

**THE CONCEPT OF EXTRADITION IN MODERN LAW OF  
NATIONS AND SHARIAH:  
A COMPARATIVE STUDY**



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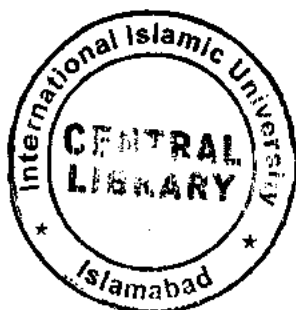
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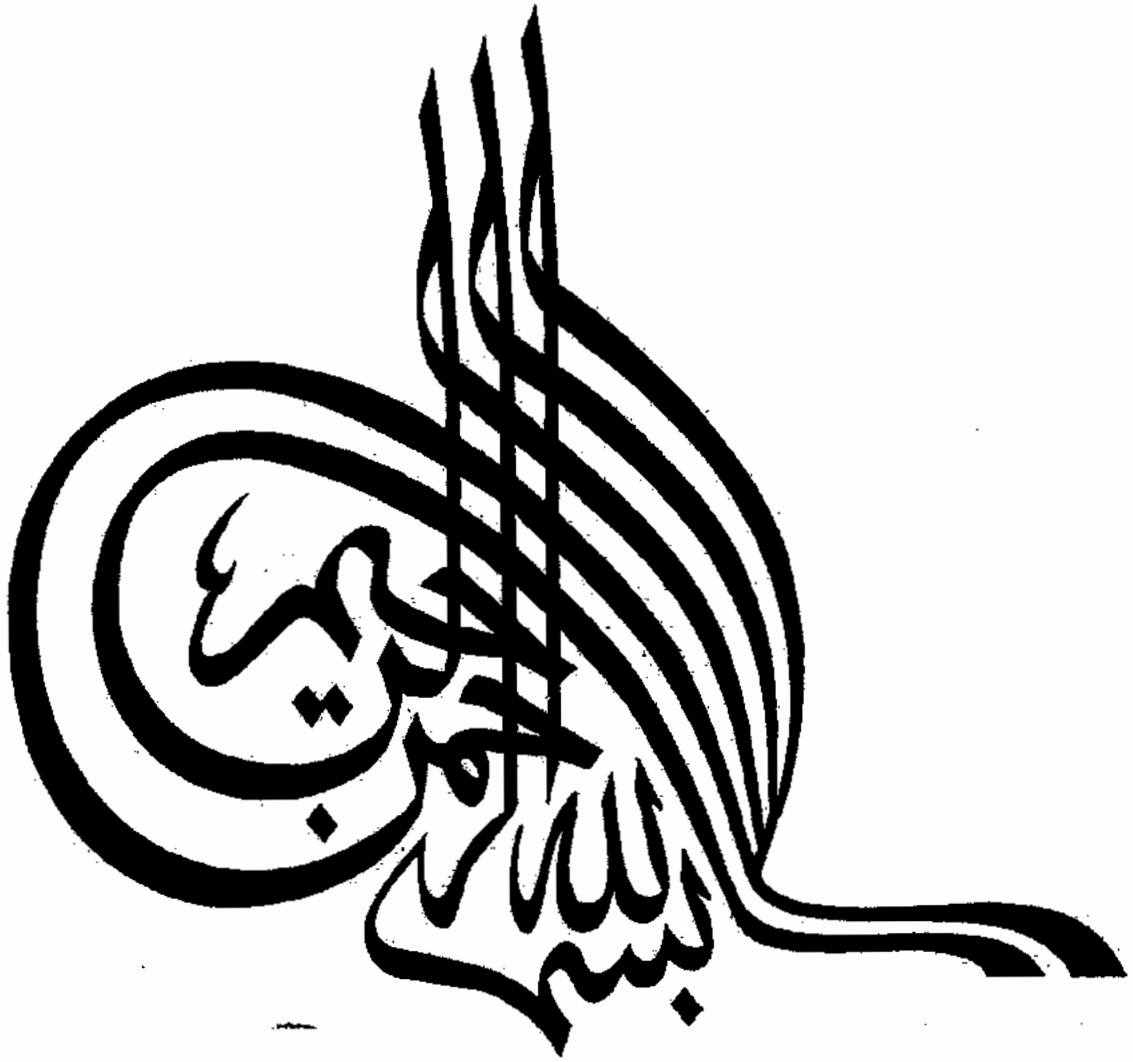
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*In the name of Allah,  
the Most Beneficent,  
the Most Merciful*



## FINAL APPROVAL

It is certified that we have gone through and evaluated the dissertation submitted by Mr. Arshad Ali, a student of LL.M. International Law having University Registration No. 138-FSL/LLMIL/F10 titled **“The concept of Extradition in Modern Law of Nations and Shariah: A comparative study”** in partial fulfillment for the award of degree of LL.M. International Law. We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of degree.

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*Dedicated  
to my  
beloved parents  
with love, loyalty and gratitude*

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*Arshad Ali*

## DECLARATION

*I Mr. Arshad Ali, hereby declare that this dissertation is original and has never been presented in any other Institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.*

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## ABSTRACT

Extradition is the official request, by one state to another, to handover a deserter offender for legal proceedings, regarding law violation. Extradition has been in practice, since human development. Historically, law of extradition is usually concerned with political desires. That is why, extradition remained more political than legal. However, with growing human development, extradition got transformed into a legal notion.

Islamic international law is also full of extradition treaties. After the migration of Habsha, when Mushrikeen (infidels) of Mecca formally requested Habsha king to return Muslims, He refused to do so.

Again during Hudabiyah, it was requested for the extradition of people. It was said that "*If anyone went over to Muhammad (PBUH) without the permission of his guardian, he should be sent back to the Quraish; but any of the followers of Muhammad (PBUH) return to Quresh, he should not be sent back.*"

This thesis is an effort to present the different dimensions of extradition in Law and Shariah. The historical background of Islamic international law, known as *Al Siyar* in Fiqh, is also discussed in short. It is also a fact, that Muslim jurists did not mention the accurate form of extradition. They have different opinion.

- 1 The Malikies argue that during extradition treaty with a non-Muslim state, the provisions of the treaty must be completed when request is made to the Islamic State for the extradition of an accused individual.<sup>1</sup>
- 2 The Hanafies and some Maliki jurists are different from most of the Malikies point by arguing that extradition from the Islamic State could only be for non-Muslims.

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<sup>1</sup> Abdul Ullah bin Ahmad bin Muhammad bin Qudamah al Muqdasī , *Al-Mughn Sharh Mukhtasar Al Kharqi* (Cairo: Matba'at al-Manar ,1347AH),10:510.

Muslims, in custody, should not be extradited to a non-Muslim state as this would give non-Muslims mastery over Muslims.<sup>2</sup>

The Shafies disagree with both the Hanafies and Malikies views. They held that a person could only be legally extradited to a non-Muslim state if the person had a family there to protect him. If the accused person had no such family then extradition was not legal. This analysis was based on the horror that extraditing Muslims to a non-Muslim state would guide polytheists to persuade the Muslim left from Islam.<sup>3</sup> While the Shafies observation was obviously deliberate regarding the extradition of Muslims, it does not appear to be applicable to non-Muslims, since they need no tribe to safeguard them from apostasy.

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<sup>2</sup>Ibid, 6: 296.

<sup>3</sup> Abu Ishaq Ibrahim b. Ali b. Yusuf Al-Sherazi, *Al-Muhazzeb* (Cairo: Matba'at al-Halabi, 1985), 3:277.

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## CHAPTER 1

### INTRODUCTION

#### 1.1 Introduction:

Extradition is a process by which one state handover a deserter offender to another state required to be brought before the court of justice.

The term deserter or fugitive offender indicates the condemned personnel who run away the command of the state which convicted him, in order to avoid their verdict. On the other hand, it is not so because this is also used for those accused people, who escape the command of the state, where they may face a criminal assessment, and which may noticeably result in discharge.

The Pakistani Extradition Act, 1972 characterize fugitive offender as: "the person who being accused or convicted of an extradition offence is, or, is suspected to be, in any part of Pakistan"<sup>4</sup>

The phrase fugitive criminal and deserter criminal are both compatible. "Justice Mohammad Afzal Cheema in *José Gonzalo de Garcia de Balsereas vs. State* says, Extradition means the delivery of a fugitive criminal to a state where the crime was committed"<sup>5</sup>

Justice Cheema further says;

Extradition in its technical or legal sense means, handing over a person, to the authorities of a foreign state, especially the delivery of a fugitive criminal to the

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<sup>4</sup> The Extradition Act, 1972 (*ACT NO. XXI OF 1972*), section 2(1) (d).

<sup>5</sup> *José Gonzalo de Garcia de Balsereas vs. State*, PLD1969Lah, 129(SB).

authorities of the foreign state in which the crime was committed, for trial or punishment.<sup>6</sup>

Similarly, the Indian Extradition Act, 1962, defines fugitive criminal in similar <sup>7</sup>terms:

Fugitive criminal means, a person who is accused or convicted of an extradition offence, within the jurisdiction of a foreign state, and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign state.<sup>8</sup>

Harvard examines draft convention on extradition, 1935, defines extradition as

“The formal surrender of a person, by a state to another state, for prosecution or punishment.”<sup>9</sup>

A UNHCR advisor defines Extradition, as:

“A formal process whereby states grant each other mutual judicial assistance in criminal matters on the basis of bilateral or multilateral treaties or on an ad hoc basis”.<sup>10</sup>

Thus it is clear that Extradition is the prescribed procedure, whereby a country desires the other state, in official capacity, to hand over a fugitive criminal, for legal proceedings.

From the historical perspective, Extradition has a long extensive record. Professor Bassiouni says “that the first recorded extradition treaty or agreement was concluded around 1280 B.C as part of a peace treaty between Ramses II, Pharaoh of Egypt, and

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<sup>6</sup> *Ibid.* 130.

<sup>7</sup> The Extradition Act, 1962 Act No. 34 of 1962 [15th September 1962.], India.

<sup>8</sup> *Ibid.*, section 2(f).

<sup>9</sup> J. G. Starke, *An Introduction to International Law* (London: Butterworth co publisher, 1967), 13.

<sup>10</sup> Sibylle Kapferer, “*the Interface between Extradition and Asylum*”, available online at: <http://www.unhcr.org/protect>, last accessed 12<sup>th</sup> February, 2015)

Hattusili III, the king of Hatti".<sup>11</sup> Yet, at that occasion, it was used in favor of political offences regarding extradition.

According to the treaty of Paris (1303 A.D), concluded amongst UK and France, it was decided "that both contracted countries should not provide shield to the enemies of the other".<sup>12</sup> Likewise, in the year 1378 A.D, a treaty between Charles V of France and Duke of Savoy, presented that "all malefactors who had fled from Savoy to Dauphin, or from Dauphin to Savoy, should be delivered up even if they were subjects of the state surrendering them".<sup>13</sup>

It is clear from the above mentioned details, that Extradition had extensively been regarded as the sole privilege of autonomous rulers and political personals. Justice Cheema comments that:

Historically, extradition was mainly sought or granted for political purposes in respect of persons, who having incurred the displeasure of their own government, left the country and sought asylum in another country. The grant or refusal of request for extradition depended on the whims of the sovereigns who passed arbitrary orders.<sup>14</sup>

The earlier treaties provided chiefly for the surrender of political fugitives; but by the time vital published his *treaties adroit does gens* in 1758, ordinary criminals were also surrendered upon specific demand.

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<sup>11</sup> M.S. Bassiouni, *International Extradition and World Public Order*, available at: <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=321185>, last accessed 17<sup>th</sup> January, 2015)

<sup>12</sup> Clarke Edward, *Treaties upon the Law of Extradition with the Convention upon the Subject Existing Between England and Foreign Nations* (London: Stevens and Haynes, 1888), 18.

<sup>13</sup> *Ibid.* 19.

<sup>14</sup> *PLD1969 Lah.129*, (SB).



However, with the change of thinking and appearance, political offences, which formerly shaped the solitary foundation of extradition, have been completely discarded. Thus, nowadays, it is a fit recognized theory, to facilitate states not to hand over in case of political offences. Glen says:

Up to the middle of the eighteenth century, these extradition treaties primarily covered, the surrender of political fugitives, however, gradually, ordinary crimes began to be included as reasons for the surrender of an alleged offender. By the second half of the last century, however, the revolution in transportation had made the speedy escape of criminals ever; hence extradition treaties become increasingly general in character. Interestingly enough, as the scope of these agreements expended to include ever more numerous categories of criminal offenders, political offences ceased to play a part, and today, such latter offences no longer form a basis for the surrender of fugitives.<sup>15</sup>

In order to extradite or not extradite, States typically go through into mutual and multiparty extradition treaties. States generally have metropolitan extradition laws, for example, the Extradition Act of Pakistan (1972), the UK Extradition Act (2003), and the Indian Extradition Act (1962). With such regulations, extradition once regarded as the sole prerogative of sovereign rulers, has now transformed into a proper concept of law.

Justice Cheema writes:

It is one of the most important means of combating international crime. National legislation, extradition treaties, bilateral or multilateral international accession to

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<sup>15</sup> Gglahn Von Gerhard, *Law Among Nations an Introduction to Public International Law* (London: Collier Macmillan Ltd, 1970), 252-253.

international conventions, and international courtesy, has become the usual basis of extradition, governing the grant or refusal of a request by the asylum country.<sup>16</sup> Furthermore, HR progress after World War II has prejudiced almost all divisions of law. Extradition is no unusual from these laws; so HR law has positioned much restriction on extradition. If serious HR violations take place, during implementation of extradition laws, it should generally be refused.

## **1.2 Significance of Extradition**

Extradition plays a vital role in international cooperation regarding most wanted criminals. This would definitely help to make a peaceful globe. Some of the important aspects of the extradition are presented as below.

### **1.2.1 Offense and the Social Order**

Offence is part of human civilization. The record of offense is as old as the man himself. The first crime was dedicated on the globe when one child of Adam killed the other.<sup>17</sup> Crimes are mere ostensible based on many causes such as paucity, joblessness, illiteracy, favoritism, law and order etc. For effective social control, Jurisdiction is important for the free and fair trial, and dispenses justice. This is why; jurisdiction is discussed here in a bit more detail.

### **Forms of Jurisdiction**

Jurisdiction commonly submits to rules used by a country over its people, possessions or actions. Jurisdiction has different forms. (1) Legislative or prescriptive jurisdiction; that is the power to legislate in esteem of the people, possessions or incident in query. (2) The executive or else enforcement jurisdiction; is the power or corporeal intervention by the

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<sup>16</sup> PLD1969 Lah.129. (SB), 130.

<sup>17</sup> Syed Abul Ala Mawdudi, *Tafhim Ul Quran, Toward understanding the Holy Quran, abridge version of Tafhim Ul Quran*, Translated and edited by Zafar Ishaq Ansari ( UK : Islamic foundation ,2006),2:27-32.

managerial class. For example take into custody of people, abduction of property etc. However, this study is concerned with jurisdiction to over a person only. Judicial and executive thus, are another two main types of jurisdiction.<sup>18</sup>

### 1.2.2 Principles of jurisdiction

These are various principles, noted in "1935 Harvard Draft Convention on jurisdiction with respect to crime".<sup>19</sup> Here the principles are discussed quite comprehensively.

#### 1.2.3.1 Territorial Jurisdiction Principle

The said convention states that:

A state has jurisdiction, with respect to any crime, committed in whole or in part, within its territory. This jurisdiction extends to;

(A) Any participation outside its territory, in a crime, committed in whole or in part, within its territory; and

(b) Any attempt outside its territory, to commit a crime, in whole or in part, within its territory.<sup>20</sup>

It suggests that a country should have command by all means. The nationality regarding criminal has no relevancy, but commission of crime in a territory is the relevant thing. Though, sometime, it may happen, that a criminal action initiated in one state, completes in another state. In such situation, both states have jurisdiction. This is also known as 'effective doctrine'. Article 4 of the said convention, is regarding crimes committed upon a ship or aircraft".<sup>21</sup>

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<sup>18</sup> Martin Dixon, *Textbook on International Law* (Glasgow: Blackstone Press Ltd, 1996), 126.

<sup>19</sup> Karl Doehring, "supplement: Research in International Law". *The American Journal of International Law*, (1935), 29:439-442. Or <http://www.jstor.org/stable/2213634442>. (last accessed October,9,2009)

<sup>20</sup> Ibid, Article 3.

