 112; Michael Jansen. "Terrorism is a Response to Western Hypocrisy," in *Islam: Opposing Viewpoints*, ed. Paul A. Winters. San Diego: Greenhaven Press, 1995: 164-168.
- ¹² Edward Said. *Orientalism: Western Conceptions of the Orient*. New York: Vintage Press, 1979; *Covering Islam: How the Media and Experts Determine How We See the Rest of the World*. New York: Pantheon Books, 1981; *Culture and Imperialism*. New York: Knopf, 1988.
- ¹³ 'Abd al-Rahman Azzam. *The Eternal Message of Mubammad*. Cambridge: Islamic Texts Society, 1993: 139; Muhammad Hafiz Ghanim. *Mabadi' al-Qanun al-Dawli*. Cairo: Dar al-Nahda al-'Arabiya, 1964: 52; Mahmud Hilmi. *Nizam*



- al-Hukm al-Islami*, pp. 11-12; the works of the later scholars originated and derived from the work of Sarakhsi, Abu Bakr Muhammad Ibn Ahmad ibn Sahl, (d. 483/1090). *Sharh al-Siyar al-Kabir*. Eds., Salah al-Munajjid and 'Abd al-'Aziz Ahmad. Cairo: Matba'at Shirkat al-I'lanat al-Sharqiyya, 1971: vol. 1: 306; and *al-Mabsut*, by al-Sarakhsi, vol. 10: 84-86.
- ¹⁴ Ibn Qayyim al-Jawziyya. *Zad al-Ma'ad fi Khayr Hadi al-'Ibad*, ed., 'Abd al-Qadir al-Arna'uti, vol. 3: 160; see also *Abkam Abl -al-Dhimma*, by Ibn Qayyim, vol.2: 475-476.
- ¹⁵ Abi Ya'la, Muhammad ibn Husayn ibn Muhammad al-Farra' al-Baghdadi (d. 458/1066). *Al-Mu'tamad fi Usul al-Din*. Ed., Wadi' Zaydan Haddad. Beirut: Dar al-Mashriq; 1974: 276; Ibn Muflih al-Maqdisi, Abu 'Abdullah Shams al-Din Muhammad (d. 763/1362). *Al-Adab al-Sbar'iya*. Shu'i Arna'ut and 'Umar al-Qayyam, Eds. Beirut: Mu'assasat al-Risala, 1996: vol. 1: 213.
- ¹⁶ The following discussion derived from my Ph.D. dissertation entitled "International Treaties (Mu'ahadat) in Islam: Theory and Practice in the Light of Siyar (Islamic International Law," Chapter one pp. 34-63.
- ¹⁷ Ibn al-Athir. *al-Nihaya*, 1: 236.
- ¹⁸ Sarakhsi. *al-Mabsut*, 10: 84-86; Abu Zahra. *Sharh al-Siyar al-Kabir*, 1: 306; 'Abd al-Rahman 'Azzam. *al-Risala al-Khalidab*. 156.
- ¹⁹ Bukhari. *Sabih al-Bukhari*. 9: 417.
- ²⁰ Q. 9: 1-4.
- ²¹ Ibn Qayyim al-Jawziyya. *Zad al-Ma'ad*, 3: 160.
- ²² Sarakhsi. *Sharh al-Siyar al-Kabir*, 1: 21-24; Kasani. *Bada'i 'al-Sana'i'*, 9: 4315-4318.
- ²³ Ibn Qayyim al-Jawziyya. *Abkam Abl al-Dhimma*, 1: 86; Sayyid Qutub. *Fi Dhilal al-Qur'an*. 3: 1559-1560; Najib Armanazi. *al-Shar' al-Durwali fi al-Islam*, 67, 164; 'Abd al-Rahman 'Azam. *al-Risala al-Khalida*, 156-160;
- ²⁴ Abu Ya'la al-Farra'. *al-Mu'tamad fi Usul al-Din*, 276; Ibn Muflih. *al-Adab al-Sbar'iyya*, 1: 213.
- ²⁵ For further lexical meanings of dar, please see the following dictionaries: *al-Sihab*, 2: 659-660; *Mu'jam Maqayis al-Lugha*, 12:311; *Mufradat al-Qur'an*, 174, *Lisan al-Arab*, 4: 295-300, *al-Qamus al-Mubit*, 2: 229-231; *al-Misbah al-Munir*, 1:202-203; *al-Tawqif 'ala Muhimat al-Ta'arif*, 332 and *al-Mu'jam al-Wasit*, 1: 202-203.
