Introduction

The seventh century in the East was a time of major turbulence and upheavals which culminated in the Muslim conquest and dominion over what had been Sasanian Iran as well as over a significant part of the Byzantine empire. When the Muslims gained their first major victories over the Byzantine forces in the fourth decade of the seventh century CE, and when in the next few decades they overtook large parts of the ancient Near East, they were but a small minority among a large and heterogeneous population, made up of various ancient peoples, ethnicities, cultures, and religions. The encounter between the new, and not yet fully formed, Muslim religion and society and these ancient societies and cultures was a momentous event for both the conquerors and the conquered, as is well attested by the contemporary sources that have survived.[1] It raised hopes of freedom and change in some of the conquered peoples, including the Jews, the Samaritans, and the Monophysites, and generated great fear and awe in others.

While the immediate effects of the conquest seem to have been mild, according to the accepted views nowadays,[2] and allowed life in the conquered territories to take its course, its long-lasting effects were far-reaching.

This book proposes to investigate the emergence of the regulation of the status of non-Muslims under Muslim rule beginning with the initial agreements signed at the time of the conquest and continuing into the seventh to ninth centuries, a period in which the relationship between the Muslim rulers and the numerous populations of conquered peoples was formed. It was during this latter period that endeavours were made to create a consistent policy regarding the conquered population, and the

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document of *Shurūṭ ʿUmar*, which was to become canonic, was drawn up. The book thus tries to track both the immediate initial stages and the *longue durée* processes that stood behind the formation of the status of non-Muslims under Muslim rule for many centuries to come. Unlike former works on the subject, this research focuses on the *origins* and on the *process* of the formation of the status rather than on the established fixed status. Moreover, it attempts to do so from an interdisciplinary viewpoint, integrating long-standing traditions, customs, and concepts originating in the worlds of both the conquerors and the conquered.

HISTORY OF RESEARCH

The policy adopted by the conquering Muslims towards the huge and heterogeneous population that they now dominated has attracted the attention of many scholars of Islam. Research of this field has concentrated first and foremost on the examination of the canonical document called *Shūrūṭ ʿUmar*, i.e. 'the Conditions of ʿUmar' (also called 'the Pact of ʿUmar', or 'the Petition to ʿUmar')[3] which defines the relationship between the Muslim conquerors and the non-Muslim population and delineates the status of the latter in Muslim society. The ʿUmar implied is traditionally believed to be the mythological caliph and conqueror ʿUmar b. al-Khaṭṭāb (r. 13–23/634–44).

This document has been discussed again and again in many different scholarly works for a long time,[4] and there has been a continuous debate over its date and its *Sitz im Leben*. For several reasons,[5] the most obvious being that the document reflects a state of established Muslim rule and of the close coexistence of Muslims and non-Muslims, the majority of scholars who referred to this document believed that, in its present form, it was not a product of the days of the conquest itself, as its title implies, and as Muslim tradition claims. Other arguments include its unresolved inconsistency with reports regarding the early surrender agreements, and its irrational petition format, in which the conquered ask of their own initiative that such a series of restrictions be imposed upon them. Rather, it was *justifiably* assumed that the existing document was a product of a later period, and was formulated by the Muslims some time during the eighth or ninth century. It is thus considered by most scholars a pseudo-epigraphic document which was attributed to the mythological caliph and conqueror.[6]

It should be emphasized, however, that the probable date suggested by most scholars, the eighth–ninth century, is nevertheless a comparatively

early date as regards Muslim law. This makes this document (as well as other parallel documents of its time) especially important when attempting to trace the formation of the status of non-Muslims.