<sup>21</sup> Ibid.

### **1.2.3.2 Nationality Jurisdiction Principle**

In the said rule or principle, country have court jurisdiction, above each and every person of their public everywhere. As a result, the court has power to try for any crime against their national laws. Most of the countries follow widely this code. In Pakistan Penal Code 1860 (PPC), the principle is based upon this rule, known as extraterritorial jurisdiction".<sup>22</sup>

The said convention, under article 5 states, that state have jurisdiction which is:

- (a) By natural person which is outside from their territory, or
- (b) By a corporation or other, etc<sup>23</sup>

### **1.2.3.3 Collective/Universal Jurisdiction Principle**

Crimes like piracy, ear crimes, crimes against humanity, slave issues are collective problems. These are universally considered crimes and every state have responsibility to exercise their jurisdiction. Article 9 and 10 of the convention are related to piracy. The said convention stated that "A state has jurisdiction, with respect to any crime, committed outside its territory, by an alien, who constitutes piracy according to international law."<sup>24</sup>

### **1.2.3.4 Protective Jurisdiction Principle**

In this jurisdiction country will be able to implement its influence, in those crimes, which are injurious to its protection. Article 7 and 8 are about the security of the state.

Article 7 says that:

A state has the jurisdiction with respect to any crime committed outside its territory by an alien against the security, territorial integrity or political

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<sup>22</sup> PPC, (1860), section 4.

<sup>23</sup> Martin Dixon, *Textbook on International Law* (Glasgow: Blackstone Press Ltd., 1996),126.

<sup>24</sup> Ibid.

independence of that state, provided that the act or omission which constitutes the crime was not committed in exercise of a liberty guaranteed the alien by the law of the place where it was committed.<sup>25</sup>

Article 8 is related to counterfeiting of seals, currency, etc; it states as:

A state has jurisdiction with respect to any crime committed outside its territory by an alien who consists of a falsification or counterfeiting or an uttering of falsified copies or counterfeits, of the seal, currency, instruments of credit, stamps, or public documents, issued by the state or under its authority.<sup>26</sup>

#### **1.2.4 Submissive Individuality Jurisdiction**

This type of jurisdiction is concerned with the nationality, of the victim of the crime.<sup>27</sup>

For instance, in the famous Lotus case, the government of turkey claimed jurisdiction on the basis of additional that killed persons were Turkish.<sup>28</sup>

#### **1.2.5 Concurrent Jurisdiction**

Such type of jurisdiction normally exists, when more than one court has jurisdiction over a matter. For example, in USA, there is federal state court system and in UK there are court of appeal, High Court, crown court, magistrate court and county court.

Suppose, if a US national Z, falsifies Indian money in UAE. UAE has authority based on territorial principle. India has authority based on defensive principle and USA has authority based on race code. Such type of jurisdiction is recognized as concurrent jurisdiction.

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<sup>25</sup> PCIJ, (1927), Series A to10

<sup>26</sup> Ibid.

<sup>27</sup> Quran, 5: 27-32.

<sup>28</sup> PCIJ, (1927), Series A, to.10

However, the charge against such a person can be tried in single authority, since the code of (bis-in-idem illustrates, that this would be illegal to have twice trial against accused, in favor of the matching offence). Double jeopardy is also related to such like events. This is now a special part of different world constitutions. Article 13 of the Convention on Jurisdiction 1935, also approves this rule.<sup>29</sup>

For the above case, Countries must have extradition treaties among them; otherwise, UAE will try against such offender.

#### **1.2.6 Exclusive jurisdiction**

A situation may arise, where; every single country has jurisdiction or authority. Extradition in this case, will be highly beneficial, when the criminal run away from one country to another country, defeating the ordinary purpose of diminishing the offense.

Dr. S. K. Kapoor summarized the above discussion as:

Ordinarily, each state exercise complete jurisdiction over all the persons within its territory. But sometimes there may be cases when a person after committing crime runs away to another country. In such a situation, the affected country finds itself helpless, to exercise jurisdiction, to punish the guilty person. This situation is undoubtedly very detrimental for peace and order. In such a situation, peace and order can be maintained only when there is international cooperation among states. There is social need to punish such criminals, and in order to fulfill this social necessity, the principle of extradition has been recognized.<sup>30</sup>

Movement of the person's nowadays, has becomes easier due to developed means of transportation. As such, the escape of criminals has become very easy. Today, extradition

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<sup>29</sup> Martin Dixon, *Textbook on International Law* (Glasgow: Blackstone Press Ltd, 1996), 126.

<sup>30</sup> S.K Kapoor, *International Law and Human Right* (Allahabad: Central Law Agency ,2004), 335.

treaties are very valuable thing. In Soering vs. UK case, the European court of HR observed that:

Movement across the world has become easier, due to which, crimes have increased on a larger scale at international level. It is therefore, in the interests of all nations that suspected offenders, who flee abroad, should be brought to justice. Conversely, the establishment of safe heavens for fugitive would not only result in danger for the state obliged to harbor the protected person but also tend to undermine the foundation of extradition.<sup>31</sup>

Especially, after 9/11, no individual country is supposed to provide protection to rebels. Thus, many conventions have been made, for combating international terrorism, and to talk either to prosecute, or, extradite the culprits. For example, the 1999 OIC conference,<sup>32</sup> is regarding combating international terrorism. The Pakistani law of Extradition Act (1972) has been also amended, to include financing for terrorism in the list of extradition offences.<sup>33</sup>

### 1.3 H.R & Law of Extradition.

It's the era of human rights development and protection in the world. National and International law, both are closely linked with their commitment to the protection of HR which is considered a mixture of civilization of the countries. "Global movements of HR do impact upon every international law instruments, and as such law of extradition is also the affected area of international law subjects, regarded to HR."<sup>34</sup>

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<sup>31</sup> *European court of HR*, (1989), 899.

<sup>32</sup> *Convention of the Organization of the Islamic Conference on Combating on International Terrorism*, (1999) Article 5-8, <http://www.cfr.org/terrorism-and-the-law/convention-organization-islamic-conference-oic-combating-international-terrorism/p24781> (last accessed ), January 17, 2015, 8PM.

<sup>33</sup> S.R.O. 1051(1)/2008, dated 8-10-2008.

<sup>34</sup> Sibylle Kapferer, *The Interface between Extradition And Asylum*, 59. Or, <http://www.unhcr.org/protect> (Last accessed 12.05.2011)

Extradition is subject to HR, but still no one has played significant role for extradition, as far as human right is concerned. Similarly, political consideration many times result into violation of HR, due to lack of federal law by developing countries such as Pakistan. For example, the case of Aimal Kansir<sup>35</sup> who put to death two official of (USA) CIA along with others injured, by using an AK-47 rifle in Langley, Virginia, USA on 25<sup>th</sup> January 1993. He was captured in June 1997 in Pakistan. A Pakistani retired official said:

No formal request for his extradition was ever made to Pakistan, and no extradition proceeding was initiated, the day he was arrested, and delivered to FBI agents, in violation of the constitution and laws of Pakistan...Will go down in our history as a day of infamy.<sup>36</sup>

In similar fashion, Ms. Amna Masood Janjua says, that "the US has abducted over 10,000 Pakistani nationals during last 10 years, and they have tortured them."<sup>37</sup>

Dr.Aafia Siddique is yet another example. Ms.Liz Davies, a UK political campaigner, in her editorial remarks about Aafia's case decision says that:

All we know is that she has not been treated according to rule of law or received due process. The circumstances of her arrest, her trial and her punitive sentence are extremely concerning.<sup>38</sup>

All these things show that the countries who penalize the criminals be obliged to value the principles of HR. Kidnapping is not permissible under international Law which is a threat to international peace. Peace can be only achieved by defending and developing

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<sup>35</sup>PCr. LJ (1998), 1097.

<sup>36</sup> .Roe dad Khan, *In Search of Truth*, The Dawn November 24, 2002, available at: <http://www.dawn.com/2002/11/24/op.htm#3> last accessed February, 3, 2010, Roedad Khan, *In Search of Truth*, The Dawn, November24, 2002.

<sup>37</sup> <http://www.english.farynews.com/newstext.php?no=8908151347>, last accessed March, 3, 2013.

<sup>38</sup> . Ms.Liz Davies, *The Sinster of Aafia Siddiqui*, [www.morningstaronline.co.uk/index.php/news/layout/set/print/content/full/96686](http://www.morningstaronline.co.uk/index.php/news/layout/set/print/content/full/96686), last accessed November 14, 2010.



HR. Contemporary extradition laws provide apparatus for fugitive criminals. The rules of such a protection can be regularized by means of public laws regarding extradition.

#### 1.4 Significance of Public Extradition Law

It is a fact, that the law related to extradition is a mix together of state and worldwide law, but municipal extradition act is highly significant than international law regarding extradition. Extraditions need treaties and municipal law determines, whether, a deserter can be delivered under the extradition agreement or not? This situation is regarding the double countries, like Pakistan, where global treaty does not apply in public court, due to exclusive nature of state legislation.

It should be noted that, in such belongings, a person can take advantage to refuse extradition such as political offence, twice criminality, double jeopardy, favoritism etc. Moreover, there must be prima facie case against the extraditable person otherwise it will be unlawful.

Professor Starke says:

International law provides, that the grant of and procedure as to extradition are most properly left to municipal law and does not, for instance, preclude states from legislation so as to preclude the surrender of fugitives by them, if it appears that the request for extradition had been made, in order to prosecute the fugitive on account of his race, religion, or political opinions, or if he may be prejudiced thereby upon his eventual trial by the courts of the requesting state.<sup>39</sup>

It is clear that states have long standing cooperation's with each other, by means of extradition, to bring fugitives to justice, and not to defeat the law. It is very important for states to ensure, HR and sovereignty. It is because, some offenders complete their

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<sup>39</sup> J.G Stark, *Introduction to International Law* (London: Butterworth, 1984), 341.

sentence and face extradition to another for that jurisdiction, and it is also a fact, that criminal justice operates in different states of government independently.<sup>40</sup>

### 1.5 Extradition and their Historical Perspective

Extradition treaties have very oldest examples in international law.<sup>41</sup> Diplomatic history is traced back to 1258 B.C, like some things in extradition settlement during Egyptian king Rameses II with Hittite III<sup>42</sup>. Also in the prehistoric Rome and Greece, clash arose between consecrated right of asylum, and eventually the fear of divine retribution forward political consideration.<sup>43</sup>The development of extradition law largely took place with the concept of respondent superior and vicarious liability.<sup>44</sup>

Similarly, in the Roman law of Noxae Deditio, the father or master of criminal offender could be held liable for extradition, by reason of authority.<sup>45</sup>If father don't committ crime their children don't. This later extended to international law and relation.<sup>46</sup> In UK history that Charles I father of Charles II implemented throughout the English communal conflict of the 1640s, directing to demolish the kingdom in England for over a decade.<sup>47</sup> In 1660 while Charles II ascended to the throne in the re-establishment of the kingdom, his initial act while sovereign was to penalize those accountable intended for his father's capital

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<sup>40</sup> David C May, Kevin I Minor Rick, Ruddell Betsy, A. M Matthews, *Corrections and Criminal Justice System* (London: John and Bartlett Publishers, 2008), 6.

<sup>41</sup> Walker Alfred, Thomas Alfred, *A History of the Law of Nation* (Cambridge :University, Press Cambridge, 1899),38.

<sup>42</sup> Breasted H. James, *A History of the Law of Egypt from Earliest Time to the Persian Conquest* (2nd Ed, 1916), 438.

<sup>43</sup> Philipson Coleman, *the International Law and Custom of Ancient Greece and Rome*, (1911), 349-358.

<sup>44</sup> Levinson J, Dairy, *Collective Sanctions*, (2003), 56: 346.

<sup>45</sup> Ibid 1415.

<sup>46</sup> Hessbrugge Arno Jan, *The Historical Development of the Doctrine of Attribution and Due Diligence in International Law* (London, 2008.), 265,278-80.

<sup>47</sup> Fraser Rebecca, *The Story of Britian: From Roman To The Present Narrative History*, (2005), 327-77.

punishment. He started series of negotiations on numerous treaties with foreign states, like Denmark, to give up regicides.<sup>48</sup>

Beginning in eighteen century, it become usual for extradition treaties to specify deserting troops as extraditable criminals, and extradition treaties were very chiefly concerned with military offenders, and their problem in eighteen & eighteen centuries, in Europe".<sup>49</sup>

In eighteen century modern extradition treaties era started and variety of common crimes were mentioned along with old focused categories like political enemies, leaders of rebellion, military deserters etc.<sup>50</sup> Treaty of Amiens 1802, of extradition was made between France and UK for extradition of accused of murder, forgery, of fraudulent, bankruptcy etc.

Similarly, step by step concept developed in extradition treaties like, formal procedures, reciprocity imposed by both sides, grounds for extradition, extraditable crimes and non extraditable crimes were included in treaties. Furthermore, legal phenomenon and national courts were called upon to decide the legality of extraditions, and jurisdiction, as in Nathan Robbin's case, which say that judiciary played rule in extradition treaties.<sup>51</sup>

By late 1800s, different extradition treaties started to proliferate, and near to World War 2, only USA had some hundred treaties in force. This was a short historical background of extradition.

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<sup>48</sup> J G Stark, *Introduction to International Law*, 341.

<sup>49</sup> M, Cherif Bassiouni, *International Extradition, United State Law and Practice*, (2007), 5.

<sup>50</sup> Christopher L Blakesle , *The Practice of Extradition From Antiquity to Modern France and The USA: A Brief History* (london: B.C.International Law&Comp ,1981),48.

<sup>51</sup>Ruth Wedgwood, *The Revolutionary Martyrdom of Jonathan Robbious* (New York: 1990), 100.

The first extradition treaty of the Belgium was concluded in 1833. 62 extradition treaties were concluded by countries during 1872 -1930. There were twenty one extraditable offences like:

- 1) Assassination, murder
- 2) Robbery
- 3) Kidnapping
- 4) Willful assault resulting in grievous bodily have
- 5) Blackmail or extortion
- 6) Use of explosive.

The above mentioned types of extraditable offenses is the oldest traditional type, but in the new extradition system which contain no such list but extradition is possible anytime when crime is considered a crime in both treaty binding countries laws.

#### 1.6 Extradition and Islamic International law (shariah)

حتى يعطيهم المسلمون على ذلك ما لا بأس بذلك عند تحقق الضرورة،  
ولا بأس بدفع بعض المال على سبيل الدفع عن البعض إذا خاف ذهاب الكل،  
فأما إذا كان بالمسلمين قوة عليهم فإنه لا يجوز المصادرة بهذه الصفة، فإنه

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Islamic scholars use the term 'Siyar' which is the plural of 'Sirat' which means Islamic international law.<sup>52</sup> Imam Hasan Shaiybani was the first Islamic scholar who wrote a famous book name Kitab al Siyar al Saghir. This original book script has been lost but imam Sarakhshi preserved it in his book, Mabsut, which is translated by

<sup>52</sup> Mohammad b. Hasan AL Shayibani, *Siyar Al Kabir* (Beirut : Dar Al Kutab Al Almea , 1997), 5:5

<sup>53</sup> Syed Riaz ul Hassan, *The Reconstruction of Legal Thought in Islam* (Lahore: Law Publishing Company 1/5 Edward Road, 1947), 135.

Majid Khadduri, and Dr. Mahmood Ahmad Ghazi. After that we see later on Siyar al Kabir. can extradition is possible in Islamic law? There is a question that “is Islamic Shariah international or territorial?” so it is clear that Shariah is universal law for all mankind. And it is not a territorial so it creates the division of the world. Like we see: World is divided between two parts *Dar ul Islam* and *Dar ul Harb*. and citizen of *Dar ul Islam* is Muslim and *Zimmis*. And Islam provides two kinds of protection:

- (a) provisional(it is extendable for a fixed period according to treaties etc)
- (b) permanent (it guaranteed only under a pledge. it is only for *Zimmies* permanently residing in Islamic state)<sup>54</sup>

There are two types of citizens leaved in *Dar ul Harb* as:

- (a) The Harbies “those don’t believe in Islam and have no guaranteed protection in Islamic countries
- (b) The Muslims for such Muslims who living in *Dar ul Harb* jamhoor ‘Imam Malik, Imam Shafiee and Imam Ahmed ‘says that they are treated like Muslims living in Islamic state. But Imam Abu Hanifa says that a Muslim who lives in *Dar ul Harb* does not migrate to Islamic state can’t be treated as Islamic state citizen and they must enter into *Dar ul Islam* as soon as it is possible<sup>55</sup>

#### 1.6.1 Territorial character of Islamic Shariah.

It is said that shariah is universal but practically it is demanded that it should be of territorial character, and it is practicable in *Dar ul Islam*. So there are some questions like:

- 1) To what extend it can be treated as territorial?
- 2) Will it apply to all the people in Islamic state or some of them?

