COMPATIBILITY OF SHI'A ISLAMIC DIPLOMATIC LAW AND MODERN INTERNATIONAL DIPLOMATIC LAW

TOUBA MESBAHI

Submitted in fulfilment of the requirements for the degree of

Doctor of Philosophy

Department of Theology and Religious Studies

School of Critical Studies

College of Arts

University of Glasgow

June 2024

ABSTRACT

The discussion around the compatibility between the two legal systems of International diplomatic law and Islamic diplomatic law (*sīyār)* is often stigmatised by the debate on terrorism and *jihād,* and the notations of *dār al-islām* and *dār al-ḥarb*. Alternatively, controversies over religious rulings by particular Muslim scholars and their Islamic jurisprudential positioning on human rights exacerbate the debate further. This research has attempted to move beyond the exponents of the exclusivist theories by employing an analytical approach to the debate and examining the strengths and weaknesses of arguments made in favour of compatibility or tension in a logical manner. However, any discussion around Islamic diplomatic law encounters misconceptions around the uniformity of religious doctrines and beliefs that constitute the structure of *sunnī* and *shī'ī* political standing. This is of particular importance considering the conduct of modern sovereign *shī'ī* Islamic States such as Iran, and crucial events like the U.S. embassy seizure. Thereby, this research has attempted to review, critique and evaluate the accuracy of arguments made, based on the *shī'a ithnā-'asharī* School of thought that has been missing within the literature.

Consequently, offering a unique approach to the examination of compatibility between *sīyār* and modern International diplomatic law, particularly with regard to the concept of diplomatic immunity and privileges through its inclusion of the *shī'ī* thought. Moreover, by considering the *sunnī* and *shī'ī* jurisprudential approaches to the use of sources, combined with a historical review of various events such as the Charter of Madīnah or the Treaty of Ḥudaybīyyah, this research has also identified their similarities and differences including the use of methodological techniques. This allows a critical review of the positioning and adaption of religious rulings by contemporary *shī'ī* jurists in overcoming the challenges of modern times including those of International relations. The approach also allows an evaluation of the ratification of globally accepted frameworks such as the 1961 Vienna Convention on Diplomatic Relations by Muslim States and those identifying themselves as Islamic, with the example of the Islamic Republic of Iran.

Table of Contents

ACKNOWLEDGEMENTS

As a PhD student completing my thesis, my life has revolved around words, but at this moment, words cannot express my gratitude for the efforts of those I have had the honour of working with during my research.

I need to begin with the two influential personalities to whom my knowledge of the *shī'a ithnā-'asharī* doctrine is owed; ʿAllāmahs Abbas Mesbahzadeh and Isa Ahari. To my brilliant supervisor Dr Lloyd Ridgeon, for making my work possible through all the different stages and inspiring me to become a better academic. To my co-supervisor Dr Saeko Yazaki and the entire TRS department. To Claire, Lesley and Laura at the graduate school, to our librarian Richard Babty, and to the countless other academics who have contributed to my education, particularly in the field of International relations. To Āyatullāh Fazil Milani and Prof Ali Paya who were always there to answer my questions. Thank you for your invaluable support and guidance. Sadly, Āyatullāh Milani who was one of the leading *shī'a* religious authorities in the United Kingdom passed away during the final stage of my thesis. This made the accomplishment profoundly bittersweet. Finally, I would like to take this opportunity to thank my examiners Dr Mohammad Reza Kalantari and Dr Farhad Shafti for giving me the opportunity to discuss my findings and benefit from their expert guidance. I would also like to thank the convener of my viva, Dr Mia Spiro for guiding me through the process and making a difficult task easier.

This is for my family, grandfathers and grandmothers, who were the beacon of light in my life and all those amazing family members who were the cause of so much joy and heartache, my beautiful, smart and kind cousin, who had just started university. May you all rest in peace. To my mother and father, I could never thank you enough for all that you do for me, I love you and I pray I can make you proud. To my two younger brothers, you are my best friends. Finally, not that it is a competition, but I just submitted my PhD so I am probably the favourite child now.

As always, thank you, Lord, my closest friend, God.

AUTHOR'S DECLARATION

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Touba Mesbahi

CHAPTER 1 –INTRODUCTION

1.1 Introduction

The study of the *shī'a ithnā-'asharī* (Twelver) doctrine [1] had been a neglected field in Islamic Studies, with the approach taken in literature being that of the *sunnī* majoritarian perspective. [2] The 1979 Islamic revolution of Iran brought the *shī'a* into the limelight, their successful involvement in politics had made them a formidable force in the Middle East (Scharbrodt, 2020; 73). [3] The Islamic revolution of Iran had proved to be one of the most perplexing challenges to the American policymakers, and to some extent the international community. The issue that they have continued to wrestle with after the event has been the notation of engagement; to what extent should they embrace or shun Iran, and should they continue to marginalise the *shī'a*? Nevertheless, in reacting to the headlines about Iran or the *shī'ī*, the available literature has regularly failed to take account of complexities. Thus, it is easy to fall victim to the flawed generalisations of historical and current events. Decades following the Islamic Revolution of Iran, there continues to be a sense of ignorance about the *shī'a ithnā-'asharī* doctrine [4] behind events taking place in Iran or elsewhere in the Near East. 'If we are set to understand revolutions as bringing about deep structural change' (Lassner, 2000; 92), then we must make a start in identifying the differences and similarities of thought in the Muslim majority populated States, and those identifying themselves as Islamic. This is true many years later after the occurrence of the Islamic revolution exemplified by the comment made by the American Senate leader [5] following the 9/11 attacks within the United States of America, confessing 'I know a lot about many things but nothing about Islam and the Muslim world – and neither do most of my colleagues'. More recently, the current U.S. President Biden has admitted 'I realise now how little I knew about the details of Islam, I knew about it, but I didn't know the difference that existed, I didn't (understand) what the hidden Imām [6] - I mean. So I went out and I hired a full professor - a professor of Islamic studies who came to work with me' (Biden, 2022; 1). So with regards

[1] Branch of Islam following twelve Imāms after the Prophet, the first being Imām 'Alī.
[2] Branch of Islam following the leadership of the four Caliphs after the Prophet.
[3] 'The closeness between politics and Orientalism' in the production of knowledge and academia on Islam is an issue of concern to Edward Said (Said, 1977; 96). He argues that 'politics in the form of Imperialism bears upon the production of literature (Said, 1979; 14).
[4] This revolves around the necessity of the divine leadership of Imāms after the Prophet, beginning with Imām 'Alī and finishing with al-Mahdī, the last divinely appointed leader.
[5] No name is given by Esposito (Esposito, 2003_a: 120).
[6] Reference is made to *shī'a ithnā-'asharī* Imām al-Mahdī..

to diplomatic law, is there a dissonance between International law and Islamic law particularly with that of the *shī'a ithnā-'asharī* perspective, and are we witnessing a gulf between the criminal law of Western societies and that of Islamic societies and States such as Iran?

The shock of the Islamic Revolution in Iran 'set in motion a search for its causes' (Keddie, 1983; 579), despite of many religious, ethnic, and cultural warning flags present beforehand. The search is understandable given previous misunderstandings when even the same author had previously viewed Iran as 'an island of peace'. Commenting with confidence that 'the continued growth of government power, and the expansion of the army, the bureaucracy, and of secular education, even in the villages, it appears probable that the political power of the *'ulamā'* (scholars) will continue to decline as it has in the past half-century' (Keddie, 1972; 229). The number of works written about the features of this revolutionary upheaval is considerable, if one looks at the first decade alone; countless academic studies could be identified. [7] However, most of the published work on the Iranian revolution are strictly political interpretations of the affair, and relatively few accounts deal with the ideological, jurisprudential or legal aspects. What has prompted this research on the topic of the compatibility of *shī'a* Islamic law with International law is the rate at which States such as Iran and the *shī'ī* School of thought have been misunderstood. There is a general sense that they have been stigmatised with the term 'terrorism', at times without any discussion around their perspective stance. [8] Iran was included by the U.S. in the list of States sponsoring terrorism as far back as 1984, but more recently the Americans have alleged Iran has provided 'financial, material, and logistical' assistance to terrorist militants around the globe such as the Ḥizbullāh in Lebanon, Ḥūthī in Yemen, and other militant *shī'a* groups in Iraq and Syria (Chitadze, 2022; 146). [9] However, it could also be argued that the misinterpretation and misapplication of Islamic law are often made by a few Muslim groups, arguably non-State actors, seems to justify the position of those who impute terrorism to Islam. [10]

[7] This includes Keddie (1981, 1983, and 1988); Abrahamian (1982 and 1988); Akhavi (1980); Arjomand (1980,1982,1984,1985 and 1988); Dabashi (1993); Ghods (1989); Milani (1994); Moaddel (1993); Parsa (1989); Rahnema (1990); and Tabari (1983).

[8] Terrorism is a difficult term to define, in fact 'the most complicated issue facing the international and academic communities in dealing with international terrorism is the formation of a generally accepted definition. Theodore A. Coulumbis and James H. Wolfe defines a terrorist as a 'non-State actor employing standard and non-orthodox forms of violence in pursuit of certain political objectives' (Celmer, 1987; 5).

[9] The U.S. government has imposed restrictions on activities with Iran under various legal authorities since 1979, following the seizure of the U.S. embassy in Tehran. For a full list, refer to https://www.state.gov/iran-sanctions/ (accessed 31/08/2023).

[10] The linking of the term Terrorism to Islam or Iran does not invoke a criminal jurisdiction or justification, as 'terrorism is a term without legal significance. It is merely a convenient way of alluding to activities,

Nevertheless, gross misperception of Islamic law and particularly *shī'a* Islamic law by some non-Muslims is also a major problem. Either way, can there simply be an argumentation that the foundational principles in *shī'a* Islamic diplomatic law and International diplomatic law are compatible? [11] If so, then the events such as the Tehran U.S. embassy seizure and the consequent hostage crisis indicate certain tensions. The attacks that take place on diplomatic missions in the Muslim world when tensions are high, such as the recent Muslim outrage in the wake of the Swedish/ Danish Qur'ān burning instances, suggest that such compatibility is questionable. Alternatively, could the same be attributed to International law and policies of non-intervention often associated with those who have extended their power and influence through colonisation? Where there are incompatibilities, are there various mechanisms in place for resolving the differences between the two legal systems? Could these lead to the harmonizing of interpretation and application? Are these being accurately reviewed? Consequently, the idea of compatibility or tension between *shī'a* Islamic law and International law is deserving of further research. In doing so, we would need to delve into three separate fields, exploring International relations, International Law, and Diplomatic law within *shī'ī* Islam.

1.2 Literature Review

i) International Relations

There are countless number of books and articles written within the field of International relations over the years, many of which focus on the Near East. These tend to argue their thoughts on founding theories of unique relationships between nations, States, and cultures. The theoretical approach allows the representation of various parts of the world to be made, simplifying the complex reality in a specific realm of interest. Nonetheless, there has been an avalanche of new material following the 1979 Islamic revolution of Iran, even if literature focused on the Near East International relations, is regarded as being less, compared to other global regions (Hoffman, 2019; 3). Either way, literature in International relations had been dominated by the Cold War, began a change, focusing on a new threat. Thereafter, terms such as 'back to the future', [12] 'end of history', [13] 'democratic peace theory', [14] 'new world

whether of States or of individuals, widely disapproved of and in which either the methods used are unlawful, or the targets protected, or both' (Higgins, 1997; 28).

[11] This is expounded by considerable number of Muslim scholars, can be referred to Mahmassani (1966), Rehman (2005), and Zawati (2001).

[12] For further details, refer to Mearsheimer (1990).

[13] For further details, refer to Fukuyama (1989).

[14] For further details, refer to Solingen (2001).

order', [15] and possibly the most commonly used 'clash of civilizations', [16] could be found in the literature addressing International relations. This begins a new wave of theorists using old and new models to interpret events taking place, particularly in the Near East. Most address issues like the notions of security, liberty, economics, environmental factors, gender, refugees, migration, and more generally Islam. Within the myriad of literature on Iran, the focus is often geared towards Human rights and International law, international and regional politics, governance and diplomacy. The theories used are Constructivism, [17] Liberalism, [18] and Realism, [19] which 'account for important trends in Iranian foreign policy', with their own flaws preventing them from providing a comprehensive explanation (Juneau, 2015; 3). At times academics have concluded that 'no single theory can capture the complexities of Political life' (Bennett, 2013; 461), and consequently have opted for a pluralistic or eclectic approach. [20] There are also those who have concluded the Near East to be exceptional, presented as a context that defies existing theoretical arguments and approaches (Darwich, 2015; 1). Attention is also placed on the regional political dynamics and an 'Islamic awakening' (Hussain, 1988; 1005; Chubin, 2012; 16), which is regarded as testing the universality of the theories in the field of International relations. Moreover, they identify the relationship between the domestic and the international to be a crucial issue within International relations. However, in the case of the Near East and significantly for Iran, such relationship is made more complex by the presence of shared ethnicities, identities and faith, creating 'a shared normative environment and distinctive set of political rules of the game' (Mabon and Lynch, 2020; 3). Despite the intense debate occurring within the discipline regarding the Near East and Iran as a central actor within its complex political dynamics, literature on criteria, impact, and ethics of faith, and that of the *shī'a ithnā-'asharī* thought is limited. This is because traditionally religion had been marginalised by International relations, rooted in the belief of the Enlightenment period. This advocated the importance of religion to fade away and decline in society over time (Prasad, 2014; 35). However, religious revivalism inspired by the Islamic revolution of 1979 amongst other crucial events, [21] has highlighted the influence of the *'shīa* revolutionary mobilisation' as seen by the reaction of

[15] For further details, refer to Miller (1992).
[16] For further details, refer to Huntington (1993).
[17] For further details on Constructivism, refer to Akhtar and Khan (2014), Fathollah-Nejad (2021), and Thomas (2024).
[18] For further details on Liberalism, refer to Siavoshi (2007), Banai (2020), and Sadeghi-Boroujerdi (2024).
[19] For further details on Realism, refer to Ehteshami, A., Hinnebusch, R., & Fawcett, L. (2013). Gomari-Luksch (2018), and Panhwar and Behan (2021).
[20] For further details on such approach, refer to Cornut, J. (2015), Tagma and Lenze (2020), and Aminabadi and Dehghani-Firoozabadi (2021).
[21] Such as 9/11 and its aftermath, the 'War on Terror' and the coalition wars in Afghanistan and Iraq.

the American and British policies towards the Persian Gulf region (Shabana, 2020; 61; Çavusoglu, 2018; 50). Thus, the *shī'ī* aspect on various International relations related issues as envisaged by this research, on topics such as diplomacy and governance, denotes the debate of strategic importance. Moreover, the compatibility assessment of *shīa* jurisprudence concerning the world of nation-States (Cravens, 1998; 532), addresses a gap within existing literature.

The unpredictability of events in the Near East, and the pace of change in the modern world have made the current exercise of theorising International relations particularly challenging. Without seeking to expand on the theoretical basis of each model of International relations, a brief look is made at the prevalent literature for the Near East including Iran. The use of Realism is commonly made essentially because, in such a theory the nation-State is the principal actor and other bodies such as individuals and organisations have limited power (McGlinchey, Walters and Scheinpflug, 2017; 15). Subsequently, the 'self-interested States compete for power and security' (Snyder, 2004; 59), through coercive power and diplomacy. The exercise of such power is thereafter explained through discussions around defensive or offencive Realism. [22] When considerations are made of human and domestic factors, reincarnations of the realist position take place, emphasising the structure of the international system as with the neorealist, [23] and a synthesis of the two positions as with the neoclassical realist. [24] Such State-centric positioning is often central to the analysis made on Iran, essentially identifying a swing towards authoritarianism to compensate for perceived weakness. It is argued that Iran like other governments within the Near East are rational actors, competing for power in a hostile, anarchic environment shaped by the constant threat of war and subversion (Walt, 1987; 5). As such, the Near East has been turned into the 'most realist parts of the world', with a high risk of war' and extremely State-centric (Lynch, 2017; 374). The emphasis is on the significance and dominance of the State, 'seeking to prove their worth in a hostile environment' (Akbarzadeh, 2019; 1). For example, when covering Iran's nuclear capabilities, there is a defensive argument that Iran has a need to address regional insecurities posed by Imperialism. As such, it is crucial for the State to provide 'a viable deterrent capability' against such threats (Takeyh, 2003; 21), in effect identifying States such as Iran as 'prisoners of insecurity' (Manochehr, 2006; 327). There is also an argument that Iran is an aggressive State attempting to assert itself as a 'regional hegemon' (Harrison 2012;

[22] For further details on defensive -offencive approach, refer to Trevino (2013).
[23] For further details on Neo Realism, on refer to Dadparvar (2023).
[24] For further details on Neoclassical Realism, refer to Juneau (2015).

14) and thus enhance its power at any cost. The use of Realism as the model that explains the strengths and weaknesses, and challenges to the ruling order has a key theme. 'All leaders, no matter what their political persuasion' recognise the need to manage their States' affairs by seeking to survive in a competitive environment (McGlinchey, Walters and Scheinpflug, 2017; 15). For instance, this explains Saudi Arabia's changing position in light of the declining power of the U.S. and the growing influence of Iran in the region (Akbarzadeh, 2019; 14). Consequently, Realism with its clear stance on the State-centric position, power and security elements, and the realpolitik systems is considered by some as 'the most effective conceptual lens through which to analyse the region' (Hoffman, 2019; 1). The neorealist expands its interpretations through the characteristics of the international system, particularly through its anarchic structure (Mirsaeedi-Farahani, 2015; 62). For example, arguing that Iran is guided by specific properties in its foreign policy, 'characterised by a univalent structure based on hierarchy and separation of duties', responding to 'features and structural effects of the international system', without regard to its internal conditions or pressures (Dadparvar, 2023; 14). The neoclassical realist adds to its interpretations by including domestic politics in their analysis. Within such argumentation, other power resources excluding the material capabilities, which could be ideological or cultural appeal, would also be taken into consideration (Juneau, 2015; 41). For example, in identifying Iran's foreign policy by its 'ideational' source of power (Juneau, 2015, 77). However, this obscures the formation of identities centred on ideology, in effect considering Iran as a rational actor that is constrained but not necessarily driven by the *shī'a ithnā-'asharī* doctrine. Moreover, this model is not attentive to the economic factors and miscalculates inter-State relations that are linked to patterns. For instance, neoclassical realism relies on 'systemic factors to explain grand strategies and long-term patterns of foreign policy behaviour', as such it fails on 'patterns of foreign policy behaviour' of States such as Iran in response to events such as the Arab Spring (D'Alema, 2022; 26).

The use of Liberalism as a model of International relations [25] is also found in literature a'bout the Near East. Such theory is based on the view that 'human beings as innately good' and believing 'peace and harmony between nations is not only achievable, but desirable' (McGlinchey, Walters and Scheinpflug, 2017; 4). The model essentially views the State as a unit of analysis, as such 'to understand foreign policy, one must peer inside the black box of the State' (Juneau, 2015, 3). Regarded as a 'bottom-up' view of politics, it is promoted in

[25] Referred to as a 'utopian theory' or a 'theory of justice' (Jackson and Stears, 2012; 24).

International relations as the approach to politics by which 'the demands of individuals and societal groups are treated as analytically prior to State behaviour' (Moravcsik, 2001, 5). Despite the Western support of authoritarian regimes in the Near East, literature is replete with the notation that Liberalism is pursued by the U.S and Europe because it equates to a 'constitutional order that recognises individual freedoms (Gould, 1999; 3), [26] there is a contradiction between liberal values and illiberal practice. Additionally, such a liberalist platform has led to the creation of 'them' and 'us' arrangement, separated out by the State's stance on Western standards of democracy. The U.S. President George W. Bush described Iran as part of the 'axis of evil' 'rhetorically and politically positioned as international pariahs' (McGlinchey, Walters and Scheinpflug, 2017; 58), in contrast to the United States and its allies. Moreover, the application of the liberalist components, such as 'the promotion of institutions of democracy, development of international organisations and International law, economic development and the promotion of human rights', has not necessarily led to liberation (Jahn, 2013:22). Notwithstanding the fact that historically Liberalism has been associated with slavery and Colonialism (Jahn, 2013; 25), in the modern context it failed to bring about a Western-style liberal democracy in Afghanistan or Iraq. In reality, it is argued that such components of Liberalism are insufficient for a State to be considered liberal, they only provide 'a fragmented understanding of Liberalism' (Matthews, 2019; 5). Nevertheless, the liberalists pointed out the 'Turkish model' within the global neo-liberal order (Tugal, 2016; 25), and the Arab Spring which was regarded as 'not anti-Western. Nor are they pro-Western' but 'fundamentally about social justice and democracy' (Bangura, 2014; 13). In addition, when consideration is made of the free market Capitalism, reincarnations of the liberalist position take place, which emphasises the transformation of society due to market-based reforms as with the neoliberalist. [27] For example, the use of this paradigm for Iran has led to 'neoliberalism in the Iranian context' arguably taking 'a hybrid form, between welfare policies and neoliberal measures' (Morgana, 2020; 3). This position on foreign policy discourse identifies the concept of 'dialogue among civilisations' as the slogan of 'democracy at home, peace abroad' (Kaya and Sartepe, 2015; 4). However, the economic reforms and the accumulation of political capital (Hunter, 2014; 150), did not result in a Western-style democratic transformation of the Iranian system. The West could not accommodate a diverse group of emerging powers; consequently, the so-called *shī'ī* theological liberalists and reformists were not supported and lost to the neoconservatives. Their platform was based on a populist platform to fight against corruption, and pursue social

[26] For further details, refer to Kurzman (1998).
[27] For further details on Neo Liberalism, refer to Valadbaygi (2022).

justice (Hunter, 2014; 182). The emphasis of the mobilisation was to 'return to the original message of the Islamic Revolution' and the seeking of 'pure religion' as the principal factor of their lives (Ehteshami and Zweiri, 2007; 151), which has been an ongoing debate. Constructivism is another model of International relations referred to in literature on the Near East. This approach identifies 'persuasive ideas, collective values, culture and social identities' as the central forces shaping international politics (Snyder, 2004; 59). Constructivists highlight the significance of State identity shaped by its history and culture, which for the Near East would traditionally identify Islam, Arabism, and Statism as three categories that affect foreign policy behaviour. For example, Egypt's foreign policy as envisaged by Gamal Abdel Nasser (d. 1970) was influenced by Arabism, in shaping Egyptian national interests (Telhami and Barnett, 2002; 17). Similarly, Iran's Islamic revolution of 1979 is viewed as primarily being guided by *shī'ī* ideological considerations, and political interpretation (Warnaar, 2013; 11). For the constructivists, the importance of State identity as a unit of analysis, 'adds a key dimension' to the understanding of the way 'States behave and relate to each other', and their 'response to domestic threats' (Akbarzadeh, 2019; 3). Far from being static, regimes evolve to accommodate change inside and outside their domain. As such, constructivists see identities and interests of actors as socially constructed, more complex, and changeable (Reinalda, 2013: 10). The essence of International relations that particularly relates to the Near East is that interactions take place between people. According to this perspective, it is not the States interacting but their agents, the diplomats, politicians and activists of those States (Gold and McGlinchey, 2017; 50). Thereby, 'structures such as norms, social institutions, and culture' constrain those agents and define their identities (Janusch, Mucha and Schwanholz, 2023; 174). If those interacting have accepted international anarchy as their defining principle, then that becomes part of the reality. Even so, that anarchy is what they make of it (Wendt, 1992; 395), 'different States can perceive anarchy differently and the qualities of anarchy can even change over time' (McGlinchey, Walters and Scheinpflug, 2017; 6). An example could be the Iranian nuclear capability; then '500 British nuclear weapons are less threatening to the United States than 5 North Korean weapons' (Wendt, 1995; 73), or a single Iranian nuclear weapon. Moreover, 'threats to security within international politics do not have an intrinsic valence', it is the social context that imbues them with meaning (Editorial, 2021; 1). Alternatively, it is argued that the Iranian position and its identity and political decision-making have been formed based on years of victimization and long ill-treatment by the West (Sherrill, 2012; 41), as such despite all the sanctions, Iran does not shy away from its stance. Constructivism highlights the important role of identity in the region and can explain sectarian tensions

because ‘inter-State relations are contingent upon the way identity is constructed’ (Luomi, 2008; 15). However, it lacks a mechanism for understanding State intentions, and the identity factor involved in examples such as Iran representing and constructing competing social worlds, leading to a constructivist identity mechanism ‘missing the politics in International relations’ (Zehfuss, 2001; 35). Finally, recent literature on International relations also covers a great deal about the conduct of the U.S. government in relation to Iran, particularly following the 1979 Tehran hostage crisis. It concerns the connotation of the treatment of diplomatic envoys, the implementation of economic sanctions, and the internal politics of Iran. Such literature and the related issues will be covered in detail in Chapter 5.

ii) International Law

The development of the principles of International law revolves around the classical text by Francisco De Vitoria (d. 1546), Francisco Suarez (d. 1617), Alberico Gentili (d. 1608), Hugo Grotius (d. 1645) and Emerich de Vattel (d.1767), who are referred to as the founders of International law (Shaw, 2008; 22). The famous book, De Jure Belli ac Pacis has been written by the most prominent of these scholars Hugo Grotius in 1625 and on the strength of this work referred to by Western historians of International law as ‘the father of International law’ (Jeffery, 2006; 15). Although academics have studied the history and development of International law around the globe, however, widespread acceptance of International law as an authoritative source of a binding legal set of rules, norms, and standards is something of a modern development. [28] It is worth noting that International law differs from domestic law, because it is primarily directed towards States and not individuals, and operates through consent by those States and not enforcement. There is no overall body that is universally accepted for imposing International law, as such because of this non-binding nature, it is dismissed by some as ‘International law’. [29] For those arguing the case for a ‘non-law status’, despite the promissory or quasi-promissory language, International law creates no legal obligation (Goldsmith and Posner, 2006; 203), and serves as merely a set of guidelines. Such arguments regard International law as ‘toothless’ because it does not have a normative force, to compel States to comply with international law even if not in their interests (Morgenthau, 1985; 251). However, the idea of a false impression of law is not shared by all, others argue that International law has been ‘treated as binding by States’, as such ‘claims are made on the basis of it, and lawsuits are filled’, and some aspects of it is accepted as law such as ‘bilateral treaties’ (O'Connell, 2008; 3). They point out that ‘almost all nations observe

[28] Discussion of the existential questions of International law found in Dworkin (2013).
[29] This includes discussion by Blake (2001), Goldsmith and Posner (2006), and Nagal (2010).

almost all principles of International law, and almost all of their obligations, almost all of the time' (Henkin, 1979; 329). Subsequently, they regard International law despite its deficits, to persist 'as the single, generally accepted means to solve the world's problems' (Weeramantry, 2004; 1). The theoretical arguments around International law exist in the doctrinal sense only by allowing 'people to invoke a special kind of right or obligation', arguably with a normative theory. For example, by 'a theory of political morality about the circumstances in which something ought or ought not to happen' (Dworkin, 2013: 11). What has come to be accepted in the modern world is that 'compliance with international law is the only means available to States to ensure their claim to the rights of sovereignty' (Pilchman, 2014; 12). Moreover, it is argued that for example, if 'under international law wars of aggression are prohibited', and there is no international police force to enforce International law, but an aggressor knows by breaking this law there will be 'considerable international backlash' ((McGlinchey, Walters and Scheinpflug, 2017; 24). As such, States will not risk the possibility of economic sanctions, or the intervention of of military action, or the loss of international trade, foreign aid and diplomatic recognition by other influential States through the United Nations. This is rejected as being subjective on the States involved, as seen by the CIA 1953 *coup d'état* overthrowing the constitutional government of Iran (Rafat, 1980; 455), or the 2003 U.S-led invasion of Iraq (Bonn, 2010: 139), or in the case of Israel because of the U.S veto. The UN Security Council has not even been able to agree on a resolution condemning atrocities committed in Palestine (Tarbush, 2024; 288).

Literature on concepts, approaches, and debates that have shaped contemporary International law is vast, with some directly focused on new developments relating to the codification of International law. [30] What is clear is that the rules governing the legal relationship between nations and States are complex, with political, diplomatic and socio-economic factors shaping the law and its application. However, the existence of International relations of whatever kind entails the existence of International law' (Klabbers, 2020: 3). Nevertheless, analysis of the origins and Eurocentric narratives surrounding the present system, [31] makes the debate of great significance to the events of the 21st century, when it is 'no longer an exclusive Western club' (Wallace, 2002; 5), particularly with regards to the Near East. However, the historical accounts regarding the genesis and development of modern International law along with its principles have always been fashioned around Western

[30] For further details on International law refer to Kaczorowska-Ireland (2015), Orford, Hoffmann and Clark (2016), and Hernández (2022).
[31] It is argued to be rooted in Western European traditions and values and in its concept and content it maintained this European bias (Wallace, 2002; 5).

civilisation. The arguments made by most literature emphasise modern International law as a legal system that is deeply rooted in Western and Christian culture. This is core to the complexities of events in the Near East, since the unequivocal statement that International law is 'a product of modern Christian civilisation' (Oppenheim, 2005; 48; Shaw, 2008; 13), is misleading. This 'essentially Euro-centric based' perception (Baker, 2000; 57), is dismissive of other cultures and their contributions and detrimental to their adherence to International law. This notation of 'international lawlessness' (Oppenheim, 2005; 63) prior to European envisaged standards is rejected by others. It is commented that there is ample evidence of International law having its roots firmly entrenched in various ancient civilizations of the world. (Baderin, 2017; xv), and owing its growth and development to the 'coexistence of plural civilizations' (Yasuaki, 2000: 7). However, there are studies by Western academics making the case for research into the possible jurisprudential contributions of early Muslim scholars to the development of modern International law. For example, according to some scholars 'very liberal Muslim legislation facilitated the passage of foreigners across the Muslim world and that of Muslims to the outside' (Boisard, 1980; 432), or the possibility of the Islamic civilisation influencing Grotius De Jure Belli ac Pacis (Weeramantry, 1988; 157). The need for further research into possible contributions of Islamic law to modern International law (Baderin, 2009; xv) has inspired this research to fill a gap regarding the *shī'ī* perspective amongst presented material in recent years. [32] Moreover, the critical approach to explaining relevant concepts has encouraged this research to address 'controversial issues that have been hushed up for centuries to be freely debated' (Bassiouni, 2015; 676). [33] Even so, most literature gives little attention to considering Islamic law within the wider debate on modern International law and avoids the Islamic contribution to modern International law altogether (Hamidullah, 1945; 62). The only aspect worthy of discussion is perceived to be the highlighting of conflict and dissonance between the two systems (Kelly, 2010; 23). [34] This is particularly the case following the 11th of September 2001 incident, by which Islam is stigmatised with the war on terrorism. Such literature tends to concentrate on the notations of The Islamic State *dār al-islām* (abode of peace) as compared to the non-Islamic State *dār al-ḥarb* (abode of war) and the aspect of *jihād* (struggle). Thereafter, an assertion is made that 'Islam was a Universalist system of belief, the two territories were always theoretically at war with each other. For war was the ultimate

[32] This includes further understanding of Islamic law as developed by Baderin (2000), (2003), (2009), and (2017).
[33] This includes the assessment of the protection for diplomats under Islamic law, as covered by Bassiouni (1980), (2014), and (2015).
[34] This includes discussion on congruity by Westbrook (1992), Berger (2008), and Ford (2017).

device for incorporating recalcitrant peoples into the peaceful territory of Islam' (Dougherty and Pfaltzgraff, 1971; 149). Or that the notation of *jihād* was there to 'legitimise aggressive policy' (Vatikiotis, 1987; 21) even though such a view on 'the Islamic theory of International relations is to be found neither in the Qur'ān nor in the Prophet Muḥammad's utterances' (Khadduri, 1965; 29). Consequently, such material opposes recorded peaceful arrangements between Muslim States and non-Muslim States through observance of the terms of treaties, 'peaceful coexistence based on armistice, diplomatic ties or peace agreements' (Allain, 2011; 404). Despite such opposition, the same academics admit that referral to International law as the absolute standard is regularly made by Muslims as their refuge against Western hegemony, particularly in the case of the Israeli-Palestinian conflict (Berger, 2008; 111). The context of this debate and the assertion that there was 'neither room nor need for an International Law' (Oppenheim, 2005; 56) prior to the modern period, underscores the importance of our present research regarding Islamic international law and its compatibility with International law. Moreover, the lack of material on the *shī'ī* perspective alongside other Schools of thought aims to complement the larger discussion regarding the commitment of Islamic States to International law, addressing a gap within the existing literature. Finally, recent literature on International law also covers a great deal on what legal scholars and practitioners mean by the term International law, legal principles, customs, and statutes, often abbreviated to sources of International law used by the respective judicial bodies and 'encountered in legal writing law' (Thirlway, 2019; 1). Such literature and the related issues will be covered in detail in Chapter 4.

iii) Diplomatic law within *shī'ī* Islam

The coverage of Islamic diplomatic law within classical Islamic literature is developed under the title of *sīyār.* Muslim jurist Muḥammad al-Shaybānī (d. 805) [35] is one of the world's earliest treatises on International law, his book entitled *kitāb al-sīyār al-kabīr* is preserved in the elaborate commentary *sharḥ-i kitāb al-sīyār al-kabīr* by the Persian scholar Muḥammad al-Sarakhsī (d. 1090) [36] (Khadduri, 1966; 38). [37] Further literature on diplomatic law can be found in the treatise on Arab-Byzantine relations by the book of *kitāb rusul al-mulūk* written by the famous scholar Ḥusayn ibn Farrā' (d. 1066), [38] providing 'the most detail treatment of diplomacy and diplomats' (Bowering, Crone and Mirza, 2013; 134).

[35] Abū ʿAbd Allāh Muḥammad ibn al-Ḥasan, commonly known as al-Shaybānī.
[36] Muḥammad ibn Aḥmad, commonly known as al-Sarakhsī.
[37] Joseph Hammer von Purgstall in his admiration for this remarkable work has designated this classic author as 'the Hugo Grotius of the Muslims' (Khadduri, 1966; 38).
[38] Abū Muḥammad al-Ḥusayn ibn Mas'ūd, commonly known as ibn Farrā'.

More recent works and treatise on *sīyār* include 'The Muslim Conduct of State' by Muḥammad Ḥamīdullāh (d. 2002), [39] *al-'alāqāt al-dawlīyyah fī al-Islām* by Muḥammad Abū Zahrā (d. 1974) *al-'alāqāt al-dawlīyyah fī al-islām* by Wahbah Muṣṭafā Al-Zuḥaylī (d. 2015), [40] and *al-qanūn wa al-'alāqāt al-dawlīyyah fī al-islām* by Ṣubḥī Maḥmaṣānī (d. 1986). [41] Although these offer valuable contributions and are used within many Islamic articles, they are not very comprehensive, have a confessional approach, and do not identify the *shī'ī* Schools of thought within their discussions on the topics of concern. Moreover, other than historically linking articles of law, these do not attempt to investigate or assess how Islamic international relations can play a role in International law. Nor is there a serious attempt at finding how much compatibility exists between Islamic international law and International law.

The topic of diplomatic law within *shī'ī* Islam is one that has not been addressed within the context of *sīyār* in the classical text. To understand the reasons for this gap in the existing literature, there is an initial requirement for a more holistic approach to the subject, the debate around *shīʿī* identity and the development of the *shī'a ithnā 'asharī* doctrine. The existence of *shī'ī* law within the early centuries of Islam has been the subject of much discussion, particularly in light of, few extant works belonging to the *shī'ī* from that early period. However, such absence could be due to the loss of the literature resulting from external factors such as conflict, sectarianism, or political upheavals (Abu Zahra, 2008; 162). However, the debate has resulted in speculation regarding how and when the *shī'ī* School came into existence and the origin and development of what has later become known as the *jaʿfarī shī'ī* School of law. Moreover, mention of the *shī'ī* thought in English literature is also a relatively new occurrence, arguably of the latter half of the twentieth century. [42] Earlier mentions of the *shī'a* being only of a cursory manner, [43] and no more than concise introductory articles. [44] Nonetheless, a comprehensive study of the origin and characteristics of *shī'a ithnā 'asharī* doctrine has taken place particularly following the 1979 Islamic revolution of Iran. Thereafter literature has been plentiful, and crucially there has been a critical examination of *shī'ī* law with an aim of reconstructing the genesis and early history of the *shī'a* doctrine. This has resulted in turn in greater awareness of the *shī'a ithnā-'asharī*

[39] The English text makes this unique, printed in Lahore as early as 1942.
[40] Also appearing in literature as al-Zuhili.
[41] These are in Arabic and printed around the same time, Cairo in 1964, Damascus 1965, and Beirut 1967.
[42] The first systematic treatment of *Shīʿī ḥadīth* and of the main doctrines was published as late as 1933 (Donaldson 1933: 281).
[43] This includes early discussion by Schacht (1967), and Goldziher (1981).
[44] This includes Elias (1969), and Kohlberg (1983).

law and its practice and implementation by the *shīʿī* community. Within recent literature, some academics argue that *shīʿī* law originated from the early 8th century CE and was initiated by the *shīʿa* Imāms in light of new circumstances. [45] The source is in particular, Imām Muḥammad ibn ʿAlī al-Bāqir (676-732 CE) [46] and Imām Jaʿfar ibn Muḥammad al-Ṣādiq (702-765 CE). [47] However, others argue that it originated in the late 8th century CE, after the *sunnī* School of thought had formed, identifying it in the context of personal or regional Schools. [48] Some others have argued that it originated in the mid 9th century CE after the shift to personal schools had already occurred. [49] Such academics question the authenticity of *shīʿī* law on the grounds that the literature in which it is contained not belong to the times claimed by their compilers (Schacht, 1967; 262). Others have rejected this as speculation and irrelevant, because of the existence of non-oral communication as proof of the 'utterances of an Imām,' committed to writing for the first time (Kohlberg, 1987; 128). Moreover, in support of the *shīʿī* School of thought with an Imāmī identity, the use of textual analysis has been tested through the application of early Islamic intellectual methodology as promoted by Harald Motzki (d.2019). [50] This has aided in dating traditions and forming 'a definable confirmation' of the *shīʿī* law within the period of discussion (Haider, 2011; 34). Such debate has been necessary to refute the arguments that reduce the *shīʿī* identity to 'a movement of political dissent', [51] with little influence on the understanding of Islamic law (Jafri, 1979; 5). Consequently, the debate around the *shīʿa ithnā-ʿasharī* identity is pivotal to the discussion on diplomatic law within *shīʿī* Islam. This is because a feature of such identity is the acceptance that the Prophet and the Imām share the same degree of authority, [52] and epistemological reliability (Kohlberg, 1983; 300; Amir-Moezzi, 1997; 8). [53] Thus, the difference in the approach to the reconstruction of events and the application of Islamic Sources and the related issues will be covered in detail in Chapter 3 distinguishes our compatibility assessment of *shīa* jurisprudence to International law. This is of particular importance in addressing a gap within existing literature in the context of *sīyār.* By searching within a larger corpus of text, we find that for *shīʿī* jurists such as Muḥaqiq al-Ḥillī (d. 1277)

[45] This includes the work by Modarressi (1993)_b, and Haider (2011) on the Imāms contribution.
[46] Regarded by the *shīʿa ithnā-ʿasharī* as the fifth Imām from the *ahl al-bayt* of the Prophet.
[47] Regarded by the *shīʿa ithnā-ʿasharī* as the sixth Imām from the *ahl al-bayt* of the Prophet.
[48] This includes the work by Howard (1975), Madelung (1970), and Crone (2002) on early Islamic schools.
[49] This includes the work by Schacht (1967) and refashioned archaic positions.
[50] The significant breakthrough in 1996 by Harald Motzki has been the development of the *isnād-cum-matn* method for dating and analysing early Muslim reports (Kara, 2016; 295).
[51] The were at first no more than a political faction, with no distinctive religious doctrine (lewis, 2003; 20).
[52] They share the same authority and propogativesas the Prophet, except revelation.
[53] This is because for the *shīʿī* the tradition must be traced back either to the Prophet or via an Imām (who may then transmit from another previous Imām) (Kohlberg 2014. 168).

[54] in his legal manual *sharā'i' ul-Islām* [55] covers the topic. Similarly, an extended exposition of which is provided by Āyatullāh [56] Muḥammad Ḥasan al-Najafī (d. 1850) in the book *javāhir al-kalām* concerning *shī'ī* demonstrative jurisprudence. [57]

Moreover, of great benefit to this research would be the extensive range of foreign policy-related legal books that have been printed in Iran following the Islamic revolution. These are authored by high-ranking Iranian diplomats, an example of which are *ḥuqūq-i diplomātik va kunsulī* written by Javād Ṣadr, *ḥuqūq-i bain al-milal-i Islāmī* written by Seyyid Khalīl Khalīlian, *ḥuqūq-i diplomātik-i novīn* by 'Abbās Mo'īnzādeh, and *ḥuqūq-i diplomātik* by Parvīz Ẕol'ain. These highlight the practitioner's viewpoints on International law, diplomatic relations, diplomatic immunities and benefits, which in turn is invaluable for our research because they highlight the issues of concern from the Iranian perspective. Nevertheless, as a legal or jurisprudential-based reference, they fall short as often biased and lack critical assessment of topics covered. There are also a large number of jurisprudential books published after the revolution on politics by the senior *'ulamā',* encouraged by the clergy's political activism, which are always enlightening. High on this list are books such as *andīshi-yi sīyāsī* and *ravābiṭ-i bain al-milal* by Āyatullāh 'Abdullāh Javādī-Amulī, *ḥuqūq-i bain al-milal* by Āyatullāh Musṭafā Muḥaqiq Dāmād, and *fiqh-i sīyāsī* by Āyatullāh 'Abbās-'Alī 'Amīd Zanjānī (d. 2011). [58]

1.3 Research Questions

It has been argued by the U.S. government following WWII, that 'the whole question of establishing world peace by world law is a debate between the wishful dreaming and practical limitations of our wisdom and goodness' (United States Committee on Foreign Relations, 1955; 135). Similarly, the idea of formulating 'the new world order' widely discussed by U.S. President Bush to define the post-Cold War, [59] was also not a new idea (Hui, 1991; 24). However, in both instances, the discussion was about one of peaceful coexistence, does this indicate that world peace could be achieved through religion and a

[54] Najm al-Dīn Abu al-Qāsim Jaʿfar ibn Ḥasan, commonly known as Muḥaqiq al-Ḥillī.
[55] Regarded as 'one of the most influential works of Twelver shī'ī jurisprudence (Calder, Mojaddedi and Rippin, 2012; 219).
[56] Āyatullāh (the sign of God) is a title given to the high raking shī'ī clergy in recent times.
[57] The author is commonly referred to as *ṣāḥib javāhir,* in recognition of this book.
[58] He was a cleric diplomat who later headed of the University of Tehran (2005–2008 CE).

[59] This vision was raised by U.S President George W Bush, in his book he welcomes 'a new approach to the world' (Bush, 1989; 160) and following the 1991 Persian Gulf War U.S President Bush, he states, 'what is at stake is more than one country, it is a big idea; a new world order' (Nelson-Pallmeyer, 2017; ix).

particular system of faith and worship is linked to the two components identified? Although religion is often linked to wars, it has also been as often a contributing factor to an ameliorating of peace such as the ending of the apartheid. [60] The basic dilemma is the perennial question of whether aggression in international affairs can be curbed, and if so at what price. Since International relations is a human activity in which persons from more than one nation, individually and in groups, interact, and the usage of the term International relations by scholars in the field is not consistent, some scholars have used International relations as a more inclusive term (Sills, 1968; 61). As 'the Western world had become increasingly secular', the study of International relations had become essentially based on aspects of nations and their government's particularly foreign policy-making activity. 'The impact of religion on International relations was missed', and the discourse often ignored that phenomenon, particularly that of 'soft power' (Haynes, 2007; 3). In an attempt to provide possible alternatives, this research will try to investigate the role of *shī'a* Islam within International relations and its possible contribution to international peace. Additionally, if diplomacy is identified by 'the gentle wielding of influence to advance national interests' (Seib, 2013; 1), then surely the role of religion within such diplomacy discussion must not be overlooked, as religion is not an isolated component but for some central to their lives. Thereby, there is a need to determine whether any political programme or diplomatic endeavours can be derived from the primary sources of Islamic law of the Qur'ān and the *sunnah* of the Prophet (and of the *ahl al-bayt*), forming the basis for an Islamic theory of International relations (Sills, 1968; 61). Moreover, due to the constant need for States to remain in communication with one another by past and present civilisations, great importance is placed on the protection of envoys and diplomats. As such, the concept of respecting and protecting emissaries of other States or communities is also allied to the attainment of international peace. The idea of inviolability and immunity attached to them is one that is acknowledged by a scope of different religions and customs (Frey and Frey, 1999; 4), but it is critical to see how it is catered for by the *sharī'a* (Islamic law), and documented within Islamic history.

Islam as a noun is a system of beliefs revealed by Allāh to the Prophet Muḥammad, but as a verbal form, Islam is the infinitive Arabic trilateral root of *silm* (peace and security). As such Islam is referred to as 'the believer's submissions to Allāh, but also to have peace, safety,

[60] The Islamic revolution ending the economic and military ties to the South African regime greatly assisted the fight against apartheid (Chehabi, 2016; 687). Similarly, various Churches were at the vanguard of struggle against apartheid ad peaceful transition (Smock, 2006; 1).

and to give peace to others' (Aydin, 2011; 75). This research will focus on such submission to the beliefs and values, and assess the possible compatibility or tension between *shī'a* Islamic international law and modern International law. As a whole, in an attempt to remove the ambiguity present within the literature regarding uniformity of thought within Islam towards Islamic international law, we will review the evolution of Islamic law, and evaluate Islamic law in theory and practice, and access the Islamic law's compatibility with International law, crucially from the *shī'a* School of thought. This will contribute towards 'the development of common ground between the different legal systems of the world to ensure global peaceful and harmonious International relations' (Baderin, 2009; xvi). Additionally, through specific reference to diplomatic law and diplomatic immunity, it will provide much-needed guidance on the protection of diplomats under *shī'a* Islamic law, to remove misunderstanding regarding its position for instance on the use of violence. To achieve this is necessary to determine to what extent International relations from a *shī'a* Islamic perspective are functional, and if *shī'a* Islamic law could be applied to a dynamic modern State. In the field of International relations can *shī'a* Islamic political thought coexist with theories of International relations, and is it capable of being applied to the international affairs domain, and contribute to International relations? In recent times, there have been suggestions of the necessity to create a strategy of *iṣlāḥ* (reform) under the banner of religious reformism, is this credible within *shī'ī* thought? [61] Thus, the rationale for this study would be to research the compatibility of *shī'a* Islamic law against modern International law by comparing Islamic diplomatic law with International diplomatic law. The objectives of this study are: i) To facilitate a better understanding of the relationship between International diplomatic law and Islamic diplomatic law, and ii) To ultimately maximise the provision of diplomatic protection by clarifying and developing Islamic diplomatic law which may eventually complement International diplomatic law. For this purpose, it is necessary to study an example of a modern populated State incorporating Islamic diplomatic law based on *shī'ī* jurisprudence. Taking all this into consideration, the main research question has to do with the compatibility between Islamic diplomatic law based on *shī'ī* School of thought and International diplomatic law. To derive our major questions, we need to review the following inquiries:

- To what extent is Islamic diplomatic law from the *shī'a ithnā-'asharī* doctrine compatible with International diplomatic law?

[61] To critically review such a stance and new modes of thought within the context of reform, modernisation, and the embracing the International norms would be beyond the scope of this research. However, as it sits within the realm of the attempt to 'a return to the original meanings of religious norms and values' (Jahanbakhsh, 2001; 51), trend of thought will be reviewed and placed in appendix 1.

- How do Muslim States or those proclaiming to be Islamic (*shī'ī* example - The Islamic Republic of Iran) conduct diplomatic relations with non-Muslim States and deal with violations of diplomatic law?
- What mechanisms exist in *shī'a* Islamic law to reconcile with International law, if there is a clear difference?

Moreover, our minor research questions which would assist in the elaboration of our major questions, taking shape would be the following inquiries:

- How, without relaxing the nature of the *sharī'a*, can the jurisprudential experts expand and adapt the Islamic diplomatic law to meet the varying needs of International diplomatic law?
- What is the significance of *fiqh-i zamān va makān* (the jurisprudential of time and place), its principles and requirements within *shī'a*? [62]

1.4 Theoretical Approach to the Study

To answer the main research question that motivates our work, we would be required to delve into the possible reasons and causes for compatibility or the lack of compatibility between two legal systems, their comprehension and application. In doing so, we need to consider three separate domains; these are the international relations, International law, and diplomacy according to *shī'ī* Islam. In addressing the International relations domain of our research within the context of the application of *shī'ī* perspective to government, we would be using the example of Iran. Thus, considering the foreign policy decisions being made, the key issue of concern would be the theoretical model that applies to our interpretations of the events. However, developing such a comprehensive explanation is impossible, in light of the complexity of Iran's foreign policy particularly considering its confrontation against Western interests. The theory that is best known for heralding survival and power, alongside imposed incentives and constraints, while taking into account domestic factors is neoclassical Realism. In the case of Iran, such intervening variables that are encountered 'act as transmission belts, filtering systematic pressures, and converting them into actual foreign policy choices' (Juneau, 2015; 4). A framework that allows differentiation between ideal and actual, allowing as much filtering or compatibility as required in light of encountered circumstances. Despite its limitations, neoclassical Realism is adopted to this research, because the model identifies the actions of a State in the international system by intervening

systematic variables (Verma, 2016; 17). By arguing that material structure is not enough to explain State behaviour, and 'an important role is played by domestic politics and the leadership regarding foreign policy' (Morsy, 2019; 81), one can relate the theory to Iran as the practical example of an Islamic State used in this research. Constraints and variables would include *shī'ī* jurisprudence, International law, and international relations, as factors that provide dynamism and path dependency, influencing its diplomacy and foreign policy. Having said that, our explanations within this research will depend on 'the assumptions one adopts, the values one adheres to, and the time span one focuses upon' (Tagma and Lenze, 2020; 3). Thus, our adopted theoretical model must have flexibility, as one size does not fit all.

In addressing the International law domain of our research which is central to our research, the key component would be the analysis and evaluations of International diplomatic law and Islamic diplomatic law. Our analysis could be done in several different ways, ranging from an incommensurability approach, a compatibility approach, or a reconciliatory approach. However, in our research, we will be examining the presence of compatibility or tension in their respective principles and outlook, and that is based on the following argumentation. Firstly, if we take the approach of incommensurability, which 'signifies the idea that there is no common measure amongst the paradigms of inquiry (Wight, 2006; 40). The example used for this approach is that of diplomatic immunity law as detailed by its codification. An argument is made that modern International law does not accommodate any rules or principles of Islamic international law due to 'the absence of any grounds of congruence between the two legal regimes' (Berger, 2008; 107). It is further claimed that it 'may be of great historical interest and Islamic source of inspiration for Islamic militants' but Islamic international law is dismissed as having no relevance to modern International law (Berger, 2008; 107). The focus here is based on the understanding that 'Islamic law has no authoritative place for institutions, particularly nations, and institutional authority is basic to public International law', and subsequently 'Islamic law takes meaning from certain narratives, and those narratives are inapposite to public International law' (Westbrook, 1992; 883). However, if we take the approach of compatibility, an example used by the approach is that of the personal safety and well-being of diplomats. The argument made highlights the guarantee given by Islamic international law regarding 'the personal safety and well-being of diplomats and their family' (Rehman, 2005; 117) in the same manner as International law. The focus here is on the sources of the two legal systems, their comprehension and application. In other words, how the structured principles referred to as *sīyār* (Islamic

International law) may 'even be said to be part of that doctrine or philosophy' that constitutes International law (Mahmassani, 1967; 205). It is further claimed that 'the opinions of Western scholars often parallel the legal opinions and works issued by Muslim jurists' (Zawati, 2001; 6) when the texts of international covenants are compared to the texts of Qur'ān or the Prophetic *ḥadīth* (discourse). This approach is based on the understanding of clear similarities on issues of concern, and the existence of 'impressive examples in the Qur'ān and the *sunnah* of Prophet Muḥammad' to support their stance. As such, the argument is structured on abundantly clear examples pointing to 'violating the immunity of diplomatic envoys if the diplomats should be subjected to punishment or detention by the host country for any offence they might have allegedly committed' (Rehman, 2005; 119). Finally, if we take the reconciliatory approach, which attempts to bridge the two legal systems, an example used by this approach is that of the active involvement of Muslim States in the activities of the United Nations and its agents. This approach has emerged from the debate around compatibility and the urgent need for negotiation between Muslim and non-Muslim States regarding a range of matters including war and peace, facilitating a common understanding and cooperation. An argument that is made refers to the non-inclusion of an Islamic base within the case for U.S. Diplomatic and Consular Staff in Tehran at the International Court of Justice. At such a crucial time, the case base of the principles of diplomatic immunity used by the U.S. government was 'solely from the Western law perspective', without any reference in any manner to the body of evidence within Islamic law. However, the Court in their summing up comments recognised that Islam also supports the 'principles relating to the treatment of foreign embassies and personnel' (ICJ, 1980; 41). But, the negotiators had missed out on such an important perspective, and not used such a persuasive reasoning as a 'base of common understanding' (Weeramantry, 1988; 166). Subsequently, it is argued that the recognition of common ground within the specific principles of *sīyār* would lend 'to consolidating and expanding the scope of contemporary International law' (Badr, 1982; 58). This endeavours a greater participation by Muslim States who would have 'an important role to play in the modern international order'. This could be done through 'an evolutionary interpretation and injection of the paradigmatic ideals of Islam into the pragmatic policies of the modern international order' (Baderin, 2000; 59).

In addressing the *shī'ī* Islam domain of our research which could influence the compatibility framework, the key factor is the examination of Islamic law flexibility criteria of the *shī'a* School of thought is subject to expansion and change. The theory adopted is that the rules of

Islamic diplomatic law can meet the requirements of the Muslim society and International community, provided that the *'ulamā* employ appropriate methods of *ijtihād* (independent reasoning) in exercising their authority. The crucial factor to this perspective is the understanding of the scholars on what subjects and issues belong exclusively to divine knowledge, based on revelation, scripture and tradition of the Prophet. At the same time, are there subjects within the body of Islamic law that could be expanded, altered, or disregarded based on human reasoning, rather than literally implementing the texts and tradition? This is because there is an assertion that Qur'ān stipulates 'the use of reason in the interpretation of the law' (Litvak, 2021; 162). In other words, allowing judgments based on reason to be made that 'reflect the will of the divine' (Takim, 2021_a; 159). Thus, the theory of *ijtihād* is used with regard to explaining the bridging between rationality and revelation. Within this framework of thinking, reference will be made to the contemporary *shī'ī* jurist Āyatullāh Rūḥullah Khomeinī (d. 1989), and his implementation of the approach in re-evaluation or re-assessment of challenging topics of contention within the context of the Islamic government. Consequently, within the scope of this application, an awareness of the changing needs of their society, particularly of recent developments in International law is deemed to be a requirement.

Since our main research question is embedded in comparative law, a brief explanation of this technique is required as it has long been used [63] as a 'valuable tool for interpreting and reforming domestic law'. A means for 'harmonizing and unifying law trans-nationally' (Valcke, 2004, 363), and as such it has developed into an instrument of learning and of acquiring knowledge. The focus on the commonalities is based on a sense of seeking improvements in legal systems, methodological differences make the study of compatibility particularly important and one of scholarly discussion. Notably, the use of comparative study is considered crucial for three purposes. i) Analytical jurisprudence, providing the comprehension of the conceptions and principles of the two legal systems that are being compared. ii) Historical jurisprudence, providing an understanding of the purpose of development of the two legal systems under consideration. iii) Ethical jurisprudence, providing analysis of the practical merits and demerits of the two legal systems (Salmond, 1920; 8). This research will make use of comparative study for analytical and historical jurisprudential purposes in its comparative approach with the aim of deducing any compatibility between diplomatic law as viewed by Islamic international law and modern

[63] By the likes of Saleilles, R. (1911). Droit civil et droit comparé, Revue internationale de l'enseignement, LXI.

International law. This can be done in the same manner as that done in comparing domestic law with International law (Cassesse, 2005; 213). This will allow the study to discuss whether Islamic law accords the same inviolability and immunities to diplomatic envoys as covered by International diplomatic law. Moreover, it will also allow an examination on whether non-State actors' actions against diplomatic missions can be successfully prosecuted in Muslim States. Additionally, if both legal systems are compatible, could Islamic diplomatic law complement International diplomatic law? Considering modern International law has changed dramatically in the last century, have there also been changes in Islamic international law in recent years? Considering 'Islam has been presented as the Religion of Arabs' (Greogian, 2003; 2), and the *sharī'a* regarded 'as monolithic' (Peletz, 2020; 26), due to its dependence on primary sources and divine texts. Can there be a change in Islamic International law? By challenging this representation, the question of coexistence is invoked; can a jurisdiction wishing to apply the Islamic law fulfil their obligations under contemporary International law? And if the systems of law are regarded as incompatible, can there be ways of reconciling both legal systems and the possibility of reforming Islamic law?

However, for our research to involve a comparative study, many sensitivities must be considered. These include reflection on the case of divine law against man-made law, the criteria of tradition versus that of modernity, the political linkage to that of the Western law and its ongoing arguments of secularisation, and the application of a Western-centric theory of neoclassical Realism by open admission. However, such sensitivities could be overcome by adhering to the compatibility approach while analysing legal questions, and by referring to the application of International diplomatic law in Muslim States in a fashion that is compatible with Islamic law. While taking note that in Muslim majority populated States and those identifying themselves as Islamic, 'the Islamic law is adopted in the country's legal system' as the requirements of the civil judiciary (Peletz, 2020; 26). This is because Islamic law governs both the activities between God and man and between man and man, and it is regarded as covering both religious and secular aspects of the law (Shah, 2008; 6). Thus, it comes within the domain of Islamic international law, which regulates the conduct of the Muslim States with the international community. However, at times the comparison could highlight the case for the application of a reconciliatory approach to resolving legal tension. With regards to using a Western initiated theory to explain the activity of an Islamic State, one must remember that International relations as an academic discipline is relatively new and 'entirely dominated by Western sources of knowledge (Bakir, 2023; 22). Thus it is

true that its biased nature undermines our understanding to explain decisions of an Islamic State such as Iran. However, the idea of Western vs non-Western is a reflection of the East-West dichotomy, our research aims to use the neoclassical Realist theory as merely a theory, a supposition, a system of ideas to explain the situation. Although not perfect, the theory has its own rules, criteria, and perspectives allowing interaction with International relations. Finally, the comparative study undertaken in this research is not intended to be a format of *qīyās* (analogy) meaning legal analogy as carried out in various Muslim contexts in reference to legal concepts. Firstly, this is because our research will not be making any judicial analogy as it is beyond the scope of the study. Secondly, *qīyās* as used for independent reasoning by the *sunnī* School of thought is not recognised by the *shī'ī* doctrine. As the focus of this research is on the *shī'a ithnā-'asharī* perspective on the sources of Islamic law, *qīyās* will not be recognised as a method for reasoning.

1.5 Methodology

This research is based on a qualitative research method, [64] with a holistic approach through an analytical examination of various themes and concepts within diplomatic law. This work compares the fundamental sources of Islamic law from the *shī'a* perspective, with an outlook towards sources of International diplomatic law. As such, a substantial part of this study, particularly the theoretical aspect will involve documentary analysis based on a Black letter approach (doctrinal methodology).[65] This concentrates on the letter of the law, when rules are generally well known and free from doubt or dispute, with the aim of collating, organising, describing, and commenting on the law in books rather than the law in action. [66] The reason for this particular approach is directly related to our comparative study. It is claimed by some academics that 'International law and the *sharī'a* may not be reconcilable', particularly with a purely textual approach (Gray, 2018; 148). 'There is a requirement to 'pin down' Islamic law, rather than leaving it 'cognitively open', to conform to the Black letter approach (Yassari, 2016; 40), thereby this goes against certain 'flexibility' in Islamic law. Those opposing the applicability of the Black letter approach to Islamic law, have a perception that the origins of the law are not consistent between Muslims, an aspect that will be addressed by this research when discussing *shī'a* jurisprudential principle. Nevertheless,

[64] Apart from Chapter 2, and a section in Chapter 5 which also gives an overview of diplomatic practice in Islam involving historical research.
[65] What is important about this approach is that 'you must be accurate about the law linked to a critique and politics around it' (Cownie, 2004; 55).
[66] Although some books, articles and monographies used might seem quite old by today's standards; these contain very useful and relevant information for the topic International diplomatic law.

the point to consider is that when addressing a teleological approach of religious scholars rather than the doctrinal, the approach is different. The 'text is a means to express a rule or principle, which doesn't necessarily coincide with the text or even lead to results which seem to be incompatible with the text' (Christoffersen and Nielsen, 2016; 47). In fact, al-Sarakhsī who identified *sīyār* as 'the conduct of State relationship with other communities and nations' (Mahmassani, 1966; 205), makes a related point critical to our approach. He notes, 'texts are finite and cases are infinite', and 'not all events are to found in the Book and *sunnah'* (Christoffersen and Nielsen, 2016; 47). Since 'the literary genres of legal writing and daily life were indeed connected' (Lieberman, 2022, 30), Islamic or similarly Jewish law in that the Black letter approach should be responsive to changes in society, otherwise it just would be 'the purview of jurists', 'maintained no connection with daily life' (Lieberman, 2022, 30). Subsequently, in order to avoid this, and work within the scope of this research, senior *shī'ī* Jurists opinions are mentioned to allow the assessment and criticism to be made. Nonetheless, the Black letter approach would not be applied, but its mention is beneficial because 'Islamic law is more than the Black letter law', operating in 'social, political, moral and economic context' (Sardar Ali, Griffith, and Hellum, 2016; 9), as it often constitutes the basis of thought and could address our compatibility discussion. Considering concerns by those who have argued that 'Islamic law should not be understood to be the sole authoritative voice' within the criteria of the Black letter approach, 'as conceptualised in the Western legal systems' (Sardar Ali, 2016; 5) because at times this could include historical accounts of the Prophet or Imām. However, the question of the authenticity of early Islamic historiography has long been a topic of much debate within research considering the time gap for its recordings (Crone, 1980; 12). As such historical accounts would place a constraint on the application of the Black letter approach, thus the Black letter approach will not be adopted for historical recordings. Nevertheless, these will be included in our discussions of Chapters 2 and 5, due to their importance to Muslim jurists with respect to the Prophet or Imām's behaviour. This supports our comparison between different opinions on selected subjects and allows for the assessment and criticism of the material. Finally, the methodology for this research involves traditional legal analysis, relying on information that already exists in some form in books, journals, articles, case reports, legislations, Statements and Resolutions by the United Nations, the work of other international intergovernmental bodies and historical records. The Islamic sources used will be principally the Qur'ān and *tafsīr* (exegesis), *shī'ī* sources of *ḥadīth*, related books and articles around Islamic law and *fatwā* (legal opinion) referred to as *istifita'āt* (legal enquiries)

and *shī'ī* accounts of *tārīkh* (history). [67] Additionally, within this research there is some engagement in its analysis of the current laws and practices for the chosen example of the Islamic Republic of Iran, considering the political language and interactions with International norms. Finally, within this research, there is an acknowledgement of studies and analysis of the literary works of great *shī'ī* scholars and intellectuals, past and present, with the foci of literature being predominantly Arabic and Persian. [68] As such, the literary analysis aims to enlighten English-speaking readers with insights and understandings that are at times invaluable because of the difficulty in vocabulary understanding when there is no familiarity with the Arabic or Persian terminologies.

1.6 The Outline of Chapters

This research is to be presented in five chapters alongside a conclusion chapter. Having started with this chapter, Chapter 1 titled 'Introduction', is intended to cover literature a review, research questions, theoretical approaches to the Study, methodology, and finally outline of the chapters. Thereafter, Chapter 2 titled 'Overview of diplomatic practice in Islam' will consider those primary parameters by reviewing the definitions of terms such as diplomacy and diplomatic law and emphasizing their importance. Subsequently, by reviewing the historical angle of diplomatic practice in Islam, the impact and contribution of the Islamic civilisation to the evolution and development of Islamic diplomatic law will be covered. Although the focus of our research is based on the *shī'a* contribution, there will be instances whereby the *sunnī* contributions to the evolution of diplomatic law will also be considered. Chapter 3 titled 'Sources of Islamic diplomatic law' will assess the sources within Islamic jurisprudence. By formulating the discussion around *sīyār,* our research will examine how legal obligations can be obtained from the primary sources namely the Qur'ān and the *sunnah* of the Prophet (and of the *ahl al-bayt*). Additionally, secondary sources of *ijmā'* (consensus) and *'aql* (reason or intellect) will be covered to give focus to the *shī'a ithnā-'asharī* approach to jurisprudence. Moreover, a critical review of significant techniques for the implementation of *aḥkām* (religious rulings) by the *shī'ī* and *sunnī* Schools of thought will be made before focusing on the implications of the concept of time and place within the *shī'ī* jurisprudence. Thereafter Chapter 4 titled 'Comparison around International law' will provide an overview of the sources of International diplomatic law, before critically

[67] Early accounts of history are predominately shared within *shī'ī* and *sunnī* literature. However, there are a few exceptions like the much debated book of Sulaym ibn Qays al-Hilālī (d. 695). Reference could be made to Gleave, R. (2015).
[68] This is essentially because the nature of this work requires an extensive use of 'arabīyah or farsī sources extant on the subject, written by scholars in those languages.

evaluating if elements of compatibility could be seen between Islamic law and International law even though they appear incompatible in their respective origin. Having conversed on compatibility, Chapter 5 titled 'Diplomatic immunity in theory and practice' will assess the modern status of diplomatic immunity by reviewing the theoretical justifications, and the codification of the principle, in order to identify areas of compatibility within Islamic diplomatic law and International diplomatic law. Subsequently, an assessment of the observance of diplomatic immunity will be made by looking at the Charter of Madīnah and the Treaty of Ḥudaybīyyah. In light of the presented discussion around *sīyār,* the approach of Muslim States towards diplomatic immunity and their ratification of globally accepted frameworks will also be reviewed. Additionally, we will also focus on analysing the foreign policy of the Islamic Republic of Iran as an example of the *shī'ī* perspective of Islamic government. In doing so, this is aimed at strengthening the broad argument on the compatibility of diplomatic immunity context of the *shī'ī* doctrine in relation to its compliance with International law. Thereafter with Chapter 6 'Conclusions', the summative comments for this research will be made, presenting our thoughts on discussions made, while highlighting evaluations and recommendations on the compatibility of Islamic and International diplomatic law. Finally, an appendix titled 'Comprehensiveness of the *sharī'a* and the ideology of reform' is included to highlight discussions around the developing and expounding of the *sharī'a*'s understanding by religious intellectuals of the *shī'a ithnā-'asharī* School, seeking to move forward in overcoming the challenges of modern times including that of International norms. Finally, an appendix titled 'Comprehensiveness of the *sharī'a* and the ideology of reform' is included to highlight discussions around the development of the *sharī'a*'s understanding by religious intellectuals of the *shī'a ithnā-'asharī* School. This seeks to identify the way forward for extending our research the overcoming the challenges of modern times, including that of International norms.

CHAPTER 2 – OVERVIEW OF DIPLOMATIC PRACTICE IN ISLAM

2.1 Introduction

The study of historical antecedents to the modern diplomatic parameters is a necessary criterion for our understanding of the compatibility of Islamic diplomatic law with International diplomatic law because of its widely recognised obligational factor within *sharī'a*. [69] It is also a necessity in addressing a key research question proposed; to what extent is Islamic diplomatic law from the *shī'a ithnā-'asharī* doctrine [70] compatible with International diplomatic law? As such, we begin this chapter by considering the various meanings and definitions surrounding the terms 'diplomacy' and 'diplomatic law' and accentuate their relevance to International law before proceeding to outline the term 'Islamic diplomatic law'. This will enhance our awareness of the complexities involved particularly when discussing the impact of Islamic civilisation towards the development of such concepts. Subsequently, a brief historical analysis of early Islamic diplomatic practice is made while assessing the evolution and development of Islamic diplomatic law. This is done by reviewing significant events during the following periods, the time of the Prophet Muḥammad (579-632 CE), the time of the four Caliphs (632-661 CE), and the periods of ʾUmayyad (661–750 CE) and the ʿAbbāsid (750–1258 CE) dynasties, signposting various diplomatic interactions and treaties between the Islamic and non-Islamic civilisations.

Although the Prophet Muḥammad doubtless is an emblematic figure, yet finding an actual historical biography of him is not easy without seeking to enter into a salvation history perspective. [71] However, these give an insight into how early Muslims conceived of the Prophet in writing their narratives. Additionally, the focus of our research in formulating the discussion around *sīyār* will be based on the *shī'ī* contribution and perspectives to its historical evolution. Nevertheless, many of the early books of history 'served as receptacles for various sentiments of the time' (Husayn, 2021: 33), [72] and the denominational

[69] The question of authenticity of early Islamic history is a topic of much debate within research essentially because of the mythical style of the presented material (Anthony, 2020; 2).
[70] The coverage of Islamic History in English literature particularly by the Orientalists is questionable considering the *shī'a ithnā-'asharī* perspective, because their argumentation is essentially entrenched on the *sunnī* readings of Islamic history (Matthiesen, 2023; 194).
[71] Salvation history is the approach of seeking the eternal saving intentions, by convincing the existence of factors even if the history is vague.
[72] Thus, you can find in what we would refer to as anti-*shī'ī*, pro-*shī'ī*, and non-partisan *ḥadīth* in the same collection.

distinctions between the *shīʻī* and *sunnī* that are made nowadays were not so identifiable prior to the ʼUmayyad and the ʿAbbāsid eras. [73] Thus, historically to a certain extent, these would be intertwined with *sunnī* contributions, [74] such as in our historical review, we also benefit from later literary works of great *shīʻī* scholars, with the foci of literature being predominantly Arabic and Persian.

Many biographies of the Prophet can be found giving accounts of his life in what is referred to as the *sīrah* (conduct) or the way of life [75] (Bonner, 2008; 37). [76] However, few early accounts have survived the core classical literature available as primary Muslim historical accounts are mostly dated from the late 8th century to the early 9th century, designated as *al-maghāzī* (the battles). [77] Thereby, we have used sources such *sīrah rasūl Allāh* of Ibn Isḥāq (d. 767) [78] as it appears in the recensions of ibn Hishām (d. 833), [79] as well as the *al-maghāzī* by al-Wāqidī (d. 823), and the narratives of al-Ṭabarī (d. 923). [80] For example, al-Wāqidī's *kitāb al-maghāzī* (book of battles), is one of the first Muslim historical accounts of military campaigns, the manuscripts available have been edited and some sections involving the Jews have later been translated into English and published (Al-Waqidi, 1966). [81] These give the first Muslim historical accounts of military campaigns, without intending to oversimplify, regarded as 'multi-layered compositions that have gone through different stages of editing and elaboration for different purposes at different times' (Kennedy, 2007; 14). From the oral transmission of the treasured accounts of the triumphs and tragedies to the preservation of memories of predecessors. This is done through the detailing of the *matn* (text) with *isnād*

[73] There are two distinct features, ideological and political, and it can be argued that although the latter existed during the earlier period but the ideological settings were laid by Imām al-Ṣādiq, thus reffred to as the *jaʿfarī* School. Thereby during this early ʿAbbāsid era we see a change in 'the emphasis of the institution of Imāmate, from political to religious authority' (Modarressi, 1993_a; 9).
[74] For example, the famous historian Abū ʿAbd Allāh Muḥammad ibn ʿUmar, commonly known as Al-Wāqidī (d. 823) like an earlier historian Abū Mikhnāf Lūt ibn Yaḥyā, commonly known as Abū Mikhnāf (d. 774), do not identify themselves as *shīʻa.* However, amongst Al-Wāqidī's twenty books are many heated topics of *shīʻī* debate. Moreover, both historians are known for their books on *maqtal al-Ḥusayn* (massacre of Ḥusayn), which again indicates their *shīʻī* tendencies.
[75] Or meaning biography.
[76] These detail 'Prophets life, the conquests, events of the first and second civil wars, lives of the governors and rebels and much more' (Robinson, 2004; 28).
[77] Nevertheless, he is often criticised for not following 'the traditionalist methodology in the *ḥadīth* transmission' (Shaikh, 2017; 117), thus missing the narrators.
[78] Abū ʿAbd Allāh Muḥammad, commonly known as Ibn Isḥāq.
[79] Abū Muḥammad ʿAbd al-Malik, commonly known as Ibn Hishām.
[80] Abū Jaʿfar Muḥammad ibn Jarīr, commonly known as al-Ṭabarī.
[81] As an early Muslim historian, he talks about and applies the historical events and what were the root causes of their happening and analyses their consequences (Faizer, 2013; ix).

(narrators) much like 'footnotes in academic writing, citing the reputable sources (Kennedy, 2007; 16). [82]

2.2 Defining Diplomacy and Diplomatic Law

According to a former British diplomat, Lord Strang (d. 1978), 'in a world where war is everybody's tragedy and everybody's nightmare, diplomacy is everybody's business' (Bolewski, 2007; 2). No wonder one can find countless attempts to give a lucid meaning to the term diplomacy, but its meaning continues to widen with time. Diplomacy is an 'all-inclusive concept', 'an official State-interaction that deals with and embraces all activity, concrete and conceptual, of the nation-State in International relations' (Whelan, 1988; 12). This interdisciplinary nature of diplomacy with bearings on various fields of knowledge (Bolewski, 2007; 3), makes a clear definition more challenging. Nevertheless, the term is 'derived via French from the ancient Greek diploma, composed of diplo, meaning folded in two, and the suffix -ma, meaning an object' (Freeman and Marks, 2023; 1). This folded document conveyed between sovereigns has been interlinked with International relations, and we can see in the 18th century the French term *diplomate* (diplomat or diplomatist) came to refer to a person authorised to negotiate on behalf of a State (Dufour, 2020; 137). There are also additional factors to consider, for example, the term's early definition by the Oxford Dictionary regards diplomacy to be 'the management of International relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; the business or art of the diplomatist' (Murray et al., 1933; 385). However, this complicates understanding the term further, because expressions used have different meanings to speakers of other languages. In other words, the adoption of words in other languages to replace key terms makes its understanding further compromised. For example, negotiation is a term that tends to have 'particular connections' in Arabic or Persian. For instance, the term is translated to *mufāwadat* or *musāwama* in Arabic, but this was identified as a key point of difference in the Arab-Israeli negotiations (Kurbalija and Slavik, 2001; 78). A similar case could exist with the translated versions of the term in Persian, which are *muẕākereh* or *mu'āmeleh*. In essence, *mufāwadat* in Arabic and likewise *muẕākereh* in Farsi are terms that are suggestive of representatives involved in the 'courtly exchange of views'. Discussions that are 'conducted in a serious, positive and sociable atmosphere' while 'putting forward constructive suggestions'. This is quite different from *musāwama* in Arabic

[82] These are not recounted in a continued prose style presented in modern historian accounts, but written as short anecdotes referred to as *akhbār* (reports) (Kennedy, 2007; 17).

and likewise or *mu'āmeleh* in Farsi terms that are suggestive of representatives 'haggling' in getting 'as much they can in a transaction' involving 'bargaining and trading' (Cohen, 2001; 28; Quinney, 2011; 111).

Other than the translation issue, definitions have tended to make the understanding of diplomacy more complicated. In reality, this is particularly concerning when it is linked with other loaded words, and synonyms for a broader theme of foreign policy or possibly in its execution. Such as diplomacy being defined 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' by notable personalities (Satow, 1932; 1). To separate out diplomacy from a broader theme, research has often quoted the British Politician Sir Harold Nicolson (d. 1968), [83] in other words, 'the practitioner as the theorist'. He concluded that diplomacy is 'not an end but a means, not a purpose but a method' (Drinkwater, 2005; 1). It seeks, by the use of reason, conciliation and the exchange of interests, to prevent major conflicts arising between sovereign States. It is the agency through which foreign policy seeks to attain its purposes by agreement rather than by war. Thus when agreement becomes impossible, diplomacy which is the instrument of peace becomes inoperative, and foreign policy of which the final sanction is war becomes operative (Nicolson, 1946; 164; Jayapalan, 2001; 17; Ismail, 2016; 20). Nevertheless, other politicians have expressed reservations by pointing out that this indicates a lack of conviction in the indivisibility of foreign policy and diplomacy, making a distinction between 'the curative methods of diplomacy' and the 'surgical necessities of foreign policy' (Drinkwater, 2005; 90). Well-known politician Henry Kissinger has viewed this as being inadequate pointing out that the effectiveness of diplomacy cannot be divorced from the domestic structure of the States, which invariably, includes international order (Kissinger, 1956; 264). Others have highlighted a fusion between diplomacy and foreign policy, arguing that the use of diplomacy will be maximised when it includes the entire process of managing relations with other States and international institutions (Burton, 2010; 199). In reality, we can conclude that diplomacy has outlived various outlooks and can no longer be seen by its traditional sense as a mere conduct of foreign affairs of sovereign nations. In the Twenty-first century, diplomacy is 'transferring from a peaceful method of inter-State relations' to a general statement of communication amongst globalised societies (Bolewski, 2007; 3). Modern diplomacy has fundamentally changed the very character of diplomacy, 'extending its

[83] As the son of diplomat Arthur Nicolson, he was born in Tehran.

activities into many spheres' while 'subjected to unprecedented influences and restrictions' (Stanzel, 2019; 9).

A further point to consider when discussing a definition for diplomacy, is the linguistic constraints, particularly for those conversing in Arabic or Persian. Moreover, its acceptance is also questionable, as pointed out by the 18th century writer, French writer Le Trosne (d. 1780), 'diplomacy is 'an obscure art concealed in the folds of deceit', which 'can exist only in the darkness of mystery' (Jonsson and Hall, 2005; 2; Eban, 1983; 384). However, such an outlook is not one that States would favour to portray their conduct when the actions of their ambassadors are considered within the sphere of contemporary diplomacy. The profession is no longer stigmatised by such terms expressed by Sir Henry Wotten (d. 1639) to Queen Elizabeth I that 'as an ambassador is an honest man sent to lie abroad for the good of his country' (Raymond, 1992; 12). Alternatively referred to as a 'swindler of mankind, or a 'traitorous assassin of morality' (Jonsson and Hall, 2005; 2), although in the case of the Tehran hostage crisis, this remained the sticking problem. In the modern world, such viewpoints are no longer valid because the functional essence of diplomatic relations has transcended the art of lie-telling or deceit, it has rather become an amiable apparatus through which nations ensure and maintain regular contacts (Griffiths, O'Callaghan and Roach, 2002; 79). Thus, contemporary diplomacy has adapted to new prevailing conditions and participants (Langhorne, 1997; 13; Jonsson and Hall, 2005; 2). In modern times, diplomacy is not just an amicable process of inter-State relations, but also an all-purposed modus of communication among the international community (Bolewski, 2007; 2). This is why diplomatic law has become necessary to enhance the smooth conduct of official relations and negotiations between independent polities, including other subjects of International law. It has therefore become imperative for there to be in place a set of rules to govern the business of international diplomacy. This has accentuated the essence of diplomatic law whose primary aim is not only to facilitate international diplomacy between the sending State as the head of a diplomatic mission and the receiving State as the one receiving the diplomatic mission. Also there to govern the relationship between representative organs of major players in the international diplomatic business (Higgins, 1985; 641). Diplomatic law now also refers to the norms of International law regulating all other subjects such as international organisations and various international bodies, as well as diplomatic institutions (Dembinski,

1988; 1). [84] Although International law is the subject of much debate, there are certain areas of almost complete agreement; diplomatic law is one such area. Diplomatic law requires 'governments to provide standards of international behaviour', which is acknowledged as being ideal and 'even if might not always manage to live up to them' (Feltham, 2004; 116).

2.3 Islamic Diplomatic Law

The conduct of Muslim envoys and detailed treatment of diplomacy and diplomatic protocols are covered to some extent by Ḥusayn ibn Farrā', in his book *kitāb rusūl al-mulūk* (book of envoys of kings) (Vailou, 2015; 1). However, the use of the term *rusul* (envoys), the plural of *rasūl,* is a derivative of the verb *arsala* (to send or dispatch). This term is most commonly used to mean Prophet or messenger of Allāh, [85] and is indicative of the intrinsic nature of this topic. In reality, one expects the term *safīr* (ambassador) to have been used for a diplomatic agent or an envoy. This would not be restricted by such religious boundaries but religious connotations are inherent when dealing with topics related to the Muslim civilisation, particularly when referring to material from medieval times. Similarly, the term *sīyār* commonly used for Islamic diplomatic law within literature, in fact, refers to 'a particular manner of conduct as recorded in the biography of an exemplary person' (Esposito, 2003_b; 297). In its singular form *sīrah*, the term meaning way of life refers to a biography of a person, but it is particularly used when referring to the biography of Prophet Muḥammad. Nevertheless, the term *sīyār* is used by al-Shaybānī when covering diplomatic law, without giving an exact meaning or definition for the term. However, the commentary on his work is given by al-Sarakhsī who identifies *sīyār* to mean the conduct of State relationship with other communities and nations (Mahmassani, 1966; 205). Although the discussion around *sīyār* and how legal obligations can be obtained from primary sources will be covered in the next chapter, but the point to be made here is that the term refers to a broader theme than merely Islamic diplomatic law, thus a more accurate translation could be argued to be Islamic International law. Conversely, Islamic law 'does not distinguish between national and International law in the modern sense of these words. Actually, Islamic law contains 'a large corpus of rules on how Muslims should deal with the non-believer inside and outside the realms of Islamic rule' (Berger, 2020, 1; Khadduri, 1955; 120). It is on such grounding that the discussion around *sīyār* is always subjected to a debate on the

[84] It should be noted that these International law norms regulating diplomatic and consular interactions were for a time basically customary before they were codified and embodied by the 1961Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Counsular Relations.
[85] For example in the chapter *al-'arāf* (7:158); Say O mankind I am the messenger of Allāh to you all …, .

notations of *dār al-islām* and *dār al-ḥarb* (Dougherty and Pfaltzgraff, 1971; 149). The term *sīyār* is even defined as 'the rules of war and dealing with non-Muslims' (Raven, 1997; 1). However, this can be critiqued as indicative of Orientalism, portraying 'Islam as a cultural other, that does not fit amongst their desired hegemony (Grosfoguel and Mielants, 2006; 3). [86] Moreover, history is a vulnerable discipline leading to misunderstanding by people particularly from outside, particularly 'when Islamic sources, the linguistic, literary and historical material are so intertwined' (Sardar, 1999; 56). As such, the topic of diplomacy in Islam seems to be lost in the sea of accusations around the aspect of *jihād,* remarking that *sharī'a* will require Muslims to 'maintain a state of permanent belligerence with all non-believers, collectively encompassed in the domain of war' (Mushkat, 1987; 302). [87] In reality, the division of the two opposing camps was formulated by the Muslim jurists two centuries after the Prophet of Islam during the era of *al-'umawīyūn* (the ʾUmayyads) and later *al-'abbasīyūn* (the ʿAbbāsids) dynasties when Muslims were ruled by a single Caliphate much like an Empire (Munir, 2003; 403; al-Dawoody, 2011; 92). Moreover, the 'division of sovereignty into two realms' is not a reflection of 'a parallel division of inhabitants', because many non-Muslims resided in Muslim territories (Berger, 2008; 108). In fact, 'once the conquests were consolidated, Muslims ruled over vast regions' of which many if not the entire inhabitants were not Muslim, as such Muslims were 'a minority in their own Empire' (Berger, 2008; 108). Moreover, there has always been a discussion around a third camp, *dār al-ṣulḥ* (abode of truce) or *dār al-'ahd* (abode of covenant), non-Islamic territories that are no longer hostile. This identifies the presence of negotiated settlements or 'peaceful coexistence based on armistice, diplomatic ties, peace agreements' (Allain, 2011; 404), which dispels the idea of a universal dichotomy. [88] Thus, 'the division and its naming did not imply the impossibility of concluding treaties and initiating official relations', in fact, wars were 'mostly concluded through peaceful treaties', negotiated by diplomatic emissaries (Berger, 2008; 107). Finally, there exists substantial historical evidence of diplomatic practice during the Islamic civilisation, which will be covered hereafter. A review of the evolution and the development of diplomatic law as will be covered in Chapter 4 further supports the case for diplomacy in Islam. The use of diplomacy, its scope and practice not only existed but also became more elaborate and widened from what Arabs practised prior

[86] Additionally, the Islamic sources that Orientalist edited, translated and printed essentially entrenched the *sunnī* readings of Islamic history (Matthiesen, 2023; 194).
[87] A point that is opposes clear instructions laid in chapter of *al-nisa'* (4:90) for harming them; If they refrain from fighting you and offer you peace, then Allāh does not permit you to harm them.
[88] Even if we consider the state of war to have prevalent between the Muslims and their neighbours until the latter submitted, 'the practice of diplomacy' has always existed from the time of the Prophet Muḥammad (Drocourt, 2010; 29).

to Islam (Mahmassani, 1966; 264). An early example of this approach is remembered by Muslims regarding the mission of Prophet Muḥammad's grandfather, 'Abdul Muṭṭalib (d. 578) [89] alongside his sons seeking conciliation or peaceful settlement with Abraha (d. 570). [90] He had come with his army to destroy the site of *ka'bah* (cube) regarded as the house of God in Makkah (Haykal, 1976, 41; Istanbuli, 2001; 124).

