

The Eligibility of Liberation Movements to Conclude International Treaties in Islamic Jurisprudence and International Law

Abdul Rahman S. Al-Daya

Assistant Professor at the Faculty of Sharia and Law, The Islamic University of
Gaza, Palestine
abdelrahman.aldaya@gmail.com

Received: 4/6/2022

Revised: 21/6/2022

Accepted: 30/6/2022

DOI: <https://doi.org/10.31559/SIS2022.7.2.4>



This file is licensed under a [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/)

The Eligibility of Liberation Movements to Conclude International Treaties in Islamic Jurisprudence and International Law

Abdul Rahman S. Al-Daya

Assistant Professor at the Faculty of Sharia and Law, The Islamic University of Gaza, Palestine
abdelrahman.aldaya@gmail.com

Received: 4/6/2022 Revised: 21/6/2022 Accepted: 30/6/2022 DOI: <https://doi.org/10.31559/SIS2022.7.2.4>

Abstract: The conclusion of international treaties in Islamic Sharia and international law is not valid unless it is concluded by the authority or its representative. However, the existence of liberation movements is an essential factor in some countries to demand the rights of people, represent their interests and defend them internally and externally. The researcher used Comparative Descriptive and Analytical Method to show the eligibility of the liberation movements to conclude international treaties and represent people in Islamic Sharia and international law.

Keywords: Eligibility, liberation movements; international treaties; Islamic jurisprudence; international law.

1. Introduction

Islam is a religion of tolerance that calls for security and peace among nations and people, as well as it is a religion aims at preserving the human soul through concluding treaties and covenants with other countries that would achieve the highest human interest for all people without racial and ethnic discrimination.

The conclusion of treaties in the legitimate politics of the Islamic state and modern international law take place only according to certain conditions, as well as the most important condition is that the two parties in the treaty have the eligibility enabling them to conclude treaties.

The liberation movements were entities emanating from people to claim their rights and represent their interests, and this allowed international jurisprudence to defend the legal character of the liberation movements according to their power and authority in their countries, which prompted public international law to deal with them. Do the liberation movements have the eligibility to conclude international treaties on behalf of their people?

2. The theoretical framework

The first topic: The fact of the eligibility of the liberation movements to conclude international treaties in Islamic jurisprudence and international law

The first requirement: the reality of eligibility in language and terminology

First: The fact of eligibility in language

Eligibility means, in language, validity as mentioned in Al-Bazdawi's writings, as God says: "And fulfill the covenant of Allāh when you have taken it, [O believers], and do not break oaths after their confirmation while you have made Allāh, over you, a security [i.e., witness]. Indeed, Allāh knows

what you do". (Sorat Al-Nahel: 91), and also says: " Those who fulfill the covenant of Allāh and do not break the contract" (Sorat Al-Raed" 20)⁽¹⁾.

Second: The fact of eligibility in terminology

The definition of eligibility in terminology is clear through the definition of its two types: eligibility of obligation and eligibility of performance.

The eligibility of obligation is: the person's validity due to the obligation of his/her legitimate rights.

The eligibility of performance is: the person's validity due to his/her action in a reliable and Islamic manner⁽²⁾.

The people of law defined it as: "the ability and authority of the international character to initiate legal actions", and they defined the international character as: "the eligibility to possess rights and accept obligations according to the provisions of international law"⁽³⁾.

The second requirement: the reality of the liberation movements

Writers have defined the concept of liberation movements with definitions that are almost convergent, and here are some of them:

Hafez Aliwi defined it as: "It is a popular rejection of colonialism with its various forms and local reactionary regimes, represented in popular resistance, political resistance or armed war"⁽⁴⁾.

Some of them defined it as: "a reaction that faces traditional colonialism, and it appeared in the third world countries that were subjected to colonialism in its direct and indirect forms, so liberation movements came in various forms, including: armed and political movements, and they represented a pressure factor on the colonial empires, especially France and Britain"⁽⁵⁾.

Azdshir Ahmed defined it as: "a peaceful or armed political struggle waged by peoples against colonialism with all forms, including occupation, mandate, and trusteeship against proxy regimes, and this struggle derives its strength from the people and depends on certain laws"⁽⁶⁾.

Others defined it as: "An armed or political conscious reaction against colonialism, which appeared after the Second World War and spread in Africa, Asia and South America"⁽⁷⁾.

The third requirement: the reality and types of treaties

First: The fact of the treaty in language

As in Merriam Webster dictionary, the meaning of (covenant) is: a written agreement or promise usually under seal between two or more parties especially for the performance of some action.

A lexicographic definition of "covenant" is: 1- a binding agreement; contract; 2- law; 3- in early English law, an action in which damages were sought for breach of a sealed agreement." Its origin is (covenant), and it means keeping and observing something continually, and it means also contract and oath.⁽⁸⁾

The covenant: security and discharge, so the warlike who joins the Islam has safety and covenant. The people of the covenant are the people who recommit on their tribute, and if they become Muslim, the covenant is canceled⁽⁹⁾.

¹ Al-Razi/ Mukhtar Al-Sahah (1/25); Al-Fayrouzabadi/Al-Qamoos al-Moheet (1/963); Ibn Manzur/ Lisan Al Arab (11/29); Al-Bukhari/ Kashf Al-Asrar on the Origins of Al-Bazdawi (4/237).

² Al-Taftazani/ Al-Talweeh on Tawdeeh (2/161); Ibn Amir Hajj/ Reporting and Inking (3/164); Kuwaiti Fiqh Encyclopedia (21/275).

³ Saleh Jawad Kazem / Study in International Organizations (pg. 16).

⁴ Hafez Aliwi / The National Liberation Movements in Their Historical Context, an article in Al-Hiwar Al-Mutamadin magazine, No. 1381, year 2005 AD.

⁵ This definition was mentioned in the history book for the second grade of secondary school in Algeria.

⁶ Azdshir Jalal Ahmed / An overview on the national liberation movements in the Arab world, and a projection of the current reality, an article in the Press News Forum, January 6, 2013.

⁷ An article entitled / The Third World in the decline of traditional colonialism and the continuity of liberation movements, (unknown author), and this is the link to the article <http://afak-adabia.7olm.org/t322-topic>.

⁸ Coelho. The Covenants in the Bible and Ancient Near East Literature, and the relationship between God and Men. PG. 1.

⁹ Ibn Manzthur/ Lisan Al-Arab (15/57); Al-Zubaidi/ Taj Al-Arous (2/443).

