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**From the perspective of human rights, the importance and status  
of international Islamic treaties**

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## Abstract

*The context and purpose of treaties that regulate relations between the Islamic state and other states in war and peace are matters that deserve special importance for the Islamic state to ensure the life and establishment of the Islamic state, and the continuation of the life and expansion of this valuable work receives its legitimacy from the heavenly mission and causes solidarity between states.*

*Materials and methods: This research is descriptive-analytical and compiled from library sources.*

*Ethical considerations: In writing the article, the originality of the texts, honesty and trustworthiness have been observed.*

*We have no rational or religious reason for the end of political relations as soon as war begins, especially when there are interests at stake, such as the continuation of political representation as a connecting link for dialogue and understanding between states involved in the war, unless there is a state of stability or a risk of danger in the continuation of the stay of the political envoy, for the interests of the state.*

*In Article 38 of the International Court of Justice Bill, the same requirements as mentioned above have been taken into account for the order of the effects of the contract, such as official notification and exchange of ratifications. Of course, if we believe that such a custom is correct in international contracts, and the custom in Islamic law is valid as long as it does not lead to the halal becoming haram and the halal becoming haram.*

**Keywords:** Islamic Contracts, Role, Treaty, Human Rights

## 1. Introduction

Unlike human laws, Sharia laws are considered part of religious rulings, and the collection of these rules forms Islamic law. It is obligatory to follow these laws in order to gain the pleasure of God Almighty and avoid his anger and wrath.

Islam is a system that encompasses the world of existence, man, and worldly and hereafter life. Therefore, it must be centralized in the form of a state in order to be able to apply the divine decrees, which regulate the life of the individual and society, to various levels of life, including belief, morality, politics, and the administration of society and various relationships. Islam establishes its state with special characteristics and based on respect for the commands of God Almighty. Therefore, it creates a special political system among other existing systems; and also systems that will come into existence in the future.

These systems are meant to be states that are based on non-Islamic principles, but are somehow related to the Islamic state in their interests and benefits. This issue causes the Islamic state to have its own principles, framework, and special rulings to regulate these relations.

The innovation of the rulings that regulate the relations between the Islamic state and other states in war and peace is one of the matters that the Islamic government should attach special importance to in order to guarantee the life and stability of the Islamic state.

This continuation of life and expansion of this valuable work receives its legitimacy from the heavenly mission, and the call to it by available means is considered a religious duty, so that in this way they can save people from slavery and connect them with God; the same connection that guides them from darkness to light.

The hypothesis is based on the fact that Islamic treaties are of great importance in international law and can still maintain their legitimacy. The question is; How are Islamic treaties effective in the international sphere? The research method is descriptive-analytical and uses library and international sources.

## 2. Materials and Methods

This research is descriptive-analytical and uses library sources.

## 3. Ethical considerations

In the article, originality, honesty, and trustworthiness have been observed.

## 4. Findings

There is no rational or legal reason to end political relations simply because war has broken out, especially when there is a reconciliation, just as there is no reason to continue political representation as a connecting link for dialogue and understanding between warring states, unless it is in the interests of the state in the event of stability or the possibility of danger to the continued residence of the political envoy.

## 5. Discussion

**5.1 The Importance of Treaties in Islamic International Law**  
**Article 38 of the Statute of the International Court of Justice lists the main sources of public international law. This article considers treaties, in the sense that they are, in fact, international treaties, as rules that the contracting states expressly accept.**

This article also added the International Court of Justice to the Charter of the United Nations and made it obligatory for all signatory states to implement it (Hafiz Ghanem, 2019:56). This issue is also similar in Islamic law, and contracts concluded between Muslims and others are considered one of the sources of international relations in Islam, in addition to the fact that the contracts of the Prophet of Islam, peace be upon him and his family, are from the pure Sunnah. That Hadith is taken into account; a tradition that is considered one of the fixed principles of lawmaking after the Holy Quran.