2.4 Diplomatic Practice during the Time of the Prophet

In covering the historical antecedents, it is worth remembering that the advent of Islam occurred in the Arabian Peninsula, placed between two huge powers of the Persian and Byzantine Empires. The area had benefited from their 'culture, both material and moral' permeating through the trans-Arabian trade routes (Lewis, 1985; 30). However, 'the province of Ḥijāz with its nomadic life' was not directly ruled by outside powers, and was able to keep its political independence (Watt, 1961; 5). This political awareness is often argued by Muslims and non-Muslims alike to exist with regard to the conduct of Prophet Muḥammad (Nizah et al., 2013; 271), based on the decisions he has made throughout his mission. A clear example of this is argued to be the administration of treaties made in line with his quest to establish the Islamic government (Haj-Sayyid Javadi, 1988; 337). His 'intellectual superiority at critical moments' (Bowering, Crone and Mirza, 2013; 375) has led to many regarding him as 'the greatest of politicians' (Esposito, 1984; 6). [91] Moreover, he has been named as the 'highest ranking influential person' in history because of his success 'in both religious and secular levels' (Hart, 1978; 3). Thus, for Muslims, Prophet Muḥammad 'has been seen as a role model, and his behaviour has been regarded as normative' in both legal matters and everyday life (Görke, 2015; 2). In fact, he is considered by many Muslims as *insān-i kāmil* (perfect human being), a concept that possibly originated in *shī'ī* Islam (Görke, 2015; 2). Subsequently coverage of diplomatic practice during the time of the Prophet is crucial to this debate. However, the actual relationship between the biographical and historiography material [92] and the narrations of his words and deeds [93] is quite complex as the two types of material have arguably emerged as separate fields 'each

[89] Shayba ibn Hāshim, commonly known as 'Abdul Muṭṭalib.
[90] Known as Abraha al-Ashram was Aksumite army general, who ruled over southern Arabian and declared himself King of Ḥimyar (Rubin,2009; 27). The story of his attach on *ka'bah* is referred to in the chapter *al-fīl* (105:1-5); Have you not seen how your lord dealth with the companions of the elephant… .
[91] The *shī'a ithnā-'asharī* condider the Prophet and the Imāms as leaders in mundane, political and religious affairs.
[92] The *sīra* or *maghāzī* books.
[93] The books of *haḍīth*.

influenced the other but they preserved their distinctive features' (Görke, 2011; 171). [94] The question of the authenticity of early Islamic historiography based on the various books of *al-maghāzī* has long been a topic of much debate within research. [95] The so-called topic of 'historical Muḥammad' has questioned the 'theologically tendentious and even outright legendary material' being presented (Anthony, 2020; 2). Subsequently, it is argued by some that in reality there are four cardinal sources, 'the Qur'ān', 'epigraphic, documentary, and archaeological evidence', 'contemporary and near contemporary non-Muslim accounts', and 'Arabic literary sources' (Anthony, 2020; 2). These should be ideally used as complementary material for historical evidencing of events.

Crucial to our compatibility study is the argument that within the historiography of early Islam, by Muslim scholars Prophet Muḥammad is regularly recognised for considering the international aspect of his call. For example, it is argued that this is done by transcending the boundaries of his local vicinity by sending envoys and emissaries to the rulers of Persia and Byzantine as well as the monarchs of Abyssinia, Egypt and some other Arab leaders (Istanbuli, 2001; 44). [96] However, there has been much debate about the authenticity of these letters with some claiming that they are forged to promote Islam as a universal religion and strengthen the position against Christian polemics (Serjeant, 1983; 141). Others have suggested that their inclusion in the books of *al-maghāzī* can be sourced to Arabic poems recited at the time (Görke, 2011; 174). Despite such doubts, on the whole, on the whole, Muslims of different Schools of thought agree on the actuality of their occurrence, only differing on 'the detail and the date, and the exact phrasing' (El-Cheikh, 2004; 44). For example, the *shī'ī* commentary to Qur'ān at the beginning of chapter *al-rūm* (30: 1-5) [97] by 'Alī ibn Ibrāhīm al-Qummī' (d. 939), mentions of the respectful reception of the Prophet's letter by the Byzantine emperor Heraclius (d. 641). This is in contrast to the Persian emperor Khusru Pārvīz II (d. 628), who tore the letter apart. The commentary concludes that as such believers are promised in Qur'ān of the Byzantine victory over the Persians (al-Qummi, 1967; 152; El-Cheikh, 2004; 45). However, in practice, it is difficult to authenticate the issue

[94] 'Both fields have a great deal in common with regard to content, form and transmission, the nature of their relationship remains a matter of debate' (Görke, 2011; 171).
[95] Such early books of early history accounts such as that of Ibn Isḥāq or Abū Mikhnāf are based on collected oral traditions dictated to pupils. Later historians such as al-Ṭabarī have use the edited versions of these collections but their authenticity is open to debate because of the author's time gap with the actual events (Crone, 1980; 12).
[96] Muḥammad ibn Sa'ad al-Baṣrī (d. 845) in his compendium of biographical information *kitāb al-ṭabaghāt al-kubrā* (book of major classes) records the letters as being written after the event of Ḥudaybīyyah in 628 CE (Ibn Sa'ad, 1960; 258)
[97] The verses mention of the Byzantine defeat and fortell of their triumph to follow (between three to nine years).

of Prophet Muḥammad's letters, even though many Muslim scholars insist on their existence (Hamidullah, 1985; 147). There are also scholars who claim the existence of the letters to correspond to a manuscript discovered in 1947 (Drocourt, 2010; 31). In support of the letter's validity, King Hussain of Jordan (d. 1999) broadcasted in 1977 that he was in possession of the Heraclius letter, and claimed the authenticity of which had been confirmed by experts (El-Cheikh, 1999; 11), but details of carbon dating have never been published. With regards to non-Islamic accounts of such events in early Islamic history, although 'Islam is unusual among amongst world religions in having its origin more thoroughly documented at the early stage of its history by outsiders than by insiders' (Penn, 2015; 7). Nonetheless, there is no apparent evidence of such communication, although this does not necessarily indicate of its non-occurrence. There are available early Syriac, Arminian and Greek Christian writings dated after the death of Prophet Muḥammad, whereas Muslim accounts are from many years later. For example, 'the earliest surviving Syriac reference' is suspected to have been written in 637 CE (Penn, 2015; 9). The representations of the Prophet's letters are also consistent with recordings of another earlier Islamic event covered in literature, namely that of the Prophet's instruction to the persecuted Muslims to seek refuge outside Arabia in Abyssinia in 613 CE (Watt, 1961; 66). The encounter with Aṣḥamah al-Najāshī (d. 631), the Negus (king) of Abyssinia, in reality, marks the 'first migration in Islam' (Subhani, 2014; 237). A group of Muslims fleeing the tribes of Quraysh were led to safety by Jaʿfar ibn Abī Ṭālib al-Ṭayyār (d. 629). [98] According to Muslim historians the Christian king was given the Prophet's message of peaceful greetings by reciting 'the verses of the chapter of *māryam* (19:17-21), [99] from Qur'ān about the virgin birth' (al-Hasan, 1982; 396). The well-known *shī'ī* Jurist ʿAllāmah [100] Muḥammad Bāqir Majlisī (d. 1699) records the event by stating, the Arabs of Quraysh sent a delegation seeking the return of the Muslims. But *jaʿfar*'s discourse with the king secured their stay in Abyssinia, highlighting the notation that there are points shared between Islam and Christianity (Majlisi, 1990_d; 412). [101] The migrants return to Madīnah coincides with the date of Prophet Muḥammad's letters, reflecting the Muslim community's 'increasingly secure position' by this time (Donner, 2012; 48).

Although any historical study would be inevitably shaped by the source material on which it is based, the question asked could be, can we believe what we read? The response would

[98] The bother of Imām 'Alī ibn Abī Ṭālib.
[99] The verses discuss virgin Mary's interaction with Allāh regarding her miracle son, Jesus.
[100] The title used for certain religious scholars, meaning the most learned.
[101] Thereafter, Jaʿfar al-Ṭayyār reflected on Prophet Muḥammad's character, 'he ordered us to speak the truth, to be faithful, to observe our obligations to our next of kin and neighbours, to refrain from forbidden acts and bloodshed …. (Majlisi, 1990_d; 412).

be that 'unfortunately we have no original documents that might confirm unequivocally any of the traditional biography' (Donner, 2012; 52), although 'the narratives do provide information about the course of events' (Kennedy, 2007; 14). Even though this would mean the Black letter or doctrinal approach could not be applied to such material, nevertheless because at times they constitute the basis of thought by Muslim jurists with regards to the Prophet or Imām's behaviour, their coverage is critical in answering our core research questions. In referring to such historical events the point to consider is that our reading of them 'is less about the historical figure of Muḥammad than for understanding how early Muslims understood Muḥammad and his message as well as how they chose to depict the disclosure of his providential plan of human salvation through both' (Anthony, 2020; 2). If we accept these accounts as a genuine representation of events, then they identify the basis of peaceful coexistence with a non-Muslim State, in building a rapport with Christians and forming clear foundations on which both parties would agree rather than differ. If we do not accept these as a genuine representation of events, they are still important in our research because they would highlight the social memory of the Prophet, and 'show how events were remembered by later generations' (Kennedy, 2007; 14). Thereby, they would illustrate how the Muslim community created their own form of diplomacy and peaceful coexistence with non-Muslim States. [102] Subsequently, their absolute rejection would be 'just an uncritical approach as unquestioning acceptance' (Donner, 2012; 52). However, the approach employed by Prophet Muḥammad is considered by some Westphalian observers as 'a declaration of policy' rather than diplomacy (Sharp, 2009; 251). Nevertheless, it is argued that such observations are taken 'out of historical/cultural context' and as such based on criteria 'from another time and place' (Sharp, 2009; 252). The concept of diplomacy is not always a process of give and take, but at times the beginning of an encounter with others. This is particularly the case through the communication of a peaceful message when dealing with those of superior military power, often 'marked by courtesy and mutual respect' (Drocourt, 2010; 31), as the case with the Prophet's letters to the neighbouring rulers. [103] The Covenant of the Prophet Muḥammad with the Monks of Mount Sinai is another example of such an approach attributed to the Prophet. [104] This gives the monks of Saint Catherine's monastery protection alongside other privileges (Morrow, 2013; 1; Ratliff, 2008; 1). Yet

[102] Irrespective of whether you judge them to be based upon true traditions or myths, they represent how the Prophet is perceived to have done so. The Qur'ān itself in chapter *al-anfāl* (8:31) refers to non-believers who were planning to kill the Prophet of having the opinion that all revealed are merely *isṭurah* (myth); '… If we wanted, we could have easily produced something similar; this is nothing but ancient myths'.

[103] 'From Muḥammad the servant of God and his messenger to Heraclius the great leader of *rūm* … 'embrace Islam that you may find peace' (Hamidullah, 1987; 80).

[104] Like many other covanants, the documents were scrivened in the handwriting of Imām 'Alī and signed by Prophet Muḥammad.

another example with respect to Christians is the declaration of *najrān* that takes place after the event of *mūbāhīlah* (imprecation) between Muslims and Christians. [105] Muslim scholars argue that by accepting Muslim sovereignty, the Prophet did not require them to convert to Islam, allowing them to worship as before and live alongside the Muslim community. [106] Prophet Muḥammad is quoted as saying 'the Muslims must not abandon the Christians, neglect them, and leave them without help and assistance since I have made this pact with them on behalf of Allāh' (Morrow, 2015; 36; Considine, 2016; 11). There is no doubt that such encounters within Muslim chronology provide later generations' foundational approach to diplomacy. Since Prophet Muḥammad is portrayed to be a 'religious pluralist' because he is engaged in 'a form of proactive cooperation that affirms the identity of the constituent communities while emphasizing the well-being of each and all' (Morrow, 2018; 391).

Muslim scholars argued that the most important diplomatic move by the Prophet of Islam which regulates relations with the Jews and Christians as well as the other tribes within the Arabian Peninsula is *ṣaḥīfat al-madīnah* (Charter of Madīnah) (Ali, 2006; 40; Subhani, 2014; 355). This Charter is also referred to as the Constitution of Madīnah and will also be referred to in Chapter 5 claimed to be one of the most successful diplomatic moves by Prophet Muḥammad (Akhtar and Razaq, 2020; 32). When the fighting between the two tribes of Al-'Aws and Al-khazraj for control of the city of Yathrib led them to seek arbitration and the Prophet was invited to help them resolve their differences. [107] His *hijrah* (migration) in 622 CE led to the establishment of the fundamentals of an Islamic government by unifying the tribes to form an *ummah (community),* or a nation (Watt, 1955, 161). [108] It is argued that the Charter 'created a covenant between all significant tribes and families' residing within

[105] According to the *shī'ī* commentary to Qur'ān by ʿAllāmah Ṭabāṭabā'eī, the event is related to the verse in the chapter of *āl-'Īmrān* (3:61); … Come Let us gather our children and your children, our women and your women, ourselves and yourselves, then let us sincerely invoke Allāh's curse upon the liars.

[106] At *mūbāhīlah*, the two sides were challenged to live with each other in peace or curse each other to extinction; When the Chritians came in their droves they found the Prophet Muḥammad to have come accompanied only by Imām 'Alī, Prophet's daughter Lady Faṭīmah, and Prophet's grandchildren Imām Ḥasan and Imām Ḥusayn (Tabatabaei, 2017_a; 224). The Christians accepted Muslim sovereignty and were required to pay *jizyah* in return for a pledge by the Muslim ruler to secure their safety and their property, and guarantees to their right to worship and to conduct their personal affairs in accordance with their own religion and customs (Al-Na'im, 1987; 321).

[107] The migration also came at a critical time for the Prophet when the tribes of Quraysh had made a pact to kill him, but were shocked on the night to see Imām 'Alī sleeping in his place as a decoy (Subhani, 2014; 328; Hazleton, 2009; 36).

[108] Soon after the arrival of the Prophet, both *anṣār* (helpers) and *muhājirūn* (migrants) changed the name of the city from Yathrib to *madīnah tun-nabī* (the city of the Prophet), thereafter known by the shortened version Madīnah.

the city, [109] 'outlining the rights and procedures for conflict resolution and community action'. Additionally, those advocating the Charter, proclaim that it guaranteed each citizen their 'religious and civil rights and participation in the daily life of the State' (Isakhan, 2016; 63). Thus preparing the basis of a government administered on 'principles of freedom, justice, equality, and peace' (Isakhan, 2016; 63). It is argued that the Charter had done more than anyone would have expected so early in the Prophet's mission. 'The framework had been built, a political system with strong foundation had been created into which tribes could be brought, and the economic basis of the system was sound' (Watt, 1956, 149). Moreover, the Charter places the Prophet as the mediating authority between different groups and tribes, forbidding the waging of war without his authorisation. It is important to stress the significance of the Charter to the debate on *sīyār,* through which the Prophet Muḥammad gained a position to exercise great power. This strategic move allowed him to become a 'ruler and priest, lawgiver and judge, Prophet and commander-in chief for the whole community' (Hills and Ross, 1956; 165). It is argued by Muslim scholars that the Statesman's approach of the Prophet can be seen thereafter by his approach to foreign envoys or delegations; he would then meet them in the mosque where *ustuwānah al-wufūd* (pillar of delegations) or the pillar of embassies still marks the place (Hamidullah, 1945; 157). According to the presented narratives, such a consultative approach is also evident during Islam's four military encounters *badr*, *uḥud*, *khandaq*, and *aḥzāb* when he countered the tribes of Makkah, various attempts were made to eradicate the small Muslim community. Prophet Muḥammad would convene assemblies of his companions at the mosque, seeking their advice and opinions (Istanbuli, 2001; 36-38). Those advocating the Charter, indicate this to have been embedded within its requirements that the Prophet 'consulted with the community at the time of war and peace' (Istanbuli, 2001; 33). Thus concluding that it is highly commendable and a major diplomatic move for the period, prompting some Muslim historians to draw comparisons with 'the Grecian and Roman assemblies' (Isakhan, 2016; 63). Irrespective of whether that comparison is right or not, the fact that despite being a Prophet and 'having the privilege of divine revelation', he still consulted the people on social issues (Taghavi, 2004; 80) [110] is incredible and extremely promising to new religious thinking. but such a comprehensive assessment is deemed to be beyond the scope of this particular research.[111] However, such sentiments on the merits of the Charter of Madīnah

[109] At the event of *mū'akhat* (brotherhood) both *anṣār* and *muhājirūn* were encouraged to make their brotherhood stronger than that of blood, brothers in Islam. Prophet Muḥammad then embraced Imām 'Alī and referred to him as my brother, this also avoided favouring of a particular tribe (Subhani, 2014; 352).

[110] As pointed out by the Iranian scholar and polititian Mehdī Bāzargān.

[111] Refer to appendix1.

are not shared by all, the opponents of such perception of the Prophet at times reject it as unreliable, since Ibn Isḥāq provides no evidence for his documentation and also question the precise timing of its creation (Humphreys, 1991: 92). [112] Others argue that the Charter is really a unilateral proclamation rather than a treaty (Lewis, 2002; 42). It is also argued that the Charter was not a single document, but rather a compilation of multiple agreements that were possibly made at different times (Khan, 2006; 205). The document that has survived was 'a series of formal documents of non-aggression' (Aslan, 2011; 55), delineating reciprocal relationships (Emerick, 2002; 131). The idea of community peacebuilding is also challenged while reflecting on the violent treatment of Jews after the Battle of Trench (Freedman and McClymond; 2001; 567), which will be briefly reviewed in Chapter 5, but others have disagreed concluding that it was intended to create 'a shared sense of identity as citizens of one State' (Emerick, 2002; 132).

Another important diplomatic move by the Prophet that touches on the law of treaties which 'forms an impressive part of Islamic doctrine' (Nussbaum, 1962; 53), is the Treaty of Ḥudaybīyyah. [113] So early in Islamic history accounts, the treaty provides the provision for 'the sanctity of emissaries, that no ambassador may be detained or harmed' (Bassiouni, 1980; 611). Although aspects of the treaty will be analysed in Chapter 5 in line with the assessment of justifications for diplomatic immunity. However, according to Muslim scholars, diplomatic credit for its very existence belongs entirely to Prophet Muḥammad, who sought the expansion of the *ummah* and 'made the Quraysh uneasy' (Subhani, 2014; 673). The treaty was directed and aimed at Muslims performing the '*umrah* (one type of pilgrimage) in Makkah, [114] because such visits were being denied by Quraysh. It also sought to make those residing and visiting Makkah aware of the Muslim community and its message. It is argued that Prophet Muḥammad surprised everyone by accepting the strict conditions of Quraysh, which were even opposed by some in his own camp (Akhtar and Razaq, 220; 33; Haykal, 1976; 352). Interestingly, according to Muslim historians when the Quraysh refused to accept his title 'Allāh's Apostle' being mentioned in the treaty, proclaiming 'for if you were an apostle we would not fight with you', he personally rubbed it out (Abu Nimer, 2000; 224). There is no doubt that this pivotal treaty helped decrease the tensions between the two rival camps and safeguard immunity for diplomats, but most significantly, it affirmed a ten-year

[112] The chain chains of transmission of narrators is missing.
[113] The treaty is scrivened in the handwriting of Imām ʿAlī, signed by the Prophet, and also witnessed by Imām ʿAlī.
[114] The pilgrimage of *umrah* happens at any time outside the specified period of *ḥajj* and is not obligatory, it is considered as a 'meritorious act of worship' (Esposito, 2003_b; 327).

period of peace between both sides (Bassiouni, 1980; 611). According to Muslim accounts two years later, the treaty was violated by Quraysh which led to the vital conquest of Makkah by Prophet Muḥammad (Armstrong, 2000; xiv; Watt; 1956; 56). What is decisive within Muslim accounts of the event is that even in the capturing of the city Prophet Muḥammad 'brought peace to war-torn Arabia' (Armstrong, 2000; 23; Haykal, 1976; 404) by forgiving his staunch enemies and granting amnesty. It is thus argued that this policy of 'reconciling of hearts' shows a 'pragmatic outlook' of the Prophet (Donner, 2012; 96) allowed him to advance his cause and take over the city of Makkah without bloodshed or forcing people to convert to Islam (Faizer, 2013; 384; Subhani, 2014; 687). According to Muslim accounts, the Prophet's diplomatic approach in binding the new community is recorded by Muslim historians to even include his marriages, aimed at creating ties of kinship across various tribes and across old hostilities. This was the case following the death of his long-standing wife lady Khadījah (d. 619) [115] who had supported him through thick and thin. It is argued by Muslims that the Prophet's later marriages were political, based on the formation of 'diplomatic alliances' (Hazleton, 2009; 10). An example of this is his marriage to the daughter of his bitter enemy Abū Sufyān (d. 641), [116] following the fall of Makkah. Those arguing against point out that although the Treaty of Hudaibiya became foundational for the Islamic doctrine regarding treaties and truces, there is 'no record outside of the Islamic sources verifies that the treaty was ever concluded at all' (Spencer, 2012; 70). Others who have accepted the existence of the treaty of Ḥudaybīyyah, have viewed it as a 'desperate gamble' (Donner, 1979; 244) or 'a sham agreement' (Smith, 2005; 138). They are also critical of the Muslim response following Quraysh's skirmish that could not be classified as a 'repudiation of the entire peace treaty' (Smith, 2005; 156).

2.5 Diplomatic Practice during the Time of the Four Caliphs

The question of leadership following the death of Prophet Muḥammad in 632 CE within the historiography of early Islam by Muslim scholars is also significant to this research [117] This is central to the division between the *shī'a* and the *sunnī* branches of Islam. [118] and one of the most important issues of concern to Muslims around the globe although beyond the scope of this research. Nonetheless, in assessing the different Schools of thought, it would be

[115] Khadījah bint Khuwaylid, the first female Muslim was a succeseful merchant.
[116] Umm Ḥabība bint Abū Sufyān (d. 666).
[117] Shaykh al-Mufīd states that the Prophet died in Medina of poison, and the most accepted account of poisoning is through food given to him at the conquest of the Khaybar 828 CE by a Jewish woman (Kohlberg, 2012; 77).
[118] Terms originating from *shī'at 'Alī* (party of 'Alī) and *sunnah*.

necessary for this study to briefly refer to the events within the last days before and after the death of Prophet Muḥammad, although we are not planning to present a narrative of those, but rather aiming to evaluate the impact of those incidents. The dispute concerning the succession that has created a major rift between people centres on the position of Imām ʻAlī ibn Abī Ṭālib (599-661 CE) [119] as *amīr al-muʾminīn* (Commander of the faithful). [120] The *shīʻa ithnā-ʻasharī* focus on the narrative that upon the Prophet's return from the farewell *ḥajj* (pilgrimage) just before his death, he is reported to have stopped at the location of Ghadīr Khumm in 632 CE, and gathered the returning pilgrims to give a sermon. [121] Taking Imām ʻAlī's arm and lifting it high, the Prophet uttered the following words, 'for whomever I have the authority over, thus ʻAlī has the authority over', [122] thereafter everyone present came to shake Imām ʻAlī's hand, a sign of giving their *bayʿah* (oath of allegiance) to him (Majlisi, 1990_f; 225). Thereby according to the *shīʻa* account, the event marks the point when the Prophet had appointed his successor, thereafter the verse in the chapter of *al-mā'dah* (5:3) [123] was revealed (Nasr and Dabashi, 1989; 160). Although the *sunnī* 'accept this incidents veracity' but interpret it differently. [124] For their scholars the narrative is no more than an attempt by the Prophet 'to defuse some discontent' by naming ʻAlī as the friend of all believers (Mavani, 2013; 2), thus they suffice to attaching a special status to him, considering his major contribution to Islam. Ironically, the issue of difference is complicated further by the understanding of the Arabic term *mawlā* (holding authority over). This is because as already discussed; Arabic expressions often have different meanings. The term used by the Prophet also means guardian, leader, master, patron, and friend. The *shīʻī* refer to this in their understanding of the historical event by identifying it with someone having authority over the people. [125] They stress that it indices of a divinely appointed leader, but the *sunnī* suffice to the term's meaning of a friend. [126] It is worth noting that 'except for

[119] Regarded by the *shīʻa ithnā-ʻasharī* as the first Imām from the *ahl al-bayt* of the Prophet, but commonly known by the *sunnī* as Caliph ʻAlī.
[120] Although the *sunnī* use this term for all rulers of the Islamic State, he *shīʻī* believe this term to be for the divine appointment for Imām ʻAlī, the first of twelve Imāms.
[121] For the full text of the sermon refer to Majd (2017).
[122] The term used for holding authority over is *mawlā*.
[123] … This day I have perfected for you your religion and completed My favour upon you, and approved Islam as your religion …, .
[124] It is argued 'how is it conseavable that the companions could agree and then fail to act on it?' (Mavani, 2013; 2). However, this line of argumentation is flawed because how could Imām ʻAlī and the household of the Prophet making a false claim. Moreover, the assumption that all companions rejected this notation is wrong, as there were companions on the side of Imām ʻAlī supporting the claim. Finally, the mere being a companion is not a unquestionable virtue because otherwise how could many verses particularly in chapter *al-tawbah* discuss of hypacracy amongst them.
[125] Leadership in the *shīʻa* context applies to Imām (divinely appointed leader) ʻAlī and his qualified decendants, the *sunnī* use the term for a prayer leader.
[126] The term is also related to *wilāyah* (authority) denoting the political leadership aspect and referenced to by Āyatullāh Khomeinī in his doctrine of *vilāyat-i faqīh* (Akhlaq, 2023; 148).

Muḥammad, there is no one in Islamic history like ‘Alī about whom so much has been written in Islamic languages’ (Nasr and Afsaruddin, 2021, 1).

Central to this debate there is also another event of contention, reference is made when the community (or at least those residing in Madīnah) decided immediately after the death of the Prophet to gather at Saqīfa and elect [127] Caliph Abū Bakr (d. 634) [128] as the first to succeed the Prophet in leading the *ummah*. [129] The *shī‘a ithnā-‘asharī* focus on the narrative that this incident took place while ‘Alī was ‘busy with the Prophet’s burial arrangements’ and as such not invited or available for the leadership election. [130] Imām ‘Alī was also not ‘amongst the crowd that came to pay their allegiance’ to the Caliph, Abū Bakr, but was rather ‘presented with a fait accompli’ (Abbas, 2021; 95). The day after the burial, Imām ‘Alī raised his objection to the recently elected Caliph, ‘you have corrupted our affairs, you did not seek consultation, and you did not respect our rights’ to which Caliph Abū Bakr replied, ‘indeed but I feared sedition’ (Andersson, 2008; 227). As such it is agreed by both the *shī‘a* and the *sunnī* branches of Islam that thereafter Imām ‘Alī, [131] decided to stay at home [132] and ‘retire from public life’ rather than create bloodshed or inner fighting between the newly formed *ummah* (Hazleton, 2009; 71). This self-restraint is highly commended and considered by the *shī‘a ithnā-‘asharī* to be based on the Prophet’s tradition in his parting words advising him ‘to be patient in facing extreme challenges after him and to ensure that Muslims stay united’ (Abbas, 2021; 99). [133] The *sunnī* historian al-Ṭabarī recalls that some including Abū Sufyān approached Imām ‘Alī to give their allegiance following the election of the Caliph, Abū Bakr, offering to fill the streets of Madīnah with soldiers. However, Imām ‘Alī rebuked them as troublemakers and said ‘you intend nothing but dissension’ (al-Tabari, 1989_b; 198). What is clear is that despite everything that had happened ‘unity was the key to the survival of Islam’ and Imām ‘Alī displayed a ‘gesture of solidarity’ in avoiding Muslim inner fighting as such a sign of his political awareness. It was only after the death of his wife, the daughter

[127] Abū Bakr ibn Abī Quḥāfah, commonly known as Caliph Abū Bakr.
[128] The title is based on the verse in the chapter of *al-nisā’* (4:59); Obey Allāh and obey the Apostle and those invested with command among you; The *shī‘a* say for the rule of *ūlil al-amr* (invested with command) to stand, the appointment has to be divine.
[129] The title Khalīf (ruler) or Caliph was used as the civil and religious leader of the community representing the Islamic State.
[130] The *shī‘ ī* reject the election for its many flaws particularly as the leader to succeed the Prophet had been appointed at the event of Ghadīr Khumm, and oath of allegiance given.
[131] In *shī‘ī* belief *the* Imām is considered to be ‘the supreme political and religious leader of the community’ (Arjomand, 1984; 33).
[132] During which he was boycotted alongside his companions inorder to given to abandon their position (Madelung, 1997; 43).
[133] In sermon 73 of Nahj al-Balāghah, Imām ‘Alī highlights the importance of the the Islamic State governance, and sets out the reasons for his initial self-isolation and later return to public life; al-Razi (1960).

of the Prophet Lady Fāṭimah (615-633 CE), [134] that Imām ʻAlī came to the mosque. [135] This was what the Caliph, Abū Bakr needed as a resolution to the events, but his return although ‘closed the rank of Muslims in support of Abū Bakr, yet reconciliation there was none’ (Madelung, 1997; 53). Yet this earned Imām ʻAlī ‘public goodwill and gratitude for his selfless approach’ (Abbas, 2021; 105), but he ‘continued to keep away from the Caliph, and the latter was hardly eager to draw him into his company’ (Madelung, 1997; 53). As such following the death of Prophet Muḥammad, the Islamic government had been formally placed in the hands of *khulafā rāshīdūn* (the rightly guided Caliphs), [136] and a new era had begun that would be marked out ‘by rapid political expansion’, referred to as ‘the Islamic conquests’ (Donner, 2012; 52).

Like ‘most sacred histories, the truth about the era of the rightly guided Caliphs is far more complicated than the traditions suggest’ and their period was ‘anything but a time of religious concord and political harmony’ (Aslan, 2011; 116). Other than the complex circumstances of Saqīfa’s election with Imām ʻAlī’s refusal to give his allegiance that ultimately led to the separation of the two branches of Islam. The era started with the tribal uprisings of *riddah* (apostasy) (632–633 CE) and ended with the Muslim civil war *fitnah* (dissension) (656–661CE) (Zeidan, 2020; 1). Faced with such challenges, the new leadership ‘affirmed its authority by military action’ and in the process, ‘an army was created’. Which in turn created a momentum that played out ‘into the frontier regions of the great Empires’ (Hourani and Ruthven, 2002; 23). Thus for Muslims, the period marks the start of a phase when the propagation of Islam became the catalyst for precipitating a conquest ‘whose scale was unparalleled in world history’ (Ponting, 2000; 305). This resulted in the spreading of Islam with ‘prodigious rapidity’ to ‘conquer Persia, Egypt, and Syria’, all within ‘fifty years’ of the death of the Prophet (Thompson, 2016; 87). Muslim historians often state that the success ‘in conquering the territory that stretched from Egypt in the West to Persian provinces in the East’ had been achieved mostly ‘through peaceful means’ (Istanbuli, 2001; 61). It is claimed that ‘the Caliphate differed from previous Empires’ with almost no destruction of infrastructure or killing of natives’ (Walberg, 2013; 58). For some, such recordings are plausible, because with the early Arab conquests despite lands being conquered ‘forced

[134] Fāṭimah bint Muḥammad, Lady Fāṭimah had adamantly defended Imām ʻAlī right to leadership until her martyrdom (Husaini, 2008; 16; Buehler, 2014; 183). For the full text of her sermon at the mosque of Madīnah refer to Al-Qurashi (2006)..

[135] Although an earlier attempt had been made by armed mob to forcefully bring him and a number of other Companions to the mosque to give allegiance (Jafri, 1979; 40).

[136] The four Caliphs were Abū Bakr (632-634 CE), ʻUmar (634-644 CE), ʻUthmān (644- 656 CE) and thereafter Imām ʻAlī (656-661 CE), of whom the latter three were all assassinated.

conversions were hardly practiced' (Berger, 2008; 108). It is thus argued that when their resistance weakened, the momentum peacefully carried Islam 'into their hearts' (Hourani and Ruthven, 2002; 23). Moreover, it is claimed, that 'the Muslim armies were mostly welcomed' because they 'brought peace and lighter taxation' (Walberg, 2013; 58). Nevertheless, as previously stated early Muslim narratives 'must be used with great care' because they often 'portray events in an idealised way' (Donner, 2012; 91). For those opposing such narratives, the recordings of peaceful conquests are misleading. They argue that the defiant Islam spelt misery (Byfield and Stanway, 2004; 260), and certain non-Muslims particularly those not considered *ahl al-kitāb* (people of the book) were subjected to persecution, discrimination and harassment (Boyce, 2001; 148).

Irrespective of such debates, the historical antecedents of diplomacy are embedded within the Muslim books of *al-maghāzī,* these tend to centre on the principle that the rightly guided Caliphs placed importance to rule by the *sīrah* of Prophet Muḥammad. An example of this is when Caliph Abū Bakr is reported to have made 'decisions through consultation, following the Prophet's footsteps*'* (Abbas, 2021; 108). Similarly, despite the military campaigns during this era, there are reports of a number of notable diplomatic endeavours, albeit in the context of the new conquests. For instance, when the Caliph, Abū Bakr, appointed the son of the previously bitter opponent of Prophet Muḥammad, Muʿāwīyah (d. 680) [137] as the Muslim army's chief, to Syria. [138] In accounts of the event, he is reported to have made particular instructions concerning the issue of foreign emissaries, 'when envoys of the adversary come to you, treat them with hospitality' (Ismail, 2016; 37). However, 'make their period of stay at your camps short, and let them leave while still ignorant, do not let them look around, so that they may not see your weakness and become aware of your disposition' (Istanbuli, 2001; 127). Thereafter, *sunnī* scholars note that in keeping with Islamic doctrine, Caliph Abū Bakr reminds him of the Islamic ethics of conflict, 'do not commit treachery or deviate from the right path'. Subsequently, he lists many factors that must be avoided in conflict from an Islamic viewpoint (Siddiqi, 2004; 139; BBC, 2009; 1). In such Muslim presentations of historiography, there is a clear attempt by authors to argue that the Caliphate was operating within Islamic law, including his inclinations towards diplomacy. An example being the statement attributed to the Caliph, Abū Bakr, 'let there be no perfidy, no falsehood in your treaties with the enemy, be faithful in all things, proving

[137] Muʿāwīyah ibn Abū Sufyān, commonly known as Caliph Muʿāwīyah, who founded the 'Umayyad dynasy.
[138] The Caliph, ʿUmar later appointed him as the governor of Syria..

yourselves upright and noble and maintaining your word and promises' (Allain, 2011; 403). [139] It is worth noting that with the spread of Islam, 'diplomacy was no longer a matter of relations between different political powers' but involved 'negotiations and alliances' as well as treaties. This can be seen for example by the delegations of Oman forging treaties and 'seeking military support' from the Islamic State in their local confrontations (Jones, 2013; 47). However, as already indicated the presented picture has been subject to a 'wave of sceptical scholars' challenging a great deal of the historiography (Donner, 1998; 23). Some have suggested a reconstruction of the early Islamic history from other sources (Crone, 1980; 15). Others have pointed out that differing accounts of the history of this period can also be found from early *shī'ī* literature that 'does not subscribe to the formula provided' by the ʿAbbāsid era historians (Ibrahim, 2021; 77). Moreover, the image of the Caliph following the Prophet's footsteps, or operating within the Islamic law is contested particularly by the *shī'a* based on Imām 'Alī's refusal to abide by the conduct of the previous Caliphs when conditioned for leadership. He insisted that he would only accept to abide by Qur'ān and the *sunnah* of the Prophet (Al-Kulaini, 1990_c; 58).

Notwithstanding the doubts regarding the accuracy of the narratives, the Muslim historical accounts of this period are filled with examples of democracy, interlinked to military conquests. Many of these transpired during the leadership of the Caliph, 'Umar (d. 644) [140]. The most significant example of this must be narratives surrounding the siege and surrender of the city of Jerusalem (Khadduri, 1955; 213). Following the consultative legacy of Prophet Muḥammad, the Caliph sought advice when witnessing the weakening of the besieged city. By this time, he was able to consult with Imām 'Alī with his resumption of involvement in the Islamic State. [141] Imām 'Alī suggested that Caliph Umar 'should proceed to Jerusalem so that they attain the target without bloodshed', possibly through an agreement (Istanbuli, 2001; 70). During his visit, the Patriarch of Jerusalem was given 'assurance of safety for themselves, for their property, their churches, their crosses, the sick and healthy of the city and for all the rituals which belong to their religion'. By accepting Muslim sovereignty, they were 'required to pay *jizyah* (poll tax) like the people of other cities'. However, they were given the choice to either reject and 'expel the Byzantines and thieves', or alternatively 'leave with the Byzantines to take their property and abandon their churches and crosses'. Even with the second option, they were assured safety 'until they reach their place of refuge'

[139] As noted in Ethics of war by Khwāja Kamāl al-Dīn (d. 1932).
[140] 'Umar ibn Khaṭṭāb, commonly known as Caliph 'Umar.
[141] Caliph 'Umar had opted for 'a collective authority of early companions', or at least a token participation of all (Madelung, 1997; 62).

(Kennedy, 2007; 91; Allain, 2011; 402). This distinction is seen in the books of Muslim historical accounts, identifying the conquests as *ṣulḥan* (by treaty) or *'anwatan* (by force) (Andersson, 2008; 208). There is an unusual agreement between different narratives regarding the peaceful diplomatic endeavours of Caliph 'Umar in Palestine. According to Christian sources, the Caliph came to the courtyard of the Church of the Holy Sepulchre but was refused to pray there despite the request by the Patriarch. He replied, if I pray here, Muslims will seize this church later and turn it into a mosque. In return, he was led by the Sophronius to a rock on the Temple Mount where God had spoken to Jacob, Christians had never built a church there so the Caliph 'built a mosque (Finegan, 2014; 274). There is also evidence within Jewish text that Caliph 'Umar acknowledged the importance of the Jews in Palestine, and granted them their request to resettle back in Jerusalem following years of displacement (Gil, 1997; 73).

As previously mentioned incidents during the time of the first Caliph, Muslim presentations of historiography for the second Caliph, make a clear attempt to argue that steps taken by the Caliphate were within the *sīrah* of Prophet Muḥammad. An example of this would be the tradition of meeting foreign envoys at the mosque, the tradition recalls; that the Caliph, 'Umar, wore 'his finest clothes at the time of the ceremonies'. While there was 'a sort of master of ceremonials who instructed the guests of local formalities' who might not have been familiar with Islamic conduct (Hamidullah, 1945; 157). The argumentation is based on the Muslim simplicity that captured the minds of outsiders. For instance, the Byzantine ambassador found the Caliph 'Umar 'sleeping on the ground under the sun unattended by any courtier'. There are also records of incidents when 'the Muslim envoys disregarded formalities in foreign courts, especially on prostration', this often 'caused umbrage' (Hamidullah, 1945; 157). Another example provided by Muslim scholars for the continuation of conduct in diplomacy would be that the Prophet and the Caliphs gave particular attention to the flow of trade. These suggest that their commercial diplomacy gave 'impetus to trade and commerce even at the expense of the State income'. It is recorded that these are shown by the Prophet's abolishing 'all inter-provincial customs duties' and stipulating the trade factor within related treaties (Hamidullah, 1945; 155). Those contesting such accounts often focus on the requirement for non-Muslims to pay a poll tax (Spencer, 2012; 104). For them, this represents an example of discrimination to emphasise the inferior status of non-believers (Goitein, 1963; 278). However, Muslim scholars emphasise the presence of exemptions to the poll tax. [142] For instance, by order of Caliph 'Umar, non-

[142] The *jizyah* is excluded for women, children, and the physically handicapped, the elderly or even the poor. The *sunnī* narration exists that the Caliph 'Umar waived a poor man from the payment of tax and when he

Muslims were exempted from paying the *jizyah* on condition that they would fight alongside the Muslims in combating the enemies, in effect for participating in military service (Abu Yusuf, 1973; 85). Likewise, the Abyssinians were made immune from military service in recognition of the sanctuary they had offered to the early followers of the Prophet Muḥammad (Khadduri, 1955; 251). The *sunnī* historian al-Ya'qūbī (d. 897) [143] recalls another occasion when Caliph 'Umar was considering the distribution of newly conquered Iraqi land, but was discouraged from doing so by Imām 'Alī as being unjust. He remarks that 'even if you are seeking to benefit the Muslims, it would be the present generation, what about future generations' (al-Ya'qubi, 2010; 170). Those arguing against such suppositions state that trade benefited the Arabian Peninsula, as such trade continued to play an important factor for Muslims. Nevertheless, Caliph 'Umar introduced custom duties to the Islamic tax system, also there were many unfair differences in the tax structure based on whether they were Muslims, people of the book, or following not non-recognised religions (El-Ashker and Wilson, 2006; 116). It is argued that the conditions set by Caliph 'Umar on how people of the book were treated were harsh (Blanchard and Humud, 2017; 29). They also highlight that at times such decisions by the Caliph, 'Umar, were in conflict with the primary sources, such as refusing to pay their share of public funds. (Al-Na'im, 1996; 28). [144] What is of importance to our debate is that the Islamic State initiated a commercial diplomatic move for foreign traders, particularly those staying a long period by appointing a 'permanent commercial agent' known as *malīk al-tujjār* (chief of merchants). He would regulate their affairs and resolve the disputes of such foreign traders. Nevertheless, according to Muslim accounts, when one of Caliph 'Umar's governors informed him that 'some traders of ours go to non-Muslim territory where they are subjected to tithes', 'Umar instructed 'levy thou on theirs as they levy on Muslim traders' as shown by the treaty of Manbij (Hamidullah, 1945; 155).

According to the historiography of the third Caliph, 'Uthmān (d. 656) [145], there were continued 'expansion of Arabian control and governance', with military campaigns into Anatolia, the Caucasus, Western Persia, Central Asia, North Africa and the Mediterranean Sea, leading to an increased revenue (Keaney, 2021; 64). 'Rather more surprisingly for a

later saw him asking for money (Abu Yusuf, 1973; 135), or abolished *jizyah* 'in light of all non-Muslims that were unable to earn their livelihood (Considine, 2016; 10).

[143] Abū ʿAbbās Aḥmad ibn Abū Yaʿqūb, commonly known as al-Ya'qūbī.

[144] Contrary to the verse in chepter *al-tawbah* (9:60) as practiced by the prophet..

[145] 'Uthmān, ibn 'Affān, commonly known as Caliph 'Uthmān.

military force largely made up of Bedouins, the Caliph, ‘Uthmān, ‘constructed an impressive navy’, which led to the conquering of most Mediterranean islands (Ringmar, 2019; 77). Those advocating his approach, identify the increased diplomacy and mention the sending of envoys by sea, such as the envoy sent to the ‘Tang Empire to establish diplomatic relations’, leading to Muslim settlements in port cities of China (Zhang, 2013, 81). Those advocating the Caliph ‘Uthmān, point out that strategically Caliph decided to move away from the tribal alliance that had prevailed from the time of the Prophet, [146] creating a cohesive central authority of the State. Those opposing his approach object to Caliph ‘Uthmān distributing many of the governorships and diplomatic positions to his own clan the ʾUmayyads whom he trusted the most (Afsaruddin, 2021; 1). [147] They also point out that in another critical political decision considered as a diplomatic disaster, Caliph ‘Uthmān allowed the Arabs to buy newly conquered lands. This was in contrast to previous policy adopted by previous Caliphs, ‘hitherto, the lands of the conquered people were officially recognised as their property and could not be bought by the Arabs’ (Khan, 2020; 1). Considering the financial fortune of the ʾUmayyads, the purchase of the newly acquired lands was undertaken by them, increasing their authority further, and settling in rich provinces of Syria. Consequently, it is argued that such policies increased antipathy within the community and despite Caliph ‘Uthmān’s attempts to send envoys to diplomatically negotiate and overcome local revolts, such resentment had become widespread. [148] Subsequently it is argued that the approach of the widespread ‘campaign of conquest’ had placed considerable strain on ‘the Islamic State, ‘Uthmān, the government, and the fighting men’ (Keaney, 2021; 64). As such, ‘the grievances against his arbitrary acts were substantial by the standards of the time and widely felt’, and by the end of the Caliph, ‘Uthmān’s reign, ‘dissatisfaction and opposition to his conduct appear to have been almost universal’ (Madelung, 1997; 78).

Both the *shīʿī* and the *sunnī* Muslim scholars agree that as time passed from the death of Prophet Muḥammad, ‘Muslims were confronted with an unfulfilled idea of a just order’ leading to the discussion around the ‘establishment of a true Islamic order’ (Sachedina, 1981; 4). With the Islamic government in turmoil, by 656 CE such ‘resentment against these policies was channelled into support for ‘Alī’ (Ringmar, 2019; 77). The presented narrative

[146] The tribal alliance had previously been changed by Abū Bakr to the domination al-Quraysh, Uthmān further refined it to be led by the ’Umayyads.
[147] One person that benefited the most in Syria was was its governor, Muʿāwīyah.
[148] Despite such representation, Caliph ‘Uthmān is often presented by books of tradition and even in Western books chiefly as the pious old Caliph who was killed while quietly reading the Qur’ān (Madelung, 1997; 140).

is that other than the six months of self-isolation following the death of the Prophet, Imām ʻAlī had cooperated with the earlier Caliphs, Abū Bakr, ʻUmar and ʻUthmān (Abbas, 2021; 144). Moreover, ʻhis knowledge of the Qur'ān and the *sunnah'* had proved invaluable to the Caliphs in their management of the Islamic State (Jackson, 2006, 17). Subsequently, the proponents argue that the public had come to realise his importance and turned to him for leadership. Thereby at this crucial time, Imām ʻAlī had ʻfully re-entered the political scene and ʻnobody had people waiting for him like ʻAlī'. The opponents of the presented narrative point out that although there is a lot of literature on him, these are all from Muslim sources. As such, they could be dismissed as possibly fabricated based on the author's partisan views (Madelung, 1997; 19), as these are always coloured by a positive or negative bias (Nasr and Afsaruddin, 2021, 1). Moreover, Imām ʻAlī as the fourth Caliph was confronted by a huge challenge of an imminent civil war, which is troubling considering ʻhis undying commitment to unity' (Abbas, 2021; 129). Additionally, it is argued that ʻhis main task in such narratives was to reassert the authority of the Caliph' (Jackson, 2006, 19), or in other words, the authority of the leadership in governing the Islamic State. The Caliphate was in trouble, on one hand, he had ʻUthmān's followers wanting revenge' for the Caliph's death, and on the other hand, ʻthose associates in the provinces wanted to protect their assets and their landholdings' acquired through ʻUthmān (Ringmar, 2019; 78). Thus argued, as the Caliph of the *ummah*, Imām ʻAlī struggled to unify the community and heal the wounds of the Muslims, old and new. However, Muslim scholars argue that his period of political leadership ʻwas fraught with problems from the outset', despite his attempts to ʻappease the contenders' and ʻpreserve the unity' (Istanbuli, 2001; 75). Additionally according to Muslim historians Dealing with the governor of Syria, Muʿāwīyah, ʻwas altogether a different matter' (Abbas, 2021; 144), thanks to the policy of the previous Caliph, ʻUthmān. He had gained absolute authority in Syria over time, without a serious rival to his leadership, and purchased most of the newly acquired lands. [149] According to the *shīʻa ithnā-ʻasharī* narratives, Imām ʻAlī was compelled to ʻchallenge the growing power of the ʾUmayyads' (Isakhan, 2016; 65) as he considered the governor of Syria, Muʿāwīyah, to be unfit and corrupt(Madelung, 1997; 148), but the ʾUmayyads' had unparalleled resources at their disposal. The *shīʻī* discussions around the problems of the *ummah* during the Caliphate focus on the Islamic practice of *jihād which* is one between the struggle of spiritual and military

[149] He was also influencial in inciting ʻAishah bint Abū Bakr (d. 678), the wife of the Prophet who had ironically been a critic of Caliph ʻUthmān. Thereafter, she rebels against Imām ʻAlī claiming revenge for the dead Caliph. After her defeat in the battle of *jamal* (camel). Despite leading an army against the Caliph, she was neither killed nor imprissined but rather respectfully escorted back to Madīnah, she withdraws from active politics (Madelung, 1997; 18).

expansions. They point out that following the death of the Prophet, the focus of attention had moved away from the 'inner' towards the 'outer' *jihād*, [150] and Imām 'Alī attempted to reverse this approach. According to the influential scholar and *shī'ī* ideologist Āyatullāh Murtaẓā Muṭahharī (d. 1979), the Prophet spent time gradually building Muslims' and their understanding of Islam before giving them permission to fight, despite their repeated request for *jihād* (Mutahhari, 2010; 599). However, it is thus argued, that the speed of the expansions during this era had denied the State the opportunity to educate new Muslims about Islamic culture and ideology. With the increased wealth and resources that were being acquired, their understanding of the essence of Islam had faded away, leading to increased tensions within the Muslim community and its relationship with those outside.

Imām 'Alī's representation in Muslim books of *al-maghāzī* is that of a legendary figure, not only during the lifetime of the Prophet Muḥammad but also during the Caliphate phase of Islamic history. Consequently, the impact of what is attributed to him on Islamic diplomacy is particularly of interest to this study. However, it is important to note that according to such narratives, Imām 'Alī did not take part 'in any conflict during the Caliphate of the first three Caliphs' (Vaglieri, 1960; 1). He had restricted himself to solely a consultative role in the matters of the State, as mentioned by the famous *sunnī* historian al-Mas'ūdī (d. 956). [151] Noteworthy, Caliph 'Umar requested Imām 'Alī to become the commander of the Muslim army to fight the Persians, but he refused to take part although he accepted to give advice (al-Mas'udi, 1988; 310). According to the *shī'ī* scholar Āyatullāh Ḥusayn 'Alī Muntaẓirī (d. 2009), the stance of Imām 'Alī was crucially based on the Prophet Muḥammad's narration that you must not fight outsiders before peacefully inviting them to Islam (Muntaziri, 1982; 711). As such, it is argued by the *shī'a ithnā-'asharī* that Imām 'Alī proclaimed to the Muslim community that an expansion of Islam as a faith would only happen if the State propagates religious values. By creating a welfare system that cares, and providing security to those whom it rules (Saifzadeh, 1999; 251). Thus, it is concluded that Imām 'Alī attempted to 'reform the political, economic and social system' in order to build a State that would avoid discrimination and bring about peace, welfare and security to all the subjects irrespective of any other factors (Al-Hallaj, 2021; 25). [152] Looking at the presented historiography, we can also note that Imām 'Alī 'did not take part in the ensuing *ridda* wars'

[150] In Islam the inner (the greater *jihād*) focuses on 'personal piety and righteous living' at times expressed in 'interactions with the family, community, and nation', but the outer (the lesser *jihād*) is that of 'militant, physical struggle' and war (Delong-Bas, 2017; 1).
[151] Abū Ḥasan 'Alī ibn al-Ḥusayn, commonly known as al-Mas'ūdī.
[152] An elaboration of the Prophet and Imām 'Alī's stance on human rights can be found in the document of *resālat al-ḥuqūq* (treatise of rights) written Imām al-Sajjād (Chittick, 1988; 299).

against rebel Arabian tribes, 'arguing for a more egalitarian *umma* in opposition to what was developing into an elite' (Jackson, 2006, 18). Crucially, in his letter to the appointed governor to Egypt, Mālīk al-Ashtar (d. 658), [153] he provides guidance on how the people of Egypt should be treated fairly and justly. 'The letter outlines his conception of legitimate and righteous rule', by using Islamic law not to bring about social control but to bring about spiritual awakening (Gleave, 2008; 1). For the *shī'a ithnā-'asharī*, the key factor is what Imām 'Alī has stressed, 'infuse your heart with mercy, love and kindness towards your subjects', thereafter he lists a number of pivotal points for Mālīk to abide by. 'For they are either of two kinds' he tells Mālīk, 'they are either your brothers in faith or brothers in creation' (Nasr and Dabashi, 1989; 75). The narratives of this period highlight the attempt by Imām 'Alī to 'reform the political, economic and social system' to restore his vision of the Prophetic governance, rather than the Caliphate (Tabatabai and Nasr, 1975; 43; McHugo, 2017; 53). He dismissed nearly all of Caliph 'Uthmān's governors, considered by him to be corrupt (Donner, 2012; 158; Madelung, 1997; 148), and distributed funds among Muslims equally (Tabatabai and Nasr, 1975; 45). Such actions were based on his attempt to build a State that would avoid discrimination and bring about peace, welfare and security (Al-Hallaj, 2021; 25), with zero tolerance for corruption (Madelung, 1997; 272). [154] An instance of this approach is noted when Imām 'Alī heard of *khalkāl* (gold anklet) being taken from mainly Jewish ladies by 'Umayyad soldiers, his reaction was that 'one could die of the sorrow', [155] a point is much referenced in *shī'ī* literature. In the modern context, the supreme leader in Iran, Āyatullāh ʿAlī Khāmeneʾī points out that 'to do this, he attempted to build his involvement in politics on ethical factors more than anything else. 'His diplomatic success was based on not using deception, being tolerant in politics, explaining issues with logic even to the enemies, never resorting to lying, refuting flattery, and differentiating on how to treat opponents based on circumstances and individuals' (Khamenei, 2009; 1). Notably, another diplomatic reference that is made to Imām 'Alī in *sunnī* and *shī'ī* material around the discussion of *sīyār* concerns to the battle of Ṣiffīn (657 CE) between the army of Imām 'Alī and his foremost opponent the governor of Syria, Muʿāwīyah. The issue of interest is the appointment of *ḥakam* (arbitrator), in which 'the difference between two States can be settled based on the opinion of one or more umpires chosen by the parties' (Hamidullah, 1945; 160). In the *shī'a ithnā-'asharī* narrative, it is highlighted that 'with his army on the

[153] Mālik ibn al-Ḥārith al-Nakhaʿī, commonly known as Mālīk al-Ashtar, the loyal companions of Imām 'Alī.
[154] This is of importance following the attempt at establishing an Islamic government in Iran, to be covered in Chapter 5.
[155] The narrative is based on the collection of Nahj al-Balāghah (peak of eloquence) sermon 27; which can be found in any version of the book such as (al-Razi, (1960).[156] 'Amr ibn al-'Aṣ (d. 664).

verge of defeat, Muʿāwīyah, on the advice of his deputy [156] ordered his soldiers to put pages of the Qur'ān on their lances. He asked Imām ʻAlī to allow the dispute to be resolved by reference to Qur'ān' (Donner, 2012; 161; Nasr and Afsaruddin, 2021, 1). Imām ʻAlī Ali told his army the raising of Qur'ān was a deception, but despite his reluctance and reservations about its outcome, he accepted (Madelung, 1997; 238). The event ultimately led to the development of *khāwārij* (seceders) and was argued by those against Imām ʻAlī's approach to be a sign that he was not a true leader of the *ummah* as judgment is God's alone (McHugo, 2017; 61). However, the incident has set 'a precedent in support of negotiating a settlement in all political, commercial and personal disputes', even on the battlefield. The development of such doctrine 'emphasise functionalism and expediency in political disputes' (Johnston, 2003; 219).

2.6 Diplomatic Practice during the 'Umayyad and the ʿAbbāsid Periods

The *sunnī* institution of the Caliphate was soon overhauled by Caliph Muʿāwīyah to shape a dynasty, instigating the start of *al-'umawīyūn* (661-750 CE) reign, that was overthrown around a century later by the *al-'abbasīyūn* (750-1285 CE) dynasty. [157] In effect the emerging Caliphate structure had evolved into a monarchy (Arjomand, 1984; 33), by 'bequeathing the seat of Caliphate to members of their families' (Istanbuli, 2001; 86). The early Muslim historiography of this period available was written essentially during the ʿAbbāsid dynasty. However, Caliph Muʿāwīyah has been portrayed as a 'political acumen', based on his years of experience as the governor of Syria.[158] For twenty years Caliph Muʿāwīyah, had been in charge of the 'most prosperous and progressive' of locations as its governor. His use of a 'trained and disciplined' military body, relied on the use of many 'Christian Syrian and Yemenite Arab' soldiers that were paid handsomely for their loyalty (Jackson, 2006, 23). During this new era, once again the emphasis moved to the process of Islamic expansion, and the army of the Islamic State swiftly crossed the strait of Gibraltar moving into Spain as a gateway to Europe taking over 'the entire Iberian Peninsula' (Molina, 2000; 1). This shift of emphasis from the period of Imām ʻAlī as the fourth Caliph meant that in 'one hundred years' after the death of the Prophet, the Islamic State was covering three continents. 'Islam had swept across North Africa' the West while crossing over to Europe, and had 'reached the frontiers of India to the East' with 'astonishing speed and

[156] 'Amr ibn al-'Aṣ (d. 664).
[157] Abū al-ʿAbbās al-Saffāḥ 9d. 754), commonly known as Caliph al-Saffāḥ founded, the ʿAbbāsid dynasty.
[158] Some dismiss such notations arguing narratives were 'minted by the dozen in order to support one political position or another' (Spencer, 2012; 136).

magnitude' (Thompson, 2016; 87). The ʾUmayyad dynasty brought 'an impetus towards centralizing State power' and 'building institutions to effectively rule this new far-flung Empire' (Robinson, 2014; 576). This trend of expansion continued through the ʿAbbāsid dynasty through the 'building of State institutions for centralizing control of their Empire' (Robinson, 2014; 576). The major difference between the two dynasties was that under the ʾUmayyads 'despite the vast expansion of their Empire, they continued to privilege the Arabs', while 'treating the non-Arab converts as second class citizens' (Goldstone, 2011, 48). This policy in turn created huge dissatisfaction among the non-Arabs, regarded by Muslim historians, as going against the instruction of the Prophet who had specified 'behold, Arab has no superiority over non-Arab' (Ibn Hanbal, 1313; 411). The ʾUmayyads also made a huge miscalculation in openly confronting and fighting the *ahl al-bayt,* based on their enmity of Imām ʿAlī, a crucial factor that ultimately led to their downfall. [159] However, both issues benefited the ʿAbbāsids who were from the family of the Prophet and cleverly used the followers of ʿAlī's resentment of the ʾUmayyads, they also exploited the dissent of the *mawālī* (non-Arabs Muslims) to their advantage. The historical accounts of the period view 'the ʿAbbāsid treatment of all Muslims who recognised the Caliphate as equal', as comparable to a 'social revolution of Islam'. The significance of this intentional strategy is related to entrancing the inhabitants of the newly conquered territories to the 'translation of its universalism' based on the 'theoretical equality of all Muslims' (Arjomand, 2022, 172). In this regard, the ʿAbbāsids diminished the 'elite Arab caste in favour of a broader Muslim equality' (Robinson, 2014; 577). They involved the Persians in their government 'presiding over the fusion of Arabic and Persian culture that produced the Islamic Golden Age' (Goldstone, 2011, 49). This adopted structure involved the Turks in an 'innovation of an elite slave soldier force' (Robinson, 2014; 577), which in time led to their control of a large portion of the ʿAbbāsid Empire.

Nevertheless, both the ʾUmayyad and the ʿAbbāsid dynasties had their authority continuously contested by those who remained committed to Imām ʿAlī, regarding *ahl al-bayt* as the rightful Imāms (Hybel, 2010, 29). [160] The contemporary *shīʿī* jurist Āyatullāh Rūḥullah Khomeinī (d. 1989) considers this opposition to be because of the ʾUmayyad and the ʿAbbāsid deviation from Islamic law, for him such dynasties were 'imitating the Persian monarchical, Roman imperial and the Egyptian pharaonic systems' (Khomeini, 2008; iv).

[159] According to *shīʿī* scholar, Shaykh al-Mufīd, Imām al-Ṣādiq had condemned the ʿAbbāsid uprising, 'since he believed that the rebellion would be counter-productive and ultimately harmful to the true community of believers' (al-Mufid, 1981; 174).

[160] Subsequently, they were persecuted during the ʾUmayyad and the ʿAbbāsid eras.

Having said that it is commonly agreed that the era was a period when 'the Islamic world was full of energy' (Khamenei, 2021; 487), and encouraged the dissemination of knowledge to others (Lassner, 2019; 269). Nevertheless, the period of the four Caliphs and the period of the two dynasties of the 'Umayyads and ʿAbbāsids are not necessarily viewed in the same within *shī'ī* narratives. For the *shī'a* community, the symbol of their defiance against tyranny is centred on Imām Ḥusayn ibn 'Alī (626-680 CE). [161] His reluctance to accept the sovereignty of the Caliph Yazīd (d. 683) [162] as ruler of the Islamic government, led to his martyrdom, a sacrifice he pronounced to be making for the protection of Islam. [163] However, the 'brutal massacre, of Imām Ḥusayn, his family and loyal supporters, numbering about seventy people, including women and children' (Zulkifli, 2013; 106), was a huge mistake by the inexperienced young Caliph. The killing of Imām Ḥusaynby thousands of 'Umayyad soldiers is annually remembered across the globe by the Muslim community from different Schools of thought, and not just the Twelvers. Imām Ḥusayn has become a symbol of sacrifice in the struggle for right against wrong, a demarcation of truth from falsehood. For the *shī'a ithnā-'asharī,* the annual commemoration of Imām Ḥusayn has become the reoccurring call to evoke in the choosing of martyrdom in the face of tyranny, and the 'aspiration of political justice' (Inayat, 1982; 181; Dalimayr, 1999; 125). From a historical perspective, nothing recorded in the narratives suggests Imām Ḥusayn had planned an armed combat with the 'Umayyad authorities (Amir-Moezzi, 2016; 66), Nevertheless, his brutal massacre in the deserts of Karbalā that occurred in Muḥarram [164] of 680 CE despite his reiteration of this point, which has crystallised the *shī'a* identity. His tragic martyrdom has been argued by some as formalizing the division between the *sunnī* and the *shī'ī* sects (Ismail R, 2016; 34). However, this is not accurate because arguably the split between the two sects is based on ideas and ideology rather than political rivalries and 'the question remains with regards to when the split started' (Matthiesen, 2023; 24). Nevertheless, what has been referred to as the 'legend of Ḥusayn' (Vaglieri, 1971; 1) is pivotal in ensuring that 'the *shī'a* past does not die over time', thus history has become the source of inspiration for the 'tradition and commemorative rituals' (Moazzen, 2017; 98). The persecution of the followers of 'Alī which had begun under the 'Umayyads dynasty continued under the ʿAbbāsid dynasty in one form or another, essentially based on the fear of their symbolic

[161] Regarded by the *shī'a ithnā-'asharī* as the third Imām from the *ahl al-bayt* of the Prophet.
[162] Yazīd ibn Muʿāwīyah, the grandson of Abū Sufyān.
[163] Famously declaring that Islam rest in peace, if the like of Yazīd comes to rules over it, implying of the death of Islam (Majlisi, 1990_a; 184).
[164] The first month in the Islamic calendar, regarded as sacred from days before Islam in which killing was forbidden, Imām Ḥusayn was killed on its 10th day- 'Ashūrā.

power (Hughes, 2013; 107). A prime example of such fear and hatred of the *shīʻa* [165] is that of Caliph al-Mutawakkil (d. 861) [166] who raised 'the tomb of al-Ḥusayn to the ground and imprisoned pilgrims who visited Karbalā' (Muir, 1891; 525; Sourdel; 1970; 126), to stop the annual remembrance. However, this enraged the *shīʻī* followers' further, inspiring commemoration of Imām Ḥusayn's martyrdom at any cost, stimulating continued remembrance. In fact, such alarm by the ʿAbbāsid dynasty towards the *shīʻa* is recorded in their narratives, for instance in the summoning of the Imām of the *ahl al-bayt* to whom they were closely related, to their royal courts, throughout the ʿAbbāsid era. The *shīʻa* narratives repeatedly refer to the Imāms being placed under house arrest, despite not being politically active (Hughes, 2013; 107). This occurrence is particularly noticeable for Imām 'Alī ibn Muḥammad al-Hādī (828-868 CE), [167] and his son Imām Ḥasan ibn 'Alī al-'Askarī (846-874 CE) [168] (al-Mufid, 1981; 472 & 491). They were held under surveillance in the Caliph's military camp (Knysh, 2016; 167), al-'Askarī's residence in the army barracks led to his unique title reference to the term *'askar* (soldier). [169] A further example of such brutal hostility and fear is the transfer from Madīnah to Baqdād (Donaldson, 1933; 159), the arrest and long imprisonment of Imām Mūsā ibn Jaʿfar al-Kāẓim (745-799 CE), [170] by Caliph Hārūn al-Rashīd (d. 809) [171] (al-Mufid, 1981; 422).

However, the most surprising and challenging example to such authority is that of Caliph al-Maʾmūn (d. 833). [172] After killing his brother Caliph al-Amīn (d. 813) in a feud over succeeding Caliph Hārūn al-Rashīd, he found 'chaos in the heartland of the Caliphate', besieged by a civil war. Terrified of a possible revolt by the *shīʻa* at such a critical time, he attempted to 'reach out' to them as a diplomatic gesture (El-Hibri, 2021; 109). He claimed to Imām ʿAlī ibn Mūsā al-Riẓā (766-818 CE) [173] that he sought to give him his oath of allegiance. According to the *shīʻī* narratives, Imām declined [174] and replied 'If this Caliphate belongs to you (as ordained by Allāh), then it is not permissible for you to take off the

[165] Such open prosecution suggests that the *shīʻī* identity and ideology around the institution of Imāmate had become distinct by this period.
[166] Abū Faẓl Jaʿfar ibn Muḥammad, commonly known as Caliph al-Mutawakkil. He was the grandson of Caliph Hārūn al-Rashīd.
[167] Regarded by the *shīʻa ithnā-ʻasharī* as the tenth Imām from the *ahl al-bayt* of the Prophet.
[168] Regarded by the shīʻa ithnā-'asharī as the eleventh Imām from the *ahl al-bayt* of the Prophet.
[169] The term *'askar* (soldier) is a derivative of the Middle Persian word *lashkar* (army).
[170] Regarded by the *shīʻa ithnā-ʻasharī* as the seventh Imām from the *ahl al-bayt* of the Prophet.
[171] Abū Jaʿfar Hārūn ibn Muḥammad, commonly known as Caliph Hārūn al-Rashīd.
[172] Abū ʿAbbās ʿAbd Allāh ibn Hārūn, commonly known as Caliph Al-Maʾmūn.
[173] Regarded by the *shīʻa ithnā-ʻasharī* as the eighth Imām from the *ahl al-bayt* of the Prophet; His name is at times written as al-Rida or Reza with the Arabic and Persians pronunciation.
[174] He was proclaimed heir apparent, to which al-Riẓā accepted under the condition that he is not involved any of the State affairs (al-Mufīd, 1981; 259), the Imām was thereafter poisoned and killed within a short span of time (Tor, 2001; 103).

garment in which Allāh has clothed you and to give it to another'. Then he continued 'If the Caliphate does not belong to you, then it is not permissible for you to give me that which does not belong to you' (Jafarian, 2014; 439). The early *shī'ī* jurist Shaykh al-Ṣadūq al-Qummī (d. 991) [175] records seven dialogue interactions of Imām al-Riẓā with religious leaders of other faiths or none, during this period of time.[176] He notes that while was at Ṭūs,[177] ambassadors and scholars of other faiths were invited on an occasion by al-Maʾmūn for an open debate that could be regarded as an early interfaith event (Al-Saduq, 1999; 154). The event is also recorded by al-Bajalī (d. 825) [178] and noted to be an important source of 'Muslim literary dialogue' and 'significant as an indicator of *shī'ī* Muslim knowledge of Christian argumentation' during the 9th century (Bertaina, 2010; 537).

Following the events of Karbalā, the *shī'a* Imāms had refrained from involvement with or risings against political establishment (Newman, 2013; 31),[179] but the *shī'ī* regarded the ʾUmayyad and the ʿAbbāsid rulers as undeserving and unfit to rule the Muslim *ummah*. The contemporary *shī'ī* scholar, Āyatullāh Khomeinī, questions their credibility; 'what did Hārūn al-Rashīd ever study, or any other man who ruled over realms as vast as his?' (Khomeini, 2008; 125). He thereafter challenges the validity of their dynasties 'why did you illicitly assume rule over the Muslims? Why did you usurp the Caliphate and government, despite your unworthiness?' (Khomeini, 2008; 72). Nevertheless, it needs to be noted that despite various monarchs' personal unawareness of religious rulings, it did not stop them from propagating Islamic sciences. In effect, the *shī'ī* were tolerated alongside other scholars or jurists as long as they did not interfere in State affairs. As such 'in mutual appreciation of each other's limitations, the jurists and statesmen stayed apart' (Al-Na'im, 1987; 323). Thereby, by adapting to the changing conditions, many 'theological and legal doctrinal developments' occurred during the ʾUmayyad and particularly the ʿAbbāsid dynasties. Islamic knowledge 'blossomed in the Islamic *ummah* during its Golden Age' (Bassiouni, 2015; 653), [180] and accordingly the system of International relations referred to as *sīyār,* developed during this period of Islamic government.

[175] Abū Jaʿfar Muḥammad ibn ʿAlī ibn-Bābivay.
[176] On an occasion the gathering included the Christians of Byzantine, Iraq and Central Asia.
[177] A city in northern Persia, chosen as the capital of the Empire by son al-Ma'mun.This is the location were the Caliph Hārūn al-Rashīd fell ill and died.
[178] Ṣafwān ibn Yaḥyā Abū Muḥammad, commonly known as al-Bajalī.
[179] The *shī'ī* model of the leadership has 'evolved gradually' and 'no significant changes' have been introduced (Kohlberg, 1976; 521) other than the occultation of Imām al-Mahdī.
[180] The development of the Islamic Schools of Law are from this so called golden period, the four *sunnī* Schools of *mālīkī*, *ḥanbalī, ḥanafī*, and *shāfī'ī*, as well as the *jaʿfarī shī'ī* School of Law.

Despite their internal problems and the various civil wars between the Muslims during the era of ʾUmayyad and the ʿAbbāsid dynasties, there was a sizable increase in diplomatic practice and interactions with outside governments, as well as negotiated settlements, diplomatic ties, and peace agreements. The early books *al-maghāzī* regard the ʾUmayyad and the ʿAbbāsid dynasties to have attained 'the height of sophistication' in their diplomatic interactions with neighbouring Kingdoms' (Safiyanu, 2021; 48; Zawati, 2001; 78). During these dynasties, 'the language, the substance and the style of diplomatic correspondence evolved' (Istanbuli, 2001; 130). There exists an immense amount of 'peace treaties conclusively negotiated', based on diplomatic missions sent to non-Muslim States during the era (Zawati, 2001; 78). Research into ʾUmayyad and the ʿAbbāsid era has shown 'a multiplicity of sources' in a number of languages available to 'historians and scholars of Christian-Muslim relations in the field of diplomatic contacts' (Drocourt, 2010; 29). Examples include 'relations between the ʾUmayyad dynasty of al-Andalūs and Constantinople' (Drocourt, 2010; 33), or interactions between 'the ʾUmayyad sovereign Caliph 'Umar II (d. 720) [181] and the Byzantine Emperor Leo III (d. 741), (Drocourt, 2010; 36). Similarly, the ʿAbbāsid monarch Hārūn al-Rashīd [182] with the Byzantine Emperor Constantine VI (d. 805) (Drocourt, 2010; 38), and many others. The main theme of such treaties can be summarised in what is now called 'diplomatic relations. For example, official contacts between princes and courts, with political, military, cultural or economic aims, and personified in exchanges of emissaries, letters, gifts, treaties or other kinds of documents' (Drocourt, 2010; 38). What is also evident is that diplomatic relations were convened through messengers and envoys, who were from the 'political or religious elite' and 'not merely a delivery service'. Such accounts mention that they were 'carefully chosen to bear the words of his patron despite the hardships of travel and the potential dangers of transgressing foreign customs' (Luckhardt, 2018; 86). Muslim scholars mention that the success of the ʿAbbāsid dynasty in international connections particularly led to the employment of a 'special envoy to transact confidential business with neighbouring potentates' (Hamidullah, 1945; 156; Ismail, 2016; 38). These Muslim ambassadors would have been 'welcomed with all sorts of brilliant court ceremonies, diplomatic courtesies, and the astute display of military strength' (Vasiliev, 1953; 312), when they travelled to non-Muslim kingdoms such as Byzantium. The Muslim rulers would have likewise earnestly

[181] ʿUmar ibn ʿAbd al-ʿAzīz, commonly known as Caliph Umar II.
[182] Abū Yūsuf (d. 798) authored *kitāb al-kharaj* (book of taxation) during the period of Hārūn al-Rashīd (Istanbuli, 2001; 87).

received foreign envoys in their capital with ‘full pomp of Oriental magnificence’ (Vasiliev, 1953; 312).

2.7 Conclusion

Within the brief historical study made of the various early periods of the Islamic State, it has been apparent that despite the existence of the debates regarding the accuracy and time frame of the early Islamic historiography material, diplomatic endeavours are contained within the presented narratives. Those advocating *sīyār* argue the ‘recognition that Islam was not merely a set of religious ideas and practice but also a political community’ (Allain, 2011; 400; Khadduri, 1966; 10). Subsequently, they conclude that its structure did not venture too far from the modern conception of the State. For many, the point of importance is that regardless of the historical accuracy of narratives by early Muslim historians, the cultural memory of the Prophet and the four Caliphs, the ʾUmayyad and the ʿAbbāsid dynasties is crucial. Since the conduct of particularly the Prophet Muḥammad, rightly guided Caliphs or the Imāms, is seen as role models by Muslims, their ‘behaviour’ becomes ‘normative’ (Görke, 2015; 2), forming the basis of diplomatic practice and Islamic diplomatic law. For them, this can be regarded as how Muslims have created their own form of peaceful coexistence with non-Muslim States. For others, the portrayals are all about the appreciation of the ‘universality and centrality of religion’ (Lewis, 1981; 11). As such there is the Oriental portrayal of ‘Islam as a cultural other’ (Grosfoguel and Mielants, 2006; 3), entrenched around the notations of *dār al-islām* and *dār al-ḥarb*. They argue that although the events have possibly occurred in a different context to events taking place in our time, the perception behind such narratives is the same and used to formulate the basis of *sīyār*. Irrespective of the stance taken, the historical accounts of early Islam seem to be embedded with such ‘comprehensive rules’. These are of utmost importance in articulating relations of various parties involved within the Islamic State including non-Muslims. Additionally, of great value are the contact and treaties between the Islamic State and non-Muslim States, both at times of war and peace (Taulbee and Von Glahn, 2017; 45). Additionally, the sense of inter-cultural contact in which the various civilisations were given the opportunity, to borrow from each other, can be evidenced through the long history of early Islamic diplomatic relations. This is particularly seen during the so-called ‘Golden Age of Islam’, when vital points of contact between Islam and Europe (such as in Spain), allowed Islamic intellectual and social influence to filter through to Europe (Lombard, 1980; 87), contributing immensely towards the development of International diplomatic law. This

further emphasises the importance of International law in conducting a historical analysis of diplomatic practice, identifying the Islamic contribution to the development of various concepts. Furthermore, in identifying the *shī'a ithnā-'asharī* perspectives, one can relate to the critical nature of peace by reflecting on Imām 'Alī's approach to the events. His self-restraint or self-isolation by retiring from public life rather than being involved in inner fighting identifies not only his concerns for the survival of Islam but also for finding ways to avoid bloodshed. Moreover, his refusal to participate in any expansionist fighting during the Caliphate phase of Islamic history reiterates for the *shī'ī* Islam, the importance of peaceful negotiation in the face of hostilities. Finally, with regards to our key research question, the historical Muslim narratives covered within this chapter seem to be consistent with the theory of compatibility approach between that of Islamic diplomatic law including the *shī'a ithnā-'asharī* stance and International law rather than the incommensurability, or reconciliatory alternatives. Such a platform is particularly echoed by the proclamation of Imām 'Alī that an expansion of Islam would only happen if the State propagates religious values, and creates a welfare system that cares and provides security to those whom it rules (Saifzadeh, 1999; 251).

CHAPTER 3 – SOURCES OF ISLAMIC DIPLOMATIC LAW

3.1 Introduction

Based on the discussion around Islamic diplomatic law, initially, there is a need to formulate a brief understanding of Islamic law. This is essential because the question of compatibility around the principles of *sīyār* and modern International law has exacerbated a trail of controversies amongst scholars of Islamic jurisprudence and International law. Exponents of the exclusivist theoretical view which dominates literature always portray Islamic law as 'fundamentally incompatible' with International law (Powell, 2019; 20). On the other hand, 'with few Western International lawyers educated in Arabic and the principles of Islamic jurisprudence' (Burgis-Kasthala, 2018; 46), it is claimed that 'English text do not merely present Islamic law, they construct it' (Strawson, 1995; 21). Thereby, the first step required in appreciating similarities and differences with modern principles of International law is to obtain a 'sufficient explanation of the basic principles' of Islamic law (Mahmassani, 1961; 205). Moreover, by considering the unique orientation of this research, we aim to highlight key information in identifying the *shī'a ithnā-'asharī* jurisprudential perspectives and positions, often missing in existing literature. For Muslim scholars *sīyār* is 'but a chapter in the Islamic corpus juris, binding upon all who believe in Islam' (Khadduri, 1966; 6). Since Islamic diplomatic law shares the same sources as other components of Islamic law, 'both are the two sides of the same coin' (Malekian, 2011; 5). Subsequently, this chapter will highlight the importance of primary sources of Islamic law, that of Qur'ān and the *sunnah* of the Prophet (and of the *ahl al-bayt*). These are always pivotal in the development of Islamic law and are the focus of the discussion in the process of reasoning for its manifestation. By seeking to examine how legal obligations can be extracted from these sources, we can recognise the human jurisprudential development of *sīyār.* This approach will not only enhance our awareness of the complexities involved but also provide an understanding of how *shī'a ithnā-'asharī* legal obligations are obtained through the primary sources of Qur'ān and the *sunnah* of the Prophet and extended to that of the *ahl al-bayt*. [183] This is aided by secondary sources of *ijmā'* and *'aql* and collectively referred to in the text as *adilla al-arbaʿa* (the four proofs). [184] The discussion on the review of significant

[183] This positioning regarding the *ahl al-bayt* special position is based on chapter *al-aḥzāb* (33:33) of Qur'ān; … Allāh intends only wishes to remove all abomination from you O people of the household (of Prophet), and to purify you with a thorough purification.

[184] In *sunnī* juristprudence, the secondary sources would be *ijmā'* and *qīyās*.

techniques for the implementation of religious rulings by the *shī'ī* and *sunnī* jurists are thereafter followed by an assessment of the recent evolvements within the *shī'ī* jurisprudence with regards to the concept of time and place. This is of particular importance to our research as it holds an explicit relevance to *sīyār*, aiding our quest in answering the central research question; to what extent is Islamic diplomatic law from the *shī'a ithnā-'asharī* doctrine compatible with International diplomatic law? In doing so, this chapter is also directed towards another key question proposed; what mechanisms exist in *shī'a* Islamic law to reconcile with International law, if there is a clear difference? It will also allow exploring our topical questions; what is the significance of *fiqh-i zamān va makān* (the jurisprudential of time and place), its principles and requirements within *shī'a*? And attempt to address; how, without relaxing the nature of the *sharī'a*, can the jurisprudential experts expand and adapt the Islamic diplomatic law to meet the varying needs of International diplomatic law?

3.2 Definitions around Sources of Islamic Diplomatic Law

The Arabic terms *dalīl* (proof) and *aṣl* (origin) have often been used interchangeably in literature as substitutes for the term 'source' (Kamali, 2008; 10). This has led to the usage of phrases such as *adillāt al-sharī'a* (proofs of the law) and similarly *uṣūl al-fiqh* (roots of jurisprudence) or the principles of jurisprudence in the discussion of sources for Islamic law. Within the debate around the topic of diplomacy in Islam in most English literature, the term *sharī'a* or *al-sharī'ah* is commonly used to represent Islamic law. Nevertheless, like other Arabic terms, *sharī'a's* meaning is not as clear as commonly perceived, and a definition of the term is required for further clarification. The Arabic term *sharī'a* has been translated by some as a pathway (Rahman, 1994; 389), but literally means 'a way to a watering place'. For example, the term is used in the historical narratives of the massacre of Imām Ḥusayn and his companions in the deserts of Karbalā when 'Abbās ibn 'Alī (d. 680) went to the stream, *sharī'a furāt* (Euphrates watering place) [185] (Majlisi, 1990_h; 41). However the term is a derivative of the verb *shara'a* meaning 'a way leading to' and is commonly used for finding 'the right way' to religion and subsequently its use 'is wider than the legal provisions' (Kamali, 2008; 14). Crucially, the term *sharī'a* appears in Qur'ān only once in the chapter of *al-jāthīyah* (45:18) [186] with regards to 'contradistinction' *hawā* (whimsical desire) and prescribes to the moral code of life. Moreover, it should also be noted that the verse was revealed in Makkah in the early days of the Prophet's mission and before any form

[185] Reference to *sharī'a furāt* is also seen in sermon 51 of Nahj al-Balāghah regarding the meeting of the army of the governor of Syria, Muʿāwīyah, and Imām 'Alī in the battle of Ṣiffīn; al-Razi (1960).
[186] Then We have put you on the way of commandment, so follow that and not the desires of the ignorant.

of Islamic law or governance had been prescribed (Park, 2017; 146). Hence, it is fair to conclude that *sharī'a* cannot be regarded as an exclusive legal term despite reference to it as the divine body of Islamic law. The term should cover belief, moral and ethical issues, 'a divinely ordained path of conduct that guides Muslims toward a practical expression of religious conviction' (El-Shamsy, 2023; 1).

Likewise, although the term *fiqh* (profound understanding) in Islam refers to the knowledge of religion it is also commonly used with direct reference to the understanding of jurisprudence. Within the Qur'anic chapter of *al-tawbah* (9:122), [187] all Muslims have been commanded to *tafaqquh* (the seeking of profound understanding) of religion. Subsequently, this profound understanding or *fiqh,* should not be limited to an exclusive legal term either. Hence, it would also include all aspects of Islam including belief, moral and ethical issues. Nonetheless, *fiqh* is defined in English as the human learned understanding of *sharī'a* (Le Roux, 1981; 28), and often referred to in text as the science of *sharī'a*, or the 'knowledge of the practical rules of the *sharī'a* deduced from Qur'ān and the *sunnah'* (Kamali, 2008; 41). Āyatullāh Muṭahharī has noted that an initial reference to the term *fiqh* with the meaning 'knowledge of the practical rules of the *sharī'a* acquired from the detailed evidence in the sources' was made in 716 CE just following the death of Imām 'Alī ibn Ḥusayn al-Sajjād (659-713 CE) [188] (Mutahhari, 1993; 69). Nowadays, within Islamic literature, there is a clear distinction made between the terms *sharī'a* and *fiqh.* The term *sharī'a* is recognised as the divine sources of Islamic law based on Qur'ān and *sunnah,* and *fiqh* is recognised as the 'human jurisprudential aspect of Islamic law', or the 'theoretical and practical understanding of Islamic law', or even a 'human product' [189] based on 'intellectual systematic endeavour' (Baderin, 2009; 187). Moreover, in recent times there have been moves in some Muslim majority States such as Saudi Arabia to implement 'a *sharī'a* oriented policy' known as a *sīyāsa al-sharī'a* (political Islamic law) as part of their legal-political framework (Kamali, 2008; 225). However, it can be argued that since there would be no direct 'blueprint for politics' of 'minutiae of legal-political arrangements' in Qur'ān or the *sunnah* (Park, 2017; 144), it should thus be really be termed *sīyāsa al-fiqhīa* [190] since it is relying on human learned understanding of *sharī'a*. A final point to consider is that within the development of

[187] And it s not for the believers to go out (to fight) entirely, why should'nt a group of every party go forth to become learned in religion, and to warn their people when they return back to them, so that may be aware.
[188] Regarded by the *shī'a ithnā-'asharī* as the fourth Imām from the *ahl al-bayt* of the Prophet.
[189] The question to ask here is that does it have to be a human product, can articial intelligence make a similar or a more accurate deduction, but that's beyond the scope of this research.
[190] Following rerevolution in Iran, the term *fiqh-i sīyāsī* is commony used but also reference is made to *fiqh al-ḥukūmah* (jurisprudence of government).

different *shī'ī* and the four *sunnī* Schools of law, [191] there is a disagreement on what exactly constitutes as sources of Islamic law. Although they all agree on the primary sources of Qur'ān and *sunnah,* they differ on the use of secondary sources. [192] For example, the approach to analogy as the basis of Islamic law is unacceptable under *shī'ī* jurisprudence (Takim, 2021_a; 61). Although both agree that secondary sources cannot introduce any rules that are in conflict with the primary sources (Askari, Iqbal and Mirakhor, 2014; 46). However, there are instances occurring of judgements made by the second Caliph 'Umar in particular that are unacceptable under *shī'ī* jurisprudence. An example of this would be his decision regarding non-Muslims getting their share of public funds which breaks the ruling of conflict with the practice of the Prophet (Al-Na'im, 1996; 28). [193] This fact is rejected as arbitrary independent human judgement, highlighted by the *shī'ī* jurists arguments against the Caliphate, made by him.

