



## A Comparative Study of the Islamic Doctrine of Aman with the Contemporary International Law of Peace

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### Abstract:

. Islamic International Law (IIL) divides the whole world into two parts: Domain of Muslim (Dar al-Islam) and Domain of Disbelief (Dar al-kufr), that consequently determine both domains. Of course Muslim jurists have different opinions in this regard.

This research sums up the nature of relation between Muslims and non-Muslim is peace while hostility is associated with aggression. Islamic International Law allows Muslims to sign peace treaty even with those non-Muslims who are aliens of Muslims. The peace treaty may be for fix time and may be for unlimited time. The peace treaty must not be contrary to the main principles of Islamic law. Similarly, Contemporary International Law (CIL) also acknowledged Peace treaty among nation states. According to CIL, every nation state is free to make peace treaty with any nation state on its own terms and conditions. If any International peace treaty is contrary to the domestic law of any state, the domestic law of the state shall prevail.

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## Introduction

The world has now become a global village, where no state of the world can survive in isolation. After experiencing the dreadful outcomes of the Second World War, the leader and representative of 50 states gathered at the United Nations Conference on International Organization in San Francisco, California from 25 April to 26 June 1945 to draft and then sign the UN Charter for the Peace.<sup>2</sup> After the formation of the United Nations Organization and the development of nuclear weapons, Nation states are interested to settle their international conflicts through dialogue and Peace Treaties. In these peace treaties and dialogue, the viability, status, nature and duration of the treaty related to Muslim and non-Muslim relation has always been a subject of debate among the academia, scholars and social activists. This article is an attempt to study the nature of treaties related to the relationship between Muslims and non-Muslims in the situations of hostility and peace. If the relationship of Muslims with non-Muslims is assumed as hostile then what will be the interpretation of the verses of the Qur'ān which induce Muslims to do good with non-Muslims.<sup>3</sup> If the relationship of Muslims with non-Muslims is presumed as peaceful then what will be the understanding of the verses of the Qur'ān which invoke Muslims on *Jihad*.<sup>4</sup> These kinds of discussions are made understandable in this article to clear the view point of different Scholars and Muslim jurists.

It would be difficult to comprehend the relation between Muslims and non-Muslims without mentioning the role of peace treaties. In this article important issues related to peace treaties are discussed like; Does IIL allow to sign peace treaty with non-Muslim states? Is peace treaty to be considered with non-Muslim states as a temporary ceasefire? Do peace treaties are contracted with non-Muslim states for a fixed period or may be for unlimited time? How peace treaties are to be terminated if needed? What will be the status of peace treaty if non-Muslim states violate any provision of it? What will be the status of International peace treaty if it is not compatible with the spirit of IIL? Does Muslim state bound to declare null and void any peace treaty before its termination for attacking on non-Muslims in case of any violation? These questions are addressed in this article. This article is constructed as follow: In first part of the study, we make an overview of the contemporary international law on peace treaty. In second part, we study the views of classical and contemporary Muslim scholars in the context of the doctrine of Aman on the viability, status and nature of peace treaty between Muslims and non-Muslims. In the last part, we provide conclusion of our study for the better understanding, viability and implication of the treaty between Muslim and non-Muslims.

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<sup>2</sup> <https://www.un.org/about-us/history-of-the-un>.

<sup>3</sup> “Allah forbids you not, with regard to those who fight you not for [your] Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just”. Al-Qūran: 60, 08. The translation of the verses of the Quran in the whole article is taken from English Translation of the Meanings by Abdullah Yusuf Ali, a version revised by the Presidency of Islamic Researches, IFTA, Call and Guidance. Published and Printed by the King Fahd Holy Quran Printing Complex in 1987.

<sup>4</sup> “O Prophet! rouse the Believers to the fight. If there are twenty amongst you, patient and persevering, they will vanquish two hundred: if a hundred, they will vanquish a thousand of the Unbelievers: for these are a people without understanding” Al- Qur’ān 08:65.

“And fight them on until there is no more Tumult or oppression, and there prevail justice and faith in Allah; but if they cease, Let there be no hostility except to those who practice oppression” “Al-Qur’ān: 02, 193.

