

War, Peace

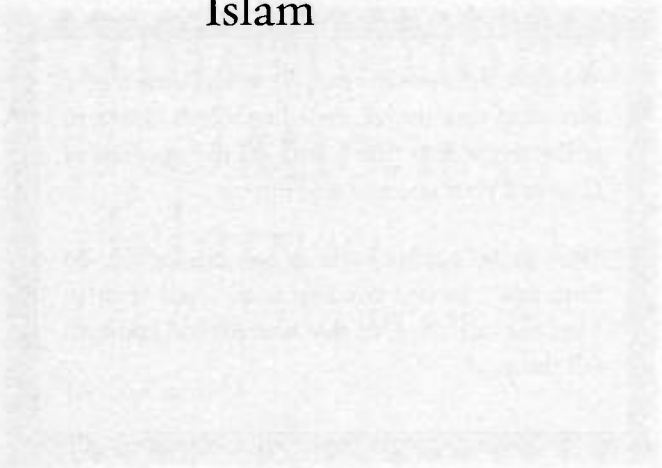
International Relations in Islam

Muslim Scholars on Peace Accords with Israel



YITZHAK REITER

War, Peace
International
Relations in
Islam



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SUSSEX
UNIVERSITY



1998

“Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies of God and your enemies and others ...”

“But if the enemy inclines towards peace, do thou (also) incline towards peace, and trust in God: for he is the One that heareth and knoweth (all things).”

Qur'an 8:60-61

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FOREWORD BY EFRAIM HALEVY

“The rulings of Islamic law cited in this book are likely to serve as a textual and intellectual basis for the public discourse on peace between Israel and the Palestinians and Arab States.” This concluding sentence in the book of Yitzhak Reiter, an Israeli scholar deeply versed in the learnings of Islam, succinctly encapsulates the *raison d’être* of this work that is now being presented to the public at large. Originally written in Hebrew, designed to enlighten the Israeli public on an issue of vital concern to it, we have thought it appropriate – indeed, of absolute necessity – to put this source of knowledge at the disposal of the English-reading audience worldwide. Why so?

It is common knowledge that Israeli–Palestinian and Israeli–Arab disputes have a religious aspect to them. Indeed, the Arab approach is particularly influenced by religious considerations and there will be many who would go so far as to postulate that the Muslim–Judeo religious divide is the primary feature of the entire field of conflict and that the political–secular angle of the ongoing dispute is merely an offshoot of a major incompatibility that is and will forever remain unbridgeable and therefore insoluble. In short, the disputes between Jewish Israel and its Arab neighbors can never be solved. Religion will not permit reconciliation, whatever the political interests of the parties for peace.

The century-long confrontation that has rent the parties apart and has plunged them into a seemingly unending chain of bloody and costly battles has become a matter of growing political and public concern worldwide. Not only are the political and strategic concerns of the powers, states and non-state players in the Middle East ever more influenced by this regional set of conflicts, but the ramifications of Islamic militant activities are assuming global proportions, affecting the daily lives of most peoples. The question the ordinary citizen must ask is not whether he or she can hope to live in peace with the Muslim next door but rather does religion permit the Muslim to do so with his “heathen” neighbor?

This book offers the reader a detailed research effort into primary

source material spanning centuries of Islamic law and decision making. It not only provides a chapter-and-verse listing of authoritative Islamic judgments but simultaneously allows the non-Muslim outsider unique insight into the norms and culture of Islam that are largely unknown to people who are newcomers to this part of the world of learning. For the English reader this is probably a first and, as such, Reiter has set out a detailed and uninterrupted string of source material spanning centuries of thought. I believe this should and will serve many a scholar and student in the years to come.

It would, of course, have been even better if such a work had appeared under the signature of a Muslim scholar. Indeed, the very fact that a Jewish scholar, an Israeli, has decided to take up this challenge is a sign of the times. In a decade that has witnessed excesses of violence in Islam, one would have hoped that a collective work on religious moderation would have topped the list of the Muslim powers that be. However, in the absence of such an effort, which would require extreme courage, both intellectual and physical, in the turbulent winds that are sweeping through the Islamic world, we believe this initiative is more than timely.

Moreover, we intend taking this effort one step further: an Arabic edition of this work is in the pipeline, reflecting our hope of reaching out to our neighbors.

Needless to say, we welcome any comment both on the content of this academic exercise of Professor Reiter and on our decision to “go public” in English. If we succeed in launching a meaningful discourse on the subject at hand and certainly if our Muslim cousins decide to weigh in with their reactions, we will be content that dialogue along the lines promoted in this work has been achieved.

EFRAIM HALEVY

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The Truman Institute for Research of the Hebrew University has also been my research venue since the late 1980s, and I am indebted to its past and present directors and academic committees for their continuous support.

