

THE ISLAMIC INFLUENCE IN MOULDING AND SHAPING THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 1961

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ABSTRACT

This paper seeks to discuss the origin of diplomacy in international law and its gradual development from its infancy phase until the official emergence of the Vienna Convention on Diplomatic Relations 1961 (“VCDR 1961”), as well as the challenges faced by the global players of international law in ensuring that international diplomacy, as embodied in the VCDR 1961, is invariably adhered to. It also highlights the prominent principles of diplomacy in Islam and their practical examples. This paper employs a descriptive-analytical approach, which contributes significantly to the study of the topic of Islamic influence in moulding and shaping the Vienna Convention on Diplomatic Relations 1961. The centrality of this paper resides in the elaboration of the enormous influence of Islamic law of diplomacy on the VCDR 1961 and well-established state practice (which is a rule of Customary law). However, the focus is more on the Islamic influences that have permeated the VCDR 1961.

Keywords: VCDR 1961, Diplomatic Practice, Customary Law, Islamic Diplomacy.

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PENGARUH ISLAM DALAM PENGACUAN DAN PEMBENTUKAN KONVENSYEN VIENNA MENGENAI HUBUNGAN DIPLOMATIK 1961

ABSTRAK

Kertas ini bertujuan untuk membicarakan asal-usul diplomasi dalam Undang-undang antarabangsa dan perkembangan berperingkatnya dari fasa awal sehingga kemunculan rasmi Konvensyen Vienna Mengenai Hubungan Diplomatik 1961 ("VCDR 1961"), serta cabaran yang dihadapi oleh para pelaku Undang-undang antarabangsa dalam memastikan diplomasi antarabangsa yang termaktub dalam VCDR 1961 akan sentiasa dipatuhi. Kertas ini juga menyoroti prinsip-prinsip utama diplomasi dalam Islam beserta contoh-contoh praktikalnya. Pendekatan deskriptif-analitis digunakan dalam kajian ini, yang memberikan sumbangan besar dalam mengkaji topik pengaruh Islam dalam membentuk Konvensyen Vienna Mengenai Hubungan Diplomatik 1961. Intipati utama kertas ini terletak pada perincian tentang pengaruh besar undang-undang diplomasi Islam terhadap VCDR 1961 dan amalan negara yang mantap (yang merupakan peraturan undang-undang kebiasaan). Namun, fokus lebih diberikan kepada pengaruh Islam yang telah menyerap masuk ke dalam VCDR 1961.

Kata Kunci: VCDR 1961, Amalan Diplomatik, Undang- Undang Adat, Diplomasi Islam.

INTRODUCTION

In its traditional sense, diplomacy has been frequently used to defend the security interests of a state or ruler, and such usage is reflected in the structures and attitudes of state-based diplomacy.¹

Its significance has always been ubiquitous and omnipresent throughout history, and so has the protection of diplomatic agents from unfair treatment on these missions and negotiations in another nation. Diplomatic immunity has been duly recognised in customary international law.²

Diplomatic immunity is a concept that has been around for many years, aiming to protect diplomatic agents from any lawsuit or prosecution in another country, as well as threats or coercion. Perry S. Smith argued that this ancient principle is so firmly established in the international legal order that it requires no citation of authority.³

In "A Guide to Diplomatic Practice", Satow has defined diplomacy as "the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with vassal states."⁴ Harold Nicolson defines diplomacy as "the management of international relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; the business".⁵

There has always been an overarching need to promote good relations between countries, especially in times of conflict and tension. The need to forge international cooperation to confront global

¹Richard Langhorne, "On Diplomacy." *Political Studies Review* 6, no. 1 (December 2007): 54–62.

²Smith, "Of War and Peace: The Hudaibiya Model of Islamic Diplomacy", 135-168.

³Smith, "Of War and Peace", 135-168.

⁴L. M. Review of *The Science and Art of Diplomacy*, by Ernest Satow. *Journal of Comparative Legislation and International Law* 5, no. 1 (1923): 157–59.

⁵Wiseman, Geoffrey, and Paul Sharp. "Diplomacy." In *An Introduction to International Relations*, edited by Richard Devetak, Jim George, and Sarah Percy, 296–308. (Cambridge: Cambridge University Press, 2017).

challenges effectively cannot be overemphasised. Diplomacy is said to be the lynchpin for all such efforts.⁶

The emergence of the Vienna Convention on Diplomatic Relations 1961 (VCDR 1961) on this subject matter is often attributable to the awareness of the international community of the need to create a new agreement between countries that was modern and suitable for relations at the time of the 1960s.

Unfortunately, the historical accounts regarding the genesis and development of modern international law, along with its principles, have always been fashioned around Western civilisation, as if other civilisations have never contributed to such a development.⁷ Ultimately, the goals and aspirations of the VCDR 1961 reflect the core values of the United Nations (UN).

An attempt to distill the notable influence of the Islamic traditions of diplomacy in moulding and shaping the VCDR is propelled by a wish to highlight that Islamic rules and international law of diplomacy may work hand in hand in effectively facing and confronting global challenges of creating conducive and harmonious international relations, which are established based on mutual respects and peaceful co-existence.

This paper will discuss the origin of diplomacy in International law and its gradual development from its infancy phase until the official emergence of the VCDR 1961. It will also canvass the challenges faced by the global players of International law in ensuring that international diplomacy, as embodied in the VCDR 1961, is invariably adhered to. Thereafter, the paper will embark on the discussion of some outstanding principles of diplomacy embodied in Islam by highlighting a few illustrations of such principles.

The centrality of this paper resides in the elaboration of the enormous influence of the Islamic law of diplomacy in the VCDR 1961

⁶Ismail, Muhammad-Basheer A. "Historical Overview of the Universality of Diplomatic Practice." In *Islamic Law and Transnational Diplomatic Law: Philosophy, Public Policy, and Transnational Law*, edited by [John Martin Gillroy], [19-22]. New York: Palgrave Macmillan. https://doi.org/10.1057/9781137558770_2.

⁷Ismail, "Historical Overview of the Universality of Diplomatic Practice", 19-22.

and well-established state practice (which is a rule of Customary law). However, our focus is more on the Islamic influences which have permeated the VCDR 1961.

Nevertheless, before our discussion on the enormous influences of the Islamic law of diplomacy in the VCDR 1961, this paper shall also shed light, *en passant*, on the need to understand the influence of Islamic elements in the VCDR 1961.

RESEARCH METHODOLOGY

This paper employs a descriptive-analytical approach, which contributes significantly to studying the topic of Islamic influence in moulding and shaping the VCDR by examining historical contexts, textual analyses, and the interplay of Islamic principles with diplomatic norms and practices. This approach helps clarify whether the relationship between diplomatic law and Islamic law is compatible or contradictory.

