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Cover Page Footnote
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This article is available in Journal Sharia and Law: https://scholarworks.uaeu.ac.ae/sharia_and_law/vol2018/iss75/9
The Baqt Treaty under Islamic Law

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Abstract:

The primary focus of this study is al-Baqt treaty that concluded with Nubia in the year 656/31, and governed relations between Islamic Egypt and Nubia for more than 600 years. This study aims to highlight its potential jurisprudential implications, as a legitimate precedent, which would allow, whenever common interest is involved, regulating the relation Islamic State upon it. It revealed, in particular, the flexibility of Islamic jurisprudence in the field of international relations. The study has used historical and analytical descriptive approach to trace and analyse the legal juristic aspects of this treaty under Islamic Law. The main findings of the study has revealed that the Baqt Treaty confirms that the three alternatives (Islam, Jizya, fight) is not an absolute compulsory edict in all conditions. Further, The Baqt Treaty demonstrates that soft force is not less powerful than military force in achieving the interests of the Islamic state. Moreover, this treaty confirms that the Islamic Law, in international relations, distinguishes between countries that guarantee freedom of faith without restrictions and those who violate it and oppress their citizens. Finally, this study revealed that Islamic jurisprudence contributed to the reduction in human trafficking.

Keywords: The Baqt Treaty; Nubia; using force In Islam.

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1- Introduction.

It is accepted within the Islamic scope that Sharī’ah, as the final revelation, impose upon Muslims to establish relations with the non-Islamic world to achieve several goals, which include promoting peaceful coexistence, and preaching of Islam. To this end, Muslim jurists comprehensively tackled the principal tools established by Islam to organize its foreign affairs under the Islamic international law (as-Siyar). It is worthwhile to say that these tools are not confined to sword and warfare as claimed by some authors. They also include diplomatic exchanges, trade exchange, treaties, and other peaceful instruments.

Treaties as appropriate tool to regulate has been activated since the establishment of the first Islamic state in Al-Madīnah, when the Prophet (PBUH) enacted the Constitution of Medina (Ṣaḥīfat al-Madīnah) in the year 622/1. Later, the Ḥudaybīyah Treaty was concluded in the year 628/6. Driven by the increasingly rapid Islamic conquests Muslims expand their use of treaties as an effective tool to end wars and establish peaceful relations or alliances with the local authorities of the cities they conquered. The central issue discussed in this paper is an Islamic treaty, known as the al-Baqt(1) treaty, which was with Nubia(2) in the year 656/31.(3)

(1) This term was used in the Hellenistic world for both a compact of mutual obligations and its connected payments. The second meaning comes from the ancient Egyptian language, which is (bak), and it means the tax that paid in kind. Frede Lokkegaard, “Baḳṭ”, in Encyclopaedia of Islam, Brill, (1986), Vol. 1, p. 966; Muṣṭafá Mas‘ūd, al-Islām Wā al-Nūbah, Maktabah al-Anglo, (2011), p.136.
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This treaty governed the relations between Islamic Egypt and Nubia for more than 600 years.

While this treaty has received a number of studies, this paper explores its jurisprudential implications and how flexible is the Islamic jurisprudence in the field of international relations. The present study aims to answer two key questions: First, does Islamic jurisprudence based Islamic international relations on either permanent war or Jizya? Secondly, did Islamic jurisprudence contribute to the reduction in human trafficking?

Furthermore, the study aims to provide a contemporary reading of the Islamic heritage in the field of international relations. Hence, this could contribute to activating Islamic laws instead of being isolated, making Islam an active partner in achieving world peace and making it concordant with the modern world, which enables Islam to avoid permanent confrontation with others.

With this in mind, al-Baqt treaty represents a legitimate precedent under which the Islamic State can enact regulations. In fact, Islamic Sharī'ah derives conclusive evidence from Aqwāl al-ṣaḥābah (views and fatwas of the Prophet's companions) that enjoy a special value in the Islamic law. The four Sunni schools emphasized that, and in certain circumstances, Aqwāl al-ṣaḥābah are considered a source of Islamic law.\(^4\) The value of these views and fatwas maximizes when they belong to al-Khālafā’ al-Rāshidīn (The rightly guided caliphs), since their actions, relating to international relations, represent important precedents and a source of Islamic international law for several reasons. First, they enjoyed a high status as to Islamic jurisprudence (Fiqh). Second,

they had a vast knowledge of Maqāṣid al-Shari‘ah (objectives of Islamic law). Thirdly, they were experts in Sunnah. Fourthly, certain ḥādīths ordered Muslims to follow them, Prophet (PUBH) stated: “You must then follow my Sunnah and that of the rightly-guided caliphs. Hold to it and stick fast to it”. (5) In interpreting this ḥādīth, al-Khaṭṭābī (d.988/388) explained that when the caliph's opinion is challenged by or disagreed upon by a companion, the caliph's opinion prevails. (6)

Above all, the importance of the deeds and policies of the al-Khālafā’ al-Rāshidīn, increases due to the fact that they actually applied them in running the Islamic State, the foreign affairs in particular. They managed Muslims affairs, held treaties, and gave clear instructions to be followed during peace and wars. Thus, these deeds give us important precedents in this field. Of particular importance, we can draw inference, make analogy and act accordingly. (7) This is the approach that the Islamic scholars constantly followed, as they inferred by righteous caliphs actions. (8) Besides, some scholars considered these actions as Implicit

(6) Ḥmad Al-Khaṭṭābī, Ma‘ālim al-Sunan, al-Maṭba‘ah al-‘Ilmiyyah, (1932), Vol. 4, p. 301.
Consensus (al-Ijmāʿ al-Sukūṭī) for the lack of disagreement.\(^9\) Hence, Islamic treaties held by regional governors or by the leaderships of Islamic armies, under the Rāshidīn Caliphs' orders or approvals, can be relied on and employed as a source for inference, for example, the Treaty of Abū ʿUbaydah ʿĀmir ibn al-Jarāḥ (d. 639/18) with Ahl al-Shām (citizens of Syria) in the year 635/14 and Khālid ibn al-Walīd Treaty (d. 642/21) with Ahl al-Ḥīra (citizens of Ḥīra city) in the year 633/13. Likewise, al-Baqt Treaty which was ratified by, as shown later, the third Rāshidīn Caliph, ʿUthman ibn ʿAffān (d. 656/35), is considered, as already stated, a legitimate precedent which permits, whenever necessary, regulating the Islamic State's relations accordingly.