Ambassador Efraim Halevy, who currently serves as the Head of the Sasha Center for Strategic Studies of the Hebrew University, promoted the idea of translating this book into English and Arabic, helped financially with the production of the English edition and contributed a foreword. I am sincerely grateful for his input and support.

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The book was translated from Hebrew to English by Ira Moskowitz, and the *fatwas* were translated from Arabic to English by Shammai Fishman (with the exception of the *fatwa* by Jad al-Haqq, which was translated by Dr. Nadim Qassem through the gracious help of my good friend, Dr. Riad Nasser). I would like to thank them all for their extensive contribution.

Last but not least, I would like to thank Anita Grahame at Sussex Academic Press for undertaking the task of publishing this book and for her excellent professional work.

YITZHAK REITER

INTRODUCTION

This book analyzes the thinking of Muslim legal experts and muftis in the field of international relations, as well as their efforts to adapt Islamic law (*shari'a*) to the realities of modern statesmanship and relations among states and peoples. It assesses their stances regarding peace agreements between Arab-Muslim states and Israel as a special case. Religious rulings (*fatwas*) and opinions expressed by authors of books on Islamic law denouncing or supporting peace with Israel are translated from Arabic to English and are accompanied by analyses of the justifications and grounds in the *shari'a* employed by Muslim experts and decision-makers against the background of the political circumstances of the time.

Discussion of these religious sources regarding Muslim relations with the non-Muslim world provides for a deeper understanding of a number of phenomena that characterize the Muslim world today: the development of Islamic law and its adaptation to changing political realities; the place of Muslim religious law in general and of legal opinion (*fatwa*) regarding current affairs in particular; the split between two major religious currents – one radical and one pragmatic – and the mechanisms for interpretation that each uses; the struggle of the Muslim world with the tensions between tradition and modernity; the relationship between religious decisions and interpretations of religious law on the one hand and ideological challenges, national and military, on the other; the role of the *fatwa* as an instrument of propaganda or publicity in an age of mass media; and the gap between religious leaders (muftis) associated with the authorities and those who are independent, or between those who identify with the regime and those with the opposition.

An examination of the political *fatwas* sheds light on the dividing lines of ideological and religious disagreement in modern-day Muslim society and on the changing concept of relations between the Muslim world and the non-Muslim world, from the classic doctrine of jihad to a pragmatic approach of adapting the legal interpretation of the *shari'a* to the modern model of international relations.

This Islamic religious discourse is also part of the public debate in the Arab world as a whole. The political and public discourse in Palestinian society and in the broader Muslim and Arab public is replete with Islamic terms reflecting the way the Muslim world conducts itself vis-à-vis the

regional and international arena. In particular, the subject of this study frequently arises in political discourse in the Middle East, where Israel is engaged in an asymmetrical confrontation with two radical Islamic movements – Hamas and Hezbollah – which assign an important place to Islamic law in their ideology, activity and political discourse. The position of the radical elements confronting Israel ranges from jihad and resistance to a lull in fighting (*budna, tabdi'a*). There are also, however, religious scholars and leaders who offer pragmatic interpretations, supported by citations from religious law, that envision the natural relations between the Muslim and non-Muslim worlds as a state of peace. This vision includes a permanent peace and diplomatic relations with Israel.

The most important document that represents the pragmatic approach is a *fatwa* of the mufti of Egypt – Jad al-Haqq 'Ali Jad al-Haqq, who lent support to the peace agreement between Egypt and Israel in March 1979. The importance of the *fatwa* that he wrote is in the great authority he wielded both as an outstanding and learned man in the field of religious law (the head of the most prestigious institute for accreditation in the Islamic world, al-Azhar in Cairo) and as the religious leader of Egypt at that time. In addition, the *fatwa* of Jad al-Haqq is important in that it is a long document of great breadth, based on the Qur'an and the Sunna (the Prophet's tradition), which cannot easily be dismissed. Furthermore, in the context of the controversy between non-extremist authorities and radical Islam, the document poses a challenge to the latter.

This trend goes hand in hand with those Arab political establishments that support striving for a permanent peace with Israel under certain conditions. For example, on 28 March 2002, the summit of Arab foreign ministers that assembled in Beirut as the 14th session of the Arab League approved the "Arab Peace Initiative," which was known in its previous incarnation as the "Saudi Peace Initiative."¹ This initiative includes a proposal to normalize relations between the Arab states and Israel, a readiness to declare an end to the Arab-Israeli conflict in exchange for Israeli withdrawal to the 4 June 1967, borders, establishment of a Palestinian state with its capital in East Jerusalem, and a just and agreed upon solution to the Palestinian refugee issue in accordance with UN Resolution 194. Approval of these decisions by the Arab League granted Israel pan-Arab legitimacy (albeit conditional) to live in security within the 1967 borders while establishing normal relations with the Arab states – a situation Israel had sought before 1967. The initiative recognized that a solution to the refugee problem must be acceptable to Israel and that a peace accord that adheres to these principles would bring an end to the conflict.