- ²⁶ Ibn 'Abidin. *Hashiyat Ibn 'Abidin*, 4: 166.
- ²⁷ The verb "dhahara" means to have authority or full influence; its original meaning is to give assistance, triumph or grant victory; for other meanings see the following references: *al-Mughrib*, 2: 36-37; *al-Kaffawi*, *al-Kulliyat*, 3: 172-173 and *Majama' Bihar al-Anwar*, 3: 498-502.
- ²⁸ Sharh al-Siyar al-Kabir, 1: 249-250, 3: 1004-1006, 4:1253 and 1257
- ²⁹ *Ibid.*, 1: 249-250.
- ³⁰ *Ibid.* This is also the opinion of members of the Shafi'i school; see, for instance, al-Mawardi. *al-Abkam al-Sultaniyya*, 137.
- ³¹ According to Haskafi, in his *Durr al-Muntaqa Sharh al-Multaqa*, 1: 638, there is no disagreement that dar al-Harb may become dar Islam even if only a part of the Islamic rulings are implemented. A majority of jurists, however, disagree with Haskafi on this particular point.



- ³² *Sharh al-Siyar al-Kabir*, 3: 1004-1006 and 4: 1253-1257; Sarakhsi. *al-Mabsut*, 10: 23 and 114; *al-Fatawa al-Hindiyya*, 2: 232; *al-Fatawi al-Bazaziyya*, 3: 311-312 in the margins *al-Fatawa al-Hindiyya*; and *Kashshaf Istilabat al-Funun*, 2: 256.
- ³³ The term "ahl al-Kitab" (People of the Book or Scripturaries—all non-Muslims, such as Christians, Jews, Majus (Zoroastrians), Samaritans, and Sabians) whether they reside within or without the dar al-Islam. However, theirs are tolerated communities within Islam or dhimmis who are accepted in any Muslim territory except the Arabian Peninsula, see Abu Yusuf, Kharaj, 128-129.
- ³⁴ *al-Siyar al-Kabir*, with Sarakhsi's commentary 5: 216, 2191, 2197; Sarakhsi. *al-Mabsut*, 10:23; *al-Fatawi al-Hindiyya*, 2: 232; *al-Durr al-Mukhtar*, 4: 175; *Durr al-Muntaqa*, 1: 634. For the same opinions expressed by the Shaf'i school, see *Rawdat al-Talibin*, 5: 433 and *Tuhfat al-Muhtaj*, 9: 269.
- ³⁵ Ibn Qayyim al-Jawziyya. *Abkam Ahl al-Dhimma*, 2: 475-476.
- ³⁶ *al-Siyar al-Kabir*, 5: 2191-2193; *Majma' al-Anbur*, 1: 659; 'Ubayd al-Sufyani. *Abkam al-Diyyar*, 18-20. Similar cases can be found in the modern world. For example, there are several Muslim communities residing in the western world. They are allowed to perform their rituals, such as the feasts and the month of Ramadan without any harassment or duress. Despite this fact, however, the western world cannot be considered *dar al-Islam*, because the governors or the leaders are not Muslim and the rulings of Islam are not enforced by Muslim authorities.
- ³⁷ Shaybani. *Asl*, 217.
- ³⁸ Sarakhsi. *Sharh al-Siyar al-Kabir*, 4: 1253; and *Idem. al-Mabsut*, 10: 93, 114.
- ³⁹ Kasani. *Bada'i' al-Sana'i'*, 9: 4374.
- ⁴⁰ Ibn Rushd. *al-Muqadimat al-Mumabihat*, 2: 153.
- ⁴¹ Abu Mansur al-Baghdadi. *Usul al-Din*, 270.
- ⁴² Ramli. *Nihayat al-Muhtaj*, 8: 82; Zakariyya al-Ansari. *Asma al-Matalib Sharh Rawd al-Talib*, 4: 204.
- ⁴³ Abu Ya'la. *al-Mu'tamad fi Usul al-Din*, p. 276; Ibn Muflih. *al-Adab al-Shar'iyya*, 1: 213.
- ⁴⁴ Ibn Qayyim al-Jawziyya. *Abkam Ahl al-Dhimma*, 1: 5.