The study has used historical and analytical descriptive approach to trace and analyse the legal juristic aspects of this treaty under Islamic Law, and it has been divided into following parts:

1. Introduction.
2. A historical background of the treaty.
3. Text of the treaty.
4. The authenticity of the treaty.
5. Defining the nature of the treaty and its place in the Islamic jurisprudence.
6. Islamic law and the freedom of humanity.
7. The jurisprudential importance of the treaty.
8. Conclusion.

2- A Historical Background of the Treaty.

The Islamic conquest of Syria between 15/636 and 20/641\(^{(10)}\) forced the Byzantine forces to retreat to Anatolia and Egypt, their logical resorts after losing Syria.\(^{(11)}\) Naturally, Muslims took advantage of their victories by tracking fugitives and extending conquests to Egypt. Consequently, ‘Amr ibn al-‘As (d. 43/682) led his army to Egypt, and it was under Islamic rule shortly after Alexandria Treaty between ‘Amr ibn al-‘As and the Byzantine authorities in the year 21/640.\(^{(12)}\)

Alexandria Treaty granted both Byzantium and Nūbiān communities, who lived in Egypt, the choice between staying in Egypt and enjoying the same privileges and duties as the Egyptians, or to depart with immunity until they reach their destination.\(^{(13)}\) However, the Nūbiāns took a very hostile stance right from the very beginning, galvanized their forces to rout the enemy, and made raids across the border into Upper Egypt,\(^{(14)}\) which posed a serious

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\(^{(12)}\) The rapid success of Islamic conquest was largely due to the welcome they received from the Copts, who were persecuted at the hands of the Byzantines. J. Spencer Trimingham, Islam in the Sudan, Frank Cass & Co, (1965), p. 60. Thomas W. Arnold, The Preaching of Islam: A History of the Propagation of the Muslim Faith, Charles Scribner's Sons, (1913), p.102.
threat to the Islamic presence in Egypt.\(^{(15)}\) Therefore, and after a consultation with the Caliph ‘Umar ibn Al-Khaṭṭāb (d. 13/634), ‘Amr ibn al-‘As decided to put an end to this Nūbiān threat, prompted by several goals, included: to secure trade routes, to protect the southern border of Egypt, and to eliminate any power loyal to the Byzantine empire.\(^{(16)}\) Subsequently, ‘Amr ibn al-‘As waged a military campaign against Nubia, which the Nūbiān faced with vehement resistance, where Muslims suffered severe injuries, as many went blind, due to the remarkable skills of the Nūbiān archers in hitting long-range targets. Upon that, Muslims called the Nūbiāns ‘the pupil smiters’.\(^{(17)}\) The successive campaigns against Nubia continued unsuccessfully. In the year 25/645 the Caliph ‘Uthmān dismissed ‘Amr ibn al-‘As as the governor of Egypt, and replaced him by ‘Abdullāh ibn Sa’d ibn Abī as-Sarḥ (d. 36-37/656).\(^{(18)}\) ‘Abdullāh in his turn continued these efforts, and sent a number of expeditions, until 31/651, when he personally led the largest and latest campaign against Nubia that reached Dongola, the Nūbiān capital, where he laid strict siege and used stone-throwing catapults. Under those circumstances, the city began to crumble, which drove king Qalidurut to seek peace.\(^{(19)}\) Muslims responded positively, and therefore al-Baqt (treaty) was concluded. 

\(^{(15)}\) Nubia became “A thorn in the side of the government. Its untameable tribes, secure in their mountains and deserts, had no notion of changing their Christian faith to Islam, nor of abandoning their ancestral right of raiding the wealthy cities of Egypt”. Butler, The Arab Conquest of Egypt, p. 432.


This treaty was unique, because it was different in nature and terms from the treaties, Muslims accustomed to conclude with other nations.

3- Text of the Treaty.

It is worth mentioning that several Islamic geographers and historians quoted texts from the Baqt treaty including: Ibn ‘Abd al-Ḥakam (d. 257/871), (20) al-Balādhurī (d. 279/897), (21) al-Ṭabarī (d. 310/9712), (22) al-Mas'ūdī (d. 346/972). (23) However, al-Maqrīzī (d. 845/1441) alone quoted the full text of the treaty, (24) and his version can be summed up as follows:

Terms and Conditions:

A. The rights of the Nūbiāns:

1. The Nūbiāns shall enjoy Amān (safe-conduct), (25) “we shall not wage war against you, nor declare war against you, nor raid you”. The treaty also stipulated that Muslims shall not be committed to defend [Nūbiāns] against any enemy: “nor shall Muslim attack your

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enemy or prevent it from attacking them”\(^{(26)}\).

2. They shall be eligible to enter Egypt for purposes of visit or trade: “you may enter our territories passing through but not taking up residence in them”\(^{(27)}\).

### B. The duties of the Nūbiāns:

1. They shall permit Muslims [and their allies] to enter Nubia for purposes of visit or trade: “we may enter yours [territories] passing through but not residing in them. You shall protect any Muslim or ally [of Muslims] who enters your territories or travels across them until he departs”\(^{(28)}\).

2. They shall permit Muslims to perform their worship and maintain the mosque: “You shall look after the mosque which the Muslims had built around your city (Donola), and you shall not prevent anyone from performing worship in it, or harass any Muslims who goes to it and remains in its sanctuary”\(^{(29)}\).