3.3 The Primary Sources (Qur'ān and sunnah)

The Islamic legal system 'is grounded in the revelations made to the Prophet', this is obtained through two fundamental sources Qur'ān and *sunnah*, 'which define all men's requirements' (Burton, 2019; 9). These can be classified as 'the direct revelation that is preserved as the record of revelation' from Allāh to Prophet Muḥammad forming the text of Qur'ān, and 'the indirect revelation regarded as the inspiration', 'which is preserved as the records of the words and actions of the Prophet' forming the *sunnah* (Burton, 2019; 11). Thus all Muslims [194] regard Qur'ān to be the word of Allāh revealed to his Prophet Muḥammad, by delivery through *wahy* (revelation) transmitted by the angel *jibrā'īl* (Gabriel) (Hamidullah, 1945; 19). [195] Āyatullāh Muṭahharī stresses that 'Qur'ān is not essentially like other religious books' which are content to discuss the problems of the existence of God and creation 'in cryptic tones'. Nor is it like those, which 'merely convey the message', a series of simple moral advice and counsels, so that those who believe are hopelessly left to search for guidance in other places. He states that 'Qur'ān formulates the tenets of faith' and 'lays down the

[191] As previously mentioned these are *mālīkī*, *ḥanbalī, ḥanafī*, and *shāfī'ī* Schools of law, and the *ja'farī shī'ī* School of law.
[192] The *sunnī* jurists use *ijmā'* and *qīyās* and the *shī'ī* jurists use *ijmā'* and *'aql*.
[193] This is contrary to the verse in chepter *al-tawbah* (9:60); Alms-tax is only for the poor and the needy, for those employed to administer it, for those whose hearts are attracted (to faith), for (freeing) slaves, for those in debt, for Allāh's cause, and for (needy) travelers, an obligation from Allāh … .
[194] The *shī'ī* or *sunnī*.
[195] According to Muslim belief, the revelation of the Qur'ān began in 610 CE and continued up to the death of the Prophet. Although according to the *shī'ī* belief, the Qur'ān was first compiled by Imām 'Alī, a common unified version was compiled by the Caliph, 'Uthmān in 650 CE, copies of which was sent to all provinces and continues to be used by all Muslims. (Mahmassani, 1961; 67).

principles of moral and ethical values'. Qur'ān lays down the laws that govern the society 'for the purpose of social and familial existence' while communicating notations essential for a person of faith (Mutahhari, 2014; 4). As such one can conclude that Qur'ān is the foundation of Islamic faith, law, life and culture and thus the criterion and standard for judging all other sources. Subsequently, 'Qur'ān continues to be the most authoritative source of Islamic law' (Denny, 2015, 150), the 'ultimate form of divine revelation' (Bowering, Crone and Mirza, 2013; 448). However, it is quite interesting that Qur'ān does not refer to itself as the 'book of law' but instead it calls itself by other names such as the 'book of light' or 'book of guidance'. [196] The *shī'ī* scholar al-Sharīf al-Rāẓī (d. 1015) [197] in his masterpiece collection of Nahj al-Balāghah (peak of eloquence) reports Imām 'Alī as directing all to Qur'ān, describing the book with the following attributes. Know that this Qur'ān is 'the advisor who never deceives, the guide who never leads astray, and the speaker who never lies'. [198] The same appears in the early *shī'ī* collection of Imām 'Alī's narrations by al-Āmidī (d. 550) [199] (al-Amidi, 1960; 569). It is important to note that *shī'ī* scholars of Qur'ān such as ʿAllāmah Muḥammad Ḥusayn Ṭabāṭabā'eī (d. 1981) have referred to Qur'ān's salient characteristics, describing the comprehensiveness, universality and eternality of Qur'ān. Thus, we find studies into such characteristics, continuously to be the topic of intense discussion (Nasiri et al., 2015, 35) and beyond the scope of this study. However, modern Western literature concerning the topics of Qur'ān tend to be lacking mainly because of two factors. Either, scholarly literature has been written by Western scholars whose work essentially are of three types, 'trace the influence of Jewish and Christian ideas in Qur'ān', 'attempt to reconstruct the chronological order of Qur'ān' or 'describe particular content of the Qur'ān'. Alternatively, literature has been written by Muslim scholars whose work either 'lack a genuine feel for the relevance of Qur'ān today' or 'fear they might deviate on some points from traditionally perceived opinions' (Rahman, 2009; vi).

It is important to note the following criteria regarding Qur'ān, firstly Muslims believe that Qur'ān is in essence a collection of commandments meant for answering human's needs and necessary for their guidance, directing everyone towards prosperity, happiness and perfection. Reference to this comprehensiveness of Qur'ān is made in a number of verses

[196] It is argued that light or guidance can be found in divine ethical virtues or moral values, but not in aspects relating to penal codes (Kadivar, 2022_b; 222).
[197] Abū al-Ḥasan Muḥammad bin al-Ḥusayn, commonly known as al-Sharīf al-Rāẓī.
[198] Imām 'Alī's reference on Qur'ān is in sermon 176 of Nahj al-Balāghah; al-Razi (1960).
[199] Abū l-Fatḥ Nāṣiḥ al-Dīn, commonly known as al-Āmidī.

within Qur'ān, for example in the chapter *al-naḥl* (16:89), [200] Qur'ān remarks that the book explains everything, and in the chapter *yūsuf* (12:111) [201] that the book gives the distinct explanation of all things (Lotfi, 1999; 140). Nevertheless, the Qur'anic stance concerning previous Abrahamic books is similar, for example with regards to the Old Testament mention of Tablets containing a clear explanation of all things in the chapter *al-ʻarāf* (7:145). [202] ʿAllāmah Ṭabāṭabā'eī in his commentary to Qur'ān *al-mīzān* states that in reality, Qur'ān contains the answer to all problems sought, as it has set structures in place to seek answers and to lead the way to prosperity (Tabatabaei, 2017_e; 280). He then goes on to point out that, *sunnah* plays an important part in this by allowing the understanding and interpretations of Qur'anic verses. Subsequently, the Prophet and Imāms actions and statements can be regarded as an extension to Qur'ān, because their stance is that 'all we say or do are based on Qur'ān' (Tabatabaei, 2017_f; 328). [203] Secondly, Muslims believe that the Qur'ān and its commandments are not specific to any particular class, group, society or race and it is aimed to guide humanity as a whole (Lotfi, 1999; 144). This universality is noted in many verses of Qur'ān, for example, in the chapter *al-ʻarāf* (7:158) [204] Prophet Muḥammad is commanded to say that he is the Apostle of Allāh to all people, thus the book would address diverse needs of different people. Allāmah Ṭabāṭabā'eī concludes that the idea of creating the Muslim community *ummah* is based on this notation because the message is universal and for all people and all circumstances (Tabatabaei, 2017_g; 255). Finally, Muslim scholars believe that the commandments of Allāh do not age and it is not time specific, as such, they transcend any particular people, place, or period (Lotfi, 1999; 150). This eternality is referenced in a number of verses within Qur'ān, for example in chapter *al-anʻām* (6:19), [205] the verse highlights that the revelation is for whomever it reaches, and in chapter *al-fuṣṣilat* (41:42), [206] the verse stresses that it could not be overcome by falsehood from before or after. ʿAllāmah Ṭabāṭabā'eī reiterates that if any society is in need of answers to certain problems then religion must provide them. We can also base this point on Qur'ān explaining everything (Tabatabaei, 2017_b; 81), thus 'containing knowledge of what has been, what exists and what will be' (Tabatabaei, 2017_f; 325). Interestingly these same three Qur'anic

[200] … and We sent down a book to you which makes everything clear, and as a guidance and glad tidings for Muslims.
[201] …What is being narrated in Qur'ān is no fabrication, it is rather a confirmation of the books that preceeded it, and a detailed exposition of everything, and as a guidance and mercy for people of faith.
[202] And We wrote for him in the Tablets of everything, an admonition and the explanation of all things …, .
[203] This is because the shī'a ithnā-'asharī consider their knowledge to be directly from God, as they are chosen by Him as infalliable (Elias, 1969; 23).
[204] Say O mankind I am the messenger of Allāh to you all …, .
[205] … And this Qur'ān has been revealed to me so I may warn you and whomever it reaches …, .
[206] No falsehood can aprroach it from before or behind (thereafter) …, .

characteristics directly relate to the discourse around *sīyār* and 'the Islamic doctrine of responsibility to protect' (Wheeler, 2020; 24). Mention of these specific features of comprehensiveness, universality, and eternality can be found within the literature of many contemporary Muslim political activists. This includes famous *sunnī* scholars such as 'Abul 'Alā' Maudūdī (d. 1979) (Firdausi, 2014; 87), and Sayyid Quṭb (d. 1966). Sayyid Quṭb who stands out as a radical Islamic intellectual states that such features are 'seemingly indicative world's peoples constituting one big family' (Toth, 2013; 321). Āyatullāh Khomeinī in his formation of an Islamic State takes a similar stance, arguing that it is based on 'the universality and the comprehensiveness of the law and the eternal validity of the faith itself' (Khomeini, 2008; 22).

Qur'ān as the sacred scripture is regarded as the foundational basis of Islamic law, this notation revolves around a large number of verses within Qur'ān directly dealing with various issues of Islamic law in different contexts referred to as *ayāt al-aḥkām* (verses of rules). The exact number of verses dealing with legal matters falls within the range of between 350 and 600 verses, depending on individual scholar's understanding and interpretation of Qur'ān (Baderin, 2009; 187). For example, any Muslim scholar could deduce a rule of law from a particular story mentioned in Qur'ān and as such classify it as a legal verse (Kamali, 2008; 20), but for others no legal ruling could be deduced from a Qur'anic verse based on morality. [207] If the strict sense of the term is enforced the legal-specific verses could be estimated to be as little as 'approximately eighty verses' (Coulson, 1964; 12). However, regarding the discourse around *sīyār,* the Qur'anic verses on International relations and constitutional matters are mostly outside this legal limitation. As such, they would be classified in the form of general principles and details which would be found in the complementary and elaborative domains by reference to the *sunnah* (Hamidullah, 1945; 21). An example of this could be the couple of verses in the chapter *al-mumtaḥana* (60:8-9) [208] making a clear distinction on how Muslims deal with non-Muslims and in making alliances with them, depending on whether they have or have not fought Muslims or expelled them from their homes. Although such verses have huge legal implications for Islamic diplomatic law, they would not be classified as legal verses in the strict sense and are subject to interpretation. In his exegesis, ʿAllāmah Ṭabāṭabā'eī points

[207] According to the *shī'ī* Imāms, Qur'ān possesses an esoteric aspect. 'Qur'ān has a *baṭn* (inner) aspect and there is a *baṭn* within the *baṭn',* 'it has *ẓāhir* (outer) aspect, there is a *ẓāhir* beyond that *ẓāhir*'. As such, the intellect of man is incapable of providing a genuine or a complete *tafsīr* (interpretation) of Qur'ān (Majlisi, 1990_c; 95).

[208] The verses make a dictinction between non-believers, allowing ties to be made with those who do not demonstrate enmity against Islam, while forbidding it to those who do.

out that the *sunnah* of the Prophet gives an extension to understanding Qur'ān because the Prophet comprehends the revelation and has far greater knowledge of its meanings than others have (Tabatabaei, 2017_a; 85). Subsequently, the position of the Prophet with regard to the revelation is essential to Islamic law because 'the task of proffering supplementary elaboration and explicit interpretation' for application of the Qur'anic verses forms an integral part of his mission (Khan, 2003; 351). 'The life and work of the Prophet provided the candle by the light of which the book is to be read. The book without the candle or the candle without the book would not achieve its purpose' (Weeramantry, 1988; 35). Such a stance on Qur'ān is aligned with a sermon by Imām 'Alī which gives an indication of further depth to Qur'ān than its literal manifestation. He highlights that an appreciation of *sunnah* is important in the understanding of Qur'ān [209] by stating that Allāh the almighty has sent his messenger to you and revealed to him the book of 'eternal truth', referring to Qur'ān as 'a prescription inclusive of all that was revealed in previous books', while highlighting that Qur'ān 'distinguishes in detail what is lawful and what is unlawful'. Thereafter, he points out why the book on its own is not sufficient 'ask whatever you have to ask from the book, but Qur'ān will not talk to you', pointing out that 'it is I who will answer to you each and every question from Qur'ān' (Al-Kulaini, 1990_a, 61). [210]

The technical term *sunnah* is often translated into English as tradition but that is not entirely accurate. The term has a number of meanings such as a well-known path, a way of life, or habitual practice. It was referred to by Arabs before Islam to denote the customs which they inherited from their ancestors, and the definition for the term *sunnah* of any person is 'the practice that he considers binding, and attempts to protect and uphold' (Nyazee, 2000; 206). However, as the foundational source of Islamic law, *sunnah* refers specifically to the *qawl* (saying), *fi'l* (action), and/or his *taqrīr*, (acquiescing) of Prophet Muḥammad as the Apostle of Allāh. There is also 'an extension of this Prophetic authority and personality' albeit denominational, to his *ahl al-bayt* for the *shī'ī* and to his *ṣaḥabah* (companions) for the *sunnī* (Mavani, 2010; 31). As a clarification point, the term *ḥadīth* is translated as discourse but is used for the representation and accounts of Prophet Muḥammad's recorded sayings and at times actions. Other related technical terms used with regards to *sunnah* include *sīrah* as mentioned for conduct, way of life or in effect the biography, *riwāyah* (narration) or a telling, and *khabar* (report) or *āthār* (accounts) used interchangeably within literature synonymous

[209] Imām 'Alī's reference on Qur'ān is in sermon 158 of Nahj al-Balāghah; al-Razi (1960).
[210] This is also a proof that the *sunnah* of the Prophet is extended to that of the *ahl al-bayt*.

for *ḥadīth* or at times for *sunnah* (Nasiri, 2013; 18). [211] The authority of *sunnah* as a primary source is derived from Qur'ān informing the Muslims in chapter *al-aḥzāb* (33:21) [212] that the Prophet Muḥammad is the best exemplar, and in the chapter of *al-nisā'* (4:59) [213] commanding the Muslims to obey Allāh and His Apostle and also the Imāms based on the *shī'ī* exegesis. During the lifetime of the Prophet, there was an opportunity for Muslims to ask questions about and make note of his response, and the Prophet is recorded as guiding them to take note as he 'utters nothing but the truth' (Brown, 1996; 91). The great *shī'ī* Jurist al-Kulainī (d. 941) [214] has narrated that the Prophet instructed the people to follow his *sunnah* (Al-Kulaini, 1990_b; 496 & 1990_c; 79). There is ample evidence that Imām 'Alī wrote down many of the traditions dictated by the Prophet himself (Majlisi, 1990_e; 45-51), there were also written or verbal recordings of the traditions by other companions. To emphasise the point, the status of those who memorise his narrations is compared to that of a *faqīh* (jurisprudent), as mentioned in the narration encouraging Muslims to learn *al-arbaʿūn aḥadīth* (forty traditions) [215] concerning their religious needs (Majlisi, 1990_b; 156; Nasiri, 2013; 72).

The *sunnī* literature on *sunnah* mentions that the recording of *ḥadīth* by the Prophet began during his lifetime and increased following his death. Thereafter, the practice was stopped by the second Caliph, 'Umar, but the practice was revived later by the ʾUmayyad ruler Caliph 'Umar ibn 'Abd al-'Azīz (d. 720). This led to a major collection and compilation of *sunnah* taking place during the ʿAbbāsid dynasty (Mahmassani, 1961; 71). In ensuring the authenticity of the narrative process as the source of Islamic law, Muslim jurists came up with ways of verifying the genuineness of the discourse through a process named *'ilm al-ḥadīth* (science of hadith). [216] The famous *sunnī* compilations of *ḥadīth* are known as *kutub al-sittah* (the six books), and consist of two *ṣaḥīḥ* (authentic) and four *sunan* (traditions) books (Mahmassani, 1961; 72). [217] The *shī'a* literature on *ḥadīth,* which is expanded to include *ahl al-bayt* as the source of the transmission. The *shī'ī* scholar Shaykh Aḥmad ibn

[211] The choice of the term is important as for the *shī'ī* jurists it refers to what is being encompassed, *ḥadīth* for the words or deeds of *ma'ṣūm,* but *āthār* is used for the words or deeds of *ma'ṣūm* and non- *ma'ṣūm,* and *khabar* is used as a general term used for the words or deeds of non-*ma'ṣūm* (Al-Fadli, 2011, 50).
[212] Verily the Prophet of Allāh id a fine example (to emulate) …, .
[213] O you who believe, obey Allāh and obey the Apostle and those invested with command among you …, .
[214] Muḥammad ibn Ya'qūb, commonly known as al-Kulainī.
[215] Āyatullāh Khomeinī also has a book of selected forty *ḥadīth* published in 1940.
[216] Muslim jurists divide the tradition transmisssion into different categories according to their degree of authenticity and reliability, *ṣaḥīḥ* (sound), *ḥasan* (good), *muwaththaq* (dependable), *ḍaʿīf* (weak) (Al-Fadli, 2011, 115).
[217] These are Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim as the most reliable, thereafter Sunan abī Dāwūd, Sunan at-Tirmiḏī, Sunan an-Nasā'ī, and Sunan ibn Mājah.

Abi Ṭālib Ṭabarsī (d. 1153) reports that Imām Muḥammad ibn ʻAlī al-Jawād (811-835 CE) [218] has a clear standard for the authenticity of a *ḥadīth.* He quotes the Prophet as saying, that any reported *ḥadīth* must checked for authenticity by examining it to see if it is in agreement with Qur'ān and *sunnah* (Al-Tabarsi, 1982, 446). Moreover, often the *ḥadīth* by an Imām begins by saying I heard from my father (name) and so on, creating a direct linkage to the Prophet. [219] The famous *shīʻī* compilations of *ḥadīth* in *shīʻa* are known as *kutub al-arbaʿa* (the four books) [220] as termed by the great *shīʻī* scholar al-Shahīd al-Thānī (d. 1559) and are commonly used in *shīʻī* jurisprudential material. These have the same status for the *shīʻī* as the six collections of *ḥadīth* status for the *sunnī.* Additionally, in *shīʻa ithnā-ʻasharī,* there are two branches of knowledge known as *ʻīlm al-rijāl* (knowledge of men) and *ʻīlm al-dirāyah* (knowledge of comprehension). These allow the jurists to investigate the traditions and the narrators comprehensively, and evaluate their respective understanding. [221]

Coupled with Qur'ān, the *sunnah* of the Prophet (and of the *ahl al-bayt*) form the primary sources of *fiqh* in our contemporary time.[222] In the discourse centring on *sīyār,* the *sunnah* plays an important part as the source of legal obligations (Hamidullah, 1945; 21); this is particularly seen in the detail that is embedded within treaties. Additionally, it would contain a wealth of information and legal settings based on the activities and criteria set by the Prophet as the leader of the Islamic government (Zanjani, 2020; 272). An example of this is the Treaty of Ḥudaybīyyah as the most authoritative example of Islamic diplomatic law during the life of the Prophet of Islam and a reference point for Muslims when discussing the concept of diplomatic immunities to be covered in Chapter 5. Finally, the emphasis on *sunnah* seems to be directly linked to its importance on 'how to read the Qur'ān and how to implement the *sharīʻa'* (Baker, 2009; 90). This is the case for not just the jurists, but Muslim thinkers and modernists, but even the radicals and extremists of our time. 'The fundamentalists or reactionary movements tend to seize upon traditions as a tool for conforming their own lives to the Prophetic *sunnah'.* This would then be used in justifying their actions 'through selective misuse of *ḥadīth'* (Skreslet and Skreslet, 2006; 53). A clear

[218] Regarded by the *shīʻa ithnā-ʻasharī* as the ninth Imām from the *ahl al-bayt* of the Prophet.
[219] Such narrations were written in notebooks creating what is known as *al-uṣūl al-arbaʿumiʾa* (the four hundred source-collections), providing a unique collection for scholars (Al-Fadli, 2011, 77).
[220] These are Al-Kāfī collected by Shaykh al-Kulainī, Man lā yaḥḍuruh al-faqīh collected by Shaykh al-Ṣadūq, Tahdhīb al-aḥkām and Al-Istibṣār fī mā ukhtulif min al-akhbār both collected by Shaykh al-Ṭūsī.
[221] The assessment process of *ḥadīth* is vital during the time of occultation of the twelfth Imām, and is based on many conditions such as the *isnād* (narrators) and *matn*, and the criterion of *mutawātir* (numerous/successive), *mashhūr* (widespread), or *waḥīd/aḥad* (isolated/singular) and so on, in an ongoing process.
[222] It is important to note that 'just as later verses from the Quran could abrogate contradicting earlier verses, the same was true for *aḥādīth*' (Görke, 2011; 181)

example of this would be the references made by the leaders of the terrorist group ISIS to conditions set by the Caliph 'Umar. This is regarding how *ahl al-kitāb* were treated (Blanchard and Humud, 2017; 29), even though it is accepted that such personal judgements of the Caliph, 'Umar, were in conflict with the primary sources Qur'ān and the *Sunnah* of the Prophet.

3.4 The Secondary Sources (ijmā' and 'aql)

The meaning of the term *ijmā'* is given as the consensus of opinion and signifies an agreement, which constitutes as a source of Islamic law to determine or to agree upon something. Although the technical term represents 'the unanimous agreement of Muslims on a regulation or law at any given time' (IBP, 2016; 72), this is not the case, and a difference exists between different Schools of thought on what it actually entails, even the four *sunnī* Schools of law have a difference of opinion. The *hanbalī* regards it through agreement of Prophets companions, *mālīkī* as the agreement of the Madīnah community (the city of the Prophet), *hanafī* regards it as the public agreement of Islamic jurists, and *shāfī'ī* refers to it as the agreement of the entire Muslim community (IBP, 2016; 73; Kamali, 2008; 182). Although the concept has been sanctioned by *sunnī* jurists, some scholars have questioned the practical feasibility of unanimity, and if any dissenting opinion of a qualified jurist has been overlooked (Vogel, 2000; 48), asking if consensus 'is not a mere legal fiction devoid of practical feasibility?' (Ismail, 2016; 57). There have been suggestions that rather than 'a universal consensus', it should be limited to the consensus of learned scholars of a locality (Kamali, 2008; 190), or 'individuals whose opinion is effective in the promulgation of the law' (Sachedina, 1981; 139).

The opinion of the *shī'ī* jurists is also of two types, the prevailing jurisprudential view based on the *uṣūlī* (rationalist) School, and the vigorously opposed opinion of the *akhbārī* (traditionalist) School. [223] For the *uṣūlī* the primary sources of Qur'ān and the *sunnah* must be supplemented by an elaborate science of interpretation through the secondary sources, the first of which is consensus. This is rejected by the *akhbārī*s 'who do not require (in theory) any interpretative efforts', the requirement is only to accept the primary sources of Qur'ān and the *sunnah* (Mallat, 1993; 30). However, since 'the crushing defeat of the *akhbārī'* in

[223] Although the 'linguist equivalence in English of *uṣūlī* would be fundamentalist', use of such an English term as its meaning is wrong. The 'literal meaning of would be one who goes back to the first principles' and refers to a specialist in *uṣūl al-fiqh*, the discipline dedicated to elucidating the sources of Islamic law. Subsequently, '*uṣūlī* is a legal term synonymous with rationalist', as opposed to the 'the anti-literalists' jurists who known as the *akhbārī* School (Wood, 2012; 79).

the late Eighteenth century, [224] the *uṣūlī* School has dominated the *shī'a ithnā-'asharī* jurisprudence (Ghobadzadeh, 2014; 35). The concept of consensus in *shī'ī* jurisprudence is 'not an independent source' but rather involves 'the process of discovering' (Sachedina, 1981; 139). This is used to designate the opinion that has been discovered by the jurist with certainty as being the opinion of the Prophet or the Imām. Thus, the validity of consensus is 'ensured by the participation of the *ma'ṣūm* (infallible)' who is the successor to the Prophet (Al-Muzaffar, 1970; 82), as crucially the non-presence and non-agreement of Imām invalidates the decisions made. This is of particular importance historically, because based on the principle of *ijmā',* the non-presence of Imām 'Alī in the events of Saqīfa's election to elect the Abū Bakr as the Caliph, invalidates the decision made (Sachedina, 1981; 138). It also counters the *sunnī* Islam criteria of consensus initiated by the Caliphate for decision-making, [225] alongside the consensus procedure practiced by various *sunnī* approaches. The *shī'ī* view such practice by the Caliphate as a way 'to inscribe into law principles and practices which seem to violate express Qur'anic statements', and by using 'the doctrine of consensus' provide 'authority to the *'ulamā'* and especially the jurists amongst them', to 'claim over Islamic tradition' (Berkey, 2002; 147). Some scholars believe that although consensus was envisaged as 'a vehicle of creativity' by the *sunnī* Schools, it had 'congealed and become reified', thus the procedure later 'slowed change'. This was because the *sunnī* jurists no longer 'investigated the Qur'ān or *ḥadīth* in order to find new solutions for new problems', but rather accepted decisions made previously through consensus (Schimmel, 1992; 62). As mentioned, according to the *shī'a* doctrine, *ijmā'* is a process of discovering Qur'ān and the *sunnah* through the opinions of the infallible Imāms of *ahl al-bayt*. [226] Thus at times of disagreement, other than the word of Allāh and his Apostle they would be the point of reference. The basis being the instruction in Qur'ān to obey those invested with command as mentioned in chapter *al-nisā'* (4:59). [227] The unanimity of the views of the *shī'ī* jurists on a certain legal question is not a source on its own but it can become a means through which the opinion of the Imāms may be discovered' (Modarressi, 1984_a; 141). It

[224] The rigorous though ultimately unsuccessful *wahābī* challenge to the Ottoman Iraq and the *shī'a* security in Persia had the impact of coalescing support for the *uṣūlī* school' led by Shaykh Vahīd Behbahānī (d. 1791).

[225] In sunnī jurisprudence *'ijmā'* is a proof because it is claimed the Prophet sanctioned the procedure as a means of establishing certainty in a matter (Gleave, 2000; 56). He is reported in the *sunan* sources that 'my *ummah* shall never agree on an error'. The *ḥadīth* does not appear in *shī'ī* sources and the authenticity is rejected by the *shī'a* for its obvious flaws.

[226] The practice is divided into various types, and if acquired directly, or based on transmitted narration, whether by discovery or evidence, based on verbal or actions, numerous or singular, and so on. Also various methods involved, is the opinion based on direct sensory perception, or confirmation by silence, or divine grace, or through intellectual opinion or instinct.

[227] O you who believe, obey Allāh and obey the Apostle and those invested with command among you …, .

is 'the inclusion of the Imām's opinion which ensured the consensus of a proof, and not the consensus itself' as an independent authoritative source. The *shī'ī* position is a means of discovering previously unknown opinion of the Imām, be he absent or present' (Gleave, 2000; 56).

The final source for the discovery of Islamic law according to the *shī'ī* preponderant view is *'aql* using precise rules. [228] This is based on the many Qur'anic verses that 'explicitly stipulate the use of reason in the interpretation of the law' (Litvak, 2021; 162). [229] By referring to the rule of correlation that states 'whatever is ordered by reason is also ordered by religion', it is deduced that religious rules occur through the verdict of reason (Modarressi, 1984_b; 4). For example, the prohibition for the use of narcotic drugs can be made through reasoning since it is harmful and has an addiction it is prohibited, even though there is no revealed rule about it. By introducing the discipline of *uṣūl al-fiqh*, the *shī'ī* jurists place general principles for the application of 'knowledge regarding practical rules of the *sharī'a* acquired from sources' (Mutahhari, 1993; 69). This process of the rational discipline of argumentation and analysis is a 'methodological framework which privileges syllogistic forms of reasoning' (Bhojani, 2015; 25). The *shī'ī* scholar Āyatullāh Muḥammad Bāqir al-Ṣadr (d. 1980) has regarded '*uṣūl al-fiqh* to be 'the theoretical framework for the actual practice of *fiqh',* or 'the logic of *fiqh*', aimed at ensuring the correctness of the actual reasoning (Al-Sadr, 2003a; 50). The famed *shī'ī* jurist Shaykh al-Mufīd (d. 1022) [230] is regarded to have 'vigorously denied the use of reasoning by *qīyās*' in jurisprudential matters. Instead, he argues for the use of reasoning by *'aql* when there are no recorded statements of the Imāms as guidance in consensus or explicit reference in Qur'ān or *sunnah* (Knysh, 2016; 181). His position opposed that of the *sunnī* jurists who take *qīyās* as a secondary source for Islamic law alongside *ijmā'*. In *qīyās* the 'divine law revealed for one event can be applied to another event, if the same common feature is found to exist in both events' (Vogel, 1998; 43). However, there is a human element involved in making the analogy. 'The task of identifying the commonality of ratio legis' or the *'illah* (effective cause) (Kamali, 2008; 198). For instance, Qur'ān forbids drinking wine because of intoxication; thereby it is argued

[228] The rational regulations in the *uṣūlī* School to discover legal rules has various criteria such as conforming with prerequisites to an obligation, or the necessitate of the prohibition for opposite to an obligation, or the prioritizing of what's important and what's more important, or the no compatibility of placing and obligation with a prohibition.
[229] The term *al-'aql* is used repeatedly in terms of man's salvation, but in Arabic (and also Persian) *al-'aql*, is used 'to denote for both reason and intellect'. 'By virtue of being endowed with *al-'aql*, man becomes man and shares in the attribute of *al-'ilm* (knowledge), which ultimately belongs to God alone' (Nasr, 1979; 1).
[230] Abū 'Abdullāh Muḥammad ibn Muḥammad, commonly known as Shaykh al-Mufīd.

that the use of narcotic drugs is prohibited for the same reason (Sodiq, 2010; 172). Nonetheless, there is a difference of opinion between different *sunnī* Schools about the level of the human element in making the analogy, for example, can another liquid such as wine be used instead of water for ablution or the removal of impurity (Ahmad, 2006; 138). The use of analogy is rejected in *shī'ī* jurisprudence (Takim, 2021_a; 61) since 'the ratio decidendi and common factor between two similar matters is not clear and difficult to distinguish' (Dahlen, 2004; 87). Imām al-Ṣādiq warns against the use of analogy pointing out many of its failures, [231] for instance a woman is required to perform at a later date any fasting missed during Ramadan while on menstruation, but not required to do so for her lost prayers, despite prayers being ranked higher in Islamic duties than fasting (Al-Kulaini, 1990_a; 57). The *shī'ī* jurists have been encouraged by the Imāms 'to utilise rational thought' instead; while their teachings regularly involve the exemplary method of reasoning (Modarressi, 1984_a; 146).

3.5 The Derivation of Legal Injunctions (ijtihād)

The term *ijtihād* translated as independent reasoning, actually means 'the expending of maximum effort in the performance of an act' (Nyazee, 2000; 263). This is a derivative of the verb *juhd* (effort) requiring the exertion of effort and endeavour, linguistically linked to *jahada* (to struggle or to strive), the very same root as for *jihād* (Bowen, 2012; 190). Thus the term *ijtihād* denotes the expenditure of mental and intellectual effort (Al-Alwani, 2005; 68), and eludes to the struggle to find the law from a scriptural passage. The technical term is defined as 'the effort a jurist makes in order to deduce the law, which is not self-evident from the sources (Kamali, 1991; 403). Alternatively, as, the 'personal effort undertaken by the jurist in order to understand the source and deduce the rules or, in the absence of a clear textual guidance, to formulate independent judgments' (Ramadan, 2004; 43). Interestingly, the term *ijtihād* 'occurs nowhere in the Qur'ān' (Shabbar, 2017; 3) or uttered by the Prophet and *ahl al-bayt* (Mutahhari, 1961; 302). As such, there has always been a lot of discussion within literature around the topic of *ijtihād,* the detail of which is outside the scope of this study.

In essence, *ijtihād* within the *sunnī* context revolves around the freedom of judgement even though the 'traditionalist' have a monolithic and strictly immutable approach to Islam. It is

[231] Imām al-Ṣādiq who witnessed the violent overthrow of the 'Umayyads and the rise of the ʿAbbāsids, and founded of the jaʿfarī School, he played no part nor advance a claim to the Caliphate (Armstrong, 2000; 57).

the mechanism of independent human judgements, despite being questionable since *sharī'a* is divine (Khan, 2003; 362). Others have argued *ijtihād* to be a juristic tool, extrapolations and reasoned judgements argued by scholarly hermeneutics (Baderin, 2009; 188). In reality, *ijtihād* is regarded as the third source of Islamic law after Qur'ān and the *sunnah*, because the secondary sources of Islamic law [232] are 'the products of *ijtihād'* (Kamali, 2008; 366). However, it is often referred to as methods of interpretation since it genuinely represents 'techniques of inferring the rules from their sources', the medium through which conclusions are reached (Ghunaimi, 2012; 119). Historically 'the classical era of *ijtihād'* (632-874 CE) began following the death of the Prophet but ended with the passing away of all the founders of the four *sunnī* Schools of law (*mālīkī, ḥanbalī, ḥanafī, and shāfī'ī*). [233] It is their interpretations of the *sharī'a* which is considered by *sunnī* Muslims to be like the divinely revealed despite being man-made, [234] this lays the concrete foundations of *fiqh*. Even though each School of law has 'continued to further develop in subsequent centuries, the later generation of jurists worked within the established precincts', and only 'refining rather than reforming prior rulings and opinions' (Khan, 2012; 15). In recent times the *sunnī* jurists have rarely used *ijtihād,* it has become a tool 'relegated to the past' (Shabbar, 2017; 6). The *sunnī* modernists have sought to employ this tool in deriving relevant principles from Qur'ān and the *sunnah* that can be formulated to suit modern times (Saeed, 2006; 54), and proactively respond to changing realities with contemporary *ijtihād* (Khan, 2012; 14).

Amongst the *shī'a ithnā-'asharī*, the traditionalists are textual followers and are known as the *akhbārī,* they have restricted themselves only to Qur'ān coupled to the *sunnah* of the Prophet and his *ahl al-bayt*. However, the *shī'a ithnā-'asharī* orientation has been mostly towards the *'uṣūlī* approach which advocates *uṣūl al-fiqh*. [235] This requires the application of particular rules as the criteria for the correct deduction of the *sharī'a* from the sources. For example, one criterion would be the essential process in assessing the acceptability of the text of *ḥadīth,* its narrators and the manner of its transmission. The application of *ijtihād*

[232] The use of *ijmā'* and *qīyās* or even *ijmā* and *'aql* used by the *shī'a*.
[233] Since their death concurs with the same time period as the death of Imām al-Ṣādiq, if you take the *shī'a ithnā-'asharī* into consideration, this period should really be extended to the occultation of the Imām al-Mahdī (941 CE).
[234] In essence, within the *sunnī* perspective *ijtihād* is viewed as a consultative process, and not binding (Akhlaq, 2023; 73), nevertheless the opinions of the four Schools have been set.
[235] The major differences between the two Schools are the following: 1) *'uṣūlī* accept *ijtihād*, while *akhbārī* rely on the texts. 2) *'uṣūlī* accept four sources of law, while *akhbārī* accept the first two primary sources. 3) *'uṣūlī* divide the community into *mujtahid* (individual qualified to exercise *ijtihad*) and *muqallid* (emulator), while *akhbārī* believe that all *shī'ī* are emulating the Imāms. 4) *'uṣūlī* issue religious rulings based on *ijtihād*, while *akhbārī* issue judgments on the basis of religious texts (Khunsari, 1970; 498; Heern, 2018; 62).

revolves around the ability to deduce religious rulings from the primary sources of Qur'ān, the *sunnah* of the Prophet and *ahl al-bayt* alongside the secondary sources of consensus and reason, as such '*uṣūl al-fiqh* and *ijtihād* are deeply interlaced' (Takim, 2021_a; 61). However, unlike the *sunnī* Schools of law, the *shī'ī* does not allow the freedom of independent judgement but regards *ijtihād* as a means of discovering the law from sources. This crucial difference in perspective stems from a historical factor when following the death of Prophet Muḥammad. The Muslims faced 'a termination of authoritative guidance in the form of textual sources', but rather than abiding by the instructions given at Ghadīr Khumm to refer to Imām 'Alī, they chose to use independent judgement and elect the Caliph as their source of guidance. Thereby, they could only 'devise and apply various tools' in order to 'approximate Gods will' on legal problems that could not be directly extracted from primary sources (Takim, 2021_a; 62). Nonetheless, this would not be true for the *shī'a* as they have continued to be guided by the presence of the Imāms as the infallible successors to the Prophet. This consequently obviated the need to resort to independent judgements (Takim, 2021_a; 62). Thus for the *shī'ī*, the foundations of the *ja'farī* School of law are set by the Imām. Thereby, they are adamant that *ijtihād* cannot be based on *ra'y* (personal opinion) independent from Qur'ān and *sunnah*, and such judgements are regarded as invalid, faulty and fallible. A clear example of this that affects *sīyār* would be the independent judgment made by the second Caliph. He stopped the non-Muslims from getting their share of public funds; despite such provision for the distribution of the tax being made within the verse in chapter *al-tawbah* (9:60), [236] and also practiced and allocated by the Prophet during his lifetime (Al-Na'im, 1996; 28). Likewise, he refused to distribute to Muslim combatants lands captured as part of the spoils of war regardless of the instruction given by the verses of Chapter *al-ḥashr* (59:6-10), [237] and again practiced by the Prophet (Al-Na'im, 1996; 28). On the same line of thought, the *shī'ī* jurists reject rulings within *ijtihād* being made based on analogy, because religious rulings should not be founded on personal assumptions. Moreover, Imām al-Ṣādiq points out the Qur'anic verse in chapter *al-'arāf* (7:12), [238]

[236] Alms-tax is only for the poor and the needy, for those employed to administer it, for those whose hearts are attracted (to faith), for (freeing) slaves, for those in debt, for Allāh's cause, and for (needy) travelers, an obligation from Allāh, and Allāh is All-Knowing, All-Wise.

[237] These verses discuss about the distribution of the gains seized without bloodshed (attained from the tribe of *banū naḍr* in Madīnah) to be put at the disposal of the Muslim community and thereafter it makes clear catergorisations regarding the distribution. It also denotes tht obeying Allāh and the Prophet goes beyond devotional issues and in terms of the Islamic State governance includes other aspects such as economic issues.

[238] He said what prevented you from prostrating when I commanded you, Satan replied I am better than him, for You have created me from fire, and him from clay.

warning ‘beware of analogy in rulings, for the first to use *qīyās* was Satan’ in regards to the creation, (Al-Kulaini, 1990_a; 58).

Ever since the short *ghaybah* (occultation) [239] of Imām Ḥujjat ibn al-Ḥasan al-Mahdī (b. 868 CE) [240] that began in 874 CE, the issue of *ijtihād* has been an important discussion ‘faced by the crisis of not having direct access to the Imām’. Lacking infallibility, arguably the *shī‘ī* s scholars have been left ‘to fill the void of the Imāms’, this has led to ‘debates over the nature and limits of their authority and knowledge’ (Heern, 2018; 67). Imām al-Mahdī in his communications regarding the incidents that may occur during his occultation refers to the community of the *shī‘ī* to approach the *ruwāt* (transmitters) as proofs (Al-Tabarsi, 1982, 283). [241] For the *akhbārī,* the role of the jurist is limited to the collection and transmission of the text. For the *‘uṣūlī,* this would entail more responsibility by being involved in their understanding of the text. As the learned authority, they would provide the general and specific connotations and the denotations of the *ḥadīth,* and derive precise precepts from them (Al-‘Amili, 1984; 140). Despite periods of time when the *akhbārī* School had dominated *shī‘ī* thought, the ‘esoteric non-rational’ elements were overwhelmed by the ‘theologico-legal-rational’ movement (Amir-Moezzi, 2011, 225). In reality, there were instances of ‘a number of close associates of Imāms’ at earlier times applying personal reasoning when addressing the needs of the Muslim community (Takim, 2021_a; 62), and some from the *akhbārī* were ‘semi-rationalist’ or ‘traditionalist who were willing to argue for their position in a rationalist style’ (Melchert, 2001; 274). Historically, Shaykh al-Mufīd is ‘reportedly the first to write a substantive work of legal theory in the *shī‘ī* tradition’. By applying the four sources of Qur’ān, *sunnah*, consensus, and reason, his uncompromising epistemological work demands ‘certain knowledge of the law as a legal requirement of legal derivation’ (Gleave, 2018; 215). This rationalist approach is supported by the *shī‘ī* scholar al-Sharīf al-Murtaẓā (d. 1044) [242] in promoting *shī‘a* thought, and also applied to the traditions by the influential *shī‘ī* jurist Shaykh al-Ṭūsī (d. 1067) [243] (Heern, 2018; 70). However, Āyatullāh Muṭahharī while discussing *ra’y* and *qīyās* notes that the initial

[239] There are two occultations, ‘the short’ (874-940 CE) where contact could be made through the four successive persons who acted as representatives or *wukalā* (deputies), thereafter ‘the long’ occultation stated when no contact was physically possible. Thereafter referral is made to deputies in the general sense whereby the *ʿulamā* can act as deputies which forms the basis of Āyatullāh Khomeinīs political power in Iran (Arjomand, 1984; 269).
[240] Regarded by the *shī‘a ithnā-‘asharī* as the twelfth Imām from the *ahl al-bayt* of the Prophet.
[241] The instruction identifies the development of communal structures and doctrines that would allow *shī‘a ithnā-‘asharī*’s survival.
[242] Abū al-Qāsim ʿAlī ibn al-Ḥusayn, commonly known as al-Sharīf al-Murtaẓā.
[243] Abū jaʿfar Muḥammad ibn al-Ḥasan, commonly known as Shaykh al-Ṭūsī.

reference to the term *ijtihād* was made in connection within the *sunnī* context of *ra'y* and *qīyās.* Thus, he points out that *ijtihād* had been denounced within works of early *shī'ī* jurists, and the first to acknowledge the term *ijtihād* in the *shī'ī* context of *'aql* was the exceptional ʿAllāmah al-Ḥillī (d. 1325) [244] (Mutahhari, 1961; 316). Thus *ijtihād* as a concept and its methodology has evolved and been redefined in *shī'ī* jurisprudence, and more recently through the works of celebrated *shī'ī* scholars such as al-Waḥīd al-Bihbahānī (d. 1792) and Shaykh Murtaẓā al-Anṣārī (d. 1864) (Takim, 2021_b; 3). Subsequently, for the *shī'a, ijtihād* has 'conferred authority' on the jurists whose conclusions have become 'decisive in shaping current practices and establishing precedents for later generations of scholars' (Takim, 2020; 7).

3.6 Methodological Techniques in Islamic Law

Muslim jurists have adopted various legal principles or methodological techniques in the theoretical framework *'uṣūl al-fiqh* when applying *ijtihād*. For example, in making deductions of religious rulings from the sources of Islamic law, the *sunnī* jurists have used various criteria that have been deemed as appropriate considering the circumstances before them. [245] These include *istiḥsān* (juristic preference), *maṣlaḥah* (public welfare) or *al-istiṣlāḥ* (public interest), *istiṣḥsāb* (presumption of continuity), *qawl al-ṣaḥābī* (saying of companions), *ʿurf* (custom), *sadd al-ḍarā'i'* (blocking lawful means), *shar'u man qablanā* (revealed laws proceeding Islam), and *istiqrā'* (induction) (Kayadibi, 2021; 674). The *shī'ī* jurist's theological outlook on issuing religious rulings refers to these as the application of methodological techniques, which differs from the *sunnī* approach of using the legal principle as a sub secondary source in itself. Thus the use of common factors such as *maṣlaḥah* [246] have different positions and criteria between the two approaches. The *sunnī* perspective on Islamic legal doctrine is structured around *maqāṣid al-sharī'a* [247] (objectives of law) (Dusuki and Bouheraoua, 2011; 317) which taps on the argument made by the famous Persian scholar al-Ghazālī (d. 1111) [248]. He stipulated that the very objective of the *al-sharī'a* is the promotion of the well-being of the people, which is based on the safeguarding of their *dīn* (faith), *nafs* (lives), *'aql* (intellect), *nasl* (posterity), and their *māl* (wealth). Thereby by ensuring the safeguarding of these five factors, one would serve the

[244] Jamāl al-Dīn al-Ḥasan ibn Yūsuf, commonly known as 'Allāmah al-Ḥillī.
[245] These are also referred to as secondary sources within text by *sunnī* jurists.
[246] The Islamic legal principles or methodological techniques of 'public interest' are there to include *maṣlaḥah* for considerations to promote benefit and prevent and remove harm, and *al-istiṣlāḥ* to promote and secure the common good.
[247] For a detail analysis of *maqāṣid al-sharī'a* refer to Auda(2022).
[248] Abū Ḥāmid Muḥammad ibn Muḥammad, commonly known as al-Ghazālī.

'public interest' and vice versa. Thus in the *sunnī* perspective this principle 'can be applied to almost any situation that is not textually decided, as well as to adapt existing laws to changed circumstances' (Takim, 2010; 145). However, within the *shī'ī* jurisprudence, the issue of 'public interest' whose foundation are found in the chapter of *al-baqarah* (2:185) [249] is regularly used. This is centred on the context of the overall protection of the Islamic structure (Husaini, 2002; 81), and is referred to within Shaykh al-Ṭūsī's opinion, the 'Islamic ruler can act on how best to protect the Muslim interest' (al-Tusi, 1967_a; 235). This technique is regarded by some as 'the cornerstone of bold new thinking' in *shī'ī* jurisprudence (Boroujerdi, 2013; 29), but is considered to be beyond the scope of this research. [250]

For the *shī'ī* jurists, the legal doctrine revolves around *'uṣūl al-fiqh* which is divided into two pillars. The first develops the methods of 'rendering juristic judgements' from the authoritative four sources of Qur'ān, *sunnah*, consensus, and reason, and the second explains 'the rational devices that the jurist can use' when the sources are 'ambivalent or reticent of an issue' (Takim, 2021_a; 60). For example, within the first section, the discourse revolves around whether the text conveys an obligation, or a recommendation or alternatively the act is forbidden, or does it give a mere disapproval, or it is indifferent, possibly an indication of a mere permission. Thus in making a deduction, the *shī'ī* jurists are required to apply various criteria, standards, and degrees of expertise, which in turn at times has led to differences of opinions between the jurists. [251] For the second, *shī'ī* jurists elaborate on the method and modes of application, for example examining the legal basis and the scope of procedural principles such as *barā'a* (exemption), *istiṣḥsāb, iḥtiyāṭ* (precaution), and *takhyīr* (choice). Since the *shī'ī* jurists 'exposition and interpretation of Islamic law is primarily text-centred', within the derivation of religious rulings, personal judgmental criteria are avoided and downplayed in the decision-making process. It should also be noted that the *shī'ī* jurists Muḥaqiq Ḥillī is known to have identified Islamic law as *'ibādāt* (matters of worship), *'uqūd* (bilateral obligations), *iqā'at* (unilateral obligations), alongside *aḥkām* (Al-Hilli, 1989, 5), although in literature one finds Islamic law to be categorised as *'ibādāt* and *mu'āmilāt* (social

[249] … Allāh intends ease for you and not hardship, …, .

[250] Refer to appendix1.

[251] For example, Qur'ānic experts classify verses into various types. *al-muḥkam* (perspicuous) and *al-mutashabih* (ambiguous). *al-'aām* (general) and *al-khāṣ* (specific). *al-muṭlaq* (absolute) and *al-muqayyad* (qualified). *al-nāsikh* (abrogator) and *al-mansūkh* (abrogated). *al-mubayyan* (expressive) and *al-mujmal* (ambivalent). *al-naṣ* (explicit) and *al-ẓāhir* (apparent). Alternatively, by where it was revealed as *makkī* (at Makkah) and *madanī* (at Madīnah), or its occurrence *asbāb al-nuzūl* (the basis of revelation), or its style of speech as a verse may concern something at the start and its end something else.

relations). [252] Either way, it can be argued that there is 'little or no discussion on inferring rulings based on ethical and moral imperatives' or assessing if 'legal rulings are congruent with the objectives of the lawgiver' (Takim, 2021_b; 6). Nevertheless, has made the following classification of Islamic law, *'ibādāt*, [253] *al-amwāl* (property), [254] *al-sulūk al-khāṣ* (personal behaviour), [255] and *al-sulūk al-ʿām* (general behaviour) [256] (Al-Sadr, 2001; 142). He then goes on to identify various aspects of International relations as religious rulings covered in the fourth classification (Al-Sadr, 2001; 144). Such consideration of religious rulings specific to the social aspect by Āyatullāh al-Ṣadr (Mavani, 2010; 26) is unique and possibly the basis of what later has been termed as *fiqh-i sīyāsī* (political jurisprudence).

The contemporary contemporary *shī'ī* scholar, Āyatullāh Khomeinī has used the platform of intellectual reasoning to discuss the availability of Islamic legal principles or methodological techniques to the jurist. This is done through advocating the theory of *vilayat-i faqīh* (guardianship of the jurist) within the application of *ijtihād*. [257] For Āyatullāh Khomeinī 'governance of the jurist is an extrinsic and rational issue', whereby the *shī'ī* jurists 'is entrusted with all the authorities; that the Prophet and the infallible Imāms were entitled to for governance' of the Islamic State. He then points out that such 'guardianship cannot be realised except through entitlement'; this does not imply by itself dignity and status but rather as 'a means of carrying out one's duty and enforcing the religious precepts' (Khomeini, 2005; v). Such a revolutionary view of governance, stresses that 'the Islamic State is not merely one part of Islam amongst others, but it is Islam itself'. Āyatullāh Khomeinī states that 'although the implementation of *sharī'a* is very important, however, it is not the ultimate goal. The *sharī'a* serves as a means to achieve the primary aim' of the establishment of the Islamic State. In other words, the significance of *sharī'a* is overshadowed by the absolute requirement for the protection of the Islamic system itself (Vaezi, 2004; 97). Thereby, Āyatullāh Khomeinī notes that 'the government and the absolute guardianship that is delegated to the noblest messenger of Allāh is the most important of divine laws and have

[252] The simplified two categories of Islamic law are *'ibādāt* 'laws that regulate the relationship between God and humans', and *mu'āmilāt* 'laws that regulate the relationship of humans with one another' (El-Fadl, 2013; 16).
[253] Which covers devotional aspects such as rulings on purity, prayer, fasting, and pilgrimage
[254] Which could be public or private matters such as rulings on payment of taxes, public funds, or owenership, finance, guarantees, insurance, and transactions.
[255] Which covers the individual and the family matters such as rulings on food, drink, clothing, housing, etiquette, covenants, or marriage and diverce.
[256] Which covers the Islamic State matters such as rulings on guardianship, areas of the judiciary and the government, jihād, and punishments.
[257] The doctrine of *vilāyat-i faqīh* is central factor within the constitution of Islamic Republic of Iran, and we will touch further in Chapter 5; the transliteration in literature at times appears as *velāyat-e faqīh or wilāyah al-faqīh.*

priority over all other ordinances of the law' (Khomeini,1989_e; 170). With this in mind, some have argued that if 'there are compromises that are variably required in any modern state' (Boroujerdi, 2013; 3), then those will be made within the scope of guardianship. This will be implemented using appropriate techniques in Islamic law, resorting to 'all sorts of expedient measures that are deemed necessary' (Khan, 2005; 141). It should be noted that traditionally this has not been the position of *shī'ī* jurists, for example, key personalities such as Shaykh al-Anṣārī have opposed the acquirement of such unique authority and reserved this solely for the infallible (Sachedina, 1998; 210). There are also many contemporary scholars who have viewed the intertwining of 'jurisprudence and theology' with 'state power, material interests, and political consideration' to be 'destroying the sacredness of Islam' (Boroujerdi, 2013; 3). [258] Although an analysis of *vilayat-i faqīh* is beyond the scope of this research but for the discussion around *sīyār,* it should be noted that the concept is deemed crucial to Islamic diplomatic law. Some view this to be an innovative component that was lacking before Āyatullāh Khomeinī because the *shī'ī* legal thought had not seriously 'engaged in the sphere of public law and consequently never articulated a coherent theory of government' (Amanat, 2003; 2). However, others point out that the idea is 'not a new invention because it had been discussed in *shī'ī* tradition for several generations' (Ardalan, 2020; 155). In any event, the scope of such contribution, referred to in Arabic as the *wilāyah al-muṭlaqa* (absolute authority), [259] is underpinned by the famous letter of Āyatullāh Khomeinī to Āyatullāh Khāmene'ī, his successor in guardianship. He points out that 'if the powers of the government are restricted to the framework of ordinances of the law then the delegation of the authority to the Prophet would be a senseless phenomenon. I have to say that government is a branch of the Prophet's absolute authority and one of the primary rules of Islam that have priority over all ordinances of the law even praying, fasting and *ḥajj*' (Khomeini, 1989_e; 170). He then makes the profound statement that based on his understanding 'the Islamic State could prevent implementation of everything, devotional and non-devotional, that so long as it seems against Islam's interests (Khomeini, 1989_e; 170), which places the issue of *maṣlaḥah* in a different context altogether.

3.7 The Concept of Time and Place

The concept of time and place is directly related to the issue of variability of Islamic law or at least its interpretation. This stems from the fact that the *sharī'a* is recognised as the divine

[258] This clear stance on political non-interference has been the position of contemporary jurists such as Āyatullāh Muḥammad Ḥujjat Kūh Kamarī (d. 1952) (Mesbahi, 2022; 926).
[259] In Iran this is also referred to as *vilāyat-I muṭlaqi-yi faqīh*.

source of Islamic law, which is thus immutable. However, *fiqh* is based on human interpretation of Islamic law, a product of the individual's intellect, and consequently mutable (Baderin, 2009; 187). In the *sunnī* context, the variability of being subject to time and place and circumstances would be likely in laws that regulate the relationship of humans with one another (Ismail, 2016; 51). Therefore, the evolvement of *ijtihād* has offered a mechanism that engages with independent human judgements (Khan, 2003; 362). Nevertheless 'whether it is possible until today, or whether the gates of *ijtihād* were closed' during the Tenth century, [260] is a matter of controversy (Marboe, 2018; 257). The contemporary *sunnī* scholars amongst others argue that 'the rulings of *sharī'a* do not change regarding the duties, penalties, and forbidden actions stipulated by Qur'ān and the *sunnah*'. Otherwise, 'the interpretation is linked to the intent which a given ruling aims to achieve and thus the rule may change in time and place (Baker, 2009; 113). In relation to our research on *sīyār* such a stance would be crucial as the differences in the times, places, and conditions are affected and are 'experienced by Muslim minority communities' residing in Western States and also similarly by 'non-Muslims in Muslim States'. This would thus require 'different forms of legal provisions from that of the classical *fiqh* that were made at different times, places, and conditions' (Mawardi, 2020; 396). Nonetheless, in the *shī'ī* context, independent judgements by jurists are considered void, because they are merely jurists and are not infallible. It is worth noting that the *shī'a* believe in the infallibility of the divinely appointed Imāms, and the continued presence of the Imām as the successor to the Prophet (Takim, 2021_a; 62). This principle requires the decision of the Imām to be sought, but during the occultation of Imām al-Mahdī, *ijtihād* has become the tool of preference in legal theory by the *'ulamā*', stimulating religious rulings. The basis of the concept of time and place in *shī'ī* jurisprudence is thus posited around the expansion of this principle, with reference to *manṭiq al-farāgh* (lacuna) proposed by Āyatullāh al-Ṣadr (Al-Sadr, 2004; 443). This 'empowers a jurist to either revise earlier rulings or infer new laws', and 'legislate on matters that have not been explicitly prohibited or mentioned in the textual sources' (Takim, 2018; 489). The concept of *zamān va makān* (time and place) proposed by Āyatullāh Khomeinī builds further by considering the traditional method of *ijtihād* to be an insufficient mechanism at times. Āyatullāh Khomeinī's conceptual proposal stems from the Islamic belief that *sharī'a* as the revealed guidance must bring prosperity to the entire human race.

[260] The doctrine of the closing of the gate of *ijtihād* asserts that by 900 C.E, 'the point had been reached when the scholars of all schools felt that all essential questions had been thoroughly discussed and finally settled'. Thus, a consensus was gradually established by one or two centuries later that all activity would be limited to *taqlīd* (imitation or emulation) of the four Schools of law, and future work will be confined to explanation, application and at most interpretation. Some recent academics have challenged argue that the gates of *ijtihād* was never closed (Hallaq, 1984; 3).

This is an intrinsic requirement of the epistemology of Islam, and thus Islamic law must be comprehensive, universal, and eternal (Lotfi, 1999; 277). If as stated *fiqh* is the 'human learned understanding of *sharī'a'* (Le Roux, 1981; 28) then it must be a functioning mechanism, allowing the jurist to extrapolate religious rulings from the divine commandment. Āyatullāh Muṭahharī notes that not all Islamic laws are fixed, some must be temporal and some vary, this would ensure the meeting of varying human needs both at a personal and social level, based on their changeable circumstances (Mutahhari, 1977; 97). To emphasise the point, an argument is made that if *ijtihād* does not involve responding to modern problems, then what would be the difference between following a living or a dead jurist (Dabashi, 2017; 164)? [261] Thereafter, Āyatullāh Khomeinī suggests that a change of approach is needed since 'time and place are two crucial parameters in jurisprudence'. He stresses that he does not intend to change the foundations of *fiqh,* 'I subscribe to the widespread *fiqh* that is current amongst the jurists; the traditional *fiqh,* and the methods of *ijtihād* as adopted by *javāhir*'. [262] But then he emphasises that 'this does not mean *fiqh* is not dynamic', pointing out that 'the ruling on a case may change as a result of new political, social and economic situations' (Khomeini, 1989_f; 290). Thereafter, the common stance by *shī'ī* jurists (in Iran) is generally in line with the position taken by Āyatullāh Khomeinī. This stipulates that 'the factors of time and place influence *ijtihād,* a situation with a particular judgement at one time which might be regarded as the same in the new situation, actually require a different judgement, considering the social, political, and economic spheres that apply, rendering the situation as different' (Khomeini, 1989_f; 290). However, Āyatullāh Khomeinī believes that a review could 'change what is regarded as permissible and what is regarded as forbidden in Islam' [263] (Khomeini, 1989_f; 176), however, this point of view is not universally accepted by other *'ulamā*'. The traditional *shī'ī* jurist reject this notation based on a tradition of Prophet Muḥammad that 'what is permitted or forbidden by him remains till the day of judgement' (Majlisi, 1990_a; 58).

Nevertheless, if this criterion were applied, the idea would be revolutionary. Some have argued this could lead to the removal of 'discriminatory rulings based on man-made characteristics such as race, gender, national origin, religion, economic status, and political

[261] Within *shī'ī* jurisprudence, the jurist must be alive for one to make *taqlīd* (following), a process of abiding by the juridical edicts of the most learned jurist. This 'denotes a commitment to accept and act in accordance with *aḥkām* of the *sharī'a* as deduced by a qualified and pious jurist' referred to as a *marja'* (reference) (Takim, 2010; 142).
[262] Refering to Āyatullāh al-Najafī.
[263] In doing s he lists a range of issues of concern that could change, which includes 'compatibility between Islamic and International law'.

ideology' (Mavani, 2013; 224). This is because, by not being constrained to previously set parameters of existing legal theory, the jurists would be allowed to revisit religious rulings again. This would allow rulings to be addressed differently within a diverse new set of benchmarks. By arguing the art of *ijtihād* is developing, Islamic law could be adapted to the changing needs based on the justification and applications for change (Al-Sadr, 1995; 33). The concept permits 'relevance of traditional Islamic law to today's world', allowing the discussion of topics 'that relate to contemporary societies', and 'socio-political and economic challenges' (Takim, 2021_a; 30). The emphasis by Āyatullāh Khomeinī on the new political, social and economic situation, centred on the 'deploying of new juristic tools and expanding the scope of existing methodological tools', this would provide 'guidance not only to individuals in matters of worship and human interrelationships but also in the governance of the State under the rubric of Islam' (Takim, 2016; 22). The establishment of an Islamic State has pushed the *shī'ī* jurists to consider topics not previously addressed, requiring them to 'voice their rulings on the pressing issues of the day' (Sadeghi-Boroujerdi, 2019; 171). However, the great expectations of addressing a long list of new issues around poverty, health and the environment, subjects from human rights and social justice to the authority of a political entity, and different aspects of International norms, have yet to materialise. Despite the 'Qur'anic ethos of justice, equality, fairness and universal human dignity' (Mavani, 2013; 224), and the innovative ideas around the concept of time and place, the jurists have held tight to their traditional bastion. It is thus argued that 'their methodology, mode of discourse, and argumentation strictly follow the traditional lines' (Takim, 2021_a; 34). However, when the Islamic government is facing domestic and international challenges and encounters, the concept of time and place could be critical (Zanjani, 1996; 251). Āyatullāh Khomeinī reminds the jurists in government [264] that they must 'make sure nothing contrary to the *sharī'a is* passed' but at the same time utilise their maximum efforts 'amidst the ebb and flow of economic, military, social and political difficulties to ensure 'Islam is not accused of being incapable of administering the world' (Khomeini, 1989_f; 218).

3.8 Conclusion

If *fiqh* is the human learned understanding of *sharī'a* and consequently limited to the jurisprudential domain, then the question will arise as to why the term *tafaqquh* was used by

[264] In his letter to the Expediency Council.

Qur'ān to instruct all beings to seek the profound understanding of religion. [265] Why should such a profound, intense or thoughtful understanding of religion be limited exclusively to jurisprudence., Surely this should include all aspects of Islam as a religion, including belief, moral and ethical issues. Moreover, if all are urged to learn and memorise the *sunnah* and likened to a *faqīh* by the Prophet, consequently applies to all issues concerning religion and would not deemed to be restricted to jurisprudence. Despite the complexities involved in defining what constitutes *fiqh,* the *shī'a ithnā-'asharī* agree that legal rulings must be based on the primary sources of Qur'ān and the *sunnah* of the Prophet and his *ahl al-bayt*. Alongside such divine commandments, the *uṣūlī* School which dominates *shī'a ithnā-'asharī* jurists of our time, extends the scope of sources beyond Qur'ān and *sunnah.* This now includes an elaborate science of interpretation of the primary sources using secondary sources of consensus and reason. By applying the *ijtihād,* jurists have been given the ability to deduce rulings from the four proofs, through the application of particular structures and rules as the criteria for the correct deduction. Following the 1979 Islamic revolution in Iran, Āyatullāh Khomeinī expanded the realm of the jurist further through the application of the concept of time and place. He declared that all jurists 'must be aware of the prevailing structures of the economics, be aware of politics, and even of politicians, be aware of capitalism and communism, and be aware of the strategical structures of governance' (Khomeini, 1989_f; 290). Although vigorously opposed by the traditional jurists, Āyatullāh Khomeinī incorporated this notation into his overall theory of the *vilayat-i faqīh*. On this basis he notes the guardianship of the jurist would enable the jurists would be enabled 'to lead and govern an Islamic State or even a non-Islamic State' (Khomeini, 1989_f; 290), and address new political, social and economic situations involved in governing the State, this by furthering *ijtihād*'s parameters. It is essentially centred on the notation of comprehensiveness, universality and eternality of Qur'anic commandments. The argument made by this stance is that the *sharī'a* cannot be confined to the past and *fiqh* must exist as 'a functioning mechanism', thus asserting that 'the gates of *ijtihād* must always be open' (Khomeini, 1989_f; 176). It is fair to conclude that the significance of *fiqh zamān va makān,* the *shī'a* jurisprudential principle of responding to the requirements of time and place has in recent times, particularly in Iran proved to be an important tool that could provide the potential basis in answering our research question concerning mechanisms in *shī'a* Islamic law to reconcile with International law, when there is a clear difference. Moreover, it provides a platform for answering our key research question, indicating a degree of

[265] Chapter of *al-tawbah* (9:122).

compatibility in different aspects of Islamic law. Because this notation does include the principles of *sīyār* from the *shī'a ithnā-'asharī* perspective with modern International law, it requires to be reviewed further in chapter 5, in our example of an Islamic State. Furthermore, it also provides a platform for *fiqh* to transcend into other aspects of religion based on components such as rationality, in order to yield the promised prosperity to the human race. Such argumentation is made on the basis of Qur'ān's assertion that the religion is perfected as mentioned in chapter *al-mā'dah* (5:3), [266] by including a wider scope of application, beyond rules and laws, to belief, moral and ethical issues. Nevertheless, the point to consider is that the application of such normative legal process would be considered to identify the law as 'dynamic, fluid and evolving' (Sardar Ali, 2016; 268), then would it not be sitting outside the narrow boundaries of the Black letter approach? This particular aspect forms the basis of new thinkers' approach to tackling the human dimensional angle, in their quest for new interpretations of religion. [267].

[266] … This day I have perfected for you your religion and completed My favour upon you, and approved Islam as your religion …, .

[267] Refer to appendix1.

CHAPTER 4 – COMPARISON AROUND INTERNATIONAL LAW

4.1 Introduction

The intention behind this chapter is to provide an overview of sources of International diplomatic law in order to make a brief but clear assessment of the compatibility between Islamic diplomatic law and International diplomatic law. According to the classical definition provided by the theoretical jurist and philosopher Jeremy Bentham (d.1832) who is credited with coining the term, 'International law', it is 'a collection of rules governing relations between States' (Sofroniou, 2017; 50). However, such a definition is not complete as modern International law has expanded further and includes two other vital elements, that of 'individuals and international organisations' (Shaw, 2019, 1). Moreover, modern International law is no longer just a collection of rules; it has developed into a complex set of rules linked to 'principles, practices, and assertions coupled with increasingly sophisticated structures and processes' (Shaw, 2019, 1). The history of International law has always been interlocked with that of 'treaty-making' between States, which some have claimed that 'the primary function of diplomacy, ancient and modern, has been the making and maintenance of treaties' (Johnston and Reisman, 2007; 20). Nevertheless, diplomatic law is also sourced from 'customary rules', a general practice that is accepted by International law (Higgins, 1995; 86). Added to this there are 'the general principles of law', which are possibly 'the most controversial, if not mysterious' source of International law (Shao, 2021; 219). Finally, all these are coupled with 'judicial decisions' and 'the teachings of the most highly qualified' in the field of law, which are influential as the 'subsidiary means for the determination of rules of International law' (Hoffman and Rumsey, 2008; 126). Therefore, within the scope of the discourse, the question of compatibility between the principles of *sīyār* and modern International law is a difficult topic to address. One that has always been a controversial subject amongst scholars of Islamic jurisprudence and International law. Moreover, English Literature is mostly 'dominated by exponents of the exclusivist theoretical view' that essentially regard *sharī'a* law as being against Western values (Islam, 2016; 1). This research will review such claims with an open mind, and assess if modern International law could be compatible with Islamic International law. In doing so, we would have addressed one of the key questions of our research proposed; to what extent is Islamic diplomatic law from the *shī'a ithnā-'asharī* doctrine compatible with International diplomatic law?

4.2 Sources of International Diplomatic Law

Any discourse on principles of diplomatic law reverts to sources of International law, one that sets out to its subjects in 'the choice and applications of given legal rules' (Bederman, 2002; 28). International law would encompass 'rules of conduct that are binding on international actors in relations, transactions, and problems that transcend national frontiers', 'the body of law governing relations between sovereign States' (Bederman, 2002; 1). Literature on this topic tends to divide sources of International law into formal and material concepts, formal being the processes of creating law, while the material being the content of the law. 'The formal and the material concept of sources relate to each other in the way that doing things (in practice) and the contemplation of doing things (in theory) would do' (Koskenniemi, 2017; xv). There is a general acceptance in the discourse around sources of International law that it is represented in the provision of Article 38(1) of the Statute of the International Court of Justice. The idea of various States allowing authority to an outside body to 'exercise jurisdiction over their own citizens or even other nation's citizens residing within their territory' is a new alternative to the traditional manners (Nassar, 2003; 587). The International Court of Justice represents 'the most authoritative and complete statement' (Shaw, 2008; 70), and continues 'to form the de facto authoritative statement of points of reference' (Koskenniemi, 2017; xi) for sources of International law. However, the term 'sources' is not used in Article 38(1) to describe 'the elements that the courts must apply' (Abass, 2014; 28), nor does the Article have the objective of being exhaustive of those elements. Nevertheless, as the judicial organ of the United Nations that is mentioned in its Charter for dealing with disputes between members (Article 92), the application of rules of International law is laid out by Article 38(1). This article recognises, a) International conventions, whether general or particular, establishing rules expressly recognised by the contesting States. b) International custom, as evidence of a general practice accepted as law. c) The general principles of law recognised by civilised nations. d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law (ICJ, 1945; 26).

Treaties are the first and the plainest sources of International law, regarded as 'the explicit, usually written, agreements labelled treaties or conventions' (Janis, 2021; 5) taking place between States and/or International organisations. Such written agreements are the likes of the UN Charter or EU Treaties or bilateral investment treaties amongst sovereign States

(Butchard, 2020; 2), form ‘the idea of a contract’ (Janis, 2021; 5). Reference to treaties as International conventions occurs in the provision of Article 38(1) of the Statute of the International Court of Justice. This gives the broadest of understanding to treaties, embracing all kinds of international agreements irrespective of their particular designation. Moreover, the general definitions of treaty as a source of law are contained in detail by (the 1969 and 1986) Vienna conventions (Danilenko, 1993; 45), in the definition of treaty, reference is made to ‘governed by International law’, embracing the element of ‘an intention to create an obligation under International law’. As such, instruments concluded that are not intended to be governed by International law, are not termed as a treaty. ‘Negotiating States can thus determine if they will conclude an agreement as a treaty, Memorandum of Understanding, or a contract governed by domestic law’ (Hollis, 2012; 48). In treaties, obligations may differ in the scope of duties involved, the classical in bilateral and some multilateral being contractual, ‘paired reciprocally in a synallagmatic manner’. However, in some multilateral treaties, ‘they may be interdependent, where one party’s duties to perform may be dependent on the performance of all other parties’ such as the disarmament treaty (Hollis, 2012; 38). Additionally, multilateral treaties are often law-making treaties, binding States who give their consent, such as the Vienna Convention on Diplomatic Relations. These multilateral treaties would need to be distinguished from treaties which ‘merely regulate limited issues between a few States’ (Shaw, 2008; 95).

Customary practices form the second essential source of International law, regarded as the unwritten source of International law. Such customary practices are the likes of the principle of non-intervention, or the law of State responsibility (consequences of wrongful acts, and rights of redress) (Butchard, 2020; 2). Recognition of custom as a source of law implies to ‘the emergence of continuous community practice within legally relevant spheres of International relations’. This leads to an accepted belief that the practice becomes binding, whereby ‘practice creates justifiable acceptance of future observance’ (Janis, 2021; 5). This differs from treaty making which requires the acceptance of formal negotiations; customary practice is ‘created by the conduct of members through negotiation of actual deeds, statements and other acts’ (Danilenko, 1993; 75). In reality, modern International law is recognised by many to be based essentially on the above mentioned two core components of Treaty Law and Customary International law (Janis, 2021; 46). Nevertheless, ‘treaties despite their considerable proliferation leave many international topics untouched, as most States are not party to most treaties’. Subsequently, customary practice remains crucial, and ‘International diplomatic law is known to have evolved largely out of customary rules of

International law' (Hardy, 1968; 4). The 1961 Vienna Convention on Diplomatic Relations (VCDR) [268] and the 1963 Vienna Convention on Consular Relations (VCCR) [269] have codified all the relevant customary rules regulating diplomatic and consular relations [270] (Hardy, 1968; 6). Despite the assumption that the space for customary law in modern times is limited and regarded as 'clumsy and slow-moving' (Shaw, 2008; 73), yet the Vienna Convention on Diplomatic Relations affirmed that it 'should continue to govern questions not expressly regulated by the provisions of the present Convention' (Behrens, 2017; 13). Thereby, 'the formation and identification of customary International law is a highly dynamic process' based on Article 38(1) of the Statute of the International Court of Justice reference to International custom as 'general practice accepted as law'. This involves an assessment of circumstances based on the consideration of the two elements of 'general practice', and 'accepted as law'. Thus, a variety of evidence is used in decision making including 'treaties, decision of national and international courts, national legislation, diplomatic correspondence, opinions of national legal advisors, practice of international organisations' (Buga, 2018; 202).

General Principles of International law is another source of International law, which has long been recognised and applied in disputes between States (Bassiouni, 1989, 786). These merely being the general principles of law that are derived from common legal practices of nations (Butchard, 2020; 2), 'doctrines of fairness and justice that apply universally in a legal system around the world' (Hoffman and Rumsey, 2008; 126). Nevertheless, the actual derivation or the 'precise content' of the general principle of law can be a daunting task (Kotuby and Sobota, 2017; 17), and at times controversial. The general principles would sometimes be embedded in a treaty provision, or are part of customary International law as noted by Article 38(1) of the Statute of the International Court of Justice regarding 'the general principles of law recognised by civilised nations' (Andenas and Chiussi, 2019; 11). However, in the absence of an exact authoritative clarification on what it entails, there has been a huge amount of literature, and at times diverse interpretations of its exact meaning (Danilenko, 1993; 173). The terms used to describe the general principles of International law appear to suggest two separate requirements, that of 'general principles' and that of 'recognition by civilised nations'. For the first requirement, the term 'general' would require a judge before taking over a principle from private law, to see if it is recognised in substance

[268] https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (accessed 31/08/2023).
[269] https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (accessed 31/08/2023).
[270] Although not regarded as entirely all.

by all the main systems of law (Bassiouni, 1989, 771). For example, 'if legal sources are perfected, they are *ipso facto* creative of international legal obligations', but when they are not perfected, such as 'when States express *opinio juris* without any supportive practice', it needs to be judged if these could be considered as 'expressions of a given principle' (Bassiouni, 1989, 769). For the second requirement made with Article 38(1), one would think that there is a 'presumption' that 'all member States of the United Nations are civilised' (Bassiouni, 1989, 786), and argued that 'the very concept of law itself entails civilisation' (Leiss, 2019; 86). The clarification needed is that it is practically impossible to refer to all domestic legal systems making such a provision inapplicable. Unlike enacted laws or agreements, general principles of law have not been suggested according to the formal sources of law, but general principles of law are considered part of positive law. For example, in keeping with the oldest principle of International law of *pacta sunt servanda* (agreements must be kept), there is a general understanding in International law that promise should be kept, and the notion that International law is created by the consent of States (Arend, 1999; 52). Another example of the general principles of International law would be the impartiality of international judges, this refers to judges not allowing their judgement to be influenced by personal bias or prejudice (Kotuby and Sobota, 2017; 173).

The final source of International law as stipulated by Article 38 (1) is the use of Judicial Decisions and Scholarly Writings in dealing with disputes [271] (Leiss, 2019; 97). However, some argue that these are not in fact 'sources upon themselves, but rather tools for clarifying the content of the law in one of the first three formal sources (Steer, 2016; 12). [272] This means that they would form a 'subsidiary means for the determination of rules of law' that has been derived 'either from treaty, custom, or the general principles of law' (Thirlway, 2019; 117). Nevertheless, there is a condition placed as mentioned in Article 59 of the Statute, that 'the decision of the court has no binding force except between parties and in respect of that particular case' (ICJ, 1945; 28). With Judicial Decisions, this removes the obligation through 'the famous common law doctrine' of *stare decisis et non-quieta movere* (to stand by things decided). Such a requirement for 'courts to follow their own previous decisions' is taken away by this article. Nevertheless, although 'those decisions do not bind' the International Court of Justice, it does not prevent the court from using 'existing decisions to a new case' (Abass, 2014; 55). The use of previous decisions is aimed at providing guidance in subsequent matters since judges are required 'to apply the law, and not to make

[271] Arguably not as a primary source.
[272] This paricularly effects those involved in new technologies.

the law' (Wallace and Martin-Ortega, 2020; 25), since 'legislation dealing with International law comes within the power of States' (Danilenko, 1993; 254). However, there are cases that have far-reaching significance and are in effect creating new laws such as Reservations [273] to the Convention on the Prevention and the Punishment of the Crime of Genocide (Akhavan, 2005, 989). Regarding the teachings of the most highly qualified publicists of the various nations, the objective of the reference is to indicate that the opinions of scholarly writers can provide 'a means for the application and development of the law' (Hoof, 1983; 176). Even though examples of explicit judgements upon the writings of individual writers are low, explicit reference to scholarly writings would not be 'for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is' (ILC, 2022; 121). It is however difficult to decide 'who are the most highly qualified publicists', 'widely recognised' and 'most relevant to the issues concerned' (Hoof, 1983; 176), as such 'susceptible to bias' (Boczek, 2005; 33). Nevertheless, 'the judicial decisions and teachings of publicists' are as 'a subsidiary means' and as such would not prevail based if against 'a rule clearly laid down in a treaty or established in customary law' (Thirlway, 2019; 8), as such they should show evidence of their positioning. Nevertheless, in some cases, the use of Judicial Decisions and Scholarly Writings have had a 'significant influence in the development of International law', such as the concept of contiguous zone (Abass, 2014; 55). [274]

4.3 Discussion around Compatibility of Islamic and International Diplomatic law

To begin with, any comparative assessment of International law requires an initial overcoming of the Eurocentric approach. This view spearheaded by the exponents of the exclusivist theory claims that 'the origin of international community in its present structure and configuration' can exclusively be traced back to 16th century Europe (Cassesse, 2005; 22). This ideology of Europe's civilizing mission regards modern International law as 'rules developed by European State systems since the 16th century which then spread to other continents and eventually the entire globe' (Fassbender and Peters, 2012; 1). Nevertheless, those involved with the Islamic legal system which comprises of 'nearly a quarter of earth's

[273] The convention inserted an article on the use of reservations based on an advisory opinion as requested by General Assembly of the United Nations in 1950; 'The lack of resolve and difficulties in enforcing the prohibition on genocide in Yugoslavia and Rwanda have further called the Convention's clarity and effectiveness into question' (Lippman, 2017; 110).

[274] A zone contiguous to a territorial sea of a coastal State, which may not extend beyond twenty-four nautical miles from the baselines from which the breadth of the territorial sea is measured.

population' (Powell, 2019; 2), are puzzled by such 'gap' and 'forgetfulness' of the 'thin factual and doctrinal traces' (Kennedy, 1997; 100) which exists in the Eurocentric accounts of history. Such a stance is essentially based on a lack of a 'trans-civilisational approach' (Alexandrowicz, 2017; xi), at least within the historical accounts of International law. Such portrayal of International law 'regards Colonialism and indeed non-European societies and their practices more generally as peripheral', because 'International law was a creation of Europe' (Anghie, 2006; 739). Subsequently, Islamic international law is either 'excluded and isolated' as a whole in their accounts of history in the making of International law, or its significance 'marginalised', 'regionalised', or possibly seen as 'others' in International law (Samour, 2014, 314). [275] Having said that within our comparative assessment, self-centralism is not unique to the Western mindset. Often Muslim literature on this topic builds the civilisational development around the Islamic ideology and everything other is regarded as *jāhilīyah* (ignorance) [276] (Frick and Muller, 2013; 6). The Islamic State is thus a nation State that is ruled by Islamic law (Jackson, 1996; xiv), and for example, the leaders of the terrorist group ISIS regarded 'the *sharī'a* as the only legitimate basis for governance' in their official publications (Revkin, 2016; 12). In this approach, it is argued that while International law is regarded as a relatively new legal system that has begun to mature and become global, Islamic law is a comprehensive and coherent system revealed by Allāh (Kassim, 2018; 4), forming the basis of the rule of law practiced by modern States of Europe. However, it is counter argued that this assumption is not entirely accurate, although 'indications of possible transmission' of Islamic legal institutions to medieval Europe 'exists', the extent of its influence in 'the emergence of rule of law and the development of a national or impersonal state, is 'far from clear' (Watanabe, 2012; 78). Thus, when it comes to complex issues, there is a general acceptance that 'existing literature does not always treat problematic issues in an objective and coherent fashion or adequately analyse methodological questions' (Mayer, 1990; 199). Moreover, the treatment of all matters Islamic, 'even amongst scholars is often distorted by the same attitudes of culture and national bias to which the popular media are subject', as such we are often provided with a 'deformed image of Islam' (Daniel, 1966; 24). On the other hand, 'the complex subject matter does not simply dissolve randomly' (Rohe, 2015; ix), even though it is often the case that scholars who have 'hardly any knowledge of Islamic law, have precise ideas of what it involves' (Rohe, 2015; 3). With this in mind, this research has identified the sources of the two legal systems underpinning Islamic diplomatic

[275] Amongst many scholars who do not mention Islamic International law within the history of International law are Wheaton (1863), Oppenheim (1926), and Fenwick (1966). Others (), have regarded Islamic International law as scanty and vague, except for some aspects of war (Nussbaum, 1954; 4).
[276] Derived from *jāhl.*

law and International diplomatic law, prior to analysing their possible compatibility or tension within their respective principles and outlook by discussing the topic in ways ranging from an incommensurability, compatibility, or a reconciliatory approach.

The incommensurability approach in literature revolves around the discourse that modern International law does not accommodate any rules or principles of Islamic international law due to 'the absence of any grounds of congruence between the two legal regimes' (Berger, 2008; 107). By adapting this approach, some scholars have advocated that there is no genuine compatibility between the two legal structures (Ford, 2017; 20). However, outright rejection of Islamic Law is not analytical; surely, criticality requires one to judge the strengths and weaknesses of each position in a logical fashion. Moreover, it is argued by some that there is a need to check for synergy, which is about 'identifying shared values' between the two systems (Rasool, 2022; 100). An alternative method is also available within the literature and is termed as a compatibility approach. The idea was championed by Ronald Dworkin (d. 2013), who commented that the compatibility of judicial review is structured within 'the very principles of democracy' (Baum, 2012: 54). With regards to the topic of this study, the compatibility approach within literature essentially revolves around comparing the texts of international covenants against the texts of Qur'ān and the *Sunnah*. [277] Additionally, there is also an attempt to see if 'the opinions of Western scholars parallel the legal opinions and works issued by Muslim jurists' (Zawati, 2001; 6). However, by adapting this approach, some Muslim scholars have advocated that the sources of *sīyār* mirror the sources of International law (Khadduri, 1956; 359). However, such a claim is questionable, as in practice, complete compatibility is always dependent on the subject of discussion. Such discourse has led to numerous books on the subject of compatibility regarding the *sharī'a* as compared to human rights, democracy and so on, with a few paralleling against International law. It's worth noting that based on these non-mirroring criteria, within the signing of international conventions, a reservation is always made possible for States recognizing themselves as Islamic or Muslim to opt out of certain articles or provisions which they may regard as being contrary to the *sharī'a* (Moschtaghi, 2009; 378). Consequently, this research has chosen to use the compatibility approach and through a series of analogies compare Islamic international law, particularly from the *shī'a ithnā-'asharī* perspective with International law. Since the *sharī'a* covers the 'relation of man to God and man to man',

[277] For instance, in the shī'ī context the supplication of *resālat al-ḥuqūq* (treatise of rights) by Imām al-Sajjād, illustrates an Islamic approach to the notation of human rights (Chittick, 1988; 299), this could be compared to a document such as the 1948 Universal Declaration of Human Rights.

encompassing both religious and secular aspects of the law, it is important to note that Islamic international law 'falls in the secular domain of worldly affairs' (Shah, 2008; 6), and comparison with International is theoretically possible. Finally, there is also a reconciliatory approach within literature and those who aim to bridge the two legal systems by promoting the 'facets of Islamic jurisprudence' to International law (Weeramantry, 1988; 164). These would recognise specific principles of *sīyār* that consolidate 'the scope of contemporary International law' (Badr, 1982; 58). Scholars promoting this approach claim that 'fusing secular and Islamic principles can effectively promote human dignity' (Monshipouri, 1988; 25). However, the question of achieving this type of synergy depends on 'the willingness' of those who assume control and responsibility (Rasool, 2022; 103) to make the required reconciliation. In practice, in most Muslim States harmonizing is pursued, and Islamic law is adopted in the country's legal system and the requirements of civil judiciary based on the International law criteria (Peletz, 2020; 26). As such, in Muslim States whose constitutions contain 'the *sharī'a* proviso in the context of deducing the law', there are instances when decisions are taken by supreme courts that are not entirely compatible with the traditional *sharī'a* rules (Rohe, 2015; 16). For other States that are regarded as Islamic, their constitution also establishes such congruence of international law and regulates them with that of the Islamic jurisprudence (Ghorbannia, 2016; 211). This can be seen within the constitution of the Islamic Republic of Iran to be addressed in Chapter 5.