- ⁴⁵ *Ibid.*, 1: 366.
- ⁴⁶ *Sharh al-Azhar*, 5: 571-572.
- ⁴⁷ 'Abd al-Qadir 'Awdah. *al-Tashri' al-Jina'i al-Islami*, 1: 274-275; see also 'Abdullhi Ahmed An-Na'im. *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. New York: Syracuse University Press, 1990. 150, 183.
- ⁴⁸ 'Abd al-Qadir 'Awdah. *al-Tashri' al-Jina'i*, 1: 275-276, where the author makes reference here to *Bada'i' al-Sana'i'* and *Isma al-Matalib*; see also Muhammad Hafiz. *Mabadi' al-Qanun al-Durwali*, 51.
- ⁴⁹ 'Abd al-Wahhab Khalaf. *al-Siyasa al-Shar'iyya wa Nizam al-Dawla al-Islamiyya*, 71; see also Hamid Sultan. *Abkam al-Qanun al-Dawli fi al-Shari'a al-Islamiyya*, 112; 'Abd al-Karim Zaydan. *Majmu'at Bubuth Fiqhiyya*, 50; Wahbi Zuhayli. *al-Atlaqat al-Dawliyya fi al-Islam*, 104-105; Mustafa Kamal Wasfi. *Musannafat al-Nidum al-Islamiyya*, 285.
- ⁵⁰ Abu Zahra. *al-Atlaqat al-Dawliyya fi al-Islam*, 53; and *Idem. al-Jarima wa al-Uquba fi al-Fiqh al-Islami*, 1: 341-343.
- ⁵¹ Muhammad Rashid Rida. *Tafsir al-Manar*, 10: 371.
- ⁵² Shaybani. *al-Siyar al-Kabir*, 1: 251, 4: 2070 and 2197; Sarakhsi. *al-Mabsut*, 10:



- 114; Kasani. *Bada'i' al-Sana'i'*, 9: 4375; *Durr al-Muntaqa*, 1: 634; *Mujama' al-Anbur*, 1: 659.
- 53 Sarakhsi. *Sharh al-Siyar al-Kabir*, 4: 1253.
- 54 *Ibid.*, 5: 2165; Sarakhsi. *al-Mabsut*, 10: 114.
- 55 Sarakhsi, Sharh. *al-Siyar al-Kabir*, 4: 1253.
- 56 *Durr al-Muntaqa*, 1: 634; Tahanawi. *Khashshaf Istilabat al-Funun*, 2: 256; al-Kaffawi. *al-Kulliyat*, 2: 341.
- 57 Malik. *al-Muddawwana*, with Sahnun's commentary, 2:22
- 58 *Ibid.*, 3: 270.
- 59 Ibn Rushd. *al-Muqaddamat al-Mumabhidat*, 2: 151; *Fatawi al-Shaykh 'Alisb*, 1: 377.
- 60 Baghdadi. *Usul al-Din*, 270.
- 61 Hajjawi, al-Iqna', with Bahuti's *Khashshaf al-Iqna'*, 3: 38; Mardawi, al-Muqni', with the Insaf, 4: 121; Ibn Muflih. *al-Furu'*, 6: 197, *al-Adab al-Shar'iyya*. 1: 213 and *al-Mubdi' Sharh al-Muqni'*, 3: 313.
- 62 Ba'li. *al-Mutla' ala Abwab al-Muqni'*, 226.
- 63 'Abd al-Qadir 'Awdah, *al-Tashri' al-Jina'i al-Islami*, 1: 277.
- 64 'Abd al-Wahhab Khalaf. *al-Siyasa al-Shar'iyya wa Nizam al-Dawla al-Islamiyya*, 71. The author summarizes the opinions of a member of scholars, for example see Ibn Qayyim al-Jawziyya. *Ahkam Abl al-Dhimma*, 1: 366; and 'Abd al-Karim Zaydan. *Majmu'at Bubuth Fiqhiyya*, 51.
- 65 'Abd al-Wahhab Khalaf. *al-Siyasa al-Shar'iyya wa Nidham al-Dawla al-Islamiyya*, 77; a similar approach is defined by Hamid Sultan. *al-Qanun al-Dawli fi al-Shari'a al-Islamiyya*, 115.
- 66 Abu Zahra. *al-Alaqat al-Dawliyya fi al-Islam*, 53-54, and *Idem. al-Jarima wa al-Uquba*, 1: 340-343; Wahbi al-Zuhayli. *al-Alaqat al-Dawliyya fa'l-Islam*, 105-106.