3. They shall bring back any fugitive from Muslim's slaves or refugees, and they shall not prevent his master from entering Nubia for regaining him “You shall arrest every slave of the Muslims who runs off to you and send him back to the land of Islam. You are to return any Muslim engaged in hostilities against the other Muslims, who seeks refuge with you”\(^{(30)}\).

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\(^{(27)}\) Ibid.

\(^{(28)}\) Ibid.

\(^{(29)}\) Ibid.

\(^{(30)}\) Ibid.
4. They shall give the Muslims 360 slaves every year, whom they capture in their wars “Each year you [Nūbiāns] shall pay (deliver) 360 slaves to the Imam of the Muslims”\footnote{Ibid.}

C. Penalties: In the event that the Nūbiān violate any of the conditions with regard to their duties, Muslims shall be acquitted of the treaty and its clauses, and the Nūbiāns shall enjoy no Amān then: “If you do harbor a slave belonging to a Muslim, or kill a Muslim or ally, or if you cause destruction to the mosque which the Muslims had built around your city, or if you withhold any of the 360 slaves, the treaty of truce and Amān between us shall be void. You and we are on equal terms”\footnote{Ibid.}.

In addition to the above, Muslims agreed to supply Nubia with amounts of grain, foods, and textiles annually. Originally, this arrangement was not included in the treaty as a binding clause, but it was an appreciation from ‘Abdullāh ibn Sa’d ibn Abī as-Sarḥ when king Qalidurut complained about the need of his country to these goods. Over time, this supply turned into a tax on receiving the fixed payment of (baqt) every year.\footnote{Al-Maqrīzī, al-Mawā’iz Wā al-I’tibār, Vol. 1, p. 562.}

Both sides honored the treaty, as a cornerstone of their relations, for over six centuries. Though, from time to time, the Nūbiāns failed to abide by these terms on different levels, from a simple delay to flagrant refusal, and it sometimes developed into raids on southern Egypt, especially when they sensed weakness in Muslim's grip over the country.\footnote{Robert Kane, “Nubia, Relations with Egypt”, in Conflict and Conquest in the Islamic World: A Historical Encyclopaedia, edited by Alexander Mikaberidze, ABC-CLIO Press, (2011), Vol. I, pp. 660-661.}
The Muslims’ response varied from sending only letters and diplomatic envoys to sending military campaigns. Letters and envoys were used to remind the Nūbiāns of their obligations, as in the letter of Mūsá ibn Ka‘b (d. 141/758), the governor of Egypt, to the King of Nubia, which shows that Muslims had exercised the utmost restraint toward the Nūbiān subtle violations. In some cases, as in 357/951 and 344/956, the Nūbiāns attacked Upper Egypt and committed acts of killing, burning and looting.

During the rule of Caliph al-Mahdī’ (d.169/785), the duration of payment was amended to every three years instead of every year. This amendment was re-confirmed in Caliph al-Mu‘taṣim’ period (d. 277/842) upon the Nūbiān Crown Prince's visit to Baghdad.

Finally, in the year 1323/723, an Arab prince of the Banu'l-Kanz assumed the Nūbiān throne by the right of succession from a Nūbiān mother. Therefore, The Mamlūk Sulṭān al-Nāṣir Muḥammad ibn Qalāwūn (d.1341/741) supported the new Islamic principality and started to officially treat Nubia as an Islamic territory. Accordingly, the application of the Baqt treaty came to an end.

4- The Authenticity of the Treaty.

Several scholars doubted the Baqt Treaty in general, or al-

Maqrïsî’s version in specific. Among them, Peter M. Holt who claimed that, “The treaty, almost certainly legendary, represents an attempt to retroject conventions of MuslimNūbiān relations which had developed by the fourth/tenth century”.\(^{39}\) Also, Yūsuf Faḍl Ḥasan rejected the text, due to the information it has regarding the mosque.\(^{40}\) In a recent study, Jay Spaulding, presented al-Maqrīsî’s text as a fraud by Muslim historians to cover their defeat in Nubia, and to promote Muslim interests. Furthermore, he stated that the original treaty as Muslims understood, never existed in the history, but rather an reciprocal trade agreement, and a tradition of royal exchange, which have existed in Nubia hundreds of years ago, not a surrender treaty Nubia was forced to accept.\(^{41}\)

**The main claims against the authenticity of the Maqrīsî’s text include:**

1. **Al-Maqrīsî’s version is detailed, versatile, and comparatively long when compared with the other versions dated to the early Islamic centuries**, which were succinct and undetailed. This claim is refuted by the fact that there were similar comprehensive agreements drawn up before and after the Baqt Treaty like the Alexandria Treaty in 21/640.\(^{42}\) In addition, three scholars emphasized the authenticity of the treaty through different approaches. Albrecht Noth found, after studying twenty-seven treaties from the early periods of Islamic conquests, that the

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external structure of the al-Baqt Treaty is consistent with the predominant characteristics of these treaties. (43) Similar conclusions reached by Wadād al-Qādī through comparing the early treaties with the characteristics of original administrative documents written on papyrus. She also argued that the observation of the similarities between them undoubtedly enhance its authenticity, and that they all belong to the same era. (44) Furthermore, Levi Ruby compared al-Baqt Treaty to the local surrender agreements during the Roman and Byzantine Periods, and he noted that detailed agreements were prevalent in the Near East from early times onwards, and therefore this strengthens its authenticity in general. (45)

B. The Nūbiāns defeated the Islamic forces, and therefore, there was any reason for Nūbiāns to submit to such terms as long as they were more powerful than Muslims. However, the Nūbiān victory, as mentioned before, was in the first campaigns that took place during the rule of ‘Amr ibn al-‘As but not ‘Abdullāh ibn Sa’d ibn Abī as-Sarḥ. This is supported by several narrations from the second and third century, which indicated that the Nūbiāns who pursued truce with Muslims, (46) which cannot be true unless they themselves were subdued and overpowered by Muslims.