In March 2007, the Arab League summit that convened in Riyadh, Saudi Arabia, ratified the Arab Peace Initiative. The concluding

announcement stated, among other things, that the Arab states reaffirm that “a just and comprehensive peace in the Middle East is the strategic option of the Arab countries, to be achieved in accordance with international legality.”² This choice ostensibly contradicts the rules of Islamic law, which stipulate that Islam must persistently act, via jihad, to expand the control of Islam in the world and that a cessation in fighting is only permissible for short periods of time in order to build up strength, after which warfare must be resumed.

Why are Muslim states, some of which rely on Islamic law – the *shari‘a* – as their main source of legislation, willing to deviate from this Islamic tenet and sign a permanent peace accord with Israel, an accord that includes recognition of a Jewish state with control over a geographic area they had previously considered to be Muslim territory (*dar al-Islam*)? How do the Muslim religious sages who seek to support their governments’ political actions deal with this problem? What are the challenges that *shari‘a* experts from the Islamic opposition pose to the authorities in various Arab states?

This book presents and analyzes *fatwas* (rulings of Islamic law) issued by religious sages and clerics – establishment muftis and independent muftis – who interpret Islamic law on issues of war and peace in relation to the actual or future possibility of a peace agreement between Muslim states and Israel. The chapters systematically analyze various religious rulings that present positions both for and against peace with Israel, as well as the religious argumentation supporting each position.

Fatwa

Why are *fatwas* important in understanding public discourses? A *fatwa* is a legal opinion written by a scholar (mufti). The mufti’s opinion is not a ruling in the form of a binding legal document, and its validity derives only from the stature and authority of its author. It comprises a query directed to the mufti alongside his response. *Fatwas* are the primary tool for the development of Muslim law and its adaptation to the changing circumstances of society in accordance with the spirit of the time and place. Therefore, *fatwas* issued by various scholars are compiled into collections. In the 20th century, the muftis began to compose political *fatwas* (for example, *fatwa mu‘asira* – “Contemporary *Fatwas*” – by Sheikh Dr. Yusuf al-Qaradawi).³ These *fatwas* are an integral part of the political and ideological discourse on the questions of domestic and foreign policy that occupy the attention of the Arab and Muslim world. In addition to the *fatwa*’s role in providing a response to legal questions, it is sometimes also an instrument for disseminating political viewpoints, achieving political influence, or spreading propaganda.

Because of the muftis' religious authority and popularity, their *fatwas* often influence public opinion on issues that are on the public agenda. Contributing to this development is the mass media revolution that enables rapid and massive dissemination of opinions by authoritative muftis. Today, one can find hundreds of new *fatwas* published frequently on dozens of Internet sites offering an "online *fatwa*." Various prominent muftis have their own Internet sites, and more general sites also exist, where muftis work on a rotational basis or where a council of muftis formulates responses to questions of social importance.

By the Middle Ages, a distinction had already emerged between official muftis, who work for pay on behalf of the rulers, and independent muftis. The former were organized in a hierarchy by allocation of provinces and districts, and they were headed by a chief mufti. As expected, the official muftis of the state would generally support the ruler's policy on political questions while the independent muftis would challenge official policy. Today, muftis affiliated with extremist Islamic movements issue *fatwas* that contradict and even attack official muftis. The latter are sometimes disparaged as *muftu al-salatin* – the muftis of the rulers.⁴ Nonetheless, the official muftis are usually more learned, having completed higher studies at the al-Azhar institution in Cairo or other prestigious institutions, and have more extensive legal experience. Very few of the independent muftis reach the level of knowledge of the official muftis. The status of the official muftis varies from one Muslim state to another. In Syria, for example, the mufti is regarded as a puppet of the president. In Lebanon, in contrast, the mufti wields independent political power and his rulings are also considered independent. While the mufti in Egypt is linked to the regime's interests, his long and erudite opinions stimulate a public discourse on fundamental issues. The wider Egyptian public, and especially those not affiliated with the Muslim Brotherhood, value the rulings of the chief mufti and relate to them according to their content, even though he is identified with the regime.⁵

A *fatwa* that addresses a political issue is designed to imbue the regime's actions with legitimacy (by the official muftis) or to deny such legitimacy (by Muslim sages affiliated with opposition groups). It is logical that the regime would encourage the official muftis, who are state employees, to issue legal opinions that are consistent with its political actions. Thus, it is clear that a *fatwa* in this area will always depend on the political context and that each commentator will search and find Islamic legal sources on which to base his opinion, supporting or opposing the regime's actions. Today any ruler can obtain a *fatwa* that provides religious authorization for his policy from Muslim sages whose salaries come from public coffers.