However, the Holy Quran and the Holy Sunnah determine the general limits of the legitimacy of contracts with enemies and non-enemies (neutrals) in times of war and peace, examples of which are given in the following Holy Verses:

- “And do not take from among the disbelievers friends and helpers, except those who are close to a people between whom and you there is a treaty and a covenant. (( ( Surah An-Nisa, verse 90
- “If they ask you for help, then help them, except those who fight against a people with whom you have made a treaty.” (Anfal 72
- “Except for a group of polytheists with whom you have made a treaty and who have not broken your treaty and who have not helped any of your enemies.” (At-Tawbah verse 7
- “Allah commands you to be kind and to do justice to those who fight you on account of your religion and expel you from your homes. They did not, they did not. (Hashr verse 8)

Imam Zaid narrated from the Holy Prophet (peace and blessings of Allah be upon him) that he said: “If any of you gives a trust to one of them, explicitly or implicitly, this trust remains with him until he hears the word of Allah, the Exalted. Then if he accepts, he has become your brother in religion, and if he does not accept, return him to his land and place of safety and seek help from Allah.” (Qafi Hussain, 2017)

### 5.2 Terms of Contract in International Law

A contract is concluded by the free and voluntary agreement of the parties and on the basis of the terms specified in the contract. These terms are as follows:

#### First. Capacity

The capacity to enter into a contract in Islamic law is not limited to the ruler of an Islamic state, and a citizen of an Islamic state can also be a party to a contract if he is a Muslim, provided that he meets the basic conditions of the transaction, including maturity and all that is required for capacity.

Capacity is also required for giving security. "Aman" is a contract that entails abandoning hostilities with the enemy and not compromising his life, property, or freedom (Zanjani, 2009:66).

However, in very important matters, it is a condition that the person signing the contract should have a higher responsibility. For example, a peace contract with the enemy must be signed by the ruler of the Islamic state or by someone to whom the ruler has delegated authority.

The same condition applies to contracts of truce, peace, and treaty. It is necessary that the contract is made by the Islamic state or by the Imam (peace be upon him) or his deputy, and the same ruling applies to a contract of dhamma.

## **Second. Consent of the parties**

"A contract is a contract that, in order to be concluded, valid, effective, and to have its effects, must have the consent, authority, and will of both parties, or in the case of a multi-party contract, the consent of all parties to the contract must be obtained. (Ibn Arabi, B. Ta).

The will must be free and based on consent and authority. Therefore, A treaty concluded under duress is invalid and the party to whom the duress has occurred may invoke it as a voidable defect in the treaty. International law has established that a treaty is not void as long as the defect of duress has not occurred to a person in charge of the State or its representative.

Therefore, when duress has occurred to the State itself, the treaty will not be void, but the progress of international treaties and practices in the direction of recognition of Failure to submit is against the rule of "the impermissibility of the reason of duress for the annulment of treaties". (Mir Mohammad Sadiqi (2012:89). Among the conditions of Islamic jurisprudence in contracts is that it should be free from corrupt terms, and duress is one of the reasons that corrupt any contract. (Najfi (2016:98),

## **Third. Form of the contract**

In some important contracts, it is stipulated that it must have a specific form of execution. International law has also stipulated in treaties that it must have It should be in a specific form, such as in an official and written document, signed by the representative of the state, approved by the state as an internal law, and registered with the Secretary-General of the United Nations, which indicates the great importance of this international contract (Ziyai Bigdali, 2004:74).

In Islam, there is no specific form of execution for this type of international contract, but these methods are used by Islamic states. It is accepted; because these methods are already common and do not contradict any firm religious text. Therefore, we do not find any obstacle in following the form of implementation prescribed in international law. The Holy Prophet (peace and blessings of Allah be upon him) also ordered the writing of contracts concluded with other political systems; as he did in his contract with the Quraysh in the Peace of Hudaibiyah, and in addition to the view of the contract, both parties and neutral persons, they witnessed the execution of the contract. There is no legal prohibition against writing a contract in more than one language - as is now common in international custom (Muttaqi Hind (1989:655).

It is better to mention that the person who signs the contract (whether or not he has been delegated by the Imam) must inform the Imam of the contract and its clauses, and the only difference between these two cases is that the Imam's acceptance and recognition is in the case of the person who has been delegated by him. We know that such a contract is called a "superfluous contract," and this indicates the political centrality in the Islamic system. The effects of a contract - in Islamic law - are determined solely by the will of the two parties and the signing of the contract, unlike treaties that, according to international law, must also be officially declared and the exchange of letters approved in order to be effective. Of course, there is no prohibition in Islamic law that a condition be included in the contract that after the acts The will of the parties to conclude and sign the contract, the effects of the contract are suspended until the official announcement and the exchange of ratifications and other conditions of international law (Makaram Shirazi, 1410: 568)

It should be noted that international custom, which is considered one of the sources of international law, also has the same requirements for the order of the effects of contracts, such as official notification and exchange of ratifications; of course, if we believe that such custom is valid in international contracts. (Article 38 of the Statute of the International Court of Justice) And custom is valid in Islamic law as long as it does not lead to the halal becoming haram and the halal becoming haram.