C. The treaty included a specific term concerning a mosque in Dongola, which contradicts the narration of Ibn Sūlaym al-Uswānī, the Egyptian diplomat, who was dispatched to Nubia in 386/996. He recorded that he celebrated the Muslim ʿĪd al-Adhā (Festival of Sacrifice) with about sixty Muslims outside the city of Dongola. That means there was no mosque in the city.\(^{(47)}\)

The above-stated claims can be challenged as follows:

First, the term 'mosque' was used in its wider sense, which means Muṣallā (a prayer site). Muṣallā refers to a space allocated for performing prayers, and does not mean the architecturally designed mosque as it is known nowadays. This Musallā was built outside the city gate of Dongola, not inside it. This fact is clearly sustained by the narration of Ibn Ḥazm (d. 456/1036), as he said that Saʿd: “built a mosque in the finā’ (near or courtyard) of the city gate of the capital of their kingdom, and made it a condition that they keep it forever”.\(^{(48)}\)

Second, what intended by Ibn Sūlaym, that they went outside the city of Dongola to perform ʿĪd al-Adhā prayers, had nothing to do with mosque, but because it was their duty as Muslims. In the light of the Prophet's tradition, ʿĪd al-Adhā prayers should be performed out the city, as ibn Qudāmah (d. 620/1223) said, “There is no report that the Prophet (PBUH) preformed ʿĪd prayers in his mosque except when there was a reason or excuse (rain). This is the consensus among Muslims”.\(^{(49)}\)

Hence, a number of scholars supported the authenticity of the

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Maqrīzī's text such as Carl Heinrich Becker,\(^{(50)}\) Trimingham,\(^{(51)}\) and Majid Khaddurī.\(^{(52)}\) In addition, the Egyptian Exploration Society found four papyrus scrolls in Qasr Ibrīm in 1972. One scroll is an early Arabic document, which is an official letter of complaint from the Abbasid Governor of Egypt, Mūsá ibn Kaʾb in the year 141/758, to the King of Nubia. This letter confirms the accuracy of many of the treaty provisions reported by al-Maqrīzī.\(^{(53)}\) The three first lines demolish what has been said that ‘Abdullāh ibn Saʿd ibn Abī as-Sarḥ did not gain victory over the Nūbiāns, as Mūsá ibn Kaʾb wrote “You know what you reconciled upon and committed yourselves to the fulfillment of it”. This indicates that the Nubians bound themselves to fulfill previous stipulations, in return for “preserving your blood and property”. Moreover, the main topic of the letter was directed to the lack of the Nubian commitment to the treaty, as it stated:

“You do not bring to us what you owe of the baqt about which a peace agreement was made with you, nor do you return those of our slaves who run away to you; nor are our merchants safe among you; nor do you hasten to permit our messengers to return to us”.\(^{(54)}\)

In this regard, Plamley said, “What has been suspected by some as being an invention of later Arab historians is now seen to be

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\(^{(53)}\) This letter was Translated to English by Plumley, “An Eighth-Century Arabic Letter to the King of Nubia”, The Journal of Egyptian Archaeology, Vol. 61, (1975), pp. 241-245.

\(^{(54)}\) Ibid.
fact”.\(^{(55)}\) and Michael Brett noted that the recovered correspondence makes reference to the Baqt.\(^{(56)}\)

The earlier discussions prove the authenticity of the Treaty. It is worthwhile that the subject of this study will not be affected whether al-Maqrizi’s text is authentic or not, nor it will be affected whether the Nūbiāns had to conclude this treaty because of Muslims’ victory over them, or their actual intentions were to conclude a reciprocal trade treaty. What matters here is the actions of the Islamic State, and its perspective to the foundations that governed the Islamic-Nūbiān relations. The Islamic State, led by one of the Righteous Caliphs, agreed to stop any attack on Nubia and granted the Nūbiāns peace, in exchange for certain conditions. These compelled the Nūbiāns to stop their raids on the Egyptian border, give the annual quota of baqt, and not to attack Muslim merchants or diplomats. This understanding by the Islamic party is undisputedly confirmed in historical sources. Next, we examine several texts, written by a number of Muslim scholars that discuss the conditions of the treaty and its nature. These texts are considered an additional evidence confirming the authenticity of the treaty.

5- Defining the nature of Treaty and Its Place in the Islamic Jurisprudence.

Islamic law, as interpreted by the jurists of the classical period, allows the state to conduct peace treaties with non-Muslims. These treaties can be categorized, according to the choice of the parties, under two headings:

A. The temporary peace treaty, usually called Muwāda'ah, or

\(^{(56)}\) Brett, Approaching African History, p. 152.
similar terms such as Muhādna, Hudna, Ṣulḥ, or Muṣallaḥa. It means a treaty of reconciliation that puts an end to physical conflict for a temporary period.\(^{(57)}\) The non-Muslim party, under this kind of treaties, has the right to enjoy peace in their own land, and Islamic Laws are not applied upon them. However, they are obliged to refrain from waging war against Muslims.\(^{(58)}\) As a result, this type of the temporary peace treaty grants non-Muslims a complete protection for their wealth and lives, and immunity against captivity.\(^{(59)}\) It is worth mentioning that, under this kind of treaties there is no obligation on Muslims to protect the non-Muslim party against the attacks waged by other parties.\(^{(60)}\)

**B. Permanent peace treaty** called ‘Aqd al-Dhimma, which allows non-Muslims to stay in Dar al-Islām, keep their faith, and enjoy the protection of the Muslims. Provided that they commit themselves to pay Jizya and accept the general rulings of Muslims.\(^{(61)}\) This kind of treaties serves multiple purposes including urging non-Muslim to abandon fight, and offering them the possibility of converting to Islam through their close contact with Muslims, which may lead to a better understanding of Islam.\(^{(62)}\)