4.4 Discussion around the Analogy of International Treaties

The first point of discussion is that of the Statute of the International Court of Justice Article 38(1)(a) which concentrates upon treaties (conventions) as the oldest principle of International law, which necessitates contractual obligation. This required the sanctity of treaties upon all parties by fulfilling their obligation in good faith and is known by in Latin as *pacta sunt servanda* (agreements must be kept) (Sofroniou, 2017; 65). Intrinsically the same requirement can be found in Islamic law within the context of *muʿāhidah* (treaty) a derivative of *ʿahd* (covenant), *mīthāq* (pact), and *ʿaqd* (contract). It is incumbent upon believers that 'contracts should be respected and fulfilled' (Kotuby and Sobota, 2017; 90). Thus, Islamic international law places a 'significant weight and respect' on the judicial characterization of international agreements, and all Muslims are legally obliged to implement and fulfil the provision of treaties with Muslims and non-Muslims alike (Malekian, 2011; 40). The *shīʿī* scholar ʿAllāmah Muḥammad Ḥusayn Kāshif al-Qiṭā (d.1954) regards the very requirement of the treaty to be its fulfilment in Islamic

jurisprudence (Dad-Marzi, 2000; 63). This point is directly referenced to a number of verses within Qur'ān such as chapter *al-mā'idah* (5:1) [278] where the fulfilling of contractual agreements is clearly made as mandatory. Alternatively, in the chapter of *al-anfāl* (8:72), [279] Muslims are reminded that they must help fellow Muslims who have not migrated to *dār al-islām* unless this breaks the obligations of the Islamic State made previously in a treaty. In effect, 'the duty of honouring a treaty with non-Muslims is given priority over the duty of mutual help amongst believers where the two duties are in conflict' (Badr, 1982; 59). According to the Qur'anic, exegesis of Allāmah Ṭabāṭabā'eī, the verse instead of using *ʿahd* refers to *mīthāq* for the making of the treaty, an expression from the derivative of *al-thiqah* (trust). This implies that in treaties the two parties must trust each other irrespective of the parties religious convictions, Muslims cannot initiate the breaking of this trust in the covenant (Tabatabaei, 2017_d; 189).

Jurisprudentially other than the *shāfī'ī* School who limits treaties to a maximum of ten years based on the duration of the treaty by the Prophet (Khadduri, 1966; 17), all other *sunnī* Schools regard treaties as indefinite (Sulayman, 1987; 18), and do not see a time constraint unless specified within. Additionally, the Islamic State can enter into a binding treaty with non-Muslims based on the leader's decision in the interest of the Islamic State (Munir, 2003; 429) as specified by the use of the Islamic methodological technique of 'public interest'. [280] This was elaborated upon in the previous chapter, and highlighted by the example of the signing of the Treaty of Ḥudaybīyyah. Such a stance supports the argument presented in the prohibition of the friendship of enemies that is mentioned in the chapter of *al-mumtaḥanah* (60:1), [281] and reaffirms the instruction to establish peaceful relations with those who do not fight you and offer you peace as clearly indicated in the chapter of *al-nisa'* (4:90). [282] The *shī'ī* School makes a distinction between people of the book and non-believing enemies and requires the latter treaties to have a time constraint (Qurban-nia, 2000; 91). Moreover, *ṣāḥib javāhir* while reviewing the historical evidence in his book concerning treaties, comments that in Islamic law treaties have certain classifications and a structure that benefit the Muslim community. He notes that this is why, we can have personal covenants made by a Muslim member of the community (rather than the head of the Islamic State) with enemy member(s)

[278] O you who believe, fulfil your contracts …, .
[279] And those who believe but did not migrate, do not have a friendship with them till they migrate, yet if they ask you to help them for (the sake of) religion, then its your duty to help them, unless its regarding those to whom you have a prior treaty, and Allāh is seeing of what you do.
[280] Referred to within terms *al-istiṣlāḥ* or *maṣlaḥah.*
[281] O you who believe, do not take my enemies and your enemies as allies …, .
[282] … If they refrain from fighting you and offer you peace, then Allāh does not permit you to harm them.

to give them protection and amnesty. Crucially, the terms of such a covenant becomes binding on other members of the community, and all fellow Muslims must abide by the terms of the protection (al-Najafi, 1983; 95). The discourse around treaties demands a mention of the Treaty of Ḥudaybīyyah, which Qur'ān declares in chapter *al-fatḥ* (48:1) [283] as the manifest victory. The specific regulations of the treaty as well as the vision it provides for diplomatic immunity will be discussed in Chapter 5, but it stands out as a clear example of Islamic international law. Yet another crucial political peace treaty that could be highlighted here is the Treaty of Imām Ḥasan ibn ʿAlī (625-670 CE) [284] with Caliph Muʿāwīyah ibn Abū Sufyān, [285] which brought to an end a Muslim civil war in 661 CE (Al-Tabari, 1989_a; 92). Although the treaty was made by Imām Ḥasan, his brother Imām Ḥusayn abided by the terms of his brother's peace treaty until Caliph Muʿāwīyah violated the terms through the appointment of his son Yazīd as the next ruler (Madelung, 1997; 323). This ultimately formed the basis of the hugely significant event of Karbalā that followed in later years. The position taken in Islamic international law by all Schools is that the treaty remains valid for its duration if it contains a time constraint, and is only valid by its terms being fulfilled and not violated. This is similar to the position of International law termed *rebus sic cantibus* (with things remaining the same), 'fundamental change of circumstances may invalidate the obligations given in a treaty' (Malekian, 2011; 40). Nowadays, 'the majority of international treaties stipulate that in the event of a disagreement over treaty provisions, the parties are to seek a peaceful settlement' (Powell, 2019; 27). The hugely important Islamic Charter of Madīnah to be discussed in Chapter 5 similarly addressed an 'inter-tribal collective peaceful resolution' (Powell, 2019; 152).

As a whole there is a recognition in literature of the 'form and firmness of the treaty obligations brought about by Islamic legal tradition' (Del Moral and Shahid, 2018; 7), but it is argued by some scholars that *pacta sunt servanda* in Islamic international law lacks the depth of the meaning contained in International law (Cravens, 1998; 570). Moreover, they refer to those seeking reconciliation between Islamic and International diplomatic law as 'apologist'. This is argued to be because of *sīyār's* failure to provide specific guidance on the 'structure of their International relations' or 'actually resolving international disputes' (Cravens, 1998; 541). Those opposing compatibility altogether, argue that the basis of International law is the assumption that treaties are made 'between sovereigns on the basis

[283] Verily we have given you, a manifest victory.
[284] Regarded by the *shīʿa ithnā-ʿasharī* as the second Imām from the *ahl al-bayt* of the Prophet.
[285] When there were objections to the treaty, Imām Ḥasan refers to the Treaty of Ḥudaybīyyah as a previous model of such accord (Majlisi, 1990_g: 2).

of equality and reciprocity'. However, they argue that the Islamic international law's universality does not permit such a basis for treaties between the Islamic State and non-Muslims, making treaties 'temporal' (Ford, 2017; 40). Thus they conclude, that the barrier helps to 'explain the relative failure of the Muslim world to find adequate responses to the challenge of modernity' (Afsah, 2008; 269). However, for other scholars of the field, this approach demonstrates 'a lack of understanding of *sīyār'* altogether (Bashir, 2018; 13) because the two points do not necessarily correlate. Firstly, many non-Muslim States could also be considered underdeveloped, and the assumption that all underdeveloped States are practicing *sīyār* is not accurate. Thereby, it cannot be argued that Islamic international law is the reason for stopping States from reaching the so-called modernity standard (Bashir, 2018; 13). Secondly, as mentioned previously, most Muslims regard *sīyār* as permitting indefinite treaties. Historically this can be evidenced by various examples during the ʾUmayyad and the ʿAbbāsid dynasties in their diplomatic negotiations and peace treaties with non-Muslims and beyond the temporal arrangements (Weeramantry, 1988; 142). Even those who may have certain restrictions concerning non-believers such as the *shīʿī* School, exclude *ahl al-kitāb* from such restrictions. Moreover, they often apply the tool of *ijtihād* to get the freedom of judgement required for crucial decisions and thus go beyond a temporal arrangement (Amin, 1999, 1). [286] In fact, despite any doctrinal difficulties, Islamic political practice is seen in the modern day to have directed Muslim States 'into treaties of indefinite duration with non-Muslim powers on the basis of sovereign equality and reciprocity' (Ford, 2017; 42). In this 'age of coexistence', most Muslim States have 'treaties of amity' with non-Muslim States that no longer have a fixed duration (Del Moral and Shahid, 2018; 80).

In the Muslim counterargument, the Western claim to equality in International law is rebuffed for not being precise. There are many events that remind us all, that 'only five States in the world have the final say in the Security Council over matters that concern the whole world's peace and security' (Bashir, 2018; 13). This is clearly highlighted by the recent war in Ukraine involving Russia, or the previous Vietnam War involving the U.S. of America. Additionally, the emphasis on 'the distinction between civilised and uncivilised' is also misleading as this approach often discriminates against those States 'outside the Western world' (Wangchi, 2018; 138). Having covered the many angles of this discourse, the emphasis that the principle of universality in *sīyār* has not been 'defined under the principle

[286] By referring to Imām 'Alī's leniency in behaviour towards his enemies, *shīʿī* jurists such as Shaykh al-Mufīd attempt to make a distinction between the hereafter punishments of going to hell with a purely legal issue of their treatment in this world. Such rationalist approach is supported by al-Sharīf al-Murtaẓā concluding that 'not all non-believers are subject to the same laws' (Kohlberg, 2020; 101).

of sovereignty and territoriality' but rather under 'a single concept of one territory in the world', which is accurate. It is argued that this has been designed to ensure the 'universal application of peace as well as justice on all nations', regardless of their 'political, juridical, cultural, religion, including language and economic abilities' (Malekian, 2011; 7). This stems from the Qur'anic reference in the chapter *al-bagarah* (2: 213), [287] which identifies humankind as being one nation and sending down scriptures and apostles when they differed. Thus, compatibility could be provided by discussing *sīyār*'s 'peaceful coexistence based on armistice, diplomatic ties or peace agreements' (Allain, 2011; 404). Although tension is often referred to within the debate on the notations of the *dār al-islām* and *dār al-ḥarb* (Dougherty and Pfaltzgraff, 1971; 149) but as already covered, these avoid mention of a third camp developed around the formation of treaties, *dār al-ṣulḥ* or *dār al-'ahd*. Nevertheless, Islamic law does need to escape the doctrinal constraints of its classical core in order to adapt itself to an international perceptive on issues such as that espoused within the universal declaration of Human Rights (Ridgeon, 2022, 4). Similarly, some aspects of the 1961 Vienna Convention on Diplomatic Relations or the 1963 Vienna Convention on Consular Relations require a review of religious rulings with an eye for change possibly under the scope of *zamān va makān*. This is arguably central to the new thinking in recent years, which deserves an extensive study that is outside the scope of this research. [288]

4.5 Discussion around the Analogy of International Customary Law

The second point of discussion enshrined within the Statute of the International Court of Article 38(1)(b) is a statement regarding International customs as evidence of general practice acknowledged as law (Bederman, 2010; 135). 'When customary rule becomes gradually crystallised', it is as 'legally binding as treaty law'. However, whereas treaties are 'binding on States that are party to them', International customary law is 'applicable to all States' (Honkonen, 2009, 294). In *sharī'a* rules of Islamic diplomatic law with reference to customary law is made within the context of *'urf* and at times with reference to *sīra 'uqalā'* (conduct of the rational) or *banā' 'uqalā'* (rational norms), mention is also made within the context of the *sunnah* as discussed later. However, such acceptance is always conditioned to one criterion, the custom of concern should not 'contradict a mandatory rule' of the *sharī'a* (Rohe, 2015; 87). The use of customary law in *sharī'a* is based on certain Qur'anic references

[287] Mankind was one nation, thereby Allāh sent forth the Prophets as bearers of good tidings and warners, and with them He sent scriptures in truth, to judge between the people in which they differed …, .
[288] Refer to appendix1.

and various examples which exist in Islamic jurisprudence. For instance in the chapter *al-baqarah* (2: 194) [289] mention is made of legal retribution for fighting in sacred months. This is the forbidding of fighting in four sacred months as being a pre-Islamic custom, taken over and applied within Islamic law. In fact, it is true to say 'Muslim societies are embedded in local customary law that sustains these societies in legal framework unlike any other' (Powell, 2019; 160). This allows 'contractual obligations to be interpreted in light of the customary practices prevailing at the particular time and place of contracting (Ford, 2017; 42). This would also be the basis of the argument of those insisting on revisiting certain religious rules and revising them according to social norms and local customs of a particular community as related to contemporary norms (Takim, 2018; 483). Overall there is an accepted recognition that in practice, 'most rules of customary International law which have received the status of law are adaptable or acceptable under the Islamic International law' (Abiad, 2008; 82). An example of this compatibility can be seen in the rule of reciprocity, 'amongst the oldest principles' recognised in International customary law in the absence of law. 'Reciprocity implies that parties can do back to others what they have done to them, subject to limits of their reciprocal strengths' (Clark, 2007; 1274). Similarly, there are many Qur'anic verses that mention the rule of reciprocity such as in the chapter of *al-naḥl* (16:126), [290] which mentions proportionate reciprocity in case of receiving any wrongdoing, but reminding the believers to show patience. Likewise, in the chapter of *al-tawbah* (9:7) [291], there is mention of reciprocity in the treaty towards the pagans of Makkah. Thus, the idea of States seeking 'to be treated the same way they treat others' (Badr, 1982; 59) is structured in Islamic diplomatic law within the 'standards of fairness' (Al-Zuhili, 2005; 275). Customary law is also mentioned within Islamic literature with reliance on the *sunnah* as an indication of compatibility with Article 38(1)(b) by accepting custom as a source of law (Khadduri, 1966; 9). This is because *sunnah* is in itself the custom and tradition of Prophet Muḥammad (Abiad, 2008; 72), and his household or companions. Nevertheless, such an argument for compatibility in Islamic diplomatic law has been overstated. Although the argument is correct in some sense, but 'the way this practice defines rules of law is vastly different from the role of customary law that plays in International jurisprudence' (Ford, 2017; 42). Moreover, critics of such argument point out that customary rule in International law could be altered or abolished but the same is not true for the *sunnah* of the Prophet (Abiad, 2008; 73). Additionally, regarding local practices, it is true that Islam has tolerated

[289] The sacred month is (for aggression) a sacred month, and inviolablity requires retribution …, .
[290] And if you take retribution, then retribute in propotion to the wrong done to you, but if you endure patiently, verlely it is etter for you.
[291] … So long as they are upright toward you, be upright towards them, indeed Allāh loves the rightous.

some pre-Islamic customs but to say 'Islamic law evolved from Arab customary law is unwarranted since it is a well-known fact that the new religion prohibited many bad practices and accepted some good ones' (Gaber, 1962; 34). Thus, it is claimed by some that the argument of compatibility with Article 38(1)(b) is not entirely accurate, even if we accept that the *sharī'a* allows 'contractual obligations to be interpreted in light of customary practices prevailing at particular time and place of contracting'. This would still be the case even if it were accepted that some Muslim States allow the consideration of custom in giving judgment (Habachy, 1962; 470). This rejection of compatibility is because 'custom is a source of law not only through its ability to give rise to new norms of conduct but also to erode pre-existing norms'. It is argued that International practice evolves with new rules and this vision differs from Islamic law, as custom cannot erode rules laid down by Qur'ān or the *sunnah* (Ford, 2017; 43). However, such argumentation is flawed because of the notation known in Latin as *jus cogens* (compelling law), 'principles forming the norms of International law that cannot be set aside'. Both the 1969 and 1986 Vienna Conventions on the Law of Treaties stipulated that 'a treaty is void if it conflicts with *jus cogens'* (Lagerwall and Carty, 2015; 1), and the same would be true of customary law. This forms the idea of designating internationally accepted norms from which no derogation is permitted by way of particular agreements, and as such 'recalls the doctrine of *sharī'a* supremacy' (Ford, 2017; 44). This also refutes the argument made by advocates of incommensurability that Qur'ān is 'literal and unchangeable' (Cravens, 1998; 534), while modern International jurisprudence can change and evolve.

On a general note with regards to custom in Islamic law, the point to stress is that although within the *sunnī* jurisprudence 'look at existing customary law which is not expressly rejected by the Qur'ān as having been implicitly accepted by it'. The *shī'ī* jurists are not so openly accepting, their thinking stems from the notation that Qur'ān should be regarded as 'instituting a new order' that displaces existing practice (Weeramantry, 1988; 48). Thus, they only agree on exceptions in custom acceptance, as prescribed by Qur'ān and the *sunnah* of the Prophet and *ahl al-bayt*. Although it must also be stressed that new Muslim thinking challenges such argumentation by pointing out that, the seeking of new interpretations to the rules laid down by Qur'ān or the *sunnah* is always possible through mechanisms embedded within such as *'urf*. [292] Even though, those opposing compatibility of the two systems consider the reconciliation of *sīyār* and modern International law on custom to be an

[292] Refer to appendix1.

'apologist argument' (Ford, 2017; 50) with a 'characteristically reactive stance' (Westbrook, 1992; 819). Nonetheless, such a stance is not accurate since many of the cases that have been highlighted indicate some blatant similarities within customary law, but then rejectionism is often based on a lack of an in-depth understanding of issues.

4.6 Discussion around the Analogy of General Principles of Law

The third point of discussion is that the Statute of the International Court of Justice Article 38 (1)(c) 'embodies' the application of General principles of International law recognised by civilised nations in disputes between States (Bassiouni, 1989, 768). Moreover, this gives the court the power to 'develop and refine such principles' (Crawford and Brownlie, 2019; 34). Whenever existing law does not cover a particular situation, by utilizing and adapting such general legal principles, the Statute aims to 'avoid the danger' of courts declaring a judgement *non-liquet* (not clear) as known in Latin (Bassiouni, 1989, 778). In effect, the article gives the judges the ability to 'fill the legal lacunae' through the application of 'legal reasoning' (Ford, 2017; 45). This methodology remarkably resembles the Islamic jurisprudential use of legal reasoning used by the *shī'ī* jurists or analogy by the *sunnī* jurists (Khadduri, 1966; 9). Additionally, it is also connected with the notation consensus used by Islamic law as 'being comparable with what the Statute of the International Court of Justice terms as the general principles of law recognised by civilised nations' (Ghunaimi, 2012; 118).

The whole discussion around such similarity is exemplified by the approach of Āyatullāh al-Ṣadr for the topic of *manṭiq al-farāgh* (lacuna). This aims to empower the *shī'ī* jurist in inferring new laws by addressing matters that have not been mentioned or in Islamic textual sources' (Takim, 2018; 489). In doing so, the practice provides an avenue to issues of International law and those relating to contemporary societies (Takim, 2021_a; 30). This openness to the general principles of law could also be seen in discussions of Āyatullāh Khomeinī following the Islamic revolution of Iran. He aims at ensuring the continuation of religious rulings and judgements by *shī'ī* jurists on issues of modern concern and International norms, so that 'Islam is not accused of being incapable of administering the world' (Khomeini, 1989_f; 218). In practice, many Muslim States have adopted clauses similar to Article 38 'allowing reasoned judicial gap filling', providing 'provisions for judicial innovation of such general principles of law as natural justice or equity, good conscience or public order' (Ford, 2017; 46). These tend to be often based on the use of

Islamic legal principles or methodological techniques such as 'juristic preference', or 'public interest', both likened to the concept of equity, justice and good conscience, 'matters that are in the public interest but not specifically defined by the *sharī'a'* (Singh, 2015; 41). Some have argued this is the basis of how most Muslim States have been signatories to all the diplomatic related conventions (Ismail, 2016; 167). [293] Most importantly, the argument for such compatibility in general principles of the law breaks 'the myth' that emerged within International relations from the theory known as 'the clash of civilisations' [294] (Gray, 2018; 4). This is centred around the claim that Islam is inherently incompatible with certain concepts and International norms. For many scholars this utilised approach proves practical examples 'that readily harmonise with and accommodate modern International norms' (Mayer, 1991; 200). Nevertheless, despite the evidence there are still scholars that regard the modem tendency among Muslims claiming *sīyār*'s being analogous to Article 38(l)(c) to be problematic. They argue that 'the doctrinal legacy of Islamic unitarism and universalism clearly bars turning to non-Islamic publicists of any variety' (Ford, 2017; 50). For them, this illustrates an apologist stance by Muslims seeking to 'reconcile traditional Islamic legal doctrines with modern Western legal principles' (Westbrook, 1992; 835). This argument although partly accurate, is false presented. Although 'the secular general principles of law can only be invoked to the extent that they do not violate those principles underlying the divine law' (Ford, 2017; 47). However, the reference here is to contemporary issues, which require *fiqh* to address the lacunae. As such, there would be no direct reference within *sharī'a,* and the jurist is required to use secondary sources such as rationality, an 'instrument for clearing up the lacunae of the rule of law or bridging its non-liquate' (Ghunaimi, 2012; 119). Moreover, there has been a huge discussion on the scope of such limitations by new thinkers in recent years, but the required work is beyond the scope of this research. [295] Finally, Islamic literature on this discourse stresses the recognition of Islamic law as constituting a major legal system by the United Nations in 1945, being a basis for Article 38 of the International Court of Justice particularly when it comes to reference to the general principles of the law (Mahmassani, 1966, 222). Nevertheless, such arguments of compatibility and the role that Islamic law has played in shaping the evolution of International law are overstated. Although the International Court of Justice could theoretically make use of Islamic law, but the presumption is not supported by evidence, in

[293] Including the 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations, and 1969 Vienna Convention on the Law of Treaties.
[294] Notably proposed by Huntington in his 'the clash of civilisations: and the remaking of world order', suggesting 'double standards in practice are the unavoidable price of universal standards' (Huntington, 1996; 184).
[295] Refer to appendix1.

practice, references to Islamic law rarely appear in International Court of Justice judgments or even in separate opinions. [296] It is argued by some that to date, the references that exist do not provide well informed or compelling basis in 'demonstrating either that Islamic legal norms helped give rise to international legal norms or even that Islamic legal norms are consistent with international legal norms' (Lombardi, 2007; 118).

4.7 Discussion around the Analogy of Judicial Decisions and Publicists

The fourth point of discussion is Article 38 (1)(d) of the Statute of the International Court of Justice deals with reference to judicial decisions and the teachings of the most highly qualified scholars. These are subsidiary and 'do not form part of the primary sources of International law' (Steinl, 2017; 158). Additionally, these are non-binding for the International Court of Justice and are used as 'evidence' for guidance shedding light on the 'determination of rules of law' (Childress, Ramsey and Whytock, 2015; 341). In Islamic law, the notation corresponds to the judgments of eminent Islamic scholars and interpretations, considering their significant role in the shaping of Islamic law (Malekian, 2011; 160). From the *sunnī* perspective, jurisprudence has been dominated for many centuries by four 'rival legal scholars and their associated schools of thought (*mālīkī, ḥanbalī, ḥanafī, and shāfi'ī*). From the *shī'ī* perspective, the same process of *ijtihād* has dominated their history but continues with the *shī'ī 'ulamā*' aiming to 'answer questions in the absence of the Prophet and the Imāms' (Heern, 2018; 43). This is based on an instruction given by Imām al-Bāqir to a learned companion to issue *fatwā* in the mosque, stating that he would like to see others like him with that ability developing within the *shī'ī* community (Al-Tastari, 1991; 97). [297] This has led to a broad wealth of *shī'ī* intellectual activity particularly championed by the rationalist thinking of the *uṣūlīs* particularly during the occultation of Imām al-Mahdī. Thus, it can be claimed that Islamic law has enjoyed a 'very close affinity' to this aspect of the Statute of the International Court of Justice (Ford, 2017; 50). However, at the same time, it is conceded that by some scholars Islamic law has never envisaged a formal 'hierarchy of superior courts whose binding precedents might have

[296] An example of one such occurrence relates to the case against Iran relating to hostage crises when it was attested; 'the principle of the inviolability of 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' (ICJ, 1980; 40).

[297] Although Imām al-Bāqir is known to have been harassed by the 'Umayyads (Kohlberg, 2022; 1), and had withnessed the atrocities of Karbalā, yet he took the position of not being involved in the events of their overthrow. 'Do not commit injustice on those who have committed injustice upon you' (Majlisi, 1990_i; 162). However, while the 'Umayyads were busy quelling revolts in their Empire, Imām al-Bāqir used the opportunity to teach the *shī'a* doctrine of belief.

established the uniformity of a case law system' (Coulson, 1964; 30). With a lack of judicial administration, some States such as Saudi Arabia do not even publicise court judgements (Saleh, 1989; 786). One could say, there is a steadfast 'refusal to develop a system of precedential case law akin to that possessed by the Anglo-American jurisprudence identifiable with Article 38 (1) (d) referral for judicial decisions' (Ford, 2017; 47). However, the *shī'ī* jurists' position towards *ijtihād* is structured differently from their *sunnī* counterparts. The *'uṣūlī* stance regarding *ijtihād* as covered in the previous chapter has led to the development of the institution of *marja'iyyah* (religious reference) indicating further compatibility with this aspect of the Stature of the International Court of Justice. In effect, following the rise of the Safavid dynasty (1501 – 1736 CE) in Iran and the establishment of the Islamic *shī'ī* School as the official religion of the State, the hierarchy of *mujtahids* (authority in religious law) was formalised. [298] Thereafter, their authority became a source of reference for religious 'decisions based on rational deductions' (Walbridge, 2001; 4), and later their religious rulings were recognised within the legal and State decisions, particularly following the 1979 Islamic revolution of Iran, and the enforcement of the doctrine of the *vilayat-i faqīh*. Thus, the *fatwā* can form the basis of legal and governmental judgements 'as longs as the basis of required consideration was obtained, remains valid the ruling retains its validity' (Algar, 1981; 124).

Despite the divergence of opinion between *sunnī* and *shī'ī* scholars on the first part of the article, there is an agreement for the second part based on the reasoning by the *'ulamā'* (Mahmassani, 1966, 236), retaining a significant role in the shaping and interpreting of Islamic law (Ghunaimi, 2012; 108). This is exemplified by the presence in Iran of the Guardian council, a group of jurists overseeing the conformity of laws passed by the parliament with *sharī'a'* and the constitution (Mallat, 2007; 159). Nonetheless, it is argued by some that 'the doctrinal legacy of Islamic unitarianism and universalism clearly bars turning to non-Islamic publicists of any variety' (Ford, 2017; 50). While Article 38(1)(d) 'permits reliance on case law as a means for determining rules of law', and despite 'the modem tendency among Muslims to rely on the works of publicists', whether Islamic international law would actually recognise an equivalent source is questionable (Cravens, 1998; 541). However, this is not entirely accurate because within methodological techniques of *ʿurf* reference is made to rational norms. The notation of 'conduct of the rational' within

[298] This led to the development of *marja'iyyah* and *shī'ī* jurists becoming *marjaʿ al-taqlīd* (source of emulation).

shī'ī jurisprudence is an accepted approach of the wise, [299] such as the case when a sick person seeks the advice of a doctor, irrespective of his faith. Āyatullāh Khomeinī uses the same argument in reference to *taqlīd* (imitation) when explaining the necessity of referring to an *'ālim* (scholar) by a *jahil* (ignorant), seeking guidance and knowledge in what he does not know, ascertaining 'the opinion of an expert in law' (Takim, 2018; 490). In fact, the influential *shī'ī* jurist Shaykh al-Anṣārī asserts that direct certainty in the majority of topics would not be possible during the occultation of the authoritative Imām. Thus, he calls for a 'complete consideration and exhaustion of utmost effort' in the analysis for justifications (Bhojani, 2015; 153). This includes reference to the experts in different fields by jurists whose conclusions have become 'decisive in shaping current practices and establishing precedents for later generations of scholars' (Takim, 2020; 7). crucially, in this argumentation by *shī'ī* jurists, the restrictions of elements such as time, place, ethnicity, nationality, religion or belief do not play a part, in the identification of an expert (Jahankhah, 2011; 186). This forms the basis of many reforms of Islamic law being suggested by the new thinking in recent years but beyond the scope of this research. [300]

4.8 Conclusion

To begin with, it must be stated that the approach in this research was to limit our study of International law to its written form only. This avoided being involved in the 'socio-legal' context, or the 'critical legal or the 'spirit of the law' arguments (Trowler, 2008; 25), as these were deemed to be beyond the scope of this research. We are confined in our work by the Black letter approach, which limits referral to concepts that are well known and free from doubt and dispute (Wright, 2018, 30). [301] By taking this approach, we were able to use information that already existed in some form, such as that of the Statute of the International Court of Justice, and Statements and Resolutions by the United Nations. We were also able to use books, journal articles, legislations, or the work of other International inter-governmental bodies, or recognised historical records to make out comparative analysis of International law with Islamic International law. Such a comparative study provided a platform for answering one of our core research questions through comprehension of the conception of such legal systems. It also allowed consideration of their historical perspectives on their development, while also identifying the ethical considerations that at

[299] When all wise people of a time do something and there is no objection from the Prophet or Imāms, that action is legal; otherwise *sharī'a* would have prevent people from preferming it (Azari, 2014; 87).
[300] Refer to appendix1.
[301] The Black letter or doctrinal approach.

times highlighted many practical merits and demerits involved in each legal system. Nevertheless, there was a need to avoid the 'red herrings that divert attention from real issues and prevent constructive dialogue' (Ellis, 2012; 102). This could be seen in the 'simplistic and reductionist' position of the Orientalists (Afsah, 2008; 292) which often tend to identify everything and anything about what happened in the past and what is happening at present to the appreciation of the 'universality and centrality of religion' (Lewis, 1981; 11). Similarly, the 'essentialist assertions' (Afsah, 2008; 292) see 'religion as the only frame of reference for Muslim societies' (Na'im, 1996; 3). Such claims consider the Muslim society to be unlike any other in modern times, and 'impervious to secularisation' (Zubaida, 2003; 3).

The focus of our research within the discussion covered in this chapter tilts towards the compatibility of the principles of *sīyār* based on the *shī'a ithnā-'asharī* perspective and modern International law. We have thus highlighted that the key to answering our main research question is the dynamic involved in understanding the *sharī'a*, the jurisprudential, as compared to historical, and interpretative exercises by Muslim scholars. The appreciation of Islamic law could be hindered by such factors because of the authenticity of historical or the credibility interpretative process which could be deemed questionable to others. These factors are also critical on how it could interconnect to International law and subsequently address the compatibility factors, because of the thin line confining law in the Black letter approach. However, apart from obstacles such as the linguistic, cultural and distinct Islamic legal perspectives, the claim to compatibility seems to have been commandeered by arguments around the apologist approach. The issue of contention has been 'the historical Islamic law of nations as a precursor to modern International law. The academics would be 'stressing their mutual compatibility', and 'the intellectual debt of the latter to the former' (Afsah, 2008; 277). While considering the influence of *sīyār* within the 'genesis of International law' (Del Moral and Shahid, 2018; 8). In the number of analogies made regarding the sources of the Statute of the International Court of Justice, with primary sources of Islamic law, our study identified the compatibility of Islamic International law to International law but also highlighted the existence of certain points of tension. In effect, the demonstration of the compatibility of the two legal systems, does not claim 'one should replace the other', or it could, but merely states the possibility of being 'complementary and co-exist' (Shah, 2008; 164). Nevertheless, it is argued that even those who identify incompatibility because they see 'territorial sovereignty as a vital component to international order' (Richmond, 2002; 381), do not say that Islamic law has no role in modern

International relations between Muslim States. Thus, it is argued that this indicates 'the need for a new Islamic approach to International relations that is compatible with the world of nation-States' (Cravens, 1998; 532)., This in turn highlights the importance of the religious intellectuals and the role they have played in evolving jurisprudence within Iran in recent years.[302]. Moreover, further to the acceptance of compatibility between modern International law and Islamic international law principles, rather than incommensurability, an argument for reconciliation is also possible Muslim States including those identifying themselves as Islamic have been able to sign many Statements and Resolutions of international bodies. (Del Moral and Shahid, 2018; 8), to be touched upon in the next chapter. Thus, it can be argued that considering 'multiple legal systems, constitute and define the space that confers intelligibility to arguments of justice', allowing a 'range of legal sources' within Muslim States (Ellis, 2012; 93), counters the incommensurability argument being made against Islamic law. This factor is reviewed in our practical example of Islamic law within an Islamic State, in the next chapter.

[302] Refer to appendix1.

CHAPTER 5 – DIPLOMATIC IMMUNITY THEORY AND PRACTICE

5.1 Introduction

Right at the beginning of this research, we raised our main research question around compatibility with International diplomatic law. To ascertain the possibility of such compatibility within our domains of international relations, International law, and diplomacy according to *shī'ī* Islam and identify the theoretical frameworks suggested for our interpretations, we would need to apply them to a recognised concept. The concept of diplomatic immunity and privileges is undoubtedly a topic of great importance particularly at a time when States have expanded their relations with others more than ever before. The United States has been reported to maintain over 300 diplomatic missions and consulates in more than 190 countries around the globe, [303] and the British government has been reported to have 280 overseas embassies and high commissions. [304] Thus, diplomatic immunity has 'evolved parallel to the development of modern diplomacy', and aims to provide 'foreign diplomats with protection from legal action in the host country', and facilitate relations between States (Schultz, 2010; 196). Nevertheless, the controversy in recent times has raised many questions for civil society [305] 'in understanding why a diplomat and his family have such immunities' (McClanahan, 1989; xii). There has been a tendency of exploitation of such diplomatic immunity by the imperialist and colonial powers, and States in the Middle East and Africa where there has been a history of foreign interventions have particularly raised such concerns. An example of this is seen with the 1953 *coup d'état* in Iran to overthrow the constitutional government of the country (Rafat, 1980; 455). This consequently, led to the Iranian authorities specifying the American embassy as the 'den of Spies' (Samuels, 2005; 109) following the 1979 Islamic revolution. [306] On the other hand, there have been cases of regimes flouting the rules of diplomatic immunity, with examples such as the American embassy takeover in Tehran as mentioned, or the 1984 shooting of Constable Yvonne Fletcher by the London Libyan People's Bureau (Maginnis, 2002; 990). However, there have also been many cases of misuse and corruption of diplomatic immunity

[303] Retrieved from https://edition.cnn.com/2013/05/09/politics/btn-diplomatic-presence/ (accessed 31/08/2023).
[304] Retrieved from https://www.gov.uk/government/organisations/foreign-commonwealth-development-office/about (accessed 31/08/2023).
[305] A community of citizens linked by common interests and collective activity.
[306] American ambassador William Sullivan states that in 1977 the US embassy housed well over 2000 staff (Ali, 2018; 60).

privileges by persons not carrying out legitimate diplomatic functions (Sarkar, 2020; xxi; McClanahan, 1989; xi). Subsequently, the press often publishes extensive reports of those escaping prosecution for 'crimes ranging from driving under the influence of alcohol to shoplifting, assault, drug trafficking, kidnapping, rape, the imposition of slavery, and even murder' (Ross, 1989; 175). One such example of a blatant violation must be the 2018 torture and murder and dismemberment of the journalist Jamal Khashoggi in the Saudi consulate in Istanbul (Milanovic, 2020; 1; Bosch, 2021; 1).

Therefore, the intention behind this chapter would be threefold. Firstly, to provide an overview of diplomatic Immunity, discussing its theoretical justifications under International law and its codification in accepting 'well-established, if not universally respected, rules of International law' (Denza, 2009; 1). Secondly, to explore the Islamic position on diplomatic immunity while considering areas of the compatibility or tension between Islamic law and International law, with specific reference to diplomatic immunity. Thirdly, to provide an assessment of the ratification, conduct and observance of diplomatic immunity by Muslim States particularly those identifying themselves as Islamic. The Islamic Republic of Iran, with its *shī'a ithnā-'asharī* legal structure endorsed by the *'ulamā'*, with its constitution's characteristic congruent with the spirit of *shī'ī* ideology (Farsoun and Mashayekhi, 2005: 105), regarded as an ideal example to be studied within the boundaries of our research. Thus, justification is made for a single least likely case of comparability for Iran, [307] particularly considering the major diplomatic immunity incident of the 1979 American embassy takeover. The argumentation by those rejecting compatibility is that the Islamic Republic of Iran's incorporation of Islamic law within its constitution is the reason for the tension with International law. Thus, without accent, the three theoretical frameworks related to our three domains will be applied within the context of diplomatic immunity and privileges. [308] In doing so this research will further explore the key question of our proposed research; to what extent is Islamic diplomatic law from the *shī'a ithnā-'asharī* doctrine compatible with International diplomatic law? Additionally, the application will involve other research questions; how do Muslim States or those proclaiming to be Islamic (*shī'ī* identity example - The Islamic Republic of Iran) conduct diplomatic relations with non-Muslim States and deal with violations of diplomatic law? And how, without relaxing the nature of the *sharī'a*,

[307] In a least likely case, the independent variables in a theory are at values that only weakly predict an outcome or predict a low magnitude outcome (George and Bennett, 2005; 121).
[308] Namely 'neoclassical Realism' in International relations, 'compatibility' in International law, and '*ijtihād*' in diplomacy according to *shī'ī* Islam.

can the jurisprudential experts expand and adapt the Islamic diplomatic law to meet the varying needs of International diplomatic law?

5.2 The Modern Status of Diplomatic Immunity

Diplomatic immunity is regarded as a fundamental principle of customary International law (Sen, 2012; 3), aimed at promoting civilised International relations, and providing protection to diplomats based abroad from retaliation at times of international conflict (Ogdon, 1936; 10). Like other discussions involving principles of diplomatic law, the basis of diplomatic immunity reverts to the sources of International law covered within the previous chapter. This is essentially because 'a major portion of diplomatic law is concerned with the actions of States in their capacity as executives', this would involve 'the decision to exchange diplomatic missions, the choice of international representatives, or a ruling that a given envoy is no longer *persona granta'* (Hardy, 1968: 8). As such, there are certain 'administrative, legislative or judicial standards' that form an integral part of International law, referred to as 'diplomatic privileges and immunities' [309] for dealing with the presence of diplomatic personnel of other States (Hardy, 1968: 9). The U.S. State department protocol broadly defines diplomatic immunity as 'the freedom from local jurisdiction accorded dully accredited diplomatic agents and members of their immediate household' (U.S. Department of State, 1977; 59). In effect, this addresses their 'movement' not leading to arrests, their 'property use' not entering into taxation, their 'homes' and privacy not being violated, their 'communication' with fellow citizens not being intruded, and their 'possessions' not being confiscation. (McClanahan, 1989; 1). The persons enjoying diplomatic immunities are in a literal sense 'above the law of the receiving State', and all States which enter into diplomatic relations with other States, accept this 'encroachment on their sovereignty' (U.S. Department of State, 1986; 4). However, 'the essence of immunity is reciprocity' each giving assurances from 'local prosecutions, provided their own diplomats are treated similarly', also in that everyone is equal, 'the diplomat of a great power is no more equal than that of a small country' (McClanahan, 1989; xii). At the core of the diplomatic immunity concept lays the non-intervention principle, which is an indispensable requirement of the world order defined by sovereign States. [310] This declares that 'sovereign States shall not intervene in each other's internal affairs' based on respect for 'States sovereignty and territorial integration'

[309] Privilege and immunities are in effect synonyms of the same principle that denotes a benefit over and above that ordinary granted by National law, thus providing an exemption from specific provisions of the local law.
[310] Retrieved from Article 2.4 of the Charter, https://www.un.org/en/about-us/un-Charter/full-text (accessed 31/08/2023).

(Naigen, 2016; 449). Consequently, the requirement of States to have and maintain a channel for communication on a regular and personal basis within relevant diplomatic missions alongside their immunity (De Smet, 2003; 314), is thus protected. This also protects all 'channels of diplomatic communication' by 'exempting diplomats from local jurisdiction' allowing them to 'perform their duties with freedom, independence, and security' (U.S. Department of State, 1990; 210).

The discussion around diplomatic immunity's justification presented is based on three theories, each aiming to clarify the confusion and uncertainties associated with emissaries. These are the personal representation, exterritoriality, and functional necessity theories (Barker, 2016; 42; McClanahan, 1989; 28). These provide the theoretical considerations from different perspectives, the personifying of the sending State, the extension of State territory, and the performing of the function of the mission. Over time, these theories have influenced to a certain extent, the development of the diplomatic privileges and immunities principle (Gross, 1969; 442). Firstly, the theory of personal representation views the diplomatic agent as 'the personal representative of the sovereign of the sending State', and identifying the envoy with the sovereign exempts him or her from the jurisdiction of the receiving State (Hardy, 1968; 10). [311] The diplomatic agent should not be considered as an ordinary individual, and thus 'not owe any allegiance' nor 'be subjected to the laws and jurisdictions of the receiving State' (Sen, 2012; 97). In other words, the envoy is 'exempted from the power of those to whom they have been sent', because 'they should not, while performing the duty of their office, change their status,' and become subject to another sovereign while they are still acting as the representatives of their sovereign, who are generally rivals (Van Bijnkershoek, 1946; 44). Moreover, the insult incurred by the envoy is regarded upon the personal dignity of the sovereign who is being represented (Wilson, 1967; 3). However, it has been argued that this theory is flawed because it is 'rather limited in application of international functionaries' (Michals, 2012; 48), and is outdated by modern democratic evolutionary trends. Diplomats are nowadays representing States and are no longer personal representation of sovereigns, sovereignty has 'moved from the hands of monarchies into the hands of the people and their elected officials' in many States. Moreover, sovereignty is always shared amongst 'the executive, the legislature and the judiciary' (Wilson, 1967; 4), in the modern diplomatic concept. In reality, immunity must be traced

[311] The representative character theory by the Diplomatic Privileges Act of 1708; Retrieved from http://statutes.org.uk/site/the-statutes/eighteenth-century/1708-7-anne-c-12-diplomatic-privileges-act/(accessed 31/08/2023).

not to the head of the State but to 'the State which sends the diplomatic agent' (Ogdon, 1936; 105), States are seen to 'increasingly vest sovereignty in the nation' instead of the previous structure of a monarch (McClanahan, 1989; 29).

Secondly, the theory of exterritoriality is based on the idea that the diplomatic agent is legally resident within the territory of the sending State even though physically resident in the receiving State (Ross, 1989; 178; McClanahan, 1989; 30). Thereby, 'all acts performed within the building as being performed in the country represented' (Hardy, 1968; 10). In other words, the envoy resides entirely beyond the territory of the receiving State, thus neither the diplomat nor his or her suite could be subjected to the criminal and civil jurisdiction of the receiving State (Ogdon, 1936; 78). However, some have argued this theory also is flawed, because the idea is 'more difficult or even silly in practice in modern situations' (McClanahan, 1989; 30), as in strict application when an envoy is travelling, a 'hotel is presumed to be part of the territory of the country he or she represents (Michals, 2012; 49). Subsequently assertion of a literal application of exterritoriality creates many undesirable situations leading to absurd results if carried to the extreme (Nelson, 1988; 499). Moreover, the theory does not provide 'the actual reasons for determining rights and duties', thus has 'little value as a guideline' in determining the scope and limitations of diplomatic privileges and immunities provision (Ogdon, 1936; 102).

Thirdly, the theory of functional necessity declares that 'the diplomat receives the privileges and immunities requisite to enable him to perform his task' (Hardy, 1968; 11). The modern tendency to grant diplomatic immunity is essentially based on the concept, that envoys could not 'exercise their functions perfectly unless they enjoyed such privileges' (Sen, 2012; 97). In other words, the functional criterion is related to the 'representation of the State' and not just the diplomat's 'daily occupation', to ensure the performance of the mission rather than benefitting the individuals (Hardy, 1968; 11). In other words, envoys must have 'the ability to move freely and unhampered as they represent their governments and report in confidence', without interference, intimidation, fear of civil or criminal prosecution, and local jurisdictions and taxations from the receiving State (McClanahan, 1989; 32). However, some have argued that even this theory is flawed since functional necessity is 'disturbingly vague' (Wilson, 1967; 22). Diplomats enjoy 'absolute immunity for their private acts, even though a truly functional approach would not support this degree of immunity' (Maginnis, 2002; 996). Consequently, it has been argued that this idea is in effect a 'license to break the law' (Ross, 1989; 205). Since the diplomat is not required to consider, what is 'accepted

behaviour' that affects 'the convenience of the society of the receiving State' (McClanahan, 1989; 32). This includes circumstances when diplomats cause a danger to the general public or particular individuals (Behrens, 2017; 75), such as with the Salisbury Poisonings. [312] Moreover, the functional necessity theory does not clarify if the sending State can prioritise its envoy duties that instigate a 'threat to the security of the host nation' (Wilson, 1967; 25). While the host State can 'decide to respond to serious cases of abuse by completely breaking relations' (Henriksen, 2021; 112) the theory does not elaborate on serious breakdowns. Critical assessment of functional necessity theory highlights the importance of 'the relationship between International law and politics', and by focusing on its history, one has to question 'the enduring effects of a colonial past' and imperialism on International law (De la Rasilla, 2018; 2). One could question why the U.S. would require a massive complex of 43 acres which is larger than the Pentagon itself in the tiny Middle Eastern nation of Lebanon with a population of just six million (Ebrahim, 2023; 1). However, this was dwarfed by the 104 Acre American complex with the 16000 personnel contingent (5000 of which were private contractors) in Iraq following its troop's withdrawal in 2011 (Keleman, 2011; 1).

The modern sense of diplomatic immunity has taken shape when resident embassies became the norm in Italy within the late 15th century and later elsewhere in Europe, and thereafter resident ambassadors have been 'the most characteristic officers of Western diplomacy' (McClanahan, 1989; 25). Although there have been various moments of great friction such as the incident during the reign of Queen Anne of Great Britain (d. 1714), when the Russian ambassador was arrested for debt, but the ensuing international incident led to the Diplomatic Privileges Act of 1708. [313] Anxious to preserve diplomatic contacts, States have tolerated the incidental frictions, but it had 'long been a dream that the International law on immunities could be codified' (McClanahan, 1989; 41). There have also been calls for transcending cultural and civilisational boundaries, away from the 'Eurocentric narrative' of the development of International law as 'a cultural by-product of the Western world' and marginalising everything else (De la Rasilla, 2021; 179). [314] Even though the notion of diplomatic immunity has existed and had been adhered to by nations, the 1815 Vienna

[312] The Poisoning of Sergei and Yulia Skripal with Novichok, a military-grade nerve agent developed by the former Soviet Union. Thereafter in March 2018, the British government expelled 153 Russian diplomats.
[313] Retrieved from http://statutes.org.uk/site/the-statutes/eighteenth-century/1708-7-anne-c-12-diplomatic (accessed 31/08/2023).
[314] In the vast majority of literature on the history of social theory, one is confronted by the 'the subject–object dichotomy', the 'Europeans are the knowing subjects' and the' non-Europeans figure in these accounts', are merely 'objects of the observations and analyses of the European theorists' (Alatas, 2006; 790).

regulations introduced innovative 'new rules about diplomatic organisation and precedence which thoroughly overhauled the traditions of the *ancient régime'* [315] (Lesaffer, 2015; 1). Nevertheless, the modern status of diplomatic immunity codification began with the 1953 mandate of the United Nations to the International law commission to re-examine the subject of diplomatic immunities. This undertaking of the codification of diplomatic law (McClanahan, 1989; 42) was essentially because codification was considered to be 'a necessary factor in the improvement of relations between states', with an aim of acquiring 'minimum of friction and the maximum of goodwill and facility' (Nelson, 1988; 496). This resulted in the 1961 Vienna Convention on Diplomatic Relations, [316] and the 1963 Vienna Convention on Consular Relations, [317] ultimately making the codification of rules, conventions and practices on diplomatic privileges and immunities. The codification has provided an international legal framework [318] in diplomatic relations among nations, intending to ensure the efficient performance of the functions of diplomatic missions. Thus, the 1961 Vienna Convention on diplomatic relations, is regarded as a 'cornerstone of modern diplomacy' (Bruns, 2014; 1), and a 'landmark of the highest significance' (Barker, 2016; 63). Whilst it has not ended the controversy around diplomatic immunity, 'the act of codification has served to place immunities concerned on a precise and definite footing than hitherto' (Hardy, 1968; 69). [319] Nonetheless, the codification does not define diplomatic relations, nor does it define States that are entitled to establish diplomatic relations (Denza, 2016; 19). It merely provides a 'codification of diplomatic practice' in a globalised world with increasing inter-dependency between States (Bruns, 2014; 2). Eighty-one states initially, and by 1985, one hundred and forty-five States, were able to reach a consensus and had ratified the convention, although some with reservations (Frey and Frey; 2020; 204). There are twelve articles within the 1961 Vienna Convention, which outline different categories [320] of immunities and inviolabilities given to various classes of diplomatic personnel, their family members, and the mission. [321] Interestingly, recognition is also given

[315] The *ancien régime* (old order) refers to the social and political order that existed in France from the late Middle Ages until the French Revolution.
[316] Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (accessed 31/08/2023).
[317] Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (accessed 31/08/2023).
[318] Retrieved from https://legal.un.org/diplomaticconferences/1961_dipl_intercourse/ (accessed 31/08/2023).
[319] Thereafter, the UN General Assembly announced the Convention on the prevention and punishment of crimes against internationally protected persons including diplomatic agents, 'requiring extradition and prosecusion of anyone perpertrate violant crimes against protected persons, regardless of their motives or justifications' (Slagter and Van Doorn, 2022; 187).
[320] Articles 29 to 40 of the 1961Vienna Convention on Diplomatic Relations.
[321] Detailing personal inviolability of the mission's members, inviolability of the mission premises and private residence, inviolability of the mission's archives, freedom of communication, protection of diplomatic bag and couriers, freedom of movement, immunity from criminal and civil jurisdiction, exemption

within the articles to the diplomatic bag, [322] 'bearing visible external marks' and 'containing only diplomatic documents and articles', which cannot be opened or detained (Sen, 2012; 477). However, there is 'no express provision' 'for a course of action in the event of a suspicious bag' (Nelson, 1988; 506). Subsequently, the abuse of the diplomatic bag is also a hot topic when discussing diplomatic immunity, particularly in light of the Khashoggi tragedy (Milanovic, 2020; 35). For example, an Algerian diplomat's bag was seized in 1973 by the Dutch government and found to contain 500 grenades and 8 kilograms of explosives amongst other things (Slagter and Van Doorn, 2022; 187). Regarded 'as a form of abuse of diplomatic immunity', the receiving State suspecting the abuse, can either protest to the sending State concerned or to terminate diplomatic relations' (Zeidman, 1989; 428). Nonetheless, the inviolability of the diplomatic bag has led to many incidents of its misuse and serious abuses by various States (Zeidman, 1989; 430).

5.3 The Islamic Position on Diplomatic Immunity

Despite the 'layered conceptualisation of diplomacy' (Neumann, 2012; 299), most literature on the development of diplomatic immunity continues to have a Euro-centric flavour to it, [323] and is 'culturally biased', favouring Western conception (Neumann, 2012; 316). However, 'many civilisations have respected the inviolability of envoys' and have accorded envoys at least the basic protections (Frey and Frey; 2020; 197). The contribution of Islamic law towards the development of modern International law has been discussed in the previous chapter. Further analysis of diplomatic immunity is debated here as there are ample instances of respect and protection given to envoys, as well as the importance of treaties within Islamic history (Bassiouni, 1980; 609). These highlight the special status of envoys within *sīyār* and the automatic immunity given to them once identified as an envoy irrespective of their faith (Shaban-nia and Husaini, 2018; 132). This 'covers areas such as diplomatic immunity, maritime law, asylum, inter-State trade, laws of treaties, enemy territory and property, and laws of safe conduct' (Powell, 2019; 89). [324] Thus, it has been argued that 'Islamic Law has

from taxation, exemption from customs duties, exemption from social and security obligations, and exemption from personal and public services.

[322] Also known as the diplomatic pouch, and *la valise diplomatique*. However, some Muslim States party to the Vienna Convention have indicated that the protection given to diplomatic bag is rather too absolute; https://treaties.un.org/ (accessed 31/08/2023).

[323] Eurocentric is regarded as 'the notation that the West properly deserves to occupy the center stage of the progressive world history, both past and present' (Hobson, 2004; 2)

[324] There is so much material present in the body of political and diplomatic jurisprudence that some have classified different component of *fiqh* as, worship, economics (financial matters), civil (contracts), family (marriage, divorce, inheritance, last will and testament), judicial matters (adjudication and laws of testimony), and political matters (government, foreign affairs, jihad, and International rights) (Zanjani,1983; 342).

formulated specific regulations and rules to protect the diplomats from any sort of harm, killing, or damaging their properties' (Bsoul, 2013; 133; Jaeez, Azhar, and Bin, 2016; 221). The evidence for this claim is based essentially on directives of the primary sources of *sharī'a,* namely Qur'ān and the *Sunnah* (Al-Mutairi, 2016; 47). These include instances of reference to the notation of diplomacy, the protection from persecution, the protection from arbitrary arrest and detention, and the care and treatment of envoys (Safiyanu, 2021; 43) including the principles relating to the diplomatic immunity and privileges of granting diplomats *amān* (protection or safe conduct). This is 'a legally binding privilege that obligates the State to protect the beneficiary until he departs from its territory', but allows for the expelling of the beneficiary (Bassiouni, 1980; 610). Such a stance can be seen in the exchange of envoys narrative between Prophet Sulaimān (Solomon) (992-952 BC) and Bilqīs's (Queen of Sheba) reign (1013 - 982 BC) as specified in chapter *al-naml* (27:23-44). [325] These verses highlight the importance of emissaries as a means of diplomatic communication and their immunity from harm. However, as mentioned when Solomon considers an attempt of bribery with the gifts presented to him, insult is taken and Sheba's envoy is expelled. It has been claimed by others that Prophet Muḥammad's call had an international aspect from the outset, this is seen by 'over three hundred letters sent' out by him in his call to Islam (Dar and Sayed, 2017; 5617). These were directed to State leaders, monarchs as well as tribal chiefs, and religious authorities in Arabia and outside (Hamidullah, 1985; 147). [326] As such, he is viewed by some academics as a Statesman from a province that was able to keep its political independence' (Watt, 1961; 5), or being able to display 'political awareness' (Nizah et al., 2013; 271). Moreover, well-known shī'ī Jurists in recording certain events have stated that Prophet Muḥammad was keen on ensuring the security and protection of envoys and diplomats, thus instructing all followers that 'envoys should not be harmed or killed' (Majlisi, 1990_j; 31). [327] A similar stance has been recorded by senior jurists of other Muslim Schools of thought (Shaban-nia and Husaini, 2018; 142) [328] and forms the *locus classicus* in Islamic diplomatic law. Moreover, Muslim historical books mention various accounts of the Prophet appointing his companions to receive delegations and envoys arriving in the city of Madīnah, instructing them to respect the envoys while maintaining the protocols and accommodating and facilitating their livelihood.

[325] These verses cover the story of the mighty queen Bilqīs and her encounter with Prophet Sulaimān leading to her submission to Allāh.
[326] Prophets awareness of the concept of diplomacy is seen within the case of Prophet Muḥammad's letters to the neighbouring rulers (Drocourt, 2010; 31).
[327] A violation of an ambassador's immunity provoking a *casus belli,* an occasion for war.
[328] Such as narration in *al-Sunan al-Kubrā* of Abū ʿAbd al-Raḥmān Aḥmad, commonly known as al-Nasāʾī (d. 915).

These indicate that the Prophet would meet emissaries at his mosque by a pillar of delegations (Hamidullah, 1945; 157), listen to them, reply as required or appointed companions to deal with their queries (Ghalush, 2004; 660). Subsequently, the concept of *sīyār* as explained by al-Shaybānī was developed upon such diplomatic perspective of the Prophet. [329] It was further 'broadened to include peaceful as well as hostile relationship with other nations', 'rules and practices governing the termination or suspension of hostilities', opening the inter-State relationships and the making of treaties (Khadduri, 1966; 5). Although the full extent of the book's perspective to *sīyār* and its analysis is deemed beyond the scope of this research, we can conclude that there is an acceptance by Muslim jurists and historians of emphasised the principle of *amān* within the context of the binding nature of treaties, in accordance with the maxim *pacta sunt servanda* (Bassiouni, 1980; 614; Zahid and Shapiee, 2010; 377). [330] It is thus pointed out that 'diplomatic immunity and protection is regarded as one of the important principles of the Islamic law for the development and consolidation of peaceful International relations' (Malekian, 2011; 44).

However, there are a number of possible differences in the presented perspective of scholars in the field of diplomatic immunity. Further clarification and critique of these points of concern would support our research in comparing the two legal systems, and identify possible instances of tension. Firstly, it is argued that diplomatic immunity as envisaged in the West is structured on theoretical understandings. However, 'Islamic history has not recorded any theoretical transformation of legal justifications regarding diplomatic immunity' (Ismail, 2016; 84). The counterargument to this ambiguity identifies possible differences in the perspective taken rather than the non-existence of reasoning. The justification for the diplomatic stance in Islam is recognised as the 'religious conception of conflict management' (Bjola and Kornprobst, 2013; 18), as pointed out by al-Sarakhsī in his explanations of *sīyār*. He points out that 'this is because the decision of war and peace cannot be taken without messengers, so the envoy must be safe to convey the message' (Bashir, 2013; 153). Subsequently, the legal basis of diplomatic privileges provided is indicative of functional necessity, this enables the envoys to 'exercise their duties and functions' (Zawati, 2001; 79) as pointed out by the Prophet. [331] Thereby, this would 'prevent wars and conflict

[329] The topic of *amān*, treaties made, and jurisprudential positions taken are discussed in detail by al-Shaybānī's coverage of *sīyār* with 'a special focus on the rights of the diplomatic envoys' (Bashir, 2013; 146).
[330] Nevertheless, it is argued that the *amān* at times needs to have conditions which is allowed, such as entering a place regarded as a sanctuary (al-Tusi, 1967_b; 48).
[331] Reference to functional necessity requirement is made in the events following the treaty of *ḥudaybīyyah.*

and even turn hostile relations into peaceful ones' (Bashir, 2013; 152). Secondly, in contrast to the Western conceived diplomatic immunity, the allowance of diplomatic immunity in Islamic law is argued to be essentially for short missions (Hamidullah, 1945; 144). This stance is represented by the views of the Caliph Abū Bakr with regard to the issue of foreign envoys, 'make their period of stay at your camps short and let them leave while still ignorant' (Istanbuli, 2001; 127). However, the counterargument points out that in early history 'envoys were sent on special missions' and 'there were no resident envoys' (Grote, 2020; 312). Nonetheless, at times 'envoys stayed in their host country for long periods' (Frey and Frey; 2020; 5), and ʿAllāmah al-Ḥillī mentions its permissibility in *shīʿa* jurisprudence (Shaban-nia and Husaini, 2018; 142). It is noted that although a short stay might have been the norm for that period since the Prophet is recorded for instructing his companions to accommodate envoys when visiting Madīnah (Ghalush, 2004; 660), as such there was no urgency requiring them to leave immediately. The third point argued is that unlike the concept of diplomacy in the West as being the norm, the diplomatic allowance by Muslims is an exception. This is because 'the state of war was regarded as the normal relation' in encounters of Islam and other nations (Khadduri, 1955; 213), thus 'collectively encompassed in the domain of war' (Mushkat, 1987; 302). However, the counterargument is that even within the rulings on *jihād,* the emphasis is always on acquiring peace, 'peace is the rule, and war is the exception' (Zawati, 2001; 75). This could be seen in instances of conquered entities when the inhabitants were exculpated from partaking in *jihād* provided they warned the Islamic State of any impending hostility (Istanbuli, 2001; 99). Moreover, numerous references to relations between Byzantium and the Islamic Empire, [332] exist where when the aggressive confrontations of the two avowed enemies were overtaken by harmonious relations (Vasiliev, 1953; 311). Examples include exchanges between 'Umayyad sovereign 'Umar II and the Byzantine Emperor Leo III' (Drocourt, 2010; 36), and the ʿAbbāsid sovereign Hārūn al-Rashīd and the Byzantine Emperor Constantine VI' (Drocourt, 2010; 38; Jeffery, 1944; 269). Fourthly, it is argued that in contrast to the Western conceived diplomatic immunity, the diplomatic allowance as practiced by Muslims was a temporarily forced necessity (Hamilton and Langhorne, 2010; 20), pushed on them by the *dār al-islām* and *dār al-ḥarb* criteria. However, a clarification made within the counterargument is that 'the practice of diplomacy' has always existed from an early period in the lifetime of the Prophet (Drocourt, 2010; 29) dispelling this orientalist perception. It could not have been a

[332] For example, with the case on Constantine VII, His writings are one of the best sources of information on the Byzantine Empire and many references are seen around Muslim enyoys.

temporary measure because in Islamic law 'peaceful coexistence is based on an armistice, diplomatic ties or peace agreements' (Allain, 2011; 404), as such this dispels the idea of universal dichotomy. Additionally, historical accounts of 'cultural relations between Islam and Christendom' particularly during the ʾUmayyad and the ʿAbbāsids periods refute this notation, 'with several embassies in both directions' (Drocourt, 2010; 30). [333] Moreover, such understanding would not be reflective of inhabitants, as many non-Muslims resided in *dār al-islām,* in fact statistically Muslims were at times 'a minority in their own Empire' particularly after conquests (Berger, 2008; 108). The fifth point argued is that, unlike the Western concept of diplomatic immunity, the protection in Islam could be removed from envoys if there arose hostility whilst they were present in the Islamic State. Thereby, envoys could be 'either insulted or imprisoned or even killed' (Khadduri, 1955; 244), because 'if war broke out before the ambassadors had left, they might be held captive or even executed' (Hamilton and Langhorne, 2010; 21). However, such argumentation is refuted by Muslims in that historically such a stance has not occurred and is unsubstantiated. Even though immunity is 'the product of reciprocity, such as the exchange of prisoners, diplomatic immunity, and custom duties' is required (Khadduri, 1966; 6), [334] the assumption regarding the reciprocity of safety is questionable. The position of Muslim jurists is that the beneficiary of *amān* is guaranteed protection in *sharī'a*. If this is true for the protection provided by an individual, then how could it be different from the case for an envoy who has the protection given by the head of State (Shaban-nia and Husaini, 2018; 135)? This would be 'a legal binding privilege that obligates the State to protect the beneficiary until his departure from its territory' and violation of such protection given is not permissible according to all Muslim Schools of thought. This would be regarded in *sharī'a* as 'a legally binding privilege that obligates the State to Protect the beneficiary until his departure from its territory' (Bassiouni, 1980; 610; Mottahedeh; 1980; 31). In *shī'ī* jurisprudence, this is further grounded based on Imām 'Alī's position that 'a non-Muslim who repudiates his treaty or pledge with Muslims should not be killed'. An instance is when the envoy of the governor of Syria Muʿāwīyah, was worried about his safety while hiding an item, 'Imām 'Alī' asked him, are you not an envoy? envoys cannot be killed' (Baladhuri, 1998; 211). [335] Moreover, Imām 'Alī is also quoted as saying 'respect for the life, security, and property of non-Muslims who have *amān* is binding on all Muslims, as is their safe return' (Bassiouni, 1980; 614). Furthermore,

[333] Research shows 'a multiplicity of sources' in a number of languages available to 'historians and scholars of Christian-Muslim relations in the field of diplomatic contacts' (Drocourt, 2010; 29)
[334] The *sunnī* School of ḥanafī is quoted to have reciprocity of immunity even when temporary peace has been established (Khadduri, 1966; 53).
[335] This confirms the Prophets clear instruction that 'envoys cannot be killed' (Hur-Amuli, 1989; 117).

according to Shaykh al-Ṭūsī if an individual was under the impression of being granted *amān,* while not approved, violation of the presumed protection is still not possible (al-Tusi, 1967_b; 15). Finally, the point that contrasts diplomatic immunity as practiced within the Western approach to the immunity provided to diplomats in Islam is that the latter is not absolute (Munir, 2000; 49), there is an exception for the *ḥudūd* (limits) crimes against God (Bassiouni, 1984; 184; Novakovic, 2020; 102). Crucially this difference is accepted by Muslim jurists while pointing out that this is because there are no exceptions to the Qur'anic assertion of *ḥudūd* as indicated in chapter of *al-mā'dah* (5:45). [336] *Shī'ī* jurists agree that in *sharī'a* within the rulings, the applicability of *ḥudūd* has no exception (Shaban-nia and Husaini, 2018; 51), and the issue will also be touched upon later in this chapter when examining the practical implementation of diplomatic immunity. Interestingly Āyatullāh in his 1963 speech objecting to Shah's policies mentioned this issue; 'if an American cook kills your senior *shī'ī* jurist, he would be immune from prosecution, and surely, our granting of exemptions must be questioned' (Khomeini, 2012, 1). It is worth noting that Islamic criminal law does not classify all crimes *ḥudūd,* Muslim jurists identify three separate different categories of crimes in Islam. These are *ḥudūd* crimes referred to as crimes against God, *qiṣāṣ* (retaliation) crimes against individuals, and *ta'zīr* (punishment) crimes left at the discretion of the judge or the State. Although there are no specific statements in Qur'ān and the *sunnah* on diplomatic immunity (Bassiouni, 1980; 610). [337] Nevertheless, when the Prophet was insulted by envoys who were representing a false Prophet, [338] they were told if it was not the fact that envoys could not be harmed or killed, they would have been punished (al-Najafi, 1983; 77; Istanbuli, 2001; 146). [339] In reality, Muslim jurists have based immunity on the notation of protection identified by the verse in chapter *al-tawbah* (9:6). [340] This verse deals with the granting of protection to pagans seeking asylum, so that they may hear the word of Allāh (Zanjani, 2020; 284). Nevertheless, there are differences in the protection of *amān* that is being sought by individuals, and that being given to a diplomat, the former can be prosecuted for all crimes, but the latter cannot (Bassiouni, 1980; 614). Nevertheless, according to the *shī'ī* jurisprudence jurist Shaykh al-Ṭūsī, when a prosecution

[336] We ordained therein for them a life for life, eye for eye, nose for nose, ear for ear, tooth for tooh, and wounds equal for equal …, .
[337] The *sunnī* School of ḥanafī is quoted to accept that a non-Muslim who has security and safety within the Islamic State cannot be held liable under the *ḥudūd* laws (Ismail, 2016; 106), but he is answerable on those committed against individuals.
[338] Under *aḥkām*, this is regarded as a *ḥudūd* crime.
[339] The *shī'ī* jurists (such as Āyatullāh al-Najafī) refer to this narration in the same format as *sunnī* scholars.
[340] And if any one of the polytheists seeks your protection, then grant them your protection so that he may hear the words of Allāh, then deliver him to his place of safety, that is bcause they are people who do not know.

is taking place for a crime, it needs to take place under the Islamic judicial structure, if the crime is committed in an Islamic State (al-Tusi, 1967_c; 37), but in practice, the category of the offence is the key to this debate as often to alleviate the punishment criteria, they are classified within the domain of crimes that are left at the discretion of the State.

5.4 Historical Review of the Prophet's Contribution

In considering the presented position on diplomatic immunity, there are repeated references to two particular events during the life of the Prophet alongside others, which underpins the principles of *sīyār.* These are the Charter of Madīnah and the Treaty of Ḥudaybīyyah, and we aim to assess them to further understand their strategic importance. In doing that, we are not planning to review a narrative of the Prophet's life, but rather aim to evaluate the Prophet's contributions. It is worth noting that 'there is no 'one official version' of Prophet Muḥammad's life by Muslims and non-Muslims alike. Thus, this research has referred to Muslim accounts of history who tend to agree on a 'broad narrative but differ on many of its details' (Brown, 2011; 1). Reference to these crucial events provided is aimed at providing an insight into how Muslims conceive of the Prophet's contribution to writing their narratives. Moreover, as 'historians do not treat all recorded events as being equally important'; all research is thus 'stressing some, while downgrading or even omitting others'. Our criteria here must be based on 'the degree to which events affected what later happened' (Goldschmidt and Boum, 2018; 2) in the domain of *sīyār*.

The Charter or the constitution of Madīnah is commonly referred to by Muslims as the 'first treaty in Islam', clarifying the 'principles governing the Islamic State in its embryonic stage' (Iqbal, 1977; 18), as such it is regarded as the first political-constitutional document by Prophet Muḥammad. The 'Treaty of Ḥudaybīyyah' which envisions the expansion of the Muslim community (Subhani, 2014; 673) throughout the Arabian Peninsula and beyond is considered high in the list of treaties that are critical to Islamic history because it was aimed at easing tension between Muslims and the opposing Quraysh. Finally, the significance of the treaties in general lies in their inclusion as a crucial part of Islamic doctrine (Nussbaum, 1962; 53), and the two chosen events provide the clearest authoritative examples of Islamic diplomatic law. Although it must be noted that a modern model of Islamic diplomacy need not be limited by the subject matter in these historical categories, but embrace any subject matter not prohibited by the *sharī'a* (Smith, 2005; 165).

To begin with, the importance of the Charter of Madīnah [341] whose authenticity (if not the preserved text) is acknowledged in one form or another by most Muslim and non-Muslim scholars. [342] It relates to the creation of 'a covenant between all significant tribes and families' within the city Yathrib, thereafter known as Madīnah. By outlining 'the rights and procedures for conflict resolution and community action' (Isakhan, 2016; 63), and portraying the political shape of an evolving *ummah,* it is regarded as 'the first example of an Islamic State' based on the rule of law (Hashemi, 2017; 137). This would include those outside such as the Jews, in forming the 'one community' with the believers, while 'having their religion, and the Muslim have theirs' (Berkey, 2002; 64). For Muslims, the Charter is indicative of mutual solidarity between *muhājirūn* (migrants) and *anṣār* (helpers), the inhabitants of Madīnah extending their arms in helping the migrants. The *muwāda'ah* (pact) is between the people involved namely the Muslims, Jews, Christians and pagans (Khadduri, 1955; 208; Beham, 2013; 356). Although the discussion around the Charter has been made in Chapter 2, however, the Prophet Muḥammad's receiving of emissaries in the year of *hijrah* makes the event unique. This is because the receiving of delegates and deputations takes place prior to the formation of the Islamic State (Bashier, 1983; 54). The importance here is the prominence the Prophet attaches to envoys, which proceeds the formation of the government. This is also seen in numerous other narratives, which highlight certain reasoning behind immunity and certain privileges to diplomats and envoys given within Islamic diplomatic law. For example, when there were objections by Quraysh to the migration of the Prophet, he dispatched emissaries to the king of Abyssinia seeking asylum (Subhani, 2014; 237). The Muslim narrative's focus on emissaries to an outside kingdom highlights the special regard provided by the Prophet to the issue of emissaries, which continued after migration at the mosque of Madīnah by the pillar of emissaries (Hamidullah, 1945; 157), and slowly introduced Islam to those outside his community. As such, the Muslim accounts of the event are centred on the promotion of peacebuilding by Prophet Muḥammad (Husin, 2017; 45), one that even addressed an 'intertribal collective peaceful resolution' (Powell, 2019; 152). To prevent conflict between the signatory parties, the city of Madīnah was designated as a *ḥaram* (sanctuary), with strict rules for its protection and against bloodshed (Rubin, 1985; 11). In short, the arguments placed in favour of the Charter are that it made possible the gathering of loose tribes and forming the structures of a State,

[341] The original document of the Charter is based on excerpts included in early Muslim sources, the earliest of which is ibn Hishām has written an annotated version of the *sīra* by Ibn Isḥāq. However, mention is made in other books of scholars such as *kitāb al-amwāl* by Abu 'Ubayd (d. 846) or ibn Zanjūyah (d. 870) (Goto, 1982; 1).

[342] Sceptics such as Gil, Caetani, or Rodinson reaffirm this point. Refer to constitution of Medina as covered in pages 21-45 of Gil (2004), pages 391–408 of Caetani (1905), or pages 152–54 of Rodinson (1996).

the foundation of civilisation and the creation of the Muslim community (Watt, 1955, 161). Additionally, according to the Muslim scholars debating the topic, the event sets out the 'principles of freedom, justice, equality, and peace' (Isakhan, 2016; 63), and is regarded as 'the first treaty of Islam' drafted by the Prophet (Black, Esmaeili, and Hosen, 2013; 69). Nevertheless, the arguments placed against the Charter range from questioning the historical existence of the Charter (Hoyland, 2019; 548) to the multi-exercising of power by the Prophet (Hills and Ross, 1956; 165).

Those criticizing accounts of the event, reject the Charter as being a mutual treaty in the modern sense and view it as a unilateral proclamation by the Prophet (Lewis, 2002; 42). The critical point of peacebuilding is also questioned highlighting the tense relationship that existed thereafter between the Muslims and Jews. [343] They also question the issue of treason a few years later (Sodiq, 2010; 45) that resulted in the expulsions of the Jewish tribes of *banū qaynuqā'* and *banū naḍr* from Madīnah, and the violent treatment of *banū qurayẓah* (Freedman and McClymond; 2001; 567). It is argued within such stance, that this differs from the notation of peacebuilding in the modern age, which is regarded 'as actions to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict' (Kadayifci-Orellana, 2015; 431). The extensive discussion to assess the incident of *banū qurayẓah* is undoubtedly beyond the scope of this research but the topic is worth touching upon within the present discussion around the Charter of Madīnah. To begin with, as any comparative assessment of *banū qurayẓah* requires an initial overcoming of the apologetic approach. Although the literature by the Muslim proponents of *sīyār* on this topic is varied, there are many who are dismissive of the incident altogether. [344] There are also those who view this incident like other historical accounts to be myths and realities intermixed. [345] 'Our perspective is all there is' and 'whether there is any reality outside our perceptions' is debatable (Valk, Albayrak, and Selçuk, 2017; 116). Nevertheless, it is worth noting that those advocating incommensurability refer to the incident as one incompatible with International law. Moreover, there is an added problem linked to all narratives of the incident in that historically no original or completed copy of Ibn Isḥāq's book has survived. What is presented is an annotated version of his book produced a century

[343] The Charter included a neutrality clause for non-Muslims (that included the Jews) for not helping the enemies; they were exempted from *jihad* in return (Al-Mekrad, 1989; 165).
[344] An extensive assessment of of such argumentation could be followed through the three chapters (32-34) in volume 2 in the collection, Muhammad: Critical Concepts in Religious Studies, edited by Görke (2015).
[345] Based on discussion with the Dr Skovgaard-Petersen and opinions expressed in his book, 'The Muslims' Muhammad and everyone else's' published in Danish by Gyldendal.

later by ibn Hishām, [346] or modern reconstructions of Ibn Isḥāq's work through the art of locating his work in other historical material of the time (Brown, 2011; 67).

The first point made by those dismissive of event [347] is that the reports quoted, particularly regarding the severe punishment of *banū qurayẓah*, are essentially based on a single source. [348] It is argued that there appears to be no earlier record present other than what is recorded by the 8th century historian, Ibn Isḥāq in his book *sīra rasūl Allāh* (Kirazli, 2019; 13). [349] The book of *sīra* by Ibn Isḥāq is thereafter compiled and annotated by ibn Hishām's recensions, as well as later by the *maghāzī* by al-Wāqidī, and also the narratives from al-Ṭabarī (De Jarmy, 2021; 79). Later sources rely entirely on the mentioned sources, although some historians do not specify the source of their reports, [350] or mention the incident without precise documentation. [351] They argue that this does not mean that biographies of Muḥammad do not exist prior, particularly in an episodic form, but the narrative of *banū qurayẓah* is based on the text of Ibn Isḥāq. [352] Such objections revolve around the problem that the narration from the *ḥadīth* requires *matn* and *isnād* as covered in Chapter 3. However, the text by Ibn Isḥāq is missing the chain of narrators, [353] the argument is thus made that it is not quite so easy to determine Ibn Isḥāq's method of research, leading to uncertainty in the accuracy of the narration. [354] Consequently, it is argued by those adapting such a position that his narrations are rarely used in books of jurisprudence, for instance, the head of the *mālīkī* School labels Ibn Isḥāq as a liar (Kirazli, 2019; 12; Arafat, 1976; 101). However, the response to such argumentation is that their reasoning is systematically flawed even if true. This is because all Muslim historians depend on Ibn Isḥāq for many of their narratives of the

[346] It is argued that some of Ibn Isḥāq material was found by ibn Hishām to be questionable and thus removed; an example being the narrative of Satanic Verses regarding the three pagan Meccan goddesses al-Lāt, al-'Uzzá, and Manāt.
[347] It is argued that there are serious doubts about the incident's occurrence; encouraging readers to investigate the matter further (Donner 2012, 47).
[348] It is argued that there are no Jewish classic records by classic of Jewish martyrdom and tribulations books (Kirazli, 2019; 13).
[349] It is argued that the authenticity of his book like other books of oral history of the period is questionable because the author is 'not by a grandchild, but a great grandchild of the Prophets generation' (Crone, 1980; 12).
[350] Such as the Ibn Saʿd (d. 845), Maqdisī (d. 1268), Ibn al-Jawzī (d. 1201) or Maqrīzī (d. 1442).
[351] Such as Abū al-Ḥasan ʿAlī ibn al-Ḥusayn, commonly known as al-Masʿūdī (d. 956).
[352] Ibn Isḥāq remains one of earlies Muslim scholars to have used passages from the canonical Gospels in his works for the purpose of defending the veracity of Islamic religious claims (Griffith, 2004; 140), but this has tarnished his approach.
[353] For a narration to be regarded as sound, the chain of authority is noted without interruption back to a companion of the Prophet, each of whom needs to be assessed for trustworthyness.
[354] Detail basis of such argumentation could found in Watt (1962) and Watt (1983).

Prophet, [355] and they cannot have it both ways (Spencer, 2012; 96). In the counterargument the point is made that other accepted and relied upon events including the Charter of Madīnah are similarly based entirely on the text of Ibn Isḥāq. It is thus emphasised that Ibn Isḥāq is instrumental in shaping the image of the Prophet, 'much like a journalist' 'constructing his story' (Brown, 2011; 64). [356] Additionally the questioning of the event's reliability echoes the rejectionalists, this is something that those sceptical of Muslim historical document have long been stating. [357] They have argued that 'there is scant evidence, if any, of the imposing of an analytical framework on receiving historical traditions' is accurate (Lassner, 2019; 76). It is stated by those adapting such a position that 'on the face of it, the documentation transmitted among Muslims about his life is rich and detailed; but we have learned to mistrust most of it', as Muslim scholars themselves point out of their untrustworthiness (Hodgson, 2009; 160). [358] The counterargument concludes that the alternative is either to have confidence in his work and not reject or impugn Ibn Isḥāq's good faith, as 'deliberate fictitious ascription of the material to the main informants is unlikely' (Motzki, 2003; 219), or to reject his material altogether. Moreover, in the counterargument also points out that 'the commonly cited chains of transmission, actually emerged much later'. The inclusion of *isnād* was 'possibly motivated by the desire to strengthen the claim to authenticity of what was being reported' (Sirry, 2021; 7), at a later period.

The Second point made by those questioning the authenticity of the event is that all the historical sources mentioning the incident were compiled during the rise of the ʿAbbāsid dynasty, [359] this was a period of time when a new Caliphate was forming, thus seeking legitimacy in order to support its rise to power (De Jarmy, 2017; 1). Thereby, it is argued that ʿAbbāsid were linked to the provision of a 'patronage of writers who worked on writing formal master narrative of Islamic history', as such we find the ʿAbbāsid era to provide 'the most critical phase in the shaping of Islamic textuality and culture' (El-Hibri, 2021; 64). For such Muslim scholars objecting, the settings would have played a part in the shaping the

[355] It is argued that the popularity ibn Hishām's edited version of Ibn Isḥāq's book is as popular biography of the Prophet as Ibn Kathīr (d. 1373) (Brown, 2011; 67); Abū al-Fidā Ismāʿil ibn ʿUmar commonly known as Ibn Kathīr.

[356] According to some, Ibn Isḥāq (and later al-Wāqidī) are only concerned with establishing a set biographical image rather than any historical facts (Faizer, 1995; 235).

[357] Such as Ignaz Golziner in 1890 and further elaborated by Joseph Schacht in 1950 (Watt and McDonald, 1988; xvii).

[358] In reality, sucharguementation does not consider the *sīra* as a primarily historical text when it is, a distinct genre (Faizer, 1995; 26).

[359] Following the overthrowing of the ʾUmayyad dynasty, by ʿAbbāsid revolution of 750 CE, when the capital city was also moved from Damascus in Syria to Baqdad in Iraq.

narrative of events, the figure of Prophet Muḥammad and in defining his features. The ʿAbbāsid dynasty (and the Fāṭimid dynasty in North Africa) [360] were designed to reflect the early history of Islam, and in particular Prophet Muḥammad and his mission to spread Islam (Lassner and Bonner, 2009; 131). They tend to express doubt by arguing that the *banū qurayẓah* narrative originated during the ʿAbbāsid period when tensions between Muslims and Jews were high and therefore the reliability of the narrative is questionable (Cole, 2018, 142). [361] 'The ʿAbbāsids faced the need to create social cohesion, establish their political authority, as well as instil a vision of Islam upon which the Muslims under their control could agree' (Milby, 2008; 1), particularly concerning the relationship to Jews. [362] This line of argumentation is similarly disputed, it is argued that 'the Arabs of the Prophet's time had no tradition of written history'. Thus, what is being accepted as *sīrah* of the Prophet in its entirety written around 150 years after the Prophet's death (Brown, 2011; 66). Such argumentation for the denial of *banū qurayẓah*, is in line with those questioning the existence of Prophet Muḥammad altogether. This is because 'all biographies of the Prophet and all encyclopaedia articles' are based on the narratives of this era (Spencer, 2012; 96). In fact, al-Ṭabarī was closer to the ʿAbbāsid rulers more than Ibn Isḥāq was, so you can either argue that to say Ibn Isḥāq or al-Ṭabarī were 'biased in favour of the ʿAbbāsids is misleading' (Kennedy, 2015; 310). Or that the narratives of Ibn Isḥāq and other historians of his era such as al-Ṭabarī were inevitably governed by their 'own religious views' and 'forces influencing them' (Brown, 2011; 65). Additionally, the assumption of the narrative is mirroring friction between the ʿAbbāsid Empire and the Jews, who were supposedly 'living in closed or autonomous communities opposing the Islamic political leadership' is debatable. In contrast, recent research has found Jews during the ʿAbbāsid era to be 'embedded in a wide variety of social organizations' of the time and 'engaged in mutually beneficial patron-client relationships' during this period (Grayson, 2017: ii).

The third point raised by those challenging the narratives which directly effects the focus of this research is centred the argument made by numerous *shīʻī* articles from a *shīʻa ithnā-ʻasharī* perspective. It is said that considering the non-mention of narrative from the *shīʻa*

[360] This was a *shīʻa Ismāīlī* dynasty claiming to be decendants of Lady Fāṭimah (909 - 1171 CE).
[361] Moreover, the account bears suspicious similarity to earlier Christian expulsions of Jews from Roman land (Cole, 2018, 142).
[362] According to such speculators, Ibn Isḥāq (and later al-Wāqidī) are only concerned with establishing a set biographical image rather than any historical facts (Faizer, 1995; 235).