## **Fourth. Subject of the Contract**

The jurists - in Islamic law and jurisprudence - have stipulated that the subject of the contract must exist, and from this condition it can be understood that the content of the contract must be clear and unambiguous, and the rights and obligations of the parties must be precisely determined so that the contract is not voidable due to defects, such as fraud or deception. Because ambiguity harms the purpose for which the contract was concluded, and we said that in the contract of Imam Ali (a.s.) to Malik Ashtar-Radi Allahu Anhu, there is a requirement that prohibits ambiguity, and it is not hidden that such a defect is considered a form of betrayal, which is forbidden in Islam (Haider, 2003:58).

Islam acts in all its affairs in the light of morality, which is what makes it bear even its enemies, even though they are May Allah grant you victory. The Holy Quran says in this regard: "And do not use your covenants and oaths to deceive one another, lest he who is steadfast should also deceive and swear falsely, and you will be afflicted with a severe punishment for barring the way of Allah." (An-Nahl, 94)

The purpose of a treaty is not a fleeting and fleeting benefit, but rather the purpose is the principles and values for which Muslims strive and under whose guidance they walk. Accordingly, what price can be imagined for the interests of the world, which in fact even hinder the movement towards God? One of the goals of Islam is to bring the call of truth to the ears of those who are deprived of hearing this call and to act in accordance with its interests and lofty goals through legitimate means; because being devoid of values and ethics is absolutely not permissible, and in Islam, no matter how noble and sublime the goal may be, it cannot be achieved. Use incorrect and illegitimate methods (Mousavi Bejanwardi, 2007:32).

Therefore, the subject of the contract must be possible and legitimate, and legal legitimacy requires that the subject of the contract is not forbidden from a Sharia perspective and is also morally desirable. Muslim jurists add that the contract must be based on Islamic rulings and principles, and the evidence for this is the saying of the Holy Prophet, peace and blessings of Allah be upon him and his family, who said: "Muslims are bound by their word, except for a word that He makes the lawful unlawful and makes the unlawful lawful. And also, when he made peace with the polytheists of Quraysh in Hudaibiyah, that Prophet said: "By the Lord in Whose Hand is my soul, I will grant them any request that includes the sacred things of God."

## **Fifth. Contract Period**

In international law, contracts have a specific period of time, the beginning of which is the time of the order of their effects, while their end is the expiration of the contract or the end of the specified period. It is a contract. In international contracts, there is a text that also determines the duration of the contract.

The implementation and order of the effects of the content of international treaties require official notification and exchange of ratifications and its legalization in the domestic laws of the countries

that signed the contract, while in Islamic law, a contract is valid only by the agreement of the parties to perform it, and the effects of the contract are valid until the conditions for its implementation are complete and there is no defect. It does not affect the contract and its validity and validity, it remains (Najib Al-Amnari (1930:520), unless a condition contrary to these matters is agreed upon in the contract.

The performance of a contract ends with the realization of one of the causes of termination and with the expiration of the period specified in the clauses of the contract. The provisions of contracts differ according to their types. We will talk about this issue when discussing Types of International Contracts in Islam.

### 1. Types of International Agreements in Human Rights

There are various divisions for international agreements in Islam, which are divided into commercial, political, cultural and humanitarian types according to their goals and purposes, agreements, according to the parties, into private, general, bilateral and multilateral agreements, according to the period of time, into permanent and temporary agreements, and according to the conditions, into closed and open agreements.

What is important for us in this discussion is the discussion It is about political agreements that regulate foreign policy relations between Islamic states and other states and lead to the cessation of hostilities and the establishment of peace (Al-Zuhili, 2011:42).

### 2. The contract of trust

The contract of trust is of two types: special and general. The special type is for a few enemies of non-Muslims. Some writers - with whom we also agree - believe that the best name for the contract is "special trust", "covenant". Although this security is a type of treaty, given that in the modern era, treaties are contracts concluded between states and international organizations (i.e., legal entities), it cannot be considered an international treaty.

