

INTERNATIONAL LEGAL PERSONALITY OF PROPHET MUHAMMAD (PBUH)

Mohd Hisham Mohd Kamal*

ABSTRACT

An international legal person is a subject of international law who enjoys rights, duties or powers in international law and the capacity to act on the international plane. Under modern international law, States are international persons, whereas private individuals are not. This article discusses whether Prophet Muhammad (pbuh) of the religion of Islam was an international legal person. Evidence shows that his correspondences with other States and nations were in his name “Muhammad ibn ‘Abdullāh” or “Muhammad the Messenger of Allah,” and not as the head of the City-State of Medina. Was he recognised as such by the international community at that time? This work finds that Prophet Muhammad (pbuh) was accepted by the international community during his time as an international legal person. His personality was due to his unique position as a prophet.

Keywords: international legal personality, Prophet Muhammad (pbuh), Islamic international relations, international acts

PERSONALITI PERUNDANGAN ANTARABANGSA NABI MUHAMMAD (S.A.W.) (570-632)

ABSTRAK

Persona perundangan antarabangsa adalah subjek undang-undang antarabangsa yang menikmati hak, tanggung jawab atau kuasa dalam undang-undang antarabangsa dan keupayaan untuk bertindak atas pentas antarabangsa. Di bawah undang-undang antarabangsa moden,

* Associate Professor, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia.

negara adalah persona antarabangsa, manakala individu persendirian bukan. Makalah ini membincangkan sama ada Nabi Muhammad (s.a.w.) pembawa ajaran Islam seorang persona perundangan antarabangsa. Keterangan menunjukkan bahawa surat-surat rasmi Baginda kepada negara-negara dan bangsa-bangsa lain adalah atas nama “Muhammad bin Abdullah” atau “Muhammad Pesuruh Allah” dan bukan sebagai ketua negara bandar Madinah. Adakah Baginda (s.a.w.) diiktiraf sebegitu oleh masyarakat antarabangsa ketika itu? Kerja ini mendapati bahawa Nabi Muhammad (s.a.w.) diterima oleh masyarakat antarabangsa pada masa Baginda itu sebagai seorang persona perundangan antarabangsa. Personaliti Baginda adalah disebabkan kedudukan unik Baginda sebagai seorang nabi.

Kata kunci: personaliti perundangan antarabangsa, Nabi Muhammad (s.a.w.), perhubungan Islam antarabangsa, tindakan antarabangsa

INTRODUCTION

The law of international relations is part and parcel of Islamic law (*Shari'ah*), whose primary sources are the Qur'ān and the *Sunnah* (sayings, deeds, and approvals of Prophet Muḥammad (pbuh) (570-632)). History records show that the Prophet (pbuh) conducted relations with neighbouring tribes and empires. The question is whether he had international legal personality to do so. This work analyses the conducts of the Prophet (pbuh) in dealing with surrounding empires and nations, in particular, treaties which he entered into with nations and letters which he sent to kings. Were these international acts conducted in his capacity as the head of the City-State of Medina or as a prophet, that is, leader of his religious followers? It is submitted that Prophet Muḥammad (pbuh) had international legal personality because he had been accepted by the international community at that time as having rights and obligations under the law of nations which existed then. It is also contended that he had such personality on the ground of his unique position as a prophet.

Several works have been written on legal personality and international legal personality.¹ The discussion therein deals with the concept under modern international law, including on the status of international organisations and of natural persons. Janne Elisabeth Nijman's *The Concept of International Legal Personality* also provides the historical introduction of the concept.² The term "*persona jure gentium*" which means "international legal person" was first used by Gottfried Wilhelm Leibniz (1646-1716) in his 1693 work *Codex Iuris Gentium Diplomaticus*.³ Nijman focuses on Leibniz's conception of international legal personality. She does not discuss the law of nations regarding the ability of an entity to conduct international legal acts before Leibniz's time.

Mohammad Talaat al-Ghunaimi⁴ briefly deals with the legal personality of Prophet Muḥammad (pbuh) under Islamic international law. Al-Ghunaimi has argued that Prophet Muḥammad (pbuh) was endowed with international personality on two grounds: that the Prophet (pbuh) concluded treaties, and that he sent and received ambassadors.⁵ Al-Ghunaimi, however, does not deal with the question of whether hostile responses from certain States to the Prophet's diplomats and letters affected the Prophet's international personality. This article discusses international acts of Prophet Muḥammad (pbuh) before and

¹ Janne Elisabeth Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (The Hague: T.M.C. Asser Press, 2004); Flora Goudappel and Silvia Romein, "Evolving Legal Personality: The Case of European Union Citizenship", *Ius Gentium* 11 (2005), 1-34; Jan Klabbers, "The Concept of Legal Personality," *Ius Gentium* 11 (2005), 35-66; M.N.S. Sellers, "International Legal Personality," *Ius Gentium* 11 (2005), 67-78; Nary Subramaniam and Lawrence Chung, "Measuring the Evolvability of Legal Personality", *Ius Gentium* 11 (2005), 79-133; Andy Omara, "The International Legal Personality of ASEAN – Does Its Capacity to Perform International Acts Depend on a Charter?," *Asian Journal of International Law* 2(1-2) (2007) 69-108.