## Contemporary International Law on Peace Treaty

Treaties and International Conventions are the major sources of International Law.<sup>5</sup> Treaties play a vital role in the development of global relations among the nation states. Wars are concluded, clashes are settled, regions are acquired, national concerns are determined, associations are recognized and international associations are formed, through International Peace treaties.<sup>6</sup> Before the UN Charter, International Law regarding peace treaties was based on International Customs. The Vienna Convention 1969 on the law of peace treaties has given a universal acceptance to the international treaties based on custom. The Vienna Convention 1969 reflects in the Customary International Law being a law universally accepted. According to the Convention, international treaty is a global contract among the nation states in written form which is administered by International Law.<sup>7</sup> The said definition of International Peace Treaty excludes treaties among the nation states which are not administered by International Law rather than run by national laws. The term “written form” in the said definition does not invalidate the oral treaties among the nation states administered by International Law. Article 3 of the Convention states:

“The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

- (a) The legal force of such agreements;
- (b) The application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
- (c) The application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties”.<sup>8</sup>

This means that these agreements will not lose its validity because of not being included in the definition of term treaty by the article of 2 of the Vienna Convention. There are Several other terms which represent the term treaties are, Charter, Pacts, International agreements, Declarations, Conventions and Covenants.<sup>9</sup> According to the Vienna Convention, every peace treaty is binding on the agreed party states. The rule of binding for the nation states is based on the Customary International Law code and that is (*Pacta Sunt Servanda* ) means a treaty is

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<sup>5</sup> Malcolm N. Shaw, International Law (New York: Cambridge University Press, 2008),902.

<sup>6</sup> Ibid.

<sup>7</sup>“treaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”. Article 2 (a) of the Convention.

<sup>8</sup> Vienna Convention on the law of Treaties.

<sup>9</sup>“Treaty is the creation of written agreements whereby the states participating bind themselves legally to act in a particular way or to set up particular relations between themselves. A series of conditions and arrangements are laid out which the parties oblige themselves to carry out”. Malcolm N. Shaw, International Law (New York: Cambridge University Press, 2008),93

binding and the contractual parties must perform their duties accordingly for both kinds of treaties either fixed or unfixed periods of time.<sup>10</sup>

## **Kinds of International Treaties**

Under Contemporary International Law, Treaties are divided into two kinds:

1. General treaty and;
2. Specific treaty

General treaty with reference to its applicability at International level, is constituted for worldwide general significance. It is made with consent of all the UN members. The purpose of this kind of treaty is to align different viewpoints of member states in order to maintain and promote international peace and security. This kind of treaty is considered as International Law<sup>11</sup>. Reservation by any nation state is accepted if such reservation is not contrary to the spirit of the treaty.<sup>12</sup>

Specific Treaty is not worldwide with reference to its applicability to the contracting parties only. It is made and applicable either between two or among minor figure of nation states.<sup>13</sup> This kind of treaty contract does not have any concern with those states which are not party to this contract.<sup>14</sup> The contracting parties are bound to observe the terms and conditions agreed mutually in the contract and they also bound to avoid those elements which effect the contract.<sup>15</sup> Reservation by either party may also be accepted if such reservation does not negate the spirit of the treaty.<sup>16</sup>

## **Formation and procedure of making General Treaty**

Before the Vienna Convention 1969, international treaties were administered under Customary International Law. There were no requisites to be fulfilled by the nations states for contracting a valid international treaty. Similarly, no specific manners were also prevailed for observing and contracting international treaties. This diversity with reference to the formation and execution of international treaties had created different difficulties for the nation states other than the contracting party states to any international peace treaty. Peace treaties were formed by the conditions and wishes of the contractual party states. The Vienna Convention on the Law of Treaties has formulated some internationally defined and globally recognized rules and regulations for the formation of peace treaties. These rules will only be applied when there is any dispute between the contractual states or the terms and conditions of the treaty need to be interpreted.<sup>17</sup> If there are no disputes between the contracting parties or terms and conditions do not create confusion and conflicts, then in such situations the treaty terms and condition will prevail.

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10 Article 26 of the said Convention states "PACTA SUNT SERVANDA" Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Muhammad Mushtaq Ahmad, Jihad, Muzahamat aor Baghawat (Gujanwala: Al-Shariah acadami,2012),751.

<sup>11</sup> Vienna Convention on the Law of Treaties (Vienna, 23 May 1969)

<sup>12</sup> Article 19.

<sup>13</sup> Malcolm N. Shaw, International Law (New York: Cambridge University Press, 2008),94.

<sup>14</sup> Article 11 of Vienna Convention.

<sup>15</sup> Article 18.

<sup>16</sup> Article 19.

<sup>17</sup>Malcolm N. Shaw, International Law,908.