This book opens with a presentation of the classical doctrine of the

shari'a regarding war and peace as background for the *fatwas* analyzed in the chapters that follow. Chapter 2 describes the practice of signing agreements with non-Muslims over the course of Muslim history and the efforts made by Islamic thinkers to form a bridge between international relations in modern times and the classic Islamic theories about relations with non-Muslim groups and peoples. Chapter 3 is dedicated to a discussion of the *Hudaybiyya* agreement – an agreement of non-combat between the prophet Muhammad and his enemies, the tribe of *Quraysh*, in Mecca in the year 628. The agreement lasted ten years and became, in effect, a model for agreements between Muslims and non-Muslim groups. Although it serves as a precedent for legal rulings, Muslim commentators continue to disagree about its significance and the conclusions one can draw from the historic event itself, as well as the implications for Muslim states' relations with Israel. Because important *muftis* who supported the signing of the peace agreement with Israel did so in part on the basis of this precedent, a debate arose among Israeli (and Western) experts in Islam and the Middle East as to whether those pointing to this event meant to refer to it as true peace or whether it was intended as a ruse, that is, an agreement that may legitimately be broken from the outset, even before official termination, when doing so is convenient for Muslims. This chapter analyzes different stands regarding this issue and concludes that political context should serve as a basis for determining which of the two approaches applies.

Chapters 4–8 are devoted to *fatwas* on the subject of peace with Israel, presented in chronological order. The first *fatwa* in Chapter 4 presents the Al-Azhar sages rejection of the 1947 UN Partition Resolution followed by other Egyptian *fatwas*, from 1956 (when Egypt blocked the Straits of Tiran to Israeli ships), and 1969 (Al-Azhar response to the first peace initiative of the U.S. secretary of state, William Rogers). Chapter 5 deals with the *fatwa* of the chief *mufti* of Egypt, Jad al-I Haqq (mentioned above), which is analyzed and set in its historical context; Chapter 6 deals with the 1995 debate between two of the most important contemporary authorities on the *shari'a*, the late mufti of Saudi Arabia 'Abd al-'Aziz ibn Baz and the popular Islamist scholar Dr. Yusuf al-Qaradawi (who resides in Qatar), over the Oslo agreements, signed between Israel and the Palestine Liberation Organization (PLO) in 1993. Chapter 7 discusses the possibility of the Palestinian resistance movement, Hamas, agreeing to a truce (*budna*) with Israel and includes a proposed draft *budna* that was discussed by colleagues of Hamas leader Ismail Haniya (also known as Haniyeh) and representatives of the European community. Although in this case the subject is not a formal legal opinion, it is important because it gives us an idea of what Hamas's stand might be if and when a similar proposal is made in the future. Chapter 8 addresses a position paper,

written in the form of a *fatwa* by one of the most important religious leaders in Saudi Arabia, that relates to Israel's second war in Lebanon (2006) and the position of the Hezbollah against Israel. Chapter 9 – which concludes the book – presents the agreements signed between the Algerian leader 'Abd al-Qadir (who was also an important religious figure) and the French in the 1830s. These agreements granted *shari'a* legitimacy to French control over the shores of Algeria, even though they constituted land that had been conquered by Muslims and were being relinquished to non-Muslims, the French.

Finally, a note on translation and transliteration: when translating the *fatwas* from Arabic to English, we chose readable language over literal translation whenever possible. We hope that we have succeeded in conveying a discourse composed by members of one culture to readers who are members of another culture without distorting the original meaning of the Arabic texts (*Allahu a'lam*). For Qur'an verses we used the translation of Yusuf Ali. A common transcription is used for Arab names and terms, without adding diacritical marks. When a particular name is familiar and well-known in a different transcription, the familiar spelling is used (for example Heikal and Qadoumi instead of Haykal and Qadumi).

seemingly prepared to exploit any minor incident to destroy a rival.") He relied on Western scholars, including Bernard Lewis, who wrote: "... the murder of a Muslim by a Meccan for what appears to have been a purely private difference of opinion served as *casus belli* for the final attack and the conquest of Mecca."²²

Moreover, according to Pipes, the Prophet could have exercised restraint or made do with a ransom payment, but instead he maneuvered the contacts with the other side toward a dead end so that he would have an excuse to conquer Mecca. The ancient Muslim sources do not claim, or even hint, that the Prophet should have agreed to the conciliation offer from the people of Mecca. According to Ibn Hisham, the leader of Quraysh, Abu Sufyan, understood the significance of the violent incident in which a member of the Khuza'a tribe was killed and went to al-Madina to pursue conciliation. He spoke with senior members of the Prophet's camp, but his call for a conciliation accord received neither a positive nor a negative response. Meanwhile, the Prophet made preparations for conquering Mecca.²³