Inductive reasoning was employed to specify the vocabulary

\(^{(59)}\) Al-Kāsānī, Badā‘i‘ al-Sanā‘i‘, Vol. 7, p. 106.
items and terms used by different historians in describing al-Baqt treaty. The list of Muslim historians begins with Ibn ‘Abd al-Ḥakam (d. 257/871),\(^\text{(63)}\) al-Balādhurī (d. 278/892),\(^\text{(64)}\) al-Ya’qūbī (d. 284/897),\(^\text{(65)}\) al-Ṭabarī (d. 310/923),\(^\text{(66)}\) al-Masʿūdī (d. 346/956),\(^\text{(67)}\) Ibn Kathīr (d. 703/1373),\(^\text{(68)}\) Ibn Khaldūn (d. 808/1406),\(^\text{(69)}\) and ends with al-Maqrīzī (d. 845/1442).\(^\text{(70)}\)

As a result, the induction revealed that seven historical narratives mentioned the term ‘al-Ṣulḥ’ and its derivatives to describe the treaty, while the terms ‘Muwāda’ah’ and ‘Hādna’ were used twice for each. In addition, ‘Mu'aqda'ah’ and ‘Amān’ were used once. As have been noted, there is an agreement among Muslim historians that al-Baqt is a temporary peace treaty. It is also confirmed by the lack of the requirements of ‘Aqd al-Dhimma, which requires the submission of the covenants to the authority of Muslims, and paying Jizya to protect them against any attack, and this, was not available in the case of Nubia.

While the jurists' records showed a total agreement that al-Baqt was a temporary Ṣulḥ treaty, and therefore it is a temporary peace treaty, the records showed disagreements among the jurists regarding the legitimacy of “al-Baqt clause", which led to a division among them as follows:

A. The Islamic Jurists of Iraq: they confirmed that al-Baqt treaty considered Muwāda'ah. Therefore, buying Nubians, whom are enslaved, is forbidden, as they are entitled to Amān pursuant to Muwāda'ah, and Amān does not permit slavery.\(^{(71)}\) Muhammad ibn al-Ḥasan al-Shaybānī (d. 189/804) stated that “the other party of Muwāda'ah offers a hundred souls of their offspring or their wives, Muslims cannot accept them, as Amān protects them against slavery”.\(^{(72)}\) The above emphasizes the sanctity of the enslaved ones who enjoy Amān. Hence, when slave traders kidnap some of these people, Muslims will be prohibited from buying them, and this could represent a prelude to the prevention of human trafficking.

B. The Islamic Jurists of Madīnah: Imām Mālik (d. 179/795) adopted a straightforward objection stance when he disallowed buying those who enjoy Amān or their offspring, if they are enslaved by a third party. In this regard, it was narrated that Mālik stated: “when Nūbiāns are kidnapped or enslaved, Muslims shall be prohibited from buying them”,\(^{(73)}\) and he added: “Their children have the same rights as their parents”.\(^{(74)}\)

C. The Shāfi‘ī Jurists: The Shāfi‘ī Jurists: while the Shāfi‘ī records had not touched upon al-Baqt Treaty, they agreed that temporary peace treaties oblige Muslims to “guarantee and protect the lives and wealth of covenancers, under the force of Hudna. Likewise, Muslims are required to refrain from attacking their lives, wealth,

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or abusing their honor”.

D. The Ḥanbali Jurists: despite the absence of texts referring to al-Baqt treaty, their records, pertaining general Amān, clearly disallowed enslavement of people under Hudna. They also obliged Muslims not to buy them from those who enslaved them on a faith-based background: “the duty of the caliph to protect the people of Hudna from Muslims is certain, because they are protected by Hudna and therefore Muslims are disallowed to buy them if they are caught in the captivity of disbelievers”.

E. Al-Awzā’ī the Jurist of Shām: he permitted the “Baqt clause" considering that Sharī’ah Law does not apply to them (Nūbiāns).

F. The Islamic Jurists of Egypt: the Islamic jurists of Egypt, particularly Yazīd b. Abī Ḥabīb (d. 128/745) and his student al-Layth ibn Sa’d (d. 175/791), are considered the main advocates of al-Baqt Treaty with all its conditions. Yazīd b. Abī Ḥabīb related: “The agreement made between the Egyptians and Nubia is not an agreement of reconciliation (Muwāda’ah), but a truce of safety, under which we supply them with a certain quantity of wheat and lentils and they give us slaves (Raqiq)”.

“We know the land of Nubia better than Mālik ibn Anas. Under the peace treaty, we are committed not to carry out raids into their territory, but not to prevent enemies from attacking them. Whomsoever their king reduces to slavery, or the slaves that they subjugate when they raid each other, can be legally bought; but

(77) Abū ‘Ubayd, Kitāb al-Amwāl, p. 236.
(78) Ibid, p. 216.
those whom the Muslims reduce to slavery by abduction (bughāh) or by stealing (surraq), are illegal to buy.” (79)

While the previous text explicitly referred to the fact that the Egyptian jurists banned buying Nūbiāns if kidnapped by slavers, they still had no objection against buying slaves possessed by Nūbiān people. They believed that the al-Baqt Treaty had a limited impact as they viewed it as a simple truce, allowing exchange of 'gifts'. Additionally, slaves used to be given under the Nūbiāns' will. The motivation of the Egyptian jurists practically Yazīd bin Abī Ḥabīb Ibn Suwayyid, who was originally a slave from Nubia,(80) could be the desire to spread Islam among the Nūbiāns and to facilitate their movement into the Islamic region. However, the Egyptian justifications seem to be weak and go against the requirements of Muwāda'ah as set by Islamic jurist mentioned above. The people of the Muwāda'ah, their families and slaves are granted Amān. Therefore, Imam Mālik's view is the most probable opinion, and he advised other jurists that they should consider the “Baqt clause" at least as a doubtful matter,(81) and therefore, must be abandoned,(82) given the severity of this issue. Slavery, as confirmed by one of the jurists, is a kind of torment and death would be preferred to losing