THE HISTORY AND DEVELOPMENT OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 1961

It is often said that the historical reputation of diplomats in earlier times was unsavoury. Richard Langhorne believes that the first serious public and political effort to codify International law and, with it, diplomatic practice on a multilateral basis occurred under the aegis of the League Nations between 1924 and 1929.⁸ One thing that is certain is that the journey of bringing the VCDR 1961 into existence was not an easy one. What is also plain and obvious is that the VCDR 1961 had to painstakingly undergo a rather long circuit from Vienna in 1815 to Vienna in 1961 before it finally managed to attain a successful outcome.⁹

⁸Richard Langhorne, "The Regulation of Diplomatic Practice: The Beginnings to the Vienna Convention on Diplomatic Relations, 1961." *Review of International Studies* 18, no. 1 (1992): 3–17.

⁹Langhorne, "The Regulation of Diplomatic Practice", 3–17.

Historically speaking, the road to attaining the VCDR 1961 began with the Congress of Vienna in the 19th century in 1815, where this landmark Congress introduced the concept of diplomatic immunity by codifying it into diplomatic law.¹⁰ During this 1815 Congress, regulations concerning the relative ranks of diplomatic agents were adopted to halt the frequent disputes (prior to 1815) due to persistent uncertainty in many areas of diplomatic relations.¹¹ The 1815 Congress was then followed in 1818 by another Congress known as the Congress of Aix-la-Chapelle.¹² Though the reciprocal grant of diplomatic privileges and immunities in bilateral treaties proliferated in the 19th Century, such treaties did not specify the content of the privileges and immunities to be granted and instead referred to the law of nations.¹³

Prior to World War II (1939-45), the only enforceable multilateral instrument - then akin to VCDR 1961- was the Convention regarding Diplomatic Officers adopted by the Sixth International Conference of American States at Havana in 1928 and ratified by a number of American States. However, the United States and Canada did not ratify it.¹⁴

As far as the VCDR is concerned, it started with the writing of the draft codes that were to influence the works of the VCDR. Several institutions and scholars took part in writing such draft codes. The International Law Commission or ILC - the international body which was entrusted to codify the VCDR right from the start- had to go through several sessions commencing from its first session in 1949

¹⁰Langhorne, "On Diplomacy", 54–62.

¹¹ Holger Paul Hestermeyer, "Vienna Convention on Diplomatic Relations (1961)." In *Max Planck Encyclopedia of Public International Law*, ed. Rüdiger Wolfrum (UK: Oxford University Press, 2012), 697-709.

¹²Hestermeyer, "Vienna Convention on Diplomatic Relations", 697-709; Randall Lesaffer. *The Congress of Aachen [Aix-La-Chapelle] (1818) and the Completion of the Vienna System*. (UK: Oxford University Press, 2018).

¹³Hestermeyer, "Vienna Convention on Diplomatic Relations", 697-709; Lesaffer, *The Congress of Aachen*.

¹⁴G.R. Berridge, "Havana Conventions", accessed May 25, 2024. <https://grberridge.diplomacy.edu/resources/havana-conventions>

whereby it sought to include diplomatic intercourse and immunities in its list of 14 topics provisionally selected for codification.¹⁵

Finally, during the UN Conference on Diplomatic Intercourse and Immunities, at the Neue Hofburg in Vienna from 2 March–14 April 1961, the conference decided to use the ILC's draft articles as the basis for its considerations and made modifications to them.¹⁶

The UN then adopted the present VCDR 1961 at that conference and on 24 April 1964 it was officially enforceable together with two other optional protocols namely the Optional Protocol concerning Acquisition of Nationality and the Optional Protocol concerning the Compulsory Settlement of Disputes.¹⁷

The International law on the exchange and treatment of envoys was well entrenched in Customary law for so long and the VCDR 1961 sought to codify it.¹⁸ In essence, this convention codifies rules of International law on diplomatic intercourse, privileges, and immunities.

The preamble of the VCDR 1961 states, in no uncertain terms, that it seeks to affirm and regulate 'the rules of Customary international law', to ensure 'friendly relations among nations, irrespective of their differing constitutional and social systems'. This convention also outlines the rules of diplomatic law which is duly carried out principally by the Foreign Missions and International Organisations Act.¹⁹ The significance of the VCDR 1961 lies in the following fact,

¹⁵Kai Bruns, "On the Road to Vienna: The Role of the International Law Commission in the Codification of Diplomatic Privileges and Immunities, 1949–1958," in *Diplomatic Law in a New Millennium*, ed. Paul Behrens (UK: Oxford Academic, 2017), 54–72.

¹⁶Ernest L. Kerley, "Aspects of the Vienna Conference on Diplomatic Intercourse and Immunities." *The American Journal of International Law* 56, no. 1 (1962): 88–129.

¹⁷Jan Wouters, Sanderijn Duquet, and Katrien Meuwissen, "The Vienna Conventions on Diplomatic and Consular Relations" in *The Oxford Handbook of Modern Diplomacy*, ed. Andrew F. Cooper, Jorge Heine, and Ramesh Thakur. (UK: Oxford University Press, 2013).

¹⁸Global Affairs Canada (GAC). "Vienna Convention on Diplomatic Relations", accessed September 25, 2024. https://www.international.gc.ca/protocol-protocole/vienna_convention-convention_vienne.aspx?lang=eng

¹⁹(GAC), "Vienna Convention on Diplomatic Relations".

namely, it has almost earned a universal ratification. *Ergo*, it is invariably dubbed as ‘the most successful legal instrument drafted under the UN’. Under the law of treaties, the VCDR 1961 is known as a multilateral treaty codifying an entire area of International law and it is to be regulated by the same legal rules as other international treaties.²⁰

THE SETTLED PRINCIPLES GOVERNING ISLAMIC DIPLOMATIC LAW

As far as Islam is concerned, diplomacy is prioritised over armed conflict.²¹ This is proven by the Prophet's exemplary conduct when he (PBUH) issued the Charter of Medina to regulate the relationship among Muslims and between Muslims and non-Muslims from the sects that inhabited the Medina, such as the Jewish population. Such a historic signing demonstrates cogent proof that the Prophet Muhammad (PBUH), on many occasions, preferred diplomacy to war.²²

Perry S. Smith stated that the subject of diplomacy is discussed extensively in both the *Qur'an* and the *Sunnah*.²³ Many Muslim scholars often affirm that Islamic diplomatic law forms part of Islamic *siyar*, which is translated as “Islamic international law”. The notion of diplomatic immunity occupies an important position in Islamic *siyar*.²⁴

Islamic diplomatic law, which also forms an integral part of Islamic *siyar*, is an inseparable component of Islamic law since it shares the same sources with Islamic law.²⁵ Khadduri holds the view that the sources of Islamic *siyar* are similar to the sources of International law because in his view, the *Qur'an* represents the authoritative source of law; traditions are equivalent to custom; rules

²⁰Martin Dixon, *Textbook on International Law*, 7th Edition (UK: Oxford University Press, 2013).