- 67 Kasani. *Bada'i' al-Sana'i'*, 9: 4374; *Durr al-Muntaqa*, 1: 634; *Fatawi al-Bazaziyya*, 3: 312 and *Fatawi al-Hindiyya*, 2: 232.
- 68 *Ibid.*
- 69 These three phases are outlined in the following treatises: Shaybani. *Asl, Kitab al-Siyar*, 217-220; Sarakhsi. *Sharh al-Siyar al-Kabir*, 5: 1914 and 1941; *al-Jami' al-Saghir*, 249; *al-Mabsut*, 10: 113-114; Kasani. *Bada'i' al-Sana'i'*, 9: 4376; Tahawi. *Mukhtasar al-Tabawi*, 249, *al-Fatawi al-Hindiyya*, 2: 232; *Fatawi Qadi Khan*, 3: 584; *Hashiyat Ibn 'Abdin*, 4: 174; *al-Babr al-Ra'iq*, 3: 230-231; *Karabisi, Furuq*, 1: 340; *Mawardi, Ahkam al-Sultaniyya*, 138; Ibn Hubayra. *al-Ifsab*, 2: 229-230; and Dimashqi. *Rahmat al-Umma*, 352.
- 70 Sarakhsi. *Sharh al-Siyar al-Kabir*, 5: 1914; and *Idem. al-Mabsut*, 10: 113-114; Kasani. *Bada'i' al-Sana'i'*, 9: 4376
- 71 Kasani. *Bada'i' al-Sana'i'*, 9: 4376
- 72 Qiyas is the method of systematic reasoning (analogy) that tries to identify the "illa" (effective reasoning) in a given "hukm" (judgement) on the basis of the Qur'an, Sunna and "ijma" (consensus)
- 73 Shaybani. *al-Asl Kitab al-Siyar*, 217; Sarakhsi. *Sharh al-Siyar al-Kabir*, 5: 1914; and *Idem. al-Mabsut*, 10: 114; *al-Fatawi al-Hindiyya*, 2-232; Tahanawi. *Khashshaf Istilabat al-Funun*, 2: 256.
- 74 Kasani. *Bada'i' al-Sana'i'*, 9: 4375; Abu Zahra. *al-Jarima wa al-Uquba fi al-Islam*,



- 341; and *Fatawi al-Imam Rashid Rida*. Salah al-Din Munajjid, Ed., 1: 373.
- ⁷⁵ Such as in the “great yasa of Ghengiz Khan,” a comprehensive legal code laid down by the founder of the Mongol empire. See, “Yasa” in the *Encyclopedia of Islam*, 11: 293-294.
- ⁷⁶ Ibn Nujaym. *al-Bahr al-Ra’iq Sharh Kanz al-Daqa’iq*, 3: 230-231; the term also appears in “Hashiyat al-Shalabi”. *Tabyyin al-Haq’iq*, 3: 285.
- ⁷⁷ Ziyadat (additional)—this title was given on the bases of additional cases to the earlier works, as well as recorded the case where he defers of Abu Yusuf one. It is known through the commentary works of both Qadi Khan (d. 596/1199) and al-’Attabi (d. 586/1190), see Hajji Khalifa. *Kashf al-Zunun*, 2: 962-963; Brockelmann. *Tarikh al-Adab al-’Arabi*, 3: 248-249; Foad Sezgin. *Tarikh al-Turath al-’Arabi*, 3: 57-59.
- ⁷⁸ Ibn Nujaym. *al-Bahr al-Ra’iq Sharh Kanz al-Daqa’iq*, 3: 230-231; Ibn Qadi Simawneh. *Jami’ al-Fusulayn*, 1: 13.
- ⁷⁹ *Fatawi Qadi Khan*, 3: 582-584.
- ⁸⁰ Sarakhsi *Sharh al-Siyar al-Kabir*, 5: 1914; and *Idem. al-Mabsut*, 10: 114.
- ⁸¹ Hashiyat. *Ibn ’Abidin*, 4: 174-175.
- ⁸² Rahbi. *Fiqh al-Muluk wa Miftah al-Rataj al-Mursad ’ala Khazanat al-Kharaj*, 1: 463.