² Nijman, *Concept*, 29-84.

³ *Ibid.*, 29; J.H.W. Verzijl, *International Law in Historical Perspective*, vol. 2, International Persons, (Leyden: A.W. Sijthoff, 1969), 2.

⁴ Mohammad Talaat al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, (The Hague: Martinus Nijhoff, 1968).

⁵ *Ibid.*, 31-4.

after he established the City-State of Medina and the legal implications of both friendly and hostile responses from the other nations to his acts. This justifies the present article.

The present work begins with a brief explanation of the concept of international legal personality, followed by a brief history of the pre-Islamic law of nations and of early Islam. Thereafter this work enunciates the international acts of the Prophet (pbuh) and argues that his international acts were carried out in his capacity as a prophet. Before its conclusion, this work identifies the significance of the international legal personality of Prophet Muḥammad (pbuh).

INTERNATIONAL LEGAL PERSONALITY

Personality is a bundle of rights, competences and obligations.⁶ Generally, legal personality is a status that should be obtained by an entity in order to be able to exercise certain rights, be subject to certain duties, and act within a legal situation,⁷ or, in other words, to be a subject of the law. Without having legal personality, an entity will not be recognised by the law. Consequently, the entity will have no legitimacy to act.

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights and their nature depends upon the needs of the community. Legal personality may be attributed to natural persons as well as non-human entities.

In the context of international law, an entity that has legal personality will be able to conclude treaties, to make claims, to be held responsible for internationally wrongful acts, or to conduct other international legal acts. Under the modern public international law, States are the typical international persons and thus the subjects of the law par excellence. This is a result of the Westphalian system. While international organisations have been included as subjects of international law since the end of World War I,⁸ individuals generally have only limited degree of international personality, for example, they are directly subject to the

⁶ See Klabbbers, "Concept", 46-7.

⁷ *Ibid.*, 37; Omara, "International Legal Personality", 72.

⁸ Robert Jennings and Arthur Watts (eds.), *Oppenheim's International Law*, vol. 1, Peace, 9th edition (London: Longman, 1996), 18-9.

international criminal law.⁹ “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”¹⁰ But the individual victims of international crimes are not provided with remedies by the treaties prohibiting such crimes such as the Convention against Torture and the Convention on the Prevention of Genocide.¹¹ In addition, individuals are the beneficiaries of international human rights treaties which create obligations on the States parties. This shows the limited degree of international legal personality that individuals have.

Nevertheless, in modern practice, the Secretary-General of the United Nations (UN) who has certain capacity and functions as prescribed in the UN Charter has often carried out peaceful settlement initiatives which are not envisaged by the Charter.¹² Examples include the 1970 mediation in the Bahrain – Iran dispute and the arbitration in the *Rainbow Warrior* dispute between New Zealand and France.¹³ This is a very exceptional case where an individual may have international legal personality.

Coming back to the concept, international legal personality requires that States must have treated entities in question as endowed directly with international rights and duties in order to make such entities, to the extent of the treatment, subjects of international law.¹⁴ Did States to which Prophet Muḥammad (pbuh) sent diplomats and letters treat him as endowed with international rights and duties? The discussion may shed some light to the law of nations on international legal personality in the 7th century.

⁹ *Ibid.*, vol. 1, 17.

¹⁰ *Judgment of the Nuremberg International Military Tribunal 1946* (1947) 41 *AJIL* 172.

¹¹ Giorgio Gaja, “The Position of Individuals in International Law: An ILC Perspective”, *EJIL* (2010) 21(1), 11-14.

¹² Benedetto Conforti and Carlo Focarelli, *The Law and Practice of the United Nations*, 4th revised edition (Leiden & Boston: Martinus Nijhoff Publishers, 2010), 321-2.

¹³ Henry G. Schermers & Niels M. Blokker, *International Institutional Law*, 5th revised edition (Leiden & Boston: Martinus Nijhoff Publishers, 2011), 336-7.

¹⁴ Jennings and Watts, *Oppenheim's*, vol. 1, 16.