Mustafa Abu Sway of Al-Quds University criticized Daniel Pipes's article. In a recent article, he wrote that even though the attack by members of the Bakr tribe significantly violated the Hdaybiyya agreement, the Prophet did not rush to counterattack. He sent a letter to Quraysh, demanding payment in compensation for those killed from the tribe of Khuza'a. In addition, he demanded that they expel the tribe of Banu Bakr from their defense alliance. The Prophet announced that if they did not accept his conditions, he would regard the Hdaybiyya agreement as null and void. Quraysh sent an emissary to al-Madina to inform the Prophet's camp that they also regard the agreement as terminated but then immediately recanted, and their leader, Abu Sufyan, personally traveled to al-Madina to renew the agreement. Even though he was the toughest enemy of the Muslims in al-Madina, the Muslims allowed him to enter the Prophet's mosque and to declare the renewal of the Hdaybiyya agreement. The people of al-Madina ignored his declaration, however, and Abu Sufyan returned to Mecca empty-handed.²⁴

E. The Dispute Over the Conquest of Mecca Through Peaceful Means

Contemporary Muslim commentators who wish to view the Hdaybiyya agreement as a precedent for peace in its modern sense underplay the belligerent aspect of the conquest of Mecca and portray it as an action that did not require bloodshed because the Prophet conquered the city with almost no resistance. According to Muslim sources, the Prophet announced prior to the conquest that those who take refuge in the homes

of Mecca's notables or in the Ka'ba would not be harmed.²⁵ This narrative emphasizes the Prophet's benevolence: he did not take revenge against the bitter enemies who, eight years earlier, had prevented him from preaching in Mecca. In fact, Muhammad knew that the Meccans had no chance of resisting him given the size of his army at that time.²⁶

F. Does Reference to Hudaybiyya Express Sincere Support for Peace with Israel?

In June 1979, following the publication of a *fatwa* by the mufti of Egypt, Jad al-Haqq, in support of the peace treaty between Egypt and Israel (and based in part on the Hudaybiyya precedent), Middle East experts in Israel offered various interpretations of this *fatwa*. Some interpreted it as the Egyptian establishment granting legitimacy to violate the peace accord with Israel and attack it whenever the Egyptians think the military balance of power has shifted to their advantage. A more critical Israeli interpretation was later expressed after Yasser Arafat, then-chairman of the Palestinian Authority, compared the Oslo Accords (between the PLO and Israel, signed in 1993) to the Hudaybiyya agreement in his speech in a mosque in Johannesburg in May 1994 (discussed below). Some historians, however, rejected the conspiratorial interpretation and argued that these remarks should be understood in the context in which they were spoken.²⁷ They interpreted the religious ruling by the mufti of Egypt as expressing a sincere desire to support a permanent peace with Israel. Arafat's remarks were interpreted leniently, but it was also said that his actions in the future are what will reveal his true intentions.

A basis for the conspiratorial interpretation of Hudaybiyya may be found in the thought of Muslim *shari'a* experts who emphasize the strategic achievements of this agreement: a non-belligerency pact on one front, designed to enable the Muslims to concentrate on waging war on a more vulnerable front. Muhammad Kheir Heikal, for example, presented the Hudaybiyya agreement as an example of the Prophet's farsighted strategy, although his followers at the time did not see its advantages.²⁸ Another contemporary thinker, Muhammad Afifi, wrote that the Prophet had far-reaching objectives that he did not want to reveal when he decided to negotiate an agreement with the people of Mecca. The Prophet proposed a long-term agreement in order to assure the people of Quraysh that he harbored no belligerent intentions, but he knew that they would violate the agreement. In fact, he knew in advance that the rival was not a single bloc and that the people of Quraysh lacked a unified leadership capable of preserving the agreement and thus defending the group. He knew that internal dissension had nearly led to their collapse and that victory would be easy for anyone who knew how

to take advantage of time to achieve his objectives and realize his strategy.²⁹ When the Prophet entered Mecca two years after signing the agreement, Islam had already been secretly disseminated in the city (by converts to Islam who remained there).³⁰