- ⁸³ Sarakhsi. *al-Mabsut*, 10: 114
- ⁸⁴ *Ibid.*
- ⁸⁵ al-Bazzaz’s opinion was transmitted from Muhammad ibn Ahmad b. Hamza b. al-Husayn al-’Alawi, known as Abu Shuja’, one of the leading Hanafi jurists of the fifth century H., and well known for his fatwa ’s in that day. For further information, see *al-Jawahir al-Mudhiyya*, 3: 28, and *al-Fawa’id al-Bahiyya*, 155.
- ⁸⁶ Ibn al-Bazzazi. *al-Fatawa al-Bazzaziyya*, 3: 311-312, in the margins of volume 6 of the *Fatawa al-Hindiyya*.
- ⁸⁷ *Ibid.*; see also Tahanawi. *Kashshaf Istilahat al-Funun*, 2: 256.
- ⁸⁸ Ibn ’Abidin. *Hashiyat Ibn ’Abidin*, 4: 175; *al-Fatawa al-Hindiyya*, 2:232; Kasani. *Bada’i’ al-Sana’i’*, 9: 4376; *Mukhtasar al-Tahawi*, 295.
- ⁸⁹ Shaybani. *al-Siyar al-Kabir*, 5: 1957.
- ⁹⁰ Malik. *al-Mudawwana*, 2: 22; Ibn Rushd. *al-Muqaddamat al-Mumabhadat*, 2: 152; al-Mughni with the *Sharh al-Kabir*, 6: 403-404; Mirdawi. *al-Insaf*, 4: 121; “Kashshaf al-Iqna”, 3: 38; Ibn Haybara. *al-Ifsab*, 2: 230; Dimashqi. *Rahmat al-Umma fi Ikhtilaf al-A’imma*, 352.
- ⁹¹ *Hashiyat al-Dasugi ’ala al-Sharh al-Kabir*, 2: 188.
- ⁹² Zakariyya al-Ansari. *Sharh Minhaj al-Talibin*, 4: 244.
- ⁹³ Ibn Hajar al-Haytham. *Tuhfat al-Muhtaj Sharh al-Minhaj*, 9: 268-269.
- ⁹⁴ According to various hadith collections, which preserve its isnad, this hadith was narrated by Ibn ’Abbas. See al-Tahawi. *Sharh Maani al-Atbar*, 3: 258; Ibn Hajar. *Taghliq al-Ta’liq*, 2: 490; Bukhari. *Sahih*, 3: 218.; Bayhaqi. *Sunan*, 6: 205; *Irwa’ al-Ghalil*, 5: 106-109.
- ⁹⁵ Ramli. *Nihayat al-Muhtaj*, 8: 82 and 5: 454; *Mughni al-Muhtaj*, 4: 239.
- ⁹⁶ *Fatawa al-Ramli*, 4: 53-54 in the margins of the Fatawa al-Kubra of Ibn Hajar al-Hythami; see also *Nihayat al-Muhtaj* of Ramli, 5:454.
- ⁹⁷ Rafi’. *al-Aziz Sharh al-Wajiz*, 6: 423-424; Nawawi. *Rawdat al-Talibin*, 5: 433-434.
- ⁹⁸ Abu Ya’la. *al-Mu’tamad fi Usul al-Din*, 267; *Ibn Qayyim al-Jawziyya, Ahkam Abl al-Dhimma*, 1: 475-576; Ibn Muflih. *al-Adab al-Shar’iyya*, 1: 213.



- 99 See for example: 'Abd al-Karim Zaydan. *Abkam*; Wahbah Zuhayli. *Athar al-Harb*; Abu Zahra. *al-'Alaqa al-Dawliyya*.
- 100 Sarakhshi. *Sbarh al-Siyar al-Kabir*, 5: 2157 and 2165.
- 101 *Ibid.*, 5: 1857 and 1893; Sarakhshi. *Mabsut*, 10: 88-89 and 97.
- 102 Najib Armazani. *al-'Shar' al-Dawli fi al-Islam*, 50.
- 103 Abu Zahra. *al-'Alaqa al-Dawliyya fi al-Islam*, 55; Wahbah Zuhayli. *Athar al-Harb fi al-Islam*, 157-156 and *Idem. al-'Alaqa al-Dawliyya fi al-Islam*, 107-108.