A BRIEF HISTORY OF PRE-ISLAMIC LAW OF NATIONS AND OF EARLY ISLAM

The genesis of the law of nations took root long before the advent of Prophet Muḥammad (pbuh) because history shows the existence of Ancient Greece and Rome and records of their relationship with other surrounding nations. According to Coleman Phillipson,¹⁵ the Ancient Greek's conception of the law, and the Ancient Rome's policy, with regard to other nations could be recognised as international law. The law of nations at that time had not the completeness, the firm basis, and the scientific co-ordination, of the modern international law.¹⁶ Practice was not invariably consistent and was not always in accordance with recognised principles. Nevertheless, taking into account the ancient conditions and of the circumstances surrounding earlier stages of legal development,¹⁷ there was a generally admitted rule regulating international relationship. The principles of juridical equality and reciprocity of nations were in a large measure recognised and applied in the relationship and practices.¹⁸ The Greek international law then comprised of various questions of private international law such as position of aliens, questions of the law in time of peace such as position of ambassadors, extradition, and character of treaties and alliances, questions of the law in time of war such as cause and declaration of war, truce and armistice, and various rules of warfare, including treatment of temples and graves, and treatment of prisoners and spies, and questions of maritime matters such as the treatment of the shipwrecked, embargo, blockade and piracy.¹⁹ All these were preserved in inscriptions and in the testimony of many historians.²⁰

Ancient Rome too practiced a large body of principles of law relating to, among others, extradition, the immunity of ambassadors, the regular procedure and formalities in the conclusion of treaties, the right of

¹⁵ Coleman Phillipson, *International Law and Custom of Ancient Greece and Rome* (St. Martin's Street, London: Macmillan, 1911).

¹⁶ *Ibid.*, 61.

¹⁷ *Ibid.*, 49.

¹⁸ *Ibid.*, 60.

¹⁹ *Ibid.*, 63-4.

²⁰ *Ibid.*, 64-5.

asylum, the granting of safe-conduct, the treatment of the conquered enemy and captured property, and exchange of prisoners.²¹ All these matters show clearly that “a system of law was in course of development, of which a large body was already recognized, for regularizing and controlling international relationships, and for settling disputes arising therefrom by means other than that of violence.”²²

Even during the Ancient Greek, international law was already in existence, governing the family of nations comprised of the Great Powers of Rome, Carthage, Macedonia, Syria and Egypt, and Parthia and Bactria; States of secondary rank like the commonwealths of Hellas, the kingdoms of Asia Minor, Pergamos, Bithynia, Cappadocia, Pontus, and Paphlagonia; and finally, semi-barbarous principalities in Illyria and Numidia.²³ These nations were not as stable as modern States, but taking into account the conditions and circumstances at that time, these nations were subjects of international law applicable at that time.

In the 7th century, in Arabia, there were a large number of tribes such as the Quraysh and the Ghatafan. Even the wandering tribes were politically inferior to no one. They possessed territory, although they lived in different parts of it in different seasons of the year.²⁴ Surrounding Arabia were States such as Abyssinia, as well as the Empires of Rome and of Persia. The borders might be fragile, but some parts of the territories clearly belonged to the respective nations. These nations were the genesis of modern States. If the nations Before Christ could be recognised as States, what would prevent the recognition of Rome, Persia, Abyssinia and tribes in the 7th century as States?

When these nations were permanently contiguous, their intercourse was regulated by certain practices. According to Muhammad Hamidullah, the tribes in Arabia before the advent of Prophet Muḥammad (pbuh) administered justice, waged war and concluded treaties just as any other States.²⁵ There is a vast literature that shows that Arab chieftains visited foreign rulers and that foreign ambassadors came to Arabia, and for this purpose the person of an envoy was always

²¹ *Ibid.*, 107-8.

²² *Ibid.*, 108.

²³ *Ibid.*, 65.

²⁴ Muhammad Hamidullah, *Muslim Conduct of State*, revised edition (Lahore: Kashmiri Bazar, 1945), 52.

²⁵ *Ibid.*, 52.

considered inviolable.²⁶ These practices hardened into customs, forming the law of nations.

According to Hamidullah, several systems of international law could, and in fact did, exist simultaneously in different parts of the globe.²⁷ Indeed, in the 7th century, there was a system of the law of nations in the region surrounding the place of advent of Prophet Muḥammad (pbuh). Due to the limitations in transportation and communication during that time, though the practice between the nations was confined to a particular region, the relationship was international.

Muḥammad was born in Mecca in the year 570 in the Quraysh tribe. At the age of 40, he received the first revelation, making him a prophet. For 13 years, Prophet Muḥammad (pbuh) propagated Islam in Mecca. Only his close circle believed in him, and so did the poor, the oppressed and the slaves. However, the people of his tribe (i.e. the Quraysh) in general disapproved of his teaching and persecuted him and his followers, forcing two groups of his followers to seek refuge in Abyssinia.

After his mission in Mecca was not fruitful, in the year 622, the Prophet (pbuh) and his Meccan followers migrated to Yathrib whose people were more receptive to Islam. Yathrib was later renamed as Medina. After his arrival in Medina, the Prophet (pbuh) became the head of the City-State. He entered into the Constitution of Medina which governed the relations between the Quraysh emigrants, and Medinite Arab and Jewish tribes.

