

# ‘Umar b. al-Khaṭṭāb’s Treaties with the People of the Book: Shifting Legal Boundaries in Muslim-Christian Relations

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## Abstract

*Muslim and non-Muslim historical sources provide us with contradictory stipulations in the treaties attributed to the second Caliph of Islam ‘Umar b. al-Khaṭṭāb. This article argues that the initial treaties were non-intrusive, with few, if any restrictions on the non-Muslim populations. Notwithstanding that, some security concerns may have been implemented by ‘Umar’s generals during the early conquests on a temporary basis. When the major urban centres came to be classified as amṣār al-Muslimīn, the restrictions that had been imposed in the garrison towns of Kūfah, Baṣrah, and Fustāṭ were now transferred to cities like Damascus, Jerusalem, and Ṣan‘ā’. The article concludes that over time, more and more restrictions were placed on the local non-Muslim populations, beginning with the decrees of the Umayyad Caliph ‘Umar b. ‘Abd al-Azīz and culminating with the edicts of the Abbasid Caliph al-Mutawakkil, after which the Pact of ‘Umar took its final form.*

## Keywords

‘Umar b. al-Khaṭṭāb, ‘Umar b. ‘Abd al-Azīz, al-Mutawakkil, covenants, Pact of ‘Umar, Muslim-Christian relations, Islam, People of the Book.

## Introduction

It is generally agreed in Muslim and non-Muslim sources that the Prophet Muḥammad (peace be on him) (d. 11/632) and the first caliphs of Islam issued treaties of protection to the non-Muslim communities of their time, leaving little room to doubt that authentic historical agreements once existed.<sup>1</sup> As these treaties generally had few provisions, their *laissez-faire*

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<sup>1</sup> For a comprehensive overview of all written documents in the era of the Prophet and the rightly-guided caliphs, see Muḥammad Ḥamīd Allāh, *Majmū‘at al-Wathā‘iq al-Siyāsiyyah li ‘l-‘Ahd al-Nabawī wa ‘l-Khilāfah al-Rāshidah* (Beirut: Dār al-Nafā‘is, 2009).

approach permitted the development of a living tradition that allowed non-Muslim communities to carry out their activities without interference from the Islamic government as long as they paid the *jizyah*.

During the reign of the second Caliph of Islam ‘Umar b. al-Khaṭṭāb (r. 13-23/634-644)—a period marked by the most expansive territorial expansion of the early Muslim empire—numerous treaties were concluded with non-Muslim communities.<sup>2</sup> Although some of these treaties introduced new stipulations, they generally imposed few, if any, significant restrictions. Indeed, some of these agreements even conform to the Covenants attributed to the Prophet Muḥammad,<sup>3</sup> presenting a self-image of the nascent Muslim community as rulers committed to justice who were religiously bound to protect different faith communities.

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<sup>2</sup> In this article, the term “Covenant” with a capital “C” refers to a document emanating from non-Muslim sources, while with a small “c” it is a translation of the Arabic word “*ahd*”; a “Compact” is a document that can only be found in Muslim sources; while a “Treaty” with a capital “t” is a reference to a document found both in Muslim and non-Muslim sources. The use of the word “treaty” with a small “t,” however, is a general reference to an agreement. The same rule applies for the plural in all of these cases. As for the “Pact of ‘Umar,” it is a specific reference to the document said to have been issued to Christians by ‘Umar b. al-Khaṭṭāb and which applies discriminatory measures against them.

<sup>3</sup> For works dealing with the issue of the Prophet’s Covenants, see Ibrahim Zein and Ahmed El-Wakil, *The Covenants of the Prophet Muḥammad: From Shared Historical Memory to Peaceful Co-Existence* (London: Routledge, 2022); Zein and El-Wakil, “The Ṣiffin Arbitration Agreement and Statecraft in Early Islamic Political Documents,” *Oxford Journal of Islamic Studies* 33, no. 2 (2022): 153-202.; Ahmed El-Wakil, “The Prophet’s Letter to al-‘Alā’ b. Al-Ḥaḍramī: An Assessment of Its Authenticity in Light of the Covenants and the Correspondence with the People of Yemen,” *Islam and Christian-Muslim Relations* 30, no. 2 (2019): 231-62; El-Wakil, “Searching for the Covenants: Identifying Authentic Documents of the Prophet Based on Scribal Conventions and Textual Analysis” (master’s thesis, Hamad Bin Khalifa University, 2017); El-Wakil, “The Prophet’s Treaty with the Christians of Najran: An Analytical Study to Determine the Authenticity of the Covenants,” *Oxford Journal of Islamic Studies* 27, no. 3 (2016): 273-354; John Andrew Morrow, *The Covenants of the Prophet Muḥammad with the Christians of the World* (Tacoma, WA: Angelico Press & Sophia Perennis, 2013); Morrow, *Islām and the People of the Book: Critical Studies on the Covenants of the Prophet*, 3 vols. (Cambridge: Cambridge Scholars Publishing, 2017); Morrow, “The Covenants of the Prophet and the Problems of Transmission: An Analysis of a Manuscript Copied by Fāris al-Shidyāq,” *Religions* 12, no. 9 (2021): 751, <https://doi.org/10.3390/rel12090751>; Gayane Mkrtumyan, “An Historical Evaluation of the Covenants of the Prophet Muḥammad and ‘Alī ibn Abī Ṭālib in the Matenadaran,” *Religions* 12, no. 1 (2021): 138, <https://www.mdpi.com/2077-1444/12/2/138>; Mkrtumyan, “The Treatises Named after the Prophet Muhammad (“Great Manshur” and “Little Manshur”) in Medieval Armenian Bibliography,” *Humanities and Social Science Research* 4, no. 4 (2021): 35-41; Mkrtumyan, *al-Marāsīm--al-‘Uqūd ka Maṣdar li ‘l-‘Ilāqāt al-Armaniyyah al-‘Arabiyyah bayn al-Qarn 7 wa 12 M.*, trans. Alexander Kashishian (Yerevan: Yerevan State University, 2022).

However, over time, this self-image of justice and protection came to be juxtaposed with one in which non-Muslims have to endure constant humiliation by their new Muslim masters. The self-image of Muslims as subjugators crystalized during the Abbasid period (132-936/750-1258) when in a cultural milieu of heightened interreligious antagonism, the Pact of 'Umar emerged.<sup>4</sup> A. S. Tritton points out that during the early conquests "no treaty with any Syrian town at all resembles" the Pact of 'Umar, for "they are all quite simple."<sup>5</sup> For Mark Cohen, it was formulated in the developed Muslim state "in the literary frame of a petition-decree."<sup>6</sup>

How can two parallel literary trajectories be reconciled with one another when it comes to the People of the Book, the first in the form of the Covenants which appear to have preserved a historical memory of a *laissez-faire* approach, and the second, in the form of the intrusive and humiliating Pact of 'Umar? Perhaps the answer may lie in Albrecht Noth's remark in which he hints at the importance of security, namely, "that during the first decades of Muslim expansion the Muslims were but a minority and were vastly outnumbered in most of the conquered territories, it is obvious whose identity it was desirable and necessary to recognize—namely that of the (few) Muslims!"<sup>7</sup> He adds that a "large group of clauses," in the Pact of 'Umar, address "the problems that arose during the beginnings of a mixed Muslim/non-Muslim community. All these regulations show that Muslims strove to draw a very clear distinction between the spheres of both groups, with the aim of protecting Muslim minorities in a new and alien environment, who had to be careful no[t] to lose their (not yet fully developed) identity."<sup>8</sup>

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<sup>4</sup> The four most important studies on the Pact of 'Umar are Milka Levy-Rubin, *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence* (Cambridge: Cambridge University Press, 2011); Mark R. Cohen, "What was the Pact of 'Umar? A Literary-Historical Study," *Jerusalem Studies in Arabic and Islam* 23 (1999): 100-57; Albrecht Noth, "Problems of Differentiation between Muslims and Non-Muslims: Re-Reading the 'Ordinance of 'Umar' (al-Shurūṭ al-'Umariyya)," in *Muslims and Others in Early Islamic Society*, ed. Robert G. Hoyland (Aldershot: Ashgate, 2004), 103-24. A. S. Tritton, *The Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of 'Umar* (London: Humphrey Milford, Oxford University Press, 1930). Readers may also consult Youshaa Patel, *The Muslim Difference: Defining the Line between Believers and Unbelievers from Early Islam to the Present* (New Haven: Yale University Press, 2022), 82-90 and Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), 69-72.

<sup>5</sup> Tritton, *The Caliphs and Their Non-Muslim Subjects*, 9.

<sup>6</sup> Cohen, "What was the Pact of 'Umar?" 129.

<sup>7</sup> Noth, "Problems of Differentiation between Muslims and Non-Muslims," 118.

<sup>8</sup> *Ibid.*, 122.

In this paper, we will expand Noth's observations and propose that these literary developments can perhaps be understood from the perspective of an evolving Islamic polity in which Muslims initially devised non-intrusive policies towards subjects that capitulated peacefully (*ṣulḥan*); how as a minority they had general security concerns in new and unfamiliar enemy terrain; and how they implemented particular restrictions in lands taken by force (*anwatan*) to guarantee law and order and their own safety amidst potential insurgences. With time, Muslims implemented imperial and administrative policies to enforce Islamic social norms and cultural dominance to secure their own interests in predominantly non-Muslim cultural surroundings.

Overall, we propose that the Pact of 'Umar developed from a truce (*ṣulḥ*) issued by Abū 'Ubaydah b. al-Jarrāḥ (d. 18/639), which gradually evolved over time and was eventually attributed to 'Umar. Our analysis reveals that the Pact of 'Umar is subject to a complex legal history that encompasses various shifts in the Islamic self-image. We argue that its development was influenced by multiple factors, including the Covenants of the Prophet and 'Umar; the process of renewing and ratifying treaties; security measures enacted by 'Umar's generals in the areas that were conquered by force, including specific regulations that 'Umar enforced in the Muslim administrative centres (*amṣār*); the development of Muslim imperial policy; 'Umar b. 'Abd al-'Azīz's decrees to non-Muslim majority cities that acquired their status as *amṣār*; al-Shāfi'ī's Template Agreement; and the edicts of al-Mutawakkil.

### The Covenants of 'Umar

There is evidence in historical records that the policies of the first caliphs of Islam towards the People of the Book were non-intrusive and that this was based on some sort of command by the Prophet Muḥammad that is consistent with the spirit of the Covenants. A tradition reported by al-Bukhārī (d. 256/870) has 'Umar state prior to his death: "I instruct the Caliph who will succeed me to abide by the protection of Allah and that of His Messenger (*bi dhimmat Allāh wa dhimmat Rasūlih*) [towards the protected people]. He must fulfil the Covenant that has been granted to them (*yūfā lahum bi 'ahdihim*), fight on their behalf, and not burden them with more than they can bear."<sup>9</sup> In his Covenant with Patriarch Sophronius (d. 638 CE), 'Umar explicitly states

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<sup>9</sup> Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ* (Damascus: Dār Ibn Kathīr, 2002), 751, ḥadīth 3052; also see 336-37, ḥadīth no. 1392 at 337; 910-12, ḥadīth no. 370, at 912. Also see Ya'qūb b. Ibrāhīm al-Anṣārī Abū Yūsuf, *Kitāb al-Kharāj* (Beirut: Dār al-Ma'rifah, 1979), 125; Aḥmad b. al-Ḥusayn al-Bayhaqī, *al-Sunan al-Kubrā*, ed. Muḥammad 'Abd al-Qādir 'Aṭā', 10 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003), 9:347, ḥadīth no. 18741.

that he is extending his protection to Christians “because the honourable and beloved Prophet sent by Allah honoured them with his seal, which he gave to them using his blessed hand when he commanded that they be looked after and protected.”<sup>10</sup> ‘Umar’s Covenant with the Christians of Mesopotamia,<sup>11</sup> which has been reported in the *Chronicle of Seert*, closely follows the language and structure of the Covenants of the Prophet Muḥammad upon which it was modelled.

‘Umar is said to have granted a Covenant to Gabriel of Qartmin, the Bishop of Ṭūr ‘Abdīn, which also follows the same terms and conditions as the Prophet’s Covenants. Although it is no longer in our possession, a Syriac manuscript has summarized the contents of the original text which states that the monks are to be free of all taxation, that the *jizyah* should be levied at a rate of four dirhams, and that whoever violates its stipulations shall be cursed by God for having gone against the commands of the Prophet Muḥammad.<sup>12</sup>

A manuscript with a *terminus post quem* of 367/978 recalls a legendary encounter between ‘Umar and an unnamed monk where he is reported to have acknowledged the Covenants of the Prophet during his caliphate. During their conversation, ‘Umar pledges to uphold the Prophet’s injunctions towards the monks and disavows himself from anyone who would do them harm.<sup>13</sup>

The Catholicos Isho‘yahb III (d. 659 CE), who lived during the caliphates of ‘Umar and ‘Uthmān b. ‘Affān (r. 24-35/644-656), remarked that Muslims are “no enemy to Christianity, but they are even praisers of our faith, honorers of our Lord’s priests and holy ones, and supporters of churches and monasteries.”<sup>14</sup> Isho‘yahb III’s observation mirrors a

<sup>10</sup> Zein and El-Wakil, *Covenants of the Prophet Muḥammad*, 255. For an English translation from the Greek text of Procopios of Nazianzus, see Daniel J. Sahas, *Byzantium and Islam* (Leiden: Brill, 2021), 170-72. For the Arabic text, see ‘Ārif al-‘Ārif, *al-Mufaṣṣal fī Ta’rīkh al-Quds* (Jerusalem: Maṭba‘at al-Ma‘ārif, 1999), 92.

<sup>11</sup> See Addai Scher, *Chronique de Séert: Histoire Nestorienne Inédite*, *Patrologia orientalis* t.7, fasc.ii (Paris: Firmin-Didot, 1911), 620-23 [300-303].

<sup>12</sup> See François Nicolas Nau, “Un colloque du patriarche Jean avec l’émir des Agaréens et faits divers des années 712 à 716 d’après le MS du British Museum Add. 17193,” *Journal Asiatique*, no. 5 (1915): 276-79. Also see Robert G. Hoyland, *Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish and Zoroastrian Writings on Early Islam* (Piscataway, NJ: Darwin Press, 2019), 123. Gabriel of Qartmin, *Life XII*, ed. Andrew Palmer, p. 72, <https://archive.org/details/LifeOfGabrielOfQartminEd.AndrewPalmer>.

<sup>13</sup> See Ibrahim Zein and Ahmed El-Wakil, “‘Umar ibn al-Khaṭṭāb’s Encounter with an Unnamed Monk: From History to Legend,” *Islam and Christian-Muslim Relations* 34, no. 2 (2023): 157-81, <https://doi.org/10.1080/09596410.2023.2229615>.