Before the execution of any international treaty a wilful consent of the party states to any international treaty is required. For this purpose, the procedure of adoption of treaty in the convention is to be taken by the majority of states present in the convention. If it is related to General Treaty which is constituted for worldwide and general significance of all States. The draft of the agreed treaty by the legal representatives of the participant states will be adopted for a valid approval. Article 9 of the Convention states the draft of agreed treaty other than in international conference will be adopted by the participant states unanimously. If the procedure of making of a treaty takes place in an international conference, then adaption will be by two-third majority of the participant states by voting. If the required majority does not agree than any other rule of adoption for the approval may take place like exchange of the treaty instruments and so on.<sup>18</sup> After the adoption of any treaty by the participant states of international convention, the consent of the involved states must be given, because consent is the sole element in the formation of treaty to make the state bound to observe the treaty. The ways of giving consent by participant states may be in different forms like mutually agreed or any other mode of consent, the Convention has stated. Consent of the participant states may be in the form of their signatures, approvals, acceptance, accessions, ratifications and exchanging of the instruments of the treaty.<sup>19</sup>

### **Formation and procedure of making Specific Treaty.**

The formation and produce of making Specific Treaty is confined to the requirements and needs of the contracting parties. Vienna convention provides some basic requirements for the formation of treaty between or among states. According to the convention treaty must be made between or among states through competent authority.<sup>20</sup> Contracting parties must have consent form contracting the treaty otherwise such treaty will not be binding.<sup>21</sup> Revocation of any term and condition or extending it to third party may be possible through mutual consensus of the contracting states.<sup>22</sup>

### **Elements of Peace Treaties**

Under the Vienna Convention 1969, there are two elements of international peace treaty that must be fulfilled by contracting parties.

- **State**
- **Consent**

The first element of international peace treaty is state. Bothe kind of treaties either specific or general, will be constituted by state only because Contemporary International Law deals only nation States not individuals. It has given the sole authority to state to conclude any international treaty. State itself does not use the authority of contracting international treaty it

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<sup>18</sup> “ADOPTION OF THE TEXT 1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2. 2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule”. Article 9.

<sup>19</sup>“MEANS OF EXPRESSING CONSENT TO BE BOUND BY A TREATY The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed”. Article 11 of the Convention.

<sup>20</sup>. Article 2 sub section C of the Vienna Convention.

<sup>21</sup> Article 13.

<sup>22</sup> Article 37.

delegates such authority to human beings.<sup>23</sup> Article 7 of the Vienna Convention 1969 proposes that a person who represents the delegated authority through state for contracting any peace treaty internationally must have “Full Power” otherwise the treaty will be in question.<sup>24</sup> Persons who represent state by virtue of their functions not by acquiring “Full Power” of the state, if such person makes a peace treaty on the behalf of the state, such peace treaty will also be bounding on such state. Article 7 (2) of the Convention states in this regard;

“In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited; and

(c) Representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ”<sup>25</sup>.

Any treaty concluded or any act regarding a treaty committed by anyone who does not fall in the category of the Article 7 of the Vienna Convention 1969 will have no legal effect unless the state ratifies it.<sup>26</sup>

The second element of international peace treaty is the consent of the contracting parties. Both of kinds of treaties specific or general, require the explicit consent of the contracting states. According to the Vienna Convention 1969 under Article 9, such consent may be expressed in the form of form of their signatures, approvals, acceptance, accessions, ratifications and exchanging of the instruments of the treaty by participant states of any international convention.<sup>27</sup>

### **Alteration and amendments in peace treaty**

Alteration and amendments are also possible in both kind of treaties specific and general subject to consensus of the contracting states.<sup>28</sup> In case of general treaty, every contracting state must participate in the negotiation of amendments of treaty, if any state in general peace treaty, does not agree to the amendment such state will not be bound by the

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<sup>23</sup> Article 1

<sup>24</sup> “Article 7. FULL POWERS 1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if: (a) He produces appropriate full powers; or (b) It appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers”. Vienna Convention on the Law of Treaty 1969.

<sup>25</sup> Article 7 (2) of the Vienna Convention.

<sup>26</sup>“SUBSEQUENT CONFIRMATION OF AN ACT PERFORMED WITHOUT AUTHORIZATION. An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State”. Article 8 of the Convention.

<sup>27</sup>“MEANS OF EXPRESSING CONSENT TO BE BOUND BY A TREATY The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed”. Article 11 of the Convention.

<sup>28</sup> Article 40.

amendment. In case of specific treaty, if any contracting state does not agree on amendment then such amendment will not be made.<sup>29</sup>

### **Breach and termination of peace treaty**

Contemporary International Law bounds all contracting states of observe peace treaty for maintaining and promoting international peace and security.<sup>30</sup> This provision is known as Customary International Law as (*Pacta Sunt Servanda*). General peace treaty has its own terms and conditions for termination and suspension which will be prevailed. If peace treaty does not have any ground of termination, then Vienna conventions will be followed. This convention gives the right of termination or withdrawal or denouncing form whole peace treaty or any specific ground to the contracting states subject to the consent of all states.<sup>31</sup> The convention also states that any party of the peace treaty has the right of termination subject to the notice of 12 months before withdrawal or denouncing if not otherwise mentioned.<sup>32</sup> The presumption that all Muslim states are bound to accept each and every international Peace treaty without any observation because they are the member of United Nation Organization is a misunderstood concept regarding CIL.