"Public security" is that which is for the people within the boundaries of a city, district, or village.

The subject of trust is that the guarantor - who may be a ruler or an ordinary Muslim - undertakes to provide security for one or more people, and in this case, killing or taking his property is forbidden, and imposing a tax on the person entrusted is not permissible, and the rule of trust includes the life of the trustee and his subjects, including his mother, wife, minor children, servants and slaves, provided that they are with him when the trust is given (Al-Zuhili, 2011:23).

The majority of jurists believe that "aman" is enforceable upon the surety's knowledge of the surety's request, except for the Shafi'i who believe that in addition to the surety's request, the surety's acceptance is also a condition. The end of the aman is agreed upon according to the period of time. However, the jurists differ in determining the end of the period of aman.

The Malikis and Shafi'i believe that aman for men is like a fire that lasts no more than four months, and this is in the case that the surety is an ambassador or He is not a political envoy (diplomat), and if he is, the end of his political term will determine the duration of his security.

The period of security - in their eyes - if the Muslims are weak, according to the authority of the Imam, continues for ten years. The security of women does not require a period. However, when the security is absolute and the period is not mentioned in it, it is considered to be four months.

And with the end of accepting the four months, the period of security is permanent. It also ends. However, in the Umayyad, Zaydi and Hanafi schools, the period of security with them is less than one year and is determined according to the need to eliminate the possibility of corruption; because it is possible that the hostage is a spy. (Abdul Malik, 2013:12)

The Hanbalis allow the contract of security without paying the jizyah on the part of the hostage or the political envoy, either absolutely or for a short or long period, unlike the truce, which, in their opinion, is not permissible without mentioning the period. Malik The authenticity and authenticity of the trust agreement in Islam is the word of God Almighty in the Holy Quran, which says:

"And whenever one of the polytheists seeks refuge with you after learning about the religion, grant him refuge until he hears the word of God, and after hearing the word of God, bring him to his home in safety and security." The clearest evidence of trust is in the case of travelers and political envoys (diplomats).

Even the Holy Prophet (peace and blessings of God be upon him and his family) granted trust to two false Muslim envoys, He said: "If I had killed the ambassador before, I would have killed two of you." Abdullah bin Mas'ud said: "A year passed and the envoys were not killed." Therefore, Islam believes in political representation and grants personal immunity to political envoys and ambassadors upon the condition of a treaty of peace.

However, Islamic jurisprudence believes in the absence of judicial responsibility for criminal and civil (and sometimes even political) acts for them, as in it is a common international custom, not a requirement; because an ambassador or envoy, as long as he is a resident and under the law of an Islamic state, must be bound by the rulings of the Islamic country (Qurtabi: 1985, 25). Some writers believe that some provisions that are not included in the text should be disregarded; because such matters are the responsibility of the guardian and his special rights.

However, not granting judicial immunity to political residents is a requirement of justice and international law. It considers appropriate dealing with such a person permissible, and even believes that in special and necessary cases, in order to defend the security of the state, such a person can be arrested.

However, in the event that an armed war occurs and war is declared, do political relations between the warring states end and, accordingly, does the status of a permanent representative also disappear from the political envoy? (Ghafri, 2012: 56) Is there a rational or legal reason for ending relations? We do not have politics just by starting a war, especially when there is a reconciliation between them; just as the continuation of a political mission as a connecting link for dialogue and creating understanding between warring states is not necessary, unless there is a danger to the continued residence of the political envoy in the interests of the state; just as the one who sends a spy must be able to do so without encountering any problems. He returned to his home and refuge. A group of international law scholars believe that political relations do not end except with the expulsion of the political envoy or his exile by the government of his country.

### 3. A truce or ceasefire agreement

(A truce) is an agreement concluded between the leader of the Muslim Brotherhood and the leader of the enemy's Brotherhood at a specific time and in accordance with specific conditions. If the leader of the Muslim Brotherhood is not authorized to implement the ceasefire, he

must inform the head of the Islamic state of the terms and conditions of the agreement so that the head of state can consider the agreement permissible and accept it. The legitimacy of the treaty of peace can be found in the following verses:

- "If the enemy desires peace, then desire peace, and put your trust in God, and entrust your affairs to God."
- "Then fulfill your covenant with them until the term they have appointed." Of course, there must be a legitimate interest for Muslims in concluding this type of international agreement, and the effect of the ceasefire or peace includes all enemy members, including those present on the front and those not present.