<sup>14</sup> Michael Philip Penn, *When Christians First Met Muslims: A Source Book of Early Syriac Writings on Islam* (Oakland: University of California Press, 2015), 36.

stipulation in the Prophet's Covenant with the Christians of Najrān, a text that was in circulation during the Abbasid period,<sup>15</sup> and said to have been scribed in 4/625 by Mu'āwiyah b. Abī Sufyān (d. 60/680):

The Christians hold the right to request assistance from the Muslims to help them repair their churches (*biya'ihim*) and monasteries (*ṣawāmi'ihim*), and for any other matter pertaining to their religious affairs. The Muslims must help them without the aim of receiving compensation, rather they should aim to restore that religion out of faithfulness to the Covenant of the Messenger of Allah, and as a donation and gift to them from Allah and His messenger.<sup>16</sup>

The reconstructed *Chronicle* of Dionysius recalls how Mu'āwiyah behaved in conformity to the above stipulation when he ordered the restoration of the Great Church at Edessa during his reign (41-60/661-680) after an earthquake struck Serūgh on Sunday, April 3, 679 CE and left it in ruins,<sup>17</sup> indicating that there were no major restrictions to the building of churches during the early caliphate. In his Edict to the Orthodox Patriarchate of Jerusalem, Mu'āwiyah acknowledges that the monks "were first set free by the Messenger of Allah, and after him by 'Umar ibn al-Khaṭṭāb,"<sup>18</sup> suggesting that he did not deviate from the Prophet and 'Umar's policies towards the People of the Book. In 67/687, John Bar Penkāyē, a monk affiliated with the Assyrian Church of the East, depicts Mu'āwiyah's rule towards Christians as non-intrusive:

From [the Westerners] a man named Mu'āwiya became king and took control of the kingdoms both of the Persians and of the Romans. Justice flourished in his days, and there was great peace in the regions he controlled. He allowed everyone to conduct himself as he wanted. For, as I said above, they upheld a certain commandment from him who was their guide concerning the Christian people and the monastic order. . . . From everyone they only demanded tribute. They allowed [each] to remain in whatever faith he wished.<sup>19</sup>

John Bar Penkāyē's depiction of a *laissez-faire* approach aligns with the stipulations found in the Covenants, suggesting that the early caliphs' policies towards the People of the Book imposed minimal

<sup>15</sup> See Louis Massignon, "La politique Islamo-Chrétienne des scribes nestoriens de Deir Qunnā à la cour de Bagdad au IX e siècle de notre ère," *Vivre et Penser* 2, no. 2 (1942): 7-14.

<sup>16</sup> Scher, *Chronique de Séert*, 615 [295].

<sup>17</sup> Andrew Palmer, Sebastian P. Brock, and Robert G. Hoyland, *The Seventh Century in the West-Syrian Chronicles* (Liverpool: Liverpool University Press, 1993), 195.

<sup>18</sup> Zein and El-Wakil, *Covenants of the Prophet Muḥammad*, 271. For the original Greek text, see Athanasios Papadopoulos-Kerameus, *Analekta Hierosolymitikes Stachyologias* (St. Petersburg: V. Kirsvaoum, 1897, reprinted in Brussels, 1963), 4:403-4.

<sup>19</sup> Penn, *When Christians First Met Muslims*, 92.

restrictions, if any. Although a detailed discussion of the authenticity of the Covenants lies beyond the scope of this paper, we find that they reflect an early *laissez-faire* attitude that posed a challenge to the imperialistic ambitions of the Muslim rulers and governors to whom they were presented during the Umayyad and Abbasid periods.<sup>20</sup> Efforts to dismiss these Covenants as forgeries may not have always been successful in light of the living tradition, thus requiring the creation of a definitive competing “historical” text to stand in stark contrast to their terms and conditions. Consequently, the Pact of ‘Umar emerged, drawing inspiration from various restrictive measures allegedly implemented during the second Caliph’s reign.

### The Ratification of Treaties

According to Milka Levy-Rubin, the copies of the treaties concluded by the Prophet with the Jews of Maqna and the people of Najran were reproduced from original documents, indicating that “the actual existence of written copies was taken for granted.”<sup>21</sup> This suggests that the Roman and Sasanian practices of issuing treaties were present among the Arabs in Late Antiquity.

The custom of renewing treaties when the contracting party died also appears to have been in place. *The Chronicle of Seert* reports that a delegation sent by the Catholicos Isho‘yahb II (d. 645 CE) met with Abū Bakr (d. 13/634) after the death of the Prophet to formulate a treaty.<sup>22</sup> Abū Yūsuf (d. 182/798)<sup>23</sup> and al-Ṭabarī (d. 310/923)<sup>24</sup> also inform us that the Compact which the Prophet contracted with the people of Najran was renewed after his death by Abū Bakr. It appears, however, to have

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<sup>20</sup> Rather than being categorically rejected, it appears that the texts of the Covenants to Christians were instead contended. Leon Arpee reports how the Armenian writer of the second half of the thirteenth century, Giragos Vartabed, noted that the Catholicos John of Otzun sought a decree from Hishām b. ‘Abd al-Malik so that his people be granted freedom of conscience and public worship, and for churches and clergy to be free from taxation. Arpee believes that these rights were confirmed based on a Covenant of the Prophet. See Leon Arpee, *A History of Armenian Christianity: From the Beginning to Our Own Time* (New York: Armenian Missionary Association of America, 1946), 355. ‘Abd Allāh b. Ishāq b. Ismā‘īl al-Hāshimī, who was related to the Caliph al-Ma‘mūn, appears to have acknowledged the veracity of the Covenants in his epistle to ‘Abd al-Masīh b. Ishāq al-Kindī, indicating that these documents may have been accepted within certain elite circles during the Abbasid period. See Georges Tartar, *Ḥiwār Islāmī-Masīhī fī ‘Ahd al-Khalīfah al-Ma‘mūn* (Strasbourg: Jāmi‘at al-‘Ulūm al-Insāniyyah, 1977), 12.

<sup>21</sup> Levy-Rubin, *Non-Muslims in the Early Islamic Empire*, 38.

<sup>22</sup> Scher, *Chronique de Séert*, 618-19 [298-99].

<sup>23</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 73.

<sup>24</sup> Muḥammad b. Jarīr al-Ṭabarī, *Ta’rīkh al-Rusul wa ‘l-Mulūk*, 8 vols. (Leiden: Brill, 1879-1901), 2:534-35.

been violated during the caliphate of ‘Umar as indicated by a report on the authority of Sulaymān al-A‘mash (d. 148/765) in the *Tafsīr* of Muqātil b. Sulaymān (d. 150/767):

I [i.e. Sulaymān al-A‘mash] asked Sālim [b. Abī ‘l-Ja‘d]: “How did ‘Umar expel them [i.e. the people of Najrān]?” He said: “They increased in number until they reached 40,000 fighters. The Muslims became scared that they could turn against them. Some evil then occurred between them and so they approached ‘Umar and said to him: “What was between us has now been annulled.” They then went away but ‘Umar took advantage of the situation. They returned back to him and said: “We have made peace amongst ourselves, so dismiss your punishment from us.” ‘Umar said: “By Allah! I will never dismiss it.” He then exiled a group of them to Greater Syria (al-Shām), a group to Iraq, and another group somewhere else.”<sup>25</sup>

The report also states:

Had ‘Alī wished to reproach ‘Umar b. al-Khaṭṭāb, may Allah be pleased with them both, he would have done so when the people of Najrān came to see him [during his caliphate]. They had with them a writ inscribed on a piece of leather (*qit‘at adīm*) that bore the seal of the Prophet, peace and blessings be upon him. They said to ‘Alī: “We beseech you by Allah. This is the writ that was scribed by your hand. We therefore seek your intercession and your spoken command, that you send us back to Najrān.” ‘Alī said: “Leave me concerning this. ‘Umar was wise in his ruling.”<sup>26</sup>

Ibn Abī Shaybah’s (d. 235/849) version of the report from Sālim b. Abī ‘l-Ja‘d differs slightly:

The people of Najrān reached 40,000 [fighters] and ‘Umar feared that they could turn against the Muslims. Enmity arose amongst them and so they approached ‘Umar and said, “There has been enmity amongst us, therefore exile us.” The Messenger of Allah had written a writ for them that they should not be exiled. ‘Umar took advantage of the situation and exiled them. They then regretted their decision and returned to ‘Umar requesting that this be annulled but he refused. When ‘Alī became Caliph, they approached him and said, “We ask you by what you wrote with your right hand, and your intercession before your Prophet, for you to annul the ruling that was imposed upon us. He passed judgment and said, “‘Umar was wise in his ruling.” Sālim said, “They believed that if ‘Alī was to

<sup>25</sup> Muqātil b. Sulaymān, *Tafsīr*, ed. Aḥmad Farīd, 3 vols. (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2003), 1:212. According to Michael Lecker, the third destination was Hajar in Baḥrayn. See Michael Lecker, “Najrān Inc.: The Najrānī Exiles in Iraq, Syria and Baḥrayn from ‘Umar ibn al-Khaṭṭāb to Hārūn al-Rashīd,” in *Juifs et chrétiens en Arabie aux Ve et VIe siècles: Regards croisés sur les sources*, ed. Joëlle Beaucamp, Françoise Briquel Chatonnet, and Christian J. Robin (Paris: Association des amis du Centre d’histoire et civilisation de Byzance, 2010), 293-302.

<sup>26</sup> Ibn Sulaymān, *Tafsīr*, 1:212.



reproach 'Umar on anything then it would have been on his ruling concerning the people of Najrān."<sup>27</sup>

Ibn Zanjawayh's report from Sālim states that "'Umar feared they could turn against the Muslims and cause division between them."<sup>28</sup> They then told 'Umar: "We wish to separate ourselves and make our way to Greater Syria (al-Shām)."<sup>29</sup> Perhaps these 40,000 fighters were Arabian Jews who had at one point been allies of the Sasanians and whom 'Umar perceived to be a security threat during his war against Persia.<sup>30</sup> We may also deduce from a correspondence of 'Umar that these Jews relocated to Greater Syria after its subjugation by the Muslims, perhaps to support them in its administration, while the Christians of Najrān, whom they may have clashed with, were relocated to Kūfah.<sup>31</sup> We know that under the rule of 'Uthmān, the bishop of Najrān in Iraq complained about some financial obligations, to which the third Caliph responded by ordering his governor, al-Walīd b. 'Uqbah, to meet their needs,<sup>32</sup> suggesting that perhaps there were no significant Jewish Arabian tribes that had relocated there.

Another possibility could be that 'Umar requested these 40,000 Jewish fighters to relocate to Kūfah instead of Greater Syria to assist the Muslims in their war against the Sasanians. According to Elias bar Shīnāya, 'Umar exiled the Jews of Najrān to Kūfah in 20/641,<sup>33</sup> with Ibn Kathīr concurring

<sup>27</sup> Abū Bakr Ibn Abī Shaybah, *al-Muṣannaf fi 'l-Aḥādīth wa 'l-Āthār*, ed. Kamāl Yūsuf al-Ḥūt, 7 vols. (Riyadh: Maktabat al-Rushd, 1409 AH), 7:426, ḥadīth no. 37017.

<sup>28</sup> Ḥamīd b. Mukhlid Ibn Zanjawayh, *Kitāb al-Amwāl* (Riyadh: Markaz al-Malik Fayṣal li 'l-Buḥūth wa 'l-Dirāsāt al-Islāmiyyah, 1986), 276, ḥadīth no. 418.

<sup>29</sup> Ibid.

<sup>30</sup> See Robert G. Hoyland, *Theophilus of Edessa's Chronicle and the Circulation of Historical Knowledge in Late Antiquity and Early Islam* (Liverpool: Liverpool University Press, 2011), 104-6.

<sup>31</sup> Yāqūt al-Ḥamawī mentions two monasteries of Najrān outside of South Arabia, one in Buṣrā and the other in Kūfah. He explicitly states that it was in Kūfah that 'Umar exiled the Christians of Najrān. See Yāqūt al-Ḥamawī, *Kitāb al-Mushtarik Waḍ'an wa-l-Muftariq Ṣuq'an* (Leiden: Göttingen, 1846), 191. Abū Yūsuf reports in 'Umar's letter to the people of Najrān that he has commanded the governors of al-Shām and Iraq to cater for their needs. It is of course plausible that the Miaphysites of Najrān made their way to al-Shām while those affiliated to the Assyrian Church of the East went to Kūfah. The Jews of Najrān could have in turn relocated to both al-Shām and Iraq. See Abū Yūsuf, *Kitāb al-Kharāj*, 73-74. It should be borne in mind that the Ghassanids had settled in the town of Najrān near Buṣrā before Islam came. See Irfan Shahid, "Arab Christianity before the Rise of Islam," in *Christianity: A History in the Middle-East*, ed. Habib Badr, Suad Abou el Rouss Slim, and Joseph Abou Nohra (Beirut: Middle East Council of Churches, 2005), 437-40.

<sup>32</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 74.

<sup>33</sup> Elias bar Shīnāya, *La Chronographie d'Élie bar-Šinaya: Métropolitain de Nisibie*, ed. L. J. Delaporte (Paris: H. Champion, 1910), 84.

that, in the same year, “Umar exiled the Jews of Khaybar to Dar‘ā (Adhri‘āt) and other cities. He also exiled the Jews of Najrān to Kūfah. He divided Khaybar, Wādī ‘l-Qurā, and Najrān between the Muslims.”<sup>34</sup>

The possibility of security concerns having emerged in the Arabian Peninsula with respect to some Jewish communities during the caliphate of ‘Umar also appears to be supported by Ibn Kathīr (d. 774/1373):

‘Umar sent word to the Jews, saying: “Allah has given me permission to send you into exile. It has reached me that the Messenger of Allah said, ‘No two religions shall coexist in the Arabian Peninsula.’ Therefore, anyone of you who has a covenant (‘*ahd*) with the Messenger of Allah should bring it to me so that I may enforce it. As for those who do not have a covenant (‘*ahd*), they should prepare themselves to leave.” ‘Umar then exiled all those who did not have a covenant (‘*ahd*) from the Messenger of Allah.<sup>35</sup>

‘Umar may have struck an agreement with the Arabian Jews during his caliphate, offering them relocation and the opportunity to be generously rewarded in exchange for supporting the Muslim armies in their military campaigns. It is perhaps in that manner that he dealt with the formidable force of 40,000 Jewish fighters from Najrān among other Jewish communities in the Arabian Peninsula such as Fadak and Khaybar. A precedent for such action could have been the Constitution of Medina, which established a military alliance between the Muslims and the Jews of Medina.<sup>36</sup> In that regard, al-Zuhrī narrates how “the Jews used to raid with the Messenger of Allah, peace and blessings be upon him, and he used to distribute the booty among them.”<sup>37</sup> Such an action by ‘Umar could explain the presence of Jews in the Muslim armies as attested by the earliest non-Muslim sources.<sup>38</sup>

A report on the authority of Yaḥyā b. Sa‘īd tells us, “‘Umar exiled the people of Najrān, its Jewish and Christian population, and he bought from them their lands that were devoid of plants and trees (*bayād arḍihim*), as

<sup>34</sup> Ismā‘īl b. ‘Umar Ibn Kathīr, *al-Bidāyah wa ‘l-Nihāyah*, 15 vols. (Beirut: Dār al-Fikr, 1987), 7:101. Also see al-Ṭabarī, *Ta‘rīkh al-Rusul wa ‘l-Mulūk*, 4:112.