The Palestinian thinker Iyad Hilal offered a more radical explanation, reflecting a minority opinion from the Islamist stream. Hilal wrote that a Muslim ruler must conceal his true intentions – from both the other side and from the Muslims themselves – during negotiations with the rival because revealing his objective in advance is liable to undermine the effort to reach an agreement. This was how the Prophet acted vis-à-vis Quraysh: he pretended that he was intent on performing the *'umrah* no matter what and concealed his true goal, which was to reach a non-aggression pact in order to focus the primary effort against the Jews at Khaybar and Arab tribes who still did not embrace Islam.³¹ According to Hilal, the Prophet knew that Quraysh and Khaybar were scheming to forge an alliance to wipe out the camp of Islam. Thus, he reached a preemptive agreement with Quraysh, his entire objective being to sabotage the alliance developing between Quraysh and Khaybar. After defeating Khaybar and the Arab tribes, the Prophet waited for an opportunity (*yatabayyan al-furas al-mula'ima lil-qiyam bi'amal ma*), and the moment that Quraysh violated the Hudaybiyya agreement, he changed the peace policy he had adopted toward Quraysh. He rejected the attempts by Quraysh to continue the *hudna*, and he set off to conquer Mecca. Agreements in Islam are, therefore, an important method for waiting and exploiting opportunities and international circumstances in order to resume disseminating Islam in the world.³² These comments can serve as a source of inspiration for those who argue that the use of Hudaybiyya as a *shari'a* justification for a peace accord with Israel is manipulative. We stress, however, that this is a minority opinion among contemporary commentators. The overwhelming majority of Muslim thinkers who address this question regard the Hudaybiyya agreement as expressing a sincere desire for peace. We will now examine interpretations of the “Johannesburg speech” of Yasser Arafat.

G. The Hudaybiyya Precedent in Yasser Arafat's Speech in Johannesburg

In May 1994 PLO chairman Yasser Arafat visited South Africa as the guest of Nelson Mandela. The visit took place shortly after the signing of the Cairo Agreement (the Gaza-Jericho accord) and six days after Arafat's festive arrival from Tunis to the Gaza Strip. During his visit Arafat spoke in English at a mosque in Johannesburg and cited the precedent of the Hudaybiyya agreement in order to justify signing the Oslo

Accords. Arafat did not know that his speech was being secretly recorded by a local reporter from Radio 702 in Johannesburg. The recording was sent to a Jewish settler from Karnei Shomron in the West Bank, Ned Goldwasser, who was in South Africa at the time, and it was later broadcast on the “Arutz 7” radio station (affiliated with the right wing and West Bank settlers) and then on the state-run “Israel Radio” station.³³

The sentences in his speech that stirred controversy appeared in the following paragraph:

“ . . . This agreement, I do not regard it as anything more than the agreement the Prophet Muhammad signed with Quraysh, and you recall that the caliph ‘Umar refused to sign the agreement because he viewed it as an inferior agreement. But Muhammad gave his consent to the agreement. In the same way, we are now accepting this peace agreement [Oslo], but are also [working] to continue our way to Jerusalem, the direction of the first prayer, together with you and not alone . . . ”

The Johannesburg speech prompted the Likud faction in the Knesset to call upon Prime Minister Yitzhak Rabin “to admit his mistake” and cancel the Oslo Accords. Opposition factions even submitted a no-confidence motion in this context. In his speech Arafat sought to mobilize his listeners on the Jerusalem issue – an issue the Oslo Accords deferred to a later stage, when final status negotiations would be conducted. Arafat, having returned from the Cairo summit, where he had insisted on receiving a letter on the subject of Jerusalem as a condition for signing the agreement, updated his listeners on this matter and added that he anticipated a struggle over Jerusalem and that Israel would exploit the time to establish facts on the ground. Thus, he called upon his listeners to be prepared for jihad for the liberation of Jerusalem.

Some Middle East experts interpreted the reference to Hudaybiyya in the same breath with jihad as an admission by Arafat that he intended to violate the Oslo Accords when the time was right. They argued that just as the Prophet Muhammad had exploited an incident as a pretext for terminating the agreement with Quraysh, so too would Arafat act when the conditions were ripe.³⁴ Arafat was portrayed as someone who signed “an agreement with a wink.”³⁵ Some argued that the Prophet Muhammad had signed an agreement “that he had no intention of fulfilling” and that in order to dull the alertness of the other side, he had sought a relatively long-term agreement of ten years. The Prophet’s action was portrayed as “a flagrant violation of the agreement, without any provocation by the people of Mecca.”³⁶ Some also explained that Arafat, like Muhammad, would find a suitable pretext and opportunity to

violate the agreement, while pinning the blame on the Israeli side for not fulfilling all of the articles of the agreement with the PLO.³⁷