Treaty: is the contract and alliance. A treaty is a covenant between two persons or two groups.⁽¹⁰⁾ Besides, the Arabic Language Academy in Cairo introduced a definition of the treaty as: "An agreement between two countries to organize their relations."⁽¹¹⁾

Second: The fact of the treaty in terminology

a. The fact of the treaty in terminology of jurists:

The Hanafia school defined the treaty, as kindness, litigation and meekness. Al-Kasani said: "meekness is the conclusion of a treaty to leave the fight. It is said: the two parties bid farewell, so this means that everyone pledged not to invade his companion."⁽¹²⁾

According to the Malikia school, treaty means a truce, as Ibn Arafah defined it, as: "truce is the contract between the Muslim and the warlike in peace during the period which warlike didn't join the Islam"⁽¹³⁾.

According to the Shafi'a school, treaty is legitimate, and it is called a truce and meekness. Al-Qadi Al-Omrani said in Al-Bayan: "The truce, the treaty and the meekness are similar, which means the contract with the people of war to stop fighting for a period of time with or without compensation."⁽¹⁴⁾

According to the Hanbali school, it also means to compromise, so Ibn Qudamah defined it, as: "meekness with the people of war, and this is not permissible except gaining interests of Muslims."⁽¹⁵⁾

Al-Buhooti defined it as: "The contract is to leave the fighting for a known period as much as the need, and it can be increased with a request with or without compensation. Besides, it is called truce, meekness, treaty and peace, and it is not valid to contract except from the imam or his deputy."⁽¹⁶⁾ There is not a specific legal definition of the term treaty. It means "truce", according to the most of jurists. The contract is made between two parties to leave the fighting with or without compensation to secure or maintain a benefit that the imam or his deputy might consider.

b. The fact of treaty in international law

Treaties are considered the first direct source for the establishment of international legal rules, and they are in the international system as the legislation in the internal system, so when states become harmonious with each other to establish a specific treaty, it performs the same function that the legislator performs within the state.⁽¹⁷⁾

Besides, the second article of the Vienna Convention on the Law of Treaties concluded in 1969 defined it as: "An international agreement concluded in writing between two or more states and subject to international law, whether it is written down in one document or more, and whatever the name that is given to it."⁽¹⁸⁾

Jean-Jacques Rousseau defined it as: "an agreement between the persons of international law intended to make specific legal results."⁽¹⁹⁾

Dr. Ezzedine Fouda defines it as: "a written agreement which is concluded according to special formal procedures, and the contracting parties from public international law establish international legal relations in a specific field, or for a specific purpose that they have committed to achieving it in accordance with international law."⁽²⁰⁾

¹⁰ Al-Fayrouz abadi / Al-Muheet dictionary (pg. 338).

¹¹ Ibrahim Mustafa / Al-Waseet Lexicon of the Arabic Language Academy (2/640)

¹² Al-Kasani / Bada' Al-Sana'i (6/57).

¹³ Ibn Arafah / Al-Desouqi's Hashia on Al-Sharh Al-Kabeer (2/527).

¹⁴ Transmitted by: Al-Nawawi / Al-Majmoo' (21/387).

¹⁵ Ibn Qudamah / Al-Kafi (4/210).

¹⁶ Al-Bahooti / Kashaf Al-Qinaa (2/430).

¹⁷ Hamed Sultan / Public International Law (pg. 46).

¹⁸ Sabah Al-Karbouli / International treaties are mandatory to be implemented in Islamic jurisprudence and international law (pg. 20).

¹⁹ Jacques Rousseau / Public International Law (pg. 34); Ismail Al-Issawi / Provisions of Treaties in Islamic Jurisprudence (pg. 57).

²⁰ Ezzedine Fouda / The Legislative Role of Treaties in International Law (pg. 100); Ismail Al-Issawi / Provisions of Treaties in Islamic Jurisprudence (pg. 58).

Third: The types of treaties in the Islamic jurisprudence and International Law

a. The types of treaties in Islamic jurisprudence

There are many types of treaties, and their names vary according to their content, such as commercial, political, cultural, military and social treaties, but the commercial and political treaties were known in the old days. The Islamic state has concluded various types of treaties and truces with other parties. These treaties are mentioned as the following:

1. Permanent treaties: The imam is not allowed to revoke them even if he realized that there is a necessity to that, unless the second party violates the terms of the treaty, including: the discharge contract, (which is the contract that takes place between the Muslim authority and the People of the Book and the like in return for paying a personal tax to have protection and exemption from some duties of Islam).⁽²¹⁾
2. Temporary treaties: they are either with a limited number, and this type of contract called safety means that every Muslim has the right to conclude it with the infidels, and it can be concluded with an unlimited number, and it is called the truce.⁽²²⁾

Some of them divided it according to its subject⁽²³⁾, as:

1. Treaties of friendship (good neighborliness): These treaties aim to control the relationship between the Islamic country and its neighboring countries without a state of war between the two countries in order to determine the status of this neighborhood. Some writers have presented this type of treaty with the Medina Document that the Prophet, peace be upon him, specified the nature of the relationship with the neighbors of Muslims in Medina (the Jews), whereby he made both Muslims and Jews a nation distinct from other nations.⁽²⁴⁾
2. Trade exchange treaties: treaties are concluded to regulate external trade exchanges between the Islamic State and other countries. Some of writers presented these treaties, as in the Hudaybiyah Treaty⁽²⁵⁾ which indicated freedom of movement and security of trade routes.⁽²⁶⁾
3. Peace treaties: treaties are concluded to determine the statues of coexist with each other safely and far away from all types of conflict and war. These treaties may be before, after, or during the war. The jurists have named them different concepts, such as truce, tribute and others, for example Al-Hudaybiyah Peace Treaty.⁽²⁷⁾
4. Redemption treaties: treaties are concerned in liberating prisoners of war through exchange, or by paying an agreed amount of money.

b. The types of Treaties in International Law

International law jurists have traditionally classified treaties in different forms according to their subject or persons:

1. In terms of subject matter:

Treaties are divided into contractual treaties and normative treaties:

- Contractual treaties: these treaties aim to achieve a special legal result among the signatory parties, such as: treaties of alliance, trade, joint defense, friendship treaties and so on.
- Normative treaties: these treaties include general rules of international relations, such as: the Hague Convention of 1899 & 1907, and the Document of the League of Nations in 1919, and the Charter of the United Nations in 1945.⁽²⁸⁾

2. In terms of persons:

Treaties are divided into bilateral treaties between two parties and collective treaties among several parties.

²¹ Wahba Al-Zuhaili / Effects of War in Islamic Jurisprudence (pg. 356).

²² Wahba Al-Zuhaili / International Relations in Islam (pg. 150); Sabah Al-Karbouli / International Treaties (pg. 42).

²³ Ismail Al-Issawi / Provisions of Treaties in Islamic Jurisprudence (pg. 77)

²⁴ Mahmoud El Deek / International Treaties in Islamic Sharia and Public International Law (pg. 142); Ismail Al-Issawi / Provisions of Treaties in Islamic Jurisprudence (pg. 76).