- 104 Muhammad al-Dasuqi. *al-Imam Mubammad ibn Hasan wa Atharibi fi al-Fiqh*, 30; Majid Khadduri. *al-Qanun al-Dawli al-Islami: Kitab al-Siyar li Shaybani*, 22-23.
- 105 Abu Zahra, *al-'Alaqa al-Dawliyya fi al-Islam*, 57; Wahbah Zuhayli. *al-'Alaqa al-Dawliyya*, 108-109; 'Abd al-Hamid al-Hajj. *al-Nuzum al-Dawliyya fi al-Qanun wa al-Shari'a*, 183-184.
- 106 See Majid Khadduri. *War and Peace in the Law of Islam*. Baltimore: Johns Hopkins Press, 1955; 'Uthman J. Damiriyya. *Manhaj al-Islam fi al-Harb wa al-Silm*, 58. Shafi'i. *al-Umm*, 4: 103-104.
- 107 *Ibid.*
- 108 Mawardi. *al-Abkam al-Sultaniyya*, 137-138.
- 110 *Ibid.*
- 111 Abu Ya'la. *al-Mu'tamad fi Usul al-Din*, 276.
- 112 See the literature advocating reforms produced by modern Muslim thinkers, such as Muhammad Iqbal. *The Reconstruction of Religious Thought in Islam*. Lahore, Pakistan: Sh. Muhammad Ashraf, 1951; Malcolm Kerr. *Islamic Reform: The Political and Legal Theories of Muhammad 'Abdub and Rashid Rida*. Berkeley: University of California Press, 1966.
- 113 Abu Zahra. *al-'Ilaqa al-Dawliyya fi al-Islam*. As the countries of the modern world belong to the United Nations, in which all of its members are obligated to its rulings, Islamic nations are obligated, under Qur'anic injunction, to accept and respect any treaties conducted with the United Nations members. According to other modern scholars, members of the United Nations are to be counted among dar al-harb, rather dar al-'ahd, 57; Wahbah Zuhayli. *al-'Alaqa al-Dawliyya*, 108-109; 'Abd al-Hamid al-Hajj. *al-Nuzum al-Dawliyya fi al-Qanun wa al-Shari'a*, 183-184.
- 114 Halil Inalcik. "Dar al-'Ahd," *The Encyclopaedia of Islam*, new edition 2, Leiden: E. J. Brill, 1965, 116; Majid Khadduri. *War and Peace in the Law of Islam. Idem. Islamic Law of Nations*; Hans Kruse. "Al-Shaybani on International Instruments," *Journal of Pakistan Historical Society* (1953) 90-100.
- 115 Ghunaymi. *Qanun al-Salam fi al-Islam*, 104.
- 116 'Abdallah Ibrahim al-Tariqi. *al-Isti'ana bi ghayr al-Muslimin fi al-Fiqh al-Islami*, 26. Q. 60: 8.
- 117 Ghunaymi. *Qanun al-Salam fi al-Islam*, 104; al-Tariqi. *al-Isti'ana bi ghayr al-Muslimin fi al-Fiqh al-Islami*, 26; Nadia Mahmud Mustafa. *al-Muqaddima al-'Amm li Masbru' al-'Alaqa al-Dawliyya*, 160.
- 119 Sarakhshi. *Sbarh al-Siyar al-Kabir*, 1: 75-76.
- 120 *Ibid.*
- 121 Khawarizmi. *Jami' al-Masanid*, 1: 291-292; Zubaydi. *Uqud al-Jawahir al-Munifa fi Adillat Abi Hanifa*, 1: 195.
- 122 *Jami' al-Masanid*, 1: 291-292.



- ¹²³ Sumnawi. *Rawdat al-Qudab wa Tariq al-Naja*, 3: 1237.
- ¹²⁴ Kasani. *Bada'i' al-Sana'i'*, 9: 4304-4305; Juwayni, *Ghiyath al-Umam fi Iltiyath al-Zulam*, 207.
- ¹²⁵ *Ibid.*
- ¹²⁶ Shaybani. *al-Siyar al-Kabir*, 1: 76-77 and 198; *Idem. al-Jami' al-Saghir*, 248-249; Jassas. *Abkam al-Qur'an*, 1: 261; Qurtubi. *Tafsir al-Qurtubi*, 16: 273.
- ¹²⁷ Shaybani. *Kitab al-Siyar*, 222, Majid Khadduri, Ed.; *Sharh al-Siyar al-Kabir*, 5: 1708.