(82) In the light of the Prophetic tradition narrated by al-Bukhārī and Muslim: “Verily, that which is lawful is clear and that which is unlawful is clear, and between them are the things that are ambiguous, [things] about which many of the people have no knowledge. Thus, if someone is wary of the ambiguous things (shubuhāt), his religion and honor are sound [...]”. Muḥammad al-Bukhārī, Saḥīh al-Bukhārī, Dār ibn Kathīr, (1987), Vol. 1, p. 28, Hadīth No. 52; Muslim, Saḥīh Muslim, Vol. 3, p. 1219, Ḥadīth No. 1599.
freedom.\textsuperscript{(83)}

In short, jurists like Imām Mālik have done well when they banned purchasing people who have Amān in case of being captured by slavers, averting an important means of slave trade.

This opinion tally with Maqāsid (objectives) of Islamic Shari‘ah, concerning the freedom of humanity as Islamic Shari‘ah has pushed forward towards a clear objective, the termination of slavery, which is conducted through a gradual mechanism. It has legislated emancipation of slaves as one of the dispensations of Zakāh (alms-tax) revenues. Further, Islamic Law encouraged various forms for emancipation and prescribed Manumission as atonement for the accidental killing of a believer, the breaking of an oath, perjury, expiation of Ṭihār,\textsuperscript{(84)} intentional fast-breaking, abortion, and expiation of other sins as stated in Islamic law. In the same vein, Islamic Law in accordance with Sūrat an-Nūr (24:33) allows slaves to purchase their own freedom in instalment through a formal contract called (Mukātaba), and urged the owner to help them in this effort, and another kind of emancipation is occurred through the master’s will (Tadbīr). By which, the master would declare that his slave would be free after his death.\textsuperscript{(85)} In addition, Islam

\textsuperscript{(84)} Ṭihār is a pre-Islamic formula of divorce effected by the husband when he likens his wife to the back of kinswomen within the prohibited degree, e.g., he may say to his wife: “Thou art to me like the back of my mother”. Islam considers Ṭihār as an extrajudicial oath, which requires an act of expiation to undo: the husband either manumit a slave or fast for two successive months or feed sixty poor people. Frederick Klein, \textit{The Religion of Islam}, Taylor & Francis, (1985), p.193; Susan Ann SpectorSky, \textit{Women in Classical Islamic Law: A Survey of the Sources}, Brill, (2010), p. 37.
recognized “the social reality of cohabitation with slave women and went on to explicitly acknowledge the status and rights of those women and of their offspring”. (86) Finally, Islam orders beneficence and kind treatment for slaves. In brief, Islam had a built-in system of manumission that provided for gradual exit from servitude into freedom. Unfortunately, Muslims retreated, lagging behind backward heritage of other nations. Therefore, instead of prevention and elimination of slavery, their market flourished once again. Hence, all practices of buying and selling slaves out of war context in the Islamic history are illegal and go against the Islamic Sharī’ah. (87)

Back to al-Baqt Treaty, the 360 slaves condition has no significance per se as it can be replaced nowadays by any other goods such as machines, weapons...etc.

6- The Jurisprudential Importance of the Treaty: There are three aspects to be considered as indicators of the jurisprudential significance of this treaty:

First: the Baqt Treaty confirms that the three alternatives (Islam, Jizya, fight) is not an absolute compulsory edict in all conditions. (88) Although, Jizya used to be considered as the ideal sign of non-Muslims’ commitment to the Islamic state and peace, Islamic history has shown the possibility of accepting other arrangements not involving Jizya. (89) Al-Baqt Treaty proves that

there is a wide margin where relations between Muslims and others can be regulated according to certain conditions, where the condition of Jizya is excluded.

Other treaties confirmed this also. Prior to al-Baqt Treaty and in time of the caliph, ‘Umar b. al-Khaṭṭāb, when Muslims conquered Bilād al-Shām, al-Jrājimah\(^90\) sought for peace.

“The terms were made providing that al-Jrājimah would act as helpers to the Muslims, and as spies and frontier garrison in Mount al-Lukām. On the other hand, it was stipulated that they pay no tax, and that they keep it for themselves the booty they take from the enemy in case they fight with the Muslims. In these terms were included besides the Jrājimah all those who lived in their city”.\(^91\)

Additionally, the Prophet (PBUH) himself made a number of treaties without setting Jizya as a condition such as his treaties with Banī Ḍumrah,\(^92\) Banī Ghaffār\(^93\) and Ṣaḥīfah al-Madīnah.\(^94\)

Furthermore, The earlier alternatives (Islam, Jizya or fight) are offered, as Salāmān al-‘Awdah stated, when the two armies meet face to face after causes of war have been established such as the


\(^{93}\) Ibid. p. 268.

\(^{94}\) Ibid. p. 59.
case of aggression or fitnah (religious persecution), and therefore it is a matter of war between two armies.\(^{(95)}\) Islamic Law obligates the Muslim army to be over-reserved, as it has to introduce these choices as a final warning before military operations begin. \(^{(96)}\) Therefore, this represents a rule, among others, of declaration of war imposed by Islamic Shari‘ah. We can now understand the Prophet’s commandment to his army’s leaders: “When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and withhold yourself from doing them any harm...”. \(^{(97)}\) Thus, when war breaks out between Muslims and others, Muslims demand their enemy either to embrace Islam or pay Jizya, which puts an end to the war and brings reassurance that no aggression or fitnah may occur in the future.

It is, therefore, inaccurate to presume that the Muslims' relations were based on either permanent war or isolation. Even through the

\(^{(95)}\) Hajar al-Zāwiyah with Salmān al-‘Awdah, “Al-Jihād”, episode 12, Directed by ‘Abdullāh Mudayfir, MBC1, episode 12, 15/10/2005.