### **Nature and duration of Peace Treaties under Islamic International Law**

Islamic International Law considers that that peace treaty may signed with non-Muslim states.<sup>33</sup> The terms and conditions of treaty may vary with time and space but they must not be against the spirit of Shari'ah. Classical jurist discussed the issue of Peace treaty with non-Muslims. According to Imam Al-Shafi peace treaty is permitted and said that the Prophet (peace be upon him) had contracted the Peace Treaty of *Mithaq-e- Madinah* with the Jews of Madīnah.<sup>34</sup> According to him the following conditions, if fulfilled, may validity any peace treaty with non-Muslims:

- Weakness of Muslims.

According to him, peace treaty will be considered valid if Muslims are weak and cannot fight against non-Muslim. He is also of the view that if non-Muslims demand some consideration in lieu of peace treaty it may also be agreed if Muslims see suited. Similarly, Muslims can also demand any consideration in lieu of peace treaty but that will be for specific time only.<sup>35</sup>

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<sup>29</sup> Article 30.

<sup>30</sup> Article 47.

<sup>31</sup> “[Termination of or withdrawal from a treaty under its provisions or by consent of the parties] The termination of a treaty or the withdrawal of a party may take place:

in conformity with the provisions of the treaty;

or (b) at any time by consent of all the parties after consultation with the other contracting States.”

Article 54.

<sup>32</sup> “[Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal] 1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless: (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty. 2. A party shall give not less than twelve months’ notice of its intention to denounce or withdraw from a treaty under paragraph 1” article 56.

<sup>33</sup> “But if the enemy incline towards peace, do thou [also] incline towards peace, and trust in Allah: for He is One that heareth and knoweth [all things]”..Al-Qur’ān: 8,61.

<sup>34</sup> Abu Abdullah Muhammad bin Idrees Al-Shafi, Al-Umm, vol.4 (Bairut: Dār-Marifah, 1990), 199.

<sup>35</sup> Ibid,.

- Limited time.

According to Imam Al-Shafi, peace treaty may be signed with non-Muslims for a limited time. He is of the view that Muslim state cannot make a peace treaty without mentioning a specific time period because not mentioning a specific time such peace treaty will be considered forever which is not permitted. He gives reason to this rule of law that the Prophet (peace be upon him) had made Peace treaty of Hudaibiyyah for limited time of 10 years because *Jus ad bellum* (cause of war) according to him is disbelief. Moreover, the Prophet (peace be upon him) had the obligation to fight the pagans of Arab till they accept Islam and other than the pagans of Arab were to pay poll tax in case of denying Islam<sup>36</sup>. In addition to the view point of Al-Shafi, a Muslim state can sign any peace treaty without mentioning a specific time, if it keeps the option of termination reserved.<sup>37</sup> The option of termination immunises Muslim state from a perpetual binding and allows it to set aside the treaty whenever it thinks fit.<sup>38</sup>

- Time must not exceed 10 years.

According to Imam Al-Shafi, the limitation of the time is 10 years because the maximum time for which the Prophet (peace be upon him) had contracted Hudaibiyyah peace treaty for 10 years only. Muslim state is to make herself strengthen within the period of 10 years. If Muslim state does not strong enough to fight then such Muslim state will renew the Peace treaty for another period of 10 years or less.<sup>39</sup>

According to Ibn Qudamah al-Hanbali peace treaty with non-Muslims is permissible with or without consideration. According to him peace treaty with non-Muslims would be permissible only if it fulfills the following conditions:

- Weakness of Muslims

According to him, peace treaty will be considered valid when Muslim state does not have sufficient power to fight against non-Muslims. Peace treaty is signed to achieve power and strength during peace. Getting power by Muslim state in the result of peace treaty is not the actual reason. The actual reason according to most of the jurists is weakness of Muslim state that validity the legality of the treaty.

- Peace treaty yielding accepting Islam

According to Ibn Qudamah, the peace treaty would also be considered valid if Muslims expect embracing Islam by non-Muslims during peace treaty.

- Pay poll tax by non-Muslims

Peace treaty will also be valid if non-Muslims pay poll tax to Muslim state in the consequence of peace treaty. Moreover, he is of the view that Muslim state can conclude peace treaty for getting any benefit other than acceptance of Islam and Paying poll Tax by non-Muslims.<sup>40</sup>

- Limited time.