<sup>35</sup> Ibn Kathīr, *al-Bidāyah wa ‘l-Nihāyah*, 4:219.

<sup>36</sup> Michael Lecker, *The “Constitution of Medina”: Muhammad’s First Legal Document* (Princeton: Darwin Press, 2004), 27–31, especially see clauses 18, 27, and 44, at 29–30.

<sup>37</sup> Al-Qāsim b. Sallām Abū ‘Ubayd, *Kitāb al-Amwāl* (Beirut: Dār al-Shurūq, 1989), 294.

<sup>38</sup> See “The Teaching of Jacob the Newly Baptized V. 16,” 39–40; “Letter 14” of Maximus the Confessor, 58; and “The Armenian Chronicle of 661” [i.e., Sebeos], 63–66 in Stephen Shoemaker, *A Prophet Has Appeared: The Rise of Islam through Christian and Jewish Eyes; A Sourcebook* (Oakland: University of California Press, 2011). Also see John of Nikiu, *The Chronicle of John bishop of Nikiu, translated from Zotenberg’s Ethiopic text*, ed. R. H. Charles (London: Williams & Norgate, 1916), 189.

well as their vineyards.”<sup>39</sup> Regardless of whether they were Jewish or Christian, ‘Alī may have felt that ‘Umar gave them a fair and generous compensation, and now that these lands had been transferred to new ownership, it would not have been appropriate for these to be returned to them. The process of confirming, renewing, and attesting the ratification of previous treaties is thus illustrated in the following letter of ‘Alī:

In the name of Allah, the Most Gracious, the Most Merciful. This is a letter from the servant of Allah, ‘Alī b. Abī Ṭālib, Commander of the Believers, to the people of Najrān in Iraq: You brought me a letter from the Prophet of Allah—peace and blessings be upon him—according to which he gave you protection for your lives and wealth. I herein fulfil what was written to you by Muḥammad—peace and blessings be upon him—Abū Bakr, and ‘Umar. Whoever of the Muslims comes to them should fulfil his obligations towards them. They are not to suffer any injustice or maltreatment, and none of their rights shall be infringed upon. This [letter] was scribed by ‘Abd Allāh b. Abī Rāfi‘, ten days having passed in Jumādā al-Ākhira, in the year thirty-seven from the time the Messenger of Allah—peace and blessings be upon him—entered Medina.<sup>40</sup>

It thus appears that the ratification of treaties during the early caliphate was primarily focused on dealing with unforeseen geopolitical circumstances, shifting power dynamics in the newly conquered territories, the relocation of various communities from the Arabian Peninsula, and managing complex administrative challenges.

### Security Measures

The version of ‘Umar’s Capitulation Treaty with the Christians of Jerusalem reported by Eutychius, Patriarch of Alexandria (d. 940 CE), states that “they have been granted protection in respect of their lives, offspring, wealth, and their churches, that these neither be destroyed nor inhabited.”<sup>41</sup> Al-Ṭabarī’s version is similar, explaining that ‘Umar has granted them “security in respect of their persons, wealth, churches and crosses” and that “their churches shall neither be destroyed nor inhabited.”<sup>42</sup> Al-Ṭabarī’s version, however, adds that the Jews shall not live in the same quarters as the Christians and that the people of Jerusalem shall be guaranteed security if they choose to make their way to Roman lands.<sup>43</sup> Although the Capitulation Treaty appears to have been

<sup>39</sup> Ibn Abī Shaybah, *al-Muṣannaḥ*, 7:426, ḥadīth no. 37016.

<sup>40</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 74.

<sup>41</sup> Eutychius, *Annales* (Beirut: E Typographeo Catholica, 1909), 7:17. Also see Jirjis al-Makīn Ibn al-‘Amīd, *Historia Saracenicā Arabicā & Latinā*, ed. Thomas Erpenius (Lugduni Batavorum: Ex Typographia Erpeniana Linguarum Orientalium, 1625), 28.

<sup>42</sup> Al-Ṭabarī, *Ta’rīkh al-Rusul wa ‘l-Mulūk*, 3:105.

<sup>43</sup> *Ibid.*

modelled on the Prophet's Covenants with Christians, it had to deal with subjects who were still loyal to Heraclius, necessitating provisions for safe passage for those wishing to leave, the management of Christian-Jewish animosity, and the establishment of effective security measures.

As the conquests continued, Muslims built garrison towns such as Kūfah, Baṣrah, and Fuṣṭāṭ, known as *amṣār al-Muslimīn*, which they used as military bases. These towns, which had their own distinct Islamic character, had more stringent security measures than elsewhere. It is reported that 'Umar b. al-Khaṭṭāb ordered his freed slave Yarfa' to write down his instructions to the people of the garrison towns (*ahl al-amṣār*) concerning the People of the Book: "that the hair on their forelocks be cut, that they fasten the girdles around their waists, and that their attire (*ziyyahum*) be made recognizable from that of the Muslims (*ziyy ahl al-Islām*)."<sup>44</sup> It appears that 'Umar wanted them to retain their own traditional garbs in order for them to be distinguishable from the Muslims and not infiltrate their ranks. He may also have had some reservations about using them in the bureaucracy for fear that they may divulge state secrets.<sup>45</sup>

The Compact of Khālīd b. al-Walīd (d. 21/642), issued during the caliphate of Abū Bakr to Iyās b. Qabīṣah al-Ṭā'ī, the governor of al-Ḥīrah, stipulates some restrictions on dress, clearly for security reasons:

They may wear whatever they wish, except for any attire of war (*ziyy al-ḥarb*), and they should not resemble the Muslims in the way they dress (*min ḡayr an yatashabbahū bi 'l-Muslimīn fī libāsihim*). If any one of them wears military clothing (*ziyy al-ḥarb*), he shall be asked about it. If he has a good explanation, we shall accept it from him; otherwise, he shall be penalized in proportion to how much armament he is carrying (*'ūqiba bi qadr mā 'alayhi min ziyy al-ḥarb*).<sup>46</sup>

John Bar Penkāyē remarks that during the caliphate of Mu'āwiyah, "there was no distinction between pagan and Christian, the believer was not known from the Jew, and truth was not distinguished from error."<sup>47</sup> His remark implies that there was no strict enforcement of a dress code intended to be discriminatory against non-Muslims. The Prophet's Covenants with the Magi and with the Jews of Khaybar and Maqna

<sup>44</sup> Abū 'Ubayd, *Kitāb al-Amwāl*, 130, ḥadīth no. 138.

<sup>45</sup> See Abū 'Abd Allāh Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, ed. Yusūf b. Aḥmad al-Bakrī and Shākir b. Tawfīq al-'Arūrī, 3 vols. (Dammam: Ramādī li 'l-Nashr, 1997), 1:448-55.

<sup>46</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 144.

<sup>47</sup> Penn, *When Christians First Met Muslims*, 95.

prohibit the hair on the non-Muslims’ forelocks to be cut<sup>48</sup> and allow them to ride horses.<sup>49</sup> The Covenant with the Jews of Khaybar and Maqna even permits them to carry weapons,<sup>50</sup> suggesting that any restrictions that were implemented during the early caliphate were in response to local circumstances.

According to Eutychius, ‘Amr b. al-‘Āṣ (d. 43/664) requested from al-Muqawqis that the Copts aid the Muslims in building two bridges, for them to host and accommodate the Muslims, and that they allow the Muslims to enter their markets and use their bridges between Fuṣṭāṭ and Alexandria.<sup>51</sup> A Compact issued by ‘Iyāḍ b. Ghanm to the bishop of Edessa states that they are required “to guide the Muslims who have lost their way, to repair bridges and roads, and to provide good counsel to the Muslims.”<sup>52</sup> Khālīd b. al-Walīd is also said to have requested the inhabitants of Ullais<sup>53</sup> and al-Rūmiyah<sup>54</sup> to act as guides, and so did Abū ‘Ubaydah concerning the Samaritans.<sup>55</sup> In contrast to the Covenants of the Prophet which prohibit Christians from serving as guides and helpers to Muslims during times of war,<sup>56</sup> it seems that the Companions introduced such stipulations as temporary measures to ensure military success in new, unfamiliar, and potentially hazardous environments where their security was at risk.

### Did ‘Amr b. al-‘Āṣ Impose Discriminatory Measures on Christians?

The reconstructed *Chronicle* of the West Syriac Patriarch Dionysius of Tel-Maḥrē (d. 845 CE) reports the following incident that allegedly took place during the reign of ‘Uthmān:

At this time the Arab general ‘Amr b. Sa’d yielded to the influence of malicious advisers and began to treat the Christians in his province [Damascus] like enemies; for he resolved to humiliate them and to rob them of the symbol of their pride and glory. He ordered all crosses to be extirpated and effaced from walls and streets and places open to view and he forbade the standard of the Cross to be shown on days of feasting and supplication. When the King endorsed this command with menacing

<sup>48</sup> El-Wakil, “Searching for the Covenants,” p. 109 sec. 20, and p. 125, sec. 7.

<sup>49</sup> Ibid., p. 110 sec. 20, and p. 126, sec. 9.

<sup>50</sup> Ibid., p. 110 sec. 20.

<sup>51</sup> Eutychius, *Annales*, 7:24.

<sup>52</sup> Yaḥyā b. Aḥmad al-Balādhurī, *Kitāb Futūḥ al-Buldān* (Beirut: Mū’assasat al-Ma’ārif, 1987), 240. On the same page, see another letter from ‘Iyāḍ b. Ghanm with similar stipulations.

<sup>53</sup> Ibid., 339.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., 216.

<sup>56</sup> Zein and El-Wakil, *Covenants of the Prophet Muḥammad*, 86, 114, 152.

words, like a tyrant, the Jewish people were overjoyed. They began to run up the roofs of temples and churches and to take down the venerable crosses; they also effaced those that were on the streets and walls. On account of this the Christians put on mourning.<sup>57</sup>

This account is noteworthy for two reasons. First, it is the only non-Muslim testimony we have about the prohibition of displaying crosses during the early caliphate, which suggests that prior to this event, no such restrictions were in place. Second, “‘Amr b. Sa’d” is difficult to identify. François Nau<sup>58</sup> believed this ‘Amr to be ‘Amr b. al-‘Āṣ, while Samir Khalil Samir<sup>59</sup> and Abdul-Massih Saadi<sup>60</sup> identify him as ‘Umayr b. Sa’d. However, neither of these men was ever governor of Damascus. It is more plausible that the emir referred to here is ‘Amr b. Sa‘īd b. al-‘Āṣ al-Ashdaq who was governor of Damascus for a brief period during the second civil war. The latter was promised by the Caliph Marwān b. al-Ḥakam to succeed him, but just before his death in Ramaḍān 65 AH/April 685 CE, Marwān transferred the caliphate to his son ‘Abd al-Malik, who appointed ‘Abd al-Raḥmān b. Umm al-Ḥakam as the governor of Damascus. ‘Abd al-Raḥmān b. Umm al-Ḥakam was overthrown from his position by ‘Amr b. Sa‘īd, who afterwards prevented ‘Abd al-Malik from entering the city. Ibn Kathīr reports that they fought for sixteen days until they concluded a pact stipulating that ‘Amr b. Sa‘īd would succeed ‘Abd al-Malik as caliph, but ‘Abd al-Malik betrayed ‘Amr b. Sa‘īd and had him killed in the year 69/688-689.<sup>61</sup> Thus, this account, which Dionysius mistakenly places during the caliphate of ‘Uthmān, likely took place during the short period in which Amr b. Sa‘īd was the governor of Damascus. Dionysius continues:

A certain well-known and God-fearing Christian who had access to the court of ‘Amr told him this: “O good emir, it is unjust to make the accursed Jews, the enemies of our religion, superior to us and free to climb up onto our churches and to make a mockery of our Mysteries and of our crosses.” God put it into the emir’s mind to reply: “I merely commanded that the crosses which we always see when we pass through the streets should be

<sup>57</sup> Palmer, Brock, and Hoyland, *Seventh Century in the West-Syrian Chronicles*, 169-70.

<sup>58</sup> See Nau, “Un colloque du patriarche Jean avec l’émir des Agaréens et faits divers des années 712 à 716 d’après le MS du British Museum Add. 17193,” 225-79.

<sup>59</sup> See Samir Khalil Samir, “Qui est l’interlocuteur Musulman du patriarche Syrien Jean III (631-648)?” in *IV Symposium Syriacum, 1984: Literary Genres in Syriac Literature (Groningen - Oosterhesselen 10-12 September)*, ed. H. J. W. Drijvers et al. (Rome: Orientalia Christiana Analecta 229, 1984), 387-400.

<sup>60</sup> See Abdul-Massih Saadi, “The letter of John of Sedreh: A New Perspective on Nascent Islam,” *Journal of Assyrian Academic Studies* 11 (1997): 68-84.

<sup>61</sup> Ibn Kathīr, *al-Bidāyah wa ‘l-Nihāyah*, 8:307-10.

effaced.” And he ordered one of his constant companions to go out and throw any Jew whom he should find on the roof of a church headlong to the ground. Now one Jew had climbed onto the roof of the great temple of John the Baptist and had broken off the cross. He was just coming down the stairs, when he met that general sent by the emir coming up. This man took the cross from him and brought it down on his head with bone-breaking force; his brains spurted out of his nostrils and he fell down dead. After this all enthusiasm for carrying out the Arab threat evaporated.<sup>62</sup>

This event reportedly took place before 86/705 when the sixth Umayyad Caliph al-Walīd b. ‘Abd al-Malik converted the great church of St. John the Baptist into the Umayyad mosque, as evidenced by the presence of a cross on the roof, suggesting that the first discriminatory measures against Christians began to surface in Damascus during the second civil war.

Dionysius tells us that the emir then “summoned by letter the patriarch John.”<sup>63</sup> However, it appears that Dionysius is conflating two different events belonging to two different periods to two protagonists that share a similar name. The emir who had a conversation with the Miaphysite Patriarch of Antioch John Sedra (631-648 CE) could not have been ‘Amr b. Sa‘īd b. al-‘Āṣ al-Ashdaq, but rather in all likelihood, ‘Amr b. al-‘Āṣ. The conversation between the latter and Patriarch John is recorded in a ninth-century manuscript<sup>64</sup> which states that their encounter took place on “the ninth of this month of May, on holy Sunday,”<sup>65</sup> probably Sunday May 9, 639/Jumādā al-Ūlā 1, 18. This meeting would have taken place during the caliphate of ‘Umar b. al-Khaṭṭāb and after the conquest of Greater Syria in which ‘Amr b. al-‘Āṣ was one of the main generals. As Penn notes, “most suggest that the work witnesses, however distantly, a real encounter between the Patriarch John and a Muslim emir.”<sup>66</sup> The encounter makes no reference to a treaty but is consistent with the early Muslim practice of giving non-Muslims the option to embrace Islam or pay the *jizyah* in exchange for retaining their ancestral faith. This is evident by how “the glorious emir” asks Patriarch John to “either show me that your own laws are written in the gospel and be guided by them or submit to the Hagarene law.”<sup>67</sup> This recollection of the encounter is consistent with the provisions of the

<sup>62</sup> Palmer, Brock, and Hoyland, *Seventh Century in the West-Syrian Chronicles*, 170.