²⁵ Peace Treaty Ismail Al-Issawi / Provisions of Treaties in Islamic Jurisprudence (pg. 80),

²⁶ Mahmoud Al-Deek / International Treaties in Islamic Sharia and Public International Law (pg. 143).

²⁷ The previous reference (pg. 146).

²⁸ Mahmoud Al-Deek / International Treaties in Islamic Sharia and Public International Law (pg. 158).

The base in the above two classifications is that bilateral treaties are contractual treaties, while collective treaties are normative treaties.⁽²⁹⁾ This division seems appropriate academically, but it has no great benefit in terms of the effect of the treaty, as long as the contract is the law of the contracting parties, so when the treaty is conducted and fulfilled its conditions, it binds its parties with its items, as Article of the Statute of the International Court of Justice stipulates the adoption of international public and private treaties that set rules expressly recognized by the conflicting states as one of the court's rulings and advisory opinions.

Interpreters of international law classified treaties into various doctrines, including dividing them according to the number of countries contributing to them into bilateral or special treaties, collective or general treaties, as well as dividing them according to their duration into permanent or temporary treaties. Furthermore, dividing treaties according to their nature into normative treaties and contractual treaties, and also dividing them according to their subject into political treaties, social or economic treaties.⁽³⁰⁾

The types of treaties in public international law named according to the nature of the treaty, while we find treaties in Islam are classified according to the nature of the relationships that they regulate, so they are either permanent or temporary, and the focus in this study is "the parties of the treaty, not its subject".

We also find these various divisions in international law as doctrinal divisions, and they have no effect in positive law and are not followed by practical results.⁽³¹⁾

Fourth requirement: the fact of international law

Legal scholars differed in the definition of public international law, some of them defined it as: "a set of rules that regulate the relations among countries and determine the rights and duties of each of them."⁽³²⁾

Some of them defined it as: "the rules that govern the dispositions among a group of civilized countries."⁽³³⁾

Public international law has many names, such as "the law of peoples, the law of war and peace, the law of humankind, and external political law."⁽³⁴⁾

Jurists also said that public international law is the law that includes a set of legal rules and principles regulating international relations and defining the rights and duties of each one.

Accordingly, some of them defined it as: "a set of binding rules belonging to the international community."⁽³⁵⁾

International law takes into account ethical, economic and political considerations, and violating its provisions entails international responsibility and the imposition of legal sanctions.⁽³⁶⁾

It is noticeable that the rules of public international law are affected by the rules of ethics through the incorporation of the rules of ethics into these rules when the countries feel their duty towards the humanitarian community, for example: the Geneva Convention of 1863. Thus, the basis of international law is public satisfaction, and the sources of public international law vary in terms of their character and the strength of their meaning. There are original sources listed by Article 38 of the Statute of the International Court of Justice, which are: "General international agreements, normative treaties, contractual and special treaties, international norms, and principles of law approved by the United Nations". Besides, sources which include rulings of international courts, doctrines of senior authors in public law, rules of justice and decisions of international organizations.⁽³⁷⁾

²⁹ Muhammad Aziz Shukri / Introduction to Public International Law in Peacetime (pg. 158).

³⁰ Ali Sadiq Abu Heif / Public International Law (pg. 526).

³¹ Mahmoud Al-Deek/ International Treaties in Islamic Sharia and Public International Law (pg. 159); Emad Al-Tayyar / International Treaties (pg. 50).

³² Ali Sadiq Abu Heif / Public International Law (pg. 18).

³³ Omar Al-Farjani / The Origins of International Relations in Islam (pg. 136).

³⁴ Ibid (pg. 136).

³⁵ Muhammad Sami Abdel Hamid / Fundamentals of Public International Law (pg. 7).

³⁶ Sabah Al-Karbouli / International treaties are mandatory to be implemented in Islamic jurisprudence and international law (pg. 24).

(37) Statute of the International Court of Justice, Article 38; Sabah Al-Karbouli / International Treaties (pg. 24).

The second topic: The eligibility of liberation movements to conclude international treaties in Islamic jurisprudence

The first requirement: the opinions of jurists regarding the person qualified to conclude international treaties:

The jurists of Islamic law stipulate that the person who has the right to deal in the name of the Islamic state with another state is the caliph or the imam as the person who expresses the will of the state politically because the treaty needs wide consideration and discretion for the benefit of Muslims.

The imam is also entitled to delegate others to conclude treaties, and therefore it is not permissible for any Muslim - in his personal capacity - to conclude the treaties without referring to the Imam of the Muslims.⁽³⁸⁾

Here is a detailed explanation of what they said:

The first opinion: It is not permissible to conclude a treaty or compromise except by the imam or his deputy, as Shafi'i's, the Malikis, the Hanbalis, the Imamia and Zaydi Shiites mentioned.⁽³⁹⁾

Al-Shaibani says: "If the Muslims besieged a fort, none of them should secure the people of the fortress without the permission of the imam"⁽⁴⁰⁾, and Al-Sarakhsi explains this by saying: "Because they actually surrounded the fortress, and because every Muslim is obligated to obey the command. He should not make a contract that obliges the ruler to obey him in that except with his satisfaction. The imam is appointed to look into these affairs in order to determine the benefit and harm referred to Muslims, and the subjects should not take precedence over what is not a priority to the imam."⁽⁴¹⁾ Sahib Al-Mughni said: "It is not permissible to conclude a truce or a discharge except from the general imam or his deputy because it is a contract with the group of the infidels, and the imam is able to know the interest of the Muslims, so if their truce is not concluded by the imam or his deputy, it is not valid."⁽⁴²⁾

Al-Qarafi says: "The person who concludes the contracts with the infidels as a discharge or reconciliation is the greatest imam or caliph."⁽⁴³⁾

Al-Khattabi said that "The imam is the person who makes the covenant and truce between Muslims and the people of polytheism, and it is not for anyone except the Imam to make an entire nation assures the infidels."⁽⁴⁴⁾

Moreover, an extrapolation of Islamic history shows that there is no individual Muslim - in his personal capacity - concluded an international document or treaty. Thus, the theory and the practical reality both testify that the individual does not have the eligibility to conclude international treaties, but the person who concludes these documents is the imam, his deputy, or the delegated person.⁽⁴⁵⁾ However, if a contract was made by someone except the imam without a government authorization, the contract is not valid,⁽⁴⁶⁾ but if he has a mandate to do so, then there is no objection to it, because even if the head of state is the first official, there is nothing to prevent the heads of Islamic countries at the present time from seeking help in expressing the will of their countries with the Minister of Foreign Affairs or diplomatic representatives or whoever is authorized by the head of the Islamic state to do so.⁽⁴⁷⁾

³⁸ Al-Kasani / Bada' Al-Sana'i (7/108); Ibn Rushd / Bidayat al-Mujtahid (1/313); Al-Nawawi / Rawdat Al-Talibeen (10/334); Ibn Qudamah / Al-Mughni (10/520).