According to him, peace treaty must be for limited time and it must not be for more than 10 years because peace treaty for unlimited time suspends the spirit of Jihād against non-

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36 Abu Abdullah Muhammad bin Idrees Al-Shafi, *Al-Umm*, vol.4 (Bairut: Dār-Marifah, 1990),200.

37 Ibid,.

38 Muhammad Mushtaq Ahmad, *Jihad, Muzahamat aor Baghawat* (Gujranwala: Al-Shariah Acadami,2012),294.

39 Abu Abdullah Muhammad bin Idrees Al-Shafi, *Al-Umm*, vol.4 (Bairut: Dār-Marifah, 1990),200.

40 Ibn Qudamah, *Al -Mughni* vol.9 (Egypt: Maktabah al-Qahirah,1968),297.



Muslims. This rule of law is based on the doctrine of " Perpetual Hostile Relations between Muslims and non-Muslims".

- Peace Treaty is a bilaterally a Binding Contract

According to Ibn Qudamah, peace treaty is binding for both the parties. He explicitly says that option of the termination of peace treaty would not be given to none of the parties. He gives logic for this rule of law that giving the option of termination to either party is against the spirit of peace treaty.<sup>41</sup>

Ibn Qudamah 's view point is different from the view point of Imam Al-Shafi regarding giving the option of terminating peace treaty. According to Imam Al-Shafi, peace treaty is to be signed for a limited time but it would also be possible that the peace treaty would be for unlimited time provided that if Muslim state has the option of termination. Ibn Qudamah does not recognize the option of termination for any of the parties. According to him the option of termination is against the spirit of peace treaty.

According to Imam Abu Hanifah, peace treaty will be signed with belligerents only when Muslims are weak because war against non-Muslim belligerents is obligatory and it will be suspended only when Muslims have any lawful justification.<sup>42</sup> He is of the view that only Muslim state has the authority to sign peace treaty with non-Muslim belligerents.<sup>43</sup>

According to Shaybani, peace treaty will be signed with non-Muslims when there is Muslims interest. Moreover, peace treaty is not a binding contract which a Muslim state can suspend it by any unilateral formal declaration.<sup>44</sup> Shaybani asserts that in general, peace treaty will not be signed with apostates but it may be signed with them if Muslim state is weak and does not have enough power to fight against them. Consideration may be taken for making peace treaty with non-Muslim state while it may not be taken from apostates but if it is taken once then it will not be returned to them<sup>45</sup>. Peace treaty may also be signed with rebels and consideration will not be taken from them if it is taken then it will be returned to them because they are Muslims and taking money from Muslims without any justification is unlawful If Muslims are weak and thy offer peace treaty to non-Muslim belligerents and they accept Muslim state's offer subject to some compensation in such situations if Muslims are weak then they are allowed to pay the compensation for making peace treaty.<sup>46</sup>

Imam Kasani is of the view that peace treaty is the suspension of war against non-Muslim belligerents. It may be signed with them when Muslims have any interest in the peace treaty.<sup>47</sup> If Muslims do not have any interest then Muslim state should not inclined to it.<sup>48</sup> He is also of the view that peace treaty is not a binding contract, Muslim state has the power to terminate it with a formal declaration and must give sufficient time to alien state for the necessary safety of its non-combatant components. According to him, peace treaty may be for both periods of

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<sup>41</sup> Ibid.,

<sup>42</sup> Muhammad bin Abi Sahl al-Sarakhsi, *Sharh al-Siyar al-Kabir*, Vol.1 (Al-Qahirah: al-Sharikah al-Sharqiyya lil ilanat, 1971), 1689.

<sup>43</sup> Ibid.,

<sup>44</sup> Muhammad bin Abi Sahl al-Sarakhsi, *Sharh al-Siyar al-Kabir*, Vol.1 (Al-Qahirah: al-Sharikah al-Sharqiyya lil ilanat, 1971),306.

<sup>45</sup> Ibid,1691.

<sup>46</sup> Ibid, 1692.

<sup>47</sup> Ala al-ddin, Abu bakar bin Masud bin Ahmad al-Kasani, *Badai al-Sanai* vol.7 (Bairut: Dar-kutub al-Imiyyah, 1986),108.