<sup>63</sup> Ibid.

<sup>64</sup> Penn, *When Christians First Met Muslims*, 201.

<sup>65</sup> Ibid., 203.

<sup>66</sup> Michael Philip Penn, “John and the Emir: A New Introduction, Edition and Translation,” *Le Museon* 121, no. 1-2 (2008): 77.

<sup>67</sup> Ibid., 89.

early treaties, which granted non-Muslims authority to govern themselves according to their own laws.

Lastly, we find that in his Compact with the People of Egypt, ‘Amr b. al-‘Āṣ gave the Christians protection in respect “of their persons, creed, wealth, churches, and crosses.”<sup>68</sup> The *History of the Patriarchs of the Coptic Church of Alexandria* informs us how ‘Amr b. al-‘Āṣ had granted a Covenant to Pope Benjamin I which ended the persecution of the Copts at the hands of the Romans.<sup>69</sup> John of Nikiu reports how ‘Amr “took none of the property of the Churches, and he committed no act of spoliation or plunder, and he preserved them throughout all his days.”<sup>70</sup> These texts support the view that ‘Amr b. al-‘Āṣ never prohibited Christians from displaying their crosses or discriminated against them on account of their religion.

### Devising Imperial Policy

As the caliphate solidified itself politically, Muslims began paying attention to other concerns besides their own security. Jurists soon realized that the non-intrusive, *laissez-faire* nature of the early agreements put Muslims at a disadvantage when contending with daily realities such as attacks on the character of the Prophet, proselytization, selling intoxicants to Muslims, and the marriage of a non-Muslim man to a Muslim woman. The following report by Abū Bakr al-Bayhaqī (d. 384/994) in which the Companions responded to an attack against the character of the Prophet is a case in point:

‘Arafah b. al-Ḥārith al-Kindī passed by a Christian man and invited him to Islam. In response, he attacked the character of the Prophet and spoke of him inappropriately. ‘Arafah hit the Christian man on the nose. He then went and complained to ‘Amr b. al-‘Āṣ. ‘Amr said to ‘Arafah, “We have given them the covenant (*al-‘ahd*).” ‘Arafah retorted, “May Allah forbid that we have given them the covenant for them to openly insult the Prophet! Rather, we have given it to them so that we may leave them to utter what they want within their churches, not to burden them [financially] with more than they can bear, to defend them from their enemies, and to allow them to govern themselves according to their own laws unless they come to us and accept our laws. If that is the case, then we judge between them according to the law of Allah and that of His

<sup>68</sup> Al-Ṭabarī, *Ta’rīkh al-Rusul wa ‘l-Mulūk*, 4:109.

<sup>69</sup> Severus Ibn al-Muqaffa’, *History of the Patriarchs of the Coptic Church of Alexandria, II: Peter I to Benjamin I (661)*, ed. Basil Evetts, *Patrologia Orientalis I* (Paris: Librairie de Paris, 1907), 1:495-96 [231-232].

<sup>70</sup> Nikiu, *Chronicle*, 200.



messenger, and whatever they do in private, we leave them to it.” ‘Amr said, “You have spoken the truth,” and ‘Arafah was a Companion.<sup>71</sup>

The covenant referred to by ‘Arafah did not include a clause on how Muslims should deal with non-Muslims who insult the religion of Islam or the Prophet. It is clear that the initial *laissez-faire* approach became increasingly unrealistic to rulers and state administrators engaged in imperial policy, and that the old treaties had to be ratified to make place for new treaties with restrictive provisions.

When predominantly non-Muslim cities such as Damascus, Jerusalem, and Ṣan‘ā’ came to be classified as *amṣār al-Muslimīn*, Muslim jurists needed to devise a way of managing the changing conditions on the ground. It is therefore plausible that they adopted some of the restrictive security measures that had been implemented in the garrison towns of Kūfah, Baṣrah, Fuṣṭāṭ and elsewhere to the new *amṣār* (sing. *miṣr*). These restrictions came across to some Muslims as punitive and contradictory to what had been stipulated in the earlier treaties. We thus find someone asking Aḥmad b. Ḥanbal (d. 241/855): “What is the justification for preventing the protected people from building a church or a synagogue (*bī‘ah aw kanīṣah*) when the land belongs to them and they pay the *jizyah*, and we have been forbidden to treat them unjustly or to harm them (*wa qad muni‘nā min ḡulmihim wa adhāhum*)?”<sup>72</sup> Aḥmad b. Ḥanbal responds by citing a statement of Ibn ‘Abbās:

In any city that has been established by the Arabs (*miṣr maṣṣarathu al-‘Arab*), the non-Arabs cannot build a church therein, strike the gong, drink intoxicants, or keep swine. As for a city that was inhabited by non-Arabs, but which Allah, may He be praised and exalted, opened to the Arabs for them to settle in, the non-Arabs have their covenant (*‘ahdihim*), which the Arabs must fulfil (*yūfū bi ‘ahdihim*), and which entails that they must not endure more than they can bear.<sup>73</sup>

Ibn Zanjawayh reports a variant of the above narration in which Ibn ‘Abbās states, “It is obligatory for the Muslims to fulfil their obligations towards them when it comes to whatever customs precede [the city having acquired its status as a *miṣr*].”<sup>74</sup> In that respect, Ibn ‘Abd al-Ḥakam reports how the Companion and governor of Egypt Maslamah b. Mukhallad (r. 47-62/667-682) allowed a church to be built in the Fuṣṭāṭ

<sup>71</sup> Al-Bayhaqī, *al-Sunan al-Kubrā*, 9:336, ḥadīth no. 18710.

<sup>72</sup> Aḥmad b. Muḥammad al-Khallāl, *Aḥkām Ahl al-Mīlāl*, ed. Sayyid Kisrawī Ḥasan (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1994), 347, ḥadīth no. 970.

<sup>73</sup> Ibid., 346, ḥadīth no. 967. Also see Ibn Zanjawayh, *Kitāb al-Amwāl*, 274-75, ḥadīth no. 414; al-Bayhaqī, *al-Sunan al-Kubrā*, 9:339, ḥadīth nos. 18714 and 18715.

<sup>74</sup> Ibn Zanjawayh, *Kitāb al-Amwāl*, 274, ḥadīth no. 413. Also see 387, ḥadīth no. 634.

area because it was in Babylon, which was technically speaking outside the boundaries of the *miṣr al-Muslimīn*.<sup>75</sup>

Although the *laissez-faire* approach became increasingly difficult for Muslims to accept on a practical level, it still had to somehow be accommodated. When asked about the construction of new churches in the *amṣār*, Aḥmad b. Ḥanbal replied that the matter should be referred to the Sulṭān.<sup>76</sup> Still, the construction and presence of grand religious structures being under the custody of non-Muslims proved to be a nuisance. We thus find how al-Walīd b. ‘Abd al-Malik was unable to tolerate the great Church of St. John the Baptist in Damascus being the main religious building of the new capital of the Muslim empire, leading him to confiscate it from the Christians and convert it into the Great Mosque of Damascus in violation of the Treaty of Khālīd b. al-Walīd.<sup>77</sup> It then became customary under Islamic law that when a land was conquered by force (*‘anwatan*), the largest non-Muslim religious building in the main conquered city was converted into a mosque. As Robert M. Hayden observes, “the first action of the conquering Ottoman (Mehmet II in Constantinople, Suleyman in Belgrade and Pecs) was to convert the largest church into a mosque.”<sup>78</sup>

Despite the practical considerations of some jurists, the trajectory of imperial policy—shaped by the enactments of rulers and the selective emphasis on certain Islamic texts over others—ultimately led to the curtailment of the *laissez-faire* approach. This shift altered interreligious dynamics, prompting Muslim authorities to devise treaties that prioritized the rights of Muslims over those of non-Muslims.

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<sup>75</sup> Abū al-Qāsim Ibn ‘Abd al-Ḥakam, *The History of the Conquest of Egypt, North Africa and Spain: Known as the Futūḥ Miṣr of Ibn ‘Abd al-Hakam*, ed. Charles C. Torrey (New Haven: Yale University Press, 1922), 132. Also see Audrey Dridi, “Christians of Fustat in the First Three Centuries of Islam: The Making of a New Society,” in *A Cosmopolitan City: Muslims, Christians and Jews in Old Cairo*, ed. T. Vorderstrasse and T. Treptow (Chicago: Oriental Institute Museum Publications, 2015), 33-40.

<sup>76</sup> Al-Khallāl, *Aḥkām Ahl al-Milal*, 349, ḥadīth no. 979.

<sup>77</sup> See Ibrahim Zein and Ahmed El-Wakil, “Khālīd b. al-Walīd’s Treaty with the People of Damascus: Identifying the Source Document through Shared and Competing Historical Memories,” *Oxford Journal of Islamic Studies* 31, no. 3 (2020): 295-328.

<sup>78</sup> Robert M. Hayden, “Intersecting Religioscapes in Post-Ottoman Spaces: Trajectories of Change, Competition, and Sharing of Religious Spaces,” in *Post-Ottoman Coexistence: Sharing Space in the Shadow of Conflict*, ed. Rebecca Bryant (New York, Oxford: Berghahn, 2016), 63.

### The Decrees of ‘Umar b. ‘Abd al-‘Azīz

The eighth Umayyad Caliph ‘Umar b. ‘Abd al-‘Azīz (r. 99-101/717-720)<sup>79</sup> reportedly issued numerous decrees to his governors which have been preserved in the books of *ḥadīth*, jurisprudence, and history. Among these are various restrictions on non-Muslims which he implemented in the *amṣār*,<sup>80</sup> such as prioritizing Muslims in state administration<sup>81</sup> and requiring non-Muslims to distinguish themselves from Muslims in their outward appearance (*ghiyār*) through the way they part their hair, dress code, and the mounts that they ride.<sup>82</sup> He also famously put an end to taking the *jizyah* from non-Arab converts to Islam,<sup>83</sup> was happy to see more conversions to the faith,<sup>84</sup> and reminded his governors that the Prophet had “not been sent as a tax collector.”<sup>85</sup>

Additionally, ‘Umar b. ‘Abd al-‘Azīz prohibited the building of new places of worship in the *amṣār*.<sup>86</sup> ‘Abd al-Razzāq al-Ṣan‘ānī (d. 827/211) reports from his uncle Wahb b. Nāfi‘ that he saw ‘Umar b. ‘Abd al-‘Azīz’s letter ordering the destruction of old churches in the *amṣār*, adding how he saw a church being torn down by ‘Urwah b. Muḥammad, the Caliph’s governor in the Yemen.<sup>87</sup> As this directive appears to have only applied to churches that were built in the *amṣār* after the coming of Islam and at a time when Ṣan‘ā’ had acquired its status as a *miṣr*, we find that when the Christians of Damascus complained about a church that Mu‘āwiyah

<sup>79</sup> On ‘Umar b. ‘Abd al-‘Azīz, see Antoine Borrut, “Entre tradition et histoire: genèse et diffusion de l’image de ‘Umar II,” *Mélanges de l’Université Saint-Joseph* 58 (2005): 329-78.

<sup>80</sup> For an overview of these restrictions, see Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimma*, 1:456-59.

<sup>81</sup> See Luke Yarbrough, “Did ‘Umar b. ‘Abd al-‘Azīz Issue an Edict Concerning Non-Muslim Official?” in *Christians and Others in the Umayyad State*, ed. Antoine Borrut and Fred Donner (Chicago: University of Chicago, 2016), 173-206.

<sup>82</sup> See Yarbrough, “Origins of the Ghiyār,” *Journal of the American Oriental Society* 134, no. 1 (2014): 113-21. Also see Milka Levy-Rubin, “Umar II’s Ghiyār Edict: Between Ideology and Practice,” in *Christians and Others in the Umayyad State*, ed. Antoine Borrut and Fred Donner (Chicago: University of Chicago, 2016), 157-72.

<sup>83</sup> See Ibn ‘Abd al-Ḥakam, *The History of the Conquest of Egypt, North Africa and Spain*, 155-156 and Yaḥyā b. Aḥmad al-Balādhurī, *Ansāb al-Ashrāf*, ed. Suhayl Zakkār and Riyāḍ Ziriklī, 13 vols. (Beirut: Dār al-Fikr, 1996), 8:147-48.

<sup>84</sup> ‘Abd al-Raḥmān b. ‘Alī Ibn al-Jawzī, *Sīrat wa Manāqib ‘Umar ibn ‘Abd al-‘Azīz al-Khalīfah al-Zāhid*, ed. Na‘īm Zarzūr (Beirut: Dār al-Kutub al-‘Ilmiyya, 1984), 119-20.

<sup>85</sup> See Abū Yūsuf, *Kitāb al-Kharāj*, 131-32; al-Balādhurī, *Ansāb al-Ashrāf*, 8:146. Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimma*, 1:458.

<sup>86</sup> Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimma*, 1:458-59.

<sup>87</sup> ‘Abd al-Razzāq al-Ṣan‘ānī, *Muṣannaḥ*, ed. Ḥabīb al-Raḥmān al-A‘zamī, 11 vols. (Beirut: Al-Majlis al-‘Ilmī, 1403 AH), 6:59, ḥadīth no. 9999, 10:320, ḥadīth no. 19233. Also see al-Khallāl, *Aḥkām Ahl al-Milal*, 350, ḥadīth no. 982.

had given to the Banū Naṣr, ‘Umar b. ‘Abd al-‘Azīz gave it back to them because it was one of the fifteen churches mentioned in a treaty that was made with them at the time the city was conquered.<sup>88</sup> According to one tradition, ‘Umar b. ‘Abd al-‘Azīz decreed: “Do not destroy a synagogue, a church, or a fire temple, but also do not build new ones.”<sup>89</sup> He is also said to have decreed that Christians in Greater Syria are forbidden from striking the gong or raising their crosses on top of their churches.<sup>90</sup> He instructed one of his governors to “not allow a cross to be displayed out in the open, except that you order it to be broken.”<sup>91</sup>

Part of his policy may have included taking a firmer stance towards non-Muslims living in the Arabian Peninsula, and he is reported in the *Muwaṭṭa’* of Mālik as a narrator of the ḥadīth “No two religions shall remain in the land of the Arabs.”<sup>92</sup> Ibn Abī Dhi’b reports that “he witnessed ‘Umar b. ‘Abd al-‘Azīz during his caliphate exile the protected people (*ahl al-dhimmah*) from Medina. He then sold their Muslim slaves [to the Muslims].”<sup>93</sup> The *History of the Patriarchs of the Coptic Church of Alexandria* may perhaps have alluded to the exile of non-Muslims from the Ḥijāz when it tells us how ‘Umar b. ‘Abd al-‘Azīz decreed that those who do not want to convert to Islam should “go forth from my dominions.”<sup>94</sup>

In spite of the restrictions that he imposed on his non-Muslim subjects, the historical sources inform us that ‘Umar b. ‘Abd al-‘Azīz was also benevolent to them. He was ready to give the Great Mosque of Damascus back to the Christians because he believed it had been unjustly usurped from them.<sup>95</sup> When the Christians of Qinnaṣrīn complained about how the Muslims had unfairly taken their homes in spite of the

<sup>88</sup> Abū ‘l-Qāsim Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 80 vols. (Beirut: Dār al-Fikr, 1995), 2:354. Also see Ibn Zanjawayh, *Kitāb al-Amwāl*, 387, ḥadīth no. 635 and 388 ḥadīth no. 636.