At the time of the Muslims' migration, the Quraysh declared war against the Muslims, causing the revelation of verses al-Ḥajj (22):39-40 which permitted the Muslims to fight.²⁸ The subsequent verses al-Baqarah (2):216-217, revealed in the state of war, obliged the Muslims to fight against the aggression.²⁹ The Muslims fought the Quraysh in the Battles of Badr, Uḥud and Khandaq and several skirmishes. In the year

²⁶ *Ibid.*, 55.

²⁷ *Ibid.*, 1.

²⁸ Mohd Hisham Mohd Kamal, "Meaning and Method of Interpretation of *Sunnah* in the Field of *Siyar*: A Reappraisal", in *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, ed. by Marie-Luisa Frick & Andreas Th. Muller (Leiden & Boston: Martinus Nijhoff Publishers, 2013), 71-2.

²⁹ *Ibid.*, 72.

627, Prophet Muḥammad (pbuh) and the Quraysh entered into the Peace Treaty of Ḥudaybiyyah, thus suspending the state of war between the two sides. However, two years later, the Quraysh materially breached the peace treaty. The Prophet (pbuh) took a punitive action against the Quraysh, resulting in the capture of Mecca.

During the time when the conclusion of the Peace Treaty of Ḥudaybiyyah was bringing security to the Muslims from the threat of the Quraysh, Prophet Muḥammad (pbuh) sent letters through diplomats to several heads of States, including the Great Rulers of Rome, of Abyssinia and of Persia, inviting them to Islam. This is in the fulfillment of his universal mission.

INTERNATIONAL ACTS OF PROPHET MUḤAMMAD (PBUH)

According to verse al-Ḥujurāt (49):13 of the Qur’ān, Allah has made humankind into nations and tribes so that humankind “may know each other.” According to verses al-A’rāf (7):158 and Saba’ 34:28 of the Holy Book, Prophet Muḥammad (pbuh) was sent to all humankind. It means that the Prophet (pbuh) could not limit his mission only to his tribe. He had to spread Islam to the other tribes and nations, Arabs and non-Arabs, so that these tribes and nations live under the same teaching peacefully and harmoniously with one another. For this purpose, the Prophet (pbuh) had to be able to deal with the leaders of tribes and nations. He was himself accepted as the leader by his followers who were considered by verse al-Anbiya’ (21):92 of the Qur’ān as one “*ummah*” or nation.

Prophet Muḥammad (pbuh) entered into several treaties, including the Constitution of Medina, which is the supreme governing law for the inhabitants of the city of Medina and clans around it, and as the leader of his *ummah*, the Peace Treaty of Ḥudaybiyyah with the Quraysh of Mecca. Regarding the Treaty of Ḥudaybiyyah, the Prophet (pbuh) observed its terms which provided for *inter alia* the return to the Quraysh of any Muslim Meccan who tried to take refuge in Medina. He also did not breach the term that the two sides would have peace for ten years. When the Quraysh committed a material breach of the treaty, the Prophet (pbuh) took control of Mecca in fulfillment of the requirement of the law at that time.

Prophet Muḥammad (pbuh) also sent his diplomats to several Heads of States, bringing letters in which he called them to embrace Islam.³⁰ This act begot friendly relations with a few States, namely: Abyssinia, Bahrain and Oman.³¹

Prophet Muḥammad's ability to conclude treaties, to send diplomats, to have rights and duties under international law, and to claim for reparation were proofs that he was an international legal person then. Nevertheless, the Emperor of Persia reacted with hostility to the Prophet's letter, saying, "He writes to me this and he is my servant!"³² The Emperor of Persia ordered his governor in Yemen to arrest the Prophet (pbuh) and bring him to his court in Persia.³³ Was this act an indication that the Emperor of Persia did not recognise the international

³⁰ Abū Muḥammad 'Abdul Malik ibn Hishām ibn Ayub al-Himyarī, *al-Sīrah al-Nabawīyah*, vol. 4 (Beirut: Dār al-Khayr, 1996), 192; Abū Ja'far Muḥammad ibn Jarīr al-Ṭabarī, *Tārīkh al-Ṭabarī al-Ma'rūf bi-Tārīkh al-Umam wa al-Mulūk*, vol. 2, ed. by 'Abda' 'Alī Mahanā (Beirut: Mu'assasat al-A'lamī li-al-Maṭbū'āt, 1998), 479-88; Jamāluddīn Abū al-Farj 'Abdur Raḥman ibn 'Alī al-Jawzī, *al-Muntaẓam fī Tawārīkh al-Mulūk wa al-Umam*, vol. 2, ed. by Suhayl Zakkār (Beirut: Dār al-Fikr, 1996), 795; Abū al-Ḥasan 'Alī ibn Abī al-Kīram Muḥammad ibn Muḥammad ibn 'Abdul Karīm ibn 'Abdul Wāhid ash-Shaybānī (known as Ibn al-Athīr), *al-Kāmil fī al-Tārīkh*, vol. 1 (Beirut: Dār al-Kitāb al-'Arabī, 1403H/1983), 283; Majīd Alī Khan, *Muhammad the Final Messenger* (Lahore: Sh. Muhammad Ashraf, 1983), 250-1; Akbar Shah Najeebabadi, *The History of Islam*, vol. 1, revised by Safī-ur-Raḥman Mubarakpuri, ed. by Abdul Rahman Abdullah & Muhammad Tahir Salafī (Riyadh: Darussalam, 2000), 211.