\(^{(96)}\) This is supported by what Al-Ṭabarī reported. He mentioned that the people of Samarkand complained to ‘Umar ibn ‘Abd al-‘Azīz, the Umayyad caliph, that Qutaybah ibn Muslim al-Bāhilī, a Muslim commander, has conquered their city without prior notice to the three options normally offered to conquered peoples by Muslim commanders. ‘Umar ibn ‘Abd al-‘Azīz, in his response, wrote a message to Sulaymān Ibn Abī al-Surā, the Muslim governor of Samarkand, command him to let the case be heard by the local judge, and if the judgement is in their favour, he must force out the Muslims to their camps outside the town. As a result, the judge Jamī’ Ibn Ḥādir adjudicated that the Muslims must withdraw to their camps in order to face the people of the town on an equal footing and offer them the three options, the people of the town willingly accepted the existing situation, chose peace, and embraced Islam in multitudes. Al-Ṭabarī, Tārīkh Al-Ṭabarī, Vol. 6, p. 567. Ḥilmī Zawātī, Is Jihād a Just War? War, Peace, and Human Rights under Islamic and Public International Law, Edwin Mellen Press, (2001), p. 20.

\(^{(97)}\) Muslim, Sahīḥ Muslim, Vol. 3, p. 1357, Hadīth No. 1731.
hostel environment of the first centuries where Muslims forced to fight to protect their lives, Islamic call, and to liberate the surrounding nations, “Islam was among the first to develop a system that restricts war, imposes justice-based rights and duties, forbids corruption, and protects the weak. In short, Islam extends relationships among Muslims and others on the basis of friendship and peace”, (98) by using treaties as tools to organize Islamic relations for peaceful co-existence, trade, and conflict resolution, and this was not an anomalous position rather as a shared strategic policy. In brief, Muslims can and should resort to any choice that serve Islam and its call, as it is the core of the foreign relations between Muslims and non-Muslims as confirmed by the many Islamic sources. (99) The Baqt Treaty served the Islamic interests, for this reason, Muslim’s rigid adherence to this Treaty continued, as pointed out earlier, more than six hundred years. Muslims respect to this treaty in spite of their great power they had in these centuries is a concrete proof that they believed the treaty was legitimate, and peace can be established with non-Muslims without Jizya, provided that the non-Muslims party commits not to attack Muslims, obstruct Islamic missionaries, or ally against them. (100)

Second: Al-Baqt Treaty demonstrates that soft force is not less, powerful than military force in achieving the interests of the Islamic state. Historical records show that both parties: the

Muslims and the Nūbiān were committed to the treaty for a long period. The Nūbiāns were generally obligated to the treaty, which prompted some Arab historians to describe them as “people of loyalty and commitment to covenants”.\(^{(101)}\) The reasons for the Nūbiāns's commitment can be summarized as follows:

**A.** The treaty secured their territory from any invasion, conquest or submission for direct Islamic rule. Thus, they, in practice, kept their faith and local traditions for centuries.\(^{(102)}\)

**B.** The treaty provided them with an opportunity to devote time and effort for their enemies who used to raid Nubia: ‘Ulwah Kingdom in the south and the Beja tribes in the east.\(^{(103)}\)

**C.** The Nūbiāns benefited from the increased movement of trade traffic between them and Islamic Egypt, which secured some of their needs for food, clothing, and other necessities.\(^{(104)}\)

On the other side, Muslim rulers preferred to keep the treaty for the following reasons:

**A.** Though the treaty did not subjugate Nubia under a direct Islamic influence, Muslims managed to secure their southern border, which enabled them to focus on other fronts in the Mediterranean and North Africa.\(^{(105)}\)

B. The treaty entitled Muslims to enter the Nūbiān territories safely, which helped to create a secure environment that enabled the commercial convoys between the two countries to flourish.\(^{(106)}\)

C. The terms of the treaty enabled the Nūbiāns to become a constituent of the Egyptian community, as some Nūbiān figures started to emerge on the scene including, Yazīd Bin Abī Ḥabīb al-Nūbī who founded the Islamic Jurisprudence in Egypt and was among three who undertook Fatwā\(^{(107)}\) in Egypt. In addition, he was the second man in order to pay allegiance for any new Caliph, and the strongest reference in terms of Islamic Jurisprudence and historical narrations. The list also included the well-known poet Naṣib Bin Rabāḥ and the famous Ṣūfī, Dhū al-Nūn al-Miṣrī.\(^{(108)}\) Furthermore, the Egyptian army benefited of the Nūbiān skills in fighting. As their number increased in the army, a special clerk was appointed to pay their salaries. When Aḥmad ibn Ṭūlūn (d. 953/1546), the governor of Egypt, built al-Qaṭāʾi, a large city near al-Fuṣṭāṭ, in 256/870 to accommodate his soldiers, the Nūbiān soldiers had their own neighbourhood, named after them.\(^{(109)}\)

D. The treaty paved the way for migration of Arab tribes through different routes, Muslim evangelistic, culture and

\(^{(108)}\) Masʻūd, al-ʻIslām Wā al-Nūbah, p. 133.
language flow smoothly.\(^{(110)}\)

While the treaty did not subjugate Nubia directly to the Islamic influence, freedom of trade and faith helped to spread Islamic effects and to create a political, social and religious change in Nubia. Eventually, it became part of the Islamic world. It goes without saying, therefore, that Muslims managed to achieve through this treaty what they could not achieve through war. Hence, it would not be an overstatement to say “the purposes of the treaties concluded between Muslims and non-Muslims in the pre-modern era were not limited. Rather, Islamic rulers could determine, evaluate, and decide upon the potential short- and long-term advantages for the Muslims.”\(^{(111)}\) One of advantages that has been be accounted for is the freedom of faith as shown next.