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<sup>54</sup> Ibn Qudama. *Al-Mughni* (Cairo: Matba’at al-Manar, 1348 AH), 10:578.

<sup>55</sup> Al-Kasani, *Bada'ea al-Sanay'a fi Tarteab al-Sharay* (Cairo: Sharekat al-Matbou'at al-'Alamyah, 1327 AH), 7:25.

3) Can Shariah be extended to that Muslim state citizen who committed crimes in Dar ul Harb?

Shariah is extended to all people living in Dar-ul-Islam irrespective of plurality or political diversity like Omayyad's and Abbasids or numerous states like today's world. Whoever the offender may be, or whatever offence committed by a citizen of Dar ul Islam while in Darul Harb, this is on the basis of the spirit of Shariah and prevalent situation, things are decided. On one hand Shariah is universal and on the other hand it is applicable to all those who are living in Islamic state. As a result of different opinions, three views have emerged as to the enforcement of criminal law.

**The 1<sup>st</sup> opinion:**

First one is the opinion of Imam Abu Hanifa, who says that Shariah will be brought to bear on crimes committed in Dar-ul-Islam.

**The 2<sup>nd</sup> opinion:**

This view is expounded by Imam Yousuf, a Hanafi jurist. He says that Shariah is applicable to all the individuals of Dar-ul-Islam whether Muslim or Zimi or one temporarily staying there in Islamic state, such as protected person. The point of difference between Imam Abu Hanifa and Imam Abu Yousuf is only the question of the applicability of Shariah to the protected person. Imam Abu Yousuf maintains that the provision of shariah applies to a protected person in all circumstances but Imam Abu Hanifa holds that they apply to him only when individual's rights are affected.

### **The 3<sup>rd</sup> opinion:**

This one is advocated by the three Imams Malik,<sup>56</sup> Shafee,<sup>57</sup> and Ahmad<sup>58</sup> they argue that Shariah is applicable to every offence committed within the territorial limits of Dar ul Islam, whether the offender is a Muslim Zimi or protected person.

#### **1.6.2 Difference between shariah and law:**

The above mentioned views of the Islamic jurists are closely related to modern law in the following aspects.

- (1) Law should be applied to the subjects of the state, which is related to the concept of Imam Abu Hanifa, but, only one difference is that the law extends the provisions to the subjects of the state outside the territorial limits, while, Imam Abu Hanifa does not advocate such extension.
- (2) Law must be applied to all, whether nationals or foreign state, living in your country. This doctrine is developed in the 19<sup>th</sup> century, which is related to Imam Abu Yousuf.
- (3) Law applies to all the people, either nationals or foreigners.

#### **1.6.3 How can Islamic doctrines be applied in the presence of different Islamic states?**

The division of Dar ul Harb and Dar ul Islam, taken by some scholars, that there should be single Muslim and Non Muslim states in the world. It means that Muslim should be united integrated and politically homogenous. The doctrine discussed above were stable in the era of Abbasid period, when political power was divided into three states like Abbasids in the east, Alavies in the west and Omayyad's in the Spain.

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<sup>56</sup> Imam, Al Httab, *Mawahib ul Jalil Sharh Mukhtasar Khalil* ( Dar Ul Fikr, 1992), 3:355 – 365.

<sup>57</sup> Shirazi, *Kitab al-Majmu' Sharh al-Muhasab*(Dar Al Fikr, 1990),10:439-537.

<sup>58</sup> Ibn Qudama, *Al-Mughni* (Cairo: Matba'at al-Manar, 1348), 9: 383.

According to the above doctrine non-Muslim independent states are constituents of Dar ul Harb. Therefore, there have been always wars with Turks, Romans, Russians, Indians, Spanish, and French people simultaneously.

In other words *Dar ul Islam* and *Dar ul Harb* division doesn't mean that world bifurcated into two political units, but it means that one is heaven for Muslims living there peacefully and secure, and the other one is hostile camp posing a constant threat to their security.

All Muslims countries are known as Islamic states, because they are subject to Islamic law. It is also clear that each of the Muslim state consider himself a representative of Islam. There are the following some things:

- (a) In order to apply the doctrine of Imam Abu Hanifa, for crimes committed in Egypt, by Muslim or Zimmi, whether the offender belongs to Egypt, Iraq or Syria. They are citizens of Islamic state and they all have equal rights and duties. Punishment will be awarded in all situations.
- (b) If we apply the doctrine of Imam Abu Yousuf, the case will be different from those discussed above, that will be to punish every protected person who commits an offence in an Islamic state.
- (c) If we apply the doctrine to Imam Shafie, Malikie, and Ahmad, no punishment will be awarded in above three cases but also entail Hudoods, Qisas, Diyat with etc. All the Islamic states are vested with the powers of punishing the citizens of all the Islamic states for these crimes.



#### **1.6.4 Extradition and Punishment of Offenders:**

It is stated that all Islamic states are equal and if an Iraqi commits an offence in his own country, will he be liable to prosecution in Egypt as well? But the question of Muslim, Zimmi, or protected person, having committed an offence in an Islamic country manages to escape into another Islamic country or Dar ul Harb and the former country demands his extradition for the purpose of his trial, will it be possible to extradite? Can the state to which they belong expel them?

##### **1<sup>st</sup> question: Extradition of Criminal?**

Trial of an accused is better in that place, where he or she committed alleged crime. It is because that proofs and evidence can be produced easily. Another thing is that the punishments of the offenders mean to chastise the offenders and warn those who may have witnessed. If the offender is punished in another place, only punishment will be achieved, while others can't be achieved.

##### **2<sup>nd</sup> question, extradition of offender to Islamic state:**

There is no provision in Islamic regulation to prohibit the extradition of an offender to Islamic country, either he is a Muslim or Zimmi or a protected person.

##### **3<sup>rd</sup> question, extradition of offender to Non-Muslim state:**

The Islamic law does not allow the extradition of Muslim or their citizen to non Islamic state. Similarly, it is not allowed that an Islamic state to hand over a Muslim citizen of another Islamic state to any other third country. Even those who migrated to Islamic state from Dar ul Harb, Islam does not allow to hand over them to non Islamic state, except where return is pledged under an agreement. Jurists, like Imam Ahmad and some other Maliki regard the condition of agreement, proper and binding. On the other hand, Imam

Abu Hanifa, and some of Maliki took the imposition of non-Muslim upon a Muslim as non permissible. According to Shafi School, the return of a Muslim male to Dar ul Harb, is legal under the condition, that there will be family for him in Dar ul Harb.<sup>59</sup>

#### **1.7 Distinction between Extradition and Other Related Terms:**

There are some ingredients which are closely related to Extradition. We discuss some of them as part of this study here.

##### **1.7.1 Extradition and Asylum:**

Asylum is a protection which is given by a state to an asylum-seeker, while, extradition is surrender of offender to those states who want them. Both are transferable action of citizens, for some purposes. Thus, both are mutually exclusive overlap and intersect in various ways.

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<sup>59</sup> Abdul Qader Oudah, *Criminal Law of Islam* (Kharchi International Islamic Publishers (pvt) Ltd Karachi Pakistan, 1999), 1:355-366.

### 1.7.2 Extradition and Rendition:

In extradition, one state seeks the return of a fugitive offender for trial in an alleged crime; generally it is referred to as rendition. But extradition is formal process but rendition may simply be deported.<sup>60</sup>

### 1.7.3 Extradition and Expulsion/ Deportation:

Both are processes, in which residing person is forcibly removed to the judicial control of another country, and they differ in the following aspects<sup>61</sup>

- I. Extradition is authoritatively collaboration between two countries for good purpose. In the case "Brixton Prison governor Ex P Sloben (1963)" the government issued deportation order of the plaintiff, his contention in the court was that his deportation was made to extradite him. The court rejected his contention and held that the deportation in question was based on public good.<sup>62</sup>
- II. Expulsion serves solely the interest of expelling state.
- III. Extradition is regarded for criminal action but expulsion /deportation used for many other grounds. in Hans Muller of Nuremberg vs. Superintendent, Presidency, Jail, Calcutta and others,<sup>63</sup>In this case Indian SC held the difference between extradition and expulsion and held that Foreigners Act and Indian Extradition Act are distinct units.

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<sup>60</sup> Garcin John Michael, *Renditions: Constrains Imposed by Laws of Torture*, GRS Report From Congress (Sep-2009), 8: 4.

<sup>61</sup> .Agarwal H.D, *International Law & Human Rights* (2008), 233.

<sup>62</sup> Helen Frenwick and Howard Davis, *Civil Liberties and Human Rights* (2004 – 2005), 256.

<sup>63</sup> AIR(1953 SC), 367.

#### **1.7.4 Extradition and MLA (mutual legal assistance):**

Both are the processes of intergovernmental legal cooperation against criminal offenders. For MLA there are some basis, namely, international treaty, and administrative agreements.

#### **1.8 Is there a legal duty to extradite?**

Countries took the standard, that it is the duty of hosting state, to either punish the offender or surrender him to the seeking state.<sup>64</sup> It is the state duty to cooperate against crimes, and there must be extradition treaty.

The USA SC in *Factor vs. Labubenheimer* case, held, that there is no right to extrusion merely.<sup>65</sup>

#### **1.9 Conventions or Treaties relating to Extradition:**

There are numbers of treaties and conventions relating to extradition. Such treaties may be in different forms and kinds. We discuss here some of those treaties or agreements.

##### **1.9.1 Bilateral agreements:**

Numbers of countries have such agreements. For example:

- I. USA
- II. Indian has bilateral treaties enforced with 28 countries, including 5 members of the ADB/OECD inactive (Cook Island, Hong Kong China, Mongolia, Nepal) and 14 parties to the OECD convention and also with Philippines. India has also treaties under the London scheme with 8 countries include 6 members, and 1 party to the OECD convention (Australia).

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<sup>64</sup> 290, USA, SC (1933), 287.

<sup>65</sup> Ibid.

### **1.9.2 Regional extradition agreements:**

- I. Montevideo Convention on Extradition 1993.
- II. 1952 conference on Extradition of the union of Arab states.
- III. 1981 conference on Extradition of the Organization African state.
- IV. 1981 Inter American Convention Extradition.
- V. 1993 Meeting on permissible assist and authorized relation in common, people as well as against the law cases of the common wealth of sovereign states.
- VI. financial society of west African state conference on extradition
- VII. (ECOMWAS)1994<sup>66</sup>
- VIII. 2002 South African Development Community (SADC) protocol on extradition.
- IX. European convention on extradition 1957.
- X. Benelux treaty (1962) between Belgium and Netherlands.
- XI. 12 members states agreement of European communities 1989

Above mention agreements become the cause of the said research on this topic "the law of extradition in modern law of nation and Shariah a comparative study" which will be elaborated in next coming chapters in detail.

### **1.10 Conclusion**

In this first chapter effort was made to elaborate basic concepts of international law of extradition, and their implementation, for international peace, that is what, extradition is so important in today's modern world. There are also some legal terminologies which have similar meanings as extradition, such as asylum, Rendition, Expulsion or Deportation. These terms have also been highlighted, to clear any confusion and

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<sup>66</sup> *A Supplementary Agreement to ECOMWAS convention was concluded in 1983.*

overlapping with extradition. Finally, examples of those countries which are bound by some bilateral multilateral treaties like India USA etc are also given.

Countries took the standard that a state of a refuge is more responsible to penalize the offender or give him to the searching state.<sup>67</sup>It is the state duty to cooperate against crimes, and there must be extradition treaty for fair trial of wanted offenders.

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<sup>67</sup> 290, USA, SC (1933), 287.

## CHAPTER 2

### THE LEGALITY OF EXTRADITION IN SHARIAH

#### 2.1 Introduction

The discussion of Classical Fuqaha about the earth into *Dar ul Islam* and *Dar ul Harb* is supported on their contemporary legal and political order. The said division was not based on "Nusoos" Hadith or Shariah. Today political and legal relations between the states give new parameters, to the division of the countries.

This chapter provides the Islamic concept of international law and international relation. The common idea of international law restricts its jurisdictional application to nations only, but Shariah regulates international law as relation with nations and states groups, whether Muslims or Non Muslims communities in the Muslim state, and also, Islamic law encompass all community task, approach by the country. In the words of Muhammad Hamid ullah :

When Islam came and founded a state of its own, the earliest name given by Muslim writers to the special branch of law dealing with war, peace and neutrality seems, to have been 'Siyar' the plural form Sirat, meaning conduct and behavior.<sup>68</sup>

According to Sarkhasi the word "Sirat" word is used without adjective. Thus it means, "The carry out of the prophet,"<sup>69</sup> especially, his hostilities, and later on it is used by Muslim rulers, in the sense of international affairs,<sup>70</sup> and later on European experts

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<sup>68</sup> Muhammad Hamidullah, *The Muslim Conduct of State* (Lahore: Muhammad Ashraf, 1977), 9.

<sup>70</sup> Muhammed Abu Bakar Al Sarkhsi , *Al Muheat* (Cairo: Dar Ehya, Al kotub al Arabiah Cairo, 1957), 1:567.

limited international law to Christendom only and they got these principles from Muslims.<sup>71</sup>

## 2.2 Foundations of Islamic International relation:

In previous chapter it was observed that Islam is not simply organization of attitude but also a technique of living. It deals with individual life and states collectively. It is said that, In Islam the antithesis between the individual and the state or the government is not recognized, and no need is therefore felt, to reconcile and abolish such anti thesis, and therefore, Islam knows no distinction between state and church. <sup>72</sup>

Islamic international law and relation has power to cover all relation between Muslims and Non Muslims.<sup>73</sup> Islamic international law not only covers the relation of states but also cover the relations of non state groups and individual.

The Islamic international relation, and their interpretation in classical Fiqh, is organized around the domain of Islam or peace (Dar Ul Islam), hostility or war (Dar Ul Harb), and also the domain later added pledge (Dar Ul Sulh). It cannot adequately account for treaty relations both permanent and temporary. Western international law is based upon nation states and it is fully applicable to Christian nation states only, as James Lorimer says,<sup>74</sup> that race is divided into three spheres (1) civilized humanity(2) barbarous humanity (3) Savage humanity.

Islamic countries were considered in the second category, consequently entitled to partial appreciation. The area elderly chronological state of Asia according to them, have not

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<sup>71</sup> Ahmad Anwar Qudri , *Islamic Jurisprudence in the modern world*( Lahore, 1973), 277-278.

<sup>72</sup> K, S Ann Lambton, *State and Government in Medieval Islam* (Oxford University Press,1985), XV.

<sup>73</sup> Abdul Wahab Khalaf, *Al – Siyasah Al Shariyha* (Cairo: Al – Matbaah Al Salfyah , 1350, AH), 64.

<sup>74</sup> James Lorimer in Majid Khadduri, *War and Peace in the Law of Islam* (Washington: John Hopkins university press, 1979), 282-283.



developed into European enslavement.<sup>75</sup> According to Lorimer statement, the first spheres have full political power to enjoy international order, and are subject to international law. Thus, for these reason there are two things:

First Islam is based on a system of supremacy, and in order to propagate its mission, Muslims have declared war on all communities until Islam rules over the entire world, Joseph Schacht, for instance, argue that: The basis of the Islamic attitude of conflict must be transformed or subjected or slay (except women. kids and slaves). While the third choice, in common, happen only when the first two are refused.<sup>76</sup>

Second The second point is that of Majeed Khuduri who argues that:

The Islamic theory of international relation is found neither in the Holy Quran nor in the Prophet Muhammad's sayings.<sup>77</sup> Contrary to Khaduri, its argued that Islamic international relation is driven from Shariah(Quran and Sunnah), and is formulated in terms of fundamental Islamic belief in towheed or the unity of God, the unity of humanity, and the divine laws.Now,

#### 1. Monotheism of Al towheed:

There are three unities:

- (a) Unity of God
- (b) Unity of humanity.
- (c) Unity of divine laws.