<sup>48</sup> "Be not weary and faint-hearted, crying for peace, when ye should be uppermost: for Allah is with you, and will never put you in loss for your [good] deeds" Al-Qur'an: 47,35.

time limited and unlimited.<sup>49</sup> According to Ibn Qayyim al-Jawziyyah, peace treaty may be signed for limited time and unlimited time also. He is of the view if peace treaty contracted for unlimited time will not be bilaterally binding, both parties will have the option of termination. If peace treaty is for limited time it will be binding on both the parties. At the same time both the parties will have the option of termination with a condition of informing each one.<sup>50</sup>

According to Muhammad Arafah al-Dasuqi *al-Maliki*, the time duration of peace treaty is the mandate of Muslim state. He is of the view that a valid peace treaty fulfills the following four conditions:

- Such treaty must be contracted by a Muslim state or its representative
- It must be contracted in the general interest and welfare of Muslims
- The treaty must not contain any voidable condition according Islamic Law.
- The duration for which the treaty is contracted is better to not exceed four months but Muslim state may contract it for more than four months as a discretionary mandate.<sup>51</sup>

### **Kinds of Peace Treaties: *al-Muwadah* and *al-Dhimmah***

In Islamic International Law, Amān is of two kinds: Citizenship (*al-Dhimmah*) and armistice contract (*al-Muwadah*). *Al-Dhimmah* contract is further divided into two types: Permanent and Temporary contracts.<sup>52</sup>

*Al-Muwadah* may also be either temporary or permanent.<sup>53</sup> The term "*Al-Sulh*", is used also in Islamic Jurisprudence for "a permanent peace treaty with non-Muslims who accept military and political suzerainty of Muslim state"<sup>54</sup>. Sarakhsi also uses the term *al-Sulh* for the peace treaty with the non-Muslims who are belligerents.<sup>55</sup> *Al-Muwadah* is an agreement between a Muslim and non-Muslim states to suspend war and have peaceful relations.<sup>56</sup> Shaybani also uses the term of *Muwadah* for awarding Amān to a non-Muslim by a Muslim individual. He asserts if any Muslim award Amān to an aliens by taking one thousand *Dinar* this *Muwadah* will be considered lawful and the aforementioned money will be deposited in treasury of Muslims.<sup>57</sup>

<sup>49</sup> Ala al-ddin, Abu bakar bin Masud bin Ahmad al-Kasani, *Badai al-Sanai* vol.7 (Bairut: Dar-kutub al-Imiyyah, 1986),109.

<sup>50</sup> Muhammad bin Abi Bakr bin Ayub bin Saad, *Shams-u-ddin Ibn Qayyim al-Jawziyah, Ahkam ahl al-dhimmah* vol.2 (Damam: Ramadi linnashr,1997),876.

<sup>51</sup> Muhammad Arafah al-Dasuqi, *Hashiyat al-Dasuqi ala Sharh al-Kabir* VOL.2 (Bairut: Dar-al-Fikar,n.d),206.

<sup>52</sup> The contract of al-dhimmah is a contract between Muslim state and non-Muslims and it is to be concluded with two conditions: The poll tax must be payed by non-Muslims annually at the end of the year not after the contract immediately and to surrender being accepting the supremacy of Muslim state. Muslim state is bound to give protection in lieu of poll tax. Abu Muhammad Abdullah bin Ahmad bin Muhammad bin Qudama al-Hanbali, *al-Mughni le Ibn Qudamah*, vol.9 (Egypt: Maktab tul Qahira, 1968),332. 336.

<sup>53</sup> Muhammad bin Abi Sahl al-Sarakhsi, *al-Mabsut*, Vol.10 (Bairut: Dar- Marifah, 1993), 78.134.

<sup>54</sup> Mahmood Ahmad Ghazi, *The Shorter Book on Muslim International Law* (Islamabad: Islamic Research Institute, 1998).99.

<sup>55</sup> Muhammad bin Abi Sahl al-Sarakhsi, *al-Mabsut*, Vol.10 (Bairut: Dar- Marifah, 1993), 87.

<sup>56</sup> Muhammad bin Abi Sahl al-Sarakhsi, *Sharh al-Siyar al-Kabir*, Vol.1 (Al-Qahirah: al-Sharikah al-Sharqiyya lil ilanah, 1971), 688.

<sup>57</sup> *Ibid*,583.

## Elements of the Peace Treaty

In Islamic International Law, the followings are the elements of peace treaty.

- It must be in written form.
- One copy of the peace treaty should be provided to the contracting parties.
- Must be recorded carefully to satisfy the contracting parties.
- Start and end of the treaty must be known to the contracting parties if it is for fixed time.
- Date must be written at the end.
- Rules of reciprocity will be applied subject to the rules of Islamic law if peace treaty is salient.
- In case of difference about the interpretation of any clause or term of the contract, the relevant International Custom or International Market will be considered final source of decision.<sup>58</sup>