<sup>89</sup> Abū ‘Ubayd, *Kitāb al-Amwāl*, 176-77, ḥadīth no. 262.

<sup>90</sup> Al-Ṣan‘ānī, *Muṣannaf*, 10:320, ḥadīth no. 19235. Also see: al-Khallāl, *Aḥkām Ahl al-Milal*, 350, ḥadīth no. 983.

<sup>91</sup> Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 56:500. Abū Yūsuf includes this instruction in a letter where ‘Umar ibn ‘Abd al-‘Azīz elaborates the *ghiyār* code. See: Abū Yūsuf, *Kitāb al-Kharāj*, 127-28.

<sup>92</sup> Mālik b. Anas, *al-Muwaṭṭa’*, ed. Muḥammad Fu’ād ‘Abd al-Bāqī (Beirut: Iḥyā’ al-Turāth al-‘Arabī, 1985), 892, ḥadīth no. 17. For a more detailed variant, see al-Bayhaqī, *al-Sunan al-Kubrā*, 6:224, ḥadīth no. 11740. In this report, ‘Umar b. ‘Abd al-‘Azīz combines the exile of the people of Najrān with that of the Jews of Fadak, Taymā’, and Kaybar. For a good discussion of this ḥadīth, see Harry Munt, “‘No two religions’: Non-Muslims in the early Islamic Ḥijāz,” *Bulletin of the School of Oriental and African Studies* 78, no. 2 (2015): 249-69.

<sup>93</sup> Ibn Abī Shaybah, *Muṣannaf*, 6:468, ḥadīth no. 32994.

<sup>94</sup> Ibn al-Muqaffa’, *History of the Patriarchs*, 5:72 [326].

<sup>95</sup> See Zein and El-Wakil, “Khālīd b. al-Walīd’s Treaty,” 295-328.

city having capitulated peacefully (*ṣulḥan*), he returned these back to them along with their churches.<sup>96</sup> He also gave back land that was unjustly taken from a protected person by his relative al-'Abbās b. al-Walīd b. 'Abd al-Malik.<sup>97</sup>

'Umar b. 'Abd al-'Azīz wrote a letter to his governor 'Adī b. Arṭa'at, telling him, "When it comes to the protected people, you need to be kind to them. If a man among them grows old and has no money, then make sure to spend on him. If he has a caretaker then command his caretaker to provide for him and to heal his wounds, just as if you had a slave who was old, and you had no choice but to spend on him until he died or was freed."<sup>98</sup> In another letter to him, he wrote, "Allah, may He be praised and glorified, made the *jizyah* a punishment to whoever is misguided and at a loss for not choosing to embrace Islam. Therefore, go find whoever of the protected people that is of advanced age, has insufficient provisions, and is no longer able to work, then make sure to provide for him from the treasury of the Muslims."<sup>99</sup>

The *History of the Patriarchs of the Coptic Church of Alexandria* reports that 'Umar b. 'Abd al-'Azīz "commanded that the poll-tax should be taken from all men who would not become Muslims, even in cases where it was not customary to take it."<sup>100</sup> The text may here be alluding to taking the *jizyah* from monks, which 'Umar b. 'Abd al-'Azīz apparently did at a rate of two dinars.<sup>101</sup> Although 'Umar b. 'Abd al-'Azīz believed that non-Muslims should be taxed more than Muslims when plying their trade,<sup>102</sup> he nevertheless justified his fiscal policies by saying: "Those before me used to burden the protected people with more than they could bear. . . . As for myself, I do not decree on people a [financial] obligation except that it be one that they can bear."<sup>103</sup> He also instructed 'Adī b. Arṭa'at not to physically abuse those who did not pay their dues on the land taxes: "I find it preferable for them to meet Allah having

<sup>96</sup> Ibn Zanjawayh, *Kitāb al-Amwāl*, 388-89, ḥadīths no. 637 and 638.

<sup>97</sup> Ibn 'Asākir, *Ta'riḥ Madīnat Dimashq*, 45:357-58.

<sup>98</sup> Muḥammad Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, ed. Muḥammad 'Abd al-Qādir 'Āṭā, 8 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1990), 5:295-96.

<sup>99</sup> Al-Balādhurī, *Ansāb al-Ashrāf*, 8:147.

<sup>100</sup> Ibn al-Muqaffa', *History of the Patriarchs*, 5:71.

<sup>101</sup> Ibn Qudāmah al-Maqdisī, *al-Sharḥ al-Kabīr 'alā Matn al-Muqni'*, 12 vols. (Beirut: Dār al-Kitāb al-'Arabī li 'l-Nashr wa 'l-Tawzī', 1983), 10:598.

<sup>102</sup> Mālik, *al-Muwatta'*, 255, ḥadīth no. 20.

<sup>103</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 132.

committed their criminal offence rather than for me to meet Allah after having physically abused them.”<sup>104</sup>

‘Umar b. ‘Abd al-‘Azīz seems to have had a good relationship with monks, and he is said to have taken from a monk spiritual advice that he closely kept to heart.<sup>105</sup> He used to reside with a monk on his way to Jerusalem,<sup>106</sup> and the area where he was buried was purchased from monks who did not want to take any money for it.<sup>107</sup> When Ṣāliḥ b. ‘Alī al-‘Abbāsī (d. ca. 151/768) asked about its location, the monk who guided him to it enquired, “You mean you seek the grave of the righteous one (*al-ṣiddīq*)?”<sup>108</sup>

‘Umar b. ‘Abd al-‘Azīz decreed that the Kharajites should be allowed to “freely move in the land without causing harm to the protected people”<sup>109</sup> and he was of the opinion that any captives belonging to the protected people should be freed regardless of whether or not they provided assistance to the Muslims in their military expeditions.<sup>110</sup> On his deathbed, he instructed his sons that “the Arabs and those who have an agreement with the Muslims (*al-mu‘āhidīn*) should not see in you anything other than justice.”<sup>111</sup>

These contradictory depictions of ‘Umar b. ‘Abd al-‘Azīz mean that he is remembered either as a just ruler or a “pious persecutor,”<sup>112</sup> at times a mixture of both. The *Byzantine-Arab Chronicle of AD 741* states that he was of “great kindness and compassion that to this day as much honour and praise is bestowed on him by all, even foreigners, as ever has been offered to anyone in his lifetime holding the reins of power.”<sup>113</sup> The *Chronicle of AD 819* recalls that “he was a good man and a more compassionate king than all the kings before him.”<sup>114</sup> Agapius of Hieropolis (d. ca. 942 CE) reports that he “displayed asceticism and piety,” that “he banished corrupt men from his realm,” and that he “forbade Muslims to consume intoxicating drinks made from grapes and dates. He led in public a virtuous life.”<sup>115</sup> *The*

<sup>104</sup> Al-Balādhurī, *Ansāb al-Ashrāf*, 8:138.

<sup>105</sup> Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 45:210.

<sup>106</sup> Ibn al-Jawzī, *Sīrat wa Manāqīb ‘Umar ibn ‘Abd al-‘Azīz*, 218.

<sup>107</sup> *Ibid.*, 323.

<sup>108</sup> Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 45:262.

<sup>109</sup> Ibn al-Jawzī, *Sīrat wa Manāqīb ‘Umar ibn ‘Abd al-‘Azīz*, 94-95.

<sup>110</sup> Al-Maqdisī, *al-Sharḥ al-Kabīr*, 10:572.

<sup>111</sup> Ibn al-Jawzī, *Sīrat wa Manāqīb ‘Umar ibn ‘Abd al-‘Azīz*, 320-21.

<sup>112</sup> Tritton, *Caliphs and Their Non-Muslim Subjects*, 231.

<sup>113</sup> Hoyland, *Theophilus of Edessa's Chronicle*, 217.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*, 216. Also see Elon Harvey, “‘Umar II and the Prohibition of *Ṭilā’* and *Nabīdh*,” *Islamic Law and Society* 30, no. 4 (2023): 329-91, <https://doi.org/https://doi.org/10.1163>

*Chronicle of AD 1234*, tells us he “was a good and compassionate man, truth-loving and just, and he was averse to evil.”<sup>116</sup>

Theophanes, the Confessor (d. 818 CE) tells us that “Umar banned the use of wine in cities and set about forcing the Christians to become converted. Those that converted he made exempt from tax, while those that refused to do so he killed and so produced many martyrs.”<sup>117</sup> As the Qur’ān prohibits the forced conversion of non-Muslims, we may assume that Theophanes was referring to Christians who had converted to Islam and reverted back to Christianity. In that respect, we may note how Abū Yūsuf reports that one of ‘Umar b. ‘Abd al-‘Azīz’s governors asked him what he should do about a Jew who converted to Islam and who reverted back to Judaism, to which he responded that if he did not repent then he should “kill him.”<sup>118</sup>

The *History of the Patriarchs of the Coptic Church of Alexandria* states that he “did much good before men, acted ill before God”<sup>119</sup> because he oppressed Christians. Michael the Syrian (d. 1199 CE) explains that he “began to mistreat the Christians and that for two reasons: firstly, because he wanted to honour and to affirm the laws of the Muslims; secondly, because of Constantinople, which the Arabs were unable to capture and before which many of them died (with loss of much) wealth. Rancour filled his heart and he was very opposed to Christians in every way. He was declared a zealot for their laws and was considered to be God-fearing and he was averse to evil.”<sup>120</sup> As a consequence of the defeat at Constantinople, ‘Umar b. ‘Abd al-‘Azīz may have sought to replace Christians with Muslims in state administration<sup>121</sup> and implement a strict

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/15685195-bja10041; Mathieu Tillier and Naïm Vanthieghem, “Des amphores rouges et des jarres vertes: Considérations sur la production et la consommation de boissons fermentées aux deux premiers siècles de l’hégire,” *Islamic Law and Society* 30, no. 1-2 (2023): 1-64, <https://doi.org/10.1163/15685195-bja10025>.

<sup>116</sup> Hoyland, *Theophilus of Edessa's Chronicle*, 217.

<sup>117</sup> *Ibid.*, 215-16.

<sup>118</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 182.

<sup>119</sup> Ibn al-Muqaffa’, *History of the Patriarchs*, 5:71.

<sup>120</sup> Hoyland, *Theophilus of Edessa's Chronicle*, 216.

<sup>121</sup> For the first decree, see al-Balādhurī, *Ansāb al-Ashrāf*, 8:164. For the second, see *ibid.*, 196 and Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, 1:456-58. For the third, see Abū Bakr al-Ṭurtūshī, *Sirāj al-Mulūk* (Cairo: al-Dār al-Miṣriyyah, 1994), 544 and Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, 1:459. For a translation of the three recensions of ‘Umar b. ‘Abd al-‘Azīz’s decrees, see Luke Yarbrough, *Friends of the Emir: Non-Muslim State Officials in Premodern Islamic Thought* (Cambridge: Cambridge University Press, 2019), 66-70; Yarbrough, “Did ‘Umar b. ‘Abd al-‘Azīz Issue an Edict Concerning Non-Muslim Official?” 175-78.

application of the *ghiyār* code<sup>122</sup> for fear that Christians in his empire could become allies of Byzantium. The following text, which could have derived from one of his edicts, has perhaps preserved some of his concerns:

No Christian should present himself without his hair parted. He also must not wear a cloak, and he must make sure to have a *zunnār* made of leather strapped around him. He should not wear a shawl, military attire, or sandals with a stripe. He also should not ride on a saddle or keep a weapon in his home, except that it be confiscated.<sup>123</sup>

According to the jurist ‘Abd Allāh b. Aḥmad b. Zabir al-Raba‘ī (d. 329/940), known as Ibn Zabir, the above stipulations were believed to have belonged to an obscure recension of the Pact of ‘Umar, but he had found them “narrated on the authority of ‘Umar b. ‘Abd al-‘Azīz.”<sup>124</sup> The prohibition to have them wear “military attire,” “keep a weapon” in their home, or “ride on a saddle,” all appear to be preventative measures that were designed to keep them at a disadvantage so that they would not be a threat to the Muslims. Still, as Elon Harvey observes, the exact content of ‘Umar b. ‘Abd al-‘Azīz’s “edicts is unclear and the degree to which they were implemented is difficult to assess.”<sup>125</sup>

It is well known that ‘Umar b. ‘Abd al-‘Azīz was profoundly influenced by his greater namesake, ‘Umar b. al-Khaṭṭāb. This raises the question: Did ‘Umar b. ‘Abd al-‘Azīz model all of his policies on those of ‘Umar b. al-Khaṭṭāb, or did he formulate new rulings based on his own judgment and the historical circumstances of his time? Could it be that he had his own interpretation and understanding of ‘Umar b. al-Khaṭṭāb’s rulings, given that the context in which those regulations were implemented, namely during the early conquests, may not have been entirely clear to him in his own time? To what extent were the policies and administrative challenges faced by ‘Umar b. ‘Abd al-‘Azīz later

<sup>122</sup> For the decrees of ‘Umar ibn ‘Abd al-‘Azīz mentioning the *ghiyār* code, see Abū Yūsuf, *Kitāb al-Kharāj*, 127-28. For an English translation, see Levy-Rubin, “‘Umar II’s *Ghiyār* Edict,” 158. Al-Balādhurī has reported two letters where the *ghiyār* code is explained, none of which prohibits crosses to be displayed. See al-Balādhurī, *Ansāb al-Ashraf*, 8:151, 196. The second letter, which mentions the *ghiyār* code after prohibiting non-Muslims from participating in state administration, has been reproduced by Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, 1:456-58.

<sup>123</sup> ‘Abd Allāh b. Aḥmad Ibn Zabir, *Juz’ fihi Shurūṭ al-Naṣārā* (Beirut: Dār al-Bashā’ir al-Islāmiyyah, 2006), 32-33, ḥadīth no. 23. For variants of the *ghiyār* code in which ‘Umar b. ‘Abd al-‘Azīz stipulates that the Christians’ weapons should be confiscated from their homes, see Ibn ‘Asākir, *Tārīkh Madīnat Dimashq*, 2:185 and Ibn al-Jawzī, *Sīrat wa Manāqib ‘Umar ibn ‘Abd al-‘Azīz*, 119.

<sup>124</sup> Ibn Zabir, *Juz’ fihi Shurūṭ al-Naṣārā*, 26, ḥadīth no. 12.

<sup>125</sup> Harvey, “‘Umar II and the Prohibition of *Ṭilā’* and *Nabīdh*,” 5.



incorporated into the Pact of 'Umar? As it currently stands, we have no definitive answers to these questions. It is noteworthy, however, how the Armenian writer Ghevond Vardapet (d. ca. 790 CE) notes that 'Umar b. 'Abd al-'Azīz "showed greater intimacy to his own race than those caliphs before him did,"<sup>126</sup> suggesting that although he had just dealings with non-Muslims, he nevertheless played a prominent role in crafting an imperial policy that prioritized the security, interests, and religious sensitivities of the Muslims.