Discussing these unities relevance, with the above Islamic conception of international relation, we have;

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<sup>75</sup> Ibid, 282.

<sup>76</sup> Joseph Schacht, *An Introduction to Islamic Law* (Oxford University Press, 1975), 130.

<sup>77</sup> Majid Khadduri, *The Islamic Theory of International Relations*, and J.Harris Proctor (ed.), *Islam and International Relations* (London: Pall Mall Press ,1965), 35 and Abusulayman, *The Islamic Theory of International Relations* (Virginia: International Institute of Islamic Thought, Herndon, 1987), 127-141.

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(a) The unity of God:

There is no God but Allah; it is the fundamental of religion, And, God is not only creator but also sustainer of mankind:

Your guardian Lord is Allah, who created the heavens and he settled himself on the throne, he draweth the night as a veil o'er the day, each seeking the other in rapid secession: and the sun, the moon, and the stars, all are subservient by his command, verily, he is the creator and command blessed be Allah, the chorister and sustainer of the worlds. <sup>78</sup>

And Allah also says that:

Say; who is the lord and sustainer of the heaven and the earth? Say; it is Allah.. <sup>79</sup> and those who don't accept the unity of God they are unbelievers

According to the Holy Quran:

They disbelieve who say; Allah is one of three (in a trinity) for there is no God except one God, if they desist not from their word (of blasphemy) verily a grievous chastisement will be fall the disbelievers, among them.(5:73)<sup>80</sup>

God is absolute and sovereign authority, and in practical terms, this means the sovereign of shariah on the one hand, and ruler of the Islamic country and ummah on other hand. No one is being entitled to legislate in the matter of the religious for his own authority.

Holy Quran insists:

Then we put thee on the right way of religion; so follow thou that way, and follow not desires of those who know not. (45:18)<sup>81</sup>

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<sup>78</sup> Quran: 7:54.

<sup>79</sup> Quran, 13:16.

<sup>80</sup> Quran, 5:73.

Islamic view of God, s unity summaries two important categories like

- 1) God absolute sovereignty
- 2) The primacy of his law (Shariah).

b) The unity of mankind:

Islam teaches us that all people regardless of race, nationality, language, etc are one nation, Allah says in the Holy Quran:

O, mankind fear your guardian lord, who created you from a single person, created out of it, his mate, and from them twain scattered (liked seeds) countless men and woman.....

(4:1)<sup>82</sup>

The unity of mankind means that all people are one community, and in religion and social lives they are different. Quality between human being is narrated in the Prophet Muhammad's Hadith that:

A colored man has no preference over a white man or a white man over a colored one or an Arab to neither a non Arab, nor a non Arab over Arab, except for righteousness.<sup>83</sup>

In the classical literature the term "international relation" was not formulated like modern academic names,<sup>84</sup>but they referred it as Al – Siyar .[that is the law for dealing with non Muslim ,but a small part of which affects only non Muslim].

Contemporary jurist like Yusuf Al Qardaawi, Muhammad Hamidullah and Abdul Hamid, Abu Sulayman differ from new precise nature of Al – Siyar (international relation)

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<sup>81</sup> Quran, 45:18.

<sup>82</sup> Quran, 4:1.

<sup>83</sup> Imam Ahmed ibn Hanbal, *Musnad al Imam Ahmad Ibn Hunbal* (Cairo: Dar al Maref, 1980),hadith 22391.

<sup>84</sup> S. S. Ali/J. Rehman , *virtually every writer on Islamic Law has considered these divisions* (1999),77.

According to Yousuf Al Qardawi:

The law of Islamic international law (relation), (Al – Siyar) consists of international law politics, Fiqh, and the Islamic history.

Muhammad Hamidullah sees Al – Siyar more narrowly as a special branch of law dealing with war, peace, neutrality”.<sup>85</sup>he further says;

Alsiyar is part of the law and customs of the treaty obligation which a Muslim *de facto* or *de jure* state observes in its dealings with *de fact* or *de jure* state.<sup>86</sup>

Abu Sulayman jihad, also agrees with Hamid Ullah, says, Al – Siyar consist of jihad, Dar al Islam, Dar al Ahd, Dar al Harb.<sup>87</sup>

- Different views on Al Siyar is not easy, due to the difference between Islamic international relation and their practice, the latter being found in historical situation in different areas of the world.
- The distinct section of the totality of the Shariah, covers the laws of non Muslim inside and outside the Islamic state and their relation to Muslims, these laws can be divided into four categories:
  - I. Relation between the Islamic state and non Islamic state.
  - II. Relation between Islamic state and religion – social non Muslim groups, etc, tribes, living outside the Islamic state.
  - III. Relation between Islamic state and non Muslim individual and groups living inside the Islamic state.

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<sup>85</sup> Muhammad, Hamidullah , *The Muslim Conduct of State* (Lahore: Muhammad Ashraf ,1977),9.

<sup>86</sup> Ibid, 3.

<sup>87</sup>,Abdullha Abu Sulayman , *Towards on Islamic Theory of International Relation* (London : IIOTT, 1994),19.

IV. Relation between Muslim individual and non Muslim individual within the Islamic state.

Above four categories cover areas as marriage, family matters, and commercial transactions. Western international law analyze these as external, and in Islam anyone who is not a member of the Ummah, whether foreigner or a citizen, is deemed to have international relations with the Islamic state and subject of *Al-Siyar*, follow the principle of Islamic international law/relation between Muslims and non Muslims are invariably treated as external or internal.

A second element in Diver's view of *Siyar*, involves a close examination of the three Dars or domains. It is stated that whether the narrow interpretation of a *Siyar* by Hamidullah, Abu Sulayman is justified or omits the latter in the case. Since, the concept of the three Dars doesn't cover all relation between Muslims and non Muslim. The separation of the world (*Dar Al Islam, Dar Al Harb, Dar Al Sulh*) is nowhere mention in Holy Quran or in Hadiths, except in Saheeh Muslim, (in the term of house emigrants, *Dar al muhajerine*, which is not relevant to the present context) and it is thus, only juristic effort, made after Hijra, a period of protected warfare b/w Muslim states and its enemies. Jurists considered other political entities which led to this division of the world, occurring b/w Muslims and their enemies.<sup>88</sup>

For this instance Ibn Hazam held that:

With the emigration of the prophet to *Madinah*, for Muslims who belong to *Dar al Harb*, jihad could legitimately be waged at any time or place.<sup>89</sup>

According to *Abdul Wahab Khallaf* the juristic division of the world is for two reasons:

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<sup>88</sup>Wahba Al – Zohaily, *Athar Ul harb Fi Fiqh al Islami* (Beirut: Dar al Fikr, 1981), 167.

<sup>89</sup>Ahmad, Ibn Ali Ibn Hazam, *Al- Muhali* (Cairo: Dar al Itihad al Arabia li al Tabaa,1069),7:353.

- 1) *Muslims* in the beginning needed to unify their affairs, to emerge with their Islamic character, and direct their power and force toward a joint enemy. Their aim was to preserve Islam, entitle and manifest good impression of *Muslim* among nations.
- 2) Juristic characterization of the reality of the previous relation b/w Muslims and others, when war was the only factor controlling this relation in the absence of an obligation treaty. As a result, jurists pictured the actual state of war b/w Muslims and others nations as a permanent condition, because warfare appeared to be incessant.

In the jurists eyes , war in the remote past against the Persians and Roman were followed by the defensive wars against the Mongols, which eventually destroyed the Islamic state of the Abbasid's, in turn, there were followed by the defensive wars against the Mongols which eventually destroyed the Islamic state of the Abbasids. Jurists came to take the view that all states outside the Islamic state were hostile, and same would be currently in a state affective belligerency against it<sup>90</sup>

*Al- Zohaily* writes:

War b/w two states results in dividing the international family into two team, on one hand, the hostile team that includes belligerent states, and on other hand the team which contains the non – belligerents, the neutral states, and other members in international family.<sup>91</sup>

Abu Sulayman has same idea like Zuhali, but slightly different, like he says:

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<sup>90</sup> Abdul Wahab Khalaf, *Elm Usul Al Fiqh* (Kuwait: Al-Dar-Al Kuwaitiyah Li Ali- Teba'ah, 1968), 69-76.

<sup>91</sup> Wahbah, Al-Zohali, *Athar- al- Harb Fi al Fiqh al Islami* (Brirut: Dar – al –Fikr, 1981), 167.

The early Muslims were confirmed by unceasing aggression and persecution, and the non Muslims powers basic attitude of hostility against Muslim ideas and society never changed. This inimitably left its mark on the thinking of the jurists. Thus, war and fighting become practically an integral and natural part of the relationship with non Muslims, though some of the jurists did not advocate initiation of fighting by the Muslims .they did not advocate retaliation when Muslims were attacked.<sup>92</sup>

Similarly, Mohammad Abu Zahrah saying:

All jurists unanimously called the non Islamic countries hostile state because of the continuous war during the juristic diligence era [i.e. during the period of jihad] arising from the enemies aggression and Muslims defense.<sup>93</sup>

When jurists divided earth into two (*Dar – Ul –Islam& Dar – Ul - Harb*) the third one (*Dar Ul Ahd or Hudna*) was also introduced for peacefull relation b/w Islamic state and non Islamic states, resulting from a pledge or treaty.

This division is not in any Nusuoos, but it is mentioned in the book of Saheeh Muslim and there is also a mentioned Hadith about another Dar which called emigrants or Dar al – Muhajerine.

“.....Then call them, to change from their homeland to the Dar al – Muhajerine.... [emigrant house]<sup>94</sup>” it means Madinah, and for Muslims newly

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<sup>92</sup> Abdul Hamid Abu Sufyan, *Towards an Islamic Theory of International Relation* (London: IIOIT, Herndon, 1994), 43-44.

<sup>93</sup>, Mohammad Abu –Zahrah, *AL – Alaqat al – Dowalyah’Fi al Islam* (Kuwait: Dar al Kitab al Hadeeth, 1990), 59.

<sup>94</sup>Ibn Yazeed Muhammad Ibn Majah,,*Sunnan Ibni Majah* (Cairo: Dar Ehya'al Kutub al – Arabiyah, 1987),2:553.

embraced Islam before conquest of Makkah.<sup>95</sup> But after Makkah conquest

Muhammad (PBUH) said: that "no migration after the conquest of Makkah."<sup>96</sup>

The concept of *Dar – al – Dawa* ila LAllah (house of calling to Islam), according to Muhammad Hamid Ullah and Abu Sulayman is not derived directly from their writings.

Muslim have duty to call unbelievers to Islam, if they don't accept then they have power to start war against them.<sup>97</sup> It is based upon verses in Holy Quran and exhortation to jihad by Prophet Muhammad as:

(1) Al Quran:

Fighting is prescribed upon you, and ye dislike it, but is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you, but Allah know the, and you know not.

Another is related to narrow group of non Muslims.

But when the forbidden months are past, then fight and slay the pagans.<sup>98</sup>

(2) Quranic verses that order to die in the way of Allah through jihad:

And if ye are slain, or die if ye are slain, or die in the way of Allah, forgiver and mercy from Allah are for better than all they could amass.<sup>99</sup>

let those fighting in the cause of Allah who sell the lie of this world for the hereafter, to him who fight in the cause of Allah – whether he is slain or gets victory – soon shall we give him a reward of great.<sup>100</sup>

b) Sunnah:

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<sup>95</sup> Martin Lings, *Muhammad* (London: George Allen & Unwin Ltd, 1984), 108 – 115.

<sup>96</sup> Ali Muhammad Al – Shawkani, *Nail Al Awar* (Cairo: Matb'at – Halabi, 1952 ), 8:25.

<sup>97</sup> *Ibid*, 224.

<sup>98</sup> Quran 9:5.

<sup>99</sup> Quran 3:157-58.

<sup>100</sup> Quran 9:74.



There is also Haiths, like:

غَزْوَةٌ فِي سَبِيلِ اللَّهِ أَوْ زَوْجَةٌ خَيْرٌ مِمَّا مَلَغَتْ عَلَيْهِ الشُّمُونُ وَغَرَبَتْ.....

A journey undertaken in the morning or evening (for jihad) is better than (anything) on which the sun rises or sets.<sup>101</sup>

Third: there are verses which prohibit Muslims to ally pagans and Apostates but order to prohibits himself from their friendship as:

Let us not believers take for friend's unbelievers rather than believers. If any do that, shall have no relation left with Allah.....<sup>102</sup>

Finally: there is Hadith which is necessity of fighting show us:

I have been ordered (by Allah) to fight against the people, until they testify that none has the right to be worshiped but Allah, and that Muhammad is Allah,s apostle ,so if they perform all that, then they save their lives and property from me except for Islamic law, and then their reckoning(accounts)will be done by Allah.<sup>103</sup>

Above mention verses and Hadith, There are some scholars who believe that there is no room for Muslims to ally, adhere, and over build relationship with non Muslims, and after Hijrah Islam is forced. Therefore, Majid khdduri, writes:

The Muslim law of nations recognized no other nations than its own ...to be enforced by the supreme authority of the imam.<sup>104</sup>

And Najeab Armanazi say:

The Islamic division of *Dar Islam* and *Dar al Harb* is similar to the Bolshevik rule, where it is supposed that Russia is the home of every community, a house of peace for

<sup>101</sup>, Muhammad Matraji, *Translation of Saheli - al - Bukhari*. (Beirut: Dar - Al - Fikr, Beirut,1992),4:29.

<sup>102</sup> Quran 3:28.

<sup>103</sup>, Alfadhl Al - Dean Shab Al - Saqalani. *Fat,ul Bari Bin Shareah al Bukhari* (Ciara: Mataat al Halabi,1378AH),6:85.

<sup>104</sup>Mjid Khadduri, *War and Peace in the Law of Islam* (London: John Hopkins,Baltim,1979),44-45.

communities, and the rest of world is the house of war, though it should be permeated by communism....<sup>105</sup>

And if there is a peace relation, then treaties were treated by the jurist as temporary for ten years.

Before Hijrah peace was the normal relationship b/w *Muslims* and *Non Muslims* and jihad is cause for peace and defiance after that era.

Fight in the cause of Allah those who fight you but do not transgress limits for Allah loveth not transgressors<sup>106</sup>.

Some say that above mention verses about self defense is abrogated by later verse, but Ibni Taymyyah rejected it. He wrote:

Repeal 'Naskh' needs evidence; the holy Quran does not contain any verse which contradicts this verse, and the contrary it is upheld elsewhere.<sup>107</sup>

Jihad is also permissible for faith, against expulsion of Muslims from their Homes, like in verse:

To those against whom war is made, permission is given to fight.<sup>108</sup>

Jurist who disagree with the Hadiths, and support jihad for fighting against non Muslims/non believers and dying in the cause of God have their opinions.. The Shafeeci held that the Hadith such as.

I have been ordered to fight against the people .....<sup>109</sup> Imam Shafi says, that this Hadith is against the teaching of Islam and mentioned in his book that:

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<sup>105</sup> Armanazi,(Damascus:1930), 113.

<sup>106</sup> Quran 2:190.

<sup>107</sup>Ibn Shehab Ahmmad Taqul Dean Ibni Taymyyah, *Resalat Ali - Kitul* ( Cairo: Mataba, Al Sunnah Al - Muhammadiya,1368 AH),118.

<sup>108</sup> Quran, 22:39-40.

<sup>109</sup> Martin Lings, Muhammad (London: George Allen& Unwin Ltd, 1984), 108 - 115.

The world harmony in that Hadith [the previous Hadith<sup>110</sup>] means the Arabian pagans in general, and the cause of fighting them was their hostility to Islam, and to the prophet Muhammad and their fighting with him, where the word fight does not mean to kill, it could be permissible to fight the person .....which means to push out the evil, not to call to Islam.<sup>111</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.....<sup>112</sup>

Even in the time of war, Shariah offered to the opponent individual's refuge and protection, as in Holy Quran;

If one amongst the pagans asks thee for asylum, grant it to him, so that he may hear the word of Allah, and then escort is because they are man without knowledge<sup>113</sup>

Both side's citizens and foreigners in both countries obey municipal laws. In Quran"

Is there any reward for good other than good?<sup>114</sup> (55:60)

There are verses revealed after Hijrah which indicate the peace is the norm.

.....don't transgress limits for Allah lovth not transgressors,<sup>115</sup> (2:190)

This can guide us that Islamic state doesn't start war firstly and the will always face for their self defense and freedom

Another verse order Muslims, not to use compulsion in religious matters.