In contrast, some Middle East experts believed that the text alone could not be used as a basis for correct interpretation without considering the political context. They explained that Arafat needed Muslim rhetoric to justify the enormous concessions he had made in the Oslo Accords and sought to justify himself and tell his listeners that this was not an overall defeat. Therefore, he made use of the Hudaybiyya agreement, ostensibly an agreement made from a position of inferiority and defeat, but which ultimately led to a great military and diplomatic victory. Arafat's rhetoric was explained as the "human psychological dependence of a defeated person." These experts added that the Hudaybiyya agreement was made in a tribal context, whereas the Oslo Accords had international validity.³⁸ Some also noted that the Hudaybiyya agreement has a range of interpretations, including one that seeks to adapt classical Muslim law so as to accommodate international law and justify rejecting the use of violence to resolve conflicts, adding that Yasser Arafat's would be tested by his actions.³⁹

Just as the contemporary Muslim interpretation of the Hudaybiyya precedent is divided between two political poles – radical Islam (which argues that an agreement with the enemy can be violated) and moderate Islam (which argues that this is forbidden) – the disagreement among Israeli Middle East experts on this question also apparently corresponds to the differences in their ideological outlook.

Palestinian scholars such as Dr. Sami Musallam⁴⁰ and Dr. Mustafa Abu Sway⁴¹ have written that the Israeli interpretation that attributes cynical use of the Hudaybiyya precedent to Arafat is erroneous. The two writers do not contend with the position expressed in classical Muslim legal literature that regards any agreement terminating warfare as only a temporary hiatus until enough strength to continue fighting is amassed. This position again underlines the importance of the interpretation of the Egyptian mufti Jad al-Haqq, who was the first to contend with these sources and to argue that war is permitted in Islam only "in an emergency situation that has been imposed" and that the *shari'a* allows the signing of any peace accord that brings benefit to the Muslims.

In my view, Arafat sought in his Johannesburg speech to have it both ways: to justify signing the Oslo Accords for the opponents of peace in his camp, and to convey a tough message in advance of pending political struggles on the Jerusalem question and the other core issues. Arafat was ambivalent toward the Oslo Accords, which deferred the real problems in the peace negotiations to a later date when the sides would discuss a final status accord. Arafat was apparently not satisfied with the agreement, but he needed it, and the power imbalance compelled him to

accept the agreement despite its shortcomings. Arafat's negative message in his Johannesburg speech was expressed through the negative language in the following paragraph: "I do not regard it as anything more than the agreement the Prophet Muhammad signed with Quraysh . . ." and in his reference to the agreement being perceived as "an inferior agreement." Had he wanted to portray the Hudaybiyya agreement as a positive precedent, Arafat could have referred to it through positive language by saying, "I regard this agreement as just like the one the Prophet signed . . ." In addition, Arafat chose an interpretation of the concept of "inferior agreement" that portrays the *sulh* as an agreement made from a position of inferiority. Indeed, four years after the Johannesburg speech, on 18 April 1998, Arafat said in an interview with the Egyptian television network Orbit:

Of course I do not compare myself to the Prophet, but I say that we need to learn from his actions and from the actions of Saladin. The peace treaty we signed is an inferior peace. The conditions [behind it] are the intifada that lasted for seven years. We honor agreements as the Prophet Muhammad and Saladin honored the agreements they signed.⁴²

Thus, Arafat says in effect that this agreement is inferior in that the Muslim side agreed to humiliating conditions, and he emphasizes that 'Umar b. al-Khattab opposed the humiliating conditions the Prophet had accepted – just as senior PLO officials such as Farouk al-Qaddoumi and Palestinians in the refugee camps opposed the Oslo Accords. In 1998, when the Oslo process was already collapsing, Arafat also drew a parallel to Saladin, who had conquered the Land of Israel and Jerusalem from the Crusaders. Saladin honored the *hudna* agreements he made with the Crusaders, but the end result was the expulsion of the Crusaders from the Holy Land.⁴³ Nonetheless, on the positive side, it should be recalled that Arafat absorbed criticism both from within the Palestinian camp and from militant circles in the Arab world for signing a peace accord without actually receiving a state and without resolving the refugee problem, the issue of Jerusalem or the question of the future state's borders. Arafat had to justify himself, and when addressing the audience of Muslim worshippers in Johannesburg, he chose to use the most famous relevant precedent – the agreement the Prophet had made with non-Muslims. Regarding the issue of East Jerusalem, the most difficult bone of contention, Arafat sought to enlist the Muslim world in the political struggle by threatening "a jihad for the liberation of Jerusalem." Jihad is also a term that can be interpreted in different ways, giving it a political meaning or a violent meaning. In other words, if the Palestinians did not receive Jerusalem

through political negotiation, they would endeavor to liberate it through violence. In the later historical context of the Camp David summit of 2000 and the Al-Aqsa Intifada (which, according to the Israel Defense Forces' intelligence branch, Arafat did not plan but also did nothing to curb), hindsight suggests that our proposed interpretation applies to Arafat's subsequent political actions as well.