### **Al-Shāfi'ī's Template Agreement**

In his *Kitāb al-Umm*, Muḥammad b. Idrīs al-Shāfi'ī (d. 204/820) reproduces a standard Template Agreement that a Muslim caliph should issue to Christians, dated 2 Rabī' al-Awwal,<sup>127</sup> and which appears to have been based on a historical document of some sort. The author of the Template Agreement most likely had in mind balancing the early agreements with the prevailing circumstances and practical considerations that Muslims had to face. Although the Template Agreement does not explicitly contradict the Covenants when it comes to extending equal protection to Christians and ensuring Muslims do not harm them or their places of worship, it does nevertheless place restrictions on the display of crosses, the building of new churches, and the performance of Christian religious rites in public.

Although the source of al-Shāfi'ī's Template Agreement remains unclear, its text parallels many of the stipulations that Michael the Syrian attributes to 'Umar b. 'Abd al-'Azīz, suggesting that they formed part of an edict he issued. Michael notes that 'Umar b. 'Abd al-'Azīz forbade Christians to "raise their voices for prayer" and "strike the sounding-board (to call people to prayer),"<sup>128</sup> prohibitions echoed in al-Shāfi'ī's Template Agreement when it stipulates that "you shall not strike the gong (*al-nāqūs*) or publicly utter your polytheism concerning Jesus, the son of Mary, or anybody else, to one of the Muslims."<sup>129</sup> Similarly, the requirement to "wear the overcoat,"<sup>130</sup> listed by Michael, appears in the Template Agreement in the clause stating "you shall wear the *zunnār* over your outer garments so that it be made visible."<sup>131</sup> Al-

<sup>126</sup> Lewond, *History of Lewond, the Eminent Vardapet of the Armenians*, trans. Zaven Arzoumanian (Wynnewood: St. Sahag and St. Mesrob Armenian Church, 1982), 106.

<sup>127</sup> Muḥammad b. Idrīs al-Shāfi'ī, *Kitāb al-Umm*, ed. Muḥammad Zuhri al-Najjār (Beirut: Dār al-Fikr, 1990), 4:208.

<sup>128</sup> Hoyland, *Theophilus of Edessa's Chronicle*, 216.

<sup>129</sup> Al-Shāfi'ī, *Kitāb al-Umm*, 4:209.

<sup>130</sup> Hoyland, *Theophilus of Edessa's Chronicle*, 216-17.

<sup>131</sup> Al-Shāfi'ī, *Kitāb al-Umm*, 4:209.

Shāfi'ī's Template Agreement does not mention the prohibition to "ride on a saddle,"<sup>132</sup> as Michael notes, but it does specify that "the saddles and the manner by which you ride your horses should be distinguished from that of the Muslims."<sup>133</sup>

Michael's observation that "if an Arab killed a Christian he could not be executed for it, but just paid compensation of 5000 silver coins"<sup>134</sup> is not found in the Template Agreement, which specifies that if the killing was intentional, then due retaliation (*qiṣās*) should take place unless the victim's family accepts the blood-money. If, however, the killing was unintentional, then only the blood-money should be paid.<sup>135</sup> This is consistent with a decree of 'Umar b. 'Abd al-'Azīz, that the punishment for killing an innocent person should be the same for Muslims and non-Muslims.<sup>136</sup> Additionally, the Template Agreement makes no reference to restrictions on Christian endowments, which are mentioned by Michael when he states that 'Umar b. 'Abd al-'Azīz "forbade and terminated the exactions from dwellings, inheritances and portions of revenues from lands levied in favour of churches, monasteries and poor people."<sup>137</sup>

Underlying the Template Agreement appears to be its textual interplay with the texts of the Covenants which its author seems to have been aware of. In his attempt to shift legal boundaries, we see how he mentions towards the beginning of the Template Agreement that Christians "shall not support the enemies of the Muslims by fighting alongside them and showing them the weak [military] spots of the Muslims."<sup>138</sup> This same clause can be witnessed in the Covenant with the Christians of Najrān which was circulating around the same time, whereby it states towards the end of its text, after listing all of its obligations to Christians, that the latter are not "to support an enemy with whom a Muslim is at war with by spying, either openly or covertly."<sup>139</sup>

When it comes to taxation, al-Shāfi'ī himself appears to have been particularly concerned about this issue, and he is reported to have asked

<sup>132</sup> Hoyland, *Theophilus of Edessa's Chronicle*, 217.

<sup>133</sup> Al-Shāfi'ī, *Kitāb al-Umm*, 4:209.

<sup>134</sup> Hoyland, *Theophilus of Edessa's Chronicle*, 217.

<sup>135</sup> Al-Shāfi'ī, *Kitāb al-Umm*, 4:209.

<sup>136</sup> Al-Ṣan'ānī, *Muṣannaf*, 10:101, ḥadīth no. 18581.

<sup>137</sup> *The Chronicle of AD 1234* more or less reiterates the same restrictions as Michael the Syrian, though it makes no mention of the overcoat (i.e., the *zunnār*) or revenues derived from lands belonging to churches, monasteries, and poor people. See Hoyland, *Theophilus of Edessa's Chronicle*, 217.

<sup>138</sup> Al-Shāfi'ī, *Kitāb al-Umm*, 4:209.

<sup>139</sup> Scher, *Chronique de Séert*, 615 [295].

a number of scholars and protected people in Yemen what the *jizyah* was at the time of the Prophet, which they confirmed to be one dinar and that it did not include women.<sup>140</sup> The rate of one dinar was also reported as a *ḥadīth* of the Prophet by ‘Umar b. ‘Abd al-‘Azīz.<sup>141</sup> The Template Agreement, therefore, specifies that one undamaged dinar is to be levied on all free and sane men and that although poverty is no exemption, it also shall not result in the agreement being revoked.<sup>142</sup> The obligation to pay one dinar as *jizyah* could either have existed in the historical document that formed the basis of the Template Agreement, or it could have been a replacement, or even an adaptation of the four and twelve dirhams rate in the Covenants to suit the current economic conditions.<sup>143</sup> As the canonic rate of one gold dinar is equivalent to seven dirhams,<sup>144</sup> the one dinar assessment may have been selected as an acceptable mean between four and twelve dirhams to include the rich and ordinary folk.

In what appears to be another interplay with the Covenants, the Template Agreement maintains the protection of God, stating that the Christians “have the covenant of Allah and His pledge (*‘ahd Allāh wa mīthāqih*), the protection (*dhimmah*) of so-and-so the Commander of the Believers, and the protection of the Muslims.”<sup>145</sup> In this way, the Template Agreement extends its protection to Christians while at the same time taking into consideration Muslim religious sensitivities that were not articulated in the Covenants. Therefore, if any Christian “speaks improperly of Muḥammad, peace and blessings be upon him, the Book of Allah, may He be exalted, or His religion,” then “he has been disavowed from the protection of Allah (*bari’at minhu dhimmat Allāh*), the protection of the Commander of the Believers, and all the Muslims.”<sup>146</sup> Al-Shāfi‘ī’s Template Agreement ends with the Commander of the Believers granting Christians “the Covenant of Allah and His pledge (*‘ahd Allāh wa mīthāqih*), and it is the greatest that Allah has imposed on any of His creation (*wa a’zam mā akhadh Allāh ‘alā aḥad min khalqih*),”<sup>147</sup> a phrase replicated in the long-version of the Ṣiffīn Arbitration Agreement

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<sup>140</sup> Al-Shāfi‘ī, *Kitāb al-Umm*, 4:189.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*, 4:209.

<sup>143</sup> Morrow, “Covenants of the Prophet,” 14-16.

<sup>144</sup> M. Ismail Marcinkowski, *Measures and Weights in the Islamic World: An English Translation of Walther Hinz’s Handbook Islamische Maße und Gewichte* (Kuala Lumpur: ISTAC, 2003), 1.

<sup>145</sup> Al-Shāfi‘ī, *Kitāb al-Umm*, 4:210.

<sup>146</sup> *Ibid.*, 209.

<sup>147</sup> *Ibid.*, 210.

reported by Ibn Muzāḥim<sup>148</sup> and with minor variants in the texts of the Covenants.<sup>149</sup>

Like the Covenants, the Template Agreement includes a section for the witnesses' names and emphasizes its binding nature, stating "if you change or alter this agreement, then you shall be disavowed from the protection (*dhimmah*) of Allah and the protection of so-and-so, the Commander of the Believers."<sup>150</sup> However, whereas the Covenants emphasize that Muslims must strictly abide by their terms and conditions, the Template Agreement shifts the onus to Christians. This suggests that although the author of the original Template Agreement was not working in isolation from the Covenants, he nevertheless sought a compromise more favourable to Muslims while still addressing Christian audiences. He retained the protection due to Christians but incorporated a series of restrictions that prioritized Muslim interests. In this manner, the Template Agreement parallels the policies of 'Umar b. 'Abd al-'Azīz, which secured Muslim cultural hegemony. With the Covenants in mind, and likely drawing from various historical sources, the author synthesized these concerns into a coherent text intended to guide Muslim policy in its relations with non-Muslim communities.

### The Ordinances of al-Mutawakkil

The Abbasid Caliph al-Mutawakkil (r. 232-247/847-861) issued a number of ordinances placing restrictions on the protected people.<sup>151</sup> These restrictions were stipulated in at least three edicts, two of which have been preserved in full by Ibn Zabr. The first, scribed by Ibrāhīm b. al-'Abbās in Shawwāl 235/April-May 850, lists in great detail the kind of clothing non-Muslims should wear, including the type of saddle they should use on their mounts.<sup>152</sup> The second, scribed by Najāḥ b. Salama,<sup>153</sup> likely on Sunday Shawwāl 13, 236/April 23, 851,<sup>154</sup> prohibits Muslims

<sup>148</sup> Naṣr Ibn Muzāḥim al-Minqarī, *Waq'at Ṣiffīn* (Cairo: Mū'assasat al-'Arabiyyah al-Ḥadīthah, 1382 AH), 505.

<sup>149</sup> Zein and El-Wakil, "Ṣiffīn Arbitration Agreement," 176-80.

<sup>150</sup> Al-Shāfi'ī, *Kitāb al-Umm*, 4:210.

<sup>151</sup> Ibn Zabr, *Juz' fīhi Shurūṭ al-Naṣārā*, 34-35, ḥadīth no. 25; al-Ṭabarī, *Tārīkh al-Rusul wa 'l-Mulūk*, 7:354-55.

<sup>152</sup> Ibn Zabr, *Juz' fīhi Shurūṭ al-Naṣārā*, 35-38. Also see al-Ṭabarī, *Tārīkh al-Rusul wa 'l-Mulūk*, 7:355-57.

<sup>153</sup> Ibn Zabr, *Juz' fīhi Shurūṭ al-Naṣārā*, 38.

<sup>154</sup> Yarbrough, *Friends of the Emir*, 100. The date in the document reads "Sunday 13 days having passed (*khalat*) in the month of Shawwāl in the year 235 [AH]." This appears to be a mistake. The original document would most likely have been a year later, namely in 236 AH, as Yarbrough has suggested, or "Sunday 13 days remaining (*baqiyat*) in the

from employing non-Muslims in government administration.<sup>155</sup> The third, which we only have in summarized form, stipulates that their new places of worship should be demolished, prohibits Christians from displaying their crosses on festival days, bans their children from attending Muslim schools, forbids their graves from resembling those of Muslims, and requires them to nail a wooden image of the devil on their doors to distinguish their homes from those of Muslims.

There has been much speculation over why al-Mutawakkil issued these ordinances,<sup>156</sup> with Luke Yarbrough suggesting that they were given out to appease the traditionists.<sup>157</sup> It is indeed remarkable that at no point in his edicts does al-Mutawakkil refer to the Pact of 'Umar. Instead, he justifies his actions by citing Qur'ānic verses 3:118, 4:144, and 5:51, and by elusively referring to "accounts handed down from the Messenger of Allah and the righteous predecessors."<sup>158</sup> This suggests that although there may have been an early prototype of the Pact of 'Umar in circulation, it was most probably ascribed, as we shall see later, to Abū 'Ubaydah b. al-Jarrāh, with its attribution to 'Umar having been after al-Mutawakkil's reign.

To what extent the ordinances of al-Mutawakkil and the regulations of the Pact of 'Umar were applied in Abbasid times is difficult to tell. Al-Māwardī (d. 450/1058) reports in *al-Aḥkām al-Sultāniyyah* six mandatory conditions that make the agreement of protection with non-Muslims valid.<sup>159</sup> These are that they do not: 1) attack or falsify the Qur'ān; 2) disrespect the Prophet or accuse him of lying; 3) vilify and speak badly about the religion of Islam; 4) commit fornication or seek marriage to a Muslim woman; 5) entice a Muslim to leave his religion or harm him when it comes to his faith and wealth, which according to Abū Ya'lā al-Farrā' (d. 458/1066) can include highway robbery;<sup>160</sup> and 6) assist those at war with the Muslims or entertain the rich among them. Abū Ya'lā

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month of Shawwāl in the year 235 [AH],” which would render the date correct according to the Julian calendar. On calendrical conversions, see Ibrahim Zein, and Ahmed El-Wakil, “On the Origins of the Hijrī Calendar: A Multi-Faceted Perspective Based on the Covenants of the Prophet and Specific Date Verification,” *Religions* 12, no. 1 (2021): 42, <https://www.mdpi.com/2077-1444/12/1/42>.

<sup>155</sup> Ibn Zabir, *Juz' fihi Shurūṭ al-Naṣārā*, 39-41. For an English translation, see Yarbrough, *Friends of the Emir*, 96-99.

<sup>156</sup> Yarbrough, *Friends of the Emir*, 91-95.

<sup>157</sup> *Ibid.*, 104-9.

<sup>158</sup> Ibn Zabir, *Juz' fihi Shurūṭ al-Naṣārā*, 40.

<sup>159</sup> Alī b. Muḥammad b. Ḥabīb al-Māwardī, *al-Aḥkām al-Sultāniyyah* (Cairo: Muṣṭafā al-Bābī, 1966), 145.

<sup>160</sup> Abū Ya'lā al-Farrā', *al-Aḥkām al-Sultāniyyah*, ed. Muḥammad Ḥāmid al-Faqī (Beirut: Dār al-Kutub al-'Ilmiyyah, 2000), 159.

explains that this entails not waging war against the Muslims or writing to their enemies to inform them about state secrets.<sup>161</sup>

There are six conditions that are recommended<sup>162</sup> but not obligatory, and which are paralleled in the Pact of ‘Umar. These are that the non-Muslims must: 1) differentiate themselves from the Muslims in their outward appearance through the *ghiyār* code and the *zunnār*; 2) not erect buildings higher than those of the Muslims; 3) not beat the gong, recite their books, and utter their creedal statements about ‘Uzayr and Jesus out in the open; 4) not drink wine publicly, display their crosses, or allow pigs to be brought before the Muslims; 5) not carry out their funerals or lament their dead out in the open; and 6) not ride horses though they are allowed to ride mules and asses.