²¹Jamal Belbakay, “Diplomacy in Islamic Law”, Jil Research Centre, accessed September 25, 2024, <https://jilrc.com/archives/2965>

²²Belbakay, “Diplomacy in Islamic Law”.

²³Smith, “Of War and Peace: The Hudaibiya Model of Islamic Diplomacy”, 139.

²⁴Ismail, *Islamic Law and Transnational Diplomatic Law*, 70-72.

²⁵Ismail, *Islamic Law and Transnational Diplomatic Law*, 70-72.

and principles duly canvassed in treaties with non-Muslims fall in the categories of agreement; and the opinion of the caliphs and jurists, based on legal deduction and analogy, may be regarded as reason.²⁶

Some Muslim scholars contend that the existence of diplomatic interactions between the Islamic world at the time and China, for instance, is as far back as the mid-eighth century.²⁷ This is evidenced by Chinese records referring to *amir al-mu'minin* (a title for the head of the Islamic state) as *hanmi-mo-mo-ni*; Abu-al-Abbas (the first caliph of the Abbasid dynasty) as *A-bo-lo-ba*; and Harun (the famous caliph of the Abbasid dynasty) as *A-lun*.²⁸

Muslim scholars infer the interactions between the Muslims and the Chinese from instructions of Prophet Muhammad (PBUH) to Muslims charging them not to relent in their quest for knowledge even if it means travelling as far as China.²⁹

The famous companion of the Prophet, Sa'd ibn Abi-Waqqas (595–674 AD), was reported to have been the first Muslim envoy sent to China. This fact is attested to by the Chinese Muslims' reverence for a tomb in Canton, which up until the present day bears the name of Sa'd ibn Abi Waqqas. Apart from Sa'd ibn Waqqas, another prophet's companion who was reported to have a tomb in Hami, Xinjiang and he was the first of the people of Yathrib (Medina) to swear allegiance to Muhammad after the flight of the nascent Muslim community from

²⁶Sadiq Muhammad Safiyanu, "The Principle of Diplomatic Immunity Under Islamic Law", *International Journal of Social Sciences* 5, Issue 21 (2021): 42-52; Ismail, *Islamic Law and Transnational Diplomatic Law*, 72.

²⁷Hyunhee Park, "From Imperial Encounter to Maritime Trade: Chinese Understanding of the Islamic World, 750–1260." in *Mapping the Chinese and Islamic Worlds: Cross-Cultural Exchange in Pre-Modern Asia*, (Cambridge: Cambridge University Press, 2012), 20–55.

²⁸Ismail, *Islamic Law and Transnational Diplomatic Law*, p.70-72.

²⁹The status of the authenticity of hadith "اطلبوا العلم ولو في الصين" seek knowledge even if you have to go as far as China" has been subject to juristic debates among the Muslim scholars. Some Muslims scholars even considered it to be باطل (void) or even منكر (reprehensible) and (لا أصل له) "the fabricated hadith and its originality is highly disputed). However, the meaning seems to be very clear, namely Islam highly values and strongly encourages Muslims to seek knowledge. Allah SWT knows best.

Mecca, and later became the orator of the Prophet. He was Thabit ibn Qays.³⁰

The Prophet (PBUH) was also respectful toward visiting foreign envoys, despite the horrendous treatment meted out to his appointed emissaries. In other words, the Prophet (PBUH) chose not to indulge in reprisal or even retorsion. These actions serve as testamentary evidence that he (PBUH) firmly adhered to the *telos* of the inviolability of foreign emissaries and diplomats. While the Prophet (PBUH) faithfully adhered to this sacrosanct principle, others failed to respect and honour it.

A typical incident was the killing of Al-Harith ibn ‘Umair Al-Azdi- an envoy of Prophet Muhammad (PBUH) - by Shurahbil ibn ‘Amr Al-Ghassani, who was then the governor of Al-Balqa’. This envoy was intercepted on his way to the ruler of Busra by Shurahbil, who had him tied up and beheaded.³¹

Finally, the Arabic terms *saafir* or *rasul* are often used by commentators on Islamic law when referring to a diplomatic agent or envoy.³² The word *saafir*, which means ambassador, is a derivative of the verb *safara*, the original meaning of which is “conciliation or peaceful settlement.”³³

³⁰China Heritage Newsletter Quarterly, “Hui Legends of the Companions of the Prophet,” No. 5, March 2006. accessed September 25, 2024, http://www.chinaheritagequarterly.org/articles.php?searchterm=005_legends.inc&issue=005.

³¹Hossein Rahmanizadeh, “Contribution of Islam to the development of diplomatic and consular law”. *Journal of current research in science* 3, No. 2 (2015): 42-48; Discover Truth, “The Battle of Mu’tah (Mutah),” Discover the Truth, March 21, 2016, accessed September 25, 2024, <https://discover-the-truth.com/2016/03/21/the-battle-of-mutah-mutah/>; Ismail, *Islamic Law and Transnational Diplomatic Law*, 69-72.

³²Nehaluddin Ahmad, Gary I. Lilienthal, and Salim Ibrahim Ali, “Diplomatic Immunity under Islamic Tradition and Practices,” in *Islamic Sources and International Law*. eds. Nehaluddin Ahmad, Gary I. Lilienthal. (New York: Nova Science Publishers, 2023), 111-136.

³³Nehaluddin Ahmad, Arman Haji Asmad & Norulaziemah binti Zulkiffle. “Evolution and Practices of Diplomatic Immunity Under Islamic Traditions and International Law”, *Manchester Journal of Transnational Islamic Law & Practice* 18, Issue 2 (2022): 18.

In selecting the bearer of his message in the courts of the world powers at the time, the Prophet (PBUH) was fully cognisant of an essential diplomatic trait, namely the eloquence was one of the highly cherished qualities in which a diplomatic agent must possess. Thus, the appointed envoys were men usually endowed with the power and flair for language and were particularly conversant with the languages and political atmosphere of their hosts.³⁴

Perhaps this explains why the two eminent authors of *Tabaqatand Khasais al-Kubra* described these envoys as men who have received the miraculous gift of languages, owing to their ability to speak the languages of the countries they were deputed. These envoys were dispatched with the requisite credentials, specifically addressed to individual potentates (rulers).³⁵

The Prophet Muhammad (PBUH) initiated diplomatic relations with a slew of tribes in other parts of Hijaz (present-day Saudi Arabia), which included the tribes in the Najd, Yammah, Oman, Hadramaut, Bahrain, Yemen, Jarbah, Azrah, Aylah, Qadaaha and Dumat al-Jandal.³⁶ He (PBUH) also delivered letters to foreign nations such as to King Negus al-Asham ibn Jabar of Abyssinia, Emperor Heraclius of Rome, Muqauqis of Egypt, Al-Munzir of Bahrain, King Khusroe of Persia, brothers Jayfar and Abbad of Oman, Houza ibn Ali of Yamamah, Munzir ibn Harith ibn Abi Shimr of Damascus, Marwa ibn Amr Khaza'i of Syam and numerous others. All these letters were delivered by appointed envoys or emissaries.³⁷

The Prophet's letters elicited various responses.³⁸ Some accepted them in good faith, as seen with King Negus al Asham, brothers Jayfar and Abbad, and others like al-Munzir, Houza ibn Ali and Marwa ibn

³⁴Rahmanizadeh, "Contribution of Islam to the development of diplomatic and consular law", 42-48.