The jurists agree on limiting the peace to a certain period of time, an absolute ceasefire without a time limit is not correct. The wisdom of this issue is that the approval of peace does not lead to an absolute suspension of jihad. The Shafi'is believe in the cessation of fighting over property and women for a certain period of time (Abdullah: 1412, 28).

The period of cessation of fighting, according to the Imami and Shafi'i jurists and a group of Hanbali jurists, varies from four months to less than a year in the case of Muslims being strong; this is due to the words of Allah Almighty in the Holy Quran, which says: "Allah and His Messenger are free from the polytheists who made a covenant with you, Muslims, and then broke it. Then for another four months on earth (Mecca) "The reason why the ceasefire cannot be considered more than one year is that in more than one year, the payment of the jizyah becomes obligatory, and in this case, the contract is excluded from the name of "ceasefire" (hadna).

In the case of weakness of the Muslims, taking into account the need and the prudent will of the Imam (a.s.), ten years or less can be considered. The reference for this statement is the ceasefire of the Holy Prophet (s.a.w.a.) in the book of It was at Hudaybiyyah that this period was considered.

The Imam can conclude a new contract of the same amount or less if the Muslims do not strengthen themselves during this period (Zanjani 2001:21). The Hanafis, Zaydis and Malikis have not limited the period of ceasefire and have left it to the discretion of the Imam and according to the need and interest - which interest can be in peace rather than war.

This is what some of the Hanbalis have done according to the opinion of Imam Ahmad. Ibn Hanbal preferred it. And some writers are interested in confirming this theory and believe in the permissibility of calculating the duration of the fire only according to the need and interest and according to the prudent will of the guardian.

Ibn Aqlim and some others have argued that the peace between the Holy Prophet (peace and blessings of Allah be upon him) and the people of Khaybar, when he defeated them, was such that he could have exiled them to wherever he wanted (Umud Zanjani (1983:41, from the verse) The following verse also supports their claim: "Then whenever they withdraw from fighting you and surrender to you, then God has not opened for you a way against them (and has not made their wealth and lives lawful for you)."

Therefore, we are inclined to the view that the temporary nature of the ceasefire is only to prevent the interruption of jihad - as some jurists hold - and we believe that the argument in favor of the absolute permissibility of confirmation is The verse mentioned above is not correct, because this verse cannot be used to mean that there was a

previous war between this people and the Muslims, and if there was no previous war, the fire would not have much meaning, and the contract mentioned in the verse is, in fact, another type of contract.

#### 4. Dhimmi Contract

The "Dhimmi Contract" is a permanent peace contract that regulates the residence of non-Muslims in Muslim lands in return for the payment of taxes by the non-Muslims to the Islamic state.

We believe that this contract is not an international contract in the strict legal sense; because a dhimmi, who has agreed to live among Muslims and has accepted the payment of taxes, is considered one of the subjects of the Islamic state in these circumstances.

The law that applies to him in this case is not international law, but a kind of internal law of the Islamic state that concerns how to deal with non-Muslim citizens. However, in this regard, we, like jurists and other researchers, are obliged to clarify this concept.

This contract is a political contract in which one of the parties is a non-Muslim, and since its commencement is before that nation joins the subjects of the Islamic state, these individuals become part of the subjects of Muslims after the contract of Dhimmah is concluded, not before (Zia'i Bigdali: 1996, 42).

Therefore, jurists agree that the contract of Dhimmah can only be concluded by the guardian due to its special importance and its special connection with the interests of Muslims. The other party to the contract, according to the majority of jurists, must be from the People of the Book (Jews, Christians, and Sabaeans - if the existence of the Book is proven for them) or from the People of the Book (such as the Magians).

However, the contract of dhimmah with idolaters is not valid. However, according to the narration of Tabari regarding the difference of opinion among jurists, in the view of Maliki, Awza'i, Thawuri, and the jurists of Syria, this contract is valid.

According to the Holy Quran, by concluding a contract of dhimmah, war with the People of the Book ends. In this regard, Allah Almighty says: "O you who believe! Fight with those of the People of the Book who do not believe in Allah and the Last Day, and do not forbid what Allah and His Messenger have forbidden, and do not believe in the religion of truth, until they pay the jizyah to the Islamic state with humility and humility." Most jurists believe that jizyah is in return for their protection and exemption from military duty.