**Third: The treaty avers that the Islamic Law of international relations distinguishes between countries that guarantee freedom of faith without restrictions and those who violate it and oppress their citizens.**

When discussing the use of force in Islam various factors should be taken into account. Initially, The world in which Islam emerged had a hostile nature where war was the natural state and the unquestioned norm,\(^{(112)}\) it was practically impossible for Islamic Law of international relations to have been based on principles of

peaceful co-existence in the modern sense of this term. \(^{(113)}\) Naturally, state was engaged in hostilities against all those who did not have a specific treaty with it. The other nations had the same policy through history as Khālid Yahyá Blankinship rightly points out:

“The Assyrians, like the Romans under the republic, used to take to the field every year against someone. Frequently, if a treaty did not exist, a state of war was assumed. Even the United States and its allies in modern times have preferred a policy of obtaining the unconditional surrender of the enemy where possible, as in the Second World War”. \(^{(114)}\)

However, In an age when 'sack and pillage' was the usual procedure followed by a victorious army on entering a conquered city, the Muslim policy was based on the promise of religious tolerance and a more egalitarian and fairer society. \(^{(115)}\) Contrary to commonly held views, “it seems obvious that the Arab legions considered themselves as liberators of oppressed people as well as carriers of Islam”. \(^{(116)}\) They generally demonstrated an far more tolerance to followers of other faiths, specifically to Jewish and Christian Communities who enjoyed a better status, in both religious and civil affairs, under the jurisdiction of Islam in


comparison to religious minorities within the Christian West. \((117)\)

In addition, Islamic history shows that Muslims distinguished between countries that protect the freedom of religious belief and those who violate it. One main factor that enabled the relation between Muslims and Nūbiāns to enjoy stability for centuries is the Nūbiāns' approval to allow Muslims to perform their worship, maintain the mosque that Muslims built near Dongola city and proceed missionary activity. In light of the above, provisions of Jihād al-Ṭalab, set by the traditional Muslim jurists, should be viewed on the basis that it was dealing with a human reality governed by tyrannical regimes, who deprived their people from the right to freedom of faith. These regimes, which taking full advantage of the poor communication, managed to isolate their people from any external influence. Hence, fighting was the best choice to serve Islamic Call and lift fitnah. In his interpretation of the this verse: “for fitnah is more grievous than killing” (Sūrat al-Baqarah 2:191) Ibn Taymīyah made it clear that resorting to fight was the only available means of lifting fitnah.\((118)\) At present, means of lifting fitnah can be provided by laws that guarantee freedom of faith. \((119)\) In light of the fact that, “the religious freedom of Muslims is more secure in some non-Muslim countries than in a few Muslim ones”. \((120)\)

There is no reason for fighting Non-Muslim countries who guarantee religiousness for individuals, and they neither offend our
country nor prevent Islamic Call on their soil via preachers and Da’wah centres, even if they do not pay Jizya, because Jizya as a financial gain has never been an objective of Shari’ah; Imâm al-Juwaynî (d. 478/1085) elucidated that Jizya “is not intended per see. It is contradicts the virtue of al- Shari’ah to sacrifice and mislead lives on the pretext of gaining booties.”.\(^{[121]}\) In this regard, strong evidence is provided by al-Baqt treaty, as Jizya was excluded.

**8- Conclusion.**

In light of the above study of al-Baqt Treaty, the following results may be stated in brief:

- The present study revealed the flexibility of Islamic jurisprudence in the field of international relations as the relations between Muslims with non-Muslims could not be reduced to three choices, Islam, war, or Jizya, which are not of the general rule. Further, there is a major approach within Muslim jurisdictions to use ijtihâd (juridical reasoning) to deduce laws taking into consideration the new geopolitical reality and the spirit of modern era.

- The Baqt Treaty demonstrates that soft force is not less powerful than military force in achieving the interests of the Islamic state. Through this treaty, Muslims were able to achieve what they could not achieve through war.

- Al-Baqt Treaty confirms that the Islamic Fiqh, in international relations, distinguishes between countries that guarantee freedom of faith without restrictions and those who violate it and oppress their citizens.

- This study revealed that Islamic jurisprudence contributed to the reduction in human trafficking.

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معاهدة البقط بموجب القانون الإسلامي

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ملخص البحث باللغة العربية:
ينصب محور هذه الدراسة على معاهدة البقط المبرمة مع النوبة في العام ٦٥٥ هـ، والتي حكمت العلاقات بين مصر الإسلامية والنوبة لأكثر من ٦٠٠ سنة. وتهدف الدراسة إلى إبراز مضامينها الفقهية، باعتبارها سابقة شرعية تسمح، كلما اقتضت المصمحة العامة، بتنظيم علاقات الدولة الإسلامية وفقًا لها، وتكشف، على وجه الخصوص، مرونة الفقه الإسلامي في مجال العلاقات الدولية. وقد تمت هذه الدراسة بالاستناد بشكل رئيس إلى المنهج الوصفي التحليلي بهدف تتبع وتحليل الجوانب الفقهية لهذه المعاهدة. هذا، وخلصت الدراسة إلى أن معاهدة البقط تؤكد أن البدائل الثلاثة (الإسلام والجزية والقتال) ليست حكماً إلزامياً مطلقاً في جميع الظروف. علاوة على ذلك، فإن معاهدة البقط تدل على أن القوة الناعمة ليست أقل فعالية من القوة الصلبة في تحقيق مصالح الدولة الإسلامية. كما تؤكد هذه المعاهدة أن الشريعة الإسلامية تميز في العلاقات الدولية بين الدول التي تضمن حرية الإيمان دون قيود، وذلك التي تنتهي بها وتصطبغ مواطنيها وأخيراً، كشفت هذه الدراسة أن الفقه الإسلامي ساهم في الحد من عملية الاتجار في البشر.

الكلمات المفتاحية: معاهدة البقط؛ النوبة؛ استخدام القوة في الإسلام.

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