³⁹ Al-Sherbini / Mughni Al-Muhtaj (4/334); Al-Hattab / Talents of the Galilee (3/386); Al-Bahooti / Kashif Al-Qina'a (2/430); Al-Luma' Al-Dimashqia (2/399).

⁴⁰ Al-Shaibani / Al-Sir Al-Kabeer (2/576).

⁴¹ Al-Sarakhsi / Sharh Al-Seer Al-Kabeer (2/576).

⁴² Ibn Qudamah / Al-Mughni (10/520).

⁴³ Al-Qarafi / Al-Thakhira (1/207).

⁴⁴ Abu Al-Tayyib Abadi / Awn Al-Mabood (7/437).

⁴⁵ Ismail Kazem Al-Issawi / Provisions of Treaties in Islamic Jurisprudence (pg. 136).

⁴⁶ Al-Bahooti / Kashaf Al-Qina'a (1/700); Al-Mardawi / al'iinsaf fi maerifat alraajih min alkhilaf (4/211); alshirbini / mughaniy almuhtaj (4/211); Al-Sherbini / Mughni Al-Muhtaj (4/260).

⁴⁷ Hamed Sultan / Provisions of International Law in Islamic Sharia (pg. 187).

The second opinion: The Shafi'i opinion classified the truce agreement into two cases

The first case: If the region or area is large, such as India, the Romans, and the like, the contract is valid only from the greatest Imam or his authorized deputy.

Al-Sherbini says: "concluding a contract with the infidels of the provinces of Romans and India belongs to the imam or his deputy because of its danger, and the imam or his deputy is the one who handles the great affairs, and he is more knowledgeable of interests than individuals."⁽⁴⁸⁾

Al-Muhathab said: "It is not permissible to conclude a truce for a province or a great area except for the imam, or for whom the imam delegated to him because if he made that to everyone, he did not believe that a man would compromise with the people of the province, and the advantages of fighting them would overcome the disadvantages, so it is only permissible to the imam or to his representative to conclude the truce. If there is no interest in the truce, it is not permissible to conclude it, as God says: "So do not weaken and call for peace while you are superior; and Allāh is with you and will never deprive you of [the reward of] your deeds" (Sorat Mohammed: 35)."⁽⁴⁹⁾

Al-Shirazi says: "It is not permissible to make a truce for a great province or area⁽⁵⁰⁾ except for the imam or for those whom the imam has delegated to them."⁽⁵¹⁾

The second case: If the contract is for a village or a small town, the contract is valid in case of a man who belonging to Imam concluded it.

Al-Sherbini says: "it is permissible to delegate the interest of the region to the governor of the region and inform his interests because the need may call for that, and the harm is considered simple, if he makes a mistake."⁽⁵²⁾

Moreover, it is mentioned in Al-Tahtheeb: "If the governor of Khurasan or the governor of Iraq concludes a truce with the people of a village or country, it is permissible."⁽⁵³⁾

Apparently, according to the Shafi'is, it is required in this case that the imam's permission is given to the governor in the truce contract.⁽⁵⁴⁾

The third opinion: Al-Kasani from the Hanafi school mentioned that the permission of the imam is not required to conclude a truce, even if a group of Muslims summoned them without the imam's permission because it is based on the fact that the contract of conciliation is in the interest of

Muslims.⁽⁵⁵⁾ So, discharge means covenant and security. If a Muslim gives security or a covenant to the warring infidel, that is permissible for all Muslims.⁽⁵⁶⁾

The second requirement: the most preferable opinion, and explanation of the eligibility of the liberation movements to conclude international treaties in Islamic jurisprudence.

After this presentation of the schools of jurisprudents on the matter, the most correct opinion is "it is not permissible to conclude a treaty or compromise except from the imam, his deputy, or a person appointed by the imam."

It is clear that this opinion does not allow the liberation movements to conclude treaties with the presence of the imam unless they are authorized by him to conclude them. However, the eligibility of the liberation movements to conclude treaties is a matter that needs to be detailed and clarified.

There are legitimate means for delegating authority in Islam, including selection by a scientific body that has popular acceptance.⁽⁵⁷⁾

The following text is from the book "The Royal Rulings" that explains the selection process of the president of state and its required conditions. Thus, the Imamate is held due to two aspects:

The first: choosing the people who have the eligibility to conclude treaties.

⁴⁸ Al-Sherbini/ Mughni Al-Muhtaj (4/334).

⁴⁹ Ibn Qudamah/ Al-Mughni (9/298).

⁵⁰ Ibn Manzur / Lisan al-Arab (10/70)

⁵¹ Al-Shirazi / Al-Muhadhab (2/259).

⁵² Al-Sherbini/ Mughni Al-Muhtaj (4/344, 345).

⁵³ Al-Baghawi / Al-Tahtheeb in the jurisprudence of Imam Al-Shafi'i (7/517).

⁵⁴ Al-Sherbini/ Mughni Al-Muhtaj (4/345)

⁵⁵ Al-Kasani/ Badaa' Al-Sana'a (6/76)

⁵⁶ Al-Saati/ Al-Fath Al-Rabbani (14/115).

⁵⁷ Abdullah Ibrahim Zaid Al-Kilani / Sharia Politics: An Introduction to the Renewal of Islamic Discourse (pg. 159).

The second: choosing the imam. If the people who have the eligibility to conclude treaties meet to choose the imam, they will review the conditions of Imamate in these people, and they offered the pledge of allegiance for the most virtuous and compliant with the conditions.

If more than one person were compliant with the conditions of the imamate, and one of them was more knowledgeable and the other was more courageous, he will be chosen according to the need of the state. So, if the need of state for the virtue of courage calls for banning the spread the emergence of tyrants, the bravest person will be the deserving one. Also, the need of state for the virtue of knowledge calls for silencing the riffraff, the knowledgeable person will be the deserving one (4).

Al-Mawardi referred to the mechanism of selection, and there is a body that chooses the president of state similar to parliaments in recent days. Also, they choose the person according to the extent to which people are willing to obey him, as he has popular acceptance. Moreover, they take into account that the qualifications of the candidate should be commensurate with the needs of the state, which was expressed by Al-Mawardi by saying: "One of them was more knowledgeable, and the other was the bravest in choosing what is necessitated by the judgment of time".⁽⁵⁸⁾

Then he explained the specifications of the body that makes the selection process, saying: "As for the people of the Imamate, the conditions for choosing them are seven", as the following:

1. Uprightness with its all-encompassing conditions.
2. The knowledge that leads to diligence in jurisprudence and rulings.
3. The senses are intact.
4. The parts of body are intact.
5. The opinion that leads to the politics of the parish and the management of interests.
6. The courage and help that leads to the protection of people and the struggle against the enemy.
7. Lineage: he should be from Quraysh.⁽⁵⁹⁾
8. Ibn Khaldun differed in his explanation of the meaning of Quraysh, so he interpreted it as popular acceptance.