Imāms, [363] we could not be sure of its reliability. Subsequently, they claim of dramatisation and fictitious elements to the narrative (Hawzah, 2022; 1), or non-conformant with the jurisprudential notation of punishment as addressed by Qur'ān or the approach within the life of the Prophet is made (Ayazi, 2012; 132; Hawzah, 2019; 1). Such line of argumentation is countered in that the period concerned is before the *sunnī* and *shī'ī* became distinctly recognised from the perspective of the establishment of their Schools of law. [364] Additionally, it is counter argued that although there are differences in some historical accounts between the *sunnī* and *shī'a*, this is not necessarily one of them. It is stressed by those opposing that a number of *shī'ī* jurists such as Shaykh al-Mufīd, Shaykh Ṭabarsī, and ʿAllāmah Majlisī have reported the incident from the same sources (Thaqalain, 2016; 1). In fact, Āyatullāh Khomeinī has referred to the incident on a number of occasions, such as his comments 'on the day when it was realised that they could not be educated, seven hundred of them were killed in one place, the Jews of *banū qurayẓah*, in the presence of the Prophet (Khomeini, 1989_c; 49). Moreover, it is clarified in the counterargument that *shī'ī* scholars of the Qur'ān such as ʿAllāmah Ṭabāṭabā'eī have mentioned a similar account of the incident in the commentary of *al-mīzān* (Tabatabaei, 2017_c; 169). He also specifies that the verse of the chapter of *al-aḥzāb* (33:26) mentions of fighting men involved in a battle surrendering, rather than the whole community of people (Tabatabaei, 2017_h; 436). [365] Finally, it is argued by some Muslim scholars that the recorded event does not correspond with jurisprudential notation of punishment as addressed by many verses of Qur'ān. Examples used include verses in the chapter of *ġāfir* (40:40), [366] chapter of *al-an'ām* (6:160), [367] chapter of *yūnus* (10:27), [368] but an assessment of these is beyond the scope of this study. It is also argued by Muslim scholars that the description of the event is not in line with the image represented of the Prophet as identified within chapter of *al-naba'* (21:107). [369] In essence they argue that Qur'ān does not mention the event or the pact, and the reference is

[363] There are no *ḥadīth* from Imāms al-Bāqir and al-Ṣādiq who lived during the transitional period of the 'Umayyad and the ʿAbbāsid dynasties, and the incident is not mentioned in any sermons of Imām 'Alī as covered by the collection of Nahj al-Balāghah; al-Razi (1960).
[364] The *mālīkī, ḥanbalī, ḥanafī, shāfi'ī* and the *ja'farī* Schools.
[365] And He brought down those from the people of the book who supported the enemy alliance from their strongholds and cast horror into their hearts. You believers killed some and took others as captive. The term people of the book, *ahl al-kitāb* is used in Qur'ān when refering to the Jews and the Christians.
[366] Whoever does an evil deed will only be paid back with its equivalent …, .
[367] Whoever comes with a good deed will be rewarded tenfold. But whoever comes with a bad deed will be punished for only one. None will be wronged.
[368] As for those who commit evil, the reward of an evil deed is its equivalent …, .
[369] We have sent you O Prophet, only as a mercy for the whole world.

only taken from a brief suggestion in a verse of the chapter *al-aḥzāb* (33:26). [370] However, counterarguments are dismissive of such justifications by the Muslim apologetics. These range from those who say the use of Qur'ānic verses is immaterial since narratives of Qur'ān are 'all jumbled up and intermingled' (Rippin 1991, 26), Prophet Muḥammad's 'public utterances are not history' (Lassner, 2019; 17). Moreover, they argue that 'there is little evidence of sustained and unified composition', 'let alone a larger picture' of Prophet Muḥammad (Lassner, 2019; 17). Others argue that Qur'ān tells of many narratives of Prophets but Prophet Muḥammad is not among them, 'there are references to events in his life, not narratives' (Cook, 2000; 136). Finally, the comprehension and understanding of the Qur'ān in the strict sense is not possible, because Qur'ān possesses an esoteric aspect, subsequently, one is incapable of providing a genuine or a complete tafsīr (interpretation) of Qur'ān (Majlisi, 1990_c; 95). As such, Muslim arguments regarding this historical case based on Qur'ān's representations of other issues are subjective to the presented interpretations, and judgements on perspectives, particularly when scholars have accepted the verse [371] to be concerning the Jews of *banū qurayẓah* (Al-Tabari, 1992; 250; Makarim-Shirazi, 1975; 271).

There is far less controversy attached to the second historical point of discussion, the Treaty of Ḥudaybīyyah handwritten and witnessed by Imām 'Alī, to the signature of the Prophet. [372] There is consensus between Muslim scholars *sunnī* and *shī'a alike* with regards to this event. It is also referred to in chapter *al-fatḥ* (48:24) [373] and both al-Shaybānī and al-Sarakhsī offer an exhaustive account of the Treaty of Ḥudaybīyyah. It is argued by Muslim scholars as being set at a time when Muslims were weak and Quraysh were strong, and subsequently loaded with unjust and many humiliating conditions (Bashir, 2018; 230). This is further supported by many Qur'anic verses about the validity of a treaty or the importance of peace-making like those mentioned in chapter *al-anfāl* (8:72) [374] or (8:61). [375] Although the discussion around this treaty has been covered in Chapter 2, the focus on the concept of

[370] And He brought down those from the people of the book who supported the enemy alliance from their strongholds and cast horror into their hearts. You believers killed some and took others as captive. The term *ahl al-kitāb* is a term used in Qur'ān when refering to Christians and the Jews
[371] Chapter *al-aḥzāb* (33:26).
[372] The Prophet requested two copies of the treaty to be distributed for both parties in order to refer to it when there is a misunderstanding about a particular situation in the treaty (Al-Mekrad, 1989; 253).
[373] He is the One Who held back their hands from you and your hands from them in the valley near Makkah, after giving you the upper hand over them …,
[374] And those who believe but did not migrate, do not have a friendship with them till they migrate, yet if they ask you to help them for (the sake of) religion, then its your duty to help them, unless its regarding those to whom you have a prior treaty, and Allāh is seeing of what you do.
[375] If the enemy is inclined towards peace, make peace with them, and put your trust in Allāh …, .

diplomatic relations and immunity within *sīyār* requires a brief reassessment. Those arguing in favour of the treaty, point out that 'the term diplomacy is used for a norm of behaviour' and identifies within Islamic law the development of specific regulations for treaties as well as the function of diplomatic immunity (Bsoul, 2013; 133). It is highlighted that the tribe of Quraysh who were hostile to Prophet Muḥammad controlled the city of Makkah, but the Prophet intended to make a peaceful pilgrimage to the city he had left behind while migrating to Madīnah. [376] The negotiations led to a treaty that emphasised the recognition of accords, the exchange of envoys, and the granting of *amān*. In short, for Muslims the treaty is a model of Islamic diplomacy, emphasizing the sanctity of emissaries and stipulating that 'no ambassador may be detained or harmed' (Bassiouni, 1980; 611). It also highlights Prophet Muḥammad's peacebuilding, helping to decrease tensions between the Muslims and the Arab tribes, affirming a period of peace between the two rival camps and the safeguarding of emissaries (Bassiouni, 1980; 611). The treaty is used here, (as in later history by Muslim rulers) [377] as a tool to organise their relations with neighbouring lands, between tribes, for settling disputes, and for spreading peace by devising truce and suspending fighting. What makes this profound is Islamic law having 'developed specific regulations on concluding treaties as well as the function of diplomatic immunity' (Bsoul, 2013; 133). The treaty also deals with challenging topics such as removing the title *rasūl Allāh* (Allāh's Apostle) from the treaty to accommodate peace (Abu Nimer, 2000; 224). [378] There were also other concessions, such as accepting the term that whoever from the Qurayshites went to the Prophet without the permission of his supervisors would extradited back, whereas whoever from the Muslims moved over to Quraysh, they would not be extradited (Hamidullah, 1945; 132). By allowing such provisions, the treaty in effect stipulates the modern idea that 'political refugees may not be extradited', while allowing 'those who are subjects of the Muslim State' but have broken another States law, to be extradited to the relevant State's judiciary 'for prosecution and punishment' (Malekian, 2011; 326-7). Most importantly for such argumentation, the Prophet demonstrates his firm belief in diplomatic immunity through the Treaty of Ḥudaybīyyah, whereby when an envoy of Quraysh expresses his intention to convert to Islam, [379] he is told by the Prophet that he does not intend to break a covenant or imprison an envoy. 'You are at present but an envoy of the Quraysh and must

[376] Although pilgrimage was the reason for entering into negotiations, the circumstances on both sides indicates that 'temporarily there was an equilibrium of power' (Khadduri, 1955; 211)
[377] Āyatullāh Khomeinī drew a parallel to this when accepting the peace terms with Iraq as a strategic move (Pirseyedi, 2012; 49).
[378] For the *shī'ī* this particularly important because similar move was also made by Imām 'Alī in his peace treaty with the governor of Syria, Muʿāwīyah, removing the title 'commander of the faithful' to accommodate peace (Al-Tabarsi, 1995; 118).
[379] The emissary of Quraysh is reported to be Abu-Ra'fi (Bassiouni, 1980; 612).

return to Makkah', he is thereafter advised to return as an individual if he continues to feel the same (Hamidullah, 1945; 148). Those arguing in favour of the treaty insist that even after the collapse of the treaty, which prompted the conquest of Makkah, [380] the event led to the forgiving of the staunch enemies by the Prophet (Haykal, 1976; 404). This is because the Prophet had declared an amnesty to those who had fought and opposed him (Iqbal, 1977; 42), establishing peace in war-torn Arabia. As such, the argument concludes, this identifies 'how the Prophet carefully planned this peaceful conquest, beginning with the *hijrah* and followed by the Treaty of Ḥudaybīyyah' (Husin, 2017; 46). Moreover, it also points out that the treaty allowed non-hostile Arab tribes to know of Islam as well as allowing the Prophet to transcend the boundaries of his local vicinity by sending envoys to the rulers outside Arabia (Istanbuli, 2001; 44).

Nevertheless, those arguing against the treaty view *sīyār* as 'topically incomplete' for purposes of modern International relations (Westbrook, 1992; 857). They argue that the treaty was 'a sham agreement' that the Prophet entered into allowing him 'to gain time and strength for a final invasion' of Makkah (Smith, 2005; 138). [381] It is also suggested by those arguing against that the 'Quraysh's connivance in a skirmish resulted in a very small number of casualties'. [382] Thus, it should not be regarded as 'a repudiation of the entire peace treaty with the Muslims' (Smith, 2005; 156), and the Muslim response 'would not have been' justified under modern customary International law as an act of self-defence (Smith, 2005; 161). They also challenge the idea of *pacta sunt servanda* presented in the treaty, as being far less absolute in Islamic law than what is understood in the West (Ford, 2017; 42), lacking the breadth of the meaning contained in International law (Cravens, 1998; 570). Nonetheless, it is conceded by those arguing against that the obligation to perform the treaty in good faith is present (Smith, 2005; 155), and the treaty 'substantially comports with the principles of the Diplomatic Relations Convention and the Consular Relations Convention' (Smith, 2005; 158). As such it is accepted by them that the narrative highlights 'the rights and immunities of envoys, including those from hostile rulers, were recognised from the start, and enshrined in the *sharī'a*' (Lewis, 1988; 76).

[380] Quraysh's ally Banu Bakr is reported to have violated the treaty by attacking Banu Khuza'a, an ally of the Muslim signatory (Khadduri, 1955; 212)

[381] This type of assessment was often made at the time of the Oslo Palestinian/Israeli peace accord of 1994, when Yasir Arafat (d. 2004) referred to the Treaty of Ḥudaybīyyah in his speech in response to those criticizing (Mitchel, 2014; 43).

[382] The treaty included a neutrality clause bounding both the Muslims and the Quraysh from to fighting each other nor to extend help an enemy that may violate neutrality (Al-Mekrad, 1989; 165).

5.5 Muslim States and Diplomatic Immunity Ratification

The near-universal participation by sovereign States has made the Vienna Convention on Diplomatic Relations 'the most successful of the instruments drawn up under the United Nations framework for codification and progressive development of International law' (Denza, 2009; 1). There are 193 States [383] that have consented to be bound by the 1961 Vienna Convention on Diplomatic Relations and to be regarded as parties to the treaty. The only exceptions being Palau and South Sudan. [384] The high degree of observance among sovereign States is represented by about a third of the membership being Muslim States, [385] and subsequently, the list is indicative of the Muslim approach to diplomatic immunity. If diplomatic immunity is based on the 53 articles and 2 optional protocols of the 1961 Vienna Convention 'codifying to a large extent International customary law' (Dixon, 2005; 188), then the Muslim States are party to that achievement. Their involvement as any other State has led to 'long stability of the basic rules of diplomatic law and to the effectiveness of reciprocity as a sanction against non-compliance' (Denza, 2009; 1). Moreover, 182 States [386] have also consented to being bound by the 1963 Vienna Convention on Consular Relations, and are party to the treaty. The only exceptions are Afghanistan, Burundi, Chad, Comoros, Guinea-Bissau, Ethiopia, Palau, San Marino and South Sudan, [387] and as such, the list includes almost all Muslim States. A point to note here is that there are some signatory States that have not ratified the 1963 Convention. [388] However, they are not Muslim States; these are noted to be the Central African Republic, Israel, Ivory Coast and the Republic of Congo.

[383] Including UN observer states of the Holy See and State of Palestine.
[384] Retrieved from https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-3&chapter=3&clang=_en (accessed 31/08/2023).
[385] A list of Muslim States can be found within the membership of the Organisation of Islamic Cooperation https://www.oic-oci.org/states/?lan=en (accessed 31/08/2023). These States have further recognised the inviolability and immunities of the diplomatic personnel of individual State members at the 1976 Convention of the Immunities and Privileges of the Organisation of the Islamic Cooperation; https://ww1.oic-oci.org/english/convenion/AGREEMENT%20ON%201MMUNITIES%20En.pdf (accessed 31/08/2023).
[386] Including UN observer states of the Holy See and State of Palestine.
[387] Retrieved https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3&clang=_en (accessed 31/08/2023).
[388] 'The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty 'according to https://ask.un.org/faq/14594 (accessed 31/08/2023).

Thus, it can be concluded that the practice of Muslim states is indicative of compatibility between Islamic law and International law, and rejects ideas of incommensurability between the two systems. Even so, Muslim States such as Iran are regularly stigmatised with the term terrorism (Oliverio, 1998; 113), despite the fact that they are early signatories of both conventions. The argument placed by those defending such a stance is that the extent of the application of diplomatic immunities amongst different States differs, and 'remains a matter of substantial divergence' (Ismail, 2016; 87). This is because irrespective of the consent to a treaty, there is 'still room for interpretation on the national level as regards the application of these treaties, including the scope of the privileges and immunities granted and the provisions on abuse and waiver of immunity' (Lozancic, 2009; 8). States 'may as a condition of its willingness to become a party to the treaty specify certain terms subject to which it is prepared to accept the treaty' (Sen, 2012; 470). Various sovereign States are recorded as placing reservations on various article paragraphs or notifying of their understanding or declarations [389] on both conventions of diplomatic and consular relations. [390] Nevertheless, such arguments can be rebuffed because, Muslim State reservations are not because of a difference with Islamic diplomatic law, and divergence with the conventions does not just concern the Muslim States. 'Diplomatic immunity accorded by the United States and the Vienna Convention differ on some very substantial points' (U.S. Department of State, 1977; 211). [391] Additionally, the so-called '*sharī'a* based reservation' was introduced for 'the first time by Egypt in 1982' at the International Covenant on Civil and Political Rights. Even then, there were many Muslim countries including Iran that did not make such a reservation (Cali, 2018; 134). Anyhow, it is obvious that 'if a reservation goes to the very root of the treaty', 'the reservation would not be valid' and the State would not become a party to the treaty (Sen, 2012; 472). The compatibility of the two systems could be identified by the existence of reservations because this also appears in Islamic jurisprudence as shown to exist with reference to 'public interest'. [392]

[389] Such as certain Muslim States stating that the accession shall not constitute the recognition or lead to any relations with Israel.
[390] For details of points recorded for Australia, Bahrain, Belarus, Botswana, Bulgaria Cambodia, Canada, China, Cuba, Denmark, Ecuador, Egypt, France, Greece, Guatemala, Haiti, Hungary, Iraq, Ireland, Japan, Kuwait, Libya; Luxembourg, Malta, Mongolia, Morocco, Mozambique, Nepal, New Zealand, Oman, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Sudan, Syria, Ukraine, UAE, UK, USA, Venezuela, Vietnam and Yamen refer to https://treaties.un.org/ (accessed 31/08/2023).
[391] Such as diplomatic agents and their family members, administrative and technical staff and their family members, service staff and their family members, private servants of diplomatic agents. A number of reservations on these issues has also been made by various Muslim states.
[392] Particularly in light of differences of understanding and approaches highlighted in Chapter 3 between the *sunnī* and *shī'ī* perspectives such as to the use of *maṣlaḥah*.

Finally, those objecting to the compatibility between Islamic and International law would focus on the American embassy takeover and the hostage crisis. These tend to identify Iran's conduct with regard to diplomatic immunity following the 1979 Islamic revolution as that of the Islamic State. [393] Although the example of Iran needs to be reviewed, the embedded point within the argument also needs clarification. By differentiating the conduct of an Islamic State from that of a Muslim State, an attempt is mistakenly made to link the crises to the debate around the notations of *dār al-islām* as opposed to *dār al-ḥarb* (Dougherty and Pfaltzgraff, 1971; 149). This notation differentiates the Islamic State as one that is implementing Islamic law, from other Muslim States that do not, and this is not entirely accurate, and even the U.S. Central Intelligence Agency 'does not classify any as following *sharī'a* purely' (Bassiouni, 2014_a; 123). Thus, Iran is listed as having 'a religious legal system based on secular and Islamic law' (CIA, 2022; 1), in line with the constitution of the Islamic Republic of Iran's establishment of criteria for compatibility of laws (Ghorbannia, 2015; 211). Moreover, the theory fails because, during the contemporary crisis of the Gulf War, we witnessed an alliance between a State that proclaimed by constitution to be Islamic with a non-Islamic State. [394] The Saudi Arabian government even requested military aid from the United States and other non-Muslim States and based them on its land providing protection (Bulloch and Morris, 1991; 173). To sum up, one needs to say that it is true that Muslim majority populated States tend to identify themselves as Islamic [395] or secular, [396] but in reality most Muslim States (if not all) have mixed or multiple legal systems (Otto, 2008; 9) as covered in the previous chapter. It has been argued that since there is 'no concept of the modern nation-State in Islamic Jurisprudence' (Black, Esmaeili, and Hosen, 2013; 15), the modern Muslim States are seen to be the aftereffects of the breakup of the Ottoman Empire. This has induced 'a trend toward codification developed to modernise historic practices', entailing 'the merging of the *sharī'a* with the practices of the colonial State' (Bassiouni, 2014_a; 123). The differentiation in the conduct of an Islamic State from that of a Muslim State, also leads to the differentiating of the *shī'a ithnā-'asharī* State from that of a *sunnī* State, and our key research question; to what extent is Islamic diplomatic law from the *shī'a ithnā-'asharī* doctrine compatible with International diplomatic law?

[393] A difference is thus made between an Islamic State, one that is believed to adhere and apply the principles of Islamic law, to that of a Muslim State, one that is predominantly a Muslim majority State.
[394] The decision to deploy the American military forces in Saudi Arabia was accompanied a *fatwā* despite a guidance from Qur'ān chapter of *āle īmrān* (3:28) not to take disbelievers as guardians (allies). The verse states, Believers should not take disbelievers as guardians instead of the believers, and whoever does so will have nothing to hope for from Allāh, unless it is a precaution against their tyranny …, .
[395] Such several Gulf States, Iran or Pakistan,
[396] Such as several central Asian States, Turkey or Indonesia.

Of the many Muslim majority populated States which constitute 'a substantial portion of the United Nations membership' (Powell, 2019; 1), twenty-nine Muslim majority populated States have reported Islam to be their government-endorsed faith. [397] Some States are internationally recognised as secular based on their internal constitution, [398] such as Indonesia or Turkey. A few are named as Islamic Republics such as Pakistan or Mauritania; others are recognised as Islamic absolute monarchies, such as Saudi Arabia or Qatar. Muslim majority populated States, even those not officially called Islamic are 'increasingly positioning themselves in the international arena as Muslim' possibly because 'it donates a comprehensive identity', or 'a discontentment with the international order' (Berger, 2010; 17). Nevertheless, almost all are majority *sunnī* populated, and only a few States are populated by a majority of *shī'a ithnā-'asharī,* this includes States such as Iran and Iraq. Iran's constitution identifies the State as an Islamic Republic, and Iraq identifies the State as an Islamic, democratic, federal parliamentary Republic. The other *shī'a ithnā-'asharī* majority populated States are Azerbaijan whose government is intensely secular, and Bahrain, which is at present governed as an Islamic absolute *sunnī* monarchy. However, within many other Muslim States such as Lebanon or Afghanistan, the *shī'a ithnā-'asharī* population are officially recognised as a minority.

In light of the presented discussion around *sīyār*, the approach of such Muslim States 'ideological constitutions' towards International law is crucial to our debate. This would require an understanding of the balance that exists within their legal framework towards 'the modern constitution notation of national sovereignty' alongside 'the superiority of God over the nation resulting in the declaration of God's sovereignty' (Arjomand, 2012; 157). This would bring to light their approach towards diplomatic immunity and ratification of globally accepted frameworks, which has important bearings on this research. Since our work is focused on assessing possible theoretical compatibility or tension between International and Islamic law, with specific reference to diplomatic immunity. It is thus necessary to determine within this research, to what extent International relations from an Islamic perspective is functional, and can Islamic law be applied by a dynamic modern State. Since *shī'a* ideology

[397] According to PEW there are twenty-seven States; most of these are based in the Middle East and North Africa region; Retrieved from www.pewresearch.org/religion/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/ (accessed 31/08/2023).

[398] The English term of secular does not correspond exactly to any translated words in Arabic or Persian, some have used the translation of *lādīnīyah* (irreligious) in Arabic and *ghair-i maḍhabī (irreligious)* in Persian to translate the term (Alam, 2013; 37). Thereby, secularism takes on an aggressive and anti-religion overture (Chak, 2017; 65).

is ‘an inseparable component of Iranian psyche and political power’ (Farsoun and Mashayekhi, 2005: 156), in order to review diplomatic immunity in practice Iran makes an ideal example. Research is thus made into compatibility or tension between International law and Islamic law, in light of its *shī‘a ithnā-‘asharī* perspective. This is arguably the toughest test case for compatibility because events after the Islamic revolution could indicate incommensurability in their respective principles and outlooks. In doing so, we will review the ratification of diplomatic and consular legal frameworks by Iran within the context of its internal legal system and practices, as well as International law. This is particularly important in light of the 1979 seizure of the United States embassy in Tehran. Moreover, the positions of the supreme leaders of Iran Āyatullāhs Khomeinī and Khāmene’ī in relation to the American embassy hostage taking and overtures towards legal steps in accommodating International norms are also reviewed.

5.6 Iran’s Historical Perspective to the Present Day Crises

The term ‘Iranian awakening’ is used by the influential historian Browne concerning the Constitutional revolution of 1906-1911 (Browne, 1910; 31), to be indicative of the important changes the event brought to the struggle between secular and religious forces in Iran. One such example was the writing of a new constitution that emphasised on *ḥākemīyat-i qānūn* (the rule of law) and the codification of the new legal system for Iran. However, in reality, most of this constitution was ‘adopted from the European legal codes with a heavy French influence’ (Entessar, 1988; 93), but it had attempted to provide a two-tier structure to the legal system, recognizing to an extent the long-standing *sharī‘a* influence within Iran. The clerical establishment that had secured the monitoring of parliamentary legislation with the *shī‘ī* School of law within the constitution (Matin-Asgari, 2018; 36) defended its unique character. Nevertheless, they were concerned about the secular implications and warned against ‘the negative impact of the uncritical imitation of foreign models’ (Grote and Roder, 2012; 5). Āyatullāh Khomeinī in his opposition to the secularisation of Iran during the Pahlavi era (1925-1979), severely criticised the European origin of Iran's legal system as ‘Alīen and borrowed’. He claimed that ‘at the beginning of the constitutional movement, when people wanted to write laws and draw up a constitution, a copy of the Belgian legal code was borrowed from the embassy and a handful of individuals used it as the basis for the constitution.’ He then goes on to say, ‘they supplemented its deficiencies with borrowings from the French and British legal codes, and added some of the ordinances of Islam in order to deceive the people’ (Khomeini, 2008; 5). However, the constitution was

also considered by European scholars as operating 'in a context unfamiliar to the Westerner'; it was an amalgamation of traditions and scholarship from Europe and Islam, blended with the heterogeneous cultures of Persia (Baldwin, 1973; 492).

Nevertheless, the changes introduced were critical to the development of Iran's legal system, an example being the creation of the Iranian Code of Criminal Procedure in 1912, which was also heavily influenced by the French Code of Criminal Instruction of 1808 (Rezaei, 2002; 57). In order to avoid opposition from the clergy to its introduction, it was presented as an experimental measure but continued to remain as the framework of the Iranian criminal procedure until 1994 (Ashuri, 1997; 53). This legal framework involved both inquisitory procedures at the pre-trial stage and accusatory procedures at trial, avoiding the use of the clergy within the structure and thereby reducing the influence of Islamic law in the criminal justice system (Amin, 1985; 59). Throughout the Pahlavi era, there were a number of attempts in 1925, 1949 and 1967 with the aid of French legal experts to restructure and reform the constitution, but ultimately the framework remained the same although the monarchy was given further powers in issuing decrees and orders for the enforcement of law. More importantly, the reformed version had become more secular relying on Belgian, French and Swiss codes as models in order to further exclude the clergy and reduce their influence over the judiciary (Mir-Hosseini, 2010; 327). The policy of drastically reducing the influence of *sharī'a* and the clerical presence in Courts was referred to as an 'anti-clerical crusade' (Moghissi, 2016; 38). This was in itself an imitation of 'a brand of secularism and nationalism that subsequently became known under the name of Kemalism' (Grote and Roder, 2012; 7) [399]. In denouncing the Pahlavi regime for their increasing dependence on foreigners, concerned by the socio-political implications of the presence of American, British as well as many other Western advisors in Iran, Āyatullāh Khomeinī proclaimed that 'the imposition of foreign laws on our Islamic society has been the source of numerous problems and difficulties' (Khomeini, 2008; 8). [400] Crucially, he points out that the Iranian legislative system should be bound 'within the framework of Islamic precepts' (Khomeini, 2008; v). [401] It was argued that the approach that had been undertaken 'achieved no less than

[399] Kemal Atatürk is the founder of Kemalism, State ideology based on his approach to secularism implemented in Turkey following the collapse of the Ottoman Empire (Webster, 1973; 245).
[400] He spoke about the Capitulation rights on 26 October 1964 denouncing rights granted to the American military personnel for any crimes committed in Iran, highlighting the socio-political implications of granting so many unnecessary exceptions from prosecutions under Iranian law to so many foreign personnel (Khomeini, 2012, 1).
[401] Āyatullāh Khomeinī points out if an American cook kills your senior *shī'ī* jurist, he would be immune from prosecution, and surely, our granting of exemptions must be questioned (Khomeini, 2012, 1). In his speech he regarded the terms as similar to subjecting Iran to being a colony (Lolaki, 2020; 66).

the Westernisation of the judicial concepts, institutions, and practices' of Iran's legal system (Banani, 1961; 76), while bypassing the philosophy behind such legal steps in Europe. [402] Iran's autocratic structure of governance could not tolerate the impartial operation of the new judiciary and undermined the independence of the judiciary during its reign. For example, politically significant legal cases were assigned to government-oriented judges, while military tribunals were given jurisdiction in cases of State security and narcotics (Amin, 1985; 62).

The Islamic Revolution of 1979 promised a new constitution in line with its revolutionary goals of 'freedom, rule of law and Islamic Government' (Rezaei, 2002; 57). However its initial draft [403] regarded as 'essentially a liberal text' that resembled 'a mixture of the 1906 constitution and the 1958 constitution of the French fifth Republic' was rejected by the *shī'ī* clerics (Sinkaya, 2015; 83). The requirement for a new constitution was centred on *ḥākemīyat-i sharī'a* (the rule of Islamic law), as had been previously been demanded by Āyatullāh Khomeinī. Divine ordinances laid down 'for the purpose of creating a State and administering the political, economic and cultural affairs of society' (Khomeini, 2008; 22). The present Iranian constitution [404] is reported to be based on extensive work by a number of Iranian lawyers with a background in Western legal systems, such as Common law and Civil law, in addition to Islamic scholars and experts, which was thereafter put to nationwide referendum (Azizi, 2016; 245). [405] The new constitution states that 'all civil, penal, financial, economic, administrative, cultural, military, political laws and other laws or regulations must be based on Islamic criteria'. [406] Nevertheless, traces of the rule of law inspired in part by Belgian and French law are still visible within the Iranian constitution, such as the separation of the three different branches of State power, [407] i.e. executive, legislative and judiciary

[402] The European Parliament has now enshrined this in its first article 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, enshrined in Article 2 of the Treaty on European Union'. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R2092#: (accessed 31/08/2023).
[403] This was prepared by the provisional government and made public in June of 1979.
[404] English version could be found at https://www.constituteproject.org/constitution/Iran_1989.pdf (accessed 31/08/2023).
[405] The referendum of *qānūn-i asāsī jumhūrī Islāmī* (Constitution of the Islamic Republic) took place on the 2nd and 3rd of December 1979 with an approval of 98.2 percent of eligible voters, additionally an Assembly for the final review of the constitution was elected to finalise the draft, thereafter has been amended once on the 28th July 1989. The new constitution has14 chapters and consists of 177 articles, and reference to the constitution is available at https://web.archive.org/web/20061207205624/http://mellat.majlis.ir/archive/1383/10/15/law.htm (accessed 31/08/2023).
[406] See Article 4
[407] See Article 57

(Moschtaghi, 2010; 3). Nevertheless, according to critics, other than 'a formal separation of powers and the adoption of the principle of *nulla poena sine lege'* (no penalty without law) [408] there are no other aspects associated with the rule of law incorporated into the Iranian legal system (Moschtaghi, 2010; 7). This could be rejected as an overstatement because the constitution does declare the judiciary to be an independent branch of public power. [409] It also guarantees the independence of individual judges [410] who are required to base their judgements on Iran's codified law. [411] Nonetheless, the constitution sets a requirement that the parliament must ensure no legislation is passed that differs from the official School of law of Iran, [412] which is identified to be the Twelver *shī'ī,* the *ja'farī* School of law. [413] All judges are also obliged to refrain from applying executive decrees and regulations that conflict with Islamic law, [414] and refer to sources of Islamic law and advisory opinions of a *faqīh* (jurisprudent) in case of absence of codified regulations. [415]

In effect, the constitution itself, the parliamentary laws, and the judicial rulings must comply with Islamic law and have to be interpreted in that light. Subsequently, 'Islamic law outranks executive decrees, parliamentary legislation, and even the constitution' (Moschtaghi, 2009; 386). In order to enforce this requirement a constitutional organ similar to that of the French *Conseil constitutionnel* was created, *shurā-yi negahbān* (Guardian council) consisting of six *shī'ī* jurists and six legal experts, [416] ensuring compliance with the Islamic law requirement, [417] overseeing conformity of laws passed by the parliament with *sharī'a'* and the constitution (Mallat, 2007; 159). The council has the 'final judgment on the propriety of any new law or the validity of any pre-revolutionary legislation' (Entessar, 1988; 95). [418] Most importantly, the new constitution identifies the guardianship of the jurist [419] within the Islamic system of government for leadership of the *ummah*, 'entrusted with all the authorities that the Prophet and the Imāms were entitled for governance' (Khomeini, 2008; v). [420] This was not part of the draft constitution that initially had been prepared by the interim prime minister Mehdī

[408] A legal principle stating that a person could not be punished for something not prohibited by law.
[409] See Article 156
[410] See Article 164
[411] See Article 167
[412] See Article 72
[413] See Article 12
[414] See Article 170
[415] See Article 167
[416] See Article 91
[417] See Articles 4, 72 and 96
[418] The Guardian council is given power to supervise presidential and parliamentary elections making the body 'an instrument of political control' (Arjomand, 2012; 161).
[419] See Articles 5 and 107-112
[420] The current holder, Āyatullāh Khāmene'ī assumed the role in 1989 following the death of Grand Āyatullāh Khomeinī.

Bāzargān (d. 1995). [421] Nevertheless, it was reviewed by the elected Assembly of experts, but criticised by 'many political organisations and leaders' including the influential Āyatullāh Mahmūd Tāleqānī (d. 1979) (Parsa, 1989; 254). He is reported to have commented that 'the standard and level of the constitution would be much inferior to the one that we had seventy years ago' (Irfani, 1983; 199).

To others, guardianship of the jurist represents the central axis of contemporary *shī'a* political thought, 'advocating a guardianship-based political system which relies upon a just and capable jurist *faqīh* to assume the leadership of the government in the absence of an infallible Imām' (Vaezi, 2004; 53). [422] The requirement of *vilayat-i faqīh* within the Islamic government is often likened in Persian text to *nakh-i tasbīḥ* (thread of a rosary) [423] ensuring compatibility 'a just execution of State power in accordance with the *sharī'a'* (Moschtaghi, 2010; 2). An example of this capacity is Āyatullāh Khomeinī's issuing of *fatwā* 'declaring all pre-revolutionary laws null and void' (Entessar, 1988; 95). Ever since the inclusion of this principle into the constitution, there has been considerable debate by scholars and the clerical establishment concerning the guardianship of the jurist, making it a topic of intense discussion and beyond the scope of this research. Other than those advocating 'religious secularity' [424] (Ridgeon, 2022; 422), some critics have pointed to 'ideological contradictions' that such a position would have with the theory and practice of Republicanism (Shahibzadeh, 2016; 172). Opponents have stated that 'despite the seemingly democratic trappings of the constitution of the Islamic Republic, the guardian jurist is answerable to no source but God' (Amanat, 2003; 13). However, proponents have argued that the principle is democratic in nature because it represents popular will (Shahibzadeh, 2016; 183), and under the constitution, the leadership appointment is made through an elected Assembly of experts. [425] The questioning of 'divine sovereignty' as advocated by Āyatullāh Khomeinī (Ghobadzadeh and Rahim, 2014; 143), or the moderated 'mediated divine sovereignty' of Āyatullāh Muntaẓirī (Shahibzadeh, 2016; 172) highlights the possible conflict between Islam and popular sovereignty. [426]

[421] He was a long-time pro-democracy activist and a recognised academic leading Iran's interim government following the Islamic revolution in 1979.
[422] The principle was briefly covered in Chapter 3 but is extensively covered in many articles published (Rose, 1983; Moussavi, 1992; Kadivar, 2011) and (Javadi-Amuli, 1999, and Mesbah-Yazdi, 2003).
[423] Refer to https://www.hawzahnews.com/news/1570 (accessed 31/08/2023).
[424] Divorcing the clerical establishment from state structures and institutions.
[425] See Article 107; The assembly consists of 88 elected senior jurists from lists of thoroughly vetted candidates by the Guardian council.
[426] Refer to appendix1.

5.7 Iran's Multi-layered Legal System and International law

With regards to International law, neither the constitution before the 1979 revolution nor the new constitution of the Islamic Republic thereafter, has taken an explicit position toward International law. However, the constitution points to a relationship with International law, [427] by making it clear that all International treaties, protocols, contracts, and agreements must be approved by the Iranian parliament. [428] In addition, a criterion has been established for the compatibility of laws and regulations with Islamic jurisprudence (Ghorbannia, 2016; 211) that other laws or regulations must be based on Islamic conditions. [429] Whilst the constitution's foundation is 'the consideration of God's exclusive sovereignty and right to legislate and the necessity of submission to God's commands', however, it is regarded by some as having endogenous and exogenous elements. This makes the relationship between Islamic law, Domestic law, and International law from the perspective of the constitution to be 'very complex' and 'a multi-layered system' (Azizi, 2016; 245).

Considering the domestic effects of International law, the Iranian Civil code is regarded to be of importance on this issue. [430] The Iranian Civil code promulgates that 'treaty stipulations which have been, in accordance with the Constitutional law, concluded between the Iranian Government and other government, shall have the force of law'. [431] Moreover, it also states that certain stipulations [432] will only be applied insofar as the enforcement is not incompatible with the International treaties signed by the government or with the provisions of special laws'. [433] Hence, it can be argued that International treaty provisions when ratified in compliance with the constitutional prerequisite 'share the same rank to regular Parliamentary laws in the domestic hierarchy of norms' (Ziyaei-Bigdeli, 2007; 89). Also, the Iranian legal structure 'provides the possibility to invoke provisions of International treaties before domestic courts' (Moschtaghi, 2009; 387). [434] Considering the factors above, one can

[427] The sections that are relevant to International law are located in various chapters and articles, such as chapter 10 (on foreign policy) and articles 3(16) and 11 (on *ummah*), 77 (on treaties), 81 (on concessions agreements), and 125 (on signing treaties).
[428] See Article 77
[429] See Article 4
[430] The Civil Code of Iran was promulgated in 1928 with considerable help from *shī'ī* jurists (Arjomand, 2012; 169), it has since been amended in 1982. The Code is divided into three parts, property, personal status of individuals, and the law of evidence. English version could be found at https://www.refworld.org/docid/49997adb27.html (accessed 31/08/2023).
[431] See Article 9
[432] Article 7 and Articles 962 to 974
[433] See Article 974
[434] 'The Iranian judiciary explicitly confirmed this finding in regard to the International Covenant on Civil and Political Rights' (Moschtaghi, 2009; 387).

argue that in case of a conflict between the two provisions of parliamentary legislation and International treaties, the rule of *lex posterior derogat legi priori* (a later law repeals an earlier one) [435] should be applied. However, since the constitution is ranked higher than international treaties, and the constitution requires all laws to be based on Islamic criteria, [436] thereby treaty provisions which are in conflict with Islamic law are not binding on the Islamic Republic of Iran (Ziyaei-Bigdeli, 2007; 90). When it comes to non-treaty based International law, these 'can only be integrated into the Iranian legal system by a transformation act', in order to ensure a conflict with Islamic law does not occur (Moschtaghi, 2009; 389). The constitution is thus the key to guaranteeing Islamic law prevails over any other form of law, including International law (Mir-Hosseini, 2010; 361). [437]

In reviewing Iran's stance towards International law, it is important to note that Iran is party to most major international treaties, including human rights and humanitarian law conventions. In fact, Iran has a long history of supporting these without reservations. Iran was an early signatory of the Vienna Convention on Diplomatic Relations on 27 May 1961, ratified on 3 Feb 1965, [438] and the Vienna Convention on Consular Relations on 24 April 1963, ratified on 5 June 1965. [439] Moreover, it has a high ratification status on major International Human rights treaties including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights. [440] Nevertheless, breaches to these internationally recognised standards by Muslim States have always been referenced as justifications based on Islamic law, thus it is argued by some as indicating possible 'tensions between Islam and the other constitutional principles' (Moschtaghi, 2012; 684). However, this view is rejected by others, pointing out that such a blanket statement is unjustified, since 'there is no International consensus on the *sharī'a* interpretation'. Subsequently, there is always scope for the development of rules and regulations on a case-by-case basis, depending on interpretation of the Islamic law. For example, the Iranian legal system has within its structure the presence of the Expediency

[435] This is based on article 30 of the 1969 Vienna Convention on the Law of Treaties.
[436] See Article 4
[437] Iran is not alone in such ranking arrangement, in most States the constitution 'enjoys a rank higher than that of International treaties' (Aust and Demir-Gursel, 2021; 51).
[438] See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-3&chapter=3&clang=_en (accessed 31/08/2023).
[439] See https://treaties.un.org/pages/showDetails.aspx?objid=0800000280050686 (accessed 31/08/2023).
[440] See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=81&Lang=en (accessed 31/08/2023).

council, this is 'a quasi-legislative branch that has the power to interpret the constitution and enact laws as it deems best for the national interest' (Atai, 2021; 17). Others further elaborate that Iran's acceptance of International law is subjective, the basis of the 'Islamic Republic' of Iran is formed 'on the basis of standards' and these must be met, 'It's not just national interest, but religious rulings and ethical values' (Najafi, 2016; 5). They point out that Āyatullāh Khomeinī identifies the leading of society according to 'standards of reason, justice, and fairness' as absolute prerequisites, that must be maintained much like mathematical rules that cannot be changed and replaced by other rules (Khomeini, 1989_f; 405). Those who accuse Iran of being a theocracy say the clerical leadership is 'not bothered with formalities of withdrawing Iran's adherence to International instruments on rights formally accepted by the previous government', but accept that these were also 'mostly ignored by the Shah in practice'. They also point out that 'the USA employs double standards in its approach to human rights aboard, criticizing every defect in Iran vociferously' while at the same time 'remaining silent about major violations in Saudi Arabia and other allies' (Forsythe, 2006; 182). To counter such a negative portrayal of Iran's intentions, its representative at the United Nations at the event on 'The Rule of Law at the National and International Levels' formally accepted the provision of International law by Iran, pointing out that 'the rule of law as a universal value should be observed at national, regional and international levels'. He also highlighted that Iran believes 'the key to upholding the rule of law is to respect the well-established principles of International law as enshrined in the United Nations Charter'. Nevertheless, Iran's practices on the implementation of multilateral treaties were identified as being based on the requirements made by its constitution [441] and its civil code. [442] Thus, the Iranian government allocated time for consultations and deliberations 'at the national level, such as creating some ad hoc committees comprising of various governmental entities in different branches as well as academicians' during the treaty making process leading to 'adoption of the treaty through its signature, ratification or accession'. [443] At a later event on effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives, its representative reiterated Iran's 'respect to the privileges and immunities of the diplomatic missions', stating that Iran 'continues to remain committed to ensuring due compliance with the provisions of those instruments'. He identified that 'the work of the diplomatic missions strictly depends on peace, safety, quiet surroundings and the environment'. However, he pointed out that

[441] Article 77 is mentioned
[442] Article 9 is mentioned
[443] This was confirmed at the 71st Session of the United Nations General Assembly, Retrieved from https://www.un.org/en/ga/sixth/71/pdfs/statements/ rule_of_law/iran.pdf (accessed 31/08/2023).

'Iranian diplomatic and consular missions and their personnel have been targeted by illegal acts' in certain countries such as Iraq resulting in damages and casualties, and others such as the United States that have been subjected to 'inhumane movement restrictions' jeopardizing this important principle. [444]

5.8 Iran's U.S. Embassy Takeover

On the 4th of November 1979, around 3,000 militant students stormed the U.S. embassy in Tehran, taking sixty-six American diplomatic and consular staff hostages in the process. [445] The event that marks the dramatic reshaping of the politics in both countries occurred 'while the new constitution was being debated' by the Assembly of experts (Parsa, 1989; 254). The Americans have viewed the reason for the embassy takeover as the event that provided popular support for the Islamic government, 'in an internal struggle within the larger framework of the Islamic and Iranian revolution' (U.S. Department of State, 1981; 5). [446] However, the Iranians have viewed the embassy takeover, as the event that stopped 'a manifestation of a U.S. resolve to return to a position of influence in Iran' (Cottam, 1989, 210). [447] This difference in perspective mirrors that of the larger picture concerning the revolution itself. [448] On one side of the assessment, the revolution in Iran is described as 'a complex coalition of opposition groups' that merged to overthrow the Shah (Voll and Sonn, 2010; 15), one that following the revolution had 'splintered into rival factions that engaged in a bitter power struggle' (Philips, 2009; 1). On the other side of the assessment, the revolution in Iran is identified as being different to other revolutions, namely by its Islamic identity (Ashrafi, 2008, 5), dismissing various theories proposed for the occurrence of the revolution, highlighting Āyatullāh Khomeinī's leadership as pivotal to the revolution (Haghighat, 2000; 8). There is no doubt that the revolution was the outcome of diverse factors, the culmination of which led to the Islamic revolution, but Āyatullāh Khomeinī's

[444] This was confirmed at the 75th Session of the United Nations General Assembly, Retrieved from https://www.un.org/en/ga/sixth/75/pdfs/statements/protection_of_diplomats/16mtg_iran.pdf (accessed 31/08/2023).
[445] Following the embassy takeover, thirteen hostages who were African-Americans or female were released on the 13th and 19th November 1979, six other Americans escaped the takeover through the Canadian embassy, the remaining fifty-three were kept for four hundred and forty-four days until their negotiated release on 20th January 20 1980, about two minutes into the Regan Presidency (Farber, 2006; 1).
[446] This difference in perspective is of importance and links up to the discussion around the classification of the Islamic government as an Islamic State or a Muslim State..
[447] At the time American ambassador William Sullivan started his tenure in 1977, 'the US embassy housed 2000 staff', there were also 'consulates in Tabriz, Isfahan, and Shiraz' and 'US-Iranian societies in Mashhad, Ahwaz and Hamadan' (Ali, 2018; 60).
[448] 'The United States, which had been pushed out the door, was trying to return via the window' as claimed by Iran's negotiator at the Algiers agreement (Lewis, 1983; 1).

political awareness and astute approach to the events allowed him to guide that revolution and gain recognition as its leader. [449]

Following the Islamic revolution of 1979, the provisional interim government appointed chose not to sever Iran's diplomatic relations with the United States (Darvishi-Setalani, 2008; 115), as such transactions and contracts between the two States continued. In fact, four days prior to the American embassy takeover, [450] a politically sensitive meeting was held between U.S. National Security Advisor Zbigniew Brzezinski (d. 2017) and interim Prime Minister Mehdī Bāzargān (Lorentz, 2010; 360). [451] Subsequently the militant elements of the revolution who were waiting for an opportune moment to renounce the moderates, used the meeting as the *casus belli* [452] for the American embassy takeover (Milani, 2018; 166). The approach of the provisional government had greatly alarmed the revolutionary elements within Iran who were against any compromise with the so-called 'Great Satan', thus 'whoever refused to toe Imām's line was accused of being counter-revolutionary' (Kamara, 2013; 156). [453] The event is thus regarded as the beginning of the elimination of 'democrats, liberals, secularists, and leftists' from the structures of power in Iran (Mir-Hosseini, 2010; 332). A day later, the provisional government resigned in protest at the event, and Bāzargān's resignation letter mentions 'repeated interferences, inconveniences, objections and disputes' that had made him and his colleagues unable to continue their duties (Khalili, 2010; 342). What had further complicated the American embassy takeover was the presence of the deposed Shah in America under the pretext of medical treatment, this proved to be a catalyst for resentment in Iran. It was viewed as a plot by America to return the Shah to power through a *coup d'état* replicating what had previously occurred in 1953 (Lorentz, 2010; 25). Nevertheless, the U.S. president in his meeting with select congressional leaders was dismissive of a link between events. 'I cannot abide Americans in confusing the issue by starting to decide whether the history of Iran before the Shah left was decent or indecent,

[449] Āyatullāh Khomeinī's had emergence on the national scene had begun in 1963 'as the foremost leader of opposition' (Algar, 2006; 345).
[450] The embassy takeover begun on 4th November 1979, when 3,000 Iranian students seized the U.S. embassy in Tehran, taking sixty-six American hostages in process, six other Americans escaped the takeover. Thirteen hostages who were African-Americans or female were released on the 13th and 19th November 1979, the remaining fifty-three were kept for four hundred and forty-four days until their negotiated release on 20th January 20 1980 (Farber, 2006; 1).
[451] The meeting took place on 1st November, 1979 in Algiers.
[452] Both sides regard the meeting as the event provoking the hostage crises.
[453] The militant students were named *dāneshjūyān-i khaṭ-i imām* (university students following Imām's path) to dispel the idea that they were leading the crises, but rather following Āyatullāh Khomeinī's instructions. Ironically in later years they came to challenge the regime by seeking its political modernisation, Āyatullāh Mahdavī Kanī pointed out that those who call themselves followers of Imām's path are now wondering if the regime has a future, doubting the guardianship of the jurist and its foundations (Moslem, 2002; 248).

was proper or improper, I do not care about that' (Solomon, 2010; 551). [454] Mr Carter as the previous U.S. President, has since referred to Iranian leadership as 'irrational and even insane' (Houghton, 2006; 265). [455] However, for the Iranian government the issue of concern was centred precisely on the U.S. support for the Shah. If the U.S. government was embattling with the hostage crisis, Iran was recalling 'memories of long periods of imperialism and U.S. interference in Iranian affairs' (U.S. Department of State, 2003; 60) and ensuring they were not repeated. The source of the continuing tension in Iran dates back to 1953 'when the United States played a significant role in orchestrating the overthrow of Iran's popular Prime minister' (Byrne and Gasiorowski, 2015: xiii) of Dr Muḥammad Muṣaddiq (d. 1967). This centred on his plan to nationalise the country's oil industry, returning the Shah to power. [456] At his trial Muṣaddiq proclaimed 'my only crime is that I nationalised the Iranian oil industry and removed from the land the network of colonialism and the political and economic influence of the greatest Empire on earth' (Burrell, 2008; 26).[457] The Americans portrayed this as saving Iran from falling into Communist hands, [458] and revolved around the post-1952 decision by U.S. President Eisenhower (d. 1969) of greatly increasing U.S. involvement in the Persian Gulf, describing it as the 'most strategically important region of the world' (Gavin, 1999; 56).

'The American embassy takeover was intended by the militant students to 'block any improvement in relations with the United States', despite their demand for 'the return of the Shah to stand trial' (Philips, 2009; 1). [459] Following the takeover and the subsequent government's resignation, publically there were no formal statements about the incident from Āyatullāh Khomeinī, other than appointing the Council of the Islamic Revolution to govern Iran. [460] Privately, those leading the student's camp had contacted Āyatullāh

[454] He begins by stating 'I don't give a damn whether you like or do not like the shah. I don't care whether you think he is a thief or not. I don't care whether you think I was wise or not wise in accepting the shah as one of our allies'.
[455] For the former Presidents in his memoirs claims that the Iranian leader 'was acting insanely' while 'we always behaved as if we were dealing with a rational person' (Carter, 1995; 468).
[456] The CIA had regarded the 1953 *coup d'état* code name operation Ajax as a successful mode model for other covert operations during the Cold War, such as the 1954 government takeover in Guatemala or the failed Bay of Pigs invasion in Cuba in 1961 (Johnson, 2007; 4).
[457] For a full coverage of Dr Muṣaddiq's account of the 'Oil crises' and the involvement of the International Court of Justice refer to Musaddiq (1988).
[458] This is from a statement from the U.S. secretary of State Madeline Albright made in 2000, recognizing the 'setback for Iran's political development', and why they 'resent this intervention by America's in their internal affairs'.
[459] It should be noted that 'Under title 18 of the United States Code, section 3181, no extradition can take place without a treaty between the United States and the requesting State', and there was no extradition treaty between the U.S. and Iran (Bassiouni, 1980; 620).
[460] The Council of the Islamic Revolution was a key instrument during the transitional period (12th January 1979 to 17th July 1980) for the Islamic government in Iran (Lorentz, 2010; 272).

Khomeinī's son to inform him of the event and seek approval from the leader of the revolution for their action (Beheshripour, 2010; 17). The public approval came with Āyatullāh Khomeinī's son arriving at the embassy, sent to assess the situation, and expressing solidarity with the militant students (Amirahmadi, 1993; 157). Āyatullāh Khomeinī regarded the U.S. embassy to be 'a den of spies' as proclaimed by the militant student's communique (Bowden, 2007; 69). In light of the American interference in Iranian affairs (Darvishi-Setalani, 2008; 115; Samuels, 2005; 109), the event was referred to as the 'second revolution, more important than the first' (Shah-Ali, 2005; 72; Amirahmadi, 1993; 157). [461] In retrospect, this importance has become clearer that the American embassy seizure had, two distinct aftereffects, international and internal, deemed to be critical to the Islamic revolution's survival. In the international sphere, the Western policymakers who had underestimated the Islamic revolution of Iran's revolutionary ideology were provided with 'a glimpse of something new and bewildering', it was the dawn of a new encounter, referred to later as the 'militant Islam' (Bowden, 2007; 4). Although at the time, there was a deep reluctance by the U.S. to admit that 'the great superpower, with all the diplomatic and financial resources at its disposal, was unable to protect the interests of its citizens' (Farber, 2006; 143). The superpower vulnerability had become apparent with 'the bluntness of the military instrument' (Armstrong, 2009; 108). In the internal sphere, for the first time, 'the shape of the ongoing struggle' between different political groups inside Iran had 'spilled into the open' (Bowden, 2007; 367). The event revealed that the moderates, secularists, liberals, nationalists, and communists, were about to be eliminated, and 'the broad coalition of anti-Shah forces had begun to disintegrate' (Cashman and Robinson, 2021; 292). 'The religious conservatives were going to shape Iran's future' (Bowden, 2007; 140), and the American embassy documents were subsequently leaked selectively to discredit political opponents (Daniel, 2001; 199). [462] Although few had the foresight to see or the courage to differ from the official stance, in hindsight, many past revolutionary personalities have now expressed reservations about the American embassy seizure in light of continuing tensions. [463]

Although a group of militant students had initiated the American embassy takeover, the event had provided the leader of the revolution an opportunity to stop possible American

[461] Āyatullāh Khāmene'ī speaks of being in a pilgrimage at the time of the takeover and being anxious of who was behind the events, but once satisfied of their intentions and faith, extended his support to the students upon his return. Retrieved from https://www.isna.ir/amp/1400081410296/ (accessed 31/08/2023).
[462] An example of this was the released communiques that 'supposedly proved Āyatullāh Shariatmadari to have been in collusion with the Shah and the United States' (Daniel, 2001; 207).
[463] This includes senior figures such as Āyatullāh Muntaẓirī (Muntaziri, 2009; 1), Āyatullāh 'Alī Akbar Hashemi Rafsanjani (d. 2017) (Hashemi, 2020; 1), and Mahmud Ahmadinejad (Ahmadinejad, 2019; 1).

plots to weaken and overturn the Islamic Republic (Beheshripour, 2010; 15). The embassy seizure had overturned their secret plans and 'America cannot do a damn thing' (Khomeini, 1989_a; 516). For Āyatullāh Khomeinī, the United States was the 'aggressor that would always seek to dominate Iran, and thus it was best to end the relationship altogether', the event marking confrontation with the 'global shah never to be trusted' (Paterson, Clifford, Hagan, 1988; 620). In fact, Āyatullāh Khomeinī states 'I have serious doubts on the existence of an embassy or the presence of any diplomats'. [464] He clarifies that 'America did not regard Iran as an independent State parallel to itself to have an embassy or to send diplomats', 'Iran was regarded as their possession and Shah was their servant, such a place did not require diplomats' (Khomeini, 1989_b; 331). For Āyatullāh Khomeinī these were intelligent officers sent for conspiracy and espionage, not just for Iran but also for the whole area, as such it was regarded as nothing but a den of spies (Beheshripour, 2010; 21). His top priorities were not resolving the hostage crisis, for which he refused to meet American emissary, [465] but the resumption of 'the establishment and of the constitution, and the institutions under that constitution a framework within which decisions could be made and responsibilities shared' (U.S. Department of State, 1981; 37). [466] Iran was intent on standing up to America (Darvishi-Setalani, 2008; 117), 'in every revolutionary action, the first step is to see if action is possible or not, by this deed you have proven that you can stand up to America' (Khomeini, 1989_b; 327). Despite the Shah leaving the United States, [467] and the U.S. severing its diplomatic relations with Iran, [468] the Iranian government did not resume contact until much later. 'It was not until the institutions of the revolution were fully in place and the power struggle came to rest' that Iran engaged in decisively resolving the hostage crisis (U.S. Department of State, 1981; 13). [469] In a direct rejection of the criticisms, the present leader of the Islamic Republic, Āyatullāh Khāmene'ī has lately referred to the importance of this pivotal stance by Āyatullāh Khomeinī. He has pointed out that 'recent documents released by the U.S. show that Carter had in fact instructed the CIA for regime change in

[464] This was mentioned in his meeting with the Muslim author Muḥammad Ḥasanayn Haykal (d. 2016).
[465] President Carter sent his envoys Ramsey Clarke and William Miller on 7th Nov 1979 to negotiate with Iran, but Āyatullāh Khomeinī refused to talk to America, 'enemy number one', and instructed all government personnel to avoid meeting them either (Khomeini, 1989c; 503).
[466] Other than the election for the approval of the constitution on 3rd of December 1979, prudential elections were held on the 25th January 1980, and the two rounds of the election for the parliament took place on 14th of March and 9th of May 1980, and the Prime minster was appointed on 12th August 1980.
[467] He left on 15th December 1979 for Panama and later for Egypt, where he died.
[468] On 7th April 1980, the President ordered the Iranian embassy in Washington and Iran's five consulates closed and all of Iran's diplomats and personnel out of the country. (Christopher and Mosk, 2007; 167).
[469] During this time, the Americans attempted a rescue mission on the 24th April 1980 that failed in the desert of Ṭabas, resulting in the death of eight American soldiers.

Iran' (Tasnim, 2022, 1). [470] The presidential finding attachment to this document states 'conduct propaganda and political and economic action operations to weaken and disrupt the Khomeinī regime; make contacts with Iranian opposition leaders and interested area governments in order to establish a broad, anti-Khomeinī front capable of forming an alternative government' (U.S. 1979, 1). [471]

Finally, having achieved its immediate goals related to its constitution, a series of events convinced Iran the continuing detention of the hostages was becoming counter to Iran's best interest (U.S. Department of State, 1981; 134). These included an actual attempt at a *coup d'état* to overthrow the newly established Islamic Republic of Iran and its government (Gasiorowski, 2002; 645). [472] Also, Iran had been invaded by Iraq soon after the revolution when it was deemed most vulnerable, [473] this occurred at a time when the U.S. had embargoed Iranian funds. [474] As such, the war further reduced Iran's major source of revenue, oil exports, due to 'equipment breakdown and war related destruction of petroleum facilities and pipelines' (Paterson, Clifford, Hagan, 1988; 622). Although the Iranian institutions were being set up there were 'constitutional problems' with the newly elected President, [475] that ultimately led to his impeachment by the parliament (Zabir, 2012; 16). Finally, the hostage crisis had led to 'severe repercussions in the United States', which led to 'the defeat of presidential incumbent Jimmy Carter in the election of 1980' (Armstrong, 2009; 108). 'The benefits of the hostage crisis to the Reagan campaign and the timing of the hostage release was not coincidental', and releasing the hostages before November 1980 would in all likelihood cause Carter to be re-elected, and their continued detention would have meant dealing with a new U.S. administration (Kamrava, 2013; 160). [476] The combination of the above factors mentioned led to an agreement between Iran and the U.S.

[470] This reference is to a memorandum from the director of CIA to the Secretary of State concerning the return of Shāpūr Bakhtīyār (d. 1991), who served as the last Prime Minister of Iran under the shah.
[471] A handwritten note by President Carter reads 'Zbig, change wording to let it be positive, pro-US and pro-democracy'.
[472] The Nuzhih plot led to the arrest of hundreds of officers on 9th and 10th July 1980.
[473] Open warfare begun by Iraq on 22nd September 1980 'for a geopolitical gain' as well as 'preventing Iran from formatting a revolution in Iraq'. The war ended on 20th August 1988 following UN Security Council Resolution 598, returning to the *status quo ante bellum* prior to the war (Nelson, 2018; 246).
[474] As a result of the hostage crises, President's executive order 12170 froze Iranian assets including bank deposits, gold and other properties, there was also a trade embargo imposed by the US (Kumar, 2013; 365). Americans also began filing about 400 actions against Iran in United States Courts and attaching, and enjoining the transfer of, Iranian assets (Christopher and Mosk, 2007; 167).
[475] The first Iranian President was Abū al-Ḥasan Banī-Ṣadr (d. 2021) was impeached for incompetence on 21st June 1981, thereafter the Prime minister Muḥammad 'Alī Raja'ī (d. 1981) was elected the 2nd August 1981 as President, but was assassinated alongside his Prime minister on 30th August 1981.
[476] The Reagan campaign team took part in a clandestine operation of asking Iran to delay the release of hostages till after the election in order to sabotaging U.S. President Carter's Re-election (Baker, 2023; 1)

outgoing government brokered by the Algerian government (Powers, 2010; 209). [477] The hostages were released about two minutes into the Reagan presidency, Āyatullāh Khomeinī's 'final slap in the face' of the beleaguered U.S. President, tactically showing his ability to influence American political outcomes (Houghton, 2001; 143). Importantly, the accord incorporated the Iran-United States Claim Tribunal which committed both governments to 'numerous obligations designed to resolve the issues that had arisen as a consequence' of the revolution and the American embassy takeover (Combs, 2000; 306). [478]

5.9 Iran's Legal Arguments around the Hostage crisis

The issue of diplomatic immunity and the covert operations by the United States of America in Iran prior to the Islamic revolution of 1979 was crucial to the legal arguments surrounding the U.S. embassy takeover crises. The U.S. legal approach in the chaos and frustrations following the militant student seizure of the embassy centred around the 'protection of the hostages' based on 'their diplomatic and consular statuses. Considering Iran had never denied its obligations under the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, the legal argument seemed sound. Moreover, seeking the protection of the human rights of the hostages under customary law could also have been an option, but 'while Iran had ratified the International covenant on civil and political rights in 1975, the U.S. did not ratify it till 1992' (Galani, 2021; 35). However, despite various efforts 'attempted through different avenues, [479] including the International Court of Justice' (Klein, 2021; 630), [480] the crisis was not ended soon. The Iranian government's position centred on espionage, and the claim that the American embassy was involved in activities in violation of Article 41 of the Vienna convention 'duty not to interfere in the internal affairs of the host country' (Flint, 2004; 377). Āyatullāh Khomeinī commented that 'this place you have called an embassy is nothing but a den of spies, you can see for yourself by what is present, whether it was operating an embassy or

[477] The mutually acceptable resolution of the crisis is known as the Algiers Accord, signed on 19th January1981. Retrieved from https://iusct.com/wp-content/uploads/2021/02/1-General-Declaration_.pdf (accessed 31/08/2023).
[478] The Iranian parliament was given the role for resolving the hostage crises but within Āyatullāh Khomeinī's four conditions, of not interfering in Iranian internal affairs, unfreezing of Iranian assets, cancelling all legal claims and sanctions against Iran, and returning to Iran the assets of the Shah (Combs, 2000; 323).
[479] This included 'negotiations, diplomatic protests, debates in the UN Security Council, appeals by the President of the General Assembly, a fact-finding mission established by the UN Secretary-General, a far-reaching sanctions regime instituted unilaterally by the US against Iran, mediation through officials from countries such as Switzerland and mediation through the good offices of the Algerian President' (Klein, 2021; 630). Only the last initiative was productive resulting in the Algiers Accords of 19th January 1981.
[480] Both the Court interim report of 15th December 1979 and final judgement of 24th May 1980 required Iran to release the hostages and given full diplomatic protection with freedom to leave Iran.

for carrying out espionage' (Khomeini, 1989_b; 269). [481] The U.S. government petition concerning Americans detained in Iran at the International Court of Justice at The Hague, [482] detailing 'the support and encouragement the Iranian government has given to the group holding the embassy', and its endorsing 'the charge of espionage levelled against embassy personnel', and the threats of placing them in trial (ICJ, 1982; 4). The U.S. position emphasised that Iran had 'defaulted on their obligation to protect the American embassy and its staff', and had in fact become 'wholehearted participants in the violations of International law that had occurred' (Rafat, 1980; 427). Intrinsically, the case targeted the violation of international obligations stipulated by the Vienna Conventions by 'permitting, tolerating, encouraging, adopting, and endeavouring to exploit, as well as in failing to prevent and punish, the conduct' of the militant students involved (ICJ, 1980; 7). Iran denied any jurisdiction on the part of the court, [483] but specified that 'the hostage dispute had to be considered in its wider context and, consequently, was not appropriate for adjudication by the court' (Rafat, 1980; 428). Iran asserted that the U.S. embassy had been used 'as a staging ground for a CIA *coup d'état* that overthrew 'the constitutional government of the country', [484] and such conduct, derogates its status from the Diplomatic and Consular Relations Conventions (Rafat, 1980; 455), and subsequently did not participate during the court's proceedings. Nevertheless, the International Court of Justice by referring to article 53 [485] rejected Iran's objections to the jurisdiction of the court and subsequently found Iran to be in contravention of its obligations under rules of general International law (ICJ, 1980; 7). The court required Iran to 'respect the protection, immunities and privileges of the U.S. diplomatic and consular staff' (Klein, 2021; 632). Nevertheless, it is argued by some making analysis of the ruling that 'the condemnation of Iran's culpability without inquiry into the U.S. role in the events of 1953' raises questions about the court's ability to deliver equal justice (Rafat, 1980; 456).

As explained by the full account of the event occurring prior to and during the American embassy takeover, the Islamic nature of the revolution in Iran was not the basis of the argument and the U.S. position had avoided reference to the heated constitutional debate

[481] A recent seven-part documentary has been made in Iran on recommendations of Āyatullāh Khāmene'ī, called 'this is not an embassy' centred on documents found at the American embassy identifying it as 'a base govern Iran; Retrieved from https://www-tasnimnews-com.translate.goog/fa/news/1401/08/09/2796254/ (accessed 31/08/2023).
[482] It was placed under Article 40(1) Of the International Court of Justice.
[483] There is precedent for this by France, Iceland, and Turkey in previous cases of contested jurisdiction.
[484] This was through a short written response.
[485] Article 53 requires the Court to satisfy itself, not only that it has jurisdiction, but also that the case is well founded in fact and law.

around the Islamic system of government in Iran. The legal arguments regarding the affair were entirely based on the 'Western legal perspective', and thus it can be argued that the Islamic angle was not deemed crucial to resolving the crises. However, had the Islamic law's perspective 'to the body of diplomatic immunity and inviolability' been used by the U.S. government (Ismail, 2013; 22), it might have had a possible 'three-fold effect' on Iran. The 'persuasive value would have been immensely greater', it would have shown 'an understanding of Islamic culture'; and could have led 'a greater readiness on the Iranian side to negotiate' (Weeramantry, 1988; 160). For Iran, the issue of the Islamic Republic was not the basis of their counterargument either, they did not base 'a single argument on Islamic law' nor express a *sharī'a* based reservation. According to Āyatullāh Muntaẓirī, an embassy is a base of the diplomatic mission and should be regarded as the country's soil within the host State, according to *fiqh* 'the seizure of the embassy is thus a deceleration of war' (Muntaziri, 2009; 1). [486] Thus, the Iranian stance is rather highlighted through their objection to International law's noncompliance by the history of U.S. interventions in Iran. This was argued to be a blatant 'conflict with all international and humanitarian norms', and the American embassy takeover was noted to be 'a marginal and secondary aspect of an overall problem, one such that it needed to be studied separately' (ICJ, 1980; 9). It is worth remembering that even while opposing the court's jurisdiction, Iran emphasised the respect 'held *vis-a-vis* the court and its merits for peaceful reconciliation' (Moschtaghi, 2009; 386). The International Court of Justice indicated that they understood the claim that 'espionage and interference in Iran by the United States centred upon its embassy in Tehran' but indicated this to be 'unsupported by evidence furnished by Iran before the court'. Hence it was decided that 'the court could form a judicial opinion on the truth or otherwise of the matters' (ICJ, 1980; 39). Although the Iranian government was beleaguered by the ruling, the experience allowed Iran to 'learn about the value and relevance of the International Court of Justice'. This allowed Iran to become 'a more sophisticated actor in international legal proceedings', thereafter 'fully engaging as a respondent in future cases rather than returning to a policy of non-participation' (Klein, 2021; 649).

A further argument with regards to Islamic law not being the basis of hostage taking in Iran was the actual timing, the American embassy takeover occurred a month before the approval of the new constitution in Iran that ultimately proclaimed the State as an Islamic Republic. Thus, crimes committed prior to the constitutional approval and judicial changes in Iran

[486] This stance is reiterated by his student Ahmad Qabil in his published article on the American embassy seizure (Qabil, 2013; 129), which is regarded as 'irritating the conservatives' (Ridgeon, 2020; 10).

would have been subject to either the Iranian criminal laws identified at that time. Alternatively based on accepted treaties within International law such as the Vienna Conventions on Diplomatic and Consular Relations (Bassiouni, 1980; 622). Subsequently, it can be argued that careful examination of diplomatic law standards on the Tehran hostage crisis case would point to compatibility between International law and the principles of *sīyār* as indicated in Chapter 4. This can be further identified by the militant student's admission that prior to the American embassy takeover; their leaders had avoided approaching Āyatullāh Khomeinī with their plans. It is pointed out to them that as leader of the revolution, 'we should not expect his consent if we were to inform him of our plan to occupy the embassy, an action which is in violation of International rules' (Milani, 2018; 166). Once the militant students had entered the embassy, ignoring the provisional Iranian government's orders to vacate, contact was made with Āyatullāh Khomeinī's son. Since there is compatibility of both systems with regards to diplomatic protection, Āyatullāh Khomeinī questions the nature of the premises as an embassy, or the activity of those involved as diplomats by proclaiming the event as 'the seizure of the den of spies' (Beheshripour, 2010; 21). The action taken was thereafter presented as reflecting the feeling of the Iranian nation toward the U.S. government's disregard towards Iran's sovereignty, in many speeches referring to the action of the students as 'a natural consequence to the injuries that our nation suffered from America' (Khomeini, 1989_c; 84). Ironically, within the debate around elements of International law, there has been a considerable shift by both parties in recent years. The U.S. has withdrawn from international accords, saying the Court has been 'politicised' and would 'review all international agreements that could expose it to binding decisions by the International Court of Justice' (Rampton, Wroughton, and, van den Berg, 2018; 1). The U.S. withdrawal from the Treaty of Amity, [487] and the withdrawal from the optional protocol for the Vienna Convention on Diplomatic Relations in 2018, follows an earlier withdrawal from the optional protocol for the Vienna Convention on Consular Relations in 2005, severing its own ties to legal institutions and settings that it once relied upon for during the hostage crisis. Whilst Iran has turned to the International community and the International Court of Justice in pursuit of relief (Anderson, 2019; 1). In the case of violations of the Treaty of Amity, Iran stressed 'the legitimacy of the Islamic Republic of Iran to the international community' for bringing 'political and psychological pressure on the United States' (Klein, 2021; 650). Also in light of attacks on other embassies in later

[487] The Treaty of Amity between the United States of America and Iran was signed in 1955.

years, [488] were conscious of 'the tarnish this would cause the Islamic Republic', the Iranian leadership has warned militant students to 'seriously refrain from attacking foreign embassies' (Tasnim, 2016; 1).

5.10 Conclusions

In answering our key research question within the context of our identified theoretical frameworks, the discussions covered in this research on the concept of diplomatic immunity and privileges appear to indicate a degree of compatibility between Islamic from the *shī'a ithnā-'asharī* doctrine and International diplomatic laws. These discussions also comprised of a brief review of certain historical events advocated by Muslim scholars in their narratives of around *sīyār.* Thus the case made for the compatibility of Islamic diplomatic law and International diplomatic law was comprehensively assessed. In a similar manner to public International law, the protection and immunity amongst other topics of Islamic international law, 'relates to the matter of diplomats and their family' and 'the matter of jurisdiction over diplomats' (Malekian, 2011; 45). As such, it can be argued, particularly by those advocating compatibility, that if we put aside the linguistic, cultural and certain legal obstacles, we can see in essence the codification of diplomatic immunity principles within Islamic diplomatic law. This would help in rejecting the incommensurability argument, as Islamic immunity in *sīyār* does not contradict the principles embedded in International law, since there are many factors within diplomatic immunity that are recognised and enshrined within *sharī'a* (Lewis, 1988; 76). Moreover, it can also be argued that a legal obligation exists for the Islamic State to abide by the terms of treaties irrespective of whether the other party is Muslim or not. The proponents of such a stance often insist that this can also be supported by the negotiating history and conduct of the Prophet with examples provided that include the Charter of Madīnah and the Treaty of Ḥudaybīyyah. However, those opposing such a stance counterargue that such accounts of history are not definitive and 'must be used with great care' (Donner, 2012; 91). If interpretative argumentations are avoided, and the letter of the law is applied from Islamic law as set by Qur'ān and *Sunnah,* there is little compatibility. We are reminded that in the recorded narratives, there are occasions of clear tension as highlighted by the incident concerning the killing of the Jews of *banū qurayẓah.* Additionally, what is being presented, is in reality a form of security and protection of envoys and diplomats, and this is not entirely the same as diplomatic immunity, at least not in the

[488] The British embassy in Tehran was attacked on 11th November 2011, and the Saudi diplomatic missions were attacked on 2nd January 2016.

context of modern conceptions of International law and diplomacy. Nonetheless, 'in contemporary times diplomatic immunity has many meanings', but the attachment of security in Islamic law still identifies those envoys and ambassadors as enjoying total protection while within the Islamic State, 'regardless of their views and the nature of message they were delivering' (Bsoul, 2013; 134). Consequently, there is still a general sense of compatibility by examples such as 'personal inviolability', 'immunity from the jurisdiction of domestic courts', 'freedom of religion' and 'exemption from taxation' (Ismail, 2016; 168). In support of such a stance from early Islamic historiography material, Muslims have even argued that for example al-Shaybānī 'granted exceptional levels of immunity and certain privileges to diplomats and envoys, some of which are not found in many of today's legal systems (Bashir, 2013; 153).

In any event, it is suggested that if one considers the Islamically controversial topics and those that are not found or are debatable in Muslim sources. The very fact that diplomatic immunity and its particular criteria are not specifically prohibited would indicate that they are not inherently incompatible and reject incommensurability. These include issues such as the freedom of movement or communication, or the inviolability of the mission's premises or archives, or the sensitive topic of diplomatic bags. However, a final point of concern that is often made regarding this stance, is the exception for the *ḥudūd* crimes in diplomatic immunity (Bassiouni, 1984; 1840), which in turn indicates that diplomatic immunity in Islam cannot be absolute (Munir, 2000; 49). Under International law, the codification of personal inviolability has highlighted the immunity of diplomats from the criminal and civil jurisdiction of the receiving State within Article 31(1) of the 1961 Vienna Convention on Diplomatic Relations. Although this sets out the terms of the criminal immunity without an exception; nevertheless, an element of granting immunity is the obligation to obey local laws as indicated in Article 41. [489] Nevertheless, it can be argued that the Islamic stance is not too dissimilar from International law, because there is an agreement that 'diplomatic privilege does not import immunity from legal liability, but only exemption from local jurisdiction' (Van Alebeek, 2008; 134). This is because there are factors seen in various articles such as declaring the diplomat *persona non grata,* or the breaking of diplomatic ties, the waiving immunity by the sending State, the diplomat can face the jurisdiction of his own national courts for crimes committed in the receiving State, [490] resulting in diplomats being

[489] Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (accessed 31/08/2023).
[490] Envisaged in Article 31 (4).

prosecuted for serious crimes (Sen, 2012; 137). Moreover, proceedings against a diplomatic agent can be made later in life, when the diplomat loses such immunity (Vark, 2003; 111).

In conclusion, theoretically Islamic diplomatic law from the *shī'a ithnā-'asharī* perspective, like other Muslim standpoints, is potentially compatible with International diplomatic law, despite the existence of certain tensions. However, such compatibility of the two systems, of Islamic and International diplomatic laws was also reviewed in practice to see how Muslim States, including those proclaiming to be Islamic conduct their diplomatic relations with non-Muslim states, and deal with violations of diplomatic law. It was shown that not only Muslim States are party to both conventions on diplomatic and consular relations, but have placed no reservations on grounds of incompatibility with *sharī'a*. This is done by an approach of multiple or mixed legal systems allowing a 'range of legal sources' to Muslim States (Ellis, 2012; 93). This in turn has allowed Muslim States to be party to these conventions as well as the signing of many other Statements and Resolutions of international bodies (Del Moral and Shahid, 2018; 8). This is indicative of possible reconciliation leading some to question the bleak picture of Muslim States 'victimised or vilified' today. Regrettably, in much of the literature, 'Islam is often associated with violence rather than peace, even though it is rich with values and practices that encourage tolerance, peacebuilding, and dialogue' (Kadayifci-Orellana, 2015; 434).

For the practice of diplomatic immunity, a similar case could be argued for the compatibility of Islamic diplomatic law and International diplomatic law within the context of International relations, International law, and diplomacy according to *shī'ī* Islam. In order to answer another key question regarding the conduct of Muslim States in diplomatic relations with non-Muslim States, the focus of our research was placed on the example of the Islamic Republic of Iran. It was found that although, the Constitution of the State sets forth 'the cultural, social, political, and economic institutions of Iranian society on the basis of Islamic principles and norms'. [491] However, our research identified the debate around the constitution to require an in-depth study, which is crucial for the debate on Iran and worthy of research. [492] This requires an understanding of the legal framework of the modern constitution notation of national sovereignty as identified by International law, alongside the declaration of God's sovereignty as identified by Islamic law. It also requires an appreciation

[491] As stated in the Preamble of the Constitution of the Islamic Republic, retrieved from https://web.archive.org/web/20061207205624/http://mellat.majlis.ir/archive/1383/10/15/law.htm (accessed 31/08/2023).

[492] However, this important issue is beyond the scope of this research.

of an Islamic revolution, considered as a cultural revolt against the cooperation of Iran and the United States of America. There is no doubt as clearly indicated, that the American embassy seizure and the hostage taking of the American diplomats following the Islamic revolution contradicted International law and as such greatly damaged Iran's political stance internationally, it also proved to be detrimental to the internal politics of Iran. The events of 1979 had a historical angle, initiated by the 1953 CIA sponsored *coup d'état.* That event had overthrown Iran's popular Prime minister, bringing the Shah back to power alongside a unique bond of friendship with the U.S. as set by the Treaty of Amity. Thus, Āyatullāh Khomeinī had raised criticism of Shah's policies, changes to the Iranian Constitution, and the Westernisation of Iranian society as far back as 1963. [493] Subsequently, the revolution brought with itself excessive baggage of hate against the U.S. and its interventionist policies. International politics rather than Islamic law affected the events that ultimately led to the seizure of the American embassy in Tehran. Additionally, the revolution had also brought with it the promise of freedom, independence and the formation of the Islamic Republic, envisaged by its new constitution. Crucially, this was seen by Iran to be in jeopardy of the takeover, with history repeating itself in the revolutionary climate of 1979.

Those objecting to compatibility between International and Islamic diplomatic law often refer to the Tehran hostage crisis as practical proof of the lack of respect for diplomatic immunity within States identifying themselves as Islamic. Nevertheless, this position seems to be in a vacuum that is void of the historical background. Discussions covered in detail on Iran have identified the origin of the hostage crisis to be Iran's assertions of a serious charge within the context of International law. The argument presented by Iran has always been centred on the 1953 *coup d'état.* This was when the Americans committed 'acts that dislodged a legally constituted government and subjected the country to a long period of dictatorial, often brutal rule' (Rafat, 1980; 456). Thus for Iran, the Americans could not be trusted not to repeat the whole scenario. [494] Having said that, it can be argued that Āyatullāh Khomeinī's approval of the militant student action is itself indicative of the incommensurability of Islamic law with International standards. However, this stance is refuted by senior revolutionary clerics such as Āyatullāh Muntaẓirī for whom the taking of hostages is recognised to be wrong from the Islamic *shī'a* diplomatic perspective. However,

[493] Āyatullāh Khomeinī delivered his famous speech on 5th June1963 against the Pahlavi regime that led to his arrest and expelling from Iran (Khomeini, 2008; xiii).
[494] The decalcified CIA documents released in 2013 confirms the American and British involvement in the 1953 Iran *coup d'état*; Retrieved from https://www. nsarchive2.gwu.edu/NSAEBB/ NSAEBB435/ (accessed 31/08/2023).

irrespective of the rights and wrongs of the action taken by Iran, the details presented by both sides to the International Court of Justice concerning the hostage crisis is not based on a single claim of an Islamic perspective. Subsequently, the event could not constitute a case of tension between International and Islamic law principles. On the contrary, the declaration made by Āyatullāh Khomeinī concerning the American embassy as 'a centre of espionage and conspiracy' was itself referenced by the International Court of Justice as the 'seal of official government approval' to the event. The court made a note that the stance by Āyatullāh Khomeinī is based on his belief that 'those people who hatched plots against our Islamic movement in that place do not enjoy International diplomatic respect' (ICJ, 1980; 35). Subsequently, it has been argued that the Iranian stance was based on 'a cultural foundation different from that of the West', and that 'International law lacks a substantive cultural consensus needed for an international legal order' (Afshari, 1994; 250), rather than Islamic international law requirements. Finally, the scope of events covered in relation to Iran as part of the diplomatic immunity discussion helped identify the foreign policy of Iran to be dominated by the following factors. Firstly, shaped by diplomacy according to *shī'ī* Islam as shown through its advocating of the theory of *vilayat-i faqīh.* This is indicated by its constitution while highlighting the application of *ijtihād.* Secondly, formed on firm grounds of International law, through its commitment to compatibility. This is indicated by being signatory to all international conventions, supporting these without reservations. Thirdly, influenced by its endeavours to International relations possibly through a neoclassical Realism approach. This is indicated by systemic factors to grand strategies such as its concerns regarding national and international security, its personalised worldview and perceptions governed by its central administration, its regular differentiation between ideal and actual, its interest in catering to domestic institutions, and harmony of State and society.

CHAPTER 6 – CONCLUSION

6.1 Introduction

The rationale for this study was to see whether there exists certain compatibility or tension between the *shī'a* perspective on Islamic International law and modern International law. To accomplish this task, it was recognised that literature on what constitutes as *shī'ī* law is limited. Although the 1979Islamic revolution focused the research on *shī'ī* political thought, by contrast, the study of *shī'ī* law has continued to remain in the shade. Thus, there exists a gap within material on Islamic diplomatic law from the *sunnī* angle to that concerning the *shī'ī* perspective. By clarifying and developing discussions of the field, this study has facilitated an understanding of *shī'ī* Islamic diplomatic law in the context of *shī'a ithnā-'asharī* doctrine. Thereby, it is argued that this work has not only addressed the existing gap within English literature but also facilitated a better theoretical understanding of its relationship to International law regarding the provision of diplomatic immunity and protection. Moreover, in line with the objective of the research, it has been highlighted that the implementation of the *shī'ī* doctrine plays a crucial part in International relations due to the establishment of Modern Moslem States identifying themselves as Islamic with a *shī'ī* identity. Consequently, our study through its practical example of the Islamic Republic of Iran, whose constitution incorporates Islamic law based on *shī'ī* jurisprudence, has also complemented the awareness of *shī'a* perspective to *fiqh-i sīyāsī.* This includes the application of Islamic International law and its relation to International diplomatic law. This, in turn, would support and maximise diplomat protection, and help in answering our main research question, which was centred on the compatibility between Islamic diplomatic law based on *shī'ī* School of thought and International diplomatic law.

Thus, our research questions were based on such groundings, structured around an analysis of compatibility between the two distinct legal systems. The study of International and Islamic diplomatic laws not only questioned if modern International law does or does not include or accommodate any rules or principles of Islamic International law. But also quizzed if there were mechanisms embedded within the principles of Islamic law to instigate new interpretations of the sources in light of challenges of the modern era. Additionally, this research provided a unique angle to the topic of Islamic diplomatic law by considering the similarities and differences between the *shī'ī* and *sunnī* perspectives, considering their joint yet distinct history and jurisprudence. This particular consideration is thought-provoking in

the compatibility argumentation and its complexities because it is often missed within the English literature when discussing International and Islamic law regimes. Finally, the use of comparative law as an instrument of learning and knowledge not only provided this study with an understanding of the development of the two legal systems, it also equipped our evaluation with comprehension of the conceptions and principles of their respective sources. This not only proved necessary as a requirement for analysing the practical merits and demerits of the two legal systems, but was found to be rather essential in achieving cross-cultural understanding, and harmonizing of the two legal regimes. However, the place of a religious legal structure such the Islamic international law and its *shī'ī* perspective on 'the International legal system, or indeed any legal system that purports to be secular' (Evans, 2005; 3), has been a complex task. Having said that, this study has been inspired by the fact that 'it is possible to find legal basis for the use of religious traditions and norms by the conventional doctrine of modern International law,' in the enhancement and legitimacy of International law (Baderin, 2010; 657). [495]

6.2 The Contributions of the Research

This research has contributed to the much debated study of the compatibility between Islamic diplomatic law and International diplomatic law through the platform of comparative analysis. In answering our main research question; to what extent is Islamic diplomatic law from the *shī'a ithnā-'asharī* doctrine compatible with International diplomatic law? The domain of compatibility within our discussion tilted towards moderate compatibility of the principles of *sīyār* based on the *shī'a ithnā-'asharī* perspective, to that of modern International law, while identifying certain points of tension. To answer the question, it was necessary at the outset to understand the particular perspective on diplomacy by reviewing the universality of diplomatic practice in the historical context, by investigating the theoretical comparative context of the sources of the two legal systems; by studying the particular criteria of the principles of diplomatic immunities and privileges, by critiquing the practice of Muslim States including those proclaiming to be Islamic, and finally by discussing events undertaken within those States that would be identified as extremely concerning crises such as the American embassy takeover and the related hostage crisis of 1979. Our initial task of identifying the historical context proved to be the most complex but interesting despite being outside the context of jurisprudence. The inclusion of the historical angle was deemed necessary arguably because the truth of International relations and of

[495] Refer to Gunn (2003), for an analysis of the complexity of defining religion in International law.

International law 'could only be found in details of its history' (Boyle, 1991: 1). Also the historical antecedents of the modern diplomatic parameters in Islam regarded within books of Muslim scholars as a critical component within the compatibility argumentation, however, sits outside the confines of our Black letter approach unless covered directly within the written tradition of the Prophet. In other words, encountered contemporary Islamic law from the perspective of the early Islamic society is multifaceted. [496] Nevertheless, this was regarded as a necessary criterion in making the analogy of compatibility between Islamic diplomatic law with modern International diplomatic law debate. The compatibility argumentation has been spearheaded by the notation that, the very outline of what is termed *sīyār* enhanced our awareness of possible contributions made by Islamic law within the development of modern International law. [497] This line of argumentation for possible compatibility has been reinforced to an extent by the Vienna Convention on Diplomatic Relations, which mentions the inclusiveness of other parties in the formation of the convention. [498] Through a series of evaluations, the history of diplomatic practice in early Islam includes examples of diplomatic interactions and treaties.