³⁵Rahmanizadeh, "Contribution of Islam to the development of diplomatic and consular law", 42-48.

³⁶Shaikh Mohd Saifuddeen Bin Shaikh Mohd Salleh, "Learn from Prophet's Art of Diplomacy," Institute of Islamic Understanding Malaysia (IKIM), May 10, 2003, accessed September 26, 2024, <https://www.ikim.gov.my/new-wp/index.php/2003/05/10/learn-from-prophets-art-of-diplomacy/>.

³⁷Shaikh Mohd Saifuddeen, "Learn from Prophet's Art of Diplomacy".

³⁸Mohd Hisham Mohd Kamal, "International Legal Personality of Prophet Muhammad (PBUH)", *IIUM Law Journal* 25 (2), 2017:161-78.

Amr Khaza'i. Despite the fact the recipients of such letters did not embrace Islam, they still treated the Prophet's special envoys with great respect and even sent gifts of goodwill to the Prophet (PBUH), Muqauqis of Egypt was one of them.³⁹

Some recipients were, on the contrary, annoyed and angry having received the Prophet's letters. Yet, to their credit, they still treated the prophet's envoys with respect and even guaranteed them safe passage. One of them was Munzir of Damascus.⁴⁰ History also recorded recipients who rejected the letters from the Prophet (PBUH). Worst still, they openly disregarded the customary tradition of the inviolability of envoys by ill- treating them. The King Khusroe of Persia was one of such recipients.⁴¹

Diplomatic relations are not meant to be a one-way traffic commitment. On the contrary, it is a binary relation- either a state sends a delegation to another state, or it receives a delegation from another state.⁴²

THE NEED TO UNDERSTAND THE INFLUENCE OF ISLAMIC ELEMENTS IN VCDR 1961

Before we delve into a deep discussion on the influence of Islamic law of diplomacy in VCDR 1961, it is our belief that the world – even the Muslim community - urgently needs to recognise and appreciate the influence of Islamic values in VCDR 1961. After all, Alexander Pope used to say, “little knowledge is a dangerous thing!”

Scholars of public international law such as Marcus P. Beham believe that his colleagues (either from non-Muslim or non-Arabic-speaking countries) need to engage in the discourse of Islamic law. This is because Islamic law is one of the three major legal traditions of our

³⁹Salleh, “Learn from Prophet’s Art of Diplomacy”.

⁴⁰Salleh, “Learn from Prophet’s Art of Diplomacy”.

⁴¹Mohd Hisham, “International Legal Personality of Prophet Muhammad (PBUH)”, 61-78.

⁴²We shall discuss this issue in depth under the influence of Islamic elements of diplomacy in VCDR 1961 and other related treaties" (see below).

time, next to Common and Civil law systems.⁴³ Whenever a non-Muslim intellectual expresses this kind of statement, it speaks volumes about the urgent need to know the importance of knowing and understanding Islamic legal traditions.

At the same time, the world must not underestimate the significant influence of the Muslim population, considering that almost a third of all UN Member states are part of the Organisation of Islamic Cooperation (OIC).⁴⁴

Given the growing influence of Islamic law on national legislation and jurisprudence within the Muslim world as well as the growing number of contact points between diplomatic law and Islamic international law, the question of the compatibility between diplomatic law and Islamic law needs to be thoroughly addressed.⁴⁵

THE INFLUENCE OF ISLAMIC ELEMENTS OF DIPLOMACY IN THE VCDR 1961

Muslim researchers argue that the foundational principle in Islamic diplomatic law and International diplomatic law are substantially compatible.⁴⁶ Hence, they assert that the resemblances between these two systems of diplomacy substantially far outweigh their dissonances.

The point of departure in discussing any genre of Islamic law is basically the same. It starts by referring to the supreme references of Islamic law. The *Quran* and the *Sunnah* are the two principal sources of Islamic law, and these two texts contain the bulk of what constitutes diplomatic immunity under Islamic law. There are, of course, other

⁴³Markus P. Beham, "Islamic Law and International Criminal Law." In *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, eds. Marie-Luisa Frick and Andreas Th. Muller. (Leiden: Martinus Nijhoff Publishers, 2013), 349-366.

⁴⁴Beham, "Islamic Law and International Criminal Law", 349-366.

⁴⁵Beham, "Islamic Law and International Criminal Law", 349-366.

Note: Beham merely talked about the need to know the international Islamic Law as his writing was focusing more on such a subject. However, the need to know and appreciate the influence of Islamic elements in the VCDR 1961 also needs to be thoroughly addressed.

⁴⁶Ismail, *Islamic Law and Transnational Diplomatic Law*, 69-72.

sources of reference that Muslim jurists are allowed to resort to in formulating their juristic opinions or rulings.

Under Islamic jurisprudence, recourse can always be made to the principle of *maslahah*-which is essentially encapsulated under the doctrine of *Maqasidal-Shari'ah* or the goals or objectives of *Shari'ah*, by making rules based on the general interests of the Muslim community particularly in the absence of applicable provisions in the primary sources of Islamic law—the *Qur'an* and the *Sunnah*.⁴⁷ In applying the principle of *maslahah* or public interest, the only caveat which needs to be meticulously observed is that it must not run contrary to the fundamental objectives of the *Shari'ah* (*Maqasid al-Shari'ah*). That is the only “firewall” which Muslim jurists ought to pay heed to.

A few important planks of Islamic influence in the VCDR 1961 on this subject are illustrated hereinbelow.

Performing the Treaty Obligations in Good Faith

The VCDR 1961 ought to be read with other related international treaties, especially the Vienna Convention on the Law of Treaties ("Treaties Convention") and the VCCR 1963. The Treaties Convention imposes upon the parties an obligation to perform the treaty obligations in good faith. Article 26 of the Treaties Convention entitled *pacta sunt servanda*, provides that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."⁴⁸

Article 26 embodies what the *Quran* explicitly says in its few verses, the primary being which reads:

“O ye who believe, fulfil all of your contracts/ agreements/ covenants/ pledges”⁴⁹

In interpreting this verse, the great Muslim Tunisian jurist, namely Muhammad Tahir Ibnu 'Asyur elucidated, in his *tafseer* as follows:

⁴⁷Mohammad Hashim Kamali, “Maqāṣid al-Sharī’ah: The Objectives of Islamic Law.” *Islamic Studies* 38, no. 2 (1999): 193–208.