Based on this explanation, if the majority is not satisfied, or there is no imam, the ruling becomes for the people of knowledge. This was stipulated by many Islamic scholars during their explanation of the hadith of the Mu'ta Company after the martyrdom of the three leaders, and Khalid Ibn Al-Walid assuming the leadership of the Muslim army, and withdrawing with it without a command. Al-Bukhari wrote a chapter in the book "Sahih Al-Bukhari" that was called "The Chapter of Who Orders in War Without a Command, If He Fears the Enemy" (4). Ibn Hajar commented on this case by permitting it. Besides, Ibn Al-Muneer commented on this chapter: "It is taken from the texts of this chapter that if a person who is appointed for a state and the reference of the imam is excused, people must obey him. Also, Ibn Al-Muneer said: "if people agreed with the Imam, they must obey him and vice versa" (5).

Imam Al-Sharbini (may God have mercy on him) said: "If time is devoid of an imam, people will refer to the scholars. If there are many scholars in the area, then the one who is followed is the most knowledgeable of them. If they are equal, then draw as the imam said."⁽⁶⁰⁾

Al-Juwayni said in his book Al-Ghayathi: "Now it is time for me to suppose that if time becomes vacant for the Imam, and there is no judicious sultan, matters are entrusted to the scholars. Thus, all people from different classes should refer to their scholars and express their opinions in all issues of the states."⁽⁶¹⁾ If they do that, they have been guided to the right path, and the country's scholars have become the guardians of the people.

Some scholars said: "If the state or village are devoid of the Sultan, then the inhabitants of them have the right to obey the person who has a wisdom and applied his orders.

⁵⁸ Abdullah Ibrahim Zaid Al-Kilani / Ibn Khaldun's Approach in Dealing with Sharia Texts, Islamic Journal of Knowledge, International Institute of Islamic Thought, (pg. 197-202); Abdullah Ibrahim Zaid Al-Kilani / Sharia Politics: An Introduction to the Renewal of Islamic Discourse (pg. 160).

(2) Al-Mawardi / Royal Rulings and Religious States (pg. 54). (3) Ibid p.g (160). (4) Al-Bukhari/ Sahih (4/72).

⁵⁹ Ibn Hajar/ Fatih Al-Bari (6/180).

⁶⁰ Al-Sherbiny / Mughni Al-Muhtajaj to Know the Meanings of the Vocabulary of Al-Minhaj) (6/259).

(2) Al-Juwayni/ Al-Ghayathi (pg. 189).

⁶¹ Transmitted by: Ahmad / his Musnad (2/333); His investigator said: Its reference of transmission is authentic according to the conditions of the two sheikhs. (4) Al-Shaibani/ Al-Sir Al-Kabeer, pg. (165).

Al-Shaibani commented on this by saying: "They must obey the Imam as long as he does not order them to do something that is dangerous". Moreover, if the majority of their congregation has the opinion, that they do doubt it, then there is no obedience to him on them", according to the prophet Mohammed (peace be upon him) words: "There is no obedience to a created being in disobedience to the Creator." (3)

Besides, in the hadith of Ali (May Allah be pleased with him) said that the prophet Mohammed (peace be upon him) sent a company and appointed an emir over it. Its emir was angry with its people and then kindled a fire and said: "You have been commanded to obey me, so you must storm it". Some of them said: "We should enter it", and the others said: "we should not enter it, and we have embraced Islam to escape the Fire". So, when they came back to the prophet Mohammed (peace be upon him) to tell him what happened with them, he said: "If they entered it, they would never leave it because the obedience is in what is good, not evil." (4)

Based on the foregoing, the liberation movements do not exist in the entity of the Muslim state. However, if they exist, this is attributed to the weakness of the imam, or the people's dissatisfaction with him. If these movements have power on the reality, and the majority of people submit to its order and authority, their actions and treaties become correct and valid.

After this presentation of the legitimate view of the liberation movements eligibility to conclude legitimate treaties, the researcher would like to mention the advantages and disadvantages of treaties conclusion, which are as follows:

First: the advantages of treaties conclusion

- The implicit and realistic recognition of the liberation movements that have popular acceptance, and this recognition can be shown in the real life, such as engagement in armed struggle, receiving aid, attending meetings of international organizations and diplomatic interaction.
- The commitment of the liberation movements to the general treaties of the international humanitarian law, such as limiting the use of weapons during armed conflicts, peace stabilization treaties and commitment to political solutions.
- The conclusion of these treaties by the liberation movements manages the situations in the state because the existence of these movements requires the control of situations in the states, which leads to achieve the interest of the people.

Second: the disadvantages of treaties conclusion

- The liberation movements appear in the case of the weakness of the imam, or the lack of people's approval of him, which leads to instability in the rule of the state.
- The recognition of liberation movements eligibility to conclude international treaties will abide the nation by these treaties with all effects, whether they are in the interest of the peoples or not.
- The recognition of liberation movements eligibility to conclude international treaties leads to the rivalry of the various liberation movements to control the affairs of the state, and this rivalry can be resolved politically or militarily, so it leads to corruption that affects people, money and honor.

The third topic: The eligibility of liberation movements to conclude international treaties in international law

The first requirement: the international legal character of the liberation movements in concluding international treaties.

At the beginning, it must be emphasized that talking about the resistance and national liberation movements and the right of people to self-determination could not have happened without the presence of occupation and settlement and the existence of racist governments. The justification for the existence of national liberation movements and resistance is the occupation, for example the resistance of the Palestinian people and its existence under the umbrella of the national liberation movements is directly related to the Nakba and the emergence of the Zionist entity.⁽⁶²⁾

Accordingly, the right of people to self-determination and their right to use the armed force as a method to achieve this right is considered a natural and legitimate matter, especially after public international law has prohibited occupation and aggression, and this is stated in the Charter of the United Nations in the fourth paragraph of Article Two, which prohibited not only the use of force, but also the threat by using it in relations between states.⁽⁶³⁾

For this reason, international jurisprudence has strongly defended the idea of the international legal nature of the liberation movements due to the power and authority reached in a specific geographical area that prompted public international law to address it.⁽⁶⁴⁾

The liberation movements have simple responsibilities and rights in facing the states and international organizations, and these responsibilities do not exceed the international legal facilities recognized by the international community.⁽⁶⁵⁾ This legal situation enabled the liberation movements to gain some rights, and in return made them bear international obligations. With regard to rights, the recognition of the national liberation movements showed a set of legitimate rights that accompany their struggle life, and facility of international interaction as the representative of the people who suffer from the occupation, and they are summarized in the following:

1. Monitoring the armed struggle.
2. Receiving aid.
3. Conclusion of treaties.
4. Attending meetings of international organizations.
5. Diplomatic interaction⁽⁶⁶⁾.