Mankind was one single nation and Allah sent messengers with glad tiding and warnings, to judge b/w people in matters where in they differed.<sup>116</sup>

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<sup>110</sup> Ibid.

<sup>111</sup> Muhammad Bin Idris Al Shafei. *Al - Umm* (Cairo: Al - Matbu'uh al Ameregah , 1322),4:181.

<sup>112</sup> Quran, 60:8.

<sup>113</sup> Quran, 9:6.

<sup>114</sup> Quran, 55:60.

<sup>115</sup> Quran, 2:190.

<sup>116</sup> Quran, 2:213.

Thus Islam provides a better forum to deal with non-Muslims with regard to offenders and all what Islam provides is for the benefit of humanity. In order to extradite a criminal offender one has to keep in view all the basic protection principles of Shariah as well.

### 2.3 CONCLUSION:

The principles of Shariah under Quranic verses indicate that the true Islamic perspective is to see the universe in terms of God against humanity, somewhat than in terms of Muslims versus non-Muslims.

Consequently, the actuality of the matter is that the whole world, in the sense of being home to all creatures, can be considered as Dar ul-Insan, and, from the point of analysis of Islamic mission, as Dar ud-Dawah. Commonly thought Dar ul Islam countries are considered as Dar ul Muslimeen.<sup>117</sup> The connection among Muslims and others should be that of "Nasih and Mansuh, or Da'i and Mad'u."<sup>118</sup>

Thus there remains no hostile attitude towards offenders, whether Muslim or non-Muslim in an Islamic state. To hand over a culprit to the wanting state all depends on the welfare of the community and progress of Islamic principles.

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<sup>117</sup> Quran, 7: 68.

<sup>118</sup> This affiliation notes need that there must be some qualities for Muslims to convey their messages.

## CHAPTER 3

### THE ILLEGALITY OF EXTRADITION IN SHARIAH

#### 3.1 Introduction

In this chapter, the arguments and evidence of those people or Islamic scholars will be presented, who are opposed the theory of extradition in Shariah totally or partially. All these views will be presented in detail. There is a lot of scholarly debate regarding extradition, to declare it, against Islamic international law. These arguments are in the following shape:

- 1) Quran
- 2) Hadith
- 3) *Amal sahaba*
- 4) *Text from classic fiqh*
- 5) *Reciprocity*
- 6) Customary international law and Shariah
- 7) The validity of Extradition Treaties in Shariah

#### 3.2 The Holy Quran

Scholars or Jurists who oppose extradition, they present the following evidences from the Holy Quran, in support of their view.

And He will not allow the unbelievers, in any way, to gain advantage over the believers<sup>119</sup>.

The sayings about the meaning of this verse, that Allah will not allow the unbelievers, in any way to gain advantage over the believers, is legal to the extent of handing over a

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<sup>119</sup> Quran 4:141.

Muslim or Zami etc are not allowed according to this verse as like other issues.<sup>120</sup> Imam Aladdin Ali bin Mohammed bin Ibrahim Al-Baghdadi, famous as Al khazian in one of his book, about the interpretation of Quran or Tafsir mentions;

that God does not make for the unbelievers on the believers a way in Shariah, till the day of Resurrection, and it is mentioned in the issues of jurisprudence according to this verse that (a) Non Muslim cannot inherit a Muslim, (b): non Muslim having custody of money of a Muslim will not become owner, according to this verse,(c) the Non Muslim does not have authority to buy a slave owned by Muslim , (d)Muslim will not be killed in Qisas of a Zemmi according to this verse.<sup>121</sup>

So, it is easy to follow here that: the delivery or extradition of a Muslim to non Muslim is prohibited, because extradition of a Muslim to them means, that we make way for the unbelievers upon Muslims.

Allah Almighty says,

Rather, help one another in acts of righteousness and piety, and do not help one another in sin and transgression. Fear Allah. Surely Allah is severe in retribution.<sup>122</sup>

This verse forbids Muslims, from supporting each others in sin or transgression, and will not cross the limits<sup>123</sup>and extradition of a Muslim to a non Islamic state is helping upon sin, and accompany with him in sin and transgression.

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<sup>120</sup>Imam Ali Ibn Muhammad ibn Ibrahim al-Baghdadi al-Sufi, popular as al-Khazin, *Tafsir al-Khazin* 2:181.

<sup>121</sup> Ibid.

<sup>122</sup> Quran, 5:2.

<sup>123</sup> *Jāmi` Al-Bayān `An Ta`wīl āy Al-Qur`ān*, popularly, ( *Tafsīr al-Tabarī*,1990), 6:266, (Muhammad ibn Jarir al-Tabari ,last accessed April 4,2012,12 5AM .



ruler acknowledged he may hand over a Muslim to non Muslims to govern it. It is known that non Muslims trial him according to their law, not by Islamic law. We also know well, what is happening to our Muslims detainees in the prisons of the Jews, and the Christians like in Abu Ghuraib, Guntnamo Bay and Bigram.

أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْتَغُونَ ۚ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِقَوْمٍ يُوقِنُونَ ۝

If they turn away from the Law of Allah, do they desire judgment according to the Law of Ignorance? But for those who have certainty of belief whose judgment can be better than Allah's?<sup>131</sup>

The word 'jahiliyah' (literally 'ignorance') is used as an antonym to Islam. Islam is the way of 'ilm' (true knowledge), since it is God Himself who has shown this way, and His knowledge embraces everything. In contrast is the way that diverges from Islam.<sup>132</sup> The designation 'jahiliyah' will apply to every aspect of life, which is developed disregard of the knowledge made available by God, based only on man's partial knowledge, blended with imagination, superstitious fancies, conjectures and desires".<sup>133</sup>

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<sup>131</sup> Quran 5:50.

<sup>132</sup> Imam Abdullah bin Umar bin Muhammad al-Shirazi al-Shafi'i al-Baydawi, *Tafsir al-Baydawi* (1990), 2: 333.

<sup>133</sup> Quran, 5:50.



### 3.3 Hadith

Quraish demanded from the Holy Prophet (PBUH), to extradite them those who became Muslims, but Prophet (PBUH) refused their demand which guide us, that extradition of Muslim is not allowed, as it is narrated from Ali (RA) who says:

Some slaves (of the unbelievers) went out to the Messenger of Allah (ﷺ) on the day of al-Hudaybiyyah before treaty. Their masters wrote to him saying: O Muhammad, they have not gone out to you with an interest in your religion, but they have gone out to escape from slavery. Some people said: They have spoken the truth. Messenger of Allah, send them back to them. The Messenger of Allah (ﷺ) became angry and said: I do not see your restraining yourself from this action), group of Quraysh, but that Allah sends someone to you who strike your necks. He then refused to return them, and said: They are emancipated (slaves) of Allah, the Exalted. <sup>134</sup>

This indicates that a person as soon as he enters Islam, he becomes a Muslim citizen of the Islamic country, who becomes entitled to the right to care and protection of the respective state. In another Hadith it is narrated by 'Abdullah bin Umar:

Allah's Messenger (ﷺ) said, "A Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor. Whoever fulfilled the needs of his brother, Allah will fulfill his needs; whoever brought his (Muslim) brother out of a discomfort, Allah will bring him out of the discomforts on the Day of Resurrection, and whoever screened a Muslim, Allah will screen him on the Day of Resurrection."<sup>135</sup>

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<sup>134</sup> : *Sunan Abi Dawud* 2700 In-Book Reference: 15:224 English Translation: 14: 269.

<sup>135</sup> *Al Bukhari* ,Kitab AL Mazalim Wal Ghasb,Bab La Yazlam Al Muslim,2310.

Do not oppress him» is in the sense of order to us that it is the forbidden for a Muslim to oppress their Muslim brother, Ibn Batal says: the Muslim rulers have responsibility to support poor people.<sup>136</sup> And this is big injustice to extradite a Muslim to those who judge him without the religion of God and His laws.

Islam teaches us, not to leave him to those who will harm him that is an injustice to Muslim.<sup>137</sup> And in the delivery or extradition of a Muslim to non Muslim is the biggest injustice to him,<sup>138</sup> leaving him with those who will hurt him.

Once, Allah's Messenger (ﷺ) sent named Sarea, including ten men as spies under the leadership of `Asim bin Thabit al-Ansari, the grandfather of `Asim bin `Umar Al-Khattab. They proceeded till they reached Hadaa, a place between `Usfan, and Mecca, and their news reached to the tribe of Hudhail called Bani Lihyan. About two-hundred men, who were all archers, hurried to follow their tracks till they found the place where they had eaten dates, they had brought with them from Medina. They said, these are the dates of Yathrib (i.e. Medina), and continued following their tracks. When `Asim and his companions saw their pursuers, they went up a high place and the infidels circled them. The infidels said to them, "Come down and surrender, and we promise and guarantee you that we will not kill any one of you" `Asim bin Thabit; the leader of the Sariya said, By Allah! I will not come down to be under the protection of infidels. O Allah! Convey our news to Your Prophet. Then the infidels threw arrows at them till they got martyred, `Asim along with six other men, and three men came down accepting their promise and convention, and they were Khubaib-al-Ansari and Ibn Dathina and another man. So, when the infidels captured them, they undid the strings of their bows and tied them. Then

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<sup>136</sup> Mahmood Bin Ahmmad Al Hani (Beirut: Idara AL Tabaha Al Muniree, 1978), 12: 289.

<sup>137</sup> Ibn Hajar Al Asqalani, *Fath Ul Bari* (1999), 5:97.

<sup>138</sup> Ibid.

the third (of the captives) said, this is the first betrayal. By Allah! I will not go with you. No doubt these, namely the martyred, have set a good example to us. So, they dragged him and tried to compel him to accompany them, but as he refused, they killed him. They took Khubaid and Ibn Dathina with them and sold them (as slaves) in Mecca (and all that took place) after the battle of Badr. Khubaib was bought by the sons of Al-Harith bin 'Amir Bin Naufal bins `Abd Manaf. It was Khubaib who had killed Al-Harith bin 'Amir on the day (of the battle of) Badr. So, Khubaib remained a prisoner with those people.

It is narrated by Az-Zuhri: 'Ubaidullah bin 'Iyyad said that the daughter of Al-Harith had told him, "When those people gathered (to kill Khubaib) he borrowed a razor from me to shave his pubes and I gave it to him. Then he took a son of mine while I was unaware when he came upon him. I saw him placing my son on his thigh and the razor was in his hand. I got scared so much that Khubaib noticed the agitation on my face and said, 'Are you afraid that I will kill him? No, I will never do so.' By Allah, I never saw a prisoner better than Khubaib. By Allah, one day I saw him eating of a bunch of grapes in his hand while he was chained in irons, and there was no fruit at that time in Mecca." The daughter of Al-Harith used to say, "It was a boon Allah bestowed upon Khubaib." When they took him out of the Sanctuary (of Mecca) to kill him outside its boundaries, Khubaib requested them to let him offer two Rak'at (prayer). They allowed him and he offered Two Rak'at and then said, "Hadn't I been afraid that you would think that I was afraid (of being killed), I would have prolonged the prayer. O Allah, kill them all with no exception." (He then recited the poetic verse):-- "I being martyred as a Muslim, Do not mind how I am killed in Allah's Cause, For my killing is for Allah's Sake, And if Allah wishes, He will bless the amputated parts of a torn body" Then the son of Al Harith killed him. So, it was

Khubaib who set the tradition for any Muslim sentenced to death in captivity, to offer a two-Rak'at prayer (before being killed). Allah fulfilled the invocation of `Asim bin Thabit on that very day on which he was martyred. The Prophet (ﷺ) informed his companions of their news and what had happened to them. Later on when some infidels from Quraish were informed that `Asim had been killed; they sent some people to fetch a part of his body (i.e. his head) by which he would be recognized. (That was because) `Asim had killed one of their chiefs on the day (of the battle) of Badr. So, a swarm of wasps, resembling a shady cloud, were sent to hover over `Asim and protect him from their messenger and thus they could not cut off anything from his flesh.<sup>139</sup>

Asim leader of a fight named Sarea al Rgia refused to surrender to the non Muslims despite their weakness, and informed Muhammad (PBUH). He did not deny them, and agreed with them, if extradition was good then they would have done it, but it shows that it is not desirable to Muslims, but the Prophet Peace be upon him, did not hand over themselves. Because non Muslims humiliation is the most dangerous, and more than extradition.

In another Hadith;

3. وَقَالَ الْحَسَنُ وَشَرِيحَ وَإِبْرَاهِيمَ وَقَادَهُ إِذَا أَسَلْتُمْ أَخَذَهُمَا فَالْوَلَدُ مَعَ الْمُسْلِمِ. وَكَانَ ابْنُ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا مَعَ أُمِّهِ مِنَ الْمُسْتَضْعَفِينَ، وَلَمْ يَكُنْ مَعَ أَبِيهِ عَلَى دِينِ قَوْمِهِ. وَقَالَ الْإِسْلَامُ يَغْلِبُ وَلَا يُغْلَبُ.<sup>140</sup>

Prophet peace be upon him said: Islam prevails, not mounted, Islam and Muslims are prevailing over all religions of the world.<sup>141</sup> In the delivery of the Muslim to non Muslim, there is humiliation, it is to humiliate him. It shows us the prevailing of non Muslims<sup>142</sup>

<sup>139</sup> *Sahih al-Bukhari*, 304, Book 56, Hadith, 251.

<sup>140</sup> *Sunan Dar Al Qutni* (Cairo:Muqah Wazarart Al Awoqaf Al Misrea, 1999), Hadith 8: 3663 ,3903 and Al Bukhari ( Cairo: Dar Twoq Al Najaht), Hadith 3:1353, 335.

5 Abu Huraira is reported, saying:

Don't nurse grudge and don't bid him out for raising the price and don't nurse aversion or enmity and don't enter into a transaction when the others have entered into that transaction and be as fellow-brothers and servants of Allah. A Muslim is the brother of a Muslim. He neither oppresses him nor humiliates him nor looks down upon him. The piety is here, (and while saying so) he pointed towards his chest thrice. It is a serious evil for a Muslim that he should look down upon his brother Muslim. All things of a Muslim are inviolable for his brother in faith: his blood, his wealth and his honor.<sup>143</sup>

It is narrated by Abu Hurayrah:

The Prophet (ﷺ) said: "Faith prevented assassination". A believer should not assassinate. It means, faith prevents about lethality also prevents the restriction to act as if he made lethality restricted, and the meaning of hadith: that faith prevents dishonesty. Inferred that the subject of Hadith is in the delivery of the Muslim to non Muslim, which is not allowed.

It is narrated by Jarir ibn Abdullah, in another Hadith:

The Messenger of Allah (ﷺ) sent an expedition to Khath'am. Some people sought protection by having recourse to prostration, and were hastily killed. When the Prophet (ﷺ) heard that, he ordered half the blood-wit to be paid for them, saying: I am not responsible for any Muslim who stays among polytheists. They asked: Why, Messenger of Allah? He said: Their fires should not be visible to one another.

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<sup>141</sup> Imam al-Asqalani, *Subul al-Salam Sharh Bulugh al-Maram min Jam' Adillat ul-Ahkam* (Beirut: Arab Scientific Publishers, Beirut, 2004), 4:67-68.

<sup>142</sup> Ibid.

<sup>143</sup> *Sahih Muslim translated by Abdul Hamid Siddiqui*, Book 32.

Abu Dawud said: Hushaim, Ma'mar, Khalid b. al-Wasiti and a group of narrators have also narrated it," but did not mention Jarir".<sup>144</sup>

These evidences from the saying of the Holy Prophet peace be upon Him show that Extradition of Muslim is in no way permissible in Islam. Even in grave situations the companions of the Prophet have sacrificed their lives.

### 3.4 Conduct of the Companions:

Before starting the battle of Qadisiya between Muslims and the Persians, a night escaped from the Rustam group and sheltering to Muslims, when Rustam heard, that a group of military fled to Muslims, he sent a messenger to Saad, who asked him to reply to him who escaped, Saad (may Allah be pleased with him) said: we are such like people who do not disobey contracts. When Rustam messenger returned with the reply, he became angry and ordered the armies to march<sup>145</sup>. Muslims were in a state of war with the non Muslims, however, they asked to deliver them. Muslims abstained and their response was clear and frank, does not rule out that Omar and- God bless them all - they knew the story and may thus be in the rule of consensus or agreement in the nation.