⁴⁸United Nations, “Vienna Convention on the Law of Treaties of 1969”, Vienna, 23 May 1969. accessed September 26, 2024, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en

⁴⁹Al-Quran 5: 1.

"Agreements/covenants mentioned in this verse would encompass all the agreements/covenants which the Muslims entered into between themselves and the non-believers".⁵⁰

The following verse is also another cogent proof which indicates that the *Qur'an* categorically recognises the validity and sanctity of treaties.⁵¹

"Those who believed, emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations to them until they emigrate. But if they seek your help 'against persecution' in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do."⁵²

As far as the *Sunnah* is concerned, the Prophet Muhammad (PBUH) was also reported to have said:

“Narrated by 'Amr bin 'Auf al-Muzani (RA):

“Allah's Messenger (ﷺ) said: "Reconciliation is permissible between Muslims, except one which makes unlawful something which is lawful, or makes lawful something which is unlawful; at-Tirmidhi reported it and graded it *Sahih* (authentic)]

When the Prophet (PBUH) entered a well-known treaty with the pagan Arabs (the non-Muslims) in Hudaibiyah (known as “the Hudaibiyah treaty/pact”) the Prophet (PBUH) faithfully adhered to the terms and conditions of the agreement despite the fact, at the face value, it seemed to have contained some lopsided and unfavourable terms therein causing discontent and disquiet among several companions.⁵³

The Hudaibiyah treaty drives home this significant message namely Islam always treasures any treaty irrespective of with whom such an agreement is being entered into.

⁵⁰Muhammad Tahir Ibn 'Ashur, *Tafsir Al-TahrerWa Al-Tanweer*(Tunisia: Al-dar al-Tunisiyyah li al-Nashr, 1984), Part 6, 74-76.

⁵¹Smith, “Of War and Peace: The Hudaibiya Model of Islamic Diplomacy”, 140-141.

⁵²Al-Quran 8: 72.

⁵³To read and pore over the terms of the Hudaibiyah treaties, see: Smith, “Of War and Peace: The Hudaibiya Model of Islamic Diplomacy”, 139-150.

The only caveat would be the agreement shall not contain terms which are repugnant to Islam - i.e. permitting what is unlawful and forbidding what is lawful (which in contemporary legal parlance we may characterise such a caveat to be almost equivalent to “non derogable terms” or “condition precedent” in a law of contract).

The firmness of the Prophet Muhammad (PBUH) in faithfully adhering to the black letters of the treaty was duly reflected by the unequivocal statement of Prophet Muhammad (PBUH) to Abu Jandal ibn Suhayl when the latter became a Muslim and in turn, sought to defect from the Makkan camp to join the Muslims immediately after the Treaty of Hudaibiyah was executed. The Prophet’s statements ran, *interalia*, as follows:

"O Abu Jandal, have patience and be disciplined; for God will soon provide for you and your other persecuted colleagues a way out of your suffering. We have entered with the Quraysh into a treaty of peace, and we have exchanged with a solemn pledge that none will cheat the other."⁵⁴

In commenting on the way, the Prophet Muhammad (PBUH) reached a peaceful settlement with the pagan Arabs via the Treaty of Hudaibiyah, Labeeb Ahmed Bsoul had this to say "His method of negotiating the Treaty of Hudaibiyah with the Pagan Makkans left behind a rich diplomatic legacy".⁵⁵

It is worth mentioning that the triumph of the *Hudaibiyah* treaty may also be viewed via the lens of modern international law in that *negotiation*- and not confrontation- has been invariably recognised to be the proven best pacific method of settlement of dispute and such a splendid method was accordingly incorporated in Article 33 of the UN Charter under Chapter VI of the same Charter which deals with the issue of Pacific Settlement of Disputes.

⁵⁴Muhammad Husayn Haykal. *The life of Muhammad* (US: American Trust Publication, 1976), 341.

⁵⁵Labeeb Ahmad Bsoul, “Islamic Diplomacy: Views of the Classical Jurists”, In *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, eds. Marie-Luisa Frick and Andreas Th. Muller. (Leiden: Martinus Nijhoff Publishers, 2013), 127-145.

In the famous case of *Saudi Arabia v. ARAMCO (Arabian American Oil Company)*⁵⁶ one of the issues involved in this arbitration case was on the interpretation of a concession agreement signed between the Saudi government and Aramco (initially it was California Arabian Standard Oil Company) in 1933. It was held, *inter alia*, that:

"Muslim law does not distinguish between a treaty, a contract of public or administrative law and a contract of civil or commercial law. All these types are viewed by Muslim jurists as agreements or pacts which must be observed, since God is a witness to any contract entered into by individuals or collectivises; under Muslim law, any valid contract is obligatory, in accordance with the principles of Islam and the Law of God, as expressed in the *Quran*".⁵⁷

The Principle of The Inviolability of The Diplomatic Agent and The Premises of Diplomatic Missions

As a general rule, the VCDR1961 guarantees absolute immunity to diplomats and in turn prohibits their arrest, detention, and prosecution. Whenever Muslim states agree to sign and ratify this Covenant, they are certainly bound either under International law as well as under Islamic international law, to adhere to and fulfil the treaty obligations which they duly signed and ratified.⁵⁸

⁵⁶Case: *Saudi Arabia v. ARAMCO (Arabian American Oil Company)*, 27 I.L.R. 117, 163-64 (1963).

⁵⁷Sara McLaughlin Mitchell, and Emilia Justyna Powell, *Domestic Law Goes Global: Legal Traditions and International Courts* (Cambridge: Cambridge University Press, 2011),

⁵⁸To have a clear idea of this topic it would be advisable to see: M. Cherif Bassiouni, "Protection of Diplomats under Islamic Law", *American Journal of International Law* 74, no. 3 (July 1, 1980): 609-633; Husain Jeez Almutairi, Alias Bin Azhar, Mohammad Zaki Ahmad, and Alhejaili Hanan Abdurhman. "Importance of Diplomatic Immunities in Islamic Law (Shariah)." *Journal of Civil and Legal Sciences* 6, No. 01 (January 1, 2017), 1-5; Salleh, "Learn from Prophet's Art of Diplomacy"; Bsoul, "Islamic Diplomacy: Views of the Classical Jurists", 127-145; Jamal Belbakay. *Diplomacy in Islamic Law*"; Smith, "Of War and Peace: The Hudaibiya Model of Islamic Diplomacy", 135-168.