As for international obligations, in return for these rights, liberation movements are committed to respecting the rules of international law and its basic principles, the most important points can be summarized in the following:

1. Commitment to the principles of the use of armed force, in particular the laws of war that are mentioned in the Fourth Geneva Conventions of 1949, as well as additional protocols for 1977, which prevent the liberation movements to strike civilian places, or do terrorist actions that will harm innocent people.
2. The movement is working on peace stability without expanding the pace of war to neighboring countries.
3. The movement is committed to political solutions in case of the appearance positive diplomatic solutions.⁽⁶⁷⁾

It is recognized in international law that a treaty is not valid unless its parties are eligible to conclude it, and international law permit them to conclude international treaties, such as states and international organizations, as well as the Vatican State, while individuals are not considered

⁶² Hassan Joni / National Liberation Movements in the Light of International Law (pg. 3).

⁶³ Ghassan Al-Jundi / Al-Gamaliat Al-Borcania in the Principles of Public International Law (pg. 60).

⁶⁴ Ahmed Si Ali / The British-Argentine dispute over the Falkland Islands (Malwin) in the light of public international law (ppg. 87, 88).

⁶⁵ Ahmed Si Ali / Algerian Liberation Movement and International Humanitarian Law (pg. 25).

⁶⁶ The previous reference (pg. 26).

⁶⁷ Ben Amer Touni/ International Responsibility (pg. 41); Ahmed Si Ali / Algerian Liberation Movement and International Humanitarian Law (pg. 26).

persons of the international public law, and therefore the state agreements which they conclude shall not be ratified.⁽⁶⁸⁾

The fully sovereign state has the right to conclude international treaties without a restriction on its eligibility.⁽⁶⁹⁾ Persons who have the right to express these states are their presidents, or their representatives, as stipulated in the Vienna Convention on the Law of Treaties: "The persons hereinafter mentioned shall be considered to be representatives of their countries according to their functions without the need to present credentials"

1. Presidents of State, Heads of Government and Ministers of Foreign Affairs are responsible for all acts relating to the conclusion of a treaty.
2. Heads of diplomatic missions are responsible for approving the text of a treaty between the receiving state and the state accredited to it.
3. Representatives accredited by states to an international conference or an international organization or one of its branches related to the adoption of the text of a treaty in this conference, organization or branch".⁽⁷⁰⁾

The second requirement: the eligibility of the liberation movements to conclude bilateral treaties:

A country recognizing a liberation movement can conclude an agreement with this movement within the limits of eligibility recognized by the state for this movement.

The bilateral treaties signed by the liberation movements with the countries are ending the state of war with the colonial countries and obtaining independence, signing bilateral treaties related to defining borders, and signing bilateral agreements between the liberation movements and countries regulating the presence of liberation movements forces in their territories.⁽⁷¹⁾

First: the independence treaties signed by the liberation movements with the colonial countries:

Examples of treaties signed by liberation movements to gain independence include the Ivan Convention, the treaties that end Portuguese domination in Africa, and the Lancaster house agreements that led to the independence of Zimbabwe.⁽⁷²⁾ Here is a breakdown of these treaties:

1. The Evan Agreement:

This agreement was concluded between the French government and the Algerian National Front in March 1962, and the two parties agreed to end military operations in Algeria started from March 19, 1962. Moreover, it was agreed to put Algeria's future to a public referendum and establish a temporary government that would remain until independence, as well as it was finally agreed in Evan that if a majority of the people support Algeria's independence, Algeria will become an independent state.⁽⁷³⁾

2. Algiers Agreement:

This agreement was concluded between Portugal and the African Front for the Independence of Guinea-Bissau on August 26, 1974, and according to this agreement, a ceasefire was reached, and Portugal recognized the independence of Guinea-Bissau. This agreement established the principles of cooperation between Portugal and Guinea-Bissau.⁽⁷⁴⁾

⁶⁸ Ismail Kazem Al-Issawi / The provisions of treaties in Islamic jurisprudence - a comparative study (pg. 139).

⁶⁹ Muhammad Sami Abdel Hamid / Al-Waseet in public international law (pg. 116).

⁷⁰ Ehsan Hindi / Principles of Public International Law in Peace and War (pg. 387); Ismail Kazem Al-Issawi / The provisions of treaties in Islamic jurisprudence - a comparative study (pg. 140).

⁷¹ Ehsan Hindi / Principles of Public International Law in Peace and War (pg. 387); Ismail Kazem Al-Issawi / The provisions of treaties in Islamic jurisprudence - a comparative study (pg. 140).

⁷² Ghassan Al-Jundi / Al-Gamaliat Al-Borcania in the Principles of Public International Law (pg. 61).

⁷³ Bin Youssef Bin Khadda/ Evan Agreements (pg. 25); Ghassan Al-Jundi / Al-Gamaliat Al-Borcania in the Principles of Public International Law (pg. 62).

⁷⁴ Abdul Razzaq Mutlaq Al-Fahd / Studies in the Liberation Movements in the Third World (pg. 52); Ghassan Al-Jundi / Al-Gamaliat Al-Borcania in the Principles of Public International Law (pg. 62).

3. Lancaster house agreements:

These agreements were concluded between Britain and the liberation movements in Southern Rhodesia in December 1979. These agreements provided for a cease-fire and a transitional period before independence. Besides, an agreement was concluded dealing with the constitution of the new state of Zamboi.⁽⁷⁵⁾

Second: The agreements related to the borders that the liberation movements conclude with countries:

An example of this category of agreements that should be noted is the agreement concluded between the Algerian temporary government and Morocco on July 6, 1961. According to this agreement, Morocco declared its absolute support for the Algerian temporary government when negotiating with France on the basis of respect of Algeria's regional integration and Algeria's opposition to all attempts to divide its lands. Depending on the disputed lands between Algeria and Morocco, the July 6, 1961 treaty indicated that a solution would be found within the framework of negotiations between the government of Morocco and the independent Algerian government.⁽⁷⁶⁾

Examples of the agreements related to the borders concluded by the liberation movements are: The August 10, 1979 Agreement, which was signed between Mauritania and the Polisario. According to this agreement, Mauritania renounced its territorial claims in Western Sahara, and in return the Polisario pledged not to claim lands within Mauritania's borders.⁽⁷⁷⁾

Recommendation No. 34/37 issued by the General Assembly of the United Nations considered that this treaty constitutes an important progress in the peace process in order to reach a final, fair and permanent settlement for the issue of Western Sahara.⁽⁷⁸⁾