## Breach of Peace Treaty

Any Peace treaty between the party states is a bilateral contract. Both the parties are bound by virtue of treaty to follow the agreed terms and conditions. If anyone of the parties wants to terminate the treaty it must declare its termination formally. Peace Treaty may come to its end by the expiration of its time period or by breaching by any party to the treaty.<sup>59</sup> According to Kasani, breach of peace treaty is either explicitly or implicitly.<sup>60</sup> In case of explicit breach, if one party violates any of the term/s of the treaty being not announcing the treaty as terminated.<sup>61</sup> In such situations, Allah orders Muslims to fight with those non-Muslims who breach peace treaty.<sup>62</sup> The said command is related to the explicit breach which is considered aggression against Muslim state. In case of implicit breach by non-Muslims, Muslim state is bound to investigate and confirm any breach of the treaty as the Prophet (peace be upon him) did confirm the contravention of Banu Qurayzah. Similarly, the Prophet (peace be upon him) had also sent a delegation to Makkah for confirming the violation of the treaty of Hidaybiyyah. According to Shaybani, if the breach is implicit and creates doubts about the maintenance of peace treaty then Muslim state must examine such implicit breach in order to confirm whether treaty is breached intentionally or not to avoid committing any perfidy by the Muslim state. In this connection Shaybani has set some principles for examining any breach as implicit.<sup>63</sup>

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<sup>58</sup> Ibid, 1780-1800.

<sup>59</sup> Ala al-ddin, Abu bakar bin Masud bin Ahmad al-Kasani, *Badai al-Sanai* vol.7 (Bairut: Dar-kutub al-Imiyyah, 1986),109.

<sup>60</sup> Ala al-ddin, Abu bakar bin Masud bin Ahmad al-Kasani, *Badai al-Sanai* vol.7 (Bairut: Dar-kutub al-Imiyyah, 1986),109.

<sup>61</sup> Ibid.

<sup>62</sup>“Will ye not fight people who violated their oaths, plotted to expel the Messenger, and took the aggressive by being the first [to assault] you? Do ye fear them? Nay, it is Allah Whom ye should more justly fear, if ye believe” Al-Qur’an: 9,13.

<sup>63</sup> Muhammad bin Abi Sahl al-Sarakhsi, *Sharḥ al-Siyar al-Kabir*, Vol.1 (Al-Qahirah: al-Sharikah al-Sharqiyya lil ilanah, 1971),1696.

Peace treaty will not be considered breached in the following case

Spreading fear and terror by one or more persons being not capable (*Mana*) to challenge the writ of Muslim state belong to a state with whom Muslim state has signed peace treaty without the permission of their state, the peace treaty will not be considered breached because such action does not affect the writ of Muslim state. If highwaymen have enough power (*Mana*) to challenge the writ of a Muslim state and if they are spreading not a "Declared Fear" (*Mujaharah bil Qital*) in Muslim state without the permission of their mother state, the peace treaty will not be breached because they did it without the permission the party state.<sup>64</sup>

Peace treaty will be considered breached in the following case

Spreading "Declared Fear" (*Mujaharah bil Qital*) and violence in Muslim state by highwaymen who have enough power to challenge the writ of Muslim state without the permission of their mother state dismisses the protection given to them in the result of peace treaty. If such highway men are captured by Muslims state, they will be punished according to the Islamic law because they have denied to live in accordance with the legal protection provided by the Muslim state.<sup>65</sup> Similarly, if the aforementioned highwaymen come to Muslim state with due permission of the party state to the peace contract, in such situations the peace treaty will be considered terminated because in such case their criminal act will be assumed the act of party state due to its involvement in the dispute. Likewise, if the highwaymen enter to the Muslim state being knowing by the party state and of not stopping the oppressors an not informing Muslim state about the criminal activities of such people.<sup>66</sup>

### **Impact of the Breach of Peace Treaty**

If any breach of the treaty by the enemy is confirmed after sound investigation<sup>67</sup>, then it will be declared as aggression against Muslim state. Consequently, the belligerents will be given three options as the Prophet (peace be upon him) did in the case of breach of the treaty of Hudaibiyyah by Quraish of Makkah.

- To Pay compensation and blood money to the affected.
- Withdraw support of the belligerents. or
- Consider the treaty as null.

The Pagans of Makkah chosen the last option. Later on Abu Sufyan came to Madinah for the renewal of the treaty but the Prophet (peace be upon him) did not meet him and he announced the renewal as unilaterally but the Prophet (peace be up him) reached to Makkah and have not felt the need of termination of the treaty formally because Quraish had already breached the treaty. The attack of the Prophet (peace be up him) on the Pagans of Makkah in response to their obvious aggression against Muslim state in the form of the breach of the treaty of Hudaibiyyah was affirmed by the divine commandment.<sup>68</sup>

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<sup>64</sup>Ibid., 1971),1696.

<sup>65</sup> Muhammad bin Abi Sahl al-Sarakhsi, *Sharḥ al-Siyar al-Kabir*, Vol.1 (Al-Qahirah: al-Sharikah al-Sharqiyya lil ilanah, 1971),1696.