Among the immunities duly enjoyed by the diplomats under the VCDR 1961 are incorporated, *inter alia*, under:

Article 29 on the inviolability of diplomats, including their arrest and detention;

- a) Article 31 on the immunity from criminal prosecution of the diplomats;
- b) Article 37 on the immunity from criminal prosecution of the administrative and technical personnel of the mission; and
- c) Articles 22, 24, and 27, on the inviolability of the diplomatic premises and the correspondence and archives.⁵⁹
- d) Article 29 of the VCDR 1961 which reads hereinbelow is the key to such a principle of inviolability stated that:

“The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.”

This provision -Article 29 of the VCDR 1961- in fact equivalent to the principle of the inviolability of diplomatic agency duly embedded under the Islamic law of diplomacy. The principle of the inviolability of diplomatic agent duly embedded under the Islamic law of diplomacy is, in essence, premised on the doctrine of representation whereby Ibn Ali states that “whatever treatment is given to an ambassador, whether good or bad, it is as if it were done to the king who sent him, and kings have always shown the greatest respect to one another”.⁶⁰

Given the sacredness of this principle, the Muslim jurists used to invoke the following statements by the Prophet (PBUH) which is often believed to incorporate and to honour, at the same time, the trite

⁵⁹In *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, I.C.J. Reports 1980, the ICJ duly ventilated on the importance of the principle of inviolability contained in these various Articles of the VCDR 1961. The ICJ also held in para 62 of the judgement " In the view of the Court, the obligations of the Iranian Government here in question are not merely contractual obligations established by the Vienna Conventions of 1961 and 1963, but also obligations under general international law.”

⁶⁰Safiyanu, “The Principle of Diplomatic Immunity Under Islamic Law”, 42-52.

principle of the inviolability of diplomatic agents. The Prophet (PBUH) said: “By God, were it not that envoys are not to be killed, I would have beheaded both of you”.⁶¹ It is instructive to trace the genesis of such a statement. In other words, what incident prompted the Prophet (PBUH) to issue such an important statement?

The facts of the case leading to such a statement were that Musailima bin Habib, a notorious liar nicknamed al-Kadhhab (the Liar), sent two emissaries - Ibn Al- Nawwaaha and Ibn Aathaal – with the message that he, Musailima, and not Muhammad, was the true Prophet of God. Upon receipt, the Prophet (PBUH) asked the emissaries whether they subscribed to the content of Musailanah’s letter. When their answers were in the affirmative, the Prophet (PBUH) responded: “By God, were it not that envoys are not to be killed, I would have beheaded both of you”.⁶²

Labeeb Ahmed Bsoul⁶³ is of the view that based on the *Quran* and the *Sunnah*, one may safely conclude that historically speaking, Muslims rulers were the first to introduce the prototype of diplomatic safety (*aman*) and the same, according to him, may be gauged from this verse:

“If any of the polytheists seeks asylum from you, grant him asylum until he hears the Word of Allah. Then convey him to his place of safety. That is because they are people who do not know”.⁶⁴

From the classical *qur’anic* exegesis, the earlier commentators used to interpret the word *musta’minin* (both hostile and non-hostile foreigners) who received a safe passage by a Muslim government could

⁶¹In commenting on such a highly diplomatic statement from the Prophet Muhammad saw, Bassiouni reiterated that “this response clearly establishes the inviolability of even those envoys who commit transgressions”. See: Bassiouni, “Protection of Diplomats under Islamic Law”, 607.

⁶²Husain Jaez Almutairi, “Origin and Development of Diplomatic Immunities in Islam and International Laws”, *International Journal of Business, Economics and Law* 6, Issue 4 (April 2015): 47-58; Bassiouni, “Protection of Diplomats under Islamic Law”, 607.

⁶³Bsoul, “Islamic Diplomacy: Views of the Classical Jurists”, 127-145.

⁶⁴Al-Quran, 9:6.

possibly claim a genuine safety *ex debito justitiae* (as a matter of right) throughout the duration of their stay.⁶⁵

Notably, the concept of ‘*aman*’ is not only meant for diplomats. It is meant for all foreigners, or alien enemies in times of war, to safely stay for a while or pass through the Islamic state.⁶⁶

In ventilating this fascinating issue, it is worth quoting *in extenso*, in our view, the following instructive statement from "the Godfather of International Criminal Law" and a "war crimes expert" namely the late Prof. Mahmoud Cherif Bassiouni who argued that:

"Islamic law permits the head of state (the Khalifa or Imam) to enter into treaties binding the Islamic state. In this context, the 1961 Vienna Convention on Diplomatic Relations" and the 1963 Vienna Convention on Consular Relations" extend to diplomats' absolute immunity from arrest, detention, and prosecution. Nothing under Islamic law precludes immunity by treaty..."⁶⁷.

He further stated that:

"The *Quran* contains several references to the concept of Aman or safe conduct, which is in part the basis of diplomatic immunity. The diplomat is the beneficiary of Aman, a legally binding privilege that obligates the state to protect the beneficiary until his departure from its territory. The state may revoke the Aman and expel the beneficiary but may not violate it. The beneficiary who violates its terms may be prosecuted, but not if he is a diplomat, who in addition to benefiting from the Aman is also the beneficiary of other forms of legal protection and privileges".⁶⁸

As far as such a principle of the inviolability is concerned, the International Court of Justice (ICJ) has duly attested to the contribution of Islam when it made this apt remark:

"But the persons of diplomatic agent and the premises of diplomatic missions is one of the very foundations of long-established regime, to the evolution of which the traditions of Islam made a substantial contribution".⁶⁹

⁶⁵Bassiouni, "Protection of Diplomats under Islamic Law", 609–633.

⁶⁶Eidrup, The concept of *amān* ' in classical Islamic legal texts, 18-32.

⁶⁷Bassiouni, "Protection of Diplomats under Islamic Law", 609–633.

⁶⁸Bassiouni, "Protection of Diplomats under Islamic Law", 609–633.

⁶⁹International Court of Justice (ICJ), Case: United States Diplomatic and Consular Staff in Tehran, 40 (ICJ English text).

For an expert of dual disciplines namely both Islamic International law as well as the modern International law such as the late Prof. Mahmoud Cherif Bassiouni, the sacrosanct principle of the protection of the safety and security (*aman*) of any foreign envoy or emissary (even the hostile ones) is actually envisaged in the *Quran* in Surah al-Naml (27:23-44).⁷⁰

Muslim scholars strongly believe that the basis of the principle of inviolability is originally found in the *Quran* in its description of the exchange of envoys between the Prophet Sulaiman (Solomon) (992-952 B.C.) and Bilqis, Queen of Sheba.⁷¹

When Bilqis sent a delegation or envoys to the Prophet Sulaiman and in turn tried to extend gifts to him, the latter, in Bassiouni's view, considered it to be an insult as it was an attempt to bribe the Prophet Sulaiman (PBUH). The Prophet Sulaiman (PBUH) then flatly rejected the gifts and sent the delegation back.⁷²

These verses, Bassiouni argued, "clearly indicate that emissaries were contemplated as the ordinary means of diplomatic communications between Muslim and non-Muslim heads of state and that the emissaries were immune from the wrath of the host state (or the receiving state) and were not held responsible for the acts or messages sent by their head of state".⁷³

From such a landmark precedent, the following principle may be drawn i.e. even when the Prophet Sulaiman (PBUH) seemed to have been offended, he nevertheless did not harm the emissaries. The diplomatic immunity to such emissaries was duly granted and thus guaranteed by the Prophet Sulaiman (PBUH).