Research regarding the status of non-Muslims as reflected in *Shurūṭ ʿUmar* treated a variety of issues. The most renowned works, written by Arthur S. Tritton and Antoine Fattal, provided an extensive survey of the status of non-Muslims under Muslim rule in the document and in Muslim legal literature, and reviewed its implementation through the ages. Regarding the circumstances of its composition, Tritton, followed by Fattal, believed that given the above considerations, the document must have been drawn up as 'an exercise in the schools of law to draw up pattern treaties'.[7] Alternatively, Albrecht Noth and Mark Cohen argued that it was the product of an ongoing process which incorporated early elements from the time of the conquest, especially those regarding the security of the conquering minority, with new elements which reflected the reality of later times.[8]

Cohen also raised the question of the form of the document, questioning the implausible idea that the non-Muslims actually came asking their Muslim rulers for such conditions as are listed in the document; he concluded that 'the Pact of ʿUmar may be seen as an outgrowth of the conquest treaties (Noth's view) but transformed into the mold of a petition'.[9] In this work Cohen also enriched the discussion by adducing early and previously unknown versions of the *Shurūṭ*.[10] Noth raised several issues,[11] one of which was the purpose of the *Shurūṭ*. He asked specifically whether its purpose was, in fact, to humiliate the non-Muslims. Based on an exhaustive analysis of the document itself, he concluded that the document's intention was not in fact to humiliate, but rather to differentiate between Muslims and non-Muslims. He reasoned that the fact that the Muslim conquerors were but a small minority among the conquered population caused a need for a means of differentiation between the two groups. This view relied necessarily on his claim that although the existing document was composed at a later time, it nevertheless reflects the conditions of the conquest rather than those of later periods and circumstances.

Daniel E. Miller raised the question of the date of the canonization of the document. In his Ph.D. thesis he followed the various versions of the petition to ʿUmar, sorted them out according to the various legal traditions, and traced the development of the document from its nascent stages to its canonization. Although Miller believes that the document goes back in its embryonic stages to the second century of Islam, he

nevertheless claims that it became central only during the fourth century of Islam, and believes that it became the normative document only in the seventh.[12]

Until now research has thus focused on various aspects of the status of non-Muslims under Muslim rule in its early stages, mainly on the canonic text of the *Shurūṭ*, and on Muslim *ḥadīth* and legal literature. In addition, historiographic, religious, polemic, and other materials which originated in the non-Muslim sources of Islamicate society were employed mostly in order to examine the actual implementation of the restrictions.

An additional subject which attracted less attention was the initial surrender agreements.[13] These were examined separately from the *Shurūṭ*, and their veracity has often been questioned. In addition, although some scholars raised the question of the incompatibility of these agreements with the *Shurūṭ*, there has been no serious attempt until now to try and trace the process of transition from the agreements to the canonical text of the *Shurūṭ*. Additionally, both the surrender agreements and the *Shurūṭ* have been examined mainly through Muslim sources or sources emanating from Islamicate society.

Goals of the Present Research

Unlike previous works, which focus mainly on the final product, i.e. the *Shurūṭ*, its implications and interpretations within Islamicate society, this book endeavours to look for its roots and origins, searching for these not only in the Arabian and Muslim world, but in the ancient cultures and civilizations of the conquered lands and peoples as well. The key working assumption is that the Muslims did not devise the principles that lay at the basis of the surrender agreements and *Shurūṭ ʿUmar ex nihilo*. The agreements, if indeed genuine, as I endeavour to demonstrate, must have relied on some existing model. Similarly, *Shurūṭ ʿUmar*, which gradually replaced the surrender agreements, and purporting to be a comprehensive surrender agreement, did not emerge *deus ex machina*; rather, it was conceived in a long and complex process, and must have been inspired by some former patterns and concepts that guided its creation. These may have originated in the Arab society most familiar to the Muslim conquerors, but may have also stemmed from the ancient societies of the conquered peoples, including Hellenistic–Roman–Byzantine culture, and Iranian society and culture. Verification or negation of this approach in the case of the initial surrender agreements or the *Shurūṭ* naturally entails an examination of the sources representing these cultures which were

dominant in the area prior to the arrival of the Muslims as well, and thus requires research more interdisciplinary in its nature.