Third: the bilateral treaties signed by the liberation movements, which regulate the armed presence of these movements in some countries:

Examples: the treaty concluded between the Palestine Liberation Organization and the Lebanese government in November 1969. This agreement contains two chapters: the first chapter deals with the Palestinian presence in Lebanon, and the second chapter deals with the situation of the Palestinian resistance in the Lebanese territories. According to this agreement, the Palestinians have the right to live in Lebanon, move freely and participate in the armed struggle against Israel. This treaty also stipulated the establishment of centers aimed at monitoring the possession of weapons in the Palestinian camps and the cooperation of these centers with the Lebanese authorities. The agreement indicated that the leadership of the Liberation Organization is responsible for the Palestinian resistance, and the liberation movements must refrain from interfering in the internal affairs of Lebanon. Finally, the agreement stipulated the appointment of a representative of the Palestinian resistance in the Staff of the Lebanese Army to solve urgent problems continually. Besides, the November 1969 agreement was reinforced by two additional agreements signed in January and February 1970 that dealt with maintaining order in Palestinian refugee camps, militants training centers and areas of operations against Israel.⁽⁷⁹⁾

This treaty also stipulated the establishment of centers aimed at monitoring the possession of weapons in the Palestinian camps and the cooperation of these centers with the Lebanese authorities. The agreement indicated that the leadership of the Liberation Organization is responsible for the Palestinian resistance, and the liberation movements must refrain from interfering in the internal affairs of Lebanon. Finally, the agreement stipulated the appointment of a representative of the Palestinian resistance in the Staff of the Lebanese Army to solve urgent problems continually.

The November 1969 agreement was reinforced by two additional agreements signed in January and February 1970 that dealt with maintaining order in Palestinian refugee camps, militants training centers and areas of operations against Israel (1).

⁷⁵ The previous reference (pg. 63).

⁷⁶ Ahmed Si Ali / The Algerian Liberation Movement and International Humanitarian Law (pg. 30).

⁷⁷ Ghassan Al-Jundi / Al-Gamaliat Al-Borcania in the Principles of Public International Law (pg. 63).

⁷⁸ Resolutions of the General Assembly at the United Nations since 1946, see their website <http://www.un.org/ar/sc/documents/resolutions>.

⁷⁹ Abdul Razzaq Al-Fahd / Studies in the Liberation Movements in the Third World (pg. 63); Ghassan Al-Jundi / Volcanic Aesthetics in the Principles of Public International Law (pg. 64).

The third requirement: the ineligibility of the liberation movements to sign collective treaties:

This ineligibility to sign international treaties is manifested in the following matters:

In some cases, the liberation movements are invited to participate in an international conference to codify international law as an eligible observer to sign the final declaration of the conference without signing the text of the treaty prepared by the conference, such as the Treaty on the Law of the Sea which recognized in Recommendation No. 4 that show the eligibility of recognized liberation movements to sign the final statement of the conference, as Article 156 of the treaty also allowed liberation movements to participate as observers in the International Authority for the Exploitation of the Seabed and the Preparatory Committee. Liberation movements can also receive the documents contained in Article 319 of the Treaty on the Law of the Sea from the trustee. These rights were not granted to all liberation movements, but to those movements that the General Assembly of the United Nations agreed to participate as an observer in the Conference on the Law of the Sea (2).

Unlike other liberation movements, the South West African Front (Namibia) signed the Law of the Sea Agreement.

A liberation movement can be obliged by the text of a multilateral treaty by virtue of a declaration issued by it, for example Paragraph 3 from Article 96, of the First Geneva Protocol supplementing the four Geneva Conventions, which stipulates that a liberation movement can be obliged by the terms of this protocol by sending a declaration to the depositary state. Furthermore, the Paragraph 4 from Article 7 of the April 10, 1981, Treaty on the Prohibition and Limitation of the Use of Certain Conventional Weapons indicates to the eligibility of liberation movements to unilateral consent to the text of the treaty.⁽⁸⁰⁾

After this presentation of the legal view of the liberation movements eligibility to conclude international treaties, we find that there is a general agreement between what is found in the international law and the Islamic jurisprudence because the jurists differed in giving the liberation movements the legal character that qualifies them to conclude international treaties. Furthermore, they divided the treaties into bilateral treaties, which they allowed the liberation movements to conclude in the interest of the peoples, as well as collective treaties which they did not allow the liberation movements to conclude.

This agrees with the view of many jurists of the Islamic schools who forbid those who are not authorized to conclude a treaty.

Perhaps the closest legal school of jurisprudence that agree with the legal view is the Shafi'i school, which permits the conclusion of a treaty in only small regions.

3. The Results

- The liberation movements have newly appeared after the collapse of the Ottoman Caliphate.
- Islamic Sharia with its provisions has provided that the Caliph or his deputy is responsible for conclusion of treaties.
- The Islamic scholars agreed to abort any agreement without the permission of the Imam or his government.
- The Islamic scholars differ in their opinions on concluding a truce with the enemy without the imam's permission. Some of them allow concluding a truce with enemy without the imam permission, and the other don't allow it.
- The liberation movements had no presence in the Islamic state, and their presence means the vulnerability of the Imam's authority, and the lack of satisfaction of people. If the people have followed liberation movements decisions, the treaties will be acceptable.

International law has provided some authorities for the liberation movements in concluding some international treaties based on the eligibility of the movements recognized by a state.

⁸⁰ Abdul Razzaq Al-Fahd / Studies in the Liberation Movements in the Third World (pg. 64, 65).

(2) Ibid (pg. 95).

(3) Ghassan Al-Jundi / Al-Gamaliat Al-Borcania in the Principles of Public International Law (pg. 64, 65).

References:

- The holy Quran
- 1. Abadi, M. (1994). *Awn Al-Mabood, Awn al-Mabood, Sharh Sunan Abi Dawood*. 2nd Edition. Dar al-Kutub al-Ilmiyya. Beirut.
- 2. Abdel Hamid, M. (2015). *Fundamentals of Public International Law*. The Origins of Public International Law, The International Rule. New University House.
- 3. Abu Heif, A. (1995). *Public International Law Mansha'at al-Maaref*.
- 4. Ali, A. Algerian Liberation Movement and International Humanitarian Law.
- 5. Ali, A. (2010). *The British-Argentine dispute over the Falkland Islands (Malwin) in the light of public international law*. Two papers published in the Fifth International Forum on International Humanitarian Law.
- 6. Al-Baghawi. *Al-Tahtheeb in the jurisprudence of Imam Al-Shafi'i*.
- 7. Al-Deek, M. (1997). *International Treaties in Islamic Sharia and Public International Law*. Dar Al-Furqan.
- 8. Al-Bahooti, M. (1641). *Kashaf Al-Qinaa, Kashshaf Al-Qinaa on the Text of Persuasion*. Dar Al-Kutub Al-Ilmiyya.
- 9. Al-Fahd, A. *Studies in the Liberation Movements in the Third World*, Ghassan Al-Jundi / Al-Gamaliat Al-Borcania in the Principles of Public International Law (p. 62).
- 10. Al-Fayrouz, A. (2005). *Al-Muheet dictionary*. (p. 338). 8th edition, Al-Resala Foundation. Beirut.
- 11. Al-Ferjani, O. *The Origins of International Relations in Islam*. Iqra House for printing, translation, publishing and media services.
- 12. Al-Issawi, I. *Provisions of Treaties in Islamic Jurisprudence - A Comparative Study*. Dar Al-Muslim.
- 13. Al-Juwayni, A. Al-Ghayathi, "□□Al-ghiathii- ghiath al'umam fi altiyath alzulma", Dar Al-Minhaj, Saudi Arabia, 2014.
- 14. Al-Jundi, G. (2005). *Al-Gamaliat Al-Borcania in the Principles of Public International Law*. Wael House for Printing, Publishing and Distribution.
- 15. Al-Karbouli, S. (2011). *International treaties are mandatory to be implemented in Islamic jurisprudence and international law*. Dar Dijla.
- 16. Al-Kasani, A. (1986). *Badaa' Al-Sana'I in the Order of the Laws*. 2nd Edition, Dar al-Kutub al-Ilmiyya.
- 17. Al-Kilani, A. *The Legitimate Politics: An Introduction to the Renewal of Islamic Discourse*. Dar Al-Furqan for Publishing and Distribution.
- 18. Al-Kilani, A. Ibn Khaldun's Approach in Dealing with Sharia Texts, *Islamic Journal of Knowledge*. International Institute of Islamic Thought.
- 19. Al-Mawardi, A. (2088). *Royal Rulings and Religious States*. Dar Ibn Qutaiba Library. Kuwait.
- 20. Al-Qarafi, S. (1994). *Al-Thakhira. 1st Edition, (Investigated by: Muhammad Hajji and others)*. Dar Al-Gharb Al-Islami. Beirut.
- 21. Al-Razi, M. (666). *Mukhtar Al-Sahah, 5th edition, (Investigated by: Youssef Sheikh Muhammad)*, Al-Asriya Library, Beirut, 2001.
- 22. Al-Sherbini, M. (1994). *Mughni Al-Muhtaj*. 1st edition. Dar al-Kutub al-Ilmiyya. Beirut.
- 23. Al -Shirazi, I. (1083). *Al-Muhathab in the jurisprudence of Imam Al-Shafi'i*. Dar Al-Kutub Al-Ilmiyya. Beirut.
- 24. Al-Taftazani, S. (793). *Sharh Al-Talweeh Ala al-Tawdeeh*. Sobeih Library, Egypt.
- 25. Al-Zuhaili, W. *Effects of War in Islamic Jurisprudence*. Dar Al-Fikr, Beirut.
- 26. Al-Zuhaili, W. *International Relations in Islam*, Dar Al-Maktabi, Beirut.
- 27. An article entitled / The Third World in the decline of traditional colonialism and the continuity of liberation movements, (unknown author), and this is the link to the article <http://afak-adabia.7olm.org/t322-topic>
- 28. Azdshir, J. (2013). *An overview on the national liberation movements in the Arab world, and a projection of the current reality*. an article in the Press News Forum.
- 29. Ben Amer, Touni. *International Responsibility*.

30. Coelho, M. (2014). *The Covenants in the Bible and Ancient Near East Literature, and the relationship between God and Men*. Research Gate, pg. 1-8.
31. Fouda, E. (1971). *The Legislative Role of Treaties in International Law. The Egyptian Journal of International Law*. The Egyptian Association of International Law. Cairo.
32. Hafez, A. (2005). *The National Liberation Movements in Their Historical Context*. An article in Al-Hiwar Al-Modden magazine, No. 1381.
33. Hamed S. *Public International Law in Peacetime*. Arab Renaissance House. Egypt.
34. Hindi, E. *Principles of Public International Law in Peace and War*.
35. Ibn Arafa, M (1815). *Al-Desouqi's Hashia on Al-Sharh Al-Kabeer*. Transmitted by: Al-Nawawi/ Al-Majmoo. Dar Al-Fikr.
36. Ibn Faris, A. (1979). *A Dictionary of Language Measures*. (Investigated by: Abd al-Salam Haroun), Dar al-Fikr.
37. Ibn Hajar, A. (1950). *Fath Al-Bari, Sharh Sahih al-Bukhari*. Dar al-Maarifa.
38. Ibn Manzthur, M. (1993). *Lisan Al-Arab*. (3) edition. Dar Sader. Beirut.
39. Ibn Qudamah, M. (1994). *Al-Kafi fi Fiqh of Imam Ahmad*. 1st Edition, Dar al-Kutub al-Ilmiyya. Beirut.
40. Ibrahim, M. *Al-Waseet Lexicon of the Arabic Language Academy*, Dar Al-Dawa.
41. Joni, H. Article entitled: *National Liberation Movements in the Light of International Law*, Battle website http://www.alma3raka.net/spip.php?page=article&id_article=141
42. Resolutions of the General Assembly at the United Nations since 1946, see their website <http://www.un.org/ar/sc/documents/resolutions>.
43. Saleh, J. (1990). *A Study in International Organizations*, Dar Al-Hikma, Baghdad.
44. Shukri, M. *Introduction to Public International Law in Peacetime*. House of Millions. Beirut

أهلية حركات التحرير في إبرام المعاهدات الدولية بين الفقه الإسلامي والقانون الدولي

عبدالرحمن سلمان نصر الداية

أستاذ المساعد بكلية الشريعة والقانون- الجامعة الإسلامية بغزة- فلسطين

abdelrahman.aldaya@gmail.com

استلام البحث: 2022/6/4 مراجعة البحث: 2022/6/21 قبول البحث: 2022/6/30 DOI: <https://doi.org/10.31559/SIS2022.7.2.4>

الملخص:

إبرام المعاهدات الدولية في الشريعة الإسلامية والقانون الدولي لا يصح إلا إذا كانت من صاحب السلطة أو من ينيبه. لكن وجود حركات التحرير أصبح واقعاً في بعض الدول هدف رؤسائها ومنتسبيها المطالبة بحقوق الشعوب وتمثيل مصالحهم والمدافعة عنهم داخلياً وخارجياً. وقد بين الباحث في هذا البحث أهلية حركات التحرير في إبرام المعاهدات الدولية وتمثيل الشعوب في الشريعة الإسلامية والقوانين الدولية.

الكلمات المفتاحية: أهلية؛ حركات التحرير؛ المعاهدات الدولية؛ الفقه الإسلامي؛ القانون الدولي.