Al-Māwardī explains that the People of the Book cannot build new churches and synagogues (*bī‘ah wa lā kanīṣah*) in the abode of Islam, and if they do, these should be destroyed. However, when it comes to their churches and synagogues which precede the coming of Islam, they are allowed to renovate them if these fall to ruin.<sup>163</sup> Interestingly enough, this law is paralleled in the *Code of Justinian* where an enactment dated January 31, 439 CE stipulates, “We command that no Jewish synagogue may rise in a new construction, but permission is granted for propping up those in danger of collapse.”<sup>164</sup>

Al-Māwardī<sup>165</sup> and Abū Ya‘lā<sup>166</sup> appear not to have given significant weight to the traditions limiting the employment of non-Muslims in the state bureaucracy. They considered it permissible for a protected person to be an executive minister, though they did not consider him fit to become a ministerial delegate of the caliph. Not only do al-Māwardī and Abū Ya‘lā not quote any traditions on the authority of ‘Umar concerning the prohibition of employing non-Muslims, but surprisingly enough, they never even make a direct reference to the Pact of ‘Umar!

On the whole, it appears that al-Shāfi‘ī’s Template Agreement, coupled with the gradual policies of al-Walīd b. ‘Abd al-Malik, ‘Umar b. ‘Abd al-‘Azīz, and al-Mutawakkil, limited the non-Muslims’ rights within

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<sup>161</sup> Ibid.

<sup>162</sup> See al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*, 143-44 and al-Farrā’, *al-Aḥkām al-Sulṭāniyyah*, 159-60.

<sup>163</sup> Al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*, 146.

<sup>164</sup> Fred H. Blume, *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text* (Cambridge: Cambridge University Press, 2016), 237.

<sup>165</sup> Al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*, 27.

<sup>166</sup> Al-Farrā’, *al-Aḥkām al-Sulṭāniyyah*, 32.

the caliphate. After al-Mutawakkil's reign, the socio-political realities were ripe with necessary and sufficient legal texts, policies, and traditions that facilitated the development and widespread circulation of the Pact of 'Umar.

### The Pact of 'Umar

Following the reign of al-Mutawakkil, the Pact of 'Umar came to overshadow the Covenants in many Muslim circles, particularly among Ḥanbalī jurists,<sup>167</sup> becoming representative of Islam's normative position regarding the treatment of non-Muslims under Muslim rule. As Youshaa Patel points out, "Frequent references to the Pact of 'Umar in Islamic literature—administrative manuals, legal treatises and responsa, hadith collections, historical chronicles, and interfaith polemics—reflect how Muslim religious authorities turned it into an ideal template for conceiving interreligious relations."<sup>168</sup>

Muslim sources preserve three versions of the Pact of 'Umar,<sup>169</sup> with only minor differences in the content of their clauses, the most significant being the sequence in which these clauses appear. The legal manual *Juz' fīhi Shurūṭ al-Naṣārā* by the jurist Ibn Zabir, which documents all three versions of the Pact of 'Umar, was transmitted by Abū Muḥammad Hibat Allāh b. Aḥmad b. Muḥammad al-Akfānī (d. 524/1129) and Abū Muḥammad Ṭāhir b. Sahl b. Bishr al-Isfrāyīnī (d. 531/1137), both of whom narrated it from 'Abd al-Dā'im b. al-Ḥasan b. 'Ubayd Allāh al-Hilālī al-Qaṭṭān (d. 460/1068), from 'Abd al-Wahhāb b. al-Ḥasan al-Walīd al-Kilābī (d. 396/1005), from Ibn Zabir. The critical edition of the work, edited by Anas b. 'Abd al-Raḥmān b. 'Abd Allāh al-'Aqīl includes additional traditions from al-Kilābī narrated by al-Qaṭṭān that do not include Ibn Zabir in the *isnād*. These traditions begin with the chain of transmission: "It has been transmitted to us, from 'Abd al-Dā'im [i.e., al-Qaṭṭān], from 'Abd al-Wahhāb [i.e., al-Kilābī]."

Version 1 of the Pact of 'Umar was recorded by Ibn Zabir,<sup>170</sup> Ibn al-Sammāk (d. 344/955),<sup>171</sup> Ibn al-A'rābī (d. 340/952),<sup>172</sup> 'Alī b. Ḥazm (d.

<sup>167</sup> For a commentary on the Pact of 'Umar from Ibn al-Qayyim's *Aḥkām Ahl al-Dhimmah*, see Abū 'Abd Allāh Ibn Qayyim al-Jawziyyah, *Sharḥ Surūṭ al-'Umarīyyah*, ed. Ṣubḥī al-Ṣāliḥ (Beirut: Dār al-'Ilm li 'l-Malāyīn, 1981).

<sup>168</sup> Patel, *Muslim Difference*, 87.

<sup>169</sup> For a detailed examination of the three versions of the Pact of 'Umar, see Luke Yarbrough, "The Early Circulation and Late Adoption of the 'Pact of 'Umar' (Shurūṭ 'Umar)," *Jerusalem Studies in Arabic and Islam* 53 (2022): 237-304. In this article, Yarbrough's version A is equivalent to version 1, version B to version 3, and version C to version 2.

<sup>170</sup> Ibn Zabir, *Juz' fīhi Shurūṭ al-Naṣārā*, 23-25, ḥadīth no. 10.

456/1064),<sup>173</sup> al-Bayhaqī,<sup>174</sup> Ibn ‘Asākir in three slightly different recensions,<sup>175</sup> Ibn Kathīr,<sup>176</sup> Taqī ‘l-Dīn al-Subkī (d. 756/1355),<sup>177</sup> and al-Wansharīsī (d. 914/1508),<sup>178</sup> all of which culminate at the Common Link, Ṭalḥah b. Muṣarrif (d. 112/731), who transmitted it from Masrūq b. al-Ajda’ from ‘Abd al-Raḥmān b. Ghanm (d. 78/697-698). It was also transmitted by Ibn Qayyim al-Jawziyyah (d. 751/1350) from Sufyān al-Thawrī from Masrūq b. al-Ajda’ from ‘Abd al-Raḥmān b. Ghanm.<sup>179</sup> Version 1 states, “This is a writ to the Servant of Allah, ‘Umar, Commander of the Believers, by the Christians of city/country (*madīna/balad*) so-and-so.” Version 1 is the most widely disseminated and has been reported without an *isnād* by numerous Muslim scholars, including Abū Bakr al-Ṭurṭūshī (d. 520/1126) in *Sirāj al-Mulūk*.<sup>180</sup>

Version 2 of the Pact was recorded by Ibn Zabīr<sup>181</sup> and Ibn ‘Asākir in his *Ta’rīkh Madīnat Dimashq* in an *isnād* that includes Ibn Zabīr.<sup>182</sup> The latter reports the tradition from Muḥammad b. Ishāq b. Rāhawayh al-Ḥandhalī < his father < Baqīyyah b. al-Walīd < ‘Abd al-Ḥamīd b. Bahrām < Shahr b. Ḥawshab < ‘Abd al-Raḥmān b. Ghanm. This version states that the Pact was written “to the Servant of Allah, ‘Umar, Commander of the Believers, by the Christians of Greater Syria.”<sup>183</sup> A unique clause not found in versions 1 and 3 states that the Christians agree “to give the *jizyah* while we are humbled.”<sup>184</sup>

<sup>171</sup> ‘Uthmān b. Aḥmad al-Daqqāq Ibn al-Sammāk, *Kitāb Juz’ fīhi Shurūṭ ‘Umar ibn al-Khaṭṭāb ‘alā ‘l-Naṣārā*, ed. Muḥammad Ya‘qūbī and Niḍām Ṣāliḥ (Beirut: Dār al-Bashā‘ir al-Islāmiyyah, 2001), 23-27.

<sup>172</sup> Aḥmad b. Muḥammad Ibn al-A‘rābī, *Kitāb al-Mu‘jam*, ed. ‘Abd al-Muḥsin b. Ibrāhīm b. Aḥmad al-Ḥusaynī (Dammam: Dār Ibn al-Jawzī, 1997), 207-208, ḥadīth no. 365.

<sup>173</sup> ‘Alī Ibn Ḥazm, *al-Muḥallā*, 12 vols. (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2010), 5:414-15.

<sup>174</sup> Al-Bayhaqī, *al-Sunan al-Kubrā*, 9:339-40, ḥadīth no. 18717.

<sup>175</sup> Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 2:175-79.

<sup>176</sup> Ismā‘īl b. ‘Umar Ibn Kathīr, *Musnad al-Fārūq*, ed. Imām b. ‘Alī b. Imām, 4 vols. (Faiyum: Dār al-Falāḥ, 2009), 2:334-337, ḥadīth no. 663.

<sup>177</sup> Taqī ‘l-Dīn al-Subkī, *Fatāwā*, 2 vols. (Beirut: Dār al-Ma‘rifah, n.d.), 2:397-98.

<sup>178</sup> Aḥmad b. Yaḥyā al-Wansharīsī, *al-Mi‘yār al-Mu‘rib*, 13 vols. (Rabat: Ministry of Awqaf, 1981), 2:237-38.

<sup>179</sup> Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, 3:1161-62.

<sup>180</sup> Al-Ṭurṭūshī, *Sirāj al-Mulūk*, 542-44.

<sup>181</sup> Ibn Zabīr, *Juz’ fīhi Shurūṭ al-Naṣārā*, 21-23, ḥadīth no. 9.

<sup>182</sup> Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 2:174-75.

<sup>183</sup> Ibn Zabīr, *Juz’ fīhi Shurūṭ al-Naṣārā*, 22, ḥadīth no. 9.

<sup>184</sup> *Ibid.*



Version 3 of the Pact of 'Umar has five different recensions. The first recension appears in *Aḥkām Ahl al-Milāl* by Abū Bakr al-Khallāl (d. 311/923)<sup>185</sup> and is said to have been written by the Christians of Mesopotamia (*al-Jazīrah*) to 'Abd al-Raḥmān b. Ghanm. Its *isnād* begins with 'Abd Allāh, the son of Aḥmad b. Ḥanbal and ends with Ismā'īl b. 'Ayyāsh, who noted that it was transmitted by "more than one person from among the people of knowledge."<sup>186</sup>

The second recension of version 3<sup>187</sup> of the Pact of 'Umar, also preserved by Ibn Zabr, has a different *isnād* that also ends with Ismā'īl b. 'Ayyāsh, but which passes through his son, Muḥammad b. Ismā'īl, who informs us that the writ was issued by 'Iyāḍ b. Ghanm (d. 20/641) "to the protected people of Ḥimṣ."<sup>188</sup> Ibn Zabr prefers the *isnād* that includes Muḥammad b. Ismā'īl because this narration originated from 'Iyāḍ b. Ghanm, who, unlike 'Abd al-Raḥmān b. Ghanm had been a governor of 'Umar's in Greater Syria.<sup>189</sup>

The first two recensions of version 3 state that the Pact was issued by one of 'Umar's governors, and that the Caliph merely approved its terms and conditions. The third recension is said to have been issued by 'Umar himself.<sup>190</sup> The chain of transmission, which goes back to Salāmah b. Qayṣar al-Ḥaḍramī, states that the Pact was drafted "in the sixth year of 'Umar's caliphate."<sup>191</sup> Salāmah b. Qayṣar al-Ḥaḍramī was governor of Jerusalem during the caliphate of 'Umar and reportedly died there.

The fourth recension of version 3 has been reported by Ibn al-Murajjā (fifth/eleventh century), having been transmitted on the authority of Muḥammad b. Ḥudhayfah through Muḥammad b. Ka'b al-Quraẓī.<sup>192</sup> It is said to have been issued by Muḥammad b. Ḥudhayfah, having "been written to Jerusalem and other [cities],"<sup>193</sup> and with no mention of 'Umar having approved its terms and conditions. Even though the third and fourth recensions are said to have been issued in Jerusalem, their language cannot be reconciled to 'Umar's Capitulation

<sup>185</sup> Al-Khallāl, *Aḥkām Ahl al-Milal*, 357-59, ḥadīth no. 1000. Also see Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, 3, 1159-60.

<sup>186</sup> Al-Khallāl, *Aḥkām Ahl al-Milal*, 357.

<sup>187</sup> Ibn Zabr, *Juz' fīhi Shurūṭ al-Naṣārā*, 26-28, ḥadīth no. 13.

<sup>188</sup> *Ibid.*, 26.

<sup>189</sup> See Hoyland, *Theophilus of Edessa's Chronicle*, 118-19.

<sup>190</sup> Ibn Zabr, *Juz' fīhi Shurūṭ al-Naṣārā*, 31-32, ḥadīth no. 22.

<sup>191</sup> *Ibid.*, 31.

<sup>192</sup> Al-Musharraf Ibn al-Murajjā, *Faḍā'il Bayt al-Maqdis* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002), 67-70.

<sup>193</sup> *Ibid.*, 67.

Treaty with the Christians of Jerusalem and the Covenant that he granted Patriarch Sophronius.

The fifth recension of version 3 is said to have been given by Abū ‘Ubaydah when he entered Damascus. Ibn ‘Asākir provides a long *isnād* that culminates with Abū Mikhnaf (d. 157/774) who said, “So Abū ‘Ubaydah formulated the truce (*al-ṣulḥ*) and he wrote for them a writ (*wa kataba lahum kitāban*).”<sup>194</sup> Abū Mikhnaf does not mention his source for the text of the truce, but one suspects that it was Muḥammad b. Yūsuf b. Thābit who also narrated to him the conquest of Damascus from ‘Abbās b. Sahl b. Sa‘d.<sup>195</sup> Although the original text of the truce that Abū Mikhnaf narrated may have been improved over time, we nevertheless find that the beginning of the document reads: “This is a writ to Abū ‘Ubaydah b. al-Jarrāḥ from the non-Arab residents of Damascus, its vicinity, and Greater Syria.”<sup>196</sup> This recension, it would seem, is rooted at its core in a genuine historical document or a series of directives issued under the authority of Abū ‘Ubaydah during the early conquests.

### The Truce of Abū ‘Ubaydah

Most recensions of the Pact of ‘Umar are said to have originated in Greater Syria, either in Ḥimṣ, Jerusalem, or Damascus, suggesting some sort of historical foundation. In his *Kibāb al-Kharāj*, Abū Yūsuf reports how the Caliph Hārūn al-Rashīd (d. 193/809) asked him why the churches and places of worship of the protected people “were not destroyed and kept intact in their cities and provinces when the Muslims entered these countries, and why they were allowed to go about in the open with their crosses on the days of their festivals.” Abū Yūsuf responds that this was due to “the truce (*al-ṣulḥ*) that was concluded between them [i.e. the protected people] and the Muslims,” which guaranteed the protection of their places of worship in return for “payment of the *jizyah*” based on a decree issued, not by ‘Umar, but rather by the Muslim general Abū ‘Ubaydah.<sup>197</sup>

A summary of this truce was transmitted to Abū Yūsuf by the scholar Makḥūl al-Shāmī (d. ca. 112/730). The text is significant for three main reasons. First, it indicates that the original truce contained security measures that Abū ‘Ubaydah could have implemented during the conquest of Greater Syria. Second, since Abū ‘Ubaydah served as commander of the expedition to Greater Syria during the time of ‘Umar

<sup>194</sup> Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 2:120.