³¹ Najeebabadi, *History*, vol. 1, 207, 209, 211-2 & 229-30.

³² Al-Ṭabarī, *Tārīkh*, vol. 2, 486; Ahmad Hatta, *The Great Story of Muhammad pbuh: Referensi Lengkap Hidup Rasulullah pbuh dari Sebelum Kelahiran hingga Detik-detik Terakhir*, ed. by Erwyn Kurniawan (Jakarta: Maghfirah Pustaka, 2011), 424.

³³ Al-Ṭabarī, *Tārīkh*, vol. 2, 485-6; Ibn al-Jawzī, *al-Muntaẓam*, vol. 2, 802; Ibn al-Athīr, *al-Kāmil*, vol. 2, 143; Abū al-Fidā' Ismā'īl ibn Kathīr, *al-Bidāyah wa al-Nihāyah*, vol. 4 (Cairo: Dār al-Taqwā, 1999), 284; Hatta, *Great Story*, 424; Safī-ur-Raḥman al-Mubarakpuri, *al-Rahiq al-Makhtum/Cahaya Abadi*, revised edition, trans. by Mohd Nor Long, reviewed by Mohd. Puzhi bin Usop (Selangor: al-Hidayah Publication, 1399H/1979, reprint 2016), 345; Khan, *Muhammad*, 252; Najeebabadi, *History*, vol. 1, 212 & 298-9.

legal personality of the Prophet (pbuh)? Under the international law today, among the characteristics of international personality of States and international organisations is the enjoyment of privileges and immunities from national jurisdictions.³⁴

It is submitted that the Emperor of Persia did not recognise Prophet Muḥammad (pbuh) as an international legal person who had the ability to send diplomats and letters. This was the reason he considered the Prophet (pbuh) as his subject and not immune from his court's jurisdiction.

Nevertheless, it is submitted that this non-recognition did not affect the international legal personality of the Prophet (pbuh), because there were other kings who responded to the Prophet's sending of diplomats and letters with friendly gestures. The King of Abyssinia sent a letter and gifts to the Prophet (pbuh).³⁵ Friendly response was also received from the Chief of the Egyptian Copts who sent a letter and gifts to the Prophet (pbuh).³⁶

The Emperor of Rome also treated Prophet Muḥammad's diplomat and letter with respect,³⁷ but his governor, Sharahbil ibn 'Amr, killed a diplomat of the Prophet (pbuh), Harith ibn Umayr. This led the Prophet (pbuh) to send an army to the Battle of Mu'tah.³⁸ Four years later, Rome killed Farwah ibn 'Amr al-Judhami who had embraced Islam and had been retained by Prophet Muḥammad (pbuh) as the Governor of Ma'ān.³⁹ When the Prophet (pbuh) demanded reparation, the Emperor refused,⁴⁰ which led to the Prophet (pbuh) sending an army to Palestine

³⁴ See Draft Articles on Jurisdictional Immunities of States and Their Property; the Convention on the Privileges and Immunities of the United Nations 1946; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (1999) ICJ Reports 62.

³⁵ Najeebabadi, *History*, vol. 1, 207 & 209.

³⁶ *Ibid.*, vol. 1, 211-2.

³⁷ *Ibid.*, vol. 1, 212.

³⁸ Al-Ṭabarī, *Tārīkh*, vol. 2, 482; Ibn al-Jawzī, *al-Muntazam*, vol. 2, 832; Hatta, *Great Story*, 468-76; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 373-6; Khan, *Muhammad*, 269-70; Najeebabadi, *History*, vol. 1, 214-7, 299 & 308.

³⁹ Hatta, *Great Story*, 557; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 460.

⁴⁰ Muhammad Hamidullah, *The Prophet's Establishing a State and His Succession* (New Delhi: Adam Publishers & Distributors, 2006), 75.

to fight Rome.⁴¹ Was the refusal to pay reparation an indication that the Emperor of Rome did not recognise the international legal personality of the Prophet (pbuh)? Under the international law today, among the characteristics of international personality of States and international organisations is the ability to make international claims.⁴² It is submitted that the refusal was not an indication that the Emperor of Rome did not recognise Prophet Muḥammad (pbuh) as an international legal person, because prior to the killings of the Prophet's diplomat and the Governor of Ma'ān, the Emperor of Rome did pay respect to the Prophet's diplomat and letter. It was a refusal to be responsible and to amend the wrongdoing. This was a denial of justice and thus another wrongdoing on the part of the Roman Empire.