Additionally, the *shī'ī* contribution and perspectives of such evolution were shown to be comparable and to a certain extent intertwined with that of the *sunnī* counterparts. Although common references became rarer following the development of the differing Islamic Schools of Law. Importantly it was shown that the elaboration of the Treaty of Ḥudaybīyyah, and the Charter of Madīnah within the holistic overview and without considering the accuracy of historical detail, suggests that such encounters might not be too dissimilar to that of modern International law. Having said that, it should be made clear that finding early historical material is not possible without entering into the salvation history perspective. [499] This is particularly true for an emblematic figure such as the Prophet Muḥammad because many of the biographies or accounts of military campaigns [500] have been written by Muslim scholars years later, particularly during the golden period of Islam. [501] However, irrespective of the discussion around the historical accuracy of such narratives as with all historical source

[496] Covering the time of the Prophet, the four Caliphs and the dynastic periods of the 'Umayyad and the ʿAbbāsids.
[497] For example, the concept of *sīyār* as explained by al-Shaybānī correlates with some of the principles of contemporary International law.
[498] The Vienna Convention on Diplomatic Relations Preamble at Vienna on 18 April 1961 begins by 'recalling that peoples of all nations from ancient times have recognised the status of diplomatic Agents'; https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (accessed 31/08/2023).
[499] Salvation history is the approach of seeking the eternal saving intentions, by convincing the existence of factors even if the history is vague.
[500] Reference is being made to *sīra*, and *maghāzī*.
[501] Only a handful earlier accounts has survived and are regarded by some as questionable.

material, the accounts presented could be viewed as essential in presenting the social and cultural memory of the Prophet. This type of collective memory remembered by later generations and shared by the Muslim community is crucial to the debate on how Muslims have created their form of diplomacy, negotiated settlements, and peaceful coexistence with non-Muslim States, both at times of war and peace, but that perception would not be included in the Black letter approach. Thus, such diplomatic interactions must be of particular importance in the context of the Muslim historian assentation such as in the claim that the success of the Empire that stretched from Egypt in the West to Persian provinces in the East had been achieved mostly through peaceful means. For the purpose of our research, such narratives were shown to have been used in formulating the very basis of *sīyār*, and thereby, critical to the assessments of compatibility, at least in the historical sence. The inclusion of the historical narratives outside the Black letter approach, supported the argumentation of certain similarities in the foundational principles of Islamic and International diplomatic laws. This occurred despite their complexities and identifiable points of tension, for example in the case related to *banū qurayẓah*. This in turn indicated moderate compatibility in the respective principles and outlook of the two legal systems.

The grounding for compatibility was more prevalent when addressing the theoretical context between Islamic diplomatic law and international diplomatic law through the examination of, the sources of the two legal regimes. This is of importance because of their perceived difference, one regarded to be in accordance with divine command and the other entirely man-made. Nevertheless as discussed, even though the *sharī'a* acknowledges the divine sources of Islamic law as being Qur'ān and the *sunnah* of the Prophet and his *ahl al-bayt.* It was clarified that it is not entirely divine but there are other sources to the religious rulings than initially apparent. According to the *shī'a ithnā-'asharī* jurists, [502] Islamic law is also reliant on secondary sources of consensus and intellect, [503] and the *sunnī* jurists use consensus and analogy as secondary sources of Islamic law. Subsequently, Islamic law is also reliant on a human jurisprudential angle; this is referred to as *fiqh* which crucially plays an important role in the body of Islamic diplomatic law. Additionally, the *sharī'a* should not be perceived as exclusively a legal term; this is because it includes all aspects of Islam including belief, moral as well as ethical issues not covered in this study as deemed to be beyond its scope. Consequently, the existence of commonality and overlap with International

[502] In our time they follow the *uṣūlī* School of thought although the *akhbārī* School reject the use of reasoning in deriving verdicts in Islamic law.
[503] These are collectively referred as *adilla al-arbaʿa.*

diplomatic law is conceivable, and this comparative study has proven to be fundamentally acceptable. Moreover, even despite the existence of cases that could lead to tension between the two legal systems, our research has found the simplistic and reductionist position of incommensurability promoted by the Orientalists to be erroneous. [504] Such mentality wrongly identifies the divine as the only frame of reference in Islam, and the *sharī'a* making the Muslim society unlike any other in modern times. Even so, it was argued that differences in the origin of the sources of any legal system, for example in the case of Municipal and International laws, would not be the basis of an incommensurability argument in comparing the two legal regimes.

Similarly, such compatibility was found while studying the criteria of the principles of diplomatic immunities and privileges. Through careful consideration of the sources for the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, [505] compatibility was proven to be prevalent in many cases emanating from treaties, customary law, general principles of law, or judicial decisions and scholarly writings. This also involved theoretical justifications of diplomatic immunity when discussing exterritoriality, representative character and functional necessity by the two legal systems. Although in contemporary times diplomatic immunity has many meanings beyond that of the Islamic diplomatic law consideration, but Islamic diplomatic law still provides envoys and ambassadors total protection while within the Islamic State, regardless of their faith, views, hostilities, or even the nature of the message that is being delivered. This provision exists for a range of different issues such as personal inviolability, immunity from the court's jurisdiction, freedom of religion and exemption from taxation. The compatibility between Islamic and International diplomatic laws is particularly apparent in matters relating to the safety of diplomats and their families, and the jurisdiction over diplomats. Islamic law does not cover other privileges such as freedom of movement, protection of diplomatic bags and couriers, freedom of communication, inviolability of mission archives and inviolability of mission premises and private residence. However, because they are not specifically prohibited either in the Qur'ān or in the *sunnah*, thus deemed to be permissible by *shī'a* as well as *sunnī* jurists. This research found the only exception of diplomatic immunity in Islamic law from International law to be for the occurrence of *ḥudūd* crimes. However, even the codification of personal inviolability around immunity of the diplomats from the criminal

[504] Additionally, the Orientalists approach to Islamic History is questionable from the *shī'ī* perspective, because the use for their argumentation are essentially entrenched the *sunnī* reading of Islamic history (Matthiesen, 2023; 194).
[505] As identified by Article 38(1) of the Statute of the International Court of Justice.

and civil jurisdiction of the receiving State [506] identifies an obligation by diplomats to obey local laws as a requirement for such exemption. [507] Moreover, as indicated in the 1963 Convention on Consular Relations in case of 'grave crimes', such protection will not be available. [508] The approach often practiced includes declaring the diplomat *persona non grata,* the breaking of diplomatic ties, waiving immunity by the sending State, or in the case of *ḥudūd* crimes requiring the diplomat to face the jurisdiction of the sending State's national courts resulting in diplomats being prosecuted. Alternatively, prosecution would occur against a diplomatic agent later in life, when the diplomat loses his or her immunity.

Additionally, by moving away from the theoretical conception of the framework to the sphere of the practical implementation of diplomatic law and reviewing the practice of Muslim States our analogies further demonstrated compatibility. Moreover, the execution of diplomatic law was shown to permit certain complementary and co-existential capabilities, which is often practiced by both *shī'a* and *sunnī* Muslim States. It was highlighted such an approach to compatibility is regarded as visible even by those identifying themselves as Islamic States such as the Islamic Republic of Iran. Thus, we find them signatory to all Statements and Resolutions of International bodies, almost entirely without any reservations placed on grounds of incompatibility with the *sharī'a*. Subsequently, even those arguing for incompatibility because of territorial sovereignty factors, cannot say Islamic law has no role to play in modern International relations between States. Putting aside the linguistic, cultural and certain legal obstacles, in essence, the codification of diplomatic immunity principles was thereafter shown to be present within the body of Islamic diplomatic law. Alternatively, it was argued that even if not closely mirroring those principles, it certainly does not contradict them. Ultimately Islamic International relations can be perceived to be fundamentally compatible with the world of nation-States. Even if some Muslim States have chosen not to be signatories to the 1961 Vienna Convention on Diplomatic Relations or the 1963 Vienna Convention on Consular Relations, or have particular reservations, this does not indicate a failure in Islamic diplomatic law because many non-Muslim States have also chosen to do the same. Likewise, the failures of the United States of America and its allies in respecting the sovereignty of Iraq during the Gulf War [509] would not be counted as the failure of International law. In addition to the main

[506] Although Article 31(1) of the 1961 Vienna Convention on Diplomatic Relations provides criminal immunity without an exception.
[507] As indicated in Article 41.
[508] Vienna Convention on Consular Relations, article 41(2).
[509] Iran claims this to be under the false premise of weapons of mass destruction.

research question, the above discussion also addresses our other research questions; how do Muslim States or those proclaiming to be Islamic (*shī'ī* example - The Islamic Republic of Iran) conduct diplomatic relations with non-Muslim States and deal with violations of diplomatic law? And what mechanisms exist in *shī'a* Islamic law to reconcile with International law, if there is a clear difference? This is crucial in light of the proclamations that Islam has been a Universalist system of belief, with two territories of *dār al-islām* and *dār al-ḥarb* always at war with each other. The above clarifications in our study reject the notation of *jihād* existing in Islam to 'legitimise aggressive policy' (Vatikiotis, 1987; 21), as Islam is wrongfully claimed to be inherently incompatible with International norms. The recorded peaceful arrangement identified between Muslim States and non-Muslim States, and the observance of 'peaceful coexistence, based on armistice, diplomatic ties or peace agreements' (Allain, 2011; 404), emphasises the presence of compatibility with International diplomatic law. At times of tension, Muslim States have adopted clauses similar to Article 38 'allowing reasoned judicial gap filling', providing 'provisions for judicial innovation as natural justice or equity, good conscience or public order' (Ford, 2017; 46). These tend to be often based on the use of Islamic legal principles or methodological techniques such as *maṣlaḥah* or *istiḥsān* which is likened to the concept of equity, justice and good conscience, in the context of matters that are in public interest but not specifically defined by the *sharī'a'* (Singh, 2015; 41). [510] However, this can critically be argued to be outside the Blackletter law approach because it is essentially derived for the benefit of the community, and as such it is an ethical factor, and external to the letter of the law. Nevertheless, this is claimed as the basis of how most Muslim States, and those identifying themselves as Islamic, have been able to conform to International law and be signatories to all the diplomatic-related conventions (Ismail, 2016; 167).

The event that is often used to reject compatibility between Islamic diplomatic law and International diplomatic law, particularly for a *shī'ī* State concerns the Tehran hostage crisis following the Islamic revolution of Iran. Our research identified the American embassy takeover and the related hostage crisis to have revolved around a difference in cultural foundations, and a long history of political interference. The extensive discussion of the events around the embassy takeover revolves around the Islamic Republic of Iran's leadership, Āyatullāh Khomeinī, assenting 'I have serious doubts on the existence of an embassy or the presence of any diplomats' (Khomeini, 1989_b; 331). His argument was

[510] At times referred to as *maṣāliḥ al-mursalah* (Considerations of Public Interest) in sunnī law, governing measure of all that is good and evil in any action is the benefit or harm, which stems from it.

based on the stance that Americans have continuously plotted against Iran, and as such they should not enjoy International diplomatic respect, or be given the opportunity to overturn the revolution through a coup d'état as had previously occurred in 1953 (Lorentz, 2010; 25). Thus, he is praised by Iran for deciding to 'stand up to America' (Khomeini, 1989_b; 327), as identified by the International Court of Justice for endorsing 'the charge of espionage levelled against embassy personnel', and the threats of placing them in trial (ICJ, 1982; 4). Thereby, the argumentation presented is merely that American audiences were given daily doses of television coverage attributing the hostage crisis to the Muslim hatred of America (Aziz, 2021; 125), [511] when in reality the entire event sits outside the debate on Islamic diplomatic law.

The focus of our research turned to *shī'a* law and its jurisprudential techniques for our other research questions; how, without relaxing the nature of the *sharī'a*, can the jurisprudential experts expand and adapt the Islamic diplomatic law to meet the varying needs of International diplomatic law? Or what is the significance of *fiqh-i zamān va makān* (the jurisprudential of time and place), its principles and requirements within *shī'a*? The bases of the universality, the comprehensiveness, and the eternal validity of Qur'anic commandments required our study to debate such criteria through the discipline of *uṣūl al-fiqh*. Thus, our research delved into the *shī'a ithnā-'asharī* approach to jurisprudence by focusing on the need to adapt when confronted by constraints, highlighting the functionality of reasoning as the vehicle for extending or possibly reconstructing the jurisprudential stance. The ensuing concept of *ijtihād* was thus found to be a crucial component of such debate around the compatibility of the two legal systems. This key provides the jurists with the ability to deduce religious rulings from the four sources while considering the effective cause, or the reasoning behind particular revelations, extrapolations and reasoned judgements argued by scholarly hermeneutics. Following the Islamic revolution of 1979, Āyatullāh Khomeinī who had been placed in charge of governing an Islamic State expanded the scope of *ijtihād* further by introducing *fiqh zamān va makān,* moving away from the doctrinal approach to jurisprudence in the context of the time and place. In doing so, he expanded the realm of the jurists by requiring them to be aware of economics, politics, and the strategical structures of governance in order to lead and oversee the functions of the State in addressing the challenges of the new era. He argued that modernism required a dynamic religion that could inspire the masses, and modernise itself without becoming Westernised.

[511] As recoded by Walter Cronkite of CBS and Frank Reynolds of ABC.

It is argued by this research that what is referred to as *fiqh-i pūyā,* is regarded as a *shī'a* jurisprudential tool. Although this provides the potential basis for compatibility of the principles of *sīyār* with modern International law. However, if it is viewed as potentially being utilised in the context of *marja'iyyah,* then it could sit outside the Black letter approach. Although in *shī'ī* law, personal opinion independent of the sources of law is invalid as such all rulings made must be structured on the source coding of Islamic law within the components of *'ibādāt* and *mu'āmilāt*. Nevertheless, if utilised within the context of Article 38 (1)(d) of the Statute of the International Court of Justice, then it deals with reference to judicial decisions and the teachings of the most highly qualified scholars and technically within the boundary of the law. Consideration as 'evidence' for guidance shedding light on the 'determination of rules of law' (Childress, Ramsey and Whytock, 2015; 341), relates to the process of *ijtihād* by the *shī'ī 'ulamā'* in answering questions 'in the absence of the Prophet and the Imāms' (Heern, 2018; 43)., Irrespective of the positioning, it provides a platform for the recent complex argumentation made around rationality by new religious thinkers in Iran and beyond. This new approach to *ijtihād* yields a wider scope of application, beyond rules and laws, to belief, moral and ethical issue components of the *sharī'a.* By finding new interpretations of religion, *nu-andīshī-yi dīnī* has offered much greater convergence with International law and subsequently contributed to the debate around democracy and human rights. With this approach, where there are incompatibilities, the development of the art of *ijtihād* would allow various mechanisms to be incorporated in resolving the differences between the two legal systems. This adaption of Islamic law to the changing needs would lead to the relevance of traditional Islamic law to today's world, by ultimately leading to harmonised interpretations and applications of Islamic law, covering all domains including the diplomatic sphere. The ideology of reform is briefly highlighted in our Appendix regarding *rushanfikr-i dīnī* and *nu-andīshī-yi dīnī*, is an attempt to identify the religious intellectual platform, which inspires the debate around the reconciliation of religion and reason, and consequently the compatibility between Islam and Internationally accepted norms. Such an innovative approach is regarded by some as offering the religious establishment the tools required to escape its doctrinal constraints and discard its controversial positioning on gender, social issues, and legal commandments, which inevitably touch on diplomatic relations and International law, particularly relating to Black letter law.

6.3 The Potential Implications of the Research

i) International Relations

When it comes to International relations, the 1979 Islamic revolution of Iran defied the expectations of academics that by the 20th century, religion would disappear from the social and political spheres (Bell, 1977; 421). Instead popular religious ideology played a significant role in the realm of International relations, bringing a lack of uncertainty to the theories used. This led to new adaptions of those theories of International relations, such as the one used in this study, Neoclassical Realism. However, what is now termed the incoherent foreign policy of Iran, has been identified as being directed by factors such as its leadership criteria, its strategic culture, its State-society relations, and its domestic institutions. This study of *shī'a* Islam within the domain of International relations has highlighted the importance of the doctrine that is intertwined with all the previously mentioned factors. This demands alternatives to be found in the field of International relations, from the pertinent Western perspective. Moreover, since Islamic States such as Iran are still denounced for their religious identity, our research further reiterates the potential for the recommendation of the 1961 Vienna Convention on Diplomatic Relations. [512] This stipulates 'the development of friendly relations among nations, irrespective of their differing constitutional and social systems', this is believed to be a critical requirement. [513] In light of the practice of the *shī'a ithnā-'asharī* approach and the Iranian commitment to International relations, our study reiterates the point based on its compatibility findings. Within such a context, if Western States acknowledge Iranian sovereignty and independence, then theoretically they have moved towards accepting the principles of justice, and respect of Iranian history, culture, and their choice of doctrine. This however unlikely, would permit the international community dominated by the West to take an alternative tact towards Iran. This research has highlighted that the epistemological question of how and when diplomacy is structured in its general frame is of crucial importance to the parties involved within the context of international relations. The present Euro-centric approach is a source of tension, arguably similar to the religious foundations of Islamist ideology. Considering the fact that the Islamic way of life is not just advocated by the *shī'a* clerical establishment in Iran but argued to be advocated by all practicing Muslims. This research has extensively shown that the encompassing of permanent standards, principles, ethical values and rites are embedded within the *sharī'a.* Nonetheless, at a time when Islamic States such as Iran are often stigmatised by the term State-terrorism, and sanctioned by the United States to limit Iran's

[512] See paragraph 3 of the preamble.

[513] As suggested by Iranian President khātamī and adopted by UN General Assembly by A/RES/53/22 on the 16 November 1998.

realm of operations, the easing of such tension benefits all concerned. Yet, it is noteworthy that the two of the world's most bitter adversaries [514] have been 'confronting each other with words rather than weapons to resolve their outstanding dispute' (Klein, 2021; 652) at the International Court of Justice and through other U.N. bodies. By focusing on an awareness of *shī'a ithnā-'asharī* identity, this research has emphasised that understanding and acceptance of other States and their ideological position could offer a reduction in tension and enhance cross-cultural understanding, resulting in peaceful co-existence.

ii) International Law

Within coverage of the formative period of Islam by literature, there is a shared recognition of Islam as a political community, similar to the modern conception of the State. This counters the perception of Islam merely being a set of religious ideas and practices, and confined to the boundaries of *sharī'a*. [515] Considering the existence of sovereign States such as the Islamic Republic of Iran in recent times, with such vibrant political identity, one is quizzed by the alarm shown in the West towards their existence. This fear is particularly intense when it comes to Iran and its increasing influence, particularly within the *shī'ī* community of the Near East. It is thought that our finding regarding the presence of compatibility between the two legal regimes of International diplomatic law and Islamic diplomatic law addresses this unease. It is argued that the identification of tension areas could result in further development of International diplomatic law. This would lead to deeper cross-cultural understanding and further enhancement of International law's acceptability by Muslim States (including those regarded as Islamic), and their militias as non-State actors involved. Any increase in International law's influence would hugely benefit the diplomatic legal system, for example, in non-combatant protection within regulations of conflict. When discussing International diplomatic law, a point that must always be considered is that 'along with cultural diversity, the legal notation within the Islamic intellectual tradition differs considerably from the European one', and the substantive cultural and religious consensus needed for an international legal order is missing in International law (Tibi, 2005; 151). It is argued by the Islamic Republic of Iran, that the culture and religion can imbue and infuse the two domains of law and politics with such a resonance that it cannot be overlooked. It is high time for a re-evaluation of International law to the specific role of domestic audiences and cultural and religious

[514] Namely The Islamic Republic of Iran and United States of America.

[515] This factor is particularly prevalent towards the end of the ʿAbbāsid dynasty and possibly stretches in to later dynasties not covered here.

perspectives that often play a decisive role in diplomacy. This research has cons6ructively suggested that what is required is a move towards common understanding. For example, references to Islamic law rarely appear at the International Court of Justice, but it has occured. For example, in the case concerning United States Diplomatic and Consular Staff in Tehran, even though the U.S. governments legal argument had not mentioned the Islamic law perspective to diplomatic immunity. Presiding judges decided to refer to Islamic law in an official judgment (albeit in passing), [516] as 'a response to an ideological challenge framed in Islamic terms and to the distinct possibility of non-compliance by the State against whom the judgment ran' (Lombardi, 2007; 115). Such references are refreshing and play a critical role in de-escalating of crises. This is because the rule of law has a universal value, and recognizing the compatibility of the two legal regimes permits the observance of law at national, regional and international levels. Perhaps the most encouraging aspect of the United Nation's involvement with the Iran hostage crisis through the International Court of Justice has been the broad outlines set. Such a framework of judicial appraisal and settlement that met the requirements of an Islamic State is argued to be by itself indicative of compatibility between International and Islamic law legal systems. The understanding of the contribution of Islamic diplomatic law with a *shī'ī* perspective, alongside many other legal systems, can lead to the development of International diplomatic law. This would potentially lead to furthering ties between European and non-European polities, and aid in a move away from culturally biased diplomacy. Arguably, 'all diplomacy rests on myths that have their origins outside of diplomacy' (Neumann, 2012; 316), and the removal of tension points helps all concerned. For example, there has been a call for a review of the diplomatic immunity position when there is a clear violation such as torture and murder, as seen with the Jamal Khashoggi case within the Saudi consulate in Istanbul (Milanovic, 2020; 1; Bosch, 2021; 1). Such development would increase compatibility with Islamic diplomatic law within which *ḥudūd* crimes are singled out as an exception to the compatibility of Islamic diplomatic law with International diplomatic law.

iii) Diplomatic law within shī'ī Islam

Our research has highlighted that the foci of the literature being used for *shī'a ithnā-'asharī* doctrine has been predominantly in Arabic and Farsi, and not in English. Consequently, our study benefited from the literary works of many *shī'ī* scholars past and present that were

[516] For comments by Judge Waldock on page 40 and dissending opinion of Judge Tarazi on page 59; Refer ICJ (1980).

often missed by available English material on the topic. [517] This explains why in most legal books other than those particularly focused for example on the Islamic Revolution of Iran, the inclusion of *shī'ī* law is often omitted. This research has highlighted the necessity of referring to *shī'ī ḥadīth* which differs significantly from the *sunnī* counterpart, and helps in expanding the understanding of *sharī'a,* and is an indispensable tool for debates related to the Muslim community, and not purely within a *shī'ī* environment. It is in the framework that our study has identified Āyatullāh Khomeinī's contribution to *shī'ī* law within the domains of International relations and International law, particularly following the establishment of the Islamic government in Iran. He has argued for a dynamism in new thinking of *shī'ī* law, by requiring the *mujtahid as* the highest *shī'a ithnā-'asharī* authority [518] to have a broader knowledge of social, political, moral and economic factors in making their Islamic rulings, rather than merely being based *sharī'a.* He has also argued that in modern day Iran *shī'ī* jurisprudence as an expanding domain that should move much further and faster than ever before, allowing the *shī'ī* jurists to introduce or review religious rulings in accordance with the needs of time and place. In reality, this research has identified the authority of the *faqīh* to have increased beyond what had been envisaged previously, allowing the jurist to adapt the law to the requirements of the Muslim societies of the contemporary era. [519] It is the basis of this crucial decision that has also been central to the new religious thinking in recent years as covered in Appendix 1. Fruit for thought would be the example of the principle of *maṣlaḥah* in Islamic law, often resorted to be a reconciliatory concept in a situation where the principles of Islamic law and International law appear to be incompatible. Subsequently, allowing Islamic jurists recourse to the principle by making rules based on the general interests of the Muslim community. Particularly where there are no applicable provisions in the two primary sources of Islamic law, namely the Qur'ān and the *sunnah* of Prophet Muḥammad, and his *ahl al-bayt*. This is similar to Article 31(3)(a) of the 1969 Vienna Convention on the Law of Treaties, empowering the judges of the International Court of Justice or International Tribunal to give consideration to relevant external sources while interpreting International norms (McLachlan, 2005; 279). However, as previously mentioned, the discussion of *maṣlaḥah* in the *shī'ī* understanding differs from the *sunnī* thinking. In essence, the *shī'a ithnā-'asharī* regard the use of 'public interest' within the domain of the protection of the Islamic system and not the individual, and beyond

[517] The discussion around *sīyār* was based on the *shī'ī* contribution and perspectives to its evolution even though historically this is to a certain extent intertwined with *sunnī* contributions.
[518] A separate position to his position as the leader of the revolution.
[519] This encompasses the principle of vilāyat-i faqīh, which asserts political authority within the context of the Islamic State.

worldly purposes. This approach alongside Āyatullāh Khomeinī's dynamism of new thinking approach seems to be present within his mindset following the revolution, as shown by the creation of the Expediency Council. [520] This study has highlighted the importance of such mechanisms in the development of the *shī'ī* perspective on Islamic diplomatic law within the diplomatic sphere. The implications of such a system of government alongside its shī'ī identity are found by the study to be a crucial factor in the politics of the Near East and its strategic policymaking.

6.4 The Applicability of the Research

Our research identified the American embassy takeover of 1979 as an ideal practical example that could be examined as a single least likely case of comparability. This would relate to the three domains of International relations, International law and Diplomatic law within shī'ī Islam, but is miscategorised within the text as being based on the *sharī'a* and its non-compliance with International law. Our extensive study clarified that the event is argued to have occurred within the context of International relations, in order to ensure a *coup d'état,* that had previously taken place in 1953, does not reoccur. For its justification, Iran alleged that the event had halted American plots to overturn the revolution. However, our study identified the precise decisions to be related to matters that are regarded in *shī'ī* Islamic diplomatic law as *maṣlaḥah* or *al-istiṣlāḥ,*[521] matters that are in the public interest but not specifically defined by the *sharī'a*. [522] Āyatullāh Khomeinī proclaimed that '*maṣlaḥah* of the Islamic system is of utmost importance', 'overlooking this factor could lead to the ascendency of an American system backed by monetary supremacy' (Khomeini, 1989_e; 167). [523] Our research indicated that the American embassy takeover could not be resolved until the approval of the new constitution and the formation of the new institutions in Iran had taken place, indicating their importance to the Iranian leadership in their political decision making. When the time was right, using the same mechanism of public interest, the Algiers Accord was signed with the enemy as had occurred within the signing of the Treaty of Ḥudaybīyyah. Thereby, the Iranian position had attempted to highlight the violation of Article 41 of the Vienna Convention on Diplomatic Relations by the United States

[520] The Expediency Discernment Council of the System (*majmaʿ-i tashkhīṣ-i maṣlaḥat-i niẓām*) was created upon the revision to the Constitution on 6th February 1988.
[521] At times referred to in various text under *maṣāliḥ al-mursalah,* and in some under *maṣlaḥat-i niẓām.*
[522] The conforms with the notation that Islamic ruler can act on how best to protect the Muslims interest' (al-Tusi, 1967_a; 235).
[523] This is based on the technical argument in the jurisprudence of *mohem val aham* (important and more important), in highlighting the utmost importance of the Islamic government.

government, rather than arguing for the takeover of Islamic diplomatic law. Thus, it can be seen within the Algiers Accord, that the first condition requires the U.S. 'not to interfere directly or indirectly, politically or militarily in Iranian internal affairs (Combs, 2000; 323; Powers, 2010; 209). Such detailed analysis provides an ideal practical platform for the understanding of Islamic diplomatic law from a *shī'ī* perspective, while clarifying misconceptions. For example, it is often argued in the text that Āyatullāh Khomeinī's Islamic ruling for the American embassy takeover could be justified within the scope of the new constitution that includes the guardianship of the jurist. This is taken as the pivotal tool, which allowed the Iranian leadership to make decisive decisions such as the American embassy takeover. [524] However, almost a decade later Āyatullāh Khāmene'i as the next leader of the State while discussing the importance of the event made no mention of the use of such authority with regard to the American embassy takeover of 1979. [525] Moreover, the use of this context was challenged as the new constitution which included the guardianship of the jurist's authority, had not even been approved at the time of the embassy seizure.

This research further highlighted that irrespective of the circumstances around the American embassy takeover, the position of International law to Islamic law is identical with regard to such events and does not indicate incommensurability or tension. If the documentation relating to the event is examined, it is rather pointing to compatibility. This is because there are no objections made by Iran based on an Islamic criterion or the *shī'ī* perspective, not that of the United States based on *sharī'a*. This point is also indicated by the International Court of Justice, whilst identifying the principle of inviolability underlined by the provisions of Articles 44 and 45 of the Convention of 1961 (cf. also Articles 26 and 27 of the Convention of 1963). [526] Judges of the court recognised that 'the principle of the inviolability of the persons of diplomatic agent and the premises of diplomatic missions is one of the very foundations of the long-established regime, to the evolution of which the traditions of Islam made a substantial contribution' (ICJ, 1980; 40). Reference is also made to the inviolability of the envoy in Islamic law, [527] stressing 'the Prophet always treated the envoys of foreign

[524] Āyatullāh Khomeinī letter to Āyatullāh Khāmene'ī underpins this point by identifying the government as 'a branch of the Prophet's absolute authority', indicating that 'the Islamic State could prevent implementation of everything, devotional and non- devotional, that so long as it seems against Islam's interests' (Khomeini, 1989a; 170). This is in line with his assentation that the protection of the Islamic State is more important than anything or anyone including Imām al-Mahdī, in essence the Prophet and of the *ahl al-bayt's* activities are all based on the protection for Islam (Khomeini, 2008; 365).
[525] We need to consider the viewpoint at the period concerned as the stances of many personalities developed and transformed following the revolution, this can be seen with others such as Āyatullāh Muntaẓirī as well.
[526] Comments made by the chair, Sir Hurnphrey Waldock.
[527] Dissenting opinion by judge Salah El Dine Tarazi, recalls a lecture in 1937 at The Hague Academy of

nations with consideration and great affability'. In expressing their objections to the Iranian stance, they stress that 'the person of the ambassador had always been regarded as sacred', noting 'ambassadors to the Prophet and his successors were never molested'. [528]

Moreover, it is often argued that under International law, 'no theory of reprisals may justify a breach of diplomatic immunity', yet that is similar to 'the basis under the Islamic law of diplomatic immunity' regarding the reprisal theory applicable in the present case (Bassiouni, 1980; 621). The point missed here is that within the discussion is that the *shī'ī* jurist leading the Islamic government Āyatullāh Khomeinī, had expressed his serious doubts about the existence of an embassy or the presence of any diplomats. This goes to point out that had they been considered as diplomats, such actions could not have been taken against them. Thus, a clarification is made to the debate that under International extradition law, espionage is regarded as an example of 'purely political offences' involving 'conduct directed against a sovereign or its political subdivisions, but does not have any element of a common crime' (Bassiouni, 2014_b; 682). Additionally, it was discussed that within the body of *shī'ī* perspective of Islamic law, espionage is regarded as an offence, but not considered categorically prohibited under Islamic criminal law. Thereby it would not be classified as *ḥudūd* crimes for which fixed penalties are set within the Qur'ān and the *sunnah* (Bassiouni, 1980; 623; Ismail, 2013; 38). It would therefore be argued that the most appropriate action that could have been taken was to revoke the *aman* and expel the beneficiary of the privilege of protection (Bassiouni, 1980; 623). This structure confirms the compatibility of Islamic diplomatic law to that of International diplomatic law, similar to being allocated *persona non grata* under Article 9 of the 1961 Vienna Convention on Diplomatic Relations. Our example of Iran has highlighted the applicability of our research to the discussion within the three domains of International relations, International law and diplomacy according to *shī'ī* Islam. It is a common understanding that 'States cannot conduct their relations without diplomats', and 'diplomats cannot exercise their function without protection' (Legault, 1981; 360). However, our study questioned as to why instead of attacking Islamic diplomatic law, the Tehran hostage crisis could not be viewed by questions linked with the term 'diplomat'.

International law by Professor Ahmed Rechid. Refer to page 59 of the case concerning United States diplomatic and consular staff in Tehran regarding dissenting opinions, Retrieved from https://jusmundi.com/en/document/opinion/en-united-states-diplomatic-and-consular-staff-in-tehran-united-states-of-america-v-iran-dissenting-opinion-of-judge-tarazi-translation-saturday-24th-may-1980 (accessed 31/08/2023).

[528] Refer to page 59 of the case concerning United States diplomatic and consular staff in Tehran regarding dissenting opinions, Retrieved from https://jusmundi.com/en/document/opinion/en-united-states-diplomatic-and-consular-staff-in-tehran-united-states-of-america-v-iran-dissenting-opinion-of-judge-tarazi-translation-saturday-24th-may-1980 (accessed 31/08/2023).

Should we continue to regard them as ‘an honest man sent to lie abroad for the good of his country’ (Green, 1981; 132), or as a ‘swindler of mankind, or a ‘traitorous assassin of morality’ (Jonsson and Hall, 2005; 2), and does everybody know embassies to be spy-nests? (Falk, 1980: 411).

6.5 The Limitations of the Research

The limitations of our research are essentially twofold, although neither could be viewed as a potential weakness. These are restrictions placed on our study as identified at the outset, as they could not be dismissed, and considered to be inherently linked to the topic of discussion. The first of these is the choice of methodology undertaken, the Black letter approach, which was required in order to undertake a comparative study. There existed a requirement to pin down the law, both Islamic and International, rather than leaving it cognitively open. This has been particularly the case for the theoretical aspect, requiring documentary analysis based on the Black letter approach, concentrating on the letter of the law rather than the spirit of the law, commenting on the law in books rather than the law in action. To complete our comparative study, we were bound by the basic elements of law which are considered free from doubt or dispute (Wright, 2018, 30), law that is accepted by experts in jurisdictions. Examples of which were the sources of both Islamic diplomatic law and International diplomatic law. Thereby, our adopted approach is extremely narrow in its outlook, and despite the margins in which the law operates, the law has been codified. There are those who say, ‘Islamic law is more than the Black letter law’ and must examined as it operates within a ’social, political, moral and economic context’ (Sardar Ali, Griffith, and Hellum, 2016; 9). Although the move away from *uṣūl al-fiqh* to *maqāṣid al-sharī'a* allows greater activism in legal interpretation, [529] that could further a political, social or moral agenda. However, such a contextual, spirit of the law approach (Trowler, 2008; 25), which could value judgments in ways that the Black letter approach cannot, will also make Islamic law extremely controversial and susceptible to disagreements.

The second limitation in our research is regarding the historical elements embedded within Islamic law, particularly regarding the life of the Prophet. The narrative of the Prophet Muḥammad from an academic perspective is questionable due to its content, timeline, and faith-based context. This presents a challenge to all research in the field of Islamic studies, as the crystallisation of Islam as a religion is dependent on historical material that was written

[529] For a detailed discussion refer to Kersten (2016).

two to three centuries after its formation. Although scholars using such historical material are perplexed by their discrepancies, the developed theories that relate to the historiography are also so diverse and conflicting that confuse research even further (Sirry, 2021; ix). More often, the chosen conclusion depends on the scholars' particular approach, making the issue even more complex, than a critical reconstruction of events difficult. However, the actual relationship between the biographical and historiography material and the narrations of Prophet Muḥammad's words and deeds are so crucial to our research, that their inclusion was essential despite such complexity. If we do not accept these as a genuine representation of events, they are still important in our research because they would highlight the social memory of the Prophet, and 'show how events were remembered by later generations' (Kennedy, 2007; 14). Nevertheless, the topic has been challenging, for instance when discussing the Charter of Madīnah, we encountered an important discussion regarding the incident of banū qurayẓah. However, this like other historical events of the period requires an extensive historical analysis, that was deemed outside the context of this research.

If the delimitations of our research are considered, based on boundaries set for our study, that in reality limits our research to a level that our goals do not become impossible or too large to complete. Then there are a number of issues that have been highlighted throughout the dissertation which we could not address because they required further evaluation and critique that was practically beyond the scope of our research. In this section, we will suffice to mentioning a single issue related to each of our three domains to clarify the positioning of this research. When touching upon the topic of International relations, a noticeable delimitation was the internal politics within sovereign States. For instance, for Iran being used as an example of an Islamic State, the previous Iranian President khātamī's approach concerning the need to engage the various civilizations of the world including the West, in a constructive dialogue was of particular interest. This in turn impelled the issuing of the UN General Assembly's resolution 53/22, to proclaim the year 2001 as 'the United Nations Year of Dialogue among Civilizations'. [530] However, such evaluation and its repercussions within the internal politics of Iran as well as those on the International scene would have been outside the boundaries of our study. Similarly, when touching upon the topic of International law, a noticeable delimitation was diplomatic law, anything outside was left untouched. For instance, Iran is being used as an example of an Islamic State, there has been an appointment of a 'United Nations special rapporteur' on Iran since 2011 that is focused

[530] Refer to resolution A/RES/53/22 of 16 November 1998; http://www.un.org/documents/r53-22.pdf (accessed 31/05/2024).

on human rights. [531] Although, the issue's importance particularly with regard to the de-escalation of conflict relates to our core question, but the debate on Islamic jurisprudential positioning on human rights is again outside the boundaries of this study. Similarly, when touching upon the topic of) Diplomatic law within *shī'ī* Islam, a noticeable delimitation was *shī'a ithnā-'asharī* law, anything outside left untouched. For instance, for Iran being used as an example of an Islamic State, and there has been considerable discussion around its circle of influence in Yemen. The UN Security Council's resolution S/RES/2722 in 'maintenance of international peace and security'. [532] However, addressing the situation requires further understanding of the relationship between its large *zaidī* community and Twelver *shī'ī* Islam and its particular connection with the battle of Karbalā. Despite its benefits to our debate particularly regarding the compatibility of Islamic diplomatic law and International diplomatic law, such evaluation of *zaidī* law would have been outside the boundaries of our study.

6.6 The Recommendations for Follow-up Work by this Research

For Iran (prior to and after the Islamic revolution), the acceptance of International law has always been advocated, but this research has underlined the actual compatibility of the International legal regime with Islamic diplomatic law. In doing so, it has suggested the possibility of the adaption of International law components within Islamic international law with an eye on seeking enhanced compatibility. This should not only be regarded as a way forward but also viewed as a necessity in the three domains investigated. Our critical assessment of the topic has indicated the probability of this being the reason why the neo-traditionalist *'ulamā* have risen following the Islamic revolution in Iran. It is through their attempts at finding a reinterpretation of religious rulings for contemporary times, coming up with novel solutions to the challenges facing the *shī'ī* community and the country has encountered that is much valued. However, within the context of *shī'a ithnā-'asharī* law even bolder steps have been proposed under the umbrella of *nu-andīshī-yi dīnī,* some of their ideas explained in Appendix 1. The whole argument around the flexibility of *sharī'a,* away from the Black letter law, and outside the historical narratives is one that views *sharī'a* 'as leading the way' forward (Sardar Ali, 2016; 24). In this approach, the question is no longer where *shī'ī* law has come from to find compatibility but rather where *shī'ī law* is heading to

[531] Refer to Human Rights Council Resolution 37/30 on the Islamic Republic of Iran, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/37/30 (accessed 31/05/2024).
[532] Refer to resolution S/RES/2722 of 10 January 2024; https://documents.un.org/doc/undoc/gen/n24/009/28/pdf/n2400928.pdf?token=LF9eXxRWRcagfqv4GI&fe=true (accessed 31/05/2024).

find its compatibility, as *sharī'a* is of flowing stream and not of stagnant water. It is argued that the extension of this study would involve reviewing the new mentality of perceiving *fiqh*, as having a far larger capacity for flexibility than conventionally thought. This requires a move in orientation 'away from the individual as the unit of analysis and toward the society' (Mavani, 2010; 44), and consider argumentations for 'reasonability, justice, ethics and better functionality' (Kadivar, 2022_b; 226). This, in a way, acknowledges the contribution of the new thinking in finding a new paradigm within *sharī'a* around *sīra 'uqalā',* [533] conforming to reason, justice, and morality. Such a paradigm shift would utilise numerous tools and mechanisms that allow expansion, articulation and the adjusting of divine commandments. It is concluded that in the sphere of such research, the advocacy of coalition by Islamic and International legal systems in the diplomatic domain would face up to the many of the new challenges in running an Islamic State, including the conduct of hostilities. [534] This is significant because the diplomacy for the protection of civilians at both times of peace and war is 'severely regulated in Islam'. [535] Nonetheless, this work must also take account of such positioning being shattered by the 'extremist nihilist transnational groups' taking new Islamic stances and practices (Van Engaland, 2010; 166). [536]

As such an alternative extension, considering the recent tendencies by the new generation in Iran, towards secularism, disillusioned by the monopoly of power of the clerical establishment. There have been questions raised regarding political legitimacy in Islamic thought, prompting a debate on the relationship between the rulers and the ruled and their respected rights and duties. Such an extension would require a reflection on the social, cultural, or political momentum, which is expected by some academics to drive the religious establishment and its *shī'ī* leadership to adapt possibly one of two positions. Either further review religious rulings with the intension of removing tensions as mentioned, in order to bring about increased proximity and compatibility with International law. Or view such, reforms as beyond the scope of what could be tolerated, since 'reason cannot fathom the wisdom behind acts of devotion' (Ridgeon, 2020; 23). [537] In effect disregarding ideas that could subject the faith to distortion and innovation, and reinforce the boundaries of intellectual reasoning of the *shī'a ithnā-'asharī* advocated by the traditionalist, as being

[533] Conduct of the rational, also known as *banā' 'uqalā'*.
[534] Such as Hostage taking, terrorism, weapons of mass destruction, assassination and guerrilla insurgency, torture, rape, etc.
[535] Although each Islamic School of thought has its own system of interpretation for the humanitarian and diplomatic standards and war ethics.
[536] Such as the Islamic State of ISIS, Taliban, al Qaeda and the likes.
[537] As even accepted by Aḥmad Qābil, who predominately advocated reason as compatible with revelation.

conditioned on the requirement for the return of Imām al-Mahdī. An assessment of this positioning sits within the huge debate by *shī'ī* scholars on the necessity of the formation of the Islamic State, and the innovative practice of *vilayat-i faqīh* during the occultation of the authoritative Imām. An evaluation of such perspective to *shī'ī* deputyship of the Imām reflects on possible other States such as Iraq and its Najaf based *shī'ī* leadership as the example of applicability. This would assess situations in which the leadership is committed to Imām al-Mahdī as being temporarily absent and relies on the idea of him still being the possessor of ultimate religious and political authority. In relation to International law, it identifies the existence of different domains that could be operative concurrently, accepting International law as complementary alongside Islamic law in the absence of the infallible source of divine leadership and governance. This would also be in agreement with the notation that the active *shī'ī* leadership 'have coherent pragmatic policies that comply with the norms of the international community' (Kalantari, 2012; 255).

While addressing Iran's policies, positions and intentions, particularly in encouraging other States and non-State actors to find common interests. There is the potential to extend this research to consider the approach of the *shī'a* militant political actors within the States in the Near East. The study on the compatibility of Islamic diplomatic law and International diplomatic law would benefit by considering militant *shī'a* groups such as Ḥizbullāh of Lebanon, and Ḥashd al-Sh'abī in Iraq and Syria, and also the Ḥūthī in Yemen. An understanding of their *shī'ī* identity and differing or similar jurisprudential practices requires an extensive assessment of *shī'ī* law. This possibly requires a shift from the political settings in which the Americans accuse Iran of providing 'financial, material, and logistical' assistance to terrorist militants around the globe (Chitadze, 2022; 146), [538] to an awareness in which Iran has been able to provide such an assertive role. The idea behind this work revolves around the international society created by a group of like-minded State or non-State actors, who 'conceive themselves to be bound by a common set of rules in their relations with one another', and share in the working of common institutions' (Bull 1977, 13). Considering, the socio-religious political identity used by militias such as Ḥizbullāh within the context of international norms, in line with their status as non-State actors as recognised within various Geneva Conventions. Research must assess observation of

[538] The U.S. government has imposed restrictions on activities with Iran under various legal authorities since 1979, following the seizure of the U.S. embassy in Tehran. For a full list, refer to https://www.state.gov/iran-sanctions/ (accessed 31/08/2023).

International norms by such groups, for instance in light of the UN Security Council Res. 1559 regarding Lebanon. [539]

[539] Refer to resolution S/RES/1559 of 2004; http://unscr.com/en/resolutions/1559 (accessed 31/05/2024).

GLOSSARY OF ISLAMIC TERMS

adilla al-arbaʿa	The four proofs
adillāt al-sharīʻa	Proofs of the law
aḥad	Singular
ʿahd	Covenant
aḥkām	Religious rulings
ahl al-bayt	Prophet Muhammad's household
akhbārī	Traditionalist
al-ʻaām	General
al-khāṣ	Specific
Allāmah	The Most learned
ʻālim	Scholar
al-ʻabbasīyūn	The ʿAbbāsids
al-amwāl	Property
al-arbaʿūn aḥadīth	Forty traditions
al-ʻilm	Knowledge
al-istiṣlāḥ	Public interest
al-maghāzī	The battles
al-mansūkh	Abrogated.
al-mubayyan	Expressive
al-muḥkam	Perspicuous
al-mujmal	Ambivalent
al-muqayyad	Qualified
al-mutashabih	Ambiguous.
al-muṭlaq	Absolute
al-naṣ	Explicit
al-nāsikh	Abrogator
al-sīrah	The way
al-sulūk al-ʿām	General behaviour
al-sulūk al-khāṣ	Personal behaviour
al-ʾumawīyūn	The ʾUmayyads

al-uṣūl al-arbaʿumiʾa	The four hundred source-collections
al-ẓāhir	Apparent.
amān	Protection - Safe conduct
amīr al-muʾminīn	Commander of the faithful
amīr kabīr	The great commander
anṣār	Helpers
anwatan	By force
aql	Reason - Intellect
arsala	To send - dispatch
asbāb al-nuzūl	The basis of revelation
askar	Soldier
aṣl	Origin
āthār	Accounts
ayāt al-aḥkām	Verses of rules
Āyatullāh	The sign of god
barā'a	Exemption
bayʿah	Oath of allegiance
dalīl	Proof
dāneshjūyān-i khaṭ-i imām	University Student following Imām's path
dār al-'ahd	Abode of covenant
dār al-ḥarb	Abode of war
dār al-islām	Abode of peace
dār al-ṣulḥ	Abode of truce
dīn	Faith
faqīh	Jurisprudent
fatwā	Legal opinion
fi'l	Action
fiqh	Profound understanding - Jurrisprudence
fiqh al-ḥukūmah	Jurisprudence of government
fiqh-i sīyāsī	Political jurisprudence
fiqh-i zamān va makān	The jurisprudential of time and place
fitnah	Dissension
ghair-i maḏhabī	Irreligious

ghaybah	Occultation
ḥadīth	Discourse
ḥajj	Pilgrimage
ḥakam	Arbitrator
ḥākemīyat-i qānūn	The rule of law
ḥākemīyat-i sharī'a	The rule of Islamic law
ḥanafī	One of the four *sunnī* Schools of law
ḥanbalī	One of the four *sunnī* Schools of law
hawā	Whimsical desire
hijrah	Migration
ḥudūd	Limits - Crimes against God
ḥukūmat-i dīnī	Religious government
ibādāt	Matters of worship
iḥtiyāṭ	Precaution
ijmā'	Consensus of opinion
ijtihād	Independent reasoning
'īlm al-dirāyah	Knowledge of comprehension
'īlm al-rijāl	Knowledge of men
'illah	Effective cause
Imām	Leader
iqā'at	Unilateral obligations
iṣlāḥ	Reform
Islām-i nu-andīsh	New thinker's Islam
isnād	Narrators
istifita'āt	Legal enquiries
istiḥsān	Juristic preference
istiqrā'	Induction
istiṣḥsāb	Presumption of continuity
isṭurah	myth
ithnā-'asharī	Twelver *shī'ī*
ja'farī	The *shī'ī* Scho
jahada	To struggle - To strive
jahil	Ignorant

jāhl- jāhilīyah	Ignorance
jamal	Camel
jibrā'īl	Gabriel
jihād	Struggle
jīzyah	Poll tax
ka'bah	Cube – House of God
khabar	Report
khalīf	Ruler -Caliph
khāwārij	Seceders
khulafā rāshīdūn	The righty guided Caliphs
kutub al-arbaʿa	The four books
kutub al-sittah	The six books
lādīnīyah	Irreligious
lashkar	Army
madanī	At Madīnah
madīnah tun-nabī	The city of the Prophet
makkī	At Makkah
māl	Wealth
malīk al-tujjār	Chief of merchants
mālīkī	One of the four sunnī Schools of law
maqāṣid al-sharī'a	Objectives of law
manṭiq al-farāgh	Lacuna
mardum sālārī dīnī	Religious democracy
marja'	Reference
marjaʿ al-taqlīd	Source of emulation
marja'iyyah	Religious reference
mashhūr	Widespread
maṣlaḥah	Public welfare
maṣlaḥat-i niẓām	Expediency of the system
maṣāliḥ al-mursalah	Considerations of public
interest*ma'ṣūm*	Infallible
matn	Text
mawālī	Non-Arabs Muslims

mawlā	Master – leader – patron – friend
mīthāq	Pact
mohem val aham	Important and more important
muʿāhidah	Treaty
mūʻakhat	Brotherhood
muʻāmilāt	Social relations
mūbāhīlah	Imprecation
mufāwadat - musāwama	Negotiation
muhājirūn	Migrants
mujtahids	Authority in religious law
mutawātir	Numerous/successive
muẕākereh - muʻāmeleh	Negotiation
nafs	Lives
nakh-i tasbīḥ	Thread of a rosary
nasl	Posterity
negus	king
nu-andīshī-yi dīnī	New religious thinking
qānūn-i asāsī jumhūrī Islāmī	Constitution of the Islamic Republic
qawl	Saying
qawl al-ṣaḥābī	Saying of companions
qiṣāṣ	Retaliation - Crimes against individuals,
qīyās	Analogy
rasūl	Envoy
ra'y	Personal opinion
riddah	Apostasy
riwāyah	Narration or telling
rusul	Envoys
ruwāt	Transmitters
sadd al-ḍarā'iʻ	Blocking lawful means
safīr	ambassador
ṣaḥabah	Companions
ṣaḥīfat al-madīnah	Charter of Madīnah
ṣaḥīḥ	Authentic

shāfiʻī	One of the four sunnī Schools of law
sharīʻa	A way to a watering place - Islamic law
sharīʻa furāt	Euphrates watering place
sharʻu man qablanā	Revealed laws proceeding Islam
shīʻa - shīʻī	A branch of Islam following the divinely leadership of Imāms after the Prophet, beginning with Imām ʻAlī
shīʻat ʻAlī	Party of ʻAlī.
shurā-yi negahbān	Guardian council
silm	Peace and security
sīra	Conduct
sīyār	Islamic international law - International diplomatic law
sīyāsa al-sharīʻa	Islamic political law
ṣulḥan	By treaty
sunan	Traditions
Sunnah	Tradition - the body of traditional social and legal custom and practice of the Prophet
sunnatī	Traditional
sunnī	A branch of Islam following the leadership of the four Caliphs after the Prophet.
tafaqquh	The seeking of profound understanding
tafsīr	Exegesis
taqrīr	Acquiescing
taqlīd	Imitation
takhyīr	Choice
taʻzīr	Punishment - crimes left at the discretion of the judge or the State
ūlil al-amr	Invested with command
ulamā	Muslim scholars
ummah	Community
umrah	One type of pilgrimage
ʻuqūd	Bilateral obligations
ʻurf	Custom
ustuwānah al-wufūd	Pillar of delegations - Pillar of embassies

uṣūl al-fiqh	Roots of jurisprudence - Principles of jurisprudence
uṣūlī	Rationalist
velāyat-e muṭlaqi-ye faqīh.	Absolute authority of the jurist
waḥīd	Isolated
wahy	Revelation
wilāyah al-muṭlaqa	Absolute authority
wukalā	Deputies

REFERENCES

Abass, A. (2014). *Complete International law: text, cases, and materials*. Oxford: Oxford University Press.

Abbas, H. (2021). *The Prophets heir: The life of ʻAlī ibn Abī Ṭālib*. Connecticut: Yale University Press.

Abdi, A. & Khalili, E. (2002). *Muʿammāyi Ḥākemiyat-i Qānūn dar īrān*. Tehran: Ṭarḥ-i nu.

Abdo, G. (2001). Rethinking the Islamic Republic with Ayatullah Hossein ali Montazeri. *The Middle East Journal,* 55(1), 9-24.

Abiad, N. (2008). *Sharia, Muslim states and international human rights treaty obligations: A comparative study*. Leiden: Brill.

Abrahamian, E. (1982). *Iran between two revolutions*. New Jersey: Princeton University Press.

Abu Nimer, M. (2001). *Reconciliation, Justice and Coexistence*. Washington DC: Lexington Books.

Abu Yusuf, A. (1973). *Kitāb al-kharaj*. Beirut: Dār al-Maʻrifaḥ.

Abu Zahra, M. (1964) *Al-ʻAlāqāt al-dawlīyyah fī al-Islām*. Cairo: Al-Dār Al-Qawmīyyah Lil Nashr.

Abu Zahra, M. (2008) *Al-Imām al-Ṣādiq*. Cairo: Al-Dār al-Fikr Al-ʿArabī.

Adamiyat, F. (1970). *Andīshehā-yi Mīrzā Fatḥ ʿAlī Akhundzādeh*. Tehran: Intishārāt-i Kharazmi.

Afsah, E. (2008). Contested Universalities of International law. Islam's Struggle with Modernity. Journal of the History of International law, 10(2), 259-307.

Afsaruddin, A. (2021). *ʻUthmān*. Encyclopaedia Britannica. Retrieved from https://www.britannica.com/biography/Uthman-ibn-Affan, (accessed 31/08/2023).

Afshari, R. (1994). Essay on Islamic Cultural Relativism in the Discourse of Human Rights. *Human Rights Quarterly*, 16(2), 235-276.

Ahmad, A. A. (2006). *Structural interrelations of theory and practice in Islamic law: A Study of Six Works of Medieval Islamic Jurisprudence*. Leiden: Brill.

Ahmadinejad, M. (2019). *Mukhālifat-i Aḥmadīnejād bā ishghāl-i sefārat*. IMNA. Retrieved from https://www.imna.ir/news/395673/ (accessed 31/08/2023).

Akbarzadeh, S. (ed.) (2019). *Routledge Handbook of International Relations of the Middle East*. London: Routledge.

Akhavan, P. (2005). The crime of genocide in the ICTR jurisprudence. *Journal of International Criminal Justice*, 3(4), 989-1006.

Akhavi, S. (1980). *Religion and politics in contemporary Iran*. New York: State University of New York Press.

Akhlaq, S. H. (2023). The making of Shia Ayatullahs. Washington DC: Lexington books.

Akhtar, S., & Khan, Z. (2014). Understanding the Nuclear Aspirations and Behaviour of North Korea and Iran. *Strategic Analysis*, *38*(5), 617-633.

Akhtar, S. & Razaq, A. (2020). Political and Diplomatic Strategies of World Leaders and the Prophet Muḥammad (An Analytical Study). *Al-Aijāz Research Journal of Islamic Studies & Humanities*, 4(2), 29-36.

Al-Alwani, T.J. (2005). *Issues in Contemporary Islamic Thought*. Pennsylvania: International Institute of Islamic Thought.

Al-ʻAmili, M. H (1984). *Wasaʾil al-Shīʿa ilā Taḥṣīl Masāʾil al-Sharʿīyah* (Vol. 11). Tehran: Intishārāt-i Islāmī.

Al-Amidi, A.F (1960). *Ghurar al-ḥikam wa durar al-kalim* (Vol. 2). Beirut: Manshūrāt Dār al-Thaqāfah.

Al-Dawoody, A. (2011). *The Islamic law of War: Justifications and Regulations*. New York: London: Palgrave Macmillan.

Al-Fadli, A. (2011). *Introduction to ḥadīth*. London: ICAS Press.

Al-Hallaj, M.M.F. (2021). The political, economic, and social reform in thought of Imām ʻAlī. *The Arab Gulf*, 49(1), 25-46.

Al-Hasan, M.A. (1982). *International relations in Qur'an and Sunnah*. Jordan: Maktabat al-Nabdaʻ al-Islāmīyah.

Al-Hilli, N. M. (1989). *Sharāyaʿ al-Islām* (Vol. 1). Tehran: Intishārāt-i Istiqlāl.

Al-Kulaini, M. (1990)_a. *Al-Kāfī* (Vol. 1). Tehran: Intishārāt-i Islāmīyah

Al-Kulaini, M. (1990)_b. *Al-Kāfī* (Vol. 5). Tehran: Intishārāt-i Islāmīyah

Al-Kulaini, M. (1990)_c. *Al-Kāfī* (Vol. 8). Tehran: Intishārāt-i Islāmīyah

al-Masʻudi, A. I. H. (1988). *Muravij al-Ẕahab* (Vol. 2). Qum: Dār al-Ḥijra.

Al-Mekrad, F. H. (1989). *Islam and International relations*. Doctorate Dissertation. University of Wales Trinity Saint David.

Al-Mufid, S. M. (1981). *Kitāb al-Irshād*. London: Mohammadi Trust of Great Britain and Northern Ireland.

Al-Mutairi, H. J. (2016). Origin and Development of Diplomatic Immunities in Islam and International laws. *International Journal of Business, Economics and Law*, 6(2), 47-58

Al-Muzaffar, M.R. (1970). *Uṣūl al-fiqh* (Vol. 2). Qum: Intishārāt-i Ismāīlīyān.

Al-Na'im. A. A. (1987). Islamic law, International relations, and Human Rights: Challenge and Response. *Cornell International law Journal*, 20 (2), 317-335.

Al-Na'im. A. A. (1996). *Towards Islamic reformation: Civil liberties, human Rights, and International law.* Syracuse: Syracuse University Press.

Al-Najafi, M.H. (1983). *javāhir al-kalām* (Vol 21). Beirut: Dār al-Torāth al-'Arabī.

Al-Qummi, A. I. I. (1967). *Tafsīr Qummī* - edited by Ṭayīb Jazāʾerī (Vol. 2). Najaf: Dār al-Kitāb.

Al-Qurashi, B. S. (2006). *The Life of Fatimah Al-Zahra', The Principal of all Women: Study and Analysis*. Qum: Ansariyan Publications.

Al-Razi, S. (1960). *Nahj al-Balāghah.* Qum: Intishārāt-i Mashhūr.

Al-Sadr, M.B. (1980). *Al-Muqadamāt fī tafsīr al-mawẓūʿīʾlil-Qurʾān* (Vol. 1) . Dār al-tawjīh al-Islāmī.

Al-Sadr, M.B. (1995) Ravand-i Āyande-yi ijtihād. *Fiqh-i ahl al-bayt*, 1374(1), 33-42.

Al-Sadr, M.B. (2001). *Al-fatāwā al-wāẓiḥa* (Vo. 1). Qum: Markaz al-Abhāth wa al-Darasāt al-Takhuṣṣasiyya lil Imām al-Shahīd al-Ṣadr.

Al-Sadr, M.B. (2003a). *Al-darūs fi ʿilm al-uṣūl* (Vo. 1). Qum: Markaz al-Abhāth wa al-Darasāt al-Takhuṣṣasiyya lil Imām al-Shahīd al-Ṣadr.

Al-Sadr, M.B. (2003b). *Al-darūs fi ʿilm al-uṣūl* (Vo. 2). Qum: Markaz al-Abhāth wa al-Darasāt al-Takhuṣṣasiyya lil Imām al-Shahīd al-Ṣadr.

Al-Sadr, M.B. (2004). *Iqtiṣāduna*. Qum: Markaz al-Abhāth wa al-Darasāt al-Takhuṣṣasiyya lil Imām al-Shahīd al-Ṣadr.

Al-Saduq, M.I.A. (1999). *'Ayūn Akhbār al-Riẓā.* Intishārāt-I Jahān.

Al-Tabari, M. I. J. (1989)_a. *The history of Al-Tabari: The last years of the Prophet* (Vol. 6). New York: State University of New York Press

Al-Tabari, M. I. J. (1989)_b. *The history of Al-Tabari: The last years of the Prophet* (Vol. 9). New York: State University of New York Press.

Al-Tabari, M. I. J. (1992). *Jāmeʿ al-Bayān fi Tafsīr al-Qurʾān* (Vol. 20). Beirut: Dār al-Maʿrifah.Al-Tabarsi, F. (1982). *Al-Iḥtijāj* (Vol. 2). Qum: Intishārāt-i al-Murtaẓā.

Al-Tabarsi, F. (1995). *Majmaʿ al-Bayān fī Tafsīr al-Qurʾān* (Vol. 9). Tehran: Intishārāt-i Nāṣir Khosru.

Al-Tastari, M. (1991). *Qāmūs al-Rijāl* (Vol. 1). Qum: Mu'assasah al-Nashr al-Islamī.

Al-Tusi, M.B.H. (1967)_a. *Al Mabsūṭ fī fiqh al-Imāmīyah* (Vol. 1). Tehran: Intishārāt-i Murtaẓāvī.

Al-Tusi, M.B.H. (1967)_b. *Al Mabsūṭ fī fiqh al-Imāmīyah* (Vol. 2). Tehran: Intishārāt-i Murtaẓāvī.

Al-Tusi, M.B.H. (1967)_c. *Al Mabsūṭ fī fiqh al-Imāmīyah* (Vol. 8). Tehran: Intishārāt-i Murtaẓāvī.

Al-Waqidi, M. I. 'U. (1966). *kitāb al-maghāzī* (Vol. 1-3). Oxford: Oxford University Press.

Al-Ya'qubi, A. I. I. (2010). *Tārīkh-I Ya'qūbī* (Vol. 2). Tehran: Shirkat-i Intishārāt-i 'Elmī va Farhangī.

Al-Zuhayli, W. (1965). *Al-'Alāqāt al-dawlīyyah fī al-islām*. Damascus: Dār al-Fikr.

Al-Zuhili, S.W (2005). Islam and International law. *International review of the red Cross* 857, 269-283.

Alam, M. (2013). Islam and Secularism. *Pakistan Horizon*, 66(3), 37-49.

Alexandrowicz, C. H. (2017). *The law of nations in global history*. Oxford: Oxford University Press.

Alatas, S. F. Ibn Khaldūn and contemporary sociology. *International sociology*, 21(6), 782-795.

Algar, H. (1981) *Islam and Revolution: Writings and Declarations (of) Imām Khomeinī*. London: Mizan Press.

Algar, H. (2006). 'Allāmah Sayyid Muḥammad Ḥusayn Ṭabāṭabāʾī: Philosopher, Exegete, and Gnostic', *Journal of Islamic Studies,* 17(3), 326–51.

Ali, K. (2006). *A study of Islamic History*. New Delhi Adam Publishers.

Ali, L. (2018). British *Diplomacy and the Iranian Revolution, 1978-1981*. Berlin: Springer.

Allain, J. (2011). Acculturation through the Middle Ages: The Islamic law of nations and its place in the history of International law. In A. Orakhelashvili (ed.), *Research handbook on the theory and history of International law*. Cheltenham: Edward Elgar publishing, 394-407.

Alikarami, L. (2019). *Women and Equality in Iran: Society and Activism*. London: Bloomsbury Publishing.

Amanat, A. (2003). From Ijtihad to Willayat-i Faqih: The evolving of the Shia legal authorityto political power. *Logos,* 2(3), 1-15.

Amin, S. H. (1985). *Middle East legal systems* Oxford: Royston Publishers.

Amin, S.H. (1999). *Imām Khomeinī va neẓām-i bain al-milal*, Retrieved from http://www.Imām-Khomeinī.ir/fa/c803_f268 (accessed 31/08/2023).

Aminabadi, S. M., & Dehghani Firoozabadi, S. J. (2021). Eclecticism; A new approach to Explaining International Crises. *International Relations Researches*, 10(4), 7-38.

Amir-Moezzi, M. A. (1997). Remarques sur les critères d'authenticité du hadîth et l'autorité du juriste dans le shi'isme imâmite, *Studia Islamica* 85, 5-39.

Amir-Moezzi, M. A. (2011). *The Spirituality of Shiʿi Islam: Beliefs and Practices*. London: I. B. Tauris.

Amir-Moezzi, M.A. (2016). *Divine Guide in Early Shi'ism: The Sources of Esotericism in Islam*. New York: State University of New York Press.

Andenas, M. & and Chiussi, L. (2019). Cohesion, convergence, and coherence in International law. In M. Andenas, M. Fitzmaurice, A. Tanzi, & J. Wouters (eds.), *General Principles and the Coherence of International law*. Leiden: Brill, 9-34.

Anderson, S.R. (2019). *International law and the Iranian revolution*. Brookings. Retrieved from https://www.brookings.edu/opinions/international-law-and-the-iranian-revolution/, (accessed 31/08/2023).

Andersson, T. (2008). *Early Sunnī historiography: a study of the Tārīkh of Khalīfa b. Khayyāṭ*. Leiden: Brill.

Anghie, A. (2006). The evolution of International law, colonial and post colonial realities. *Third World Quaterly*, 27(5), 739-753.

Ansari, A. M. (2001). The myth of the white revolution: Mohammad Reza Shah,'modernisation'and the consolidation of power. *Middle Eastern Studies*, 37(3), 1-24.

Ansari, A. M. (2019). *Iran, Islam and democracy: The politics of managing change*. London: Gingko Library.

Anthony, S.W. (2020). *Muḥammad and the Empires of Faith: The Making of the Prophet of Islam*. Los Angeles: University of California Press.

Arafat, W. N. (1976). New Light on the Story of the Banū Qurayẓa. *Journal of the Royal Asiatic Society of Great Britain and Ireland,* 2, 100-107.

Ardalan, K. (2020). *Understanding Revolution*. Berlin: Springer.

Arend, A. C. (1999). *Legal rules and international society*. Oxford: Oxford University Press.

Arjomand, S. A. (1984). *The shadow of God and the Hidden Imam: Religion, political order, and societal change in Shiʻite Iran from the beginning to 1890*. Chicago: University of Chicago Press.

Arjomand, S. A. (ed.) (1988). Ideological revolution in Shi'ism. In S.A Arjomand (ed.), *Authority and political culture in Shi'ism.* New York: State University of New York Press, 178-212.

Arjomand, S. A. (2009). *After Khomeini: Iran under his successors*. Oxford: Oxford University Press.

Arjomand, S. A. (2012). The kingdom of jurists: constitutionalism and the legal order in Iran. In R. Grote, & T. Röder (eds.), *Constitutionalism in Islamic countries: Between upheaval and continuity*. Oxford: Oxford University Press, 147-169.

Arjomand, S. A. (2022). *Messianism and sociopolitical revolution in Medival Islam*. Los Angeles: University of California Press.

Armstrong, K. (2000). *Islam: A Short History*. New York: A Modern Library.

Armstrong, D. (2009). *Routledge Handbook of International law*. London: Routledge

Ashrafi, A. (2008), *Naqsh-i marjaʿīyat dar rahbar-yi sīyāsī Imām Khomeinī*. *Majalle-yi Matīn,* 1387(21), 5-25.

Ashuri, M (1997). *Āyīn-i dādrasī-yi Kaifarī*. Tehran: Intishārāt-i Ṣamt.

Askari, H. Iqbal, Z. & Mirakhor, A. (2014). *Introduction to Islamic economics: Theory and application*. New Jersey: John Wiley & Sons.

Aslan, R. (2011). *No god but God: The origins, evolution and future of Islam*. London: Random House.

Atai, A. (2021). *Reform of banking laws and regulations in Iran*. Leiden: Brill.

Auda, J. (2022). *Maqasid Al-Shari'ah as philosophy of Islamic law*. Pennsylvania: International Institute of Islamic Thought.

Aust, H.P. & Demir-Gursel, E. (2021). *The European court of Human Rights: Current challenges in historical perspective*. Cheltenham: Edward Elgar publishing.

Ayazi, M.A. (2012). Taʾmūlī pīrāmūn-i ravāyat-i kushtār-i yahūdīyān-i banū Qurayẓah. *Pajūhish hā-yi Qurʾānī*, 18 (3), 120-143.

Ayazi, M.A. (2017). *Muʾalifihā-yi nu-andīsh-yi dīnī dar andīshe-yi Imām Khomeinī*. Markaz-i Dāʾiratul Maʿārif Buzurg-i Islāmī. Retrieved from https://www.cgie.org.ir/fa/news/ 177236 (accessed 31/08/2023).

Aydin, H. (2011). Islam: The religion of peace. *Journal of Rotterdam Islamic and Social Sciences*, 2(1), 74-92.

Ayubi, N. N. (1996). *Over-stating the Arab state: Politics and society in the Middle East*. London: Bloomsbury Publishing.

Azari, H. (2014). *Protection of women victim of rape: Islamic and International legal perspectives.* Doctorate Dissertation. Tilburg University.

Aziz, S. F. (2021). *The racial Muslim: when racism quashes religious freedom*. Los Angeles: University of California Press.

Azizi, S.M.M. (2016). Islamic law and International law in the Islamic Republic of Iran's Constitution. In M. Mattar, V. Palmer, & M.A. Koppel (eds.), *Mixed legal systems, East and West*. London: Routledge, 245-250

Badamchi, M. (2017). *Post-Islamist Political Theory: Iranian Intellectuals and Political Liberalism in Dialogue*. Berlin: Springer.

Baderin, M.A. (2000). The Evolution of Islamic law of Nations and Modern International Order: Universal Peace through Mutuality and Cooperation. *The American Journal of Islamic Social Sciences*, 17(2), 57-80.

Baderin, M.A. (2003). *International Human Rights and Islamic law*. Oxford: Oxford University Press.

Baderin, M.A. (2009) Understanding Islamic Law in Theory and Practice. *Legal Information Management*, 9 (3), 186-190.

Baderin, M.A. (2010). Religion and International law: Friends or Foes? *SOAS School of Law Research Paper* 4, 637-657.

Baderin, M.A (ed.) (2017). *International law and Islamic law*. London: Routledge.

Badr, G.M. 1982. A Survey of Islamic International law, *Proceedings of the American Society of International law* 76, 56-61.

Baqi, E. (2004). *Ruḥānīyat va Qudrat*. Tehran: Intishārāt-i Sarā'i.

Baker, J.C. (2000). *International law and International relations*. London: Continuum.

Baker, R.W. (2009). *Islam without Fear, Egypt and the new Islamists*. Massachusetts: Harvard University Press.

Baker, p. (2023). *A Four-Decade Secret*. The New York Times. Retrieved from https://www.nytimes.com/2023/03/18/us/politics/jimmy-carter-october-surprise-iran-hostages.html (accessed 31/08/2023).

Bakhshizadeh, M. (2018). *Changing gender norms in Islam between reason and revelation*. Leverkusen: Budrich UniPress ltd.

Bakir, A. (2023). Islam and International relations: why is there no Islamic IR theory. *Third World Quarterly*, 44(1), 22-38.

Baladhuri, A. (1998). *Anṣāb al-Ashrāf*. Damascus: Dār al-Fikr.

Baldwin, G. B. (1973). The legal system of Iran. *The International Lawyer*, *7*(2), 492- 504.

Banai, H. (2020). *Hidden Liberalism: Burdened visions of progress in modern Iran*. Cambridge: Cambridge University Press.

Banani, A. (1961). *The modernisation of Iran (1921-1941).* Stanford: Stanford University Press.

Bangura, A.K. (2014). *Assessing Barack Obama's Africa Policy*. Maryland: University Press of America.

Barker, J. C. (2016). *The protection of diplomatic personnel*. London: Routledge.

Barzin, S. (1994). Constitutionalism and democracy in the religious ideology of Mehdī Bāzargān. *British Journal of Middle Eastern Studies*, 21(1), 85-101.

Bashir, K.R. (2013). Treatment of foreigners in the classical Islamic State with special focus on diplomatic envoys: Al-Shaybani and Aman. In M. L. Frick, & A. T. Müller, (eds.), *Islam and International law: engaging self-centrism from a plurality of perspectives*. The Hague: Martinus Nijhoff Publishers, 146-160.

Bashier, Z. (1983). *Hijra: story and significance*. Leicester: The Islamic Foundation.

Bashir, K. R. (2018). *Islamic International law: Historical Foundations and al-Shaybani's Siyar.* Cheltenham: Edward Elgar publishing.

Bassiouni, M. C. (1980). Protection of diplomats under Islamic law. *American Journal of International law*, 74(3), 609-633.

Bassiouni, M. C. (1989). A functional approach to general principles of International law. *Michigan ournal of International law*, 11(3), 768-818.

Bassiouni, M. C. (2014)_a. *The Sharia and Islamic criminal justice in time of war and peace*. Cambridge: Cambridge University Press.

Bassiouni, M. C. (2014)_b. *International extradition: United States law and practice*. Oxford: Oxford University Press, USA.

Bassiouni, M. C. (2015). Misunderstanding Islam on the use of violence. *Houston Journal of International law*, 37 (3), 643-677.

Baum, S. (2012). *Hans Kelsen and the case for democracy*. Colchester: ECPR Press.

Bayat, A. (2007). *Making Islam democratic: Social movements and the post-Islamist turn*. Stanford: Stanford University Press.

BBC. (2009). *War*. British Broadcasting Company. Retrieved from http://www.bbc.co.uk/religion/religions/islam/islamethics/war.shtml (accessed 31/08/2023).

BBC. (2021). *France bomb plot: Iran diplomat Assadollah Assadi sentenced to 20 years*. British Broadcasting Company. Retrieved from https://www.bbc.co.uk/news/world-europe-55931633 (accessed 31/08/2023).

BBC. (2023). *Iran frees more Europeans after prisoner swap*. British Broadcasting Company. Retrieved from https://www.bbc.co.uk/news/world-middle-east-65791257 (accessed 31/08/2023).

Bederman, D. J. (2010). *Custom as a source of law*. Cambridge: Cambridge University Press.

Bederman, D. J. (2002). *The spirit of International law*. Georgia: University of Georgia Press.

Beham, M.P. (2013). Islamic Law and International Criminal Law. In M. L. Frick, & A. T. Müller, (eds.), *Islam and International law: engaging self-centrism from a plurality of perspectives*. The Hague: Martinus Nijhoff Publishers, 347-366.

Behrens, P. (2017). *Diplomatic law in a new millennium*. Oxford: Oxford University Press.

Beheshripour, H. (2010). Naqsh-i Imām Khomeinī dar mudīrīyat-i buran-i gerugāngīrī dar lāni-yi jāsūsī. *Mutāliʿāt-i Tārīkhī*, 7(30), 11-93.

Bell, D. (1977). The Return of the Sacred? The argumenton the future of Religion. *British Journal of Sociology,* 28(4), 419-449.

Bennett, A. (2013). The mother of all isms: Causal mechanisms and structured pluralism in International Relations theory. *European Journal of international relations*, *19*(3), 459-481.

Berger, M. (2008). Islamic Views on International law. In P. Meerts (ed.), *Culture and International law*. The Hague: Hague Academic Coalition, 105-117.

Berger, M. (2010). *Religion and Islam in contemporary International relations*. The Hague: Netherlands Institute of International relations.

Berger, M. (2020). *Islamic International law*. Oxford Biographies. Retrieved from https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0170.xml (accessed 31/08/2023).

Berkey, J. P. (2002). *The formation of Islam: Religion and society in the Near East* (600–1800). Cambridge: Cambridge University Press.

Bertaina, D. (2010). Ṣafwān ibn Yaḥyā. In D. Thomas, & A. Mallet (eds.), *Christian-Muslim Relations: A Bibliographical History* (Vol. 1) (600–900). Leiden: Brill, 535-539.

Bhojani, A. R. (2015). *Moral Rationalism and Shari'a: Independent rationality in modern Shi'i usul al-fiqh*. London: Routledge.

Biden, J. (2022). *Remarks by President Biden*. Whitehouse.gov. Retrieved from https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/05/02/remarks-by-president-biden-at-a-reception-to-celebrate-eid-al-fitr/ (accessed 31/08/2023).

Bjola, C. & Kornprobst, M. (2013). *Understanding International Diplomacy: Theory, Practice and Ethics*. London: Routledge.

Black, E. A. Esmaeili, H. & Hosen, N. (2013). *Modern perspectives on Islamic law*. Cheltenham: Edward Elgar publishing.

Blake, M. (2001). Distributive Justice, State Coercion, and Autonomy. *Philosophy and Public Affairs,* 30(3), 257–296.

Blanchard, C.M. & Humud, C.E. (2017). *The Islamic State and U.S. Policy*. Washington DC: Congressional Research Services.

Boczek, B.A. 2005. *International law: a dictionary* (Vol. 2). Scarecrow Press.

Boisard, M.A. (1980). On the Probable Influence of Islam on Western Public and International law. International *Journal of Middle Eastern Studies*, 11(4), 429-450.

Bolewski, W. (2007). *Diplomacy and International law in Globalised Relation*, Berlin: Springer.

Bonn, A.B. (2010). Mass Deception: Moral panic and the U.S. war in Iraq. New Jersey: Rutgers University Press.

Bonner, M. 2008. *Jihad in Islamic history*. New Jersey: Princeton University Press.

Boroujerdi, M. (1996). *Iranian intellectuals and the West: The tormented triumph of nativism*. Syracuse: Syracuse University Press.

Boroujerdi, M. (2013). *Mirror for the Muslim prince: Islam and the theory of Statecraft*. Syracuse: Syracuse University Press

Bosch, S. (2021). Understanding diplomatic and consular inviolability-learning from the Jamal Khashoggi tragedy. *Comparative and International Law Journal of Southern Africa*, 54(1), 1-27.

Bowden, M. (2007). *Guests of the Ayatullah: The Iran Hostage Crisis: The First Battle in America's War with Militant Islam*. New York: Grove Press.

Bowen, J.R. (2012). *A new Anthropology of Islam*. Cambridge: Cambridge University Press.

Bowering, G. Crone, P. & Mirza, M. (eds.) (2013). *The Princeton Encyclopaedia of Islamic Political Thought*. New Jersey: Princeton University Press.

Boyle, F.A. (1999). *Foundations of World Order: The Legalist Approachto International relations 1898-1922*. Durham: Duke University Press.

Brown, D.W. (1996). *Rethinking Tradition in Modern Islamic Thought*. Cambridge: Cambridge University Press...

Browne, E.G. (1910). *The Persian revolution 1905-1909*. Cambridge: University Press.

Brumberg, D. (2001). *Reinventing Khomeini: The struggle for reform in Iran*. Chicago: University of Chicago Press.

Bruns, K. (2014). *A Cornerstone of Modern Diplomacy: Britain and the Negotiation of the 1961 Vienna Convention on Diplomatic Relations*. London: Bloomsbury Publishing.

Bsoul, L. A. (2013). Islamic Diplomacy: Views of the Classical Jurists. In M. L. Frick, & A. T. Müller, (eds.), *Islam and International law: engaging self-centrism from a plurality of perspectives*. The Hague: Martinus Nijhoff Publishers, 125-145.

Buchta, W. (2000). *Who Rules Iran*? The Washington Institute for Near East Policy. Retrieved from https://www.washingtoninstitute.org/policy-analysis/who-rules-iran-structure-power-islamic-republic (accessed 31/08/2023).

Buehler, A. F. (2014). Fāṭimah. In C. Fitzpatrick, A. H. Walker, (eds.), *Muhammad in History, Thought, and Culture: An Encyclopaedia of the Prophet of God*. Santa Barbara: ABC-CLIO.

Buga, I. (2018). *Modification of treaties by subsequent practice*. Oxford: Oxford University Press.

Bull, H. (1977). *The Anarchical Society: A Study of Order in World Politics*. New York: Columbia University Press.

Bulloch, J. & Morris, H. (1991). *Saddam's War: The Origins of the Kuwait Conflict and the International Response.* London: Faber and Faber.

Burgis-Kasthala, M. (2018). How Should International Lawyers Study Islamic law and Its Contribution to International law. In K. A. El-Fadl (ed.), *International law and Islam*. Leiden: Brill. Nijhoff, 39-63.

Burrell, J. (2008). *Republican Treason: Republican Fascism Exposed*. New York: Algora Publishing.

Burton, J. W. (2010). *Systems, States, diplomacy and rules*. Cambridge: Cambridge University Press.

Burton, J. (2019). *Sources of Islamic Law: Islamic Theories of Abrogation*. Edinburgh: Edinburgh University Press.

Bush, G.W. (1989). *Building a better America* (Message of the President of United States delivered to the joint session of the congress). Washington D.C.: U.S. Government Printing Office.

Butchard, P. (2020). *Principles of International law: a brief guide*. U.K. Parliament. Retrieved from https://researchbriefings.files.parliament.uk/documents/CBP-9010/CBP-9010.pdf (accessed 31/08/2023).

Byrd, D. J., & Miri, S. J. (eds.) (2017). *Ali Shariati and the Future of Social Theory: Religion, Revolution, and the Role of the Intellectual*. Leiden: Brill.

Byrne M. & Gasiorowski, M.J. (2015). *Mohammad Mosaddeq and the 1953 coup in Iran*. Syracuse: Syracuse University Press.

Çavusoglu, E. (2018). Britain's post-colonial foreign policy towards the persian gulf security (1971-1991): An alternative approach. *Türkiye Ortadoğu Çalışmaları Dergisi*, *5*(2), 37-64.

Caetani, L. (1905). *Annali dell'Islam* (vol. 1). Milan: Ulrico Hoepli.

Calder, N. Mojaddedi, M. & Rippin, A. (2012). *Classical Islam: A source book of Religious Literature*. London: Routledge.

Cali, B. (2018). Influence of the ICCPR in the Middle East. In D. Moeckli, H. Keller, & C. Heri (eds.), *The Human Rights Covenants at 50: Their Past, Present, and Future*. Oxford: Oxford University Press, 124-150.

Chak, F. M. (2017). The Post-Enlightenment Moral Crisis and the Emergence of Secular Tyranny in the Middle East. *American Journal of Islamic Social Sciences*, 34(1), 49-76.

Carter, J. (1995). *Keeping faith: Memoirs of a president*. Fayetteville: University of Arkansas Press.

Cashman, G. & Robinson, L.C. (2021). *An introduction to causes of wa*r. Maryland: Roman and Littlefield Publishers.

Cassesse, A. (2005). *International law*. Oxford: Oxford University Press.

Celmer, M. A. (1987). *Terrorism, U.S. Strategy, and Reagan Policies*. Westport: Greenwood Press.

CIA. (2022). *Travel the globe with CIA's World Fact book*. CIA.GOV. Retrieved from https://www.cia.gov/world-factbook/countries/iran/ (accessed 31/08/2023).

Chehabi, H. E. (2016). South Africa and Iran in the apartheid era. *Journal of South African Studies*, 42 (2), 687-709.

Childress III, D. E. Ramsey, M. D. & Whytock, C. A. (2015). *Transnational Law and Practice*. Netherlands: Kluwer Law International.

Christopher, W. & Mosk, R. M. (2007). The Iranian Hostage Crisis and the Iran-US Claims Tribunal: Implications for International Dispute Resolution and Diplomacy. *Pepperdine Dispute Resolution Law Journal*, 7(2), 165-175.

Chitadze, N. (2022). *Global Perspectives on the Psychology of Terrorism*. Pennsylvania: IGI Global.

Chittick, W.C (1988). *The Psalms of Islam: a translation of Ṣaḥīfah Al-Sajjādiyah*. London: Mohammadi Trust of Great Britain and Northern Ireland.

Chubin, S. (2012). *Iran and the Arab Spring: Ascendancy Frustrated*. Collection 9. Cambridge: Gulf Research Centre.

Clark, D. S. (ed.) (2007). *Encyclopaedia of law and society: American and global Perspectives*. Los Angeles: SAGE Publishing.

Cohen, R. (2001). Resolving conflict across languages. *Negotiation Journal*, 17(1), 17-34.

Cole, J. (2018). *Muhammad: Prophet of Peace amid the Clash of Empires*. New York: Nation Books.

Combs, N.A. (2000). Carter, Reagan, and Khomeini: Presidential Transitions and International law. *Hastings Law Journal,* 52(2), 303- 439.

Considine, C. (2016). Religious Pluralism and Civic Rights in a Muslim Nation: An Analysis of Prophet Muḥammad's Covenants with Christians. *Religions*, 7(2), 1-21.

Cook, M. (2000). *The Koran: A very short introduction*. Oxford: Oxford University Press.

Cornut, J. (2015). Analytic eclecticism in practice: A method for combining international relations theories. International Studies Perspectives, 16(1), 50-66.

Cottam, R. W. (1989). *Iran and the United States: A cold war case study*. Pittsburgh: University of Pittsburgh Press.

Coulson, N.J. (1964). *A History of Islamic Law*. Edinburgh: Edinburgh University Press.

Cownie, F. (2004). *Legal Academics*. Oxford: Hart Publishing.

Cravens, W. S. D. (1998). The future of Islamic legal arguments in international boundary disputes between Islamic states. *Washington and Lee Law Review*. 55 (2), 529-576.

Christoffersen, L., & Nielsen, J. S. (Eds.). (2016). *Shari 'a As Discourse: Legal Traditions and the Encounter with Europe*. London: Routledge.

Crone, P. (1980). *Slaves on Horses: The evolution of Islamic polity*. Cambridge: Cambridge University Press.

Crone, P. (2002). *Roman, Provincial, and Islamic Law: The origins of Islamic patronate*. Cambridge: Cambridge University Press.

Crawford, J., & Brownlie, I. (2019). *Brownlie's principles of public international law*. Oxford: Oxford University Press.