### 3.5 General Rules or Mahqool:

Islamic judiciary is important under Islamic Shariah, and Muslims must have Muslim judges.<sup>146</sup> Non Muslim could not be appointed for the judgments of Muslims, and Islam prevents non Muslim Scholars as judge for Muslims. A Muslim judge may be extradite for: If we do not extradite him to them what they were able to judge it other than what Allah has revealed,

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<sup>144</sup> : *Sunan Abi Dawud* 2645 ,Book 15, Hadith ,2639.

<sup>145</sup> Abdul Ullah Bin Muhammad Al Waqidi, *Fatah al Sham* (Barout: Dar Al jails , 1987),2:188.

<sup>146</sup> Muhammad b. Ahmad b. Muhammad b. Rushed, *Biday' Al Mujtahed wa Nihaya Tul Muqtasid* (Barout: Dar ul Fikr 1988), 2:344.

It is narrated by Ibn Abd al-Barr: If the blood of war Harbi underprivileged of security, what do you think the believer who day and night lived with Muslims. Has said peace be upon <sup>146</sup>إيمانٌ بيد الغناك لا يغتلك مؤمن

### 3.6 Reciprocity

Allah says in the Holy Quran

: اذع إلى سبيل ربك بالحكمة والموعظة الحسنة وجادلهم بالتي هي أحسن إن ربك هو أعلم بمن ضل عن سبيله وهو أعلم بالمهتدين

(O Prophet!) Call men to the way of your Lord with wisdom and goodly exhortation, and reason with them in the best manner possible. Surely your Lord knows best who has strayed away from His path and He also knows well those who are guided to the right way. <sup>147</sup>

وإن عاقبتهم فمما عاقبوا بما عملوا وما عوقبتم به عوقبتهم لئن سنبرئهم لئن خير للصائرين

If you take retribution, then do so in proportion to the wrong done to you. But if you can bear such conduct with patience, indeed that is best for the steadfast.

واصبر وما سنبرئك إلا بالله ولا تحزن عليهم ولا تك في ضيق مما ينكرون.....

(O Muhammad!) So bear with patience – and your patience is only because of the help of Allah- and do not grieve over them, nor feel distressed by their evil plans. <sup>148</sup>

إن الله مع الذين اتقوا والذين هم محصنون.....

For surely Allah is with those who hold Him in fear and do well. <sup>149</sup>

And fight in the way of Allah with those who fight against you but do not commit aggression because Allah does not like aggressors. <sup>150</sup>

<sup>147</sup> Quran, 16:125.

<sup>148</sup> Quran, 16:127.

<sup>149</sup> Quran, 16:128.

Fight against them, wherever they confront you in combat and drive them out from where they drove you out. Though killing is bad, Persecution is worse than killing. Do not fight against them, near Masjid-e- Haram, unless they attack you there.<sup>151</sup>

2:192: فَإِنِ انْتَهَوْا فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ

If, however, they desist from fighting (you should also do likewise), and know that Allah is Forgiving and Merciful

2:193: وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ فَإِنِ انْتَهَوْا فَلَا عُدْوَانَ إِلَّا عَلَى الظَّالِمِينَ

Go on fighting with them till there is no more a state of tribulation and Allah's way is established instead. Then if they desist from it, there should be no more hostility except against those who had been guilty of cruelty and brutality

الشُّهُرُ الْحُرَامُ بِالشُّهُرِ الْحُرَامِ وَالْحُرُمَاتُ فَمَنْ عَدَى عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا عَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ الشُّهُرُ الْحُرَامُ بِالشُّهُرِ الْحُرَامِ وَالْحُرُمَاتُ فَمَنْ عَدَى عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا عَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ

2:194: وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

A prohibited month is to be respected, if the same is respected (by the enemy), and likewise there is the law of just retribution for the violation of all prohibited things. Therefore, if anyone transgresses a prohibition by attacking you, you may do likewise, but always fear Allah and bear in mind that Allah is with those who desist from breaking Allah's bounds.

Muhammad (PBUH) treated his enemies as much as they do not start aggression. He did not initiate a war not in favor of any of them and did not annul a convention (Aahidh) with somebody, and what was his procedures and his war, but in reaction to the resistance and to ward off harm, and was keen to reply to the amount of the offense, is not punk aggression and not without omission by the pardon. In the glasses case of acts of

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<sup>150</sup> Quran, 2:190.

<sup>151</sup> Quran, 2:191.



goodness have to reciprocate or the best of it. This sub chapter allowed: (the principle of reciprocity in Islam and in the international laws.

These lessons intended to put side by side the theory of reciprocity in Islamic international relations... To accomplish this goal, it was launched from the hypothesis that the Islamic justice system is - what wide-ranging character of the gubernatorial advalorem, competent of international law to attain justice and global balance. Research hypotheses assume that:

A) The theory of reciprocity in international relationships in light of the present intercontinental system does not attain justice among nations and peoples, but is the doorway to the have power over the strongest.

B) The standards of the Islamic scheme in the administration of relationships between nations and persons gain a determine of justice and equilibrium and was unable to assent mechanism that the current international system have.

C) Is characterized by diplomacy in Islam, which gets rid of the moral isolation in diplomatic practice of secular states.

D) The probability of the submission of the principle of reciprocity in the international system multiplier system is better than mono and bi-polar system.

At a time when information and submission of the principle of reciprocity was incorporated in Islam, more than one thousand and four hundred years ago, emerged at the international scale with the evolution of provisions of the law of Qisas "an eye for an eye and tooth for a tooth"<sup>152</sup>of the gang fighting while the age of civics old (ancient Rome, the law of Hammurabi) at the end of the eighteenth century, a modern segment of reciprocity at international level.

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<sup>152</sup> Quran, 2:179.

In Islamic Shariah the principle differs from the law in terms of the first appearance of this theory which was trade with the relationship between a person and his Lord as well as questions of morals and integrity in the conduct of community and finally the sanctions.

There are a lot of texts that refer to these values and principles, and the remaining problem is the practice carried out by the Western countries, which go beyond these justifications (Islamic law), who use these justifications for the hostility and fortune of the common. It has been reported that international relations in the West, was founded on the various schools, including the model school and the school of pragmatism and the detained control of the school of pragmatism on the political practice of major powers during long periods of time.

Although the study concluded that the opportunity to apply the theory of reciprocity in the international system is common, but this issue wants additional research and study, in order to make comparison between the realistic applications in their modes.

### **3.7. Treaty Obligations under Islamic International Law**

Islamic law respects treaty obligations and agreements with Muslims and Non- Muslim states. It is stated in the Holy Quran:

Surely those who believed and migrated and strove hard in the way of Allah with their possessions and their lives, and those that sheltered and helped them - they alone are the true allies of one another. And those who believed but did not migrate (to Dar-al-Islam), you are under no obligation of alliance unless they migrate. And should they seek help

from you in the matter of religion, it is incumbent on you to provide help unless it be against a people with whom you have a pact. Allah is cognizant of all that you do. <sup>153</sup>

From the above verse, it is obvious, that the Muslims staying outside Islamic country have no political tie with the Islamic country. The verse, also on the other hand, does highlight that such Muslims are not free of the tie of spiritual brotherhood. It is recommended in the rules of Shariah, that Muslims residing in a non-Islamic country are usually victimized and looks for assistance from the Islamic country or its general public. Whenever such a situation arises, where Muslims are the victims, it becomes the responsibility, to assist the victimized Muslims. While helping one's brethren-in-faith the Muslims are expected to act scrupulously. This assist should be without international obligations and with due regards to the necessities of moral propriety.

When Islamic state is in an accord with a nation which imposes erroneous sanctions on Muslims, the demoralized Muslims will not be assisted in a way which is not in agreement with the ethical compulsions serving on the Islamic country as a result of that treaty.

. This accounts for the fact that Abu Basir and Abu Jandal were not bound by the Hudaibiyah "agreement accomplished between the Prophet Muhammad (PBUH) and the Makkan unbelievers".<sup>154</sup> This scrupulous verse was exposed after the migration from *Mecca* to *Medina*, when the Prophet Muhammad (PBUH) signed the Treaty of Hudaibiya with the Quraish. The contract actually was meant, as a Prophetic instance of the godly influence to give confidence to contractual compulsions faithfully, at rest to the

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<sup>153</sup>Quran, 8:72.

<sup>154</sup> Quran, 8:72.

defeat of the Islamic polity. Consequently, the holy Qur'an and conventional Islamic law unsurprising by one thousand years ago acknowledged widely recognized idea of today that obligation in treaties must be fulfilled.

Conventional jurists talk about the Qur'anic regulations as well as the Prophetic case in point, by emphasizing and demanding analysis of treaty understanding or elucidation in which indistinctness were interpreted in good accomplishment of the non-Muslim party. This is well illustrated in these maxims: (*al-zahir fi-l-nas al-wafa' bil- muwada'a*). particular faithfulness to agreement (*al-muslimun 'inda shurutihim*) "Muslims are bound by their agreements," and the target to keep away from the manifestation of disloyalty (*al-taharruz 'an al-ghadr*) and Muslims must "avoid committing treachery."

Thus it is necessary for both the parties to comply their treaty obligations, under conservative jurisprudence? The Muslim as a partner to a treaty stays bound by the constituents of the agreement and subsequently has to fulfill their obligations to the non-Muslim party regarding the extermination of the agreement.

### 3.8 Extradition Treaties in Shariah

Treaties make significant tools of worldwide relationships among nations in antique as well as in the contemporary era. Global treaty were of scrupulous attention to conventional *Muslim jurists*, popular among them is *Muhammad Shaybani*. They built up structure, and sketch up such tools that roofed all features and procedures, such as organization, wrapping up special things, and annihilation of worldwide treaties. Traditional Islamic scholars usually pay attention on particular feature of these treaties, the accomplishment of these agreements and the outcome of acts of disloyalty and infringement.

Shaybani's collection, talk about the capacity of the Muslims to come into treaties, during attack by a non-Muslim enemy on Muslim State. According to Siyar, if the Imam decides that the disbelievers are stronger than the Muslims, it would be enhanced to make peaceful talk by means of them than to hazard demolition.

One of model treaty is Hdaybiya treaty. The Hdaybiya Treaty entered into by Mohammad (PBUH) with the Meccans in the year 628 CE, is the first agreement in Islam, which posses a praiseworthy trustworthy basis and standard for international conformity between Muslims and non-Muslims.

Agreements which are predetermined so as the phase of harmony was to proceed for ten years, supplied an instance for the jurists, that no harmony treaty with the enemies ought to remain longer than that treaties which the prophet Muhammad(PBUH) accomplished with the non-Muslims. Later on the same were followed by the caliphs subsequent to his passing away.

Traditional Siyar, even though, hold agreement compulsion in massive regard, however, it explicitly deprived of *treaty-making* with non-Muslims, more than a provisional temperament, subject to termination of the immediate Islam's subjugation. A number of jurists argue on this area under discussions like:

- ❖ A number of jurists disagree that the period must be no longer than ten years.
- ❖ Whereas the *Hanafi* and *Maliki* schools of *Sunni jurisprudence* preserve that three years is the true period of a treaty's legality.

While there is deviation from the above specific duration, obviously, the rule of non-recognition, as represented by some form of durational constraint, remains. Conventionally, the Muslims responsibility to put into operation treaties, exterior or

interior was originated keeping in view Quranic verses, and at the same time Prophetic words and performance.

The Holy Quran says:

(And fulfill the covenant, which you have made with Allah and do not break your oaths after having firmly made them, and after having made Allah your witness. Surely Allah knows all that you do).<sup>155</sup>

And do not become like the woman who, after having painstakingly spun her yarn, caused it to disintegrate into pieces. You resort to oaths as instruments of mutual deceit, so that one might take greater advantage over another, although Allah puts you to the best through this. Surely on the Day of Resurrection he will make clear the truth concerning the matters over which you differed.<sup>156</sup>

Numerous jurists declare that perpetual treaties with *non-Muslims* could by no means be perpetual in temperament. *Abu Hanifa* did not have the same opinion, for he evidently preserve that everlasting treaties with *non-Muslims* could be made considering, an agreement had the quality of an agreement and such an agreement could possess a permanent character.

Another analysis of the traditional canon is that, agreements or treaties are of two kinds:

(1) Transitory agreements or treaties (which are applicabl to particular point in time), and (2) unconditional agreements or treaties which did not stipulate a time parameter.

The unconditional version does not, though, mean infinity seeing as they are dependent on conditions. They can be null and void by hostility of one party. On this aspect the Quran is clear: "So long as they are true to you, be true to them."

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<sup>155</sup> Quran, 17:24.

<sup>156</sup> Quran, 91-92:16.

Muslim jurists had criticized the necessity of putting treaties in writing based on Quaranic verse

O Believers, when you contract a debt for a fixed term, you should put it in writing. Let a person write with equity the document for the parties. The person, whom Allah has given the gift of literacy, should not refuse to write. Let him write, and let the one under obligation (the debtor) dictate and he should fear Allah, his Lord, and should not diminish from or add anything to the terms which have been settled. But if the borrower be of low understanding or weak or unable to dictate (for any reason), then let the guardian of his interests dictate it with equity. And let two men from among you bear witness to all such documents. But if two men be not available, there should be one man and two women to bear witness so that if one of the women forgets (anything), the other may remind her. The witnesses should be from among such people whom you approve of as witnesses. When the witnesses are asked to testify, they should not refuse to do so. Do not neglect to reduce to writing your transaction for a specified term, whether it is big or small. Allah considers this more just for you, for it facilitates the establishment of evidence and lessens doubts and suspicions. Of course, there is no harm if you do not put in writing the common transactions you conclude daily on the spot, but in case of commercial transactions you should have witnesses. The scribe and the witnesses should not be harassed: if you do so, you shall be guilty of sin. You should guard against the wrath of Allah; He gives you the knowledge of the right way for Allah has the knowledge of everything.<sup>157</sup>

Sunnah also stresses on the appointment and occasion of the period to be recorded. Subjects' along with termination of warfare; swap over of hostage, and

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<sup>157</sup> Quran, 2:282.

resolution on the grounds which caused the warfare in accordance were no restrictions on the theme substance of treaties. It is supplementary to know, that an enemy's infringement of an agreement could attract disciplinary exploitation on the part of Muslim. In such a case, it is not compulsory to enlighten the adversary of the just round the corner military action.

### 3.9 Conclusion;

The chapter discussed some opinions of authoritative scholars who quoted some of the verses of the Holy Quran and sayings from the Sunnah of the Prophet (PBUH).

These elaborated verses of Holy Quran and Hadith discussed above in detail, lead us toward the illegality of the law of extradition in Shariah. Thus, it is a controversial legal issue in Islam which I have mentioned in this research.

Islam is a religion for all time, and guides us in every sphere of our life. Jurists have decided issues keeping in view, the authenticity of applying the *Shari'ah rules* to crimes committed within the Muslim camp in *Dar al-Harb*, however, they differed over the timing of implementing the punishment. For example;

- 1 The Hanafies and Hanbalies recommended that the penalty should be deferred awaiting his arrival to *Dar al-Islam*.<sup>158</sup>
- 2 The Malikies and the Shafies held that punishment should be executed instantly, provided that the commanding officer was at liberty to do this.<sup>159</sup> If the commanding officer lacked this ability, penalty would not be put into practice until the criminal was returned to *Dar al-Islam*. Umar (RA) was the first to delay the

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<sup>158</sup> Kama! Al Dean Ibn Haman, *Fath al-Qadeer, Sharh al-Iledayah li al-Marghalani* (Cairo: Matba'at Mustafa al-Halabi, 1356 AH), 4:154. & Ibn Qudamah, *Al-Mughni* (Cairo: Matba'at al-Manar (1348 AH), 10: 439, 537-245.

<sup>159</sup> Ibn Qudamah, *Al-Mtighm* (Cairo: Matba'at al-Manar, 1348 AH), 2: 258. & Malik Ibn Anas *Almoddowanh* (Beirut: Dar al – Fik, 1991), 16: 91.



punishment of Muslim soldiers until they returned to *Dar al-Islam*,<sup>160</sup> though, during his tenure as Caliph, he was allowed to enforce the punishment on the criminal within the Muslim camp.