The following section argues that the acts of Prophet Muḥammad (pbuh) discussed above were not the acts of the City-State of Medina of which he was the leader, but instead as a prophet.

AS A PROPHET, NOT AS THE LEADER OF MEDINA

The Peace Treaty of Hudaibiyyah was between "Muḥammad ibn 'Abdullāh and Suhayl ibn 'Amr." Did the two enter into the treaties on their individual capacity? Under the Islamic law of international relations, individuals have international legal personality, though limited, such as having the right to give to a foreigner a safe conduct to enter into the country which is binding on the government.⁴³ However, individuals have no right to enter into international treaties.

Initially, Prophet Muḥammad (pbuh) instructed the scribe of the treaty, his Companion - 'Alī ibn Abī Ṭālib, to write "Muḥammad, the Messenger of Allah", but Suhayl protested by saying, "Had we witnessed that you were the Messenger of Allah, we would not have turned you away from the House of Allah nor fought you. You should write 'Muḥammad ibn 'Abdullāh.'"⁴⁴ The treaty imposed certain rights and obligations on "the Quraysh," thus Suhayl was the plenipotentiary of the

⁴¹ Hatta, *Great Story*, 557-8; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 460-1.

⁴² For example, see *Reparations for Injuries Suffered in the Service of the United Nations* (1949) ICJ Reports 174.

⁴³ al-Ghunaimi, *Muslim Conception*, 128.

⁴⁴ al-Mubarakpuri, *al-Rahiq al-Makhtum*, 333; Hatta, *Great Story*, 409-10; Najeebabadi, *History*, vol. 1, 203.

Quraysh. Thus the Quraysh tribe as a nation was a party to this treaty. On the other hand, the treaty imposed rights and obligations on “Muḥammad,” rather than on the Muslims or on Medina. Thus it was Prophet Muḥammad (pbuh) who was the other party to the treaty. The above facts can be observed from the following terms of the treaty:

Whoever comes to Muḥammad from among the Quraysh without the permission of his guardian, he shall return him to them; and whoever comes to the Quraysh from among those who are with Muḥammad, they will not return him to him.

And whoever likes to enter the league of Muḥammad and his alliance may enter into it, and whoever likes to enter the league of the Quraysh and their alliance may enter into it.⁴⁵

Ability to enter into the treaty shows that the Prophet (pbuh) was an international legal person. Suhayl recognised this, though he did not recognise him as a Messenger of Allah.

Prophet Muḥammad’s letters to the Heads of States started with, for example, “from Muḥammad, the servant of Allah and His Messenger, to Heraclius, the Great (Ruler) of Rome,”⁴⁶ “from Muḥammad, the Messenger of Allah, to the Negus, the Great (Ruler) of Abyssinia,”⁴⁷ “from Muḥammad, the Messenger of Allah, to Khosrau, the Great (Ruler) of Persia,”⁴⁸ and “from Muḥammad, the servant of Allah and His Messenger, to Muqawqis, the Chief of the Copts.”⁴⁹

⁴⁵ al-Mubarakpuri, *al-Rahiq al-Makhtum*, 332-3; Hatta, *Great Story*, 409; Hamidullah, *Muslim Conduct*, 267-8; al-Ṭabarī, *Tārīkh*, vol. 2, 469.

⁴⁶ Abū ‘Abdullāh Muḥammad ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Riyadh: Dār al-Salām li al-Nashr wa al-Tawzī‘, 1999), 3; Abū Zakariya Yaḥyā ibn Sharīf al-Nawawī, *Ṣaḥīḥ Muslim bi-Sharḥ al-Nawawī*, vol. 12, (n.pp.: Dār al-Taqwā, n.d.), 96; Hatta, *Great Story*, 426-9; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 345; al-Ṭabarī, *Tārīkh*, vol. 2, 481.

⁴⁷ Hatta, *Great Story*, 420-1; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 341; al-Ṭabarī, *Tārīkh*, vol. 2, 484.

⁴⁸ Al-Ṭabarī, *Tārīkh*, vol. 2, 485-6; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 344; Hatta, *Great Story*, 424.

⁴⁹ Hatta, *Great Story*, 422-3.

Heraclius, the Negus and Khosrau were addressed as the Heads of their respective States, showing that States were already international legal persons then. Muqawqis was addressed as the Chief of the Egyptian Copts, showing that religious groups of people who possessed a territory were also international legal persons then. With regard to the sender, Prophet Muḥammad (pbuh) did not address himself as the ruler of Medina or the leader of his Muslim nation, but instead as the Messenger. Thus the letters were not from Medina, but from Prophet Muḥammad (pbuh). This is another proof that he was an international legal person.