<sup>66</sup> Ibid.,

<sup>67</sup> Al- Qur'an: 49,06.

<sup>68</sup> Al- Qur'an: 09,13

## Termination of Peace Treaty

Islamic International Law considers that Muslim state is bound to observe peace treaty but if it thinks fit can terminate it formally. State is also bound to declare the termination of peace treaty and must inform formally the other state party. Muslim state may invade on the previously contracting state after the declaration of termination of the contract and must wait for the response of her act of termination.<sup>69</sup> If Muslim state has obtained some consideration for making peace treaty for a fixed period which is not yet expired and wants to terminate the peace treaty, in such cases Muslim state is bound to return the consideration for the period which is to be expired.<sup>70</sup>

It may be concluded that Muslim jurists are unanimously agreed on the permissibility of peace treaty by a Muslim state with non-Muslim but they are divided on the time-period, and other requisites of peace treaty. According to Imam Al-Shafi and al-Hanbali, peace treaty must be for a limited period of time and it must not be exceeded ten years. Muslim state can renew the treaty after its time of expiry. According to them peace treaty is a binding contract and have dividing opinion regarding the option of termination. According to Imam Al-Shafi peace treaty may be contracted for unlimited time if the option of the termination of treaty possesses by Muslim state. According Ibn Qudamah, none of the parties has any option of termination of peace treaty because it contradicts the spirit of peace treaty. On the other hand, Shaybani, and Kasani are of the view that peace treaty is not a binding contract and it may be for unlimited time also and both parties have the option of terminating the treaty with a condition of formal bilateral declaration. The view point of Muhammad Arafah al-Dasuqi al-Maliki is similar to the view point of Shaybani, and Kasani, regarding the limit of time for which treaty is contracted. All these jurists are agreed on the mandate of Muslim state about the time-period of the treaty. Hanfiyyah and Malikiyyah schools of thought are agreed that peace treaty will only be contracted in the general interest and welfare of Muslims and Muslim state. Muslim state can terminate the treaty in the general interest of Muslims and Muslim state with a formal declaration. Hanabilah has two different opinions regarding the requisites of peace treaty like the limit of time for which a peace treaty is contracted and its binding and non-binding on the contracting parties. According to Ibn Qudamah peace treaty will be contracted for a limited period of time and such treaty will be binding bilaterally binding. According to Ibn Qayyim al-Jawziyyah, peace treaty for limited is bilaterally binding while the peace treaty for unlimited time is not bilateral binding and contracting parties have the option of termination with a formal declaration. Ibn Qayyim al-Jawziyyah agrees with Hanafiyyah. that peace treaty may be temporary or permanent and in both cases the requisites will remain the same and will not be binding on Muslim state. Muslim state can terminate it on its own discretion.

## Conclusion

This article may be concluded as that Islamic International Law(IIL) recognizes co-existence of nation states with peaceful relations. Peaceful relations will be converted into hostile relations if aggression is made by either nation states or any group of non-Muslims or Muslims which has enough power. IIL considers aggression is the cause of war not infidelity. If infidelity was the cause of war, then no peace treaty would be allowed with non-Muslims.

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<sup>69</sup> Muhammad bin Abi Sahl al-Sarakhsi, *Sharh al-Siyar al-Kabir*, Vol.1 (Al-Qahirah: al-Sharikah al-Sharqiyya lil ilanah, 1971),1697.

<sup>70</sup> Abu Zakriyyah Muhiuddin yahya bin Sharf Al-Nawawi, *Al-Majmu o Sharh-ul-Muhazzab* vol.19 (Dimishq: Dar-ul-Fikr,n.d),451.

Islamic International Law also considers breach of peace treaty as aggression against Muslim state. Under IIL, Muslim state is bound to observe peace treaty till the end of its expiry or formal announcement of termination with sufficient time. Similarly, Contemporary International Law(CIL) also bounds nation states to observe and fulfil the terms and conditions of peace treaty. Breach of peace treaty is considered cause of lawful war in CIL. It is not necessary that every nation state is bound to follow every peace treaty even it is against the domestic law of the state. Under CIL, Muslim state can raise objection on a peace treaty if it is against the interest of Muslims or against the spirit of Shari'ah. Similarly, such treaty will not be binding if it is made due to the support of majority of nation states. Muslim states should motivate the Organization of Islamic Cooperation (OIC) which is the second largest inter-governmental organization after the United Nations, with the membership of 57 states, covering four continents. This forum should be used for the collective voice of the Muslim world to ensure and safeguard their interest on economic socio and political areas. There may be a treaty like North Atlantic Treaty Organization (NATO) among all member states of the OIC to ensure peace in the world and strengthen Muslim world.