Ergo, when the Prophet Muhammad (PBUH) equally protected the safety and security of the Musailamah's envoys despite the fact they employed undiplomatic languages against the Prophet (PBUH), the latter did not even declare such envoys *persona non grata*, instead the Prophet (PBUH) reaffirmed the *stare decisis* (the earlier precedent) set by the Prophet Sulaiman (PBUH) with this following declaration:

⁷⁰Bassiouni, "Protection of Diplomats under Islamic Law", 609–633.

⁷¹Safiyanu, "The Principle of Diplomatic Immunity", 42-52.

⁷²Safiyanu, "The Principle of Diplomatic Immunity", 42-52.

⁷³Bassiouni, "Protection of Diplomats under Islamic Law", 609–633.

"By God were it not that messengers are not to be killed, I would behead both of you".

To wind up our discussion under this rubric, it would be instructive to conclude that from a plethora of writings by a slew of Muslim scholars- the past as well as the contemporary- all of them seem to have reached a tacit consensus that the principle of diplomatic immunity, and its extent, can be said to have been derived from the *Quran* and the *Sunnah*. Such a principle is also implicitly encapsulated in the concept of *aman* (safe conduct which is duly guaranteed in the *Quran* for non-Muslims).

Muslim scholars such as Bassioni also held the view that *aman* is a trust thus it must not be broken or breached. And in arriving at such a view, the following verse from the *Quran* has been frequently cited.⁷⁴

"Allah SWT said in this verse that:

"Verily, Allah commands you to deliver trusts back to their owners; and when you judge between the people, that you judge with justice. Good is the admonition God gives you; God is All-hearing, All-seeing".⁷⁵

Diplomatic Immunity from Jurisdiction Under the VCDR 1961 And Islamic Law

In diplomatic law, diplomatic immunities consist of two main concepts: (a) inviolability and (b) immunity from jurisdiction. The heading above has discussed inviolability, and this heading will address the diplomatic immunity from jurisdiction under the VCDR 1961 and Islamic law.

Article 31 of the VCDR 1961 specifically addresses immunity from jurisdiction, stating that diplomats shall not be liable to any form of arrest or detention and enjoy immunity from criminal jurisdiction, ensuring they can carry out their duties without any interference, intimidation and fear of civil or criminal prosecution.⁷⁶

⁷⁴Bassiouni, "Protection of Diplomats under Islamic Law", 614.

⁷⁵Al-Quran 4: 58.

⁷⁶Ismail, "Justifications and Principles of Diplomatic Immunity", 61-65.

In addition, there are some theories to justify diplomatic immunity from jurisdiction, including: the representative character theory which traces immunity to the sovereignty of the state that sends the diplomatic agent, and the extritoriality theory which presupposes that diplomats are legally resident within the territory of the sending State even though they are physically resident abroad.⁷⁷

Diplomats are immune from legal actions related to their official duties. However, exceptions exist, such as in cases involving real estate transactions, an action relating to succession, or private professional or commercial activities.⁷⁸

While diplomats enjoy broad immunity, the sending state can waive this immunity.⁷⁹ Additionally, diplomatic agents must not abuse their privileges or engage in activities outside their diplomatic functions.⁸⁰

Although Islamic history does not document specific discussions on the legal justifications for diplomatic immunity, some scholars assert that the rationale for this practice in Islamic international law is based on the theory of functional necessity.⁸¹ This theory posits that diplomatic agents must have full personal immunity to carry out their

⁷⁷Ismail, "Justifications and Principles of Diplomatic Immunity", 61-65.

⁷⁸ Article (31/1) of the VCDR 1961 states that: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions".

⁷⁹ Article (32) of the VCDR 1961 reads: "1. The immunity from the jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State. 2. Waiver must always be express".

⁸⁰ Article (41/1) of the VCDR 1961 provides that: "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State".

⁸¹ Ismail, Justifications and Principles of Diplomatic Immunity, 65.

duties effectively. A Hanafi jurist, Sarakhsi, was referenced by the Federal Shariat Court of Pakistan in its 1983 notice regarding the Islamisation of laws. He stated that an individual claiming to be an envoy and possessing the appropriate credentials should be granted immunity until their ambassadorial mission is complete and they return.⁸² Without such immunity, diplomats would be unable to perform their functions effectively.⁸³

It is also important to note that the largest international Islamic organisation, the Organisation of Islamic Cooperation (OIC), supports the functional justification for diplomatic immunity in Islamic international law.⁸⁴ Article 13 of the 1976 Convention on the Immunities and Privileges of the Organisation of the Islamic Conference states that: "Immunities and privileges are accorded to the representatives of Member States, not for their personal benefit, but in order to safeguard the independent exercise of their functions in connection with the organisation."⁸⁵

The doctrine of diplomatic immunity from the jurisdiction of local courts is recognised in Islamic law. This means that diplomats are not held accountable by the host country's courts for offences committed while performing their ambassadorial duties. An illustrative case is that of the two emissaries, Ibn Al-Nawwaaha and Ibn Aathaal, who were sent by Musailima (the Liar). When the Prophet (PBUH) asked if they supported his message, their response could be seen as contempt against the Prophet (PBUH). However, the Prophet (PNUH) chose not to prosecute them for contempt, as they were considered merely a means of diplomatic communication.⁸⁶

It is evident that under Islamic international law (*Siyar*), if a non-Muslim claims to be an emissary and enters an Islamic territory, he is granted diplomatic immunity if he can present a genuine letter of credence from his ruler. However, if he cannot provide such

⁸²Islamisation of Laws Public Notice No. 3 1983 PLD (1985) Federal Shariat Court.

⁸³Zawati, *Is Jihad a Just War*, 79.

⁸⁴ Ismail, *Justifications and Principles of Diplomatic Immunity*, 65.

⁸⁵ Article (17) of the 1976 Convention on the Immunities and Privileges of the Organisation of the Islamic Conference.