The Negus' and Muqawqis' reply letters to Prophet Muḥammad's letters respectively started with, "To Muḥammad, the Messenger of Allah, from the Negus al-Aṣḥam ibn Abjar"⁵⁰ and "From Muqawqis to Muḥammad ibn 'Abdullāh."⁵¹ In both letters, Prophet Muḥammad (pbuh) was not addressed as the ruler of Medina or the leader of his Muslim nation. As the Negus had embraced Islam, he addressed the Prophet (pbuh) as the Messenger of Allah. Muqawqis, on the other hand, did not embrace Islam, but he recognised Muḥammad as an international legal person.

Medina was a State which had a permanent population. Its territory was defined by Prophet Muḥammad (pbuh) to be between its free-land to the east and the west, the 'Ayr mountain in the south, and the Thawr hill, near the Uhud mountain, in the north.⁵² It had a government headed by the Prophet (pbuh) himself. In fact, the Constitution of Medina was "from Muḥammad, the Messenger of Allah", governing the relations between the Quraysh emigrants, Medinite Arab tribes and Medinite Jewish tribes.⁵³ The capacity of Medina to enter into relations with other States was absorbed into the personality of the Prophet (pbuh) as discussed above.

Prophet Muḥammad's international legal personality also included his capacity to be responsible for internationally wrongful acts committed by his followers. A small Muslim force sent by the Prophet (pbuh) for a

⁵⁰ Al-Ṭabarī, *Tārīkh*, vol. 2, 484; Hatta, *Great Story*, 420; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 342.

⁵¹ Al-Mubarakpuri, *al-Rahiq al-Makhtum*, 344; Hatta, *Great Story*, 423.

⁵² Muhamed S. el-Awa, *On the Political System of the Islamic State*, 2nd edition (Indiana: American Trust Publications, 1978), 19.

⁵³ See Ibn Hishām, *al-Sīrah*, vol. 2, 110-2; el-Awa, *On the Political System*, 15; Hamidullah, *The Prophet's*, 65.

spying mission fought with a group of Quraysh, killed its leader and captured two others. At that time, the Muslims were not sure whether they were already in a particular month in which war was prohibited by the custom of the Arab nations then. As his followers had committed an internationally wrongful act, the Prophet (pbuh) released the captured enemies and paid compensation to the family of the killed enemy.⁵⁴ His responsibility here was as a prophet who would correct wrongdoings.

As Prophet Muḥammad (pbuh) was himself an international legal person, it is submitted that his personality began even before he established the City-State of Medina. When the Prophet (pbuh) was in Mecca, he made pledges with the tribes from Yathrib and sent a representative as a religious teacher thereto.⁵⁵

Mohammad Talaat al-Ghunaimi argues that the prophethood was the ground that Prophet Muḥammad (pbuh) was endowed with international personality. “Muhammad the Apostle, in so far as international law is concerned, occupies a unique position which warrants exceptional treatment.”⁵⁶ Al-Ghunaimi compares the unique position of Prophet Muḥammad (pbuh) to that of the Pope in the Christian community, making him being recognised as an international person.⁵⁷

The unique position of Prophet Muḥammad (pbuh) was not inherited by his successors who were not prophets. In the Treaty of Jerusalem, ‘Umar, the ‘Commander of the Faithful’ gave the people of İliyā’ “an assurance of safety for themselves, for their property, their churches, their crosses, the sick and healthy of the city and for all the rituals which belong to their religion”, and that “their churches will not be inhabited by Muslims and will not be destroyed.”⁵⁸ In the treaty, Caliph Umar ibn al-

⁵⁴ Abū ‘Abdullāh Muḥammad ibn Aḥmad al-Anṣarī al-Qurṭubī, *al-Jāmi‘ li-Aḥkām al-Qur’ān*, vol. 3 (Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.), 28-30; Azrul Azlan Iskandar Mirza, *Perang Badar* (Negeri Sembilan: Al Azhar Media, 2009), 59-63; Jalaluddin as-Sayuthi, *Asbab Nuzul al-Quran* (Kuala Lumpur: Darul Fajr, 2008), 98.

⁵⁵ Al-Ghunaimi, *Muslim Conception*, 31-2.

⁵⁶ *Ibid.*, 31.

⁵⁷ *Ibid.*, 31, n. 4.

⁵⁸ Al-Ṭabarī, *Tārīkh*, vol. 3, 403-4; Yusuf al-Qaradhawi, *Golongan Bukan Muslim dalam Masyarakat Islam*, trans. by Arsil Ibrahim (Kuala Lumpur: Angkatan Belia Islam Malaysia, 1999), 16-7; Shaikh Shaukat Hussain, *Human Rights in Islam*, 3rd edition (New Delhi: Kitab Bhavan, 2001), 58;

Khattāb was addressed as the leader of the Muslims; thus the treaty obligations were imposed on the Muslims. It is submitted that Caliph ‘Umar was not an international legal person, and so were the caliphs after him. In other words, there was a shift in the Muslim practice with regard to international legal personality.