Of course, although we accept that jizyah is in return for protection The state is a Dhimma, but the fact that the abolition of military service - even in the compulsory form that is currently being discussed - is also in exchange for the payment of the Jizya is unacceptable. The reason for this is that military service is the believer's rise to the task of jihad, and this task is due to the interests and needs of Islam, and such a task is not naturally obligatory on non-Muslims (Researcher Damad (2001:65). However, according to this view, the Jizya is due to the participation of the Dhimma In The defense is rejected, we have not found any evidence from the Quran and Sunnah, and we believe that such a view is contrary to the wisdom of legislating the jizyah; because the payment of jizyah indicates the sovereignty of Muslims and the allegiance of non-Muslims to the state under whose rule they live and are obliged to fight with Muslims and not to deceive them. The term "jizyah" is applied to the contract itself and also to the money that is obligated to be paid (and the root of this word is from punishment; because We do not harm them and we make them live in our homes.)

The amount of the jizyah, according to most jurists, is between one and four dinars, in proportion to the ability and inability of the person. From our point of view, which is in accordance with the opinion of the Imamiyyah and Malikiyyah jurists, determining the amount of the jizyah depends on the opinion of the guardian of the state. Imam Sadiq (a.s.) says in this regard: "Determining the amount of the jizyah depends on the opinion of the Imam, and he collects jizyah from everyone according to his wealth and ability." Some believe that the principle in International relations are peaceful and there is no obstacle to concluding permanent peace based on any other contract except the contract of dhamma. Based on this claim, they cite the contracts of the Holy Prophet (peace and blessings of Allah be upon him) and his family; the contracts that he concluded with the tribes between Medina and the coast; such as the Banu Dhammar, Ghaffar, and Juhayna, and also with the Jews of Medina (Azimi Shushtari (2008:50). Therefore, we do not believe that these contracts were absolute and without any time limit. Although they do not contain any binding provisions for determining the duration, the treaty, especially the one concluded in Medina, was not a political treaty between Muslims and non-Muslims that established a specific law to regulate matters between them, but rather to regulate the relations of Muslims between the two groups of Muhajirin and Ansar, and also to regulate their relations with the Jews of Medina.

### 5.3 Termination of Contracts in Islamic Law

Termination of contracts in Islamic law - in addition to the reasons mentioned above - is achieved by one of the following:

- a. The expiration of a certain period, if mentioned in the contract;
- b. A rescissory condition, if mentioned in the contract;
- c. A new treaty that nullifies and renders the previous treaty ineffective. This nullification may be based on the text of the new treaty or may be regulated by broader terms than the previous treaty;
- d. The voluntary departure of one of the parties to the treaty, such as the withdrawal of the state for any reason;
- e. By agreement of the parties on the termination of the contract;
- f. By breach of contract (breach of contract) and this is the most important reason for termination and it is in one of two cases:

#### 5.3.1 Termination of contract at the request of the Islamic State

The jurists agree that since a permanent contract is a necessary contract, it cannot be terminated and therefore, it is not permissible for the ruler to break the covenant (Zanjani (1983:98, ).

In the case of a temporary contract, termination is also not permissible, except when the contract period expires or the party The opposite is to break it. The evidence for that is the word of God Almighty, which says: "O you who have believed, fulfill your covenants," and "Then keep your covenant with them for the term they have appointed." And the Holy Prophet, peace and blessings of Allah be upon him and his family, said: "Muslims are true to their covenants." However, the Imam can break a temporary covenant if he fears betrayal from the enemy, and the evidence for that is the word of God Almighty, which says: "And if any of You fear the treachery of a group of people, so break their covenant with them, maintaining justice and truth, for God does not love the treacherous.

Breaking a contract is the breaking of the terms of the contract and a clear declaration of the termination of the contract between the Muslims and the contracting party, and until the breach of the contract reaches the notice of the contracting parties, war does not take place.

The Holy Prophet (peace and blessings of Allah be upon him) and his family made a covenant with the people of Mecca. Since they betrayed the rights of the Muslims, they broke it.