<sup>195</sup> *Ibid.*, 2:119–20.

<sup>196</sup> *Ibid.*, 2:120.

<sup>197</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 138.

after Khālīd b. al-Walīd, any decrees issued by his generals would have been subject to his authority, bearing the tacit approval of the second caliph. This potentially implies that the text may have incorporated the directives of his generals. Third, the text outlines several provisions centred around Muslim-Christian relations in the city of Damascus, suggesting that the truce evolved into an administrative prototype during the Umayyad period when Damascus became the capital of the Muslim empire and its most important *miṣr*. In contrast to Abū Yūsuf's summarized version, Ibn 'Asākir is the sole source to record the complete text of the truce as the fifth recension of version 3 of the Pact of 'Umar – a developed text likely also derived from an administrative prototype on the authority of Abū Mikhnaf.

Abū Yūsuf's recension of the truce stipulates that “their churches and places of worship shall be left intact on the condition that they do not build new ones (*lā yuḥdithū binā' bī'ah wa lā kanīṣah*).”<sup>198</sup> Abū Mikhnaf's recension is more elaborate, and has the Christians of Damascus say, “We will not build in the city of Damascus or its surroundings a church, monastery, place of worship, a monk's cell, or renew a church that has been destroyed.”<sup>199</sup> This stipulation may have evolved from a temporary security measure, for Abū Mikhnaf's recension explains that “we will not give refuge to a spy in them [i.e., the Christian places of worship] or in our homes.”<sup>200</sup>

Abū Yūsuf's recension states that Christians are “not to display their crosses in the Muslims' gathering places (*nādī 'l-Muslimīn*) or take swine in their quarters.”<sup>201</sup> Abū Mikhnaf's recension is more detailed, with the Christians expressing, “We will not go out with our crosses or our book [in the streets of the Muslims]”<sup>202</sup> and “we will not neighbour them with swine or the sale of alcohol.”<sup>203</sup> Abū Mikhnaf's recension also states, “We will not publicly display polytheism in the Muslims' gathering places (*nādī 'l-Muslimīn*) or incite a Muslim to our religion, or invite anyone to it.”<sup>204</sup> Abū Yūsuf's text states that Christians should “not beat the gong before and during the Muslims' call to prayer,”<sup>205</sup> which is paralleled in

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<sup>198</sup> Ibid.

<sup>199</sup> Ibn 'Asākir, *Ta'rīkh Madīnat Dimashq*, 2:120.

<sup>200</sup> Ibid.

<sup>201</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 138.

<sup>202</sup> Ibn 'Asākir, *Ta'rīkh Madīnat Dimashq*, 2:120-21.

<sup>203</sup> Ibid., 2:121.

<sup>204</sup> Ibid.

<sup>205</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 138.

Abū Mikhnaf's recension when the Christians express, "We will lightly beat our gongs inside our churches."<sup>206</sup>

The remaining clauses in Abū Yūsuf's text all deal with matters of security. The Christians are to "build bridges over the rivers using their own finances," "light fires for raids conducted in the way of Allah," and "not reveal the weak [military] spots of the Muslims."<sup>207</sup> These three clauses are missing in Abū Mikhnaf's recension which appears more concerned about Muslim religious sensitivities. Abū Yūsuf's text also stipulates that they will "guide the Muslims who have lost their way," that they shall "not display their banners or wear military gear on the days of their festivals and not keep weapons of war in their homes," and that they shall "not insult a Muslim or beat him."<sup>208</sup> In parallel, Abū Mikhnaf's recension has the Christians express "we shall guide them on the roads,"<sup>209</sup> "we shall not carry any weapons or keep these in our homes,"<sup>210</sup> and "we shall not insult a Muslim, and whoever beats a Muslim, then he has violated his covenant."<sup>211</sup>

Abū Yūsuf reports how the Christians requested that "we come out one day every year with our crosses but without our banners, namely on the day of our festival."<sup>212</sup> Clearly, banners were a political symbol; as for the crosses, 'Umar had guaranteed their protection when he entered Jerusalem, and so we may assume that Muslims may have perceived them outside the confines of Christian religious rites as a political symbol of Byzantium, which when displayed in the Muslims' gathering places, would have been done for the purposes of incitement and provocation. This would certainly explain Abū 'Ubaydah's concern about Christians wearing military attire during their holy day, which would only happen if he feared that these festivals might be used as a cover to incite public discord against the Muslims. In a context where there was fear of potential violence, it also becomes understandable why a stipulation prohibiting Christians from insulting or beating Muslims may have been introduced.

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<sup>206</sup> Ibn 'Asākir, *Ta'rikh Madīnat Dimashq*, 2:120.

<sup>207</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 138.

<sup>208</sup> *Ibid.*

<sup>209</sup> Ibn 'Asākir, *Ta'rikh Madīnat Dimashq*, 2:121.

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*

<sup>212</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 138.

Abū Yūsuf's text stipulates that the Christians "shall feed whoever of the Muslims passes by them for a period of three days,"<sup>213</sup> while Abū Mikhnaf's recension has them state "We shall host every Muslim who is a wayfarer and feed him from what we feed ourselves for a period of three days."<sup>214</sup> The stipulation requesting Christians to host the Muslims for three days is found in the Covenants of the Prophet,<sup>215</sup> and 'Umar is believed to have done the same when he imposed the *jizyah*,<sup>216</sup> suggesting that a clause of this nature could have been present in an original decree of Abū 'Ubaydah. Abū Mikhnaf's recension also includes the phrase "Allah is a witness to the conditions we have placed upon ourselves, and sufficient is He as a witness (*wa kafā bihi shahīdan*),"<sup>217</sup> which is reminiscent of formulary used in early Islamic political documents,<sup>218</sup> and which Abū 'Ubaydah could have employed in one of his documents.

It is significant that the clauses in Abū 'Ubaydah's decree reported by Abū Yūsuf contain more security measures than Abū Mikhnaf's recension which focuses more on Muslim religious sensitivities and day-to-day realities. If Abū 'Ubaydah and his generals had imposed restrictive measures, then it most likely would have been in the context of a tense security situation in which the Muslims were the minority, particularly in areas that were subjugated by force. Perhaps 'Iyād b. Ghanm's Compact with the people of al-Raqqā may shed some light on the type of restrictions Abū 'Ubaydah's generals could have implemented during the early conquests:

In the name of Allah, the Most Gracious, the Most Merciful. This is what 'Iyād b. Ghanm has granted the people of al-Raqqāh on the day he entered it. He has granted them protection (*amān*) in respect of their persons, wealth, and churches, that these should neither be destroyed nor inhabited as long as they pay the *jizyah*. They are not to commit any acts of intrigue, build new places of worship and churches (*kanīṣah wa lā bī'ah*), strike the gong or celebrate their festivals in the open and publicly display their crosses. Allah is a witness and sufficient is He as a witness (*shahīda Allāh wa kafā bi Allāhi shahīdan*).<sup>219</sup>

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<sup>213</sup> Ibid.

<sup>214</sup> Ibn 'Asākir, *Tārīkh Madīnat Dimashq*, 2:121.

<sup>215</sup> Morrow, *Covenants of the Prophet Muḥammad*, 226, 229, 232, 236, 240, 300, 314; Scher, *Chronique de Séert*, 616 [296].

<sup>216</sup> Mālik, *al-Muwatta'*, 279, ḥadīth no. 43.

<sup>217</sup> Ibn 'Asākir, *Tārīkh Madīnat Dimashq*, 2:121.

<sup>218</sup> Zein and El-Wakil, "Ṣiffīn Arbitration Agreement," 187.

<sup>219</sup> Al-Balādhurī, *Kitāb Futūḥ al-Buldān*, 238-39.

Al-Balādhurī reports how al-Raqqah was conquered peacefully, though its lands were taken by force.<sup>220</sup> The historical context may have been that ‘Iyāḍ b. Ghanm feared that under the guise of religion, attacks could be made against Muslims. The pretext of building new churches to host the Muslims’ enemies, the misuse of the gong, the use of open spaces where people could gather *en masse*, and abusing the symbol of the cross as rallying cries for rebellion may have been what concerned him most. These stipulations may have been consistent with directives given by Abū ‘Ubaydah who may have had similar apprehensions in areas that were not considered safe.

On the whole, it appears that some of the security measures implemented by ‘Umar’s generals formed the basis of the text of Abū ‘Ubaydah’s truce. A close reading of the recensions of Abū Yūsuf on the authority of Makhūl al-Shāmī and Ibn ‘Asākir on the authority of Abū Mikhnaf suggests that their respective texts derived from an early prototype developed in Damascus to collectively consign all these security measures under the aegis of the military commander Abū ‘Ubaydah, the conqueror of Greater Syria, in one administrative document that subsequently came to be attributed to the second Caliph ‘Umar b. al-Khaṭṭāb.

As the text reported by Ibn ‘Asākir is more elaborate than that of Abū Yūsuf, this could either mean that a developed version of Abū ‘Ubaydah’s truce was already circulating in Abū Mikhnaf’s lifetime, or, more likely, that Abū Mikhnaf narrated an early version of the truce that continued to evolve in subsequent generations, reaching its final formulation in the early Abbasid period—possibly between the period after the death of al-Mutawwakil and before Abū Bakr al-Khallāl, namely 90 to 154 *hijrī* years after Abū Mikhnaf’s death. If that is the case, then the recension attributed to Abū Mikhnaf is not only a composite text that incorporates the security measures enacted during the early conquests alongside the regulations implemented by ‘Umar b. ‘Abd al-‘Azīz in Damascus and the *amṣār* to address Muslim religious sensitivities, but also some of the harsher restrictions that began circulating in the Abbasid period after the reign of al-Mutawwakil.

Whatever new policies ‘Umar may have implemented during his caliphate, these would certainly not have been the same as those we find in his so-called Pact. The main concern of the early Muslims was law and order which entailed rules centred around mutual respect for the sake of peaceful coexistence. ‘Umar clearly understood that, and Euty chius

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<sup>220</sup> *Ibid.*, 240-41.

reports how he prohibited Muslims from conducting congregational prayers inside churches or from making the call to prayer outside of them.<sup>221</sup> Mutual respect certainly does not equate to state-sanctioned religious discrimination or the unilateral appeasing of Muslim religious sensitivities. To keep the peace, respect has to go both ways.

Abū 'Ubaydah, Khālīd b. al-Walīd, and 'Iyāḍ b. Ghanm, among others, may have had genuine security concerns, including the use and abuse of religious symbols as a political weapon. It is after all plausible that in major towns and cities, many residents of Greater Syria had publicly expressed their discontent with the new Muslim presence based on their loyalty to Byzantium. This would suggest that some of the restrictions in the Pact of 'Umar were localized to particular areas, most likely for a temporary period until the post-war situation stabilized. The Christians' acceptance of humiliating terms and conditions may even preserve a memory of acquiescence following continued friction with a victorious conqueror, particularly in towns and cities that had been subjugated by force or which experienced a great degree of instability. In this manner, the Pact of 'Umar serves as a historical reconstruction, projecting the social policies initiated by 'Umar b. 'Abd al-'Azīz and later by al-Mutawakkil to the time of the early conquests. It engages with the restrictions that were present in the newly built *amṣār* and the temporary security measures implemented elsewhere by Abū 'Ubaydah and his generals. Unlike al-Shāfi'ī's Template Agreement, the Pact of 'Umar was not composed for strictly legal purposes, and this is evident by how only version 2 makes an explicit reference to the *jizyah*. Although it successfully managed to influence policy, the Pact of 'Umar had little regard for practical considerations, and this was implicitly taken into account by jurists such as al-Māwardī and Abū Ya'lā.

### Conclusions

The descriptions of early Muslim policy towards non-Muslims reflect a distant memory of a *laissez-faire* approach that guaranteed their protection in respect of their lives, property, wealth, and places of worship, with minimal restrictions placed on them, and which was embodied in the Covenants of the Prophet Muḥammad. In conformity with the *laissez-faire* approach, the treaties issued by 'Umar b. al-Khaṭṭāb to the non-Muslim populations of his time had no desire to suppress their cultural and religious identities. It is for this reason that the early Muslims built garrison towns such as Kūfah, Baṣrah, and Fustāṭ which developed their own distinct Islamic character, and which came to be known as *amṣār al-Muslimīn*.

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<sup>221</sup> Eutychius, *Annales*, 7:17-18.

‘Umar’s generals, under the command of Abū ‘Ubaydah, may have enforced some temporary security measures designed to prevent civil unrest in the areas where they settled. When important cities such as Damascus, Ṣan‘ā’, and Jerusalem came to be classified as *amṣār*, the original agreements became problematic. Muslim religious sensitivities had not been taken into consideration, prompting local Muslim governors to adopt the regulations that were in place in the newly built garrison towns. These regulations, which addressed both security concerns and the preservation of Islamic cultural identity, formed the basis of the new edicts imposed on the non-Muslim populations.

‘Umar b. ‘Abd al-‘Azīz is the first caliph said to have enforced restrictive measures on non-Muslims. Al-Shāfi‘ī’s Template Agreement—possibly modelled on an edict of ‘Umar b. ‘Abd al-‘Azīz—included defaming the Prophet or Islam, the public consumption and selling of intoxicants, and the public display of non-Muslim religious symbols as part of the restrictions. It thus appears that the initial intent of Muslim caliphs and jurists was not to nullify the Covenants, which their non-Muslim subjects would present to them to petition for their rights, but rather to develop terms and conditions not found in them that aimed at prioritizing the interests of the Muslims in the *amṣār* as part of imperial policy.

The Abbasid Caliph al-Mutawakkil expanded upon these restrictions in at least three edicts he issued to the protected people whose intent was neither security nor putting the Muslims’ interests first, but rather to humiliate them. Al-Mutawakkil’s policy seems to have been influenced by jurists at the Abbasid court who sought to impose discriminatory and restrictive regulations on non-Muslims. It is after all in the Abbasid cultural milieu, where Islam and Christianity were seen as religious rivals, that the Pact of ‘Umar emerged. Still, as the works of al-Māwardī and Abū Ya‘lā demonstrate, the numerous regulations in the Pact of ‘Umar were not considered obligatory and were most probably only implemented at the socio-cultural level.

The Covenants legitimized a level of religious freedom that did not resonate with the norms, regulations, and religious sensitivities of the Abbasid cultural milieu. The imperial policy of Muslim caliphs towards local communities coupled with the issuance of treaties with new provisions facilitated shifting legal boundaries, resulting in the formulation of a text first attributed to Abū ‘Ubaydah b. al-Jarrāḥ, and then, at a secondary stage, after the reign of al-Mutawakkil, to ‘Umar b. al-Khaṭṭāb. The Pact of ‘Umar thus emerged as a competing text to the Covenants, bearing a complex legal history that goes beyond historical authenticity.