In this respect, this research joins a growing group of scholars who assume that the development of Muslim society can be better understood in its wider historical context, rather than as a world apart. In the last decades attention has been drawn to the significant contribution of non-Muslim sources to the understanding of Muslim history in general, and to the wide use of non-Muslim sources, including Greek, Syriac, Persian, Jewish and other sources contemporary with the period of the conquest in particular. This innovative course of research was led by Patricia Crone and Michael Cook in their revolutionizing book *Hagarism*,[14] and was later followed by Michael Morony,[15] Lawrence Conrad,[16] Robert Hoyland,[17] Chase Robinson,[18] and others.

The present book attempts to use not only contemporaneous evidence originating in sources other than Muslim ones in order to understand the transition period, but earlier sources as well. Hence, source material relating to periods preceding the conquest is employed, in an endeavour to delve into the history, traditions, and culture of the conquered societies in order to gain new insights regarding the concepts that shaped the status of the non-Muslims in Islamicate society.

Using these varied sources originating in the various cultures that preceded the Muslim conquest, the book aims to draw a continuous full-length picture of the process of the formation of the relationship between the conqueror and the conquered from the first encounters and initial surrender agreements particular to each city or region, through the preliminary endeavours to create a consistent policy regarding the conquered population, the acceptance of *Shurūṭ ʿUmar*, and, at the end, the question of its actual enforcement from the ninth to the eleventh centuries.

The Structure of the Book

The opening chapter examines the agreements made between the surrendering cities and their Muslim conquerors. As noted above, these have been examined separately before, their authenticity was often doubted, and their content was considered solely in view of the Muslim sources. This chapter endeavours to prove that the agreements were in fact an authentic product of the interaction between the conquerors and the conquered, and that they reflected, to a great extent, an ancient heritage of the conquered societies regarding the customs, the procedures, and the documents that were part and parcel of surrendering.

The process of the transition from multiple and inconsistent agreements to the creation of one general set of rules to be imposed upon all non-Muslim populations is dealt with in the second chapter. I propose here that this process involved an internal discussion within the Muslim world over the continuing validity of the surrender agreements, and over various proposed alternatives of such a uniform document. While it is shown that the Muslims accepted the traditionally sacrosanct character of these documents, it is argued that the need for a uniform and accepted policy regarding the non-Muslims living under Muslim rule became urgent, and overcame the inhibitions and reservations. The discussion regarding the various alternatives ended, in its turn, in the complete victory of *Shurūṭ ʿUmar* over its competitors.

The third chapter tackles the question of ʿUmar II's role in the process. It attempts to reinforce a long-standing thesis, already raised by Tritton and Fattal, that the basis of the *Shurūṭ* was laid by ʿUmar II b. ʿAbd al-ʿAzīz (r. 99–101/717–20) by showing that that the principle of the *ghiyār*, i.e. the differentiating signs between Muslims and non-Muslims via dress, appearance, and public behaviour, which forms the main part of the *Shurūṭ*, was part and parcel of the ideology of the exaltation of Islam which was widely promoted by ʿUmar b. ʿAbd al-ʿAzīz.

The fourth chapter of the book contributes to the long-standing discussion regarding the actual enforcement of *Shurūṭ ʿUmar*. I attempt to show here that in contrast to the generally accepted notion that until the twelfth century the *Shurūṭ* were enforced only sporadically, Muslim rulers from the ninth century onwards in Egypt and Syria often attempted to enforce the *Shurūṭ* with varying degrees of success throughout the caliphate.