#### 5.3.2 Breaking the contract at the request of the non-Muslim party

The majority of jurists (except the Hanafis) believe that convening a war with the Muslims and even simply refraining from paying the jizya to them breaks the contract of the dhimmis, as does refraining from implementing the rulings of Islam when the ruler has ordered it. However, the Hanafis do not share this view and believe that when the contract of the dhimmis is broken, they They have become powerful or have joined the warlords (Hur Aamili: 1993, 65).

However, if the dhimmis oppose the fundamental issues of Islam, such as marrying a Muslim woman or committing adultery with her or helping the enemy or harboring spies or intentionally killing Muslims or stealing Muslim property and the like, the Malikis and Hanbalis consider these matters to be a violation of the dhimmis covenant.

However, the Shafi'is - according to the most authentic narration in their view - believe that the agreement should be It must contain a clause that, if violated, automatically nullifies the treaty, and this is what we discussed in the discussion of "security," and we said that the ally enjoys the support of the Islamic state on condition that he does not act contrary to the rulings of the Islamic state and does not violate the security agreement (ibid., 66). However, the view of the majority of jurists - other than the Hanafi school - regarding fire is that this agreement is valid only if the non-Muslim party goes to war with the Muslims, with the support of the Enmity or showing off by doing forbidden things or going against any of the basic precepts of the religion is violated. It is narrated in a hadith from Imam Sadiq (a.s.) that he said: "The Holy Prophet (s.a.w.a.) used to accept the Jizyah from the Dhimmah on the condition that they do not eat pork and do not marry their sisters and their brother's daughters and their sister's daughters. If any of them does such things, they will be excluded from the protection of God and His Messenger (s.a.w.a.)." From the Prophet Imam Sadiq (a.s.) is also quoted as saying, "The Messenger of Allah (a.s.) and his family would make a covenant of dhamma with the People of the Book and accept a portion of the jizyah from them, on the condition that they would not make their children Jews or Christians."

The last hadith is used to show that one of the most important goals of the contract of dhamma is to become more capable of calling to Islam, and therefore, the contract is invalidated by those who fail to achieve such a goal. However, in the religion of Imam Abu Hanifa and his followers, the contract is not invalidated except by the enemy's betrayal.

Betrayal includes all matters that violate the covenant and trust; due to a condition that has been stipulated or a condition that is dictated by custom; Such as war against Muslims or support for their enemies, and of course this is in conditions where Muslims are able to confront them (Khuyy 1992:63). However, war and conflict do not occur after a breach of a treaty, and this is the issue in which Islam has taken precedence over human laws and has committed itself to them at the

international level. This view of Islam is like a kind of clear declaration to the other party in the event of the expiration of the treaty.

## 6. Conclusion

In Article 38 of the Statute of the International Court of Justice, international custom, which is considered one of the sources of international law, has the same requirements as mentioned above, such as formal notification and exchange of ratifications, for the order of the effects of contracts; of course, if we believe that such custom is valid in international contracts and custom is valid in Islamic law as long as it does not lead to the halal becoming haram and the halal becoming haram.

Unlike treaties that International law requires that, in addition to these, an official declaration must be made and the exchange of letters of ratification must be made. Of course, there is no reason why Islamic law should not stipulate in a contract that, after the parties have expressed their will to conclude and signed the contract, the effects of the contract should be suspended until the official declaration and exchange of letters of ratification and other conditions of international law.

We have no rational or legal reason for ending political relations simply because war has broken out, especially When there is a reconciliation; as if the continuation of a political mission as a connecting link

is for the purpose of dialogue and creating understanding between warring states, unless there is a danger in the continued residence of the political envoy in the interests of the state in a state of stability or possibility of danger; as if the envoy were to spy, then he should be able to return to his home and refuge without encountering any difficulty. A group of International law scholars believe that political relations do not end except with the expulsion of the political envoy or his/her exile by the government of his/her country.

The treaties on human rights have been absolute and without limitation of duration, although they do not contain any limitation to determine the duration, especially the treaty that was concluded in Medina, which was not a political treaty between Muslims and non-Muslims to form a specific law to regulate matters between them, but to regulate the relations of Muslims among themselves. The two groups of Muhajirs and Ansar, and also the regulation of their relations with the Jews of Medina.

However, war and conflict do not occur after the breach of a treaty, and this is the issue in which Islam has taken precedence over human laws and has committed itself to them at the international level. This view of Islam is like a kind of clear declaration to the other party in the event of the expiration of the treaty.

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