⁸⁶Safiyanu, "The Principle of Diplomatic Immunity Under Islamic Law", 49; Bassiouni, "Protection of Diplomats under Islamic Law", 607; Ismail, *Justifications and Principles of Diplomatic Immunity*, 65.

documentation, both he and his belongings will be considered *fay'*, meaning they are treated as proceeds from enemy property other than war booty.⁸⁷

To reinforce the idea that an envoy is immune from criminal jurisdiction in the host state, Hamidullah notes that "even if the envoy, or any member of his entourage, is a criminal from the state to which he is sent, he should still be treated solely as an envoy."⁸⁸

In conclusion, Islamic law provides diplomatic immunity from jurisdiction. Furthermore, Muslim states have generally signed and ratified two key international legal frameworks: the 1961 Vienna Convention on Diplomatic Relations (VCDR) and the 1963 Vienna Convention on Consular Relations (VCCR). Therefore, they are expected to uphold diplomatic immunity as outlined in Islamic *siyar*, alongside the various international treaties they have agreed to.⁸⁹ Additionally, Islamic law mandates that once treaties are entered, Muslim states must adhere to their terms and conditions.⁹⁰

Dignified Treatment to Foreign Delegations or Dignitaries

The Prophet warmly welcomed delegates and engaged in negotiations with them both honestly and decisively. He assured them that they could coexist peacefully and securely with Muslims. In 9 AH, the Prophet's meetings with delegates increased significantly, earning that year the title *Am al-Wofood* (the Year of Meetings). The discussions covered topics such as economic aid, inquiries about Islam, and the signing of peace and neutrality treaties. Throughout these negotiations, the Prophet treated envoys from other tribes with respect. Despite some of his own envoys facing torture, abuse, and even death, he (PBUH) never violated the immunity of foreign envoys. Even when foreign envoys insulted or disrespected him, the Prophet refrained from retaliation and chose to treat them peacefully.⁹¹

⁸⁷Al-Shaybani, *Kitab Al-Siyar Al-Saghir*, 63.

⁸⁸Hamidullah, *Muslim Conduct of State*, 291.

⁸⁹Ismail, *Diplomatic Immunity in Muslim States*, 113–138.

⁹⁰Allah SWT says: "O ye who believe, fulfil your covenants" (Al-Quran 5: 1).

⁹¹Amid Zanjani, *Political Fiqh of international treaty law and diplomacy in Islam*, 304-337; Rahmanizadeh, *Contribution of Islam to The Development of Diplomatic and Consular Law*, 45.

As far as the authors are aware, neither VCDR 1961 nor any other related conventions have ever laid down or prescribed therein any provision on the obligation of any receiving state to provide any respectful, honourable and dignified treatment such as allowing such foreign envoys, emissaries, delegation or dignitaries to stay in designated guest houses whenever the latter paid a visit to such a receiving state.

Notwithstanding that, the state practices in providing such dignified treatment to foreign delegations or dignitaries have been a common phenomenon and widespread in international relations. Such practices may have possibly attained the status of Customary law.

Having said that, it would be important to note that such a tradition was widely practised during the Prophet's time and by the subsequent Muslim rulers after the demise of the Prophet (PBUH).

Acting as the best role model for Muslims and to the *ummah* in general,⁹² the Prophet Muhammad (PBUH) had created an exemplary template in exhibiting superb precedents by honouring foreign delegations whenever he (PBUH) received such delegations as his state's guests. The envoys were received and stayed in *Dar-ul- Zeyfan* (guesthouse) which was protected and safe, which is considered an example of the immunity of diplomatic and consular accommodation. Such state's guests were well treated and duly considered respected and honoured dignitaries.⁹³

In doing that, the Prophet (PBUH) not only appointed some of his companions to officially receive delegations when they arrived in the city to facilitate their livelihood during their stay, but he also provided for such foreign dignitaries all the necessary and comfortable facilities.⁹⁴

⁹²The Quran says in 33:21 " Assuredly there hath been for you: in the apostle of Allah an excellent pattern for him who hopes in Allah and the Last Day and remembered Allah much"; The Quran also says in 59:7 " And whatsoever the apostle giveth you, take; and whatsoever he forbiddeth you, refrain from. And fear Allah; verily Allah is Stern in chastisement."

⁹³Almutairi et al., "Importance of Diplomatic Immunities in Islamic Law (Shariah)", 1-5; Muhammad Hamidullah, *The Muslim Conduct of State* (Kuala Lumpur: Islamic Book Trust, 2012).

⁹⁴Hamidullah, *The Muslim Conduct of State*.

Be that as it may, a few "state guest houses" were, for example, duly allocated and designated by the Prophet (PBUH) to accommodate such foreign dignitaries as they were duly considered to be the official state dignitaries.⁹⁵ One such "state guest houses"⁹⁶ was the house/mansion of Ramlah bint Al-Harith Al-Najjaria. It was a wide house (a mansion) which had a palm and cereals. It was reported that Ramlah's house used to receive foreign delegations of Salaman, Tamim bin Uyaina bin Hisnin, and delegation of Bani Kilab.⁹⁷

Apart from Ramlah's "guest house", there were other "guesthouses" as well such as the house of Mughira bin Shu'ba which used to be occupied by the descendants of Thaqeef delegation, the house of Abu Ayyub al-Ansari, the house of Yazid ibn Abi Sufyan and few more.⁹⁸

⁹⁵Hamidullah, *The Muslim Conduct of State*.

⁹⁶The modern international conventions on diplomatic relations in providing a *state guest house* to foreign dignitaries seems to copy the template duly prepared by the prophet (PBUH) 1400 years ago. Anyway, a state guest house, in essence, is a building owned by the government of a country which is used as an official residence for visiting foreign dignitaries, especially during state visits for other important event and such guest houses are Alaska Palace in Tokyo, Japan, SchlosdMaseberg in Berlin, Germany, Blair House in Washington DC, Hyderabad house in India and many others. No such requirement under VCDR or any other related conventions. This might stand as a customary law.

⁹⁷Almutairi et al., "Importance of Diplomatic Immunities in Islamic Law (Shariah)".

⁹⁸Almutairi et al., "Importance of Diplomatic Immunities in Islamic Law (Shariah)".

CONCLUSION

As far as the issue of maintaining high standard of diplomatic relations is concerned, both Islamic law of *siyar* and the modern international law have duly treated this perennial tradition as of paramount importance. Essentially both systems agree. Islamic law contains several precedents and incidents highlighting diplomatic rules and guidelines that should be fully utilised by the present international law organisations in governing diplomatic relations. The authors believe that, apart from Islam, other religions or traditions may equally possess such precious diplomatic gems which may also be adopted by the present international law which deals with the subject of diplomatic milieu.

When the ICJ made the following remarks in its judgement, we viewed such remarks to be compatible with the same principle of diplomatic inviolability duly espoused by Islamic law:

“The rules of diplomatic law, in short, constitute a self-contained regime which, on the one hand, lays down the receiving State’s obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse”.⁹⁹

⁹⁹United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980.

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