During the situation of need, *Shari'ah* permits the *Imam* to wind up a treaty of extradition. Anywhere, such a treaty survives; the Islamic State is gratified to extradite a person accused of a crime in the non-Islamic State. Muslim jurists, on the other hand, are in doubt about the accurate form of extradition. There are following juristic opinions:

- 3 The **Malikies** argue that during the existence of extradition treaty with a non-Muslim state, the provisions of that treaty must be carried out, when request was made to the Islamic State for the extradition of an accused individual.<sup>161</sup>
- 4 The **Hanafies** and several **Malikies** jurists are different from the greater part of **Malikies** point, who argue that extradition from the Islamic State could only be of non-Muslims. Muslims, in custody, should not be extradited to a non-Muslim state as this would give non-Muslims mastery over Muslims.<sup>162</sup>

The **Shafies** disagree with both the **Hanafie** and **Malikies**. They held that a person could only be legally extradited to a non-Muslim state, if he had a family there to protect him. If the accused person had no such family then extradition was not legal. This analysis was based on the fear that extraditing Muslims to a non-Muslim state would guide to polytheists, to persuade the Muslims to leave Islam.<sup>163</sup> While the **Shafies**

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<sup>160</sup> Dr Abdul all Ghalib Al-Qurashi, *Awlawiyah al-Faroug al-Siyasiyyah* (Cairo: Dar al-Wafa'a al-Tiba'ah wa al-Nashr 1990), 318-319.

<sup>161</sup> Ibn Qudamah, *Al-Mughni* (Cairo: Matba'at al-Manar, 1348AH), 10:510.

<sup>162</sup> *Ibid*, 4: 296.

<sup>163</sup> Ali Ibn Ibrahim Al-Sherazi, *Al-Muhatheeb* (Cairo: Matba'at al-Halabi, 1985), 3: 277.

observation was obviously functional to the extradition of Muslims, it does not appear to be applicable to non-Muslims, since, they need no tribe to safeguard them from apostasy.

## CHAPTER 4

### ANALYSIS OF THE JURISTS OPINIONS ABOUT EXTRADITION IN SHARIAH

#### 4.1 Introduction

The theory of extradition also deals with the Islamic international criminal law. The code of extradition, like the criminal law of international law, is Islamic coordination, and has diverse aspects, prevailing over the extradition of those who must be returned to their state of origin. The tradition of extradition in Islamic international criminal law is confined to the possibility of protection, to assure persons who need protection or have taken asylum.

There were contracts in the time of Muhammad (PBUH), the Prophet of Islam, which clarifies the compass of extradition to put into practice of Islamic law. One early case in point is the agreement of Hudaibiyah, accomplished between Muhammad (PBUH) and the infidels in the city state of Mecca in 6<sup>th</sup> A.H.<sup>164</sup> The prophet accepted unfavorable conditions like, If anyone went over to Muhammad (PBUH) without the permission of his guardian, he should be sent back to the Quraish; but should any of the followers of Muhammad (PBUH) return to Quresh, he should not be sent back.<sup>165</sup>

Though, extradition may be accepted due to the provisions of a treaty, however, threat to the life of individual, notoriously recognized infringement of human rights, attitude within the territory of the requesting state, and spiritual prejudice may avoid the

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<sup>164</sup> Farhad Malkian, *Principle of Islamic International Criminal Law* (1980), 326. OR <http://books.google.com.pk> (Last accessed Junry 17, 2015, 6 PM).

<sup>165</sup> Abdul Hamid Saddiqui, *sahih muslim*, translated in English, chapter DCCXXXVI, 3; 281.

extradition. As a consequence, political asylum seekers also must be protected from persecution. It is clear from this, that Political asylum seekers must not be extradited.

Islamic international criminal law also recognizes the extradition of those who are subject of a Muslim state, and have committed highway mugging under the jurisdiction of another state, but have fugitive to the jurisdiction of a Muslim state. Such human being should not be tried under Islamic jurisdiction and should be extradited to the relevant state for prosecution and sentence. This statute is valid till yet, while their criminal conduct, has made them to face the law. Extradition is usually arranged according to the provisions of any appropriate extradition treaty.<sup>166</sup>

#### 4.2 Principle of treaties in Islam

Muslim jurists, (9th–12th century era), build up legal principles, to preside over the correlation of the Islamic State with non-Muslim states, alongside other topics of Islamic law.<sup>167</sup> Basically, in relation to their assessment of law, most significant thing is the rise of different issues of Islamic international law in international wars (*jihad* or *siyar*) and treaties (*hudna* or *muwada'a*). The arising of such like questions during wars and after wars has laid down regulations toward a pre-political baseline which lead us to the question that Islamic State was permitted to come into mandatory contracts with non-Muslims, either individually or collectively. As soon as the Islamic State officially makes an accord, he is bound not to infringe the least compulsory set of Islamic law,

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<sup>166</sup> [http://books google.com.pk](http://books.google.com.pk), last accessed January 17, 2015, 6 PM.

<sup>167</sup> M A Zahra, *International Relations in Islam, al-'Alaqat al-dawliyya fi al-islam*, (Cairo: Al-Dar al-qawmiyya li-l-tiba'a wa-l-nashr, 1964), 88.

particularly, all those stipulations upon which the Muslim and the non-Muslim could perform a legally recognized correlation for the welfare or interests of Muslims.<sup>168</sup>

#### **4.3 Modern Treaties and Islamic Law**

The normal structure expected by Islamic jurists mostly isolated by majority of the Islamic States, among the accomplishment of European philosophy of territorial sovereignty in the 20th century; definite ethical thoughts of pre-20th century Islamic law, e.g. inter-Muslim harmony, on the other hand, go on with to have ethical and political salience among Muslims in the contemporary world as OIC concerns. And the normative frameworks of the Muslim jurist's in the pre-contemporary Muslim law, though, include other than limited ladder to reunion the model of contemporary international law to the norms of pre-modern Islamic international law.

#### **4.4 The Juristic structure in the traditional era of Islamic Law (9th–12th Century)**

Muslim jurist's derived the regulations of Islamic law, as well as intercontinental law, from manuscript of disclosure as soon as probable. Allah Almighty says in the Holy Quran:

Surely those who believed and migrated and strove hard in the way of Allah with their possessions and their lives, and those that sheltered and helped them - they alone are the true allies of one another. And those who believed but did not migrate (to Dar-al-Islam), you are under no obligation of alliance unless they migrate. And should they seek help

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<sup>168</sup> Muhammad Munir, *Noncombatant Immunity in Islamic Law and International Humanitarian Law: A Comparative Study*, unpublished LL.M. thesis submitted to the Faculty of Shar'ah and Law, International Islamic University, Islamabad (1996).

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from you in the matter of religion, it is incumbent on you to provide help unless it be against a people with whom you have a pact. Allah is cognizant of all that you do. <sup>169</sup>

It set down whatever accord on protection would be appropriate for entire Muslim, what's supplementary to the innovative residents of the country, that has turn out to be *Dar al-Islam* (the Domain of Islam) or Muslims who have journey to the *Dar al-Islam*. Also keeping in view, Muslims residing outside the jurisdiction of the *Islamic state*, the religious brotherhood tie would doubtlessly bind them, and the *Muslim residents of the Islamic state*. Similarly, a *Walayah* relationship would not exist between Muslims who do not migrate to *Dar al-Islam* but come to it as Muslim subjects of a non-Muslim state. <sup>170</sup>

Therefore, it is put down that *Walayah* is a political and constitutional intellect; only those Muslims who survive within the protective limits of the Islamic state will get pleasure from the constitutional rights of *walayah* (guardianship) of the Islamic state. People, who are established in a non-Islamic country, are expelled from its political and legal custody, because they would be beyond the custody of the Muslims of *Dar al-Kufr* (the Domain of Unbelievers), and possibly they would do nothing as guardians of Muslim general public of an Islamic state.

Similarly, it is not possible to have a contract among Muslims, one living in an Islamic state and the other outside of it. The Islamic state may not assign administrative center of power to those who have not laid down arms, and who are citizenship of the non-Islamic

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<sup>169</sup> Quran, 8:72.

<sup>170</sup> *ibid.*

state. Beyond all, these requirements of Islamic law decide the foreign policy of the Islamic state.<sup>171</sup>

The following practices clarify this point: "I am release of every Muslim living between the polytheists"<sup>172</sup> This verse, though, does highlight that those Muslims are not without charge of the tie of spiritual brotherhood. If Muslims live in a non-Islamic country are victimized and look for assistance from the Islamic country, they must assist them.

If the Islamic country becomes a hurdle in a treaty affiliation among a state which suppresses Muslims and the subjugated Muslims will not be assisted in a mode, which is conflicting with the ethical compulsions of the Islamic country as a consequence of that treaty. The Qur'an uses the word *Mithaq* for agreement.

The ethical compulsion occurring from the treaty is compulsory upon the Muslims and must not infringe the obligations of the treaty, which an Islamic state has entered with some other state. Muslims living outside the Islamic state does not follow such obligations. This accounts for the information that *Abu Basir* and *Abu Jandal* were not bound by the *Hudaybiyah* treaty accomplished among the Prophet Muhammad (PBUH) and the *Makkan* unbelievers.

This compulsion descend if a calm treaty survive among the Muslim State and the ethnic group of the victimized non-resident Muslims, in that case the Muslim State had to respect the terms of the treaty.<sup>173</sup>

If disclosure was calm, Muslim jurists relied on equivalent, assumed habitual law, pursued examples, and pleaded to ordinary intelligent way of thinking in order to resolve lawful evils. From the viewpoint of Muslim jurists of International law, it was just a

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<sup>171</sup> Ibn Qudamah, *Al-Mughni* (Cairo: Matba'at al-Manar, 1348 AH), 8:45.

<sup>172</sup> Abu Da'ud, 'Jihad', *Bab al-Nahy'an*, *'kall man i'tasama bi al-Sujud*.

<sup>173</sup> *Ibid.*

different theme inside the Islamic legal scheme, a truth that gives Islamic international law unique nature. It applied as element of an Islamic State's domestic legal order, whether or not non-Muslim States established it as obligatory. This are illustrated in the observations of the *Hanafi* jurist *Muhammad b al-Hasan al-Shaybani in detail*.<sup>174</sup>

#### **4.5 The ('Asma) or Protection of people and Possessions:**

There are different acknowledged means among Muslim jurists by which calm could appear from a situation of conflict. After becoming Muslim there are two basis of sacredness where ('*Asma*) would survive: (1) spiritual or devout (2) political. The first one takes place by eye-catching excellence of Muslims' joint attachment or devotion to the Islamic tradition. The second take place by desirable quality of the actuality that is officially permitted in Islamic country to pay for peoples living within that country by adopting transparency throughout the Muslim communities, obliging political power (*Mana'a*). Spiritual purity, still, is provisional upon communal trust, and consequently cannot connect non-believers.

Shariah would not authorize a Muslim to acquire back his possessions that were theft in *Dar al-Harb* by a non-Muslim, if they are doing trade in the *Dar al-Islam*. Consequently, shariah was defensive in protecting individual, looking to the territorial nature, and at the same time practical for performance in *Dar al-Islam*, in spite of spiritual disparity.

A non-Muslim might accomplish clarity in shariah by adopting the connection of 'protection' or *Dhimma*, and was called a *Dhimmi*, or a 'sheltered person'. When an Islamic country or his official representative could come into such responsibility, it must

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<sup>174</sup> Along with the writings of his 11th century Central Asian commentator and redactor, Shams al-Din al-Sarakhsi.



abide by it. An Islamic country might also talk about an agreement of *Dhimma* with a non-Muslim monarch, however in doing so, it could not recognize stipulations that were revolting to Shariah, for instance, a harmony with a non-Muslim sovereign to put his monarchy under the shield of the Islamic State and reimburse to the Islamic State the mandatory survey tariff (*Jizya*) or stipulation, so that he may be permitted to carry on his practice of religion, and provide them all necessary reliefs.

The third way for obtaining protection under shariah is (*aman*) or grant of security. The Islamic country could grant exact persons or classes of individuals, e.g. foreign merchants or subjects of the King of England, security.

The endowment of safety symbolizes in code means a provisional declaration of fighting according to Muslim jurists, which might merely proceed one year. The recipient person, or *Musta'min*, was only guaranteed security as against Muslims, and not in favor of the whole world. Thus *Aman* guaranteed is a protection given by the authority of state to against attack.

For the assistance of the Muslim community, the State comes into a treaty with the enemy. It was against the law to make calm with an opponent that would call for Muslims to put down armaments.

There is diverse vision regarding the minimum duration of time for which a treaty might be put in result according to jurists, where, some jurists put this question to the decision of the sovereign, whereas others have restricted truce to a maximum of 10 years.

#### 4.6 Customary International Law and Shariah:

Since *siyar* is assumed to connect only Muslims with Islamic countries, on the basis of the contract of non-Muslims individual or non-Muslim country. A number of authors view, that non-Muslims are purely the purpose or object of Islamic international law, and not its subject or focus at all.<sup>175</sup>

Muslim jurists have directed towards a few doctrines, which were communal, partially or wholly and therefore they may have recognized an immature habitual international law. The primary and important common rule was the speculation of *pacta sunt servanda*, and the creation of the words, could be hoped to be precise to it:

- 1 (*al-zahir fi-l-nas al-wafa' bil- muwada'a*), Particular faithfulness to agreements.
- 2 (*al-muslimun 'inda shurutihim*) and Muslims are bound by their conditions.
- 3 (*al-taharruz 'an al-ghadr*) the target to keep away from the manifestation of disloyalty.

Awareness is the most important substantive standard in the Islamic law of treaties. In pre-modern doctrines of Islamic law, one can also come across confirmation for other doctrines of international customary regulation, such as the protective title of ships, by having the *flag of ships* code. The Islamic law of the sea also appears to be a kind of international habitual law. Such as the rule that a person can only have one *nationality* and that upon marriage, the woman takes the nationality of her husband.

The guard of overseas diplomats (Immunity, *Diplomatic*), is universall recognized by Muslim Jurists. Islamic international law commences with a hypothesis, with the intention of the state of nature, and not fastened by individual's arguments.

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<sup>175</sup> Khadduri [1966] 6

#### 4.7 Jurisdiction of Criminal Law and Extradition Treaties

Under *Shari'ah*, offenses can be categorized under two headings:

- (1) Crimes for which there is a permanent sentence;
- (2) Crimes where the *Qadi* decides the penalty the so-called *T'azir*.

Commonly talking, the rules of these two criminal codes in *Shari'ah* are obligatory on all crimes committed in *Dar al-Islam*, and equally applicable to all Muslims, *Dhimmis*, and *Musta'mins*. Suppose, a crime is committed in *Dar al-Islam* but the criminal absconds to *Dar al-Harb* to run away from sentence, the sentence does not descend or become unacceptable and annulled, whether, the criminal is a Muslim or non-Muslim.<sup>176</sup>

Crimes committed outside *Dar al-Islam* have an unusual legal position, whether, committed by Muslim or a non-Muslim inhabitant of *Dar al-Islam* the common rule is that the *Shari'ah* is not lawfully appropriate to these crimes and the offenders. This is because, it is the *Imam's* responsibility to put into practice punishments under the *Shari'ah* within territories under his authority. Keeping in view the reality, that *Dar al-Harb* is beyond *Imam's* influence, as he lacks the capability to put into effect *Shari'ah* punishments there, such punishment is not mandatory.<sup>177</sup>

What is excluded from the rule is that, the *Shari'ah* law and its punishments do not apply in *Dar al-Harb* during the period of war. Muslims military are camped in *Dar al-Harb*, where a misdeed is committed within the Muslim camp by a Muslim or non-Muslim, which is a crime liable to be punished by the same as if it were committed in *Dar al-Islam*. That is the area under discussion in *Shari'ah* law. The reason is that the Muslim military camp is detained by soldiers of the Islamic State and therefore subject to its

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<sup>176</sup> Imam Abu Bakar Aja Al-Kasani, *Bada'ea al-Sanay'a fi Tarteab al-Sharay'a* (Cairo: Sharekat al-Matbou'at al-Alamyah, 1327 AH), 7:131.