Although last, the fifth chapter is central to the thesis of the book. This chapter, entitled 'The provenance of the modes of subordination of non-Muslims', aims to trace the origins of the various clauses that make up the *Shurūṭ*. A large part of the chapter is dedicated to the origins of the *ghiyār*, in attempt to understand what ends they were meant to achieve. The main thesis in this chapter is that most of the restrictions originated in rules and customs that were prevalent in Byzantine and Sasanian societies. There is, however, a significant difference between these two sources: the restrictions originating in the Byzantine empire revert mainly to Byzantine law regarding Jews in the empire, a clear and straightforward transfer of a code regarding members of a dominated religion. However, the rules originating in the Sasanian realm, mainly those regarding *ghiyār*, revert to the ideal of the Sasanian class system, which was promoted in

Iran by the Sasanian aristocracy, and demanded that an external set of signs – including dress, paraphernalia, and public customs – distinguish between the elites and the commoners. This Sasanian ideal of an immobile hierarchic society, where each estate is clearly discernible through its dress and paraphernalia, was adopted – and in fact appropriated – by the Muslims in order to distinguish between Muslims and non-Muslims, as a way of establishing their own superiority.

I cannot end this introduction without making the following statement: my work is purely academic; at no stage of this research was there any intention that it should serve any political ends.[19] I am aware of course that its results, especially those in Chapter 4 and Chapter 5, may be used by some to support claims of an 'inherent policy of humiliation towards non-Muslims in Islam' – a claim that should immediately be rejected. My opinion is that one cannot compare the ancient and medieval climate regarding social status and hierarchy with the views of the modern world. In ancient and medieval societies social hierarchy, as well as discrimination between various groups, was accepted, and was almost self-evident. (This is true, by the way, even for democratic Athens, where women, *metoikoi*, and slaves, who together made up the major part of Athenian society, did not have the same rights as the Athenian citizens and were socially inferior.) None of these societies believed in equality or equal rights the way modern Western societies do. I therefore believe that judgement of these societies according to our values is anachronistic and useless. There is no sense in trying to attach these views and concepts blindly to contemporaneous Islam, which just like any other religious or political group is made up of diverse views and notions. In sum, in my opinion historians should remain loyal to their sources and to their academic disciplines, and the results of their research should remain as detached as they could possibly be from any current political or social debates and controversies.

I

The Roots and Authenticity of the Surrender Agreements in the Seventh Century

The early surrender agreements made between the Muslim conquerors and the non-Muslim inhabitants of the conquered cities are a common feature throughout early Muslim historiographic and legal literature. Surrender agreements are often mentioned, and at times cited in full, by al-Balādhurī, al-Ṭabarī, al-Yaʿqūbī, Ibn Aʿtham al-Kūfī, Ibn ʿAbd al-Ḥakam, Abū Yūsuf, Abū ʿUbayd, and Yaḥyā b. Ādam; they are also mentioned sporadically in many other compositions.

These agreements have been studied by various important scholars, from numerous points of view.[1] The main claim against the authenticity of the surrender agreements lies in the fact that some of the agreements cited by Muslim authors are detailed and comparatively long documents. They include not only general conditions concerning payment or taxation on the side of the conquered and the obligation of protection of people, property, and prayer-houses, but in fact many intricate details regarding arrangements concerning public matters as well as people's rights and property. The agreements are written, witnessed, and signed – usually by the commander of the Muslim army – and at times are reported to have been sealed. They seem to be too complex and versatile for conquerors who had recently emerged from the desert and were not yet sure of their position in regard to the conquered population. Thus Fattal believes that the early agreements were rather succinct and undetailed. According to this view, some of these agreements were made verbally, and it is doubtful whether many of them were in fact written down at the time of the conquest.[2]