D'Alema, F. (2022). *Symbolic struggle for the Arab Spring: political fields and foreign policy in the Middle East*. Edinburgh: University of Edinburgh.

Dabashi, H. (2004). Blindness and Insight: The predicament of a Muslim intellectual. In R. Jahanbegloo (ed.), *Iran: Between tradition and modernity*. Washington DC: Lexington Books, 95-116.

Dabashi, H. (2017). *Theology of discontent: The ideological foundation of the Islamic revolution in Iran*. London: Routledge.

Dad-Marzi, S.M. 2000; mafhūm-i ‘aqd dar qanūn-i madanī, *Pajūhish hā-yi kalāmī falsafī*, 1379(4), 58-72.

Dadparvar, S. (2023). *Islamic Republic of Iran's Foreign Policy in the South Caucasus: Opportunities and Constraints*. Cambridge: Cambridge Scholars Publishing.

Dahlen, A. (2004). *Islamic Law, Epistemology and Modernity: Legal Philosophy in Contemporary Iran*. London: Routledge.

Dalimayr, F. (1999). *Border crossing: Towards a comparative political theory*. Washington DC: Lexington Books.

Daniel, N. (1966). *Islam and the West: The Making of an Image.* Alva: Robert Cunningham and Sons Ltd.

Daniel, E.L. (2001). *The history of Iran*. Westport: Greenwood Press.

Danilenko, G.M. (1993). *Law-Making in the International Community*. The Hague: Martinus Nijhoff Publishers.

Dar, A. I. & Sayed, J. A. (2017). Diplomacy in Islam. *Asian Journal of Science and Technology*, 8(9), 5616-5618.

Darwich, M. (2015). The Challenge of Bridging IR and Area Studies in Middle East International Relations Teaching. LSE Middle East Center. Retrieved from http://blogs.lse.ac.uk/mec/2015/08/18/the-challenge-of-bridging-ir-and-area-studies-in-middle-east-international-relations-teaching/ (accessed 31/08/2023).

Darvishi-Setalani, F. (2008). *Sirey-i ʿAmalī-yi Imām Khomeinī dar idāri-yi kishvar*. Tehran: Intishārāt-i ʿUrūj.

De Bellaigue, C. (2017). *The Islamic enlightenment: The struggle between faith and reason, 1798 to modern times*. New York: Liveright Publishing.

De Jarmy, A. (2017). *Representations of the Prophet during expeditions as depicted in the Maghāzī Literature and the ḥadīth of al-Bukhārī*. Prophet Hypotheses. Retrieved from https://prophet.hypotheses.org/430 (accessed 31/08/2023).

De Jarmy, A. (2021). Dating the Emergence of the Warrior-Prophet in Maghāzī Literature: Second/Eighth to the Fourth/Tenth Century. In D. Gril, ,S. Reichmuth ,D. Sarmis (eds.) & The Presence of the Prophet in Early Modern and Contemporary Islam. Leiden: Brill, 79-99.

De la Rasilla, I. (2018). Islam and the Global Turn in the History of International law. In K. A. El-Fadl (ed.), *International law and Islam*. Leiden: Brill, 1-14.

De la Rasilla, I. (2021). *International law and History: Modern Interfaces*. Cambridge: Cambridge University Press.

De Smet, S. (2003). The immunity of Heads of States in U.S. Courts after the Decision of the International Court of Justice. *Nordic Journal of International law*, 72(3), 313-339.

Del Moral, I. D. L. R. & Shahid, A. (2018). *International law and Islam*. Leiden: Brill.

Delong-Bas, N. (2017). *Jihād*. Oxford Biographies. Retrieved from https://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155/-00450.xml (accessed 31/08/2023).

Dembinski, L. (1988). *The Modern Law of Diplomacy: External Missions of States and International Organisations*. Leiden: Brill.

Denny, F. 2015. *An introduction to Islam*. London: Routledge.

Denza, E. (2009). *Vienna Convention on Diplomatic Relations*. United Nations Audiovisual Library of International Law. Retrieved from www.un.org/law/avl (accessed 31/08/2023).

Denza, E. (2016). *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford: Oxford University Press.

Diamond, H. S. (2012). *Reinterpreting Nuclear Consequences: Realism, Constructivism, and the Iranian Crisis.* Doctorate dissertation, University of Puget Sound.

Dixon, M. (2005). *Textbook on International law*. Oxford: Oxford University Press.

Dokhanchi, M. (2023). Debating Islamism as an Expression of Political Islam. In E. Orofino (ed.), *Rethinking Islamism beyond jihadi violence: Fighting ideas leaving the sword aside*. Vernon Press, 3-24.

Donaldson, D. (1933). *The Shiite Religion*. London: Luzac.

Donner, F.M. (2012). *Muhammad and the Believers: at the Origins of Islam*. Massachusetts: Harvard University Press.

Dougherty, J.E. & Pfaltzgraff, R.L. (1971). *Contending Theories of International relations*. Philadelphia: J. B Lippincott Company.

Drinkwater, D. (2005). *Sir Harold Nicolson and International relations: the practitioner as the theorist*. Oxford: Oxford University Press.

Drocourt, N. (2010). Christian-Muslim diplomatic relations. An overview of the main sources and themes of encounter (600-1000). In D. Thomas, & A. Mallet (eds.), *Christian-Muslim Relations: A Bibliographical History* (Vol. 2) (900-1050). Leiden: Brill, 29-72.

Dufour, F. (2020). *The Realities of Reality*: *The Reality Behind Achieving World Peace* (Part IV). Social Science Research Network. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3572685 (accessed 31/08/2023).

Dusuki, A. W. & Bouheraoua, S. (2011). The framework of Maqasid al-Shari'ah and its implication for Islamic finance. *Islam and Civilisational Renewal Journal*, 2(2), 316-336.

Dworkin, R. (2013). A New Philosophy for International Law. *Philosophy & Public Affairs,* 41(1), 2–30.

Earle, D. (2016). *Re-covering Modernism: Pulps, aperbacks, and the prejudice of form*. London: Routledge.

Eban, A. S. (1983). *The new diplomacy: International affairs in the modern age*. New York: Random House.

Ebrahim, N. (2023). *The massive new U.S. embassy complex in a tiny Middle eastern nation is raising eyebrows*. CNN. Retrieved from http://www.amp.cnn.com/2023/05/12.middleeast/massive-us-embassy (accessed 31/08/2023).

Editorial. (2021) *The Atomic Bomb is What States Make of it: A Constructivist Approach to Sanctioning Iran*, The Yale Review of International Studies. Retrieved from https://yris.yira.org/essays/the-atomic-bomb-is-what-states-make-of-it-a-constructivist-approach-to-sanctioning-iran/#_ftn77 (accessed 31/05/2024).

Ehteshami, A., & Zweiri, M. (2007). *Iran and the rise of its neoconservatives: the politics of Tehran's silent revolution*. London: Bloomsbury Publishing.Ehteshami, A., Hinnebusch, R., & Fawcett, L. (2013). Foreign policy-making in the Middle East: complex realism. *International Relations of the Middle East*, 225-244.

El-Ashker, A., & Wilson, R. (2006). *Isamic Economy: A short history*. Leiden: Brill.

El-Fadl, K. A. (2013). 'The Shari 'ah', in J. L Esposito & E. E. D. Shahin (eds.), *The Oxford handbook of Islam and politics*. Oxford: Oxford: Oxford University Press, 7-26.

El-Cheikh, N. M. (1999). Muḥammad and Heraclius: A study in legitimacy. *Studia Islamica,* 89, 5-21.

El-Cheikh, N. M. (2004). *Byzantium viewed by the Arabs*. Massachusetts: Harvard University Press.

El-Hibri, T. (2021). *The ʿAbbāsid Caliphate: A history*. Cambridge: Cambridge University Press.

El-Shamsy, A. & Coulson, N. J. (2023) *Sharia*. Encyclopedia Britannica. Retrieved fom https://www.britannica.com/topic/Shariah (accessed 31/08/2023).

Elias, J. (1969). The ithnā-'asharī shī'ī Juristic Theory of Political and legal theory. Studia Islamica, 29, 17-30.

Ellis, M.S. (2012). Islamic and International law: Convergence or Conflict? In A. M. Emon, M.S. Ellis, & B. Glahn, (eds.), *Islamic Law and International Human Rights Law*. Oxford: Oxford University Press, 91-103.

Emerick, Y. (2002). *Critical lives: Muḥammad. London: Penguin.*

Entessar, N. (1988). Criminal law and the legal system in revolutionary Iran. *Boston College Third World Law Journal,* 8(1), 91-102.

Esposito, J. L. (1984). *Islam and politics*. Syracuse: Syracuse University Press.

Esposito, J. L. (2003)_a. *Unholy war: Terror in the name of Islam*. Oxford: Oxford University Press.

Esposito, J. L. (ed.) (2003)_b. *The Oxford dictionary of Islam*. Oxford: Oxford University Press.

Evans, C. (2005). The double edged sword: Religious influences on International humanitarian law. *Melbourne Journal of International Law*, 6 (1), 1-32.

Fadaee, S. (2022). Marxism, Islam and the Iranian Revolution. In G. Kirkpatrick, P. McMylor, & S. Fadaee (eds.), Marxism, Religion, and Emancipatory Politics. Springer Nature, 103-120.

Faizer, R. S. (1995). *Ibn Isḥāq and al-Wāqidī revisited: a case study of Muhammad and the Jews in biographical literature.* Doctorate dissertation. McGill University.

Faizer, R. S. (2013). *The Life of Muḥammad: al-Wāqidī 's Kitāb Al-Maghāzī*. London: Routledge.

Falk, R. (1980). The Iranian hostage crisis: Easy answers and hard questions. *American Journal of International law*, 74(2), 411-417.

Farber, D. (2006) *Taking Hostage: The Iran hostage crisis and America's first Encounter with Radical Islam*. New Jersey: Princeton University Press.

Farhang, M. (1993). U/S. Policy towards the Islamic Republic of Iran: A case of misperception and Reactive behaviour. In H. Amirahmadi (ed.), *The United States and the Middle East: a search for new perspectives*. New York: State University of New York Press.

Farzaneh, M. M. (2015). *The Iranian Constitutional Revolution and the clerical leadership of Khurasani*. Syracuse: Syracuse University Press.

Fassbender, B. & Peters, A. (2012). Introduction. In Fassbender, B. & Peters (eds.), *The Oxford handbook of the history of International law*. Oxford: Oxford University Press, 1-26.

Fathollah-Nejad, A. (2021). A Critical Geopolitics of International Relations: A Theoretical Derivation. In *Iran in an Emerging New World Order: From Ahmadinejad to Rouhani* (pp. 11-51). Berlin: Springer.

Fawcett, L. L. E. (ed.) (2016). *International relations of the Middle East*. Oxford: Oxford University Press.

Feltham, R. (2004). *Diplomatic handbook*. The Hague: Martinus Nijhoff Publishers.

Finegan, J. (2014). *The Archeology of the New Testiment*. New Jersey: Princeton University Press.

Firdausi, M.Z. (2014). *The Political Ideology of Maulana Abdul Ala Maududi*. Carolina: Lulu press

Flint, C. (2004). *The geography of war and peace: from death caps to diplomats*. Oxford: Oxford University Press.

Ford, C. A. (2017). Siyar-isation and its discontents: international law and Islam's constitutional crisis. In M.A Baderin (ed.), *International law and Islamic law*. London: Routledge, 19-54.

Forsythe, D.P. (2006). *Human rights in International relations*. Cambridge: Cambridge University Press.

Freedman, D.N. & McClymond, M.J. (2001) *The Rivers of Paradise*. Michigan: W.B. Eerdmans.

Freeman, C. W. & Marks, S. (2023). *Diplomacy*. Encyclopaedia Britannica. Retrieved from https://www.britannica.com/topic/diplomacy (accessed 23/08/2023).

Frey, L. S. & Frey, M. L. (1999). *The history of diplomatic immunity*. Ohio: Ohio State University Press.

Frey, L. S. & Frey, M. L. (2020). Diplomatic immunity. In C.M. Constantinou, P. Kerr, & P. Sharp (eds.), *The SAGE Handbook of diplomacy*. Los Angeles: SAGE Publishing, 197-206.

Frick, M. L. & Müller, A. T. (2013). Introducing an intricate relationship. In M. L. Frick, & A. T. Müller, (eds.), *Islam and International law: engaging self-centrism from a plurality of perspectives*. The Hague: Martinus Nijhoff Publishers, 1-28.

Fukuyama, F. (1989). The End of History?. *The National Interest*, (16), 3-18.

Gaber, M. H. M. (1962). *The Early Islamic State with Special Reference to the Evolution of the Principles of Islamic International law* - 632-750 AD. Doctorate Dissertation. The American University.

Galani, S. (2021). *Hostages and Human Rights: Towards a Victim-centred Approach*. Cambridge: Cambridge University Press.

Gasiorowski, M. J. (2002). The Nuzhih plot and Iranian politics. *International Journal of Middle East Studies*, 34(4), 645-666.

Gavin, F. J. (1999). Politics, Power, and U.S. Policy in Iran, 1950–1953. *Journal of Cold War Studies*, 1(1), 56-89.

Geertz, C. (1973). *The Interpretation of Culture*. London: Fontana.

George, A. L. & Bennett, A. (2005). *Case studies and theory development in the social sciences.* Massachusetts: MIT Press.

Ghods, M. R. (1989). *Iran in the twentieth century: a political history*. Colorado: Lynne Rienner Publishers.

Gibb, H. A. R. (1947). *Modern Trends in Islam*. Chicago: University of Chicago Press.

Gil, M. (1997). *The history of Palestine, 634-1099*. Cambridge: Cambridge University Press.

Gil, M. (2004). *Jews in Islamic countries in the Middle Ages*. Leiden: Brill.

Gleave, R. (2008). *ʻAlī ibn Abī Ṭālib*. Encyclopaedia of Islam. Retrieved from http://dx.doi.org/10.1163/1573-3912_ei3_COM_26324 (accessed 31/08/2023).

Gleave, R. (2000). *Inevitable doubt: Two theories of Shīʻī jurisprudence*. Leiden: Brill.

Gleave, R. (2015). Early Shiite hermeneutics and the dating of Kitāb Sulaym ibn Qays. *Bulletin of the School of Oriental and African Studies*, *78*(1), 83-103.

Gleave, R. (2018). Imami Shi'i Legal Theory: From its origins to the early twentieth century. In A. M. Emon, & R. Ahmed (eds.), *The Oxford handbook of Islamic law.* Oxford: Oxford University Press, 207-230.

Ghalush, A. A. (2004). *Assīrah Al-Nabawīyyah Wal Da'awatu Fil ʻAhdil Madanī*. Damascus: Mu'assasah Al-Rīsālah, 660–661.

Ghobadzadeh, N. (2014). *Religious secularity: A theological challenge to the Islamic State*. Oxford: Oxford University Press.

Ghobadzadeh, N. & Rahim, L.Z. (2014). Islamic reformation discourses: popular sovereignty and religious secularisation in Iran. In J. Haynes (ed.), *Religion and Political Change in the Modern World*. London: Routledge, 141-158.

Ghorbannia, N. (2016). The Influence of Religion on Law in the Iranian Legal System. In M. Mattar, V. Palmer, & M.A. Koppel (eds.), *Mixed legal systems, East and West*. London: Routledge, 209-212.

Ghunaimi, M.T. (2012). *The Muslim conception of International law and the Western approach*. Berlin: Springer.

Gold, D. & McGlinchey, S. (2017). International relations theory. In S. McGlinchey (ed.) *International Relations*. Bristol: E-International Relations, 46-56

Goldschmidt, A. & Boum, A. (2018). *A concise history of the Middle East*. London: Routledge.

Goldsmith, J. L., & Posner, E.A. (2006). *The Limits of International Law*. Oxford: Oxford University Press.

Goldstone, J. A. (2011). *Revolutions: A very short introduction*. Oxford: Oxford University Press.

Goldziher, I. (1981). *Introduction to Islamic theology and law*. New Jersey, Princeton University Press.

Gomari-Luksch, L. (2018). *Realism, rationalism and revolutionism in Iran's foreign policy: The West, the State and Islam*. Doctorate dissertation, University of St Andrews.

Görke, A. (2015). *Muhammad: Critical Concepts in Religious Studies*. London: Taylor & Francis.

Goto. A. (1982). The constitution of Medina. *Orient*, 18, 1-17.

Gould, A. (1999). *Origins of liberal dominance: State, church, and party in nineteenth-century Europe*. Ann Arbor: University of Michigan Press.

Gray, T. (2018). *Islam and international criminal law and justice*. Brussels: Torkel Opsahl Academic Publisher, 1-14.

Grayson, J. R. (2017). *Jews in the Political Life of Abbasid Baghdad, 908-1258.* Doctorate dissertation, Johns Hopkins University.

Greogian, V. (2003). *Islam, A mosaic not a monolith*. Washington D.C.: Brookings Institutional Press.

Griffiths, M. O'Callaghan, T. & Roach, S.C. (2002). *International relations: the key concepts*. London: Ruotledge.

Griffith, S. H. (2004). The Gospel, the Qurʼān, and the Presentation of Jesus in al-Yaʿqūbī's Taʾrīkh. In R.C. Reeves (ed.), *Bible and Qur'an Essays in Scriptural Intertextuality*. Leiden: Brill, 133-160.

Grosfoguel, R. & Mielants, E. (2006). The long-duree entanglement between islamophobia and racism in the modern/colonial capitalist/patriarchal world-system. *Journal of the Sociology of Self-Knowledge*, 5(1), 1-12.

Grote, R. & Röder, T. (2012). *Constitutionalism in Islamic countries: Between upheaval and continuity*. Oxford: Oxford University Press.

Grote, G. (2020). *A History of Greece* (Vol.9). Frankfurt: Salzwasser-Verlag.

Gross, L. (1969). *International law in the Twentieth Century*. Pennsylvania: Ardent Media.

Guazzone, L., & Pioppi, D. (2022). *The Arab state and neo-liberal globalization: The restructuring of state power in the Middle East*. Reading: Garnet Publishing Ltd.

Gunn, T.J. (2003). The Complexity of Religion and the Definition of Religion in International Law. *Herald Human Rights*, 16, 189-215.

Habachy, S. (1962). Property, Right, and Contract in Muslim Law. *Columbia Law Review*, 62(3), 450-473.

Haghighat, S. S. (2000). *Six Theories about the Islamic Revolution's Victory*. London: Alhoda.

Haj-Sayyid Javadi, A.S. (1988). *Dāyeratul Maʻārif-i Tashayyuʻ*. Tehran: Bunyād-i Islāmī-i Ṭāhir.

Haider, N. (2011). The Origins of the Shi'a: Identity, Ritual, and Sacred Space in Eighth-Century Kūfa. Cambridge: Cambridge University Press.

Hallaq, W. B. (1984). Was the gate of ijtihad closed?. *International Journal of Middle East Studies*, 16(1), 3-41.

Halliday, F. (2005). *The Middle East in international relations: power, politics and ideology*. Cambridge: Cambridge University Press.

Hamidullah, M. (1945). *The Muslim Conduct of State*. Lahore: Mohammad Ashraf. (Also available as: Hamidullah, M. (2011). *The Muslim Conduct of State*. New York: The Other Press).

Hamidullah, M. (1985). *Six originaux des lettres du Prophète de l'islam: étude paléographique et historique des lettres du Prophète*. Paris: Tougui.

Hamidullah, M. (1987). *Majmūʾah al-Wathāʾiq al-Sīyāsīyah li al-ʿAhd al-Nabawy*. Beirut: Dār al-Nafā'is.

Hamilton, K. & Langhorne, R. (2010). *The practice of diplomacy: its evolution, theory and administration*. London: Routledge.

Hamoudi, H. A. (2009). Between Realism and resistance: Shiʿi Islam and the contemporary liberal state. *Journal of Islamic Law and Culture*, 11(2), 107-120.

Hardy, M. J. L. (1968). *Modern diplomatic law*. Manchester: Manchester University Press.

Hart, M. H. (1978). *The 100: a ranking of the most influential persons in history*. New York: Citadel Press.

Hashemi, S.H. (2017). Is there an Islamic Ethic of Humaterian Intervention? In M.A Baderin (ed.), *International law and Islamic law*. London: Routledge, 117-140.

Hashemi, M. (2020). *Āyatullāh Hāshemī Rafsanjānī bā aṣl-i taskhīr-i sefārat-i Amrīca mukhālif būd*. Hamshahri. Retrieved from https://www.hamshahrionline.ir/news/553698/ (accessed 31/08/2023).

Hawzah. (2019). *Pāsukh be shubhi-yi Kushtār-i banū Qurayẓah. Paygāh-i ʾiṭilāʾ rasānī-yi Ḥawzah.* Hawzah.net. Retrieved from https://hawzah.net/fa/Question/View/65289 (accessed 31/08/2023).

Hawzah. (2022). *Afsāne-yi daramātīc banū Qurayẓah*. Hawzah.net. Retrieved from https://www.hawzahnews.com/news/1068792 (accessed 31/03/2024).

Haykal, M.H. (1976). *The life of Muḥammad*. Chicago: American Trust Publication.

Haynes, J. (2007). *An Introduction to International relations and religion*. London: Pearson Education.

Hazleton, L. (2009). *After the Prophet: The epic story of the Shi'a-Sunnī split in Islam*. New York: Knopf Doubleday Publishing Group.

Heern, Z. M. (2018). Three Sources of Shi'i Knowledge and Authority: Texts, Reason, and Mysticism in Islamic Intellectual History. *Journal of Shi'a Islamic Studies*, 11(1), 43-78.

Henkin, L. (1979). *How nations behave: law and foreign policy*. New York: Columbia University Press.

Henriksen, A. (2021). *International law*. Oxford: Oxford University Press.

Hernández, G. (2022). *International law*. Oxford: Oxford University Press.

Higgins, R. (1985). The abuse of diplomatic privileges and immunities: recent United Kingdom experience. *American Journal of International law*, 79(3), 641-651.

Higgins, R. (1995). *Problems and process: International law and how we use it*. Oxford: Oxford University Press.

Higgins, R. (1997). The General International law of Terrorism. In R. Higgins, & M. Flory (eds.), *Terrorism and International law*. London: Routledge, 13-29.

Hills, T. & Ross, F. H. (1956). *The great religions by which men live*. New York: Fawcett World Library.

Hobson, J. M. (2004). *The Eastern origins of Western civilisation*. Cambridge: Cambridge University Press.

Hodgson, M. G. (2009). *The Venture of Islam: The Classical Age of Islam* (Vol.1). Chicago: University of Chicago press.

Hoffman, M. & Rumsey, M. (2008). *International and Foreign Legal Research: A Coursebook*. Leiden: Brill.

Hoffman, J. (2019). Power and Security: Realist Theory and the Middle East in the post-Arab Uprisings Context. *Towson University Journal of International Affairs*, *52*(2), 1-12.

Hollis, D. B. (2012). *The Oxford guide to treaties*. Oxford: Oxford University Press.

Howard, I. (1975). *Imami-Shi'i Ritual in the Context of Early Islamic Jurisprudence.* Doctorate dissertation, University of Cambridge.

Hoyland, R. (2019). *Seeing Islam as others saw it*. London: Darwin Press.

Honkonen, T. (2009). *The common but differentiated responsibility principle in multilateral environmental agreements: regulatory and policy aspects*. Netherlands: Kluwer Law International.

Hoof, G.J. (1983). *Rethinking the sources of International law*. Leiden: Brill.

Houghton, D. P. (2001). *U.S. foreign policy and the Iran hostage crisis*. Cambridge: Cambridge University Press.

Hourani, A. Ruthven, M. (2002). *The history of the Arab peoples*. Massachusetts: Harvard University Press.

Hur-Amuli, M. (1989). *Wasāʾil al-Shīʿa* (Vol. 15). Qum: Mu'assasah Ahl al-bayt

Hughes, A.W. (2013). *Muslim identities: An introdyction to Islam*. New York: Columbia University Press.

Hui, D. (1991). Order through Peaceful Coexistence, *Bulletin of the Atomic Scientists*, 47 (5), 24-25.

Hunter, S. (ed.) (2009). *Reformist voices of Islam: mediating Islam and modernity*. New York: ME Sharpe.

Hunter, S. T. (2014). *Iran divided: the historical roots of Iranian debates on identity, culture, and governance in the twenty-first century*. Maryland: Rowman & Littlefield.

Hunter. S.T. (2019). Islamic Reformist Discourse in Iran Proponents and Prospects. In S.T. Hunter (ed.), *Reformist voices of Islam: mediating Islam and modernity*. London: Routledge, 33-97.

Huntington, S. P (1993). The clash of civilisations. *Foreign Affairs*, *72*(3), 22-49.

Huntington, S. P (1996). *The clash of civilisations and the remaking of world order*. London: Simon and Schuster

Husayn, N. (2021). *Opposing the Imam: The Legacy of the Nawasib in Islamic Literature*. Cambridge: Cambridge University Press.

Husaini, S. A. (2002) Sayr taṭawur maṣlaḥat dar fiqh Shīʿa. *Tolūʿ*, 1381(1), 78-107.

Husaini, S. J. (2008). Defā‘ Fāṭimah az Imām at va Imām Khīsh. *Māhāne-yi Pāsdār Islām*, 1387(318), 16-19.

Husin, A. (2017). Conflict and Non-violance: Ulama and the Aceh peace process. In C. Satha-Anand (ed.), *The promise of reconciliation?: Examining violent and nonviolent effects on Asian conflicts*. London: Routledge, 43-72.

Hussain, A. (1988). Bibliography: Islamic awakening in the twentieth century: An analysis and selective review of the literature. *Third World Quarterly*, 10(2), 1005-1023.

Hybel, A. R. (2010). *The power of ideology: From the Roman Empire to Al-Qaeda*. London: Routledge

Ibn Hanbal, A. (2009). *Al-Masnad* (Vol 5). Damascus: Mu'assasah Al-Rīsālah,

Ibn Sa'ad, M. (1960). *Kitāb Al-ṭabaghāt Al-kubrā*. Beirut: Dār Ṣādir.

IBP. (2016). *Saudi Arabia Criminal Laws, Regulations and Procedures*. Washington DC: International Business Publications.

ICJ. (1945). *Statute of the international Court of Justice*. The International Court of Justice. Retrieved from https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf (accessed 31/08/2023).

ICJ. (1980). *Reports of Judgements, Advisory Opinions and Orders*. The International Court of Justice. Retrieved from https://www.icj-cij.org/public/files/case-related/64/064-19800524-JUD-01-00-EN.pdf (accessed 31/08/2023).

ICJ. (1982). *The case concerning the United States diplomatic and consular staff at in Tehran*. The International Court of Justice. Retrieved from https://www.icj-cij.org/public/files/case-related/64/9545.pdf (accessed 31/08/2023).

ILC. (2022). *Yearbook of the International law Commission 2015* (Vol. II, Part 1). New York: United Nations Publications.

Inayat, H. (1982). *Modern Islamic political thought*. London: Macmillan International Higher Education.

Iqbal, A. (1975). *The Prophets diplomacy: The art of negotiation as conceived and developed by the Prophet of Islam*. Cape Cod: Claude Stark and Co.

Iqbal, A. (1977). *Diplomacy in Islam: An essay into the art of negotiations as conceived and developed by the Prophet of Islam*. Lahore: Institute of Islamic Culture.

Irfani, S. (1983). *Revolutionary Islam in Iran: Popular Liberation or Religious Dictatorship*? London: Zed Books.

Isakhan, B. (2016). *Democracy in Iraq: History, politics, discourse*. London: Routledge.

Isalan, M. Majidi-mehr, H. & Azimi, A.R. (2017). *Nu-andīshī-yi dīnī*. Hamāyish-i Nu-andīshī-yi dīnī. Retrieved from https://kms.dte.ir/ResearchFiles/Book/12867=1.htm (accessed 31/08/2023).

Islam, J. (2016). *No, Shari'ah law is not compatible with Western values*. Forbes. Retrieved from https://www.forbes.com/sites/realspin/2016/10/06/no-shariah-law-is-not-compatible-with-western-values/?sh=365d9aae5eb3 (accessed 31/08/2023).

Ismail, M. B. A. (2013). The 1979 United States-Iran Hostage Crisis Reviewed from an Islamic international law Perspective. *Denvor Journal of International law and Policy*, 42(1), 19-40.

Ismail, M. B. A. (2016). *Islamic law and transnational diplomatic law: a quest for complementarity in divergent legal theories*. London: Palgrave Macmillan.

Ismail, R. (2016). *Saudi clerics and Shi'a Islam*. Oxford: Oxford University Press.

Istanbuli, Y. (2001). *Diplomacy and Diplomatic Practice in the Early Islamic Era*. Oxford: Oxford University Press.

Jackson, S. A. (1996). *Islamic law and the State: the constitutional jurisprudence of Shihāb al-Dīn al-Qarāfī*. Leiden: Brill.

Jackson, R. (2006). *Fifty key figures in Islam*. London: Routledge.

Jackson, R. (2014). *What is Islamic Philosophy*. London: Routledge.

Jackson, B., & Stears, M. (Eds.). (2012). *Liberalism as ideology: essays in honour of Michael Freeden*. Oxford: Oxford University Press.

Jaeez, A. H. Azhar, A. B. & Bin, M. (2016). Importance of Diplomatic Immunities in Islamic Law. *Journal of Civil and Legal science*, 6, 221-225.

Jafarian, R. (2014). *Manābeʿ-i Tārīkh-i Islām*. Tehran: Intishārāt-i 'Elm.

Jafri, S.H.M (1979). *Origins and Early Development of Shia Islam*. London: Longman.

Jahanbakhsh, F. (2001). *Islam, Democracy and Religious Modernism in Iran: (1953 - 2000): from Bazargan to Soroush*. Leiden: Brill.

Jahanbakhsh, F. (2020). *Rational Shari'ah: Ahmad Qabel's Reformist Approach. Religions*, 11(12), 665- 679.

Jahankhah, A. (2011). Jaygāh-i banā-yi 'uqalā' dar fiqh shī'a. *Faṣnāmeh Takhaṣuṣī 'Ulūm-i Siyāsī* 1390(17), 183-210.

Jannati, M. I. (2012). *Ijtihad: Its Meaning, Sources, Beginnings and the Practice of Ra'y*. Qum: Al-Tawhid Islamic Journal, (Vols 5(2 -3) & 6(1) & 7(3)).1-92.

Janis, M.W. (2021). *International law.* Boston: Aspen Publishing.

Javadi-Amuli, A. (1999). *Velāyat-i Feqāhat va Idālat*. Qum: Intishārāt-i Asrā.

Javadi-Amuli, A. (2010)_a. *Andīshi-yi sīyāsī*. Qum: Intishārāt-i Asrā.

Javadi-Amuli, A. (2010)_b. *Ravābiṭ-i bain al-milal*. Qum: Intishārāt-i Asrā.

Jayapalan, N. (2001). *Foreign policy of India*. New Delhi: Atlantic Publishers.

Jeffery, A. (1944). Ghevond's Text of the Correspondence between 'Umar II and Leo III. *Harvard Theological Review*, *37*(4), 269-332.

Jeffery, R. (2006). *Hugo Grotius in International Thought*. London: Palgrave Macmillan.

Johnson, L. K. (2007). An introduction to the intelligence literature. In L. K. Johnson (ed.), *Strategic Intelligence: Understanding the hidden side of government*. Westport: Greenwood Press, 1-20.

Johnston, D. (2003). *Faith-based democracy: trumping realpolitik*. Oxford: Oxford University Press.

Johnston, D. & Reisman, W. M. (2007). *The historical foundations of world order: the tower and the arena*. Leiden: Brill.

Jones, J. (2013). *Oman, Culture and Diplomacy*. Edinburgh: Edinburgh University Press.

Jonsson, C. & Hall, M. (2005). *Essence of diplomacy*. London: Palgrave McMillan.

Janusch, H., Mucha, W., Schwanholz, J., Reichwein, A., & Lorberg, D. (Eds.). (2023). *Turning Points: Challenges for Western Democracies in the 21st Century*. Berlin: De Gruyter.

Juneau, T. (2015). *Squandered Opportunity: Neoclassical Realism and Iranian Foreign Policy*. Stanford: Stanford University Press.

Kaczorowska-Ireland, A. (2015). *Public international law*. London: Routledge.

Kadayifci-Orellana, S. A. (2015). Peacebuilding in the Muslim world. In A. Omer, R. S. Appleby, & D. Little (Eds.), *The Oxford handbook of religion, conflict, and peacebuilding*. Oxford University Press, 440-469.

Kadivar, M. (2008). *Ḥaqq al-Nās: Islām-i nu-andīsh va Ḥuqūq-i bashar*. Tehran: Nashr-i Andīshehā-yi nu.

Kadivar, M. (2011). *Wilayat al-faqih and Democracy*. In A. Afsaruddin (ed.), *Islam, the State, and Political Authority*. London: Palgrave Macmillan, 207-224.

Kadivar, M. (2012). *Imāmat va 'itidāl-i dīnī*. Kadivar Website. Retrieved from https://kadivar.com/10015/ (accessed 31/08/2023).

Kadivar, M. (2013). Revisiting Women's Rights in Islam. In L. Larsen, Z. Mir-Hosseini, & C. Moe (eds.), *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*. London: I. B. Tauris, 213–234

Kadivar, M. (2022)_a. *Ṭaifhā-yi jadīd Islāmī*. Kadivar Website. Retrieved from https://kadivar.com/19477/ (accessed 31/08/2023).

Kadivar, M. (2022)_b. Rethinking Muslim Marriage Rulings through Structural Ijtihad. In Z. Mir-Hosseini, M. Al-Sharmani, & J. Rumminger (eds.), *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws.* Oxford: One world Publications, 209-226.

Kadivar, M. (2023). *Takfīr shodegī yā naqd napazīrī*. Kadivar Website. Retrieved from https://kadivar.com/19788/ (accessed 31/08/2023).

Kalantari, M.R. (2022). The Shi'i clergy and perceived opportunity structures: political activism in Iran, Iraq, and Lebanon. *British Journal of Middle Eastern Studies,* 48(2), 241-255.

Kamali, M.H. (1991). *Principles of Islamic Jurisprudence*. Cambridge: Islamic Texts Society.

Kamali, M.H. (2008). *Shari'ah Law: An Introduction*. Oxford: One world Publications.

Kamrava, M. (2008). *Iran's intellectual revolution*. Cambridge: Cambridge University Press.

Kamrava, M. (2013). *The Modern Middle East. In The Modern Middle East*. Los Angeles: University of California Press

Kara, S. (2016). The Origins of the Shīʿa: Identity, Ritual, and Sacred Space in Eighth-Century Kūfa, by Najam Haider. *Ilahiyat Studies*, *7*(2), 295-299.

Kassim, H. (2018). *Hermeneutics in the Genre of Mukhtaṣar: Civil and Commercial Law in Islamic Law*. Maryland: Rowman & Littlefield.

Kaya, S., & Şartepe, Z. (2015). Contentious politics in Iran: factions, foreign policy and the nuclear deal. *Alternatives: Turkish Journal of International Relations*, *14*(3), 1-12.

Kayadibi, S. (2021). *The role of the sources of Islamic Law in codification and formation of the Mercelle*. Ankara: Justice Academy of Turkey.

Keaney, H. N. (2021). *'Uthmān, ibn 'Affān: legend or liability*. London: Simon and Schuster.

Keddie, N. R. (1972). 'The Roots of Ulama Power in Modem Iran'. In N. R. Keddie (ed.), *Scholars, Saints and Sufis*. Los Angeles: University of California Press, 211-230.

Keddie, N. R. (1983). *An Islamic Response to Imperialism: Political and Religious Writings of Sayyid Jamal ad-Din 'al-Afghani'*. Los Angeles: University of California Press.

Keddie, N. R. (1983). Iranian revolutions in comparative perspective. *The American Historical Review*, 88(3), 579-598.

Keleman, M. (2011). *Huge embassy keeps U.S. presence in Iraq*. Up First. Retrieved from http://www.npr.org/2011/ 12/18/143863722/ (accessed 31/08/2023).

Kelly, M. J. (2010). Islam & international criminal law: a brief (In) compatibility study. *Pace International Law Review Online Companion*, *8*, 2-31.

Kennedy, D. (1997). International law and the nineteenth century: history of an illusion. *Queensland Law Rev*iew, 17, 99-136

Kennedy, H. (2007). *The great Arab conquests: How the Spread of Islam changed the World we live*. Philadelphia: Da Capo Press.

Kennedy, H. (2015). *The Prophet and the age of the Caliphates: the Islamic Near East from the sixth to the eleventh century*. London: Routledge.

Kersten, C. (2016). The letter or the sprit of Islamic law? Legal formalists versus substantivists. In C. Kersten, *Islam in Indonesia*: The contest of society, ideas and values. Oxford: Oxford University Press, 179-220.

Khadduri, M. (1955). *War and Peace in the Law of Islam*. Baltimore: The Johns Hopkins Press.

Khadduri, M. (1956). Islam and the modern law of nations. *American Journal of International law*, 50(2), 358-372.

Khadduri, M. (1965). The Islamic Theory of International relations and its Contemporary Relevance. In J.H Proctor (ed.), *Islam and International relations*. London: Pall Mall Press, 24-39

Khadduri, M. (1966). *The Islamic law of Nations Shaybani's sīyār*. Baltimore: The Johns Hopkins Press.

Khalili, A. (2010). *Gām be gām bā inqilāb* (Vol. 2). Tehran: Intishārāt-i Sorūsh.

Khalilian, S.K. (1983). *Ḥuqūq-i bain al-milal-i Islāmī.* Tehran: Daftar-i Nashr-i Farhang-i Islāmī.

Khamenei, A. (1997). *Ḥadīth-i vilāyat* (Vol. 4). Tehran: Sāzmān-i Tablīghāt-i Islāmī.

Khamenei, A. (2009). *Tārīkh-i Ḥokūmat-i Imām 'Alī* (Speech-15/09/1388). Daftar-i Rahbārī. Retrieved from https://www.farsi.khamenei.ir/newspart-index?tid=3934 (accessed 31/08/2023).

Khamenei, A (2021). *Islamic beliefs*. London: Ahlulbayt Islamic Mission.

Khan, A. (2003). The Reopening of the Islamic Code: The Second Era of Ijtihad. *University of St. Thomas Law Journal*, 1 (1), 341-385.

Khan, M. (2005). *Islamic democratic discourse: Theory, debates and directions*. Lanham, MD: Lexingham.

Khan, A. (2012). *Contemporary Ijtihad*. Edinburgh: Edinburgh University Press.

Khan, M. (2020). *ʻUthmān*. World history encyclopaedia. Retrieved from https://www.worldhistory.com/uthman (accessed 31/08/2023).

Kissinger, H. A. (1956). The congress of Vienna: A reappraisal. *World politics*, 8(2), 264-280.

Khomeini, R. (1989)_a. *Ṣaḥīfe-yi Nūr* (Vol. 10). Tehran: Mu'assasah-yi Tanẓīm va Nashr-i Āṯhar-i Hażrat-i Imām Khomeinī.

Khomeini, R. (1989)_b. *Ṣaḥīfe-yi Nūr* (Vol. 11). Tehran: Mu'assasah-yi Tanẓīm va Nashr-i Āṯhar-i Hażrat-i Imām Khomeinī.

Khomeini, R. (1989)_c. *Ṣaḥīfe-yi Nūr* (Vol. 13). Tehran: Mu'assasah-yi Tanẓīm va Nashr-i Āṯhar-i Hażrat-i Imām Khomeinī.

Khomeini, R. (1989)_d. *Ṣaḥīfe-yi Nūr* (Vol. 15). Tehran: Mu'assasah-yi Tanẓīm va Nashr-i Āṯhar-i Hażrat-i Imām Khomeinī.

Khomeini, R. (1989)_e. *Ṣaḥīfe-yi Nūr* (Vol. 20). Tehran: Mu'assasah-yi Tanẓīm va Nashr-i Āṯhar-i Hażrat-i Imām Khomeinī.

Khomeini, R. (1989)_f. *Ṣaḥīfe-yi Nūr* (Vol. 21). Tehran: Mu'assasah-yi Tanẓīm va Nashr-i Āṯhar-i Hażrat-i Imām Khomeinī.

Khomeini, R. (2005). *Islamic government: governance of the jurist*. London: Alhoda.

Khomeini, R. (2008). *The Islamic Government*. Tehran: Mu'assasah-yi Tanẓīm va Nashr-i Āṯhar-i Hażrat-i Imām Khomeinī.

Khomeini, R. (2012). *Mużeʾ-yi qāteʾ-yi Imām: Mokhātefat bā lāyeḥe-yi capītālāsīon*. Portāl-i Imām Khomeinī. Retrieved from http://www.Imām-Khomeinī.ir/fa/n3372/ (accessed 31/08/2023).

Khosrokhavar, F., & Mottaghi, M. (2020). The Neo-Mutazilites in Contemporary Iran. In R. Jahanbegloo (ed.), *Mapping the Role of Intellectuals in Iranian Modern and Contemporary History*. Washington DC: Lexington Books, 295-320.

Khunsari, M.B. (1970). *Rawẓāt al-jannāt fī Aḥwāl al-ʿUlamāʾ wa al-Sādāt* (Vol 6). Tehran: Intishārāt-I Ismāʿīlīyān.

Kirazli, S. (2019). Re-Examining the Story of Banū Qurayẓah Jews in Medina with a Reference to the Account of ibn Isḥāq. *Australian Journal of Islamic Studies*, 4(1), 1-17.

Klabbers, J. (2020). *International law*. Cambridge: Cambridge University Press.

Klein, N. (2021). Iran and its encounters with the International Court of Justice. *Melbourne Journal of International law*, 21(3), 620-652.

Kohlberg, E. (1976). From Imāmiyya to Ithnā-'ashariyya. *Bulletin of the School of Oriental and African Studies*, 39(3), 521-534.

Kohlberg, E. (1983). Shīʿī Ḥadīth. In A.F.L Beeston et al. (eds.), *Arabic Literature to the End of the 'Umayyad Period*. Cambridge: Cambridge University Press, 299-307.

Kohlberg, E. (1987). al-Uṣūl al-arbaʿumiʾa. *Jerusalem Studies in Arabic and Islam*, 10, 128-166.

Kohlberg, E. (2012). Shīʿī Views of the Death of the Prophet Muḥammad. In R.E Hansberger, M. Afifi al-Akiti, and C. S. F. Burnett (eds.), *Medieval Arabic Thought: Essays in Honour of Fritz Zimmermann*. London: The Warburg Institute, 77-86.

Kohlberg, E. (2014). Introduction. In F. Daftary & G. Miskinzoda (eds.), *The Study of Shi'i Islam: History, Theology and Law*. London: I.B. Tauris, 165-79.

Kohlberg, E. (2020). *In Praise of the Few. Studies in Shiʿi Thought and History*. Leiden: Brill.

Kotuby Jr, C. T. & Sobota, L. A. (2017). *General principles of law and international due process: principles and norms applicable in transnational disputes*. Oxford: Oxford University Press.

Kohlberg, E. (2022). *Zayn al-ʿĀbidīn*. Encyclopaedia of Islam. Retrieved from http://dx.doi.org/10.1163/1573-3912_islam_SIM_8144 (accessed 31/08/2023).

Knysh, A. (2016). *Islam in historical perspective*. London: Routledge.

Koskenniemi, M. (2017). *Sources of International law*. London: Routledge.

Kumar, S. (ed.) (2013). *India's National Security: Annual Review*. London: Routledge.

Kurbalija, J. & Slavik, H. (eds.) (2001). *Language and diplomacy*. Malta: Diplo Foundation.

Kurzman, C. (1998). *Liberal Islam: A Source Book*. Oxford: Oxford University Press.

Kurzman, C. (2001). Critics within: Islamic scholars' protests against the Islamic state in Iran. In M. Browers, & C. Kurzman, (eds.) (2004). *An Islamic Reformation*? Washington DC: Lexington Books, 79-100.

Kurzman, C. (2005). Islamic Reform. In C. M. Horowitz (ed.), *New Dictionary of the History of Ideas* (Vol. 5). New York: Charles Scribner's Sons.

Lagerwall, A. & Carty, A. (2015). *Jus cogens*. Oxford Bibliographies-International law. Retrieved from https://www.oxfordbibliographies.com (accessed 31/08/2023).

Langhorne, R. (1997). Current Development in Diplomacy: Who are the Diplomats Now? *Diplomacy and Statecraft*, 8(2), 1-15.

Lassner, J. (2000). *The Middle East remembered: forged identities, competing narratives, contested spaces*. Ann Arbor: University of Michigan Press.

Lassner, J. & Bonner, M. (2009). *Islam in the Middle Ages: The Origins and Shaping of Classical Islamic Civilisation*. Santa Barbara: ABC-CLIO.

Lassner, J. (2019). *Jews, Christians, and the abode of Islam: Modern scholarship, medieval realities*. Chicago: University of Chicago Press.

Le Roux, C. D. P. (1981). The ulama and Islamic law. *Journal for Islamic Studies*, Rondebosch Vol. 1, 28-43.

Legault, L.H. (1981). Hostage taking and diplomatic immunity. *Manitoba Law Journal*, 11(4), 359-365.

Leiss, J. R. (2019). The Juridicial nature of General Principles. In M. Andenas, M. Fitzmaurice, A. Tanzi, & J. Wouters (eds.), *General Principles and the Coherence of International law*. Leiden: Brill, 79-99.

Lesaffer, R. (2015.). *Vienna and the codification of diplomatic law*. Oxford Public International Law. Retrieved from http://opil.ouplaw.com/page/vienna-and-the-codification-of-diplomatic-law (accessed 31/08/2023).

Lewis, B. (1981). The Return of Islam. In M. Curtis (ed.), *Religion and Politics in the Middle East*. Colorado: Westview Press, 9-29.

Lewis, F. (1983). *Foreign affairs: Looking back at Iran*. The New York Times. Retrieved from https://www.nytimes.com/1983/01/04/opinion/foreign-affairs-looking-back-at-iran.html (accessed 31/08/2023).

Lewis, B. (1985). *The Arabs in History*. London: Hutchinson publishing.

Lewis, B. (1988). *The Political Language of Islam*. Chicago: University of Chicago Press.

Lewis, B. (2002). *The Arabs in History*. Oxford: Oxford University Press.

Lewis, B. (2003). *The Assassins: A radical sect in Islam*. New York: Basic Books.
Lieberman, P. (2022). *The Fate of the Jews in the Early Islamic Near East: Tracing the Demographic Shift from East to West*. Cambridge: Cambridge University Press.

Lippman, M. (2017). The convention on the prevention and punishment of the crime of genocide: fifty years later. In M. Lattimer (ed.), *Genocide and Human Rights.* London: Routledge, 11-110.

Litvak, M. (2021). *Know Thy Enemy*. Leiden: Brill.

Lolaki, S. M. (2020). *Diverging approaches of political Islamic thought in Iran since the 1960s*. London: Palgrave Macmillan.

Lombard, M. (1980). *The Golden Age of Islam*. Princeton: Markus Weiner Publishers.

Lombardi, C.B. (2007). Islamic Law in the Jurisprudence of the International Court of Justice: An Analysis. *Chicago Journal of International law*, 8(1), 85-118.

Lorentz, J. H. (2010). *The A to Z of Iran*. Maryland: Rowman & Littlefield.

Lotfi, E.T. (1999) *Ijtihad in Twelver shi'ism*. Doctorate Dissertation. The University of Leeds.

Lozancic, M. (2009). *Diplomatic and Consular Immunities from National Jurisdiction in Criminal Cases*. Masters Dissertation. University of Lund.

Luckhardt, C. (2018). The messenger is the place of a man's judgment: Diplomacy between Emperors and Caliphs in the Tenth Century. *Medieval worlds* 8 (1), 86-108.

Luomi, M. (2008). Sectarian identities or geopolitics. *The Finnish Institute of International Affairs, Working Papers*, *56*(9), 1-62.

Lynch, M. (2017). International Relations. In E. Lust (ed.), *The Middle East*. Washington DC: CQ Press, 369–402.

Mabon, S., & Lynch, M. (2020). *Introduction: Sectarianism and international relations.* Collection 38. Washington DC: The Project on Middle East Political Science Studies.

Madaninejad, B. (2011). *New theology in the Islamic Republic of Iran*. Doctorate Dissertation. The University of Texas at Austin.

Madelung, W. (1970). Imamism and Muʿtazilite Theology, In T. Fahd (ed.), *Le Shīʿisme imāmite*, Paris: Presse Universitaires de France, 13– 29

Madelung, W. (1997). *The Succession to Muḥammad: A Study of the Early Caliphate*. Cambridge: Cambridge University Press.

Maginnis, V. L. (2002). Limiting diplomatic immunity: lessons learned from the 1946 Convention on the privileges and immunities of the United Nations. *Brook Journal of. International Law*, 28(3), 989-1022.

Mahmassani, S. (1961). *The Philosophy of Islamic Jurisprudence in Islam*. Leiden: Brill.

Mahmassani, S. (1966). The Principles of Islamic law in light of Islamic Doctrine. *Recueil Des Cours de l'Académie de Droit International*, 117(1), 201-303.

Mahmassani, S. (1967). *Al-Qanūn wa al-ʻAlāqāt al-dawlīyyah fī al-islām.* Beirut: Dār al-ʿIlm lil Malāyin.

Majd. V. (2017). *The Sermon of Prophet Muḥammad at Ghadīr Khumm*. California: CreateSpace Independent Publishing Platform.

Majlisi, M.B. (1990)_a. *Bahār al-Anwār* (Vol. 1). Beirut: Dār al-Kutub Islāmī.

Majlisi, M.B. (1990)_b. *Bahār al-Anwār* (Vol. 2). Beirut: Dār al-Kutub Islāmī

Majlisi, M.B. (1990)_c. *Bahār al-Anwār* (Vol. 8). Beirut: Dār al-Kutub Islāmī.

Majlisi, M. B. (1990)_d. *Bahār al-Anwār* (Vol.18). Beirut: Dār al-Kutub Islāmī.

Majlisi, M.B. (1990)_e. *Bahār al-Anwār* (Vol. 26). Beirut: Dār al-Kutub Islāmī.

Majlisi, M.B. (1990)_f. *Bahār al-Anwār* (Vol. 37). Beirut: Dār al-Kutub Islāmī

Majlisi, M.B. (1990)_g. *Bahār al-Anwār* (Vol. 44). Beirut: Dār al-Kutub Islāmī

Majlisi, M.B. (1990)_h. *Bahār al-Anwār* (Vol. 45). Beirut: Dār al-Kutub Islāmī.

Majlisi, M.B. (1990)_i. *Bahār al-Anwār* (Vol. 75). Beirut: Dār al-Kutub Islāmī.

Majlisi, M.B. (1990)_j. *Bahār al-Anwār* (Vol. 97). Beirut: Dār al-Kutub Islāmī.

Makarim-Shirazi, N. (1975). *Tafsīr Nemūneh* (Vol. 17). Beirut: Dār al-Kutub Islāmī.

Malekian, M. (2006). *Mushtāqī va mahjūrī: Goftegū dar bāb-i farhang va sīyāsat*. Tehran: Negāh-i Maʿāṣir.

Malekian, F. (2011). *Principles of Islamic international criminal law: A comparative search*. Leiden: Brill.

Mallat, C. (1993). *The Renewal of Islamic Law: Muḥammad Baqer al-Sadr, Najaf and the Shi'i International*. Cambridge: Cambridge University Press.

Mallat, C. (2007). *Introduction to Middle Eastern law*. Oxford: Oxford University Press.

Martin, V. (2000). *Creating an Islamic State*. London: I. B. Tauris.

Masud, M. K. & Salvatore, A. (2009). Western scholars of Islam on the issue of modernity. In M. K. Masud, & A. Salvatore, & M. V. Bruinessen, (eds.), *Islam and Modernity: Key Issues and Debates*, Edinburgh: Edinburgh University Press, 36-53.

Matthews, T. (2019). *To be equal and free: The nexus between human rights and democracy*. A Publication of Heinrich Böll Foundation. Retrieved from https://eu.boell.org/sites/default/files/2019-12/E-Paper_Human_Rights_and_Democracy.pdf (accessed 31/05/2024).

Mawardi, A. I. (2020). The urgency of maqasid al-shariah reconsideration in islamic law establishment for muslim minorities in western countries. *International Journal of Innovation, Creativity and Change*, 12(9), 132-136.

Marboe, I. (2018). Freedom of Expression: Theory and practice in the Islamic realm. In R. Uerpmann-Wittzack, E. Lagrange, & S. Oeter (eds.), *Religion and International law: living together*. Leiden: Brill, 254-276.

Matin-Asgari, A. (2018). *Both Eastern and Western: An intellectual history of the Iranian Modernity*. Cambridge: Cambridge University Press.

Matsunaga, Y. (2011). Human rights and new jurisprudence in Muhsin Kadivar's advocacy of New-Thinker Islam. *Die Welt des Islams*, 51(3-4), 358-381.

Matsunaga, Y. (2013). Mohsen Kadivar an advocate of Post revivalist Islam in Iran. In L. Ridgeon, (ed.), *Iranian Intellectuals: 1997–2007*. London: Routledge, 57-70.

Matthiesen, T. (2023). *The Caliph and the Imām: The Making of Sunnīsm and Shiism*. Oxford: Oxford University Press.

Mavani, H. (2010). Ijtihad in contemporary Shi'ism. *American Journal of Islamic Social Sciences*, 27(3), 23-52.

Mavani, H. (2013). *Religious authority and political thought in Twelver Shi'ism: From Ali to post-Khomeini*. London: Routledge.

Mavani. H. (2020). Structural Ijtihad. In D.R. Vishanoff (ed.), *Islamic Law and Ethics*. International Institute of Islamic Thought, 52-75.

Mayer, A. E. (1991). War and peace in the Islamic tradition and International law. In J. Kelsay, & J.T. Johnson (eds.), *Just War and Jihad*. New York: Greenwood Press, 195-226.

Mazaheri, H. (1998). *Ijtihād va Taqlīd*. Almazaheri.org. Retrieved from http://almazaheri.org/Farsi/Index.aspx?TabID=0702&ID=1861 (accessed 31/08/2023).

McClanahan, G. V. (1989). *Diplomatic immunity: principles, practices, problems*. London: C. Hurst & Co. Publishers.

McLachlan, C. (2005). The principle of systemic integration and article 31 (3)(c) of the Vienna Convention. *International and Comparative Law Quarterly*, 54(2), 279-320.

McGlinchey, S., Walters, R., & Scheinpflug, C. (2017). *International relations theory*. Bristol: E-International Relations.

McHugo, J. (2017). *A Concise History of Sunnis and Shi'is*. Washington, D.C: Georgetown University Press.

Mearsheimer, J. J. (1990). Back to the Future: Instability in Europe after the Cold War. *International Security*, *15*(1), 5-56.

Melchert, C. (2001). The Imamis between rationalism and traditionalism. In L. Clarke (ed.), *Shīʿite Heritage: Essays on Classical and Modern Traditions*. New York, Global Publications, 273-284.

Mesbah-Yazdi, M.T. (2003). *Negāhī Guzarā be Naẓarīye-yi Vilayat-i Faqīh*. Qum: Mu'assasah-yi Āmūzeshī-yi Imām Khomeinī.

Mesbah-Yazdi, M.T. (1990). *Bahthī sadeh va kutāh: Ḥukūmat-i islāmī va Vilayat-i Faqīh*. Tehran: Nashr-i Bain al-Milal.

Mesbahi, M. (2022). Collective hawza leadership in a time of crisis: the period of marajeʿ thalath (1937–1953). *British Journal of Middle Eastern Studies*, 49(5), 915-936.

Milanovic, M. (2020). The murder of Jamal Khashoggi: Immunities, inviolability and the human right to life. *Human Rights Law Review*, 20(1), 1-49.

Michals, D. B. (2012). *International privileges and immunities: A case for a universal statute*. Berlin: Springer.

Milani, M. M. (2018). *The making of Iran's Islamic revolution: from monarchy to Islamic Republic*. London: Routledge.

Milby, K. A. (2008). *The Making of an Image: The Narrative Form of ibn Isḥāq's sīra rasūl Allāh*. Masters Dissertation. Georgia State University.

Miller, B. (1992). A "new world order": From balancing to hegemony, concert or collective security?. *International Interactions*, *18*(1), 1-33.

Mir-Hosseini, Z. (1999). *Islam and Gender: The religious debate in contemporary Iran*. New Jersey: Princeton University Press.

Mir-Hosseini, Ziba. 2010. Sharīʿa and National Law in Iran. In J. M. Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden: Leiden University Press, 319-371.

Mirsepassi, A. (2011). *Democracy in modern Iran: Islam, culture and political change*. New York: New York University Press.

Mitchel, T.G. (2014). *When Peace fails: Lessons from Belfast for the middle East*. North Carolina: McFarland and Company.

Moaddel, M. (1993). *Class, politics, and ideology in the Iranian revolution*. New York: Columbia University Press.

Moazzen, M. (2017). *Formation of a Religious Landscape: Shi 'i Higher Learning in Safavid Iran*. Leiden: Brill.

Modarressi, H. (1984)_a. Rationalism and traditionalism in Shi'i jurisprudence: a preliminary survey. *Studia Islamica,* 59, 141-158.

Modarressi, H. M. (1984)_b. *An Introduction to Shī'ī Law: A Bibliographical Study*. London: Ithaca Press.

Modarressi, H. (1993)_a. Early debates on the integrity of the Qur'an: A brief survey. *Studia Islamica*, 77, 5 - 40.

Modarressi, H. (1993)_b. *Crisis and Consolidation in the Formative Period of Shi'ite Islam*. New Jersey: The Darwin Press.

Molina, L. (2000). *'Umayyads. Encyclopaedia of Islam*. Retrieved from http://dx.doi.org/10.1163/1573-3912_islam_COM_1288 (accessed 31/08/2023).

Morgenthau, H. J. (1985). *Politics Among Nations* (Revised by K. W. Thompson). New York: Knopf.

Monshipouri, M. (1998). *Islamism, secularism, and human rights in the Middle East*. Colorado: Lynne Rienner Publishers.

Moghissi, H. (2016). *Populism and feminism in Iran: Women's struggle in a male-defined revolutionary movement*. London: Palgrave McMillan.

Moinzadeh, A. (1993). *Ḥuqūq-i diplomātik-i novīn.* Tehran: Nashr-i Vizārat-i Umūr-i Khārejeh.

Moravcsik, A. (2001). *Liberal international relations theory: a social scientific assessment*. Weatherhead Center for International Affairs, Massachusetts: Harvard University Press.

Morgan, M. S. (2012). Case studies: One observation or many? Justification or discovery? *Philosophy of Science*, 79(5), 667-677.

Morgana, M. S. (2020). *Precarious workers and neoliberal narratives in post-revolutionary Iran: top-down strategies and bottom-up responses*. Middle East Institute, 28. Retrieved from https://www.mei.edu/publications/precarious-workers-and-neoliberalnarratives-post-revolutionary-iran-top-down (accessed 31/05/2024).

Morrow, J. A. (2013). *The Covenant of the Prophet Muḥammad with the Monks of Mount Sinai*. Angelico Press. Retrieved from https://johnandrew@.com/2015/01/28/the-covenant-of-the-prophet-Muḥammad-with-the-monks-of-mount-sinai/ (accessed 31/06/2023).

Morrow, J. A. (2015). *Six Covenants of the Prophet Muḥammad with the Christians of His Time: The Primary Document*. Washington: Covenants Press.

Morrow, J. A. (2018). *Islam and the People of the Book: Critical Studies on the Covenants of the Prophet*. Cambridge: Cambridge Scholars Publishing.

Morsy, A. (2019). *Alliances and threats in the Middle East: neoclassical Realism and the balance of interests*. Collection 34. Washington DC: The Project on Middle East Political Science Studies, 81-85.

Moschtaghi, R. (2009). The Relation between International law, Islamic Law and Constitutional Law of the Islamic Republic of Iran: A Multilayer System of Conflict? *Max Planck Yearbook of United Nations Law*, 13(1), 375-420.

Moschtaghi, Ramin. Rule of Law in Iran (2010). *Understanding of the Rule of Law in Various Legal Orders of the World*. Working Paper Series No. 11 of SFB 700. Berlin: Free University.

Moschtaghi, R. (2012). Constitutionalism in an Islamic Republic: The Principles of the afghan constitution and the conflict between them. In R. Grote, &T. J. Röder (eds.), *Constitutionalism in Islamic countries: Between upheaval and continuity*. Oxford: Oxford University Press, 683-714.

Moslem, M. (2002). *Factional politics in post-Khomeinī Iran.* Syracuse: Syracuse University Press.

Mottahedeh, R. P. (1980). Iran's Foreign Devils. *Foreign Policy*, 38, 19-34.

Motzki, H. (2003). The Question of the Authenticity of Muslim Traditions Reconsidered. In H. Berg (ed), *Method and Theory in the Study of Islamic Origins*. Leiden: Brill, 211-257.

Moussa, M. (2017). *Abdolkarim Soroush's Nectar of Prophecy and History*. Muslim Institute. Retrieved from https://musliminstitute.org/freethinking/politics/abdolkarim-soroushs-nectar-prophecy-and-history (accessed 31/08/2023).

Moussavi, A. K. (1992). A new interpretation of the theory of Velayat-e Faqih. *Middle Eastern Studies*, 28(1), 101-107.

Muhaqiq-Damad, M. (2001). The Role of Time and Social Welfare in the Modification of Legal Rulings. In L. Clarke (ed.), *Shīʿite Heritage: Essays on Classical and Modern Traditions*. New York, Global Publications, 199-212.

Muhaqiq-Damad, M. (2003). International Humanitarian law in Islam and Contemporary International law. In I. Salami (ed.), *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. London: Alhoda, 253-293.

Muir, W. (1891). *The Caliphate, its rise, decline and fall: From original Sources*. Oxford: Hart Publishing.

Mujtahid-Shabestari, M. (2002). *Naqdī bar qaraʾate rasmī az dīn*. Tehran: Ṭarḥ-i Nu.

Mujtahid-Shabestari, M. (2012). *Rushanfikr-i dīnī, na, rushanfikr-i dīnidār, ārī*. Shahrvand-i Emrūz. Retrieved from https://neeloofar.org (accessed 31/08/2023).

Munir, M. (2000) Immunity or Impunity: A Critical Appraisal of the Immunity of Diplomats in International law and Its Status in Sha'ria. *Journal of Law and Society,* 22 (35), 39- 56.

Munir, M. (2003). Public International law and Islamic International law: Identical Expression of World Order. *Islamabad Law Review*, 1 (3), 369-430.

Muntaziri, H. A. (1982). *Fiqh al-dawlah al-Islāmīyah* (Vol. 2). Qum: Daftar-i Tablīqāt-i Islāmī.

Muntaziri, H.A. (1988)_a. *Mabāni-yi Fiqh-yi Ḥokūmat-i Isāmī* (Vol. 1). Tehran: Keyhān.

Muntaziri, H.A. (1988)_b. *Mabāni-yi Fiqh-yi Ḥokūmat-i Isāmī* (Vol. 2). Tehran: Nashr-i Tafakkur.

Muntaziri, H.A. (2003). Pāsukhī be Sorūsh. In S. Edalatnejad (ed.), *Andar bābe ijtihād: Dar bāre-yi kār āmadī fiqh Islāmī dar dunyā-yi emūz*. Tehran: Ṭarḫ-i nu.

Muntaziri, H.A (2005). *Pāsukhhā-yi be su'ālāt-i site-i rūz*. Gooya.com. Retrieved from https://news.gooya.com/politics/archives/039244.php (accessed 31/08/2023).

Muntaziri, H.A. (2008). *Ḥokūmat-i dīnī va Ḥuqūq-i Insān*. Tehran: Arghavān-i Nashr-i Dānish.

Muntaziri, H.A. (2009). *Aghāy-i Muntaẓirī: Ishghāl-i Sefārat ishtibāh būd*. Khabaronline. Retrieved from https://www.khabaronline.ir/news/22886/ (accessed 31/08/2023).

Murray, J. A. H. Bradley, H. Craigie, W. A. & Onions C. T. (eds.) (1933). *The Oxford English dictionary* (Vol. 3). Oxford: Clarendon Press.

Musaddiq, M (1988). *Musaddiq's Memoirs* (Edited by Homa Katouzian). London: JEBHE (National Movement of Iran).

Mushkat, R. (1987). Is War Ever Justifiable? A Comparative Survey. *International and Comparative Law Review*, 9(2), 227-320.

Mutahhari, M. (1961). Aṣl-i ijtihād dar Islām. *Maktab-i Tashayyo'*, 1340(6), 301-333.

Mutahhari, M. (1977). *Niẓām-i Ḥuqūq-i zan dar Islām*. Tehran: Intishārāt-i Ṣadrā.

Mutahhari, M. (1987). *Dah guftār*. Tehran: Intishārāt-i Ṣadrā.

Mutahhari, M. (1988). *Taʿlīm va Taʿllum dar Islām*. Tehran: Intishārāt-i Ṣadrā

Mutahhari, M. (1993). *Ashnā'ī bā 'ulūm-i Islāmī* (Vol 3). Tehran: Intishārāt-i Ṣadrā.

Mutahhari, M. (2010). *Majmū'a-yi āthār* (Vol 16). Tehran: Intishārāt-i Ṣadrā.

Mutahhari, M. (2014). *Understanding the Uniqueness of the Qur'an*. Carolina: Lulu press.

Mutahhari, M. (2021). *Dars hāy-i asfār* (Vol, 3). Tehran: Intishārāt-i Ṣadrā.

Nagal, T. (2010). The Limits of International Law. In D.N. Robinson (ed.), *Secular Philosophy and the Religious Temperament*. Oxford: Oxford University Press.

Naigen, Z. (2016). The principle of Non-interference and its Application in Practices of Contemporary International law. *Fudan Journal of the Humanities and Social Sciences*, 9(3), 449-464.

Najafi, M.H (2016). Nukte hā-yi dar 'arṣi-yi fiqh ravābiṭ-i bain al-milal. *Faṣlnāme-yi Fiqh,* 1375(10), 3-13.

Nasiri, A. (2013). *An Introduction to ḥadīth*. Qum: MIU Press.

Nasiri, A. Monaghib, S. M. Abdollahzadeh Arani, R. & Khoshnazar, S. K. (2015). A Review on the Relation of Universality and Eternality of the Qur'ān with its Comprehensiveness from Allameh Tabtabaie's Viewpoints. *Research Quarterly in Islamic Theology (kalam) and Religious Studies*, 11(42), 35-48.

Nasr, S. H. (1979). Intellect and intuition: Their relationship from the Islamic perspective. *Studies in Comparative Religion*, 13(1), 1-9.

Nasr, S. H. & Dabashi, H. (1988). *Shi'ism: Doctrines, Thought, and Spirituality*. New York: State University of New York Press.

Nasr, S. H. & Dabashi, H. (1989). *Expectation of the Millennium: Shi'ism in history*. New York: State University of New York Press.

Nasr, S. V. R. (1991). Islamisation of knowledge: A critical overview. *Islamic Studies*, *30*(3), 387-400.

Nasr, S. H. & Afsaruddin, A. (2021). *'Alī*. Encyclopaedia Britannica, Retrieved from https://www.britannica.com/biography/Ali-Muslim-Caliph (accessed 31/08/2023).

Nassar, A. E. (2003). The International Criminal Court and the applicability of international jurisdiction under Islamic law. *Chicago Journal of International law*, 4(2), 587- 596.

Nelson, C. M. (1988). Opening Pandora's Box: the status of the diplomatic bag in International relations. *Fordham International Law Journal*, 12(3), 494-520.

Nelson, C. E. (2018). Revolution and War: Saddam's Decision to Invade Iran. *The Middle East Journal*, 72(2), 246-266.

Nelson-Pallmeyer, J. (2017). *Brave new world order: must we pledge allegiance?* Oregon: Wipf and Stock Publishers.

Neumann, I. B. (2012). Euro-centric diplomacy: Challenging but manageable. *European journal of International relations*, 18(2), 299-321.

Newman, A. J. (2013). *Twelver Shiism: unity and diversity in the life of Islam, 632 to 1722*. Edinburgh Edinburgh University Press.

Nicolson, S. H. G. (1946). *The Congress of Vienna, A study in Allied unity*. London: Constable.

Nyazee, I.A.K. (2000). *Islamic Jurisprudence*. Pennsylvania: International Institute of Islamic Thought.

Nizah, M. Zarif, M. Atoma, P. & Kandil, H.M. (2012). Prophet Muḥammad: The Savvy Politician. *Proceedings of the International Conference on Islamic Leadership*, 97-106.

Nizah, M. Zarif, M. Atoma, P. & Kandil, H.M. (2013). Political creativity among religious leaders: The case of Muḥammad. *World Applied Sciences Journal*, 24(2), 270-275.

Novakovic, M. (2020). *Diplomatic immunity: evolution and recent country developments*. London: Palgrave Macmillan.

Nussbaum, A. (1962). *A Concise History of the Law of Nations*. London: Palgrave McMillan.

O'Connell, M. E. (2008). *The power and purpose of international law*. Oxford: Oxford University Press.

Ogdon, M. (1936). *Juridical Bases of Diplomatic Immunity: A Study in the Origin, Growth and Purpose of the Law*. Washington DC: John Byrne and Co.

Oliverio, A. (1998). *The state of terror*. New York: State University of New York Press.

Oppenheim, L. (2005). *International law: A Treatise*. New Jersey: The Lawbrook Exchange Ltd.

Orford, A., Hoffmann, F., & Clark, M. (Eds.). (2016). *The Oxford handbook of the theory of international law*. Oxford: Oxford University Press.

Otto. J.M. (2008) *Sharia and National law in Muslim countries*. Amsterdam: Amsterdam University Press.

Pak-Shiraz, N. (2013). Filmic discourses on the role of clergy in Iran. In L. Ridgeon (ed.), *Iranian Intellectuals: 1997–2007*. London: Routledge, 71-90.

Panhwar, M. H., & Behan, R. A. (2021). Offensive Realism: The US Strategies to Contain Iran. *Progressive Research Journal of Arts & Humanities*, *3*(1), 92-103.

Park, R.S. (2017) *Constructing Civility: Human good in Christian and Islamic political theologies*. Indiana: University of Notre Dame Press.

Parsa, M. (1989). *Social origins of the Iranian revolution*. New Jersey: Rutgers University Press.

Peletz, M. G. (2020). *Shari'a Transformations: Cultural politics and rebranding of an Islamic Judiciary*. Los Angeles: University of California Press.

Panhwar, M. H., & Behan, R. A. (2021). Offensive Realism: The US Strategies to Contain Iran. *Progressive Research Journal of Arts & Humanities*, 3(1), 92-103.

Penn, M.P. (2015). *When Christians first met Muslims*. Los Angeles: University of California Press.

Paterson, T. G., Clifford, J. G., & Hagan, K. J. (1991). *American Foreign Policy: 1900 to Present* (Vol. 2). Massachusetts: DC Heath.

Philips, J. (2009). *What Iran Learned From the Hostage Crisis*? The Heritage Foundation. Retrieved from https://www.heritage.org/middle-east/commentary/what-iran-learned-the-hostage-crisis-terrorism-works (accessed 31/08/2023).

Pilchman, D. D. (2014). *A Practice Theory of International Law*. Doctorate dissertation. University of California, Irvine.

Pirseyedi, B. (2012). *Arms control and Iranian foreign policy: Diplomacy of discontent*. London: Routledge.

Ponting, C. (2000). *World history: a new perspective*. London: Chatto and Windus.

Powell, E. J. (2019). *Islamic law and International law: Peaceful resolution of disputes*. Oxford: Oxford University Press.

Powers, D. (2010). *Important Documents in American History*. Irvine: Harvest Publishing.

Prasad, S. K. (2014). The marginalisation of religion in international relations: Deconstructing secular IR theories. *South Asian Survey*, 21(1-2), 35-50.

Qabil, A. (2011). *Pāsukh hā-yi- Aḥmad Qābil be suʾālāt-i bīst-o panj gānih*. Gooya.com. Retrieved from https://news.gooya.com/politics/archives/2011/07/125544.php (accessed 31/08/2023).

Qabil, A. (2013) Naqd-i ijmālī-yi ashghāl-i sifārat-i Āmrīkā dar Irān. In A. Qabil (ed.), *Fiqh, kar-kard-hā va Qabiliyat-hā*, Tehran: Sharīʿat-i ʿAqlānī, 129-142.

Qurban-nia, N. (2000). Fiqh ḥuqūq-i bain al-milal. *Qabasāt*, 5 (15-16), 86-99.

Quinney, N. (2011). Culture Counts: A diplomatic perspective on culture and regional conflict management. In C.A. Crocker, F.O. Hampson, & P.R. Aall, (eds.), *Rewiring regional security in a fragmented world*. Washington DC: U.S. Institute of Peace Press.

Radawi, S.A. (2012) Tehran. In G.A.H. Adel, & M.J. Elmi (eds.), *Ḥawza-yi ʿilmīyya, Shīʿī Teaching Institution*. London: EWI Press, 213, 238.

Rafat, A. (1980). The Iran Hostage Crisis and the International Court of Justice: Aspects of the Case Concerning United States Diplomatic and Consular Staff in Tehran. *Denvor Journal of International law and Policy*, 10(3), 425-462.

Rahimi, B. (2007). *Ayatullah Sistani and the democratisation of post-Ba'athist Iraq*. United States Institute of Peace. Retrieved from https://www.usip.org/sites/default/files/sr187.pdf (accessed 31/08/2023).

Rahman, A. (1994). *The Principles of Islamic Jurisprudence: According to the Hanafi, Maliki, Shafi'i and Hanbali Schools*. New Dehli: Kitab Bhavan.

Rahman, F. (1970). Revival and Reform in Islam. In P.M. Holt, K.S. Lambton, & B. Lewis, (eds.), In P.M. Holt, K.S. Lambton, & B. Lewis (eds.), *The Cambridge History of Islam.* Cambridge: Cambridge University Press, 632-657.

Rahman, F. (1979). *Islam*. Chicago: University of Chicago Press.

Rahman, F. (2009). *Major Themes of the Qur'an*. Chicago: University of Chicago Press.

Rahnema, A. (2000). *An Islamic utopian: A political biography of Ali Shariati*. London: I.B. Tauris.

Ratliff, B. (2008). *The Monastery of Saint Catherine at Mount Sinai and the Christians Communities of the Caliphate*. The Bulletin of the Saint Catherine Foundation. Retrieved from http://www.saintcatherinefoundation.org/files/8013/2983/0724/Sinaiticus_2008-email.pdf (accessed 31/06/2023).

Ramadan, T. (2004). *Western Muslims and The Future of Islam*. Oxford: Oxford University Press.

Rampton, R. Wroughton, L. & van den Berg, S. . (2018). *U.S. withdraws from international accords, says U.N. world court 'politicised'*. Reuters. Retrieved from https://www.reuters.com/article/us-usa-diplomacy-treaty-idUSKCN1MD2CP (accessed 31/08/2023).

Rasool, E. (2022). *Living Where We Don't Make the Rules: A guide for Muslim minorities*. Swansea: Claritas books.

Raven, W. (1997). *Sīra*. Encyclopaedia of Islam. Retrieved from http://dx.doi.org/10.1163/1573-3912_islam_COM_1089 (accessed 31/08/2023).

Raymond, W. J. (1992). *Dictionary of politics: Selected American and foreign political and legal terms*. Virginia: Brunswick Publishing Corp.

Rehman, J. (2005) *Islamic State Practices, International law and the Threat from Terrorism: A Critique of the 'Clash of Civilisation' in the New World Order*. Oxford: Hart Publishing.

Reinalda, B. (ed.) (2013). *Routledge handbook of international organization*. London: Routledge.

Revkin, M. (2016). *The legal foundations of the Islamic State*. Washington DC. The Bookings Institution.

Rezaei, H. (2002). The Iranian criminal justice under the Islamisation project. *European Journal Crime, Criminal Law and Criminal Justice*, 10(1), 54-69.

Richard, Y. (1988). Shari'at Sangalaji: A Reformist Theologian of the Reza Shah Period. In S.A Arjomand (ed.), *Authority and political culture in Shi'ism*. New York: State University of New York Press, 159-177.

Richmond, O. P. (2002). States of sovereignty, sovereign states, and ethnic claims for international status. *Review of International Studies*, 28(2), 381-402.

Ridgeon, L. (2006). *Sufi castigator: Ahmad Kasravi and the Iranian mystical tradition*. London: Routledge.

Ridgeon, L. (2020). Ahmad Qabil, a reason to believe and the New Religious Thinking in Iran. *Middle Eastern Studies*, 56(1), 1-15.

Ridgeon, L. (2022). Ahmad Qābel, Religious Secularity and vilayat-i faqih in Iran. *Religions*, 13(5), 422-437.

Ridgeon, L. (2023). *Ahmad Qābel and Contemporary Islamic Thought: Rational Shariah in Twenty-First-Century Iran*. Cambridge: Cambridge University Press.

Ringmar, E. (2019). *History of International relations: A non-European perspective*. Cambridge: Open Book Publishers.

Rippin, A. (1991). *Muslims, their religious beliefs and practices* (Vol. 1). London: Routledge.

Robinson, C.F. (2004). *Islamic Historiography*. Cambridge: Cambridge University Press.

Robinson, G. E. (2014). The Middle East and North Africa. In M. Sasaki, J. Goldstone, J. zimmermann, & S. K. Sanderson (eds.), *Concise Encyclopaedia of Comparative sociology*. Leiden: Brill, 574-592.

Rohe, M. (2015). *Islamic law in past and present*. Leiden: Brill.

Rodinson, M. (1996). *Muḥammad*. London: Penguin.

Rose, G. (1983). Velayat-e Faqih and the Recovery of Islamic Identity in the Thought of Ayatollah Khomeini. In N. R. Keddie (ed.), *Religion and Politics in Iran: Shi'ism from Quietism to Revolution*. Connecticut: Yale University Press, 166-188.

Ross, M. S. (1989). Rethinking diplomatic immunity: A review of remedial approaches to address the abuses of diplomatic privileges and immunities. *American University International Law Review*, 4(1), 173-205.

Rostami-Povey, E. (2010). *Iran's influence: A religious-political State and society in its region*. London: Bloomsbury Publishing.

Rubin, U. (1985). The Constitution of Medina: Some Notes. *Studia Islamica* 62, 5-23.

Rubin, U. (2009). *Abraha*. Encyclopaedia of Islam. Retrieved from http://dx.doi.org/10.1163/1573-3912_ei3_COM_22605 (accessed 31/08/2023).

Saab, H. (1963). The spirit of reform in Islam. *Islamic Studies*, 2(1), 17-39.

Sachedina, A. A. (1981). *Islamic messianism: The idea of Mahdi in Twelver Shi'ism*. New York: State University of New York Press.

Sachedina, A. A. (1998). *The just ruler in Shi'ite Islam: the comprehensive authority of the jurist in Imāmite jurisprudence*. Oxford: Oxford University Press.Sadeghi-Boroujerdi, E.

(2019). *Revolution and its Discontents: political thought and reform in Iran*. Cambridge: Cambridge University Press.

Sadeghi-Boroujerdi, E. (2024). Iran and the Permanence of the Theologico-Political?. *Political Theology*, 25(2), 91-97.

Sadiqnia, M. (2015). *Qarāʾat nu-andīshānih az dīn*. Markaz-i Dāʾiratul Maʿārif Buzurg-i Islāmī. Retrieved from https://www.cgie.org.ir/fa/news/ 49642 (accessed 31/08/2023).

Sadr, J. (1997). *Ḥuqūq-i diplomātik va kunsulī.* Tehran: Intishārāt-i Dānishgāh-I Tehrān.

Sadri, M. (2000). *Reason, freedom, and democracy in Islam: essential writings of ʿAbdolkarim Soroush*. Oxford: Oxford University Press.

Sadri, M. (2002). Attack from within: Dissident political theology in contemporary Iran. *The Iranian*, 13, 257-270.

Saeed, A. (2006). *Islamic Thought: An Introduction*. London: Routledge.

Safi, L. (2021). *Bā hami-yi Dunyā rābiteh bar qarār kunīd*. Inṣāf news. Retrieved from http://www.ensafnews.com/319475 (accessed 31/08/2023).

Safiyanu, S. (2021). The Principle of Diplomatic Immunity Under Islamic Law. *International Journal of Social Sciences*, 5(21), 42-52.

Said, E.W. (1977). *Orientalism*. New York: Vintage Books.

Saifzadeh, S. H. (1999). *Ravābit-i bain al-milal*. Tehran: Nashr-i Dādgustar.

Saleh, N. (1989). The law governing contracts in Arabia. *International and Comparative Law Quarterly*, 38(4), 761-787.

Salmond, J.W. (1920). *Jurisprudence*. London: Sweet and Maxwell.

Samuels, R. J. (ed.) (2005). *Encyclopaedia of United States national security* (Vol. 1). Los Angeles: SAGE Publishing.

Sanei, Y. (1989). *Muṣāḥibe bā Āyatullāh Ṣānʿeī*. Hawzah.net Retrieved from https://hawzah.net/fa/Magazine/View/4518/4559/32925 (accessed 31/08/2023).

Sanei, Y. (2009). *Guftigū*. Sanei.org. Retrieved from https://www.saanei.org/pdf/pdf.pdf/?view=01,02,09,4146,0, (accessed 31/08/2023).

Santhosh, R. (2013). Contextualising Islamic contestations: Reformism, traditionalism and modernity among Muslims of Kerala. *Indian Anthropologist*, 43(2), 25-42.

Sarkar, S. (2020). *The Politics of Human Trafficking: Lessons from Asia and Europe*. Washington DC: Lexington Books.

Samour, N. (2014). Is There a Role for Islamic international law in the History of International law? *European journal of International law*, 25(1), 313-319.

Sardar, Z. (1999). *Orientalism*. Maidenhead: McGraw-Hill Education.

Sardar Ali, S. (2016). *Modern challenges to Islamic law*. Cambridge: Cambridge University Press.

Sardar Ali, S., Griffith, A., & Hellum, A. (2016). *From Transnational Relations to Transnational Laws: Northern European Laws at the Crossroads*.London: Taylor & Francis.

Satow, E. M. (1932). *A guide to diplomatic practice* (Vol. 2). London: Longmans, Green and Company.

Schacht, J. (1967). *The origins of Muhammadan jurisprudence*. Oxford: Oxford University Press.

Scharbrodt, O. (2020). The Study of Shia Islam in British Aca-demia: Some Preliminary Reflections. *Al-Ameed Journal*, *9*(4), 71-83.

Schimmel, A. (1992). *Islam: an introduction*. New York: State University of New York Press.

Schultz, D. A. (ed.) (2010). Encyclopaedia of the United States constitution. New York: Infobase Publishing.

Seib, P. (2013). Introduction. In P. Seib (ed.), *Religion and public diplomacy*. London: Palgrave Macmillan, 1-7.

Serjeant, R.B. (1983). Early Arabic Prose. In A.F.L. Beeston (ed.), *Arabic literature to the end of the 'Umayyad period*. Cambridge: Cambridge University Press, 114-153.

Sen, B. (2012). *A diplomat's handbook of International law and practice*. The Hague: Martinus Nijhoff Publishers.

Shabana, I. (2020). Crusaders in Reverse? The Emergence of Political Islam in the Middle East and the Reactions of British Foreign Policy, 1978–1990. *Religions*, *11*(4), 57-70.

Shaban-nia, Q. & Husaini, M.J. (2018). Maṣūnīat jānī-yi namāyandigān-i keshvar-hā dar fiqh, *Goftemān-i Fiqh-i Ḥokūmatī*, 2(3), 129-160.

Shabbar, S. (2017), *Ijtihad and renewal*. Pennsylvania: International Institute of Islamic Thought.

Shah, N. A. (2008). *Self-Defense in Islamic and International law*: *Assessing Al-Qaeda and the Invasion of Iraq*. London: Palgrave Macmillan.

Shah-Ali, A.R. (2005) Inqilāb-i Duvvum. *Zamāneh* 1384(38), 72-77.

Shaikh, A.S. (2017). The fact behind the allegations Al-Waqidi was accused of them: An analytical study. *Ma'ārif-i Islāmi*, 16(1), 117-135.

Shao, X. (2021). What We Talk about When We Talk about General Principles of Law. *Chinese Journal of International law*, 20(2), 219-255.

Sharp, P. (2009). *Diplomatic theory of International relations*. Cambridge: Cambridge University Press.

Shaw, M. N. (2008). *International law*. Cambridge: Cambridge University Press.

Shaw, M. N. (2019). *International law*. Encyclopaedia Britannica. Retrieved from https://www.britannica.com/topic/international-law (accessed 31/08/2023).

Shahibzadeh, Y. (2016). *Islamism and post Islamism in Iran*. London: Palgrave McMillan.

Sherrill, C. W. (2012). Why Iran wants the bomb and what it means for US policy. *The Nonproliferation Review*, *19*(1), 31-49.