SIGNIFICANCE OF THE INTERNATIONAL LEGAL PERSONALITY OF PROPHET MUḤAMMAD (PBUH)

The fact that Prophet Muḥammad (pbuh) had an international legal personality is very significant in the study of Islamic law of international relations. As the Prophet’s *Sunnah* is the second of the two divine sources of Islamic law, his conducts with regard to the other tribes and nations are references for the Muslim jurists.

Another point is that the sources of the Islamic law of international relations, namely: the Qur’ān and the *Sunnah*, are the same with those of the other branches of Islamic law such as the Islamic family law, the Islamic criminal law and the Islamic law of transaction; it follows that the Islamic law is a single legal order that governs both the internal and the international matters of a State.⁵⁹ Therefore when verse al-Mā’idah (5):1 contains the commandment to “fulfill all obligations,” a Muslim individual must fulfill his/her contractual obligations, and a Muslim State must fulfill its treaty obligations.

From the study on the international legal personality of Prophet Muḥammad (pbuh), several rules under the law of nations at that time have come to light. First is regarding the subjects of the law of nations in the 7th century. Not only States such as the Roman Empire and Abyssinia, tribes such as the Quraysh and religious groups such as the Egyptian Copts were also international legal persons then. It is stated above the capacity of the Quraysh to enter into a treaty and the capacity of the

Ahmad F. Yousif, *Religious Freedom, Minorities and Islam: An Inquiry into the Malaysian Experience* (Selangor, Malaysia: Thinker’s Library, 1998), 42.

⁵⁹ Al-Ghunaimi, *Muslim Conception*, 90-1. See also C.G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (Houndmills: Macmillan, 1988), 131; Farhad Malekian, *The Concept of Islamic International Criminal Law: A Comparative Study* (London: Graham & Trotman, 1994), 7.

Egyptian Copts to receive diplomats. Second is the practice of sending and receiving diplomats. Diplomats were inviolable and immune, which can be deduced from the fact that Prophet Muḥammad (pbuh) took punitive action against the Roman Empire for the murder of his diplomat. This discovery of the rules on diplomatic relations and diplomatic inviolability in the 7th century reinforces the customary status of the rules.

Third is the law of treaty which governed the conclusion of treaties, the binding effect of treaties and the effects of breaches of treaties.⁶⁰ For example, the negotiation between Prophet Muḥammad (pbuh) and the Quraysh plenipotentiary to conclude the Treaty of Ḥudaybiyyah was a proof that *Pacta sunt servanda* was already a principle then; otherwise the Quraysh's conduct would have been unpredictable, making it pointless for the Prophet (pbuh) to agree to terms with the tribe.⁶¹ The rule on termination of a treaty is evidenced from the conduct of the Prophet (pbuh) in considering that the bilateral peace treaty had been terminated by a material breach thereof by the Quraysh and that consequently the suspended state of war resumed. When the Prophet (pbuh) opened Mecca, the Quraysh did not protest on the former's resort to war, which means that the Quraysh accepted that it was at fault in breaching the treaty.⁶²

Fourth is the law of responsibility which had also existed then. This can be seen from Prophet Muḥammad's demand for reparation from the Roman Empire for the killing of his governor. Another proof is the reparation that the Prophet (pbuh) made to the Quraysh for wrongdoings committed by his followers. Sent for a spying mission, the Muslims contravened his instruction and violated the law of war then. Even though the Muslims contravened the Prophet's instruction, their conduct of violating the law of war was attributable to the Prophet (pbuh) because they were sent by him. Taking the form of restitution and compensation, the Prophet (pbuh) released the two persons who had been wrongly captured and paid compensation to the family of the person wrongly killed.

⁶⁰ Mohamed Hosny Mohamed Gaber, "The Early Islamic State with Special Reference to the Evolution of the Principles of Islamic International Law, 632-750 A.D.," Ph.D. Thesis (Washington, D.C.: American University, 1962), 106.

⁶¹ Mohd Hisham, "Meaning", 66-7.

⁶² *Ibid.*, 67.

CONCLUDING REMARKS

In the early 7th century, long before the establishment of the Westphalian system, States were not the only entities that had international legal personality. Tribes and religious groups of people were also considered as nations and were among the subjects of the law of nations then.

In addition, because of his unique position as a Messenger, Prophet Muḥammad (pbuh) was also an international legal person. He was able to conduct international acts such as sending diplomats and concluding treaties. Although there was an instance that his international legal personality was not recognised, that isolated incident did not affect his status, because the other States and tribes treated him as endowed with international rights and duties.