The existence of the famous treaty between Nubia and ʿAmr b. al-ʿĀṣ' successor, ʿAbdallāh b. Abī Saʿd b. Abī Sarḥ, concluded in 652 and known

as the *baqṭ*,[3] has been doubted by several scholars. Peter M. Holt claims that 'the treaty, almost certainly legendary, represents an attempt to ret-roject conventions of Muslim–Nubian relations which had developed by the 4/10th century'.[4] Michael Brett too claims that 'it is a product of Muslim jurisprudence', and Jay Spaulding presented it not long ago as a forgery meant to promote Muslim interests.[5] However, in 1972 in the excavations at Qaṣr Ibrīm in Egyptian Nubia, a papyrus scroll from the eighth century was discovered, which contained a letter from the 'Abbāsid governor in Egypt written in 141/758 to the king of Nubia and Muqurra, demanding from him 'what you owe of the *baqṭ* about which a peace agreement was made with you',[6] and demanding that the Nubians fulfil their side of the pact 'if you wish us to fulfil for you our compact (*'ahd*)'.[7] Although this letter is not the original conquest agreement, it indicates that the governor in the mid-eighth century believed that there was a valid surrender agreement, similar in its contents to the agreement found in the literary sources. The authenticity of the Nubian *baqṭ* is thus well attested by this letter, and as a result provides some support for the authenticity of surrender agreements that are referred to or cited by Muslim authors; yet it provides only a single, somewhat late, piece of evidence.

Two scholars, Albrecht Noth and Wadād al-Qāḍī, dedicated articles specifically to the question of the authenticity of these agreements.[8] Noth believes that the reports concerning the agreements reflect authentic documents, though these have been altered at times by the transmitters. He nevertheless assumes that some details, such as the obligation not to revile or hit Muslims, or the obligation to build roads or bridges, were added on later.[9] He adds that since we do not possess any copy of an original contract, we do not have any secure means of verifying whether these agreements are authentic, forged, or just a fiction. The question of the genuineness of these agreements, he notes, can only be examined with the help of inner criteria, which unfortunately can only be of approximate value.[10]

Al-Qāḍī has attempted to further support the authenticity of the surrender agreements.[11] She bases her argument on the texts of the agreements themselves, and following their comparison arrives at the conclusion that they were drawn up in similar ways, that they are grounded on similar formats including basically the same elements, that their style is standard-ized, and that their content is analogous. In addition, she also mentions that there exist formal Muslim documents of a different nature from the end of the first century of Islam that include similar phrasing, thus

supporting the idea that legal documents exhibiting the same style were already being written at the time.[12]

Al-Qāḍī's work does indeed go far in advocating the case for the authenticity of the agreements. In this chapter I would like to add further support to this argument with the aid of evidence found outside the corpus of Muslim literature. The evidence I will present here originates in the realm of the conquered rather than that of the conquerors. This external evidence is then supported and enhanced by the Muslim sources themselves. In this chapter it will be argued that the surrender agreements made between the Muslim conquerors and the representatives of various conquered entities (cities, regions, or groups) have their origin in an ancient tradition of international diplomacy and law which, *mutatis mutandis*, was still prevalent throughout the territories when conquered by the Muslims. This tradition was not only a norm accepted by the conquered population at the time of the conquest, but was known to the Muslim conquerors as well. If this is true, then not only is there no need to suspect the authenticity of these agreements, there is in fact good reason to acknowledge their validity.

TREATIES BEFORE THE MUSLIM CONQUEST

International treaties formed the main basis for international relations from ancient times throughout the ancient Near East, as well as throughout the Hellenistic, Roman, and Byzantine world.[13] I will give here just a succinct summary of this institution which highlights the predominant characteristics of this tradition in the early periods. This will be followed by a more detailed description of such treaties and agreements in the Byzantine period, prior to the Muslim conquest.

In the Graeco-Roman world international pacts and agreements were considered part of the *ius gentium* (the law applicable to all people). The treaty itself was under the sacred protection of the deity invoked by the oath. Zeus/Jupiter was called *Zeus horkios kai pistios*, i.e. the 'the guardian of oaths and good faith (*pisitis/fides*)'. This was the actual 'basis of obligation' in all agreements under international law. The requirement that treaties should be upheld (*pacta sunt servanda*) became a categorical imperative of international law.[14]

This tradition of treaty-making was characterized by various common elements: the pacts or agreements were concluded following preliminary negotiations; they required ratification of the sovereign body; they were