<sup>177</sup> Abdal Qadir Audah, *Al-Tashri' al-Jinai' al-Islami* (Cairo: Mu'asasat al-Risalah, 1994), 280.

control. *Imam* is authorized to practice *Shari'ah* within the camps, and the crime is treated as if it is committed in *Dar al-Islam*. Whereas, crimes committed outside the Muslim camp are not subject to the Imam's authority and must be treated like any crime committed in *Dar al-Harb*.<sup>178</sup>

Jurists have decided upon the authenticity of applying the *Shari'ah*, to crimes committed within the Muslim camp in *Dar al-Harb*, however, they differed over the timing of implementing the punishment. For Example:

The Hanafies and Hanbalies recommend that the penalty should be deferred awaiting his arrival to *Dar al-Islam*.<sup>179</sup> The Malikies and the Shafies held that punishment should be executed instantly, provided the commanding officer was at liberty to do this.<sup>180</sup> Suppose, if the commanding officer lacked this ability, penalty would not be put into practice until the criminal returned to *Dar al-Islam*. Umar (RA) was the first to delay the punishment of Muslim soldiers until they returned to *Dar al-Islam*,<sup>181</sup> though, as Caliph he was authorised to enforce the punishment on the criminal within the Muslim camp.

Under the situation of need *Shari'ah* permits the *Imam* to wind up a treaty of extradition. Anywhere such a treaty survive the Islamic State is gratified to extradite a human being who was charged with an offense in non-Islamic State. Muslim jurists, on the other hand, are in doubt about the accurate form of extradition. There are following jurist's opinion:

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<sup>178</sup> Ibid, 132.

<sup>179</sup> Kamal Al Dean Ibn Haman, *Fath al-Qadeer, Sharh al-Hedayah li al-Marghalani* (Cairo: Matba'at Mustafa al-Halabi, 1356 AH), 4:154. & Ibn Qudamah, *Al-Mughni* (Cairo: Matba'at al-Manar, (1348 AH), 10:439, 537, 245.

<sup>180</sup> Ibn Qudamah, *Al-Mughni* (Cairo: Matba'at al-Manar, (1348 AH), 2: 258. & Malik Ibn Anas *Almaddowanh* (Beirut: Dar al – Fikr, Beirut, 1991), 16:91.

<sup>181</sup> Dr. Abdul all Ghalib Al-Qurashi, *Awlawiyah al-Faroug al-Siyasiyyah* (Cairo: Dar al-Wafa'a ii al-Tiba'ah wa al-Nashr, 1990), 318-319.

The Malikies argued that during extradition treaty with a non-Muslim state, the provisions of that treaty must be observed when request was made to the Islamic State for the extradition of an accused individual.<sup>182</sup>

The Hanafies and several Malikies jurists are different from the greater part Malikies who argue that extradition from the Islamic State could only be of non-Muslims. Muslims, in custody, should not be extradited to a non-Muslim state as this would give non-Muslims mastery over Muslims.<sup>183</sup>

The Shafies disagree with both the Hanafies and Malilcies view. They held that a person could only be legally extradited to a non-Muslim state if that person had a family there to protect him. If the accused person had no such family then extradition was not legal. This analysis was based on the horror that extraditing Muslims to a non-Muslim state would help polytheists to persuade the Muslim away from Islam.<sup>184</sup> While the Shafies observation was obviously deliberate to the extradition of Muslims, it does not appear to be applicable to non-Muslims since they need no tribe to safeguard from apostasy.

The Hanafies, Shafies and marginal Malikie juridical positions are at inconsistency with Prophetic practice. After closing the contract of the Hodaybiya agreement, the Prophet Muhammad returned the Qurashi, Abu Jandal, to his people in Makkah who had requested his extradition.<sup>185</sup> Abu Jandal was not accused of any crime, except converting to Islam which, from the Quraishs point of view, was a criminal offence.

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<sup>182</sup> Ibn Qudamah, *Al-Mughni* (Cairo: Matba'at al-Manar, 1348 AH), 10:510.

<sup>183</sup> *Ibid*, 4:296.

<sup>184</sup> Ali Ibn Ibrahim Al-Sherazi, *Al-Muhazheb* (Cairo: Matba'at al-Halabi, 1990),3: 277.

<sup>185</sup> Safih ul Rahman Mubarak Phuri, *The Sealed Nectar, Biography of the Noble Prophet* (Riyadh: Maktaba Dar us Salam, 1995), 341-342.

An unusual situation applies to the extradition of a *Musta'min*, Provided that there is an extradition treaty in power. In such a situation, he cannot be extradited to any non-Islamic State, except an express agreement existing there, as this would oppose the *Aman* agreed to him. The common rule is that an extradition treaty among the Islamic country and the non-Islamic country confirms the provision of *Aman* specified by the Islamic State, where extradition is legitimate.<sup>186</sup>

Where there is no extradition treaty, the Islamic State will not extradite any resident, whether Muslim or non-Muslim (including the *Musta'mins*), to a non-Islamic State that desires their extradition, whatsoever the crimes of which they are accused. This provision of the *Shari'ah* also prohibits the extradition of a Muslim who holds the nationality of a state within *Dar al-Harb* if he leaves your country from there to *Dar al-Islam*.<sup>187</sup>

If a crime is committed in the Islamic State there is no opportunity of extradition. The accused individual is tried under the *Shari'ah* as earlier noted. On the other hand, in the where there is more than one Islamic State extradition from one to another can take place. Jurists stress that *Shari 'ah* does prevent extradition of a required person to another Islamic State on criminal charges, except that person had been earlier tried and punished for that crime according to the *Shari 'ah*.

Islamic law prohibits a person from being punished double for a crime committed. Jurists argued that extradition from one Islamic State to another where the accused person has not already been tried, or punished is justifiable to face the consequence, as both states are part of *Dar al-Islam*. Every Islamic State is measured as a part of *Dar al-Islam*

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<sup>186</sup>Abdal Qadir Audah , *Al-Tashri ' al-Jinai*, (Mu'asasat al-Risalah, Cairo, (1994), 300-301.

<sup>187</sup> Ibid.

and a spokesperson of Islam, as a result, there is no doubt regarding extradition as long as the lawful requirements of both states are the same.<sup>188</sup>

During the 'Abbaside domain, it could be argued the Islamic State had broken down into three Islamic states based in Spain, Egypt and at Baghdad. Though, conventional *Fiqh* overlooked these divisions and sustained to guess the survival of a solo Islamic State whose chief was the *Imam* or 'Abbaside Caliph. For that reason, the query of extradition from the Islamic State to another Islamic State could not at all take place. Each and every one that was legally possible was the exclusion of an accused person from one constituency to another for trial inside the Islamic State.

Expulsion and deport by the Islamic State in accord with the *Shari'ah* has some similarity to extradition. No Muslims can be lawfully exiled commencing *Dar al-Islam* to *Dar al-Harb*, just as they cannot be extradited in the nonexistence of the extradition treaty. These same terms apply to *Dhimmis*. Yet, both Muslims and *Dhimmis* may be legitimately exiled to another region within *Dar al-Islam*.<sup>189</sup>

Again, non-Muslim people of the Islamic State cannot go through *Dar al-Islam* without *Aman* or as result of a reconciliation treaty between his country and Islamic State. The Islamic power is permitted to ban such a person, once the episode of their impermanent residents has ended. It also has the right to expel impermanent non-Muslim people sooner than the expiration time, if they infringe public protection or if they become apprehensive as for pattern if they are assumed of intelligence work.<sup>190</sup>

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<sup>188</sup> Audah, AbdalQadir, *A1-Tashri*, Mu'asasat al-Risalah, Cairo, (1994), 297-299. 141, 304.

<sup>189</sup> Ibid.

<sup>190</sup> Abdal Qadir Audah, *'Al-Tashri* ( Cairo: Mu'asasat al-Risalah ,1994) ,297-299. 141,304.

#### 4.8 conclusions

The Prophet Muhammad (PBUH) established a diplomatic office of Islamic country to practice ambassadorial communication among the rulers of *Byzantium* and *Persia*. The Prophet Muhammad (PBUH) also came into agreements with Arab tribes for 10-years, and a treaty for peace with the *Makkans* (Treaty of Hdaybiya), which later became an Islamic sculpt of ambassadorial perform.

The instantaneous successor to the Prophet Muhammad (PBUH) also went for abundant agreements, during the initial gesture of Islamic invasions which professed to set out the rights of the non-Muslim inhabitants of recently integrated countries.

Premature Islamic country also regulated interested tranquility agreements among the *Nubians* in the mid of 17th century. Muslims traders in china and India went through the confined monarch who provided Muslim partial dominion, because of treaties among them, and to have their adjudicator use appropriate Islamic laws to resolve their own issues.

According to Islamic law, the object and purpose of Islamic treaties, is the same as that of the Islamic state. According to the concept of Tawheed universality of relationship is, betterment of all the mankind on the earth, creation of peace throughout the world, finishing suppression and equality of all the humankinds in relation to economic, political, and collective fundamental rights, are the salient goals to be kept in view by an Islamic state while entering to the treaties. Ultimate goal of an Islamic state is achievement of universality and hence it frames its foreign policy for regulation of



international relation in the same perspective. However, due to the treaties, the state does not withdraw from the real object of the Islamic state.<sup>191</sup>

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<sup>191</sup> Mulana Hamidul Ansari Ghazi, *Islamic system of government* (Lahore: PLD, 1980) ,357.

## Executive summary And Recommendations

### Executive summary

Extradition means formal request by one requesting state to hand over a deserter offender for trial or sentence. It is adopted in international law, since ancient times. Historically, law of extradition mostly deal for politically needs, therefore extradition is left with more political than legal. With the passage of time, extradition developed as a legal concept.

It has been mentioned that in classical *Fiqh* the unified concepts of the sphere of calm or Islam (*Dar al-Islam*) with the domain of hostility or war (*Dar al-Harb*) produced the basis of conventional Islamic international relations theory.

An additional and critical characteristic of *Dar al-Harb* was its aggression to Islam and the Islamic State and it was the basic reason of conflict between the two domains. Later on, in the second century AH a third intermediary sphere between two *Dars* was added, the sphere of assurance which called (*Dar al-Ahd*) or (*Dar al-Sulh*). Neither (*Dar al-Islam*), (*Dar al-Harb*) or (*Dar al-Ahd*) was suitable to the situation of the first Muslim in Makkah before the *Hijrah*. There was no Islamic State and even despite the hostilities encountered from the Quraish, this was not *Dar al-Harb* at that time. The best way of relating the Makkah condition before the *Hijrah* is in stipulations of a forth *Dar*, namely, the domain of calling to Islam *Dar al-Da'wa*.

Similar to the three domains of traditional *Fiqh*, it too has no *Shariah* origin, unlike *Dar al-Muhajiroun* the sphere of Emigrants (to Madinah after *Hijrah*) which is point out in the Prophetic "*Hadith* narrated by Imam Muslim".<sup>192</sup>

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<sup>192</sup> Abu 'Abdullah, Muhammad bin Yazid bin Majah Al-Qizwini, *Sunan Ihni Majah* ( Cairo: Dar Ehya'a al-Kutub al-Arabiyah, 1987),2: 953.

The hypothesis raised a more elementary question during the argument of the three domains of classical *Fiqh* and their probable applicability in the modern world. The two original domains were derivative from a traditionally temporary, hostile, relation between Muslims and non-Muslims which was transformed into juristic or academic concepts.

This had become insufficient to explain the modern world after the second century AH, hence, the addition of *Dar al- 'A'id* to redefine the Muslim/non-Muslim relationship, as an alternative of framing Islamic international relations speculation in terms of two, three or even four domains, it was argued that the more original dealings of Muslims to non-Muslims was the base of Islamic international relations theory.

This was argued in two ways. First, that all relationships between all Muslims are interior or *Ummatic* and consisted of Islamic brotherhood. Secondly, all relationships among them are exterior, including relations between citizens of the Islamic State and even between Muslim husband and non-Muslim wife. The disclosure that "all Muslims form a single brotherhood"<sup>193</sup> The Prophet likened their connection to a wall where one part supports the rest.<sup>194</sup>

This vision is incorrigible by the nature of *Shariah*. It has two parts, one organising man's relations with Allah, the other his relations with his fellow human beings. The latter is sub divided into that part which applies to members of the Muslim *Ummah* and the other part which regulates relations between the Muslim *Ummah* organised as the Islamic State, on one hand, and non-Muslim individuals, groups and states, on the other hand.

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<sup>193</sup> *Qur'an*, 49: 16.

<sup>194</sup> Yahya Ibn Sharaf Al-Nalvavvi, *Riyadh al-Saliheen* (Beirut: Dar al-Fikr, Beirut, (1993), 1: 218.

This section of the *Shariah* is termed *al-Siyar* and it is the law governing the external relations of the Islamic State with non-Muslims.<sup>195</sup>

The *Qur'anic* foundation of Islamic international relationship theory is summarized in detail in the *Holy Qur'an*".<sup>196</sup> Since every component of the *Qur'an* is a source of *Shariah*, it follows that *Siyar* and the basic formation of Islamic international relation theory is this ingredient of the *Share 'ah*.

In chapter II, the basic unities of Allah and his laws and also the unity of mankind were examined. Allah's laws were revealed through the a series of Prophets culminating in the Prophet Muhammad for the whole of mankind, though at each phase only part of the human race believed in God and followed his law.

Finally, it was assumption that the *Shariah* is active, progressive and bendable sufficient to meet changes of time and pace. This does not indicate that presented Islamic law is under regular modification for one time a rule had been recognized to cover a exacting case in *Fiqh* that rule never changes after that. The flexibility of the *Share 'ah*, it was found, lies in its ability to be lengthened to face new cases or situations for which also there is no rule or the existing rule relates to circumstances.

It was found that there is a separate Islamic theory of international relations which differs basically from Western theory of international relations in several respects. Muslim jurists, on the other hand, are in doubt about the accurate form of extradition. There are following jurist's opinion:

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<sup>195</sup> Mohammad Hamidullah, *The Muslim Conduct of State* (Lahore: Sheikh Muhammad Ashraf, Lahore, 1977), 9.

<sup>196</sup> *Qur'an*, 3: 110.

The Malikies argue that during an extradition treaty with non-Muslim state, the provisions of that treaty must be pleased when request was made to the Islamic State for the extradition of an accused individual.<sup>197</sup>

The Hanafi and several Maliki jurists are different arguing that extradition from the Islamic State could only be of non-Muslims. Muslims, in custody, should not be extradited to a non-Muslim state as this would give non-Muslims mastery over Muslims.<sup>198</sup>

The Shafies disagree with both the Hanafie and Malikies view. They held that a person could only be legally extradited to a non-Muslim state if that person had a family there to protect him. If the accused person had no such family then extradition was not legal. This analysis was based on the horror that extraditing Muslims to a non-Muslim state would help polytheists to persuade the Muslim left from Islam.<sup>199</sup> While the Shafies observation was obviously deliberate regarding the extradition of Muslims, it does not appear to be applicable to non-Muslims since they need no tribe to safeguard them from apostasy.

### Recommendations

This research has fall out that:

- 1 a practical and appropriate Islamic theory of international relations exists today if the three domains are removed from classical *Fiqh* to put down a theory of Muslim relations with non-Muslims. Some current scholars, such as Abu Sulayman, have seen the call for for an Islamic theory of international relations which is entirely valid in the modern world in which the Caliphate has been put an end to and where non-Muslim states are in the rising.

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<sup>197</sup> Ibn Qudamah, *Al-Mughni* (Cairo: Matba'at al-Manar, 1348 AH), 10: 510.

<sup>198</sup> *Ibid*, 4:296.

<sup>199</sup> Ali Ibn Ibraheam Al-Sherazi, *Al-Muhatheb* (Cairo: Matba'at al-Halabi, 1988), 3: 277.

- 2 This thesis determined on such treaties in the era of the Prophet Muhammad(PBUH) and the four Orthodox Caliphs(rulers) given legal consequence of this Tradition in Islam, but the afterward application of these treaties under the 'Abbasside Caliphs would be advantageous according to their real shape.
- 3 In the thesis, it was distinguished that ceasefire treaties had exceeded the provisional period of ten years during the Empire, and had in actuality become enduring in the time of Saladin.
- 4 In short, the reconsideration of the Islamic theory of international relations though treaties, alliances and neutrality is a major task to which this thesis has made a modest contribution. As a final point, Dr. Yusuf al-Qaradawi has published and transmits on a completely new characteristic of Muslim/non-Muslim relations in the twentieth century, the location of Muslims who are permanent residents in Western countries. This new measurement also requires to be integrated into a modern re-assessment of Islamic international relations theory.
- 5 There is mixing of some terminologies amongst jurists and modern international law expert which must be pursued according to their real shape.
- 6 There must be followed by Muslims real text of Quran and Sunnah and must follow the theory of necessity in their realty.

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