Shirazi, S.S. (2013). *Islamic Law Books One and Two Handbook of Islamic rulings on Muslim's duties and practices.* London: Fountain books.

Siavoshi, S. (2007). Ayatollah Khomeini and the contemporary debate on freedom. *Journal of Islamic Studies*, 18(1), 14-42.

Siddiqi, M. N. (2004). Violence and Muslims. *American Journal of Islamic Social sciences*, 21(2), 137-143.

Sills, D. L. (ed.) (1968). *International encyclopaedia of the social sciences*. London: Palgrave Macmillan.

Singh, R. K. (2015). *Textbook on Muslim law*. Delhi: Universal Law Publishing.

Sinkaya, B. (2015). *The revolutionary guards in Iranian politics: Elites and shifting relations*. London: Routledge.

Sirry, M. A. (2021). *Controversies over Islamic origins: a introduction to traditionalism and revisionism*. Cambridge Scholars Publisching.

Skreslet, P.Y. & Skreslet, R. (2006). *The literature of Islam, A guide to primary sources in English translation*. MD: Scarecrow Press.

Slagter, T. H., & Van Doorn, J. D. (2022). *Fundamental perspectives on international law*. Cambridge: Cambridge University Press.

Smith, P. S. (2005). Of war and Peace: The Hudaibiya model of Islamic diplomacy, Florida Journal of International Law, 18(1), 135-168.

Smock, D. R. (2006). *Religious contributions to peace making, when religions bring peace not war.* United States Institute of Peace. Retrieved from https://www.usip.org/publications/2006/01/religious-contributions-peacemaking-when-religion-brings-peace-not-war (accessed 31/08/2023).

Snyder, J. (2004). One World, Rival Theories. *Foreign Policy*, 145, 52-62.

Sodiq, Y. (2010). *An insider's guide to Islam*. Indiana: Trafford Publishing.

Sofroniou, A. (2017). *International law, Global Relations, World Powers*. Carolina: Lulu press.

Sohrabi, N. (1995). Historicizing revolutions: constitutional revolutions in the Ottoman Empire, Iran, and Russia, 1905-1908. *American Journal of Sociology*, 100(6), 1383-1447.

Solingen, E. (2001). Domestic coalitional analysis and the democratic peace. *The International History Review*, *23*(4), 776-783.

Solomon, E.L. (2010). *Lies and Deceits*. New York: IUniverse.

Sorush, A. (1995). *Qabẓ va basṭ-i teʾurik-i sharīʿat: Naẓarīyeh-yi kāmil-i maʿrifat-i dīnī*. Tehran: Intishārāt-i Ṣirāt.

Sorush, A. (1998). *Razdānī va rushanfikrī va dindārī*. Tehran: Intishārāt-i Ṣirāt.

Sourdel, D. (1970). The Abbasid Caliphate. In P.M. Holt, K.S. Lambton, & B. Lewis (eds.), *The Cambridge History of Islam*. Cambridge: Cambridge University Press. 104-139.

Spencer, R. (2012). *Did Muhammad exist?: an inquiry into Islam's obscure origins*. Wilmington: Intercollegiate Studies Institute.

Stanzel, V. (2019). Issues and recommendations. In V. Stanzel (ed.), *New Realities in Foreign Affairs*. Baden: Nomos, 9-12.

Strawson, J. (1995). Islamic law and English texts. *Law and Critique*, 6(1), 21-38.

Steer, C. (2016). Sources of law making process relating to space activities. In R.S. Jakhu, & p.s. Dempsey (eds.), *Routlege handbook of space law*. London: Routledge, 3-24.

Steinl, L. (2017). *Child Soldiers as Agents of War and Peace. A Restorative Transitional Justice Approach to Accountability for Crimes Under International law*. Berlin: Springer.

Stoddard, Theodore Lothrop (1921). *The New World of Islam*. New York: Charles Scribner's Sons.

Subhani, J. (2014). *The Message*. Carolina: Lulu press.

Sulayman, A. (1987). *Islamic Theory of International relations*. Pennsylvania: International Institute of Islamic Thought.

Tabari, A. (1983). The role of the clergy in modern Iranian politics. *Religion and politics in Iran*, In N. R. Keddie (ed.), *Religion and Politics in Iran: Shi'ism from Quietism to Revolution*. Connecticut: Yale University Press, 47-72.

Tabatabai, M. H., & Nasr, S. H. (1975). *Shi'ite Islam*. New York: State University of New York Press.

Tabatabaei, M. H. (2017)_a. *Al-Mīzān* (Vol 3). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/08/2023).

Tabatabaei, M. H. (2017)_b. *Al-Mīzān* (Vol 7). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/08/2023).

Tabatabaei, M. H. (2017)_c. *Al-Mīzān* (Vol 9). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/03/2024).

Tabatabaei, M. H. (2017)_d. *Al-Mīzān* (Vol 10). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/08/2023).

Tabatabaei, M. H. (2017)_e. *Al-Mīzān* (Vol 11). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/08/2023).

Tabatabaei, M. H. (2017)_f. *Al-Mīzān* (Vol 12). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/08/2023).

Tabatabaei, M. H. (2017)_g. *Al-Mīzān* (Vol 14). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/08/2023).

Tabatabaei, M. H. (2017)_h. *Al-Mīzān* (Vol 16). Tawheed Institute. Retrieved from https://www.tawheed.com.au (accessed 31/08/2023).

Taghavi, M.A. (2020). *Obituary: Dr Davood Feirahi*. The Madayn.com. Retrieved from https://themaydan.com/2020/11/obituary-dr-davood-feirahi/ (accessed 31/08/2023).

Taghavi, M.A. (2004). *The flourishing of Islamic reformism in Iran: Political Islamic groups in Iran* (1941-1961). London: Routledge.

Tagma, H. M., & Lenze Jr, P. E. (2020). *Understanding and Explaining the Iranian Nuclear'Crisis': Theoretical Approaches*. Washington DC: Lexington Books.

Takim, L. (2010). Reinterpretation or Reformation? Shi ‘a Law in the West. *Journal of Shi‘a Islamic Studies*, 3(2), 141-165.

Takim, L. (2016). Ijtihad and the Derivation of New Jurisprudence in Contemporary Shi’ism: The Rulings of Āyatullāh Bujnurdi, in C. Kersten and S. Olsson (eds.), *Alternative Islamic Discourses and Religious Authority*. London: Routledge, 17-34.

Takim, L. (2018). Custom as a Legal Principle of Legislation for Shi’i Law. *Studies in Religion/Sciences Religieuses*, 47(4), 481-499.

Takim, L. 2020. From Partial to Complete: Juristic Authority in Twelver Shi'ism. *Journal of South Asian and Middle Eastern Studies*, 43(4), 6-27.

Takim, L. (2021)_a. *Shi'ism Revisited: Ijtihad and Reformation in Contemporary Times*. Oxford: Oxford University Press.

Takim, L. (2021)_b. Islamic Law and the Neoijtihadist Phenomenon. *Religions*, 12(6), 1-10.

Takeyh, R. (2003). Iran's nuclear calculations. *World Policy Journal*, *20*(2), 21-28.

Tarbush, M. (2024). *My Palestine: An impossible exile*. London: Haus Publishing.

Tarikh. (2014) *Suqūṭ-i Āzād*. Pāygāh-i Tārīkh-i Maʿāsir-i Irān. Retrieved from https://www.revolution.pchr.ir/show.php?page=contnts&id=16721 (accessed 31/08/2023).

Tasnim. (2016). *Rahbar-i inqilāb be sefārate khānehā nazdīk nashavīd*. Tasnīm. https://www.tasnimnews.com/fa/news/1394/10/15/962848/ (accessed 31/08/2023).

Tasnim. (2022). *Rahbar-i inqilāb be kudām sanad dar bāri-yi sarnigūnī-yi ḥokūmat-i īrān dar zamān-i Carter ishār-i kardand*. Tasnīm. Retrieved from https://www.tasnimnews.com/fa/news/1401/10/19/2834311/ (accessed 31/08/2023).

Taulbee, J. L and Von Glahn, G. (2017). *Law among Nations: An introduction to public International law*. London: Routledge.

Thaqalain. (2016). *Qaẓiyeh banī Qurayẓah.* Retrieved from http://thaqalain.ir (accessed 31/03/2024).

Thirlway, H. 2019. *The sources of International law*. Oxford: Oxford University Press.

Thomas, A. (2024). Iran and the West: A Non-Western Approach to Foreign Policy. London: Taylor & Francis.

Thompson, J. W. (2016). *History of the Middle Ages: 300-1500*. London: Routledge.

Tibi, B. (2005). *Islam and the cultural accommodation of social change.* London: Routledge.

Toth, J. (2013). *Sayyid Qutb: The life and legacy of a radical Islamic intellectual*. Oxford: Oxford University Press.

Tor, D. (2001). A histrographical reexamination of the appointment and death of ʻAlī al-Rida. *Der Islam*, 78(1), 103-128.

Trevino, R. (2013). Is Iran an offensives realist or a defensive realist? A theoretical reflection on Iranian motives for creating instability. *Journal of Strategic Security*, *6*(3), 382-392.

Trowler, P. (2008). *Cultures and change in higher education: Theories and practices*. London: Macmillan International Higher Education.

Tugal, C. (2016). *The fall of the Turkish model: How the Arab uprisings brought down Islamic liberalism*. London: Verso books.

United States Committee on Foreign Relations. (1955). *Hearings before the Committee on Foreign Relations, United States Senate, Eighty-fourth Congress*, Resolution Relating to the Calling of an Atlantic Exploratory Convention United States. Washington D.C.: U.S. Government Printing Office.

U.S. Department of State (1977). *Diplomatic Privileges and Immunities: Hearings and Markup*. Washington D.C: U.S. Government Printing Office.

U.S. Department of State (1979). *Foreign Relations of the United States, 1977–1980 (Vol. XI), Iran: Hostage crisis, Nov 1979- Sept 1980*. Washington D.C: U.S. Government Printing Office.

U.S. Department of State. (1981). Hearing before the Committee on Foreign affairs House of Representatives. Washington D.C: U.S. Government Printing Office.

U.S. Department of State. (1986). Privileges and Immunities. *What Do I Do Now?: A Sourcebook on Regulations, Allowances*. Washington D.C: U.S. Department of State Publications, supplement.

U.S. Department of State. (1990). Gist: Diplomatic Immunity. *The U.S. Department of State Dispatch 1(1), 210. Bureau of Public Affairs* - The Arabian Peninsula. Washington D.C: U.S. Government Printing Office.

U.S. Department of State. (2003). *Iran's security threats and U.S. policy*. Washington D.C: U.S. Government Printing Office.

Vaezi, A. (2004) *Shia political Thought*. London: Islamic center of England.

Valcke, C. (2017). Comparative l.aw as comparative jurisprudence: The comparability of legal systems. In M. Del Mar, W. Twining, & M. Giudice (eds.), *Legal Theory and the Legal Academy*. London: Routledge, 361-388.

Vaglieri, L. V. (1971). *Ḥusayn b. ʿAlī b. Abī Ṭālib*. Encyclopaedia of Islam. Retrieved from http://dx.doi.org/10.1163/1573-3912_islam_COM_0304 (accessed 31/08/2023).

Vaglieri, L. V. (1960). *ʿAlī ibn Abī Ṭālib*. Encyclopaedia of Islam. Retrieved from http://dx.doi.org/10.1163/1573-3912_islam_COM_0046 (accessed 31/08/2023).

Valadbaygi, K. (2022). Neoliberalism and state formation in Iran. *Globalizations*, 1-15.

Van Bijnkershoek, C. (1946). *De foro legatorum liber singularis: a monograph on the jurisdiction over ambassadors in both civil and criminal cases*. Oxford: Clarendon Press.

Van Engaland, A. (2010). The challenge of fragmentation of International humanitarian law regarding the protection of civilian: An Islamic perspective, In C. Bassiouni, & A. Guellali (eds.), *Jihad and the challenges of International and domestic law*. New York: The Hague Academic Press, 139-166.

Vasiliev, A.A. (1953). Byzantium and Islam. In N.H. Baynes and H. Moss (eds.), *Byzantium: An Introduction to East Roman Civilisation*. Oxford: Clarendon Press, 308-325.

Vatikiotis, P.J. (1987). *Islam and the State*. London: Croom Helm.

Vailou, M, (2015). *Diplomacy in early Islamic world: A Tenth century treatise on Arab-Byzantine relations*. London: Bloomsbury Publishing.

Valk, J., Albayrak, H. & Selçuk, M. (2017). *An Islamic Worldview from Turkey: Religion in a Modern, Secular and Democratic State*. Berlin: Springer.

Van Alebeek, R. (2008). *The immunity of states and their officials in international criminal law and international human rights law*. Ozford; Oxford University Press.

Van den Bos, M. (2021). *Mystic regimes: Sufism and the State in Iran, from the late Qajar era to the Islamic Republic*. Leiden: Brill.

Vark, R. (2003). Personal inviolability and diplomatic immunity in respect of serious crimes. *Juridica International*, 8, 111-112.

Verma, R. (2016). *India and China in Africa: A comparative perspective of the oil industry*. London: Taylor & Francis.

Visser, R. (2006). *Sistani, the United States and Politics in Iraq: From Quietism to Machiavellianism*? Norwegian Institute for International Affairs. Retrieved from https://brage.bibsys.no/xmlui/bitstream/handle/11250/2395442/WP_nr700_06_Visser.pdf?sequence=3&isAllowed=y (accessed 31/08/2023).

Vogel, F.E. (2002). The Trial of Terrorists under Classical Islamic Law. *Harvard International law Journal*, 43(1), 43-53.

Voll, J. O. (1983). Renewal and Reform in Islamic History: Tajdīd and Iṣlāḥ. In J. L Esposito (ed.), *Voices of Resurgent Islam*. Oxford: Oxford: Oxford University Press, 32-47.

Voll, J. O. & Sonn, T. (2010). *Political Islam: Oxford bibliographies online research guide*. Oxford: Oxford University Press.

Von Schwerin, U. (2015). *The dissident mullah: Āyatullāh Montazeri and the struggle for reform in revolutionary Iran*. London: Bloomsbury Publishing.

Walbridge, L. S. (2001). Introduction: Shi‘ism and Authority. In L. S. Walbridge, (ed.), *The most learned of the Shia: The Institution of the MarjaTaqlid*. Oxford: Oxford University Press, 3-16.

Wallace, R.M. (2002). *International law*. London: Sweet and Maxwell.

Wallace, R.M. & Martin-Ortega, O. (2020). *International law*. London: Sweet and Maxwell.

Walt, S. M. (1990). *The origins of alliance*. New York: Cornell University Press.

Wangchi, W. L. (2018). *Translation and Modernisation in East Asia in the Nineteenth and Early Twentieth Centuries* (Vol. 3). Hong Kong: The Chinese University of Hong Kong Press.

Warnaar, M. (2013). *Iranian foreign policy during Ahmadinejad: Ideology and actions*. Berlin: Springer.

Watanabe, L. (2012). The possible contribution of Islamic Legal Institutions to the emergence of a rule of Law and the Modern State in Europe. In N.R.F. Al-Rodhan (ed.), *The Role of the Arab-Islamic World in the Rise of the West*. London: Palgrave Macmillan, 61-83.

Watt, W. M. (1955). Ideal Factors in the origin of Islam. *Islamic Quarterly*, 2(3), 160-174.

Watt, W. M. (1956). *Muhammed in Medina*. Oxford: Oxford University Press.

Watt, W. M. (1961). *Muhammed: Prophet and Statesman*. Oxford: Oxford University Press.

Watt, W. M. (1962). The materials used by Ibn-Isḥāq. In B. Lewis, & B., & P. M. Holt (eds.), *Historians of the Middle East.* Oxford: Oxford University Press, 31-43.

Webster, D. E. (1973). *The Turkey of Atatürk; Social Process in the Turkish Reformation*. New York: AMS Press.

Watt, W. M. (1983). The reliability of Ibn-Isḥāq's sources. In T. Fahd (ed), *La vie du Prophète Mahomet: Colloque de Strasbourg*. Paris: Presses Universitaires de France, 31-43.Watt, W.M, & McDonald, W.V. (1988). *The History of al-Ṭabarī Vol. 6: Muḥammad at Mecca*. New York: State University of New York Press.

Weeramantry, C. G. (2004). *Universalising international law*. The Hague: Martinus Nijhoff Publishers.

Weeramantry, C.G. (1988). *Islamic Jurisprudence: An International Perspective*. London: Palgrave McMillan.

Wendt, A. (1992). Anarchy is what states make of it: the social construction of power politics. *International organization*, 46(2), 391-425.

Wendt, A. (1995). Constructing international politics. *International security*, *20*(1), 71-81.

Westbrook, D. A. (1992). Islamic international law and public International law: Separate expressions of world order. *Virginia Journal of International law*, 33(1), 819-897.

Wheeler, B. (2020). Islamist Exegesis of Q 3-110: The Islamic Doctrine of the Responsibility to Protect. *American Journal of Islam and Society*, 37(3-4), 24-49.

Whelan, J. G. (1988). *Soviet Diplomacy and Negotiating Behaviour, 1979-88: New Tests for US Diplomacy* (Vol. 2). Washington D.C.: U.S. Government Printing Office.

Wilson, C. E. (1967). *Diplomatic privileges and immunities*. Tucson: University of Arizona Press.

Wight, C. (2006). *Agents, structures and international relations: politics as ontology*, Cambridge: Cambridge University Press.

Wood, S. A. (2012). *Christian criticisms, Islamic proofs: Rashid Rida's modernist defence of Islam*. London: Simon and Schuster.

Wright, L. (2018). *Black-Letter Law*. Law Now. Retrieved from https://www.lawnow.org/black-letter-law/ (accessed 31/08/2023).

Yassari, N. (2016). *Changing God's law: The dynamics of Middle Eastern Family law*. London: Routeledge.

Yasuaki, O. (2000). When was the law of international society born?–An inquiry of the history of international law from an intercivilizational perspective. *Journal of the History of International Law*, *2*(1), 1-66.

Zabir, S. (2012). *The Iranian Military in Revolution and War*. London: Routledge.

Zahid, M. A. & Shapiee, R. (2010). Pacta Sunt Servanda: Islamic Perception. *Journal of East Asia and International Law*, 3(2), 375- 385.

Zanjani, A.A. (1983). *Āshnāyī bā ʿulūm-i Islāmī*. Tehran: Intishārāt-i Islāmī.

Zanjani, A. A. (1987). *Fiqh sīyāsī va ḥuqūq muʿāhedāt-i bayn al-milal va diplomāsī dar Islām.* Tehran: Intishārāt-i Ṣamt.

Zanjani, A. A. (1996). *Inqilāb-i Islāmī va rīshehā-yi ān*. Tehran: Intishārāt-i Ṭūbā

Zawati, H.M. (2001). *Is Jihad a Just War: War, Peace and Human Rights under Islamic and Public International law*. New York: The Edwin Mellen Press.

Zehfuss, M. (2001). Constructivisms in International Relations: Wendt, Onuf and Kratochwil. In K.M. Firke & J.E. Jorgensen (eds.), *Constructing International Relations: The Next Generation*. New York: M. E. Shapre, 54-75.

Zeidan, A. (2020). *Rashidun*. Encyclopaedia Britannica, Retrieved from https://www.britannica.com/topic/Rashidun/additional-info#history (accessed 31/08/2023).

Zeidman, A. (1989). Abuse of the diplomatic bag: a proposed solution. *Cardozo Law Review*, 11(2), 427-444.

Zhang, J. (2013). China's faith diplomacy. In P. Seib (ed.), *Religion and public diplomacy*. Edinburgh: Edinburgh University Press, 75-97.

Ziyaei-Bigdeli, M.R. (2007). *Ḥuqūq bain al-milal ʿumūmī*. Tehran: Ganj-i Dānish

Zubaida, S. (2003). *Law and power in the Islamic world.* London: I. B. Tauris.

Ẕol'ain, P. (2005). *Ḥuqūq-i diplomātik.* Tehran: Nashr-i Vizārat-i Umūr-i Khārejeh.

Zulkifli, A. (2013). *The Struggle of the Shi'is in Indonesia*. Australia: Australian National University Press.

Appendix 1 – COMPREHENSIVENESS OF THE SHARI'A AND THE IDEOLOGY OF REFORM

Ap1.1 Introduction

Discussion around *sīyār* and that of Islamic diplomatic law is entangled by two strands of critique. This either revolves around the pivotal arguments of da*r al-islām* and *dār al-ḥarb* (Dougherty and Pfaltzgraff, 1971; 149), and the facile understanding of Islam as a fixed ideology of conquest. Alternatively, it revolves around Islamic international law being prescribed by the primary sources of Qur'ān and the *sunnah* like other substantive areas of *sharī'a*. Such a line of thought is centred on the expression of God's will for humans (Powell, 2019; 34), and the shallow conclusion that Muslims are compelled by a non-human literary code. For a nuanced analysis of such a notation, there is thus a requirement for further understanding of the possibility of reform in Islam. Some among the previous generations of academics had argued in their literature that, 'Islam in its very nature is incapable of reform and progressive expansion of human knowledge' (Stoddard, 1921; 33). [540] As such reformers were considered 'neither modern enough', 'nor as representatives of authentic Islam', and Islamic modernism was regarded as 'apologetics', along superficial lines aimed to reach an educated public (Gibb, 1947; 48). On the other hand, academics gradually reasoned that for the representation of Islam as a comprehensive religion dealing with all aspects of life within the context of theology and the State (Saab, 1963; 17), there is a requirement for reform. This demands the necessity of a continuous review of how legal obligations would be extracted and interpreted, based on their sources. This would not only dispel the notation that followers of Islam are a homogenous and monolithic community (Santhosh, 2013; 25) but also recognises the human jurisprudential development of *fiqh*. This in turn also led to a plethora of works reviewing issues of knowledge and methodology from the perspectives of reform regarded as the 'Islamization of knowledge' (Nasr, 1991; 387). The challenge for many has been the notation of the intrinsic epistemology prerequisite that is present, Islamic law must be comprehensive, universal, and eternal (Lotfi, 1999; 277). Nonetheless, any discussion into reform within this study is not intended to be a study of Islam as a religion, since uncertainty and controversies would encompass virtually every aspect of any presented case, and thus beyond the scope of this research. However, our

[540] For an extensive study of Western standards in the study of Islam and modernity, refer to Masudand Salvatore (2009)..

approach is intended not only to enhance our awareness of the complexities involved but also to provide a further understanding of how *shī'a ithnā-'asharī* legal obligations are subjected to *ijtihād,* through its reference to primary sources of Qur'ān and the *sunnah* of the Prophet and of the *ahl al-bayt*. [541] Having completed a discussion on diplomatic immunity, theory and practice in chapter 5, [542] this appendix aims to reflect on the genealogy of the post-revolutionary new thinking by domestic religious intellectuals that has evolved within Iran as a social and political reality. This would allow an assessment of the scope of the entwinement of new thinking with the works of religious intellectuals and top raking *shī'ī* jurists, allowing us to identify the advocates of a new interpretation of the *sharī'a*. This -is of particular importance to our research as it holds an explicit relevance to *sīyār*, aiding our quest to answer the central question of compatibility between Islamic diplomatic law and International diplomatic law. In essence, it would provide a platform for essential compatibility if not absolute with International law, and possibly provide a reconciliatory notation that could be adapted to focus on the changing needs of Muslim society. Listing key issues such as religious pluralism, non-discrimination, and equality as major tenants of Islam. This would view the *sharī'a* as not being exclusively a legal term but also include other aspects such as belief, moral and ethical factors. Meanwhile, such discussion also provides an opportunity to consider the counterarguments of those rejecting this notation of reform, as 'Western-imposed licentiousness' of liberalism (Sadeghi-Boroujerdi, 2019; 15). Classified as reforms that aim to provide compatibility with other standards without acknowledging the interconnectedness of the mode of representation. [543] Thus, this appendix is included in support of one of our key questions proposed; what mechanisms exist in *shī'a* Islamic law to reconcile with International law, if there is a clear difference? Additionally, it also addresses a topical question; How important is *nu-andīshī-yi dīnī* (new religious thinking) as advocated by new Muslim thinkers to find other interpretations of religion?

Ap1.2 The Developments around New thinking in Iran

[541] An example in the *shī'ī* context would be the modern guise attempt to use resālat *al-ḥuqūq* (treatise of rights) of Imām al-Sajjād, as a base to relate the rights to that of the contemporary societies as identified by the International norms.

[542] The discussion on diplomatic immunity, theory and practice in chapter 5 was used to focus on the domain of 'justification' for the application of Islamic diplomacy but it is now intended to be further incorporated within the domain of 'discovery' in the application of Islamic law. The example of Iran would be the basis of information integrated 'to create an explanatory account with internal validity' (Morgan, 2012; 667).

[543] This is a point that is discouraged in cultural studies, 'the line between mode of representation and substantive content is as undrawable in cultural analysis as it is in painting' (Geertz, 1973; 16), and could lead to a failure of the approach.

To begin with, it is important to clarify that the term *īṣlāḥ* (reform) has been widely used by many, and at times, opposing movements. This includes those upholding certain Western standards alongside Islamic ideals, such as the liberal Islamic movement championing 'democracy, human rights, and gender equality', using Islamic justifications while also defending Western values. However, it also includes those supporting an Islamist agenda such as the revivalist movement who champions 'modern-style social reform including mass education, a war on poverty, and public health measures' based on Islamic purist grounds while blaming the problems facing the Muslim community on Western imperialism (Kurzman, 2005; 2028). [544] For the modernists, reform was required to make Islam more 'relevant and meaningful to the present', in light of modern advancements (Hamdeh, 2021; 22). Whereas for those seeking a religious renaissance, reform was required to revive the stagnated Islam due to a lack of dynamism and innovation in the traditional approach, seeking a return to Islam aware of the 'requirements of time and place' (Hamdeh, 2021; 77). Due to such diverse applications and the overuse of the expression, the term reformist has been applied over time to a large variety of liberal and radical personalities. A sample of this would be Mīrzā Taqī Khān Farahānī (d. 1852), [545] Jamāl al-Dīn Afghānī Asadābādī (d.1897), [546] Sharīʿat Sanglajī (d.1943), [547] ʿAlī Sharīʿatī (d. 1977), [548] Mehdī Bazargān [549] or even Āyatullāh Muntaẓirī. [550] As such, it is possible to conclude that the term is no longer referable to a particular movement or tendency within the Islamic context, particularly considering the proliferation outside religious institutions. It has been commented that with such 'a large variety of liberal and radical Islamic movements, all of them espousing reform', the term has been rendered almost meaningless (Kurzman, 2005; 2029). Some have suggested to use the term Islamic modernism to make a distinction, as this would be 'advocated by individuals who are committed to religion but do not necessarily belong to the religious establishment' (Jahanbakhsh, 2001; 51). In other words, 'those who have made an articulate and conscious effort to reformulate Islamic values and principles in terms of modern thoughts' (Rahman, 1979; 222). However, this term is argued against because of the complications of the term modernism, since 'the portrait of modernism is admittedly controversial', and the concept is linked to 'exclusion and elitism' (Earle, 2016; 4). Reference to an alternative term of *tajdīd* (revival) is also prevalent in the works of many

[544] This immense contribution contains six volumes and has an astonishing 2,780 pages.
[545] For details of his involvement as *amīr kabīr* (the great commander), refer to De Bellaigue (2017)..
[546] For details of his involvement with Pan-Islamism, refer to Keddie (1983).
[547] For details of his involvement with Salafism, refer to Richard. (1988).
[548] For details of his involvement with Islamic Socialism, refer to Byrd and Miri (2017).
[549] For details of his Religious Modernism, refer to Barzin (1994).
[550] For details of his involvement with *vilāyat-i faqīh*, refer to von Schwerin (2015).

Muslim thinkers interested in the revitalization of Islam (Voll, 1983; 32). However, this term carries a sectarian baggage with it that requires attention. The *sunnī* tend to base this term on a Prophetic narration, [551] promising a call to renewal in every century and argue that Islam has veered off the correct path by various innovation *bid'a,* particularly by the *shī'ī* and *ṣūfī* practices and requires reviving (Dokhanchi, 2023; 10). Nevertheless, such a *ḥadīth* is not present in any *shī'a* sources; it is claimed that reference to *tajdīd* in Islam is either a general call for a return to the essential tenets of Islam, which is an absolute requirement on all Muslims at all time. Alternatively, *tajdīd* is a particular call as a requirement for the ultimate return of Imām al-Mahdī, who would restore and rejuvenate Islam, when subjected to distortion and innovation (Mutahhari, 1987; 137). What is particularly reiterated is that the pursuit of reform is not a modern quest, as indicated in Chapter 2; the *sunnī* orthodoxy took shape during the formative period of Islam, and the *shī'ī* and *ṣūfī* movements have taken to reform this version of Islam (Rahman, 1970; 632). Thus, the struggle of the *shī'ī* faithful has long been observed to be centred upon the need to protest, revive and reform the distorted version of Islam presented, particularly by the Caliph, 'Umar, and the Ȗmayyad dynasty.

As mentioned in chapter 5, Iran had to contend throughout its recent history with the persistent meddling of foreign powers in its affairs. However, Iran's most dramatic move toward modern nationhood referred to as the Iranian awakening (Browne, 1910; 31) has been the Constitutional revolution of 1906-1911. [552] Predictably, the coining of the term *rushanfikr* (enlightened thinkers) is regarded to be linked to this event but used distinctly to mark the struggle between secular and religious forces in Iran (Abrahamian, 1982; 61). There is no doubt that there were many *ʿulamā* in support of the constitutional revolution, [553] but it is difficult to include them as enlightened, because 'their traditional role limited their freedom to act on their own', and in that sense 'what was expected of them as social leaders was very different from the non-clerical intellectuals' (Farzaneh, 2015; 51). Subsequently, the term *rushanfikr* carries certain unwanted baggage with itself, it has come to reflect the intelligentsia of the period, educated and intrigued by the European model and in particular the French Enlightenment. Such advocates sought to break three chains of 'royal despotism, clerical dogmatism, and foreign imperialism', proposing 'constitutionalism, secularism, and nationalism' for a modern, strong and developed Iran (Abrahamian, 1982; 62). Some have

[551] 'Verily, Allāh will raise up in this nation at the beginning of every century someone who will renew their religion' is narrated in book 37 of Sunan abī Dāwūd.
[552] Marking a reform that was 'initiated under the direct influence of reforms in Russia and especially the Ottoman Empire, but even compared to the latter they were far less successful' (Sohrabi, 1995; 1393).
[553] This includes even the liberal clergy such as Shaykh Hādī Najmābādī (d. 1903) who made 'efforts to efface superstitions from religion and call people unto fairness and intellection' (Radawi; 2012; 233).

regarded ‘the most controversial of all modern Iranian intellectuals’ to be Aḥmad Ḥokmābādī Tabrīzī known as Kasravī (d. 1946), who questioned the basis of faith and the context of the clerical authority (Martin, 2000; 104). While others have pointed out that many of the later intellectuals involved in the later Islamic revolution of 1979 were influenced by his stance against irrationality (Ridgeon, 2006; 3).

Nevertheless, the special position of Iran being the bastion of the *shīʿa* School of thought, alongside the continued presence of the clergy during the Constitutional revolution had provided them with an incredible scale of influence and power within the country. This allowed the *shīʿī ʿulamā* to not only have influence over religious matters but also the affairs of the State. In reality, they had acquired power and authority in religious, political, and social matters surpassing their counterparts, the *ʿulamā* within *sunnī* countries (Irfani, 1983; 3). However, the rise of the Pahlavi dynasty meant those who pursued modernization had become champions of secularization and Westernization and were propelled into a very political arena. [554] Crucially, they considered attention to Iran-Islamic social and political ideas as harmful to the ‘relevant ideas of the modern world’ (Boroujerdi, 1996; 99). Thus, Reza Shah (d. 1944) labelled the clergy as ‘fossilised and backward’ (Falsafi, 2003; 136) and the privileges granted to the clergy during the Constitutional Revolution of Iran were soon taken away. His son Mohammad Reza Shah (d. 1980) also labelled the clergy the ‘black reaction’ (Ansari, 2001; 8), contrasting it with his policies branded as the white revolution. However, both failed in their separate attempts to eliminate the clergy’s capacity as a political as well as social, educational, and cultural force in Iran. [555] Having said that the revolution that occurred in 1979 was not entirely the clergy’s either, but included support from various groups including the intellectuals, religious modernists and revivalists, as well as those impacted by Marxism social and political thought (Fadaee, 2022; 106). The most prominent of such pre-revolutionary intellectuals were Jalāl al-i Aḥmad (d. 1970), and ʿAlī Sharīʿatī, although it was Dr Sharīʿatī that noted the term *rushanfikr* refers to the enlightened and not the intellectual, which he points out ‘had incorrectly been translated into Persian’. A person who does mental work may not be enlightened, while a manual worker based in the factory may have an enlightened soul (Byrd and Miri, 2017; 46). He further argued that people could not fight imperialism unless they first regained their cultural identity, which is interwoven with popular religious traditions (Abrahamian, 1982; 464).

[554] Āyatullāh Khomeinī in his opposition to the Westernization sought by the Pahlavi’s has refuted the criticisms raised by Kasravī’s Asrār-i Hazārsaleh in his book Kashf-i al-Asrār.
[555] For a detailed account of the religious establishment’s response at the time of crises, refer to Mesbahi (2022).

The evolvement of religious intellectuals, 'consisting of a diverse array of scholars, activists, and thinkers' proclaiming certain allegiance to *shī'a* School but seeking reform dates back to such pre-revolutionary era (Boroujerdi, 1996; 99). However, what has evolved following the revolution has been a spectrum of thought by those who do not necessarily think the same but their characteristics fall within the same wavelength. Nonetheless, the topic of new thinking in post-revolutionary Iran is undoubtedly a research in itself and beyond the scope of this research. Thus, this appendix is not intended to be an assessment or review of the individual work of the religious intellectuals, their writings, theories and ideas. Our aim is to reflect on the positions of both religious intellectuals and seminarians, in order to accommodate a better understanding of the possibilities and challenges of reform from within *shī'i* jurisprudence. This underpins this research's quest to assess the diplomatic compatibility of Islamic international law to that of modern International law while highlighting a reconciliatory notation focused on the changing needs of contemporary times. The term *rushanfikrān-i dīnī* (religiously enlightened thinkers) was used in the early 1990s by 'Abdul Karīm Sorūsh, [556] although the term had been used prior to the revolution in reference to the Islamic modernist. [557] The term distinguishes the religious intellectuals from the secular, those attempting to theoretically 'produce constructive dialogue and balance, between pre-modern religious ideas and modern social sciences and humanities' (Badamchi, 2017; 79). It offered a dialogue between religious and non-religious forms of knowledge, concluding that since the knowledge of the material is changing, so must the knowledge of religion (Dabashi, 2004; 101). [558] It has been argued that this post-revolutionary stance by the reformist should be regarded in essence as *tajdīd-i naẓar ṭalab* (revisionalist). This is because they are seeking to identify new horizons in the realm of *fahm-i dīnī* (comprehension of religion), rather than relying on religious knowledge in abstraction (Boroujerdi, 1996; 172). Instead of making the 'society based on religion', they are now seeking to 'reconstruct religion' based on new challenges within society (Matsunaga, 2013; 61). Nevertheless, the terminology has not been acceptable by all within the spectrum of post-revolutionary religious intellectuals. Interestingly those who have studied within the *ḥawza ʿilmīyya* (the *shī'ī* clerical establishment) in some form or other have refused to be named as *rushanfikr-i*

[556] He is a western educated academic without out a background in the clerical establishment, the term appeared in a newspaper article in 1988 and published later as part of a book. The term is used to demark a distinction from the traditional (Sorush, 1995; 192).
[557] The Iranian historian Fraiydūn Ādamīyat (d. 2008) had used the term to refer to Islamic modernists such Jamāl al-Dīn Asadābādī (Adamiyat, 1970; 152).
[558] The argumentation revolves around religious knowledge being conditioned and interconnected with other bodies of knowledge (Sorush, 1995; 167).

dīnī. Mustafā Malekīān highlights that the term is paradoxical because enlightenment has viewed religion as little more than superstition aiming to free from religion's grip and rely on reason. [559] Religious intellectuals are thus at crossroads, if they claim to have *dard-i dīn* (religious anguish) and assert their adherence to religion while separating themselves from the traditional, then they cannot be enlightened thinkers. [560] Historically enlightenment thinkers 'had no explicit allegiance to religion and no concern of God's approval, no feeling for religion as a source of discovery or justification (Sadri, 2000; 129). [561] Moḥsen Kadīvar using the same argument has claimed that *rushanfikrān-i dīnī* are religiously enlightened thinkers because in effect they are aiming to revise the central sources Qur'ān and the *sunnah*. [562] This has created a bitter debate that such an accusation is in effect labelling them of apostasy and heresy (Kadivar, 2023; 1). Muḥammad Mujtahed Shabestarī regards the term as ambiguous as it does not distinguish between different viewpoints of the religious intellectuals, each of whom have distinct research agendas (Badamchi, 2017; 79). Moreover, he is concerned by the political connotations of the term, and that ideology should expand beyond politics. [563] This is because the failure of a political movement will automatically be considered as the failure of their theological and philosophical projects (Badamchi, 2017; 79). For others the personification of the term by Sorūsh is baffling because he had a pivotal role in the Cultural revolution in Iran, and was involved with the complete restructuring of all the university syllabi, to ensure 'all knowledge is Islamicised'. Sadly, this resulted in the expulsion, arrest, and imprisonment of 'a number of academics and students who did not fit with the new ideology', or were deemed to have unethical, or sacrilegious knowledge (Jackson, 2014; 72). Although the facts are undeniable, some have countered that this is true of all intellectuals of the post-revolutionary period, [564] as they have arguably 'emerged out of a distinct epistemic community and ethos in the intellectual and political milieu of post-revolutionary Iran' (Sadeghi-Boroujerdi, 2019; 35).

Based on discussions made within this study, the emphasis is clearly placed on what mechanisms exist in *shī'a* Islamic law to reconcile with International law, if there is a clear

[559] He views the distinct characteristic of the two terms as contradictory, religious intellectualists are defending the basic tenets of Islam but also attempt to think them anew (Malekian, 2006; 113).
[560] This is based on the assumption that religious intellectuals are worried and anxious over the fate of religion in the contemporary world, seeking reform because from their sociological perspective 'there is no distinction between citizen's rights based on their belief or lack of belief' (Mirsepassi, 2011, 87).
[561] He asserts that Human rights in their modern guise is the product of such enlightenment thought.
[562] This comment relates directly to Sorūsh's controversial comments on revelation, Qur'ān being both the word of Allāh and Prophet Muḥammad while Qur'ān ascerts in many places that its entirely the word of Allāh (Moussa, 2017; 1).
[563] He identifies the term as used by the strategist of a particular movement (Mujtahid-Shabestari, 2012; 1).
[564] They have a shared background and experience of working for State or neo-Statal institutions.

difference. Thereby, the focus is placed on the positioning of *shīʻī* clergy in order to grasp their assessment of the reform involved, irrespective of them wearing the usual *ʿulamā* attire. [565] In the identification of the innovative approach of the clergy in seeking further interpretation of *sharīʻa,* the term often used is *nu-andīshī-yi dīnī* (new religious thinking) which is linked to Moḥsen Kadīvar. He uses the term alongside his proposal to find ways to remove the conflict between religious precepts and International norms (Matsunaga, 2011; 358). [566] Although the use of the term can also be regarded as a way of distinguishing Kadīvar and likeminded *shīʻī* clergy advocating new thinking while preserving Islam's spiritual precepts, from the other religious intellectuals also promoting reform of the religious knowledge. However, the introduction to the use of this term dates back to prior to the presidency of the well-known cleric Muḥammad Khātamī, [567] when he used the term in arguing for a new form of intellectualism to appreciate religion and human rights (Rostami-Povey, 2013; 81). [568] It was to such reference that Āyatullāh Khazʻalī noted, 'nothing is dirtier than a pluralist reading of religion' (Arjomand, 2009; 83). Although Muḥammad Khātamī attempted to present an Islamic government with moderate characteristics and an 'extremely open minded and tolerant position on sociocultural issues (Moslem, 2002; 122). Nevertheless, his reformist government (1997-2005) included key strategists of the left such as Muḥammad Mūsavī-Kho'einīhā (Buchta, 2000; 42) and Saʿid Ḥajjāriyān, recognised figures who were instrumental in the U.S. embassy hostage crisis of 1979.

Irrespective of the historical development of the terms within the discussion on *sharīʻa* and the ideology of reform, the development and use of the term within the spectrum of thought present in Iran is crucial to our debate. This is because terms are often used interchangeably within the literature on religious reformation or given a blanket coverage. However, a distinction could be made that *rushanfikrān-i dīnī* represents 'the dialogue of Iranian-Islamic thought with Western social and political philosophy and theology'. While those identified by *nu-andīshān-i dīnī* represent 'the indigenous Islamic and *shīʻī* political theology that is reclaiming and reinterpreting its pluralistic and democratic elements' (Sadri, 2002; 269). As claimed by Saʿid Ḥajjāriyān, the deconstruction of tradition is the first step before its reconstruction (Arjomand, 2009; 85).

[565] Some choosing not to wear and some being forced out of wearing the attire.
[566] Moḥsen Kadīvar specifies the term around the concept of *Islām-i nu-andīsh* (new thinker's Islam) in his book on human rights (Kadivar, 2008, 85)
[567] During the 1980's and 1990's the followers of Imām's path who had instigated the hostage crises became the ultimate source for guidance in the ideology of purity and modernisation(Baqi, 2004; 58).
[568] For details of the history behind the process of reform and the approach taken by Khātamī refer to Ansari (2019).

Ap1.3 Reform and the Mechanism of shī'ī Legal Studies

It is important to note that our discussion is built upon earlier assessment of Islamic law covered in Chapters 3 and 4, thus the debate around *ijtihād* is central to getting the freedom of judgement required for crucial decisions (Amin, 1999, 1). The terms derivation stems from the Qur'anic chapter of *al-tawbah* (9:79) [569] with respect to power and strength, therefore it can be argued that the term implies the executer having the power and strength to find solutions. According to Āyatullāh Muḥammad Ibrāhīm Jannātī, *ijtihād* 'plays the role of an evolutionary and dynamic force in legal studies which provides solutions to contingent issues of life and fulfils the needs of changing times and the requirements of new phenomena of human civilization' (Jannati, 2012; 4). It can thus be reasoned that *ijtihād* by its nature is aimed at providing a platform for novel thinking, offering the *shī'ī* theologians a vehicle for the grounding, extending, and reconstructing of Islamic thought. Āyatullāh al-Ṣadr regards the derivation of rulings from *sharī'a'* must take into consideration new realities, 'horizontally move forward to meet needs of their era and vertically penetrate into jurisprudence and look into basic theories' (Al-Sadr, 1980; 25). Nevertheless, despite talk of the diversity of opinion of *shī'ī* jurists in the contemporary age within literature, it can be argued such diversity is 'as old as *shī'ī* jurisprudence' itself (Takim, 2021_a; 58). However, the scope of *ijtihād* has become an issue of concern, with claims that 'jurists deliberated primarily on cases involving the individual rather than society' (Mavani, 2013; 151). In effect opting to temporarily find solutions to issues concern, but avoid delving into the source of the problem in order to find a permanent solution. Following the 1979 revolution and its new constitution, there was an anticipation of a change in parameters based on its goals of 'freedom, rule of law and Islamic Government' (Rezaei, 2002; 57). With the formation of the Islamic government and the adaption of the doctrine of *vilayat-i faqīh* as identified within its constitution as covered in chapter 5, propelled the clergy into governance. As such, this required a detailed plan that addressed the needs of the society, and a complete scheme for the establishment and function of an Islamic State (Khomeini, 2008; 25). [570] This is the reasoning behind Āyatullāh Khomeinī's positioning that the conventional *ijtihād* is not sufficient, there needs to be further understanding of the welfare of the society, rather than having superior knowledge in the standard *fiqh* sciences (Akhlaq, 2023; 109). Although it can be claimed that the approach of senior jurists concerning *ijtihād* has always been in the

[569] It is they who criticise the believers who give freely and those who can only give a little with great effort: they scoff at such people, but it is God who scoffs at them, a painful punishment awaits them.
[570] It has been argued that contemporary challenges of internationally accepted norms with its moral and ethical requirements have 'forced the shī'ī jurists to shift their focus to the society' (Mavani, 2013; 151).

context of its dynamism, the quality of being characterised by independent reasoning. A *shīʿa* jurist is not trained to become an educated scholar, to know and repeat what others have said, rather he is trained to use *ijtihād* to deduce and evaluate from sources in light of new circumstances (Mutahhari, 1988; 20). [571] Consequently, the range of thought within the clerical establishment leads to the discourse that the mere separation of the religious intellectual from the traditional in the domain of religious learning is too simplistic in its outlook, [572] the evolution of which emphasises the diversity involved. [573] Subsequently the term *sunnatī* (traditional) is used in contrast to *nu-andīsh* (new thinking), but this is not sufficiently accurate either because there is great diversity in the traditional approach as well. [574]

Ap1.4 The Evolution of a Reformist Trajectory within *ḥawza ʿilmīya*

It is worth noting that there is a spectrum of thought by the *shīʿī* jurists around the scope of *ijtihād,* which in turn explains the trend in the flourishment of reformist ideas particularly those related to International law. Historically the *ʿulamā,* have regarded the jurisprudential rulings as not significantly changing over time, since the *shīʿī* understanding is essentially structured on 'what is permissible remains permissible forever and what is forbidden is forbidden forever' (Al-Kulaini, 1990_a, 58). [575] However, this approach has been opposed by some outside the religious establishment, accusing the *ʿulamā* of being oblivious to 'some of the most pressing moral and ethical issues that have arisen as a consequence of changes in times and circumstances' (Takim, 2021_a; 3). For the religious intelligentsia, *shīʿa* ideology has little to do with '*ḥadīth* interpretations, ecclesiastical jurisprudence, scholastic education, religious nostrums, and pious spirituality' (Abrahamian, 1982; 473). By the late seventies, they sought reform, demanding the clergy to speak with 'the language of the masses and inspire them to revolt against the shah', and be able to 'modernise itself without becoming Westernised' (Abrahamian, 1982; 473). [576] This eventually led to the 1979 Islamic revolution of Iran and the establishment of the Islamic government by Āyatullāh Khomeinī

[571] Āyatullāh Muṭahharī quotes this point from his teacher Āyatullāh Ḥujjat Kūh Kamarī.
[572] As argued by Moḥsen Kadīvar in his model of five distinct collectives around traditional and new thinking (Kadivar, 2022_a, 1).
[573] Often differentiated into quietism, Islamism, semi-quietism classifications alongside the ambiguous liberalism (Hamoudi, 2009; 111), which are 'all very confusing' (Kalantari, 2012; 246).
[574] However, there is no intention intended for this research to be involved in identification of all possible ways of framing post-revolutionary religious intellectuals in Iran.
[575] This traditional trend has not ceased and continuous in recent times within the religious establishment, examples include Āyatullāh Abul-Qāsim Khoʾeī (d. 1992) and Āyatullāh Ṣādiq Shīrāzī.
[576] For details of the radical political ideology of religious intellectuals such as ʿAlī Sharīʿatī refer to Rahnema (2000).

formulating the influential doctrine of *vilayat-i faqīh*, 'the jurist's authority gaining an activist political meaning' (Van den Bos, 2021; 46). [577] This crucial step led to a new approach being introduced by Āyatullāh Khomeinī around the concept of *ijtihād,* emphasizing its dynamism, *fiqh-i pūyā* (dynamic jurisprudence). This notation revolved around the presumption that 'the ruling on a case may change as a result of new political, social and economic situations' and 'factors of *zamān va makān* that influence *ijtihād*' as covered in chapter 3. Nevertheless, while defending his ideas, Āyatullāh Khomeinī continued to insist on their adherence to the traditional *fiqh* and 'the methods of *ijtihād* as adopted by Javāhir' (Khomeini, 1989_f; 290). However, within this approach, the debate changed to the variability of Islamic law particularly those regulating the relationship of humans with one another. [578] He suggested that the jurist could 'either revise earlier rulings or infer new laws', and 'legislate on matters that have not been explicitly prohibited or mentioned in the textual sources' (Takim, 2018; 489). [579] This dynamic understanding of the mechanism of *ijtihād* owes a great deal to the pre-revolutionary writings of Āyatullāh Muṭahharī' alongside the post-revolutionary statements of Āyatullāh Khomeinī, supporting 'ideas well beyond forms of literalism in following sacred text' (Ridgeon, 2023; 46). Nevertheless, the move away from 'an individual-oriented and narrow approach' of the jurists which had 'limited the scope of scholarly reflection' (Mavani, 2010; 44) gathered pace following the revolution. This resulted in a variety of new rulings being presented by a new generation of jurists, [580] whereby despite their innovative ideas still represented the traditional bastion. [581] Āyatullāh Sāne'i insists that their approach is a recognition of the dynamism of *ijtihād* [582] as the key for allowing new thinking on social issues to be made in line with the laws of its time (Sanei, 2009; 1). He argues that adherence to such dynamism does not mean a complete abandonment of the traditional approach, because certain cases rulings are based entirely on their correctness (Mir-Hosseini, 1999; 19). As such, many of his new religious rulings despite being 'compatible with the contemporary universal human rights discourse', does not modify the pre-set assumptions and theoretical framework of

[577] This position allocated to leader of the revolution has continued by the supreme leader Āyatullāh ʿAlī Khāmeneʾī. Iran's supreme power structure is in effect a legacy of hierarchal system envisaged by the politicised *shī'ī* clergy (Buchta, 2000; 6).
[578] There are two types of laws in *sharī'a* 'laws that regulate the relationship between God and humans', and 'laws that regulate the relationship of humans with one another' (El-Fadl, 2013; 16). These are referred to as *'ibādāt* (Islamic devotions) and *muʿāmilāt* (social relations).
[579] The introduction of judicial techniques normally used by the *sunnī* Schools particularly under the scope of *maṣlaḥah* was relied upon *ijtihād* by Āyatullāh Khomeinī (Mavani, 2013; 222).
[580] Personalities such as Āyatullāh Muntaẓirī and Ayatolllah Yūsef Sāne'i (d.2020).
[581] For example, some very unique religious rulings have been made by Āyatullāh Jannātī who regards most rulings to be in need of a review, from the banking system to birth control (Ridgeon, 2023; 44).
[582] Termed *ijtihād pūyā.*

traditional *ijtihād*' (Mavani, 2020; 63). The clergy were seeking to circumvent the challenges of modernity while remaining true to the established stance, but crucially their version of traditionalism was influenced by their interest in political Islam. This centred on the stance advocated by Āyatullāh Khomeinī, and his set parameter that involved the people, 'the people's guidance is as efficient as their active participation in process of decision-making' (Abdi and Khalili, 2002; 54). [583] The religious establishment's change included the debating of democracy and human rights yet did not embrace modernity and social sciences, possibly because of its perceived consequences. Nonetheless, in this new approach of recognizing the need for reform in *ijtihād*, there had been a visible shift towards 'reorienting the normative principles of religion in the direction of liberal democracy' (Hashemi, 2009; 100). [584]

However, the essential argument against such a reformist trajectory is that despite the commendable ideas, 'their methodology, mode of discourse, and argumentation strictly follow the traditional lines' (Takim, 2021_a; 34). [585] Some have argued that their approach is founded in a 'theology of selectivity' allowing the jurist to reread or reformulate some of *sharī'a's* core tenets within their post-revolutionary modern theology (Madaninejad, 2011, 140). [586] Nevertheless, Āyatullāh Muḥaqiq Dāmād reaffirms the point that modification of religious rulings is based on Islamic law having two components *'ibādāt* and *mu'āmilāt*, matters of worship are fixed while social relations would be variable (Muhaqiq-Damad, 2001; 214). [587] Moreover, he recognises that following the revolution there have been two elements to *ijtihād,* that of dynamism and Statism, [588] as such 'the dynamism tool is at the service of the State' (Muhaqiq-Damad, 2001; 203). Nonetheless, Āyatullāh Muntaẓirī views the challenges faced by the clergy following the revolution as being due to Islamic jurisprudence not having developed enough due to its traditionalism, and its focus and attention being essentially on spiritual issues, 'the jurists were thus unprepared in the spheres

[583] It is important to note that each faction of the political clerical system in Iran claims its own interpretation of a religiously sanctioned Islamic state as 'an authentic and genuine model', this allows one to distinguish one faction from the other (Moslem, 2002; 3).
[584] As such, we see them quite conservative on some issues but liberal on others, for example Āyatullāh Muntaẓirī who is quite 'conservative on gender and social issues', 'opposes the death penalty on apostasy' (Takim, 2021_a; 17).
[585] Āyatullāh Kamāl al-Ḥaydarī criticises the approach by pointing out that precedents are based on the agreements of previous jurists, 'these are neither sacred not immutable', as such any particular ruling should not prevent other jurist from challenging or revising it (Takim, 2021_a; 208).
[586] This view is based on the presumption that although Qur'ān contains determinate and stable messages that are inviolable and timeless, but this does not mean the whole Qur'ān is stable and determinate. Ignoring text that no longer represent the sensitivities of contemporary time does not corrupt the main divine message and falls within the context of Islam being a practical religion.
[587] Jurists are not permitted to use intellectual reasoning in acts of devotion, for example by questioning the number of cycles for prayers being different. However, they can use intellectual reasoning in matters that effects the relationship of humans such as banking criterial.
[588] A political system in which the State has substantial centralised control over social and economic affairs.

of modern economy, politics, and sociology' (Moslem, 2002; 72). Crucially he also warns against the implications of theocracy as a direct consequence of the link between the dynamism of *ijtihād* and Statism, questioning his previous position on the formation of the Islamic State and the guardianship of the jurist. [589]

Ap1.5 The Evolvement of *nu-andīshī-yi dīnī* within *ḥawza ʿilmīya*

Some religious intellectuals from within the religious establishment sought to initiate 'a radical paradigm shift away from traditional ijtihād (Kadivar, 2013; 213), in a framework that gives intellect, ethics, and modern sciences and a larger role in the decision making rubric of justice (Mavani, 2020; 71). They sought to expand the scope of *'aql* within the existing *ijtihād*, [590] while emphasising the role of ethics in legal deliberations, [591] and advocate a 'spiritual and goal ordinated Islam' (Matsunaga, 2013; 68). [592] For them the process of understanding during the time of the Imām or his occultation is interwoven with human reasoning within the blurred line between *fiqh* and *sharī'a,* and possibly the key that 'links the sacred to the secular Islam' (Akhlaq, 2023; 189). This evolvement of *nu-andīshī-yi dīnī* is grounded within the stance of the rational epistemologists and those taking jurisprudence into the realm of contemporary philosophy. They are influenced by the likes of Āyatullāh Mahmūd Tāleqānī (d. 1979) who had stressed that 'man's reason directs his other faculties' (Ridgeon, 2023; 204), and Āyatullāh Muntaẓirī who had identified a distinction between the modern reason from the classical 'realised by means of discussion and dialogue' (Ridgeon, 2023; 64). Similarly, prompted by issues related to the fundamental rights of the people as discussed by Āyatullāh Mehdī Ḥa'erī Yazdī (d. 1999). He argued that the formation of a government leading a State is 'part of wisdom and practical reasoning' rather than the approach of *velāyat* (guardianship) (Akhlaq, 2023; 235). [593] According to Mujtahed Shabestarī there was a failure in grasping the humanist angle involved by the clergy and a change in approach is required revolving around rationalisation (Mujtahid-Shabestari, 2002; 13). [594] Although they represent a spectrum of differing opinions and specialisations, the new thinkers in the religious establishment broadly agree on the principle

[589] He had viewed 'the formation of the Islamic State and its government is grounded by divine order and revelation' (Muntaziri, 1988, 86).
[590] It is argued that justice, ethics, reasonability and functionality in comparison with alternative solutions are the accepted basis of *sharī'a '*laws (Kadivar, 2022_b; 215).
[591] Even though Qur'ān talks more about ethics than law, the ethical principles are barely analysed within the traditional *ijtihād* (Takim, 2021_a; 162).
[592] They also campaign for the separation of the institution of religion from the State.
[593] His ideas on *ḥekmat va ḥukūmat* (wisdom and governance) challenges the jurists position being compared to that of the Prophet or the Imām (Mavani, 2013; 171).
[594] The new thinking clerics identified by the likes of Aḥmad Qābil (d. 2012) and Moḥsen Kadīvar.

of challenging the methodology and the perspective used within *shī'a* jurisprudence. They have arguably taken some of the most daring steps of their generation (Ridgeon, 2023; iv), and as such gradually pushed outside the religious establishment. [595]

Their position is argued against by the stance of senior jurists such as Āyatullāh al-Ṣadr who had declared '*'aql* is putative rather than an actual source of law' (Al-Sadr, 2003b; 203), thereby most legal sources are obtained primarily from revealed sources even if they could be discovered by reason (Takim, 2021_a; 161). Āyatullāh Muntaẓirī clarifies the point, 'the base of religious rulings is not only reason but rather the texts and tradition although their proof is obtained through reason' (Muntaziri, 2003; 44). However, Moḥsen Kadīvar bases his stance on the need to 'ascertain what subjects and issues belong exclusively to divine knowledge to be based on revelation, scripture and tradition of the Prophet, subjects 'exclusively in the realm of human reasoning' (Kadivar, 2022_b; 220). Controversially he views judgments based on reason to also 'reflect the will of the divine', and subsequently 'override apparent proofs derived from *ḥadīth'* (Takim, 2021_a; 159). [596] It is argued that essentially the whole discussion around reason is centred on Qur'ān which 'explicitly stipulates the use of reason in the interpretation of the law' (Litvak, 2021; 162). As Āyatullāh Muṭahharī has stressed, the Qur'ān confirms the authority of reason in various ways within 'sixty to seventy verses indicate that such and such has been mentioned for reason to reflect on' (Mutahhari, 2014; 25). Thereby, the exercise of reason would itself act as an analytical tool for identifying 'inherent tension or compatibility between rationality and revelation' (Ridgeon, 2022; 3). Nevertheless, it needs to be pointed out that within the validity of intellectual reasoning, the deducing of Islamic Law from its sources, there appears to exist a confusion of terms between *'aql* and *banā' 'uqalā'* or *sīra 'uqalā'* (conduct of the rational). [597] On this basis Aḥmad Qābil (d. 2012) discusses the importance of collective human reasoning to an extent that at times it could 'contradict the literal and traditional ways of interpreting' the text of primary sources (Ridgeon, 2022; 5). [598] The additional point also argued is that contemporary interpretations of Qur'ān and the *sunnah* in religious rulings

[595] Possibly due to their difference in stance on issues related to contemporary Iranian politics such as *ḥijāb* and *vilāyat-i faqīh* (Ridgeon, 2023; 131).
[596] Moḥsen Kadīvar fargues that judgments based on the '*sīrah-yi ʿuqalāʾ* (manner of the reasonable) allows compatibility between Islam and modern human rights norms (Matsunaga, 2011; 364).
[597] As discussed the use *'aql* on its own is a matter of dispute and debate around the criterion of how the intellect functions and comprehends the higher objectives of divine legislation. However, the common practice in acceptance of rationality in *ijtihād* focuses on the agreed opinions of people of sound mind, or rational norms.
[598] Aḥmad Qābil point out that only *sharī'at- e 'qlānī* (rational *sharī'a*) offers what would be more conductive to individual freedom norms (Ridgeon, 2022; 12).

must withstand the ethical and rational tests of our time, just as the 'content of revelation and early legislation was harmonious with the collectively accepted rational norms of its time' (Jahanbakhsh, 2020; 669). Thus, by examining circumstances surrounding the issuance of a ruling, human reasoning can discover the rationale behind a particular law and subsequently modify it to provide compatibility to the modern age that includes International law. [599]

What separates out the ideas of those recognised by *nu-andīshī-yi dīnī* is that they are unlike the other clergy who continue to represent the traditional approach of promoting the principles of Islamic jurisprudence structured by Shaykh al-Anṣārī for the interpretation of the revelation. The new religious thinkers are no longer debating the reapplication or even the reinterpretation of *sharī'a'* but a revision of the legal theory, *uṣūl al-fiqh* itself. It is worth noting that this is starkly different to other traditional approaches of the *shī'ī* clergy who despite their various differences within the spectrum of thinking, have a unifying common factor. They all subscribe to the notation that the commandments of Allāh do not age and it is not time specific, Qur'ān and the *sunnah* transcends any particular people, place, or period (Lotfi, 1999; 150). Thus, the influential *shī'ī* scholar Āyatullāh Muḥammad Riḍā al-Muẓaffar (d. 1964) elaborates that the divine is not accessible by reason and without the aid of revelation; reason would not be able to decipher a ruling as it would make the need for Prophets futile or could even make belief in Lawgiver pointless (Al-Muzaffar, 1970; 106). Āyatullāh al-Ṣadr expands on this point that the use of reason in religious rulings as the independent source is problematic because the Lord has made a ruling according to His plan and His wisdom. [600] 'It is difficult to verify them by assumptions because of the narrow circle of our reasoning, human beings have limited knowledge and our fallibility in comprehension is a major issue', subsequently the tendency to make mistakes or be wrong (Al-Sadr, 2003b; 255). [601] Subsequently, the structure embedded within the discipline of *uṣūl al-fiqh* by senior *shī'ī* jurists for the application of 'knowledge regarding practical rules of the *sharī'a* acquired from sources' is deemed essential, because it sets out clear guiding principles for such applications (Mutahhari, 1993; 69). However, within the proposal

[599] The new modifications include having a minimalist rather than maximalist expectation of religion as the source of norms and law, considering human rationality to be a source of ethics; and classifying rulings as either timeless or time-bound (Kadivar, 2022_b; 210).
[600] New religious thinkers such as Qābil admit that 'often reason cannot fathom the wisdom behind acts of devotion' (Ridgeon, 2020; 23).
[601] Āyatullāh al-Ṣadr concedes that 'if there is social benefit in an act, God will surely reveal it through an injunction' and 'reason can perceive the utility of an act'. However, he points out that due to its fallibility and limitations reason 'may not be able to perceive all its benefits or the possible negative repercussions of an act', and the limits of benefits or harm would be misplaced by reasoning (Takim, 2021_a; 161)

advocated by the new religious thinking, *al-ʿaql* itself is elevated from being a method, or a device, or a source of analysis, or an indicator to a source of the *Sharʿa* precepts, to actually being the main source in the judicial decision-making process when applying rulings particularly when revelation is silent on a matter. However, the new religious thinkers argue that 'revelation is culturally specific and time bound', whereas 'reason is eternal and timeless', this being a defiant stance against all previous positions because the realm of reason becomes broader than that of revelation (Takim, 2021_a; 161). [602] With such an approach 'ethics and morality are derived through human reason, and not exclusively from revelation' (Kadivar, 2022_b; 212). As such, their new ideas counter the thinking of the traditional scholars, that the central sources of Islamic law are primarily Qur'ān and the *sunnah* of the Prophet and of the *ahl al-bayt*. Thus it is argued, that the red line in new thinking has shifted from the uniformly accepted stance of *shī'ī* jurists towards the very structure of *ijtihād* as embedded by Qur'ān and the *sunnah* (Sadiqnia, 2015; 1).

The new religious thinking has also moved from inside to outside the religious establishment, with groundbreaking theories by clerics touched by factors such as the impact of modernity on human sciences and human life. Dāwūd Fieraḥī (d. 2020) believes that *fiqh* has a larger capacity for flexibility than it is conventionally thought in grappling with the modern era (Taghavi, 2020; 1). Thus, the spectrum of thought around the new thinking revolves around the suggestion of reviewing the traditional methodology, epistemology, anthropology, and cosmology associated with *fiqh*. Mehdī 'Alīpour criticises the fact that the traditional methodology has remained broadly the same as has been defined in *shī'ī* jurisprudence by Shaykh al-Anṣārī (d. 1864) (Takim, 2021_a; 206). Ḥasan Yūsefī-Eshkevarī regards the proposed change as making possible 'the critique of tradition', alongside 'the critique of modernity and of the reformists', which would allow the actual delivery of an 'Islamic renaissance and the carrying forward of reforms' (Kurzman, 2004; 91). [603] Ṣeddīqeh Vasmaqī, regarded as a female theologian, regards the call for the change as essentially based on the need to disassociate legal commandments from the essence of Islam and re-interpret them in light of modernity as many of the judicial practices are linked to ossified traditions (Khosrokhavar and Mottaghi, 2020; 310). [604] Abul-Qāsim Fanā'eī highlights the irrationality

[602] This position differentiates reason-centred from the tradition-centred jurisprudence, it advocates the primacy of reason over text in case of conflict (Takim, 2021_a; 160).
[603] He points out that *ijtihād* makes possible the review of many laws such as 'the rights of retribution and the rights of women' (Kurzman, 2004; 91).
[604] She regards the failures of political reformist in Iran to be because they lacked 'serious and comprehensive platform for structural reform', lacking a 'scientific definition of the meaning of democratization' (Badamchi, 2017; 200).

of some of the religious rulings, which stems from being rooted in the epistemological problem by the *shīʻī* jurists. They rely on primary sources of Qur'ān and the *sunnah* rather than making moral rational judgements. He argues that had they not replaced ethics with *fiqh,* had they not ignored or invalidated the dictates of moral rationalism, they would surely have seen no jurisprudential proofs for issuing such irrational rulings (Takim, 2021_a; 228). Moḥsen Saīdzādeh believes this highlights the required distinction that needs to be made between religion that is divine and religiosity that is human (Hunter, 2009; 74). Muḥammad Taqī Fāḍil Meybudī suggests that in effect the very civil and criminal codes require reformation, alongside the principles of the traditional jurisprudence (Alikarami, 2019; 184). [605] Moḥsen Kadīvar suggests that the proposed changes should be welcomed because it is promoting the unrealised dream of social justice promised by Āyatullāh Khomeinī (Pak-Shiraz, 2013; 79). He argues that in our *shīʻī* approach, justice should take precedence over religion, justice must be the standard of religion, and not vice versa (Kadivar, 2012; 1). Thus, Aḥmad Qābil highlights that if religious rulings do not lead us to justice then 'we can question all and every religious injunction' (Bayat, 2007; 188). In the context of *kalām-i jadīd* (new Islamic theology), Mujtahed Shabestarī points out that such questioning is valid and justified because any interpretation of the religious text is subject to the interpreter's preferences, preconceptions and prejudgements. Moreover, the impact of such factors intensifies as the time elapsed between the production of the source and the interpretation lengthens (Hunter, 2009; 69).

Ap1.6 The Clerical Positioning towards Modern International law

The historical stance is taken and possibly the easiest to comprehend is that of the traditional *shīʻī* jurist who regard the management of an Islamic State as the responsibility of the divine legislator who is the infallible Imām (Arjomand, 1988; 194). [606] On this basis the *ʿulamā* are required to deal with secondary affairs and confined to *umūr ḥisbīyya* (matters of accountability). Āyatullāh 'Alī Sīstānī regards this to be authority over religious matters such as the propagation of religious law, collection of religious taxes, custody over orphans or a minor, and also the general affairs on which the Islamic social system depends (Visser, 2006; 14). Thus, Āyatullāh Khoʾeī did not require a *shīʻī* jurist to have political or economic knowledge, being proficient in Arabic, principles of jurisprudence and biographical sciences would be sufficient (Takim, 2021_a; 207). Based on this stance, they would not be looking

[605] Imādudīn Bāqī has accordingly challenged the scriptural basis of capital punishment for apostasy and adultery (Arjomand, 2009; 83).
[606] For details of the history behind deputy arrangement of Imām al-Mahdī refer to Sachedina (1981).

to enforce Islamic diplomatic law and the question of compatibility or incommensurability with International law does not arise. Their approach can be regarded as the accommodation of modern International law, this acceptance of International norms is conditional on not overtly opposing the *sharī'a* settings for which they have a responsibility. [607] For example Āyatullāh Sīstānī as the general representative of Imām al-Mahdī, neither demands to participate in government nor presume to exercise control over the State affairs (Rahimi, 2007; 9). Even those contemplating participation such as Āyatullāh Shīrāzī, propose the formation of *shurāy-i fuqahā* (council of jurists) to deal with public affairs, such as war, peace and International treaties (Shirazi, 2013; 17). It is on this basis that prior to the revolution, Āyatullāh Kāẓim Sharīʿatmadārī (d. 1986) did not object or demand for a reservation, at the time of Iran's acceptance of the Vienna Conventions. [608] However, was very quick in publicly condemning the hostage taking in the wake of the American embassy takeover in the wake of the Islamic revolution (Bowden, 2007; 251), considering the impact on matters of accountability. Moreover, on such basis, Āyatullāh Luṭfullāh Ṣāfī Gulpāyegānī (d. 2022) stresses the need for foreign relations with all the countries of the world, 'being angry or upset with many countries is not beneficial, and is harmful to our people'. There is a need to 'communicate the rights of the nation through rationality and constructive interaction' through diplomatic ties with the world (Safi, 2021; 1). [609]

Following the 1979 revolution, the *shī'ī* jurists in Iran claimed to be mandated on behalf of Imām al-Mahdī to take over his responsibilities during his absence. The motive force behind the revolution was regarded to be the yearning for Islamic political ideology rather than a desire for the democratic establishment of the political system, thus a blurring of the distinctions between contrasting principles had occurred (Mujtahid-Shabestari, 2002; 33). In fact, Āyatullāh Khomeinī in many of his speeches envisaged the protection of the Islamic State to be incumbent on everyone (Khomeini, 1989_c; 15), and in one instance mentions the protection of the Islamic State [610] to be more important than anything or anyone even if he is the Imām of our time (Khomeini, 1989_d; 221). [611] Thereby the doctrine of *vilayat-i faqīh* regards the holder of the position as *valī-yi amr* (one who holds authority) in reference

[607] Āyatullāh Sīstānī's can be seen in Iraq in accommodating International law, Islamic law existing along with other legal norms of various social and political significances in daily life (Rahimi, 2007; 11)
[608] The 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations, or 1969 Vienna Convention on the Law of Treaties.
[609] The comments enraged the Islamic government in Iran as it implied direct relations with the United States.
[610] He mentions Islamic Republic.
[611] In essence the Prophet and of the *ahl al-bayt's* activities are all based on the protection for Islam.

to the Qur'anic chapter of *al-nisā* (4:59) [612] instructing obedience to Allāh, his Apostle and those invested with command. [613] Āyatullāh Khomeinī's stance that 'government is a branch of the Prophet's absolute authority' and has 'priority over all ordinances of the law' (Khomeini, 1989_e; 170) elevates the *shī'ī* jurist's position as the person in charge. He could therefore be able in 'redefining the traditional *shī'ī* legal system' within the right of the government to respond to the challenges that come with running a modern State. This would allow the issuing of rulings as 'binding norms, unilaterally, even if they were contrary to revelatory sources' (Takim, 2018; 119). Based on this stance, although they would be looking to enforce Islamic diplomatic law but aimed at compatibility with modern International law. Thereby as covered in chapter 5, Iran has a religious legal system that is comprised of secular and Islamic law in line with its constitutional criteria for the compatibility of laws (Ghorbannia, 2015; 211). Although the Islamic State identifies the constitution to be higher in ranking than International treaties, an acceptance of International law must meet the requirements of the constitution, which in turn demands all laws to be based on an Islamic criterion (Ziyaei Bigdeli, 2007; 90). Having said that, despite possible conflict, and tension between Islamic and International laws, [614] Āyatullāh Khomeinī's incorporates the dynamism of *ijtihād* linked to Statism, [615] to enforce compatibility with modern International law (Mazaheri, 1998; 1). However, Āyatullāh Khāmene'ī has set a boundary in political terms that 'the Islamic Republic can and should enjoy healthy relations with governments at the world level', however he stresses that this excludes America, 'who continuous to be the arrogant aggressor' (Khamenei, 1997, 271). This overt positioning of the *shī'ī* jurists has been rejected by many *'ulamā,* [616] including some who had initially supported the concept such as Āyatullāh Muntaẓirī, [617] who insisted that the guardianship 'does not mean the leader to do whatever he wants without accountability' (Brumberg, 2001; 215). Such objection is highlighted by Āyatullāh Muntaẓirī to be because 'the leadership can

[612] O you who believe, obey Allāh and obey the Apostle and those invested with command among you …, .
[613] Āyatullāh Muḥammad-Taqī Mesbāḥ-Yazdī (d. 2021) has argued that the people do not originate the legitimacy of the jurist in charge, his legitimacy is derived and validated by appointment of the hidden Imām. Thus, the people are obliged to follow him (Mesbah-Yazdi, 1990, 160).
[614] As identified by Āyatullāh Ḥusayn Maẓāherī with regards to the chapter of *āle īmrān* (3:28) requiring believers not to take disbelievers as allies (supporters or protectors) so that there is no domination of Islamic territory by foreigners (Mazaheri, 1998; 1).
[615] Based on the requirements of time and place and knowledge of political, economic, and social understanding, allowing the Islamic government of Iran in having political, cultural, and social exchanges and ties with non-Muslim States.
[616] For example, Āyatullāh Sharīʿatmadārī insistence on democracy and the government of the people by the people, led to him being purged from the clerical establishment for speaking out against the *vilāyat-i faqīh* concept.
[617] Āyatullāh Muntaẓirī was also purged for his reinterpretation of *vilāyat-i faqīh* to a supervisory role of the overall political system (Kamrava, 2008; 114), also suggesting 'the people can remove the elected person if he does not meet the conditions of leadership or if he violates his duties' (Muntaziri, 1988b, 204).

never be above the law, and he cannot interfere in all affairs, particularly the affairs that fall outside his area of expertise, such as complex economic issues, or issues of foreign affairs and International relations' (Abdo, 2001: 17). The stance of those objecting to theocracy and the new generation of *shī'ī* jurists in general following the revolution is that of compatibility and the removing of tension between *shī'a* Islamic and modern International laws. As such, it could be argued that their point of view is based on an assumption that Islam does not naturally provide a protection as detailed as in the Conventions and additional protocols but jurists would seek 'to infer such protection from Islamic sacred legal sources' (Van Engeland, 2010; 6). [618] Āyatullāh Muḥammad Kāẓim Bujnūrdī like many other similar minded jurists believes that many of the laws referenced to *fiqh* 'that seem to be discriminatory in nature, can be revised' these are 'not unalterable rules and can be interpreted and revised' (Takim, 2021_a; 24). [619] When it comes to those advocating *nu-andīshī-yi dīnī,* their assertion on rationality negates incommensurability and calls for compatibility with modern International law since the pivotal issue being advocated by them is 'legal equality for all human beings' (Kadivar, 2013; 225). Since all Conventions on human rights are products of the collective reason of contemporary human beings (Bakhshizadeh, 2018; 171), thereby International law should be implemented to the full as the accepted international legal criterion for such equality. This is not to say that they think Islamic law has no role to play in modern International relations, but for them, it needs to be based on the requirement for 'a new Islamic approach to International relations that is compatible with the world of nation-States' (Cravens, 1998; 532). Mujtahed Shabestarī states that ultimately we would reach a point whereby mutual understanding with the secularists could be achieved (Mujtahid-Shabestari, 2002; 312). For that to occur, Moḥsen Kadīvar thus argues for the 'compatibility of the precepts of *fiqh* to the notation of human rights' (Bakhshizadeh, 2018; 172). Aḥmad Qābil identified the notation of human rights to be the basis of the government of Imām 'Alī, [620] but he concludes 'the present government and judicial system bears no resemblance to it' (Qabil, 2011, 1). With this in mind we see that in the diplomatic sphere and following the 1979 revolution, Aḥmad Qābil published an article reprimanding the policy of occupying the American embassy (Ridgeon, 2023; 32). We also find that the reformists who were actually involved in the hostage taking crises in

[618] For Example, Āyatullāh Muḥaqiq Dāmād argues if there is a war, the divine principles of the conduct of hostilities must be respected and the requirements of war should give way to recognised humanitarian imperatives (Muhaqiq-Damad, 2003; 253).
[619] He points that that Ayatllah Khomeinī himself favoured a review of penal religious rulings such as stoning, and instead instructed the courts to guide the guilty to repentance (Hunter, 2009; 64).
[620] The style of formative Islamic governments were discussed in chapter 2.

their youth such as Moḥsen Mīrdāmādī have come to entirely reshape their position in later years (Tarikh, 2014; 1). [621]

Ap1.7 Concluding Remarks

The discourse on *sharī'a* is often dominated within Western literature by scholars, journalists, and observers on its extremist interpretation and applications. Subsequently, recognition is rarely given to the moderate and reformist debates taking place on Islamic law throughout the Muslim world, and in particular Iran. The new outlook on the future of Islamic law has led to the evolution of new thinking, as developed and expounded by religious intellectuals arguing that if *sharī'a* is regarded as encompassing 'permanent standards, principles, ethical values and rites of Islam', then it must move forward and not be constantly revisiting the past (Kadivar, 2022_b; 226). The ideology of reform as briefly reviewed within this chapter, was an attempt to identify religious intellectuals inspired by Islam's basic ethos and intrigued by the underlying requirement for modernity and authenticity (Hunter, 2009; xx). This in turn has guided the debate around the reconciliation of religion and reason, and the compatibility between Islam and Internationally accepted norms. It was highlighted that such debate around contemporary challenges has led to a heated discussion not only by the spectrum of thought within the body of the *shī'ī* clergy. It has also led to religious intellectuals being categorised depending on their ideological stance, some new religious thinkers are identified as *rushanfikrān-i dīnī,* and others are identified as *nu-andīshān-i dīnī.* The latter has represented the growing trend of the development of new thinking within the *'ulamā,* particularly following the 1979 revolution in Iran. Their evaluation of issues has led to the *shī'ī* jurists themselves reviewing *fiqh* from different perspectives, but all incorporating *ijtihād,* arguably 'a scholarly interpretative skill that can change over time' (Akhlaq, 2023; 72). Various methodological techniques and mechanisms have been introduced within this context, ranging from when no direct references to the topic are found in *sharī'a'*, or 'the public interest demands the revision of previous stance', or 'consideration is required to be given to the overall protection of the Islamic system by the ruler'. Within this framework of thinking, reference could be made to a technique identified as 'dynamic *ijtihād'* of Āyatullāh Khomeinī, requiring jurisprudential re-evaluation to re-assess challenging topics of contention within the context of the Islamic government (Ayazi, 2017; 1). This in turn has led to the emergence of concepts such as 'time and place', a

[621] They are thus viewed as apostate by their previous comrades for such a change of stance in the light of their new thinking (Ridgeon, 2023; 161).

requirement in 'knowledge of political, economic, and social understanding', and the 'welfare of the society'. These were found to be relied upon in religious rulings of the post-revolutionary neo-traditional *ʿulamā* within Iran. Nonetheless, it can be contended that the methodology used by all such traditional schemes and personalities remains broadly the same, as defined by Shaykh al-Anṣārī in the Nineteenth century. [622] Subsequently, the cornerstone of the bold new thinking that has followed in recent times rests on moving beyond the scope of such limitations within the traditional methodology. However, one cannot fathom why we have to suffice with 19th century solutions to 21st century problems. The fresh approach offered by *nu-andīshī-yi dīnī* revolves around ethical human reasoning as the crucial element required in discovering the rationale behind particular laws, seeking modifications in favour of compatibility to International law. This has led to a wider scope of application, beyond rules and laws to belief, moral and ethical issues, in finding new interpretations of religion using the complex structure of elucidation from within the *sharī'a* sources. [623] This appendix endeavours to highlight this trend of thought, seeking to escape the doctrinal constraints of the classical core of Islamic law, in order to discard its controversial positioning on gender, social issues, and legal commandments that inevitably touch on diplomatic relations. Such an innovative approach could be claimed to be offering the religious establishment the tools required 'to adopt the same kind of perceptive that are espoused within the Universal Declaration of Human Rights' (Ridgeon, 2022, 4).

Nonetheless, such an adopted position could be countered by various arguments, such as new thinking being structured on the notation that the only way forward is the modern culture being advocated by the West. 'Everything not in harmony with Western championed norms is deemed wrong and required to be removed or ignored within religious text' (Isalan, Majidi-mehr and Azimi, 2017; 1). However, this could be rebuked because the endeavours for compatibility with International norms are argued to be based on seeking 'compatibility with reason, compatibility with justice, compatibility with morality' (Bakhshizadeh, 2018; 156). It has also been said that this post-revolutionary stance by the reformists is in essence revisionism of a type, making those advocating *nu-andīshī* the same as those advocating *rushanfikrī* (Ayazi, 2017; 1). Thus, it is regarded as a trend in 'delinking between spiritual and temporal domains', an attempt to conjure up to 'Western harmony, liberalism,

[622] His books al-Ras ā'il and al-Makāsib are essential teaching material for the shī'ī clergy covering principle of jurisprudence and demonstrative jurrisprudence.
[623] This calls for additional criteria being added to the traditional ways of interpreting the text which involves taking into account the difference between the metaphorical and the literal, the unequivocal and the equivocal, the universal and the specific, the absolute and the circumstantial, the abrogated and the abrogator.

secularism' (Takim, 2021_a; 20). For example, 'Emādudīne Bāqī describes the State as similar to human association distinguished from other social groups by its purpose, and the Western definition is used in identifying a rational democratic government (Baqi, 2004; 11). This line of thinking is refuted by the argument that, 'because something is done in the West, it does not make it wrong'. Dāwūd Fayrāḥī clarifies modernity as not a single package imported from the West, 'carbon copied' or 'abandoned' accordingly (Taghavi, 2020; 1). Additionally, Aḥmad Qābil reminds the critics of Jamāl al-Dīn Asadābādī's observation that 'I went to the West and found Islamic practice but no Muslims; I came back to the East and found many Muslims but no Islamic practice' (Qabil, 2011, 1). Thus, when new religious thinkers use terms such as *mardum sālārī dīnī* (religious democracy) or *ḥukūmat-i dīnī* (religious government), they could in effect reference and amalgamate the political theories of State from both the Western and Islamic perspectives, in comprising their thoughts on socio-political order. The main argument that would stand and possibly every side agrees on this, is the one highlighted by Āyatullāh Muṭahharī. He states that 'a rational person would not oppose the thoughts of previous scholars and their approaches without evidence', otherwise society would be 'inflicted by a novelty virus', which means new thinking and a change of structured proven workable approaches, just for the sake of being new (Mutahhari, 2021; 140). [624]

In any event, the ideas of new religious thinkers have created a debate amongst the new generation, and arguably, their ideas would take effect in time to filter through. As such, 'a social, cultural, or political momentum' is needed to build up in order to penetrate and transform the dominant culture (Kadivar, 2008; 15). However, for the new norms to be taken up as a cultural custom between the *shī'a* community there needs to be a fundamental shift not just in attitude but also in religious practice. As pointed out by Āyatullāh Jannātī 'since the Sacred Lawgiver knew that various aspects of human life are subject to change its multifarious needs are open to variation' (Jannati, 2012; 83). There also needs to be a review of political positioning in a perceived battle over the representation of Islamic and Republic terms and the argued disjuncture between the two, as this affects their characterisation from a negative outlook to one that is constructive in nature. Simply to create public spaces for their thoughts, ideas, and activities, *nu-andīshī-yi dīnī* requires the backing of some high-ranking jurists within the *ḥawza ʿilmīya* in their favour. [625] Thus, it can be argued against

[624] This book is a collection of lessons delivered to clerics prior to the revolution in the years of 1976 and 1957.
[625] In other words, institution of *marja'iyyah* at the top needs to incorporate such new thinking.

that by being outside the religious establishment the mid-ranking clergy cannot grow in status as jurists within *ḥawza ʿilmīya* to initiate the change required. The present response of the establishment to such new thinkers has been that of resistance at best, and elimination at worst (Ridgeon, 2023; 131). Nevertheless, the whole scenario highlights the need for the modernization of the *shīʻī* clerical establishment itself; this is possibly the reason for the formation of many new modern religious institutions such as the Raḍavī (Mashhad), the Mufīd (Qum), and the Imām Ṣādiq (Tehran) universities, becoming operational in the post-revolutionary era. However, in reality, no reform can take place without the re-shuffling of the traditional positions but 'no re-shuffling can emerge unless one is masterfully acquainted with both traditions and the newly developed ideas outside the sphere of revelation' (Kurzman, 1998; 250). Concerning this study around *sīyār* and the question of the compatibility of Islamic diplomatic law with that of modern International law, we have sought to highlight the spectrum of thought present within from a *shīʻī* perspective. Importantly, there are no advocates of incommensurability, and each of the various collectives within the spectrum of thought has a procedure for compatibility. These lead in one form or the other in identifying Statute of the International Court of Justice and the Vienna Conventions on diplomatic and Consular relations as compatible with Islamic International law. The debate around divine sovereignty, and mediated divine sovereignty and its possible conflict with popular sovereignty and tension with International law has not been damaging either. Even those who identify incompatibility in the West because of their take on territorial sovereignty being 'a vital component to international order' (Richmond, 2002; 381), do not say that Islamic law has no role to play in modern International relations between Muslim States.