Pakistan's former president made an interesting use of the Hudaibiyya precedent, which partially resembled Arafat's speech in Johannesburg. After September 11, 2001, Musharraf was attacked by his opposition for allowing US aircraft to fly over his country for airstrikes in Afghanistan. He made a speech justifying his action by saying:

America is asking for our support in three main specific areas: (Inaudible) information exchange, the use of our airspace and the third area [where] they need our support is logistic support . . .

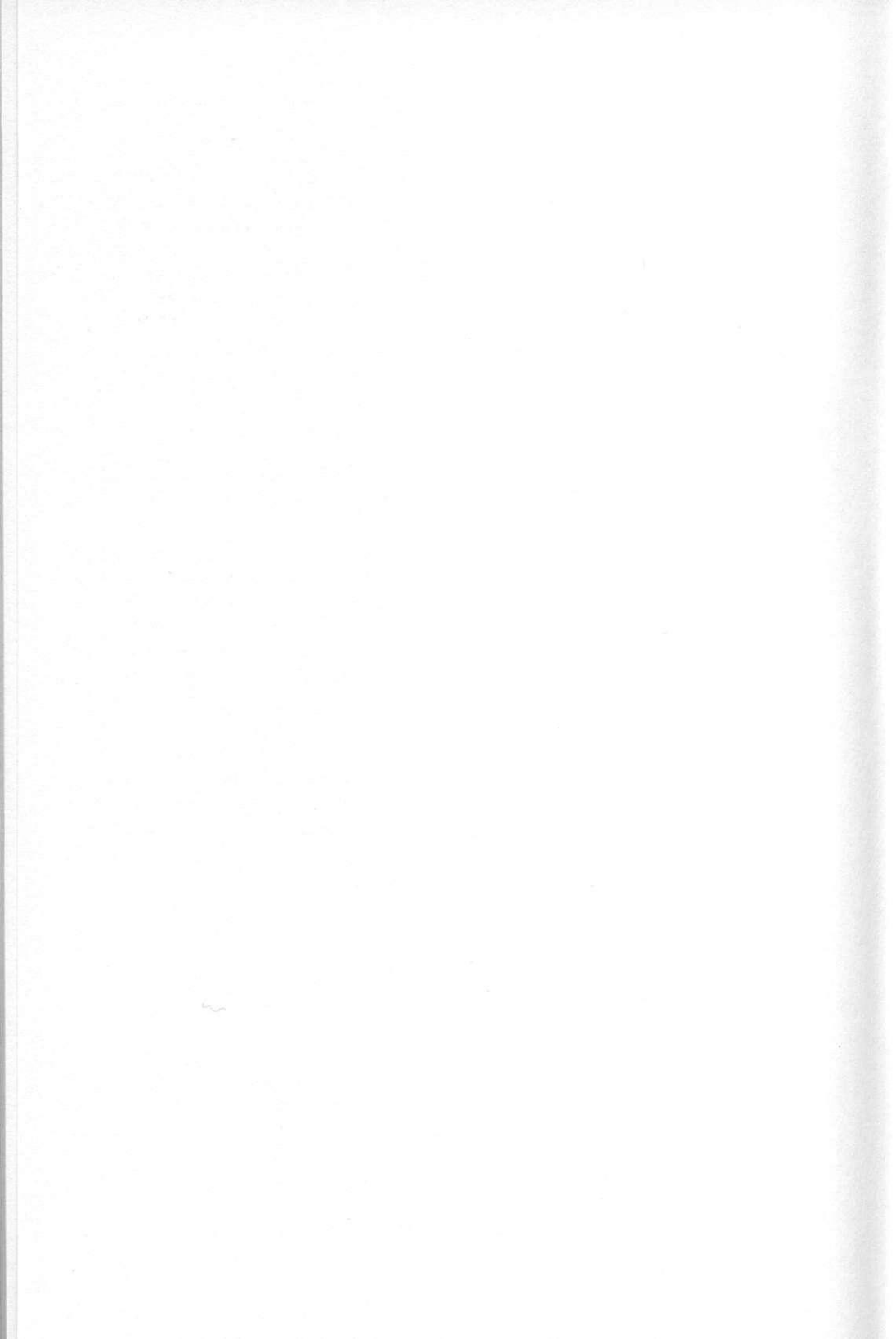
Some clerics and some religious leaders are being driven toward an emotional decision. I want to remind them of the first six years of the history of Islam . . . When the prophet noticed that these two enemies [Jews of al-Madina and the Meccan infidels] were getting together, he decided to sign an agreement, an alliance with the same infidels of Mecca with whom he had been fighting. I want to draw your attention to the main point of this particular alliance . . . [Replying to Umar, the Prophet said:] "You are emotionally charged. But wisdom's demand is that we should sign it at the moment, and this would be beneficial to Islam, and as the time passes, you will become aware of what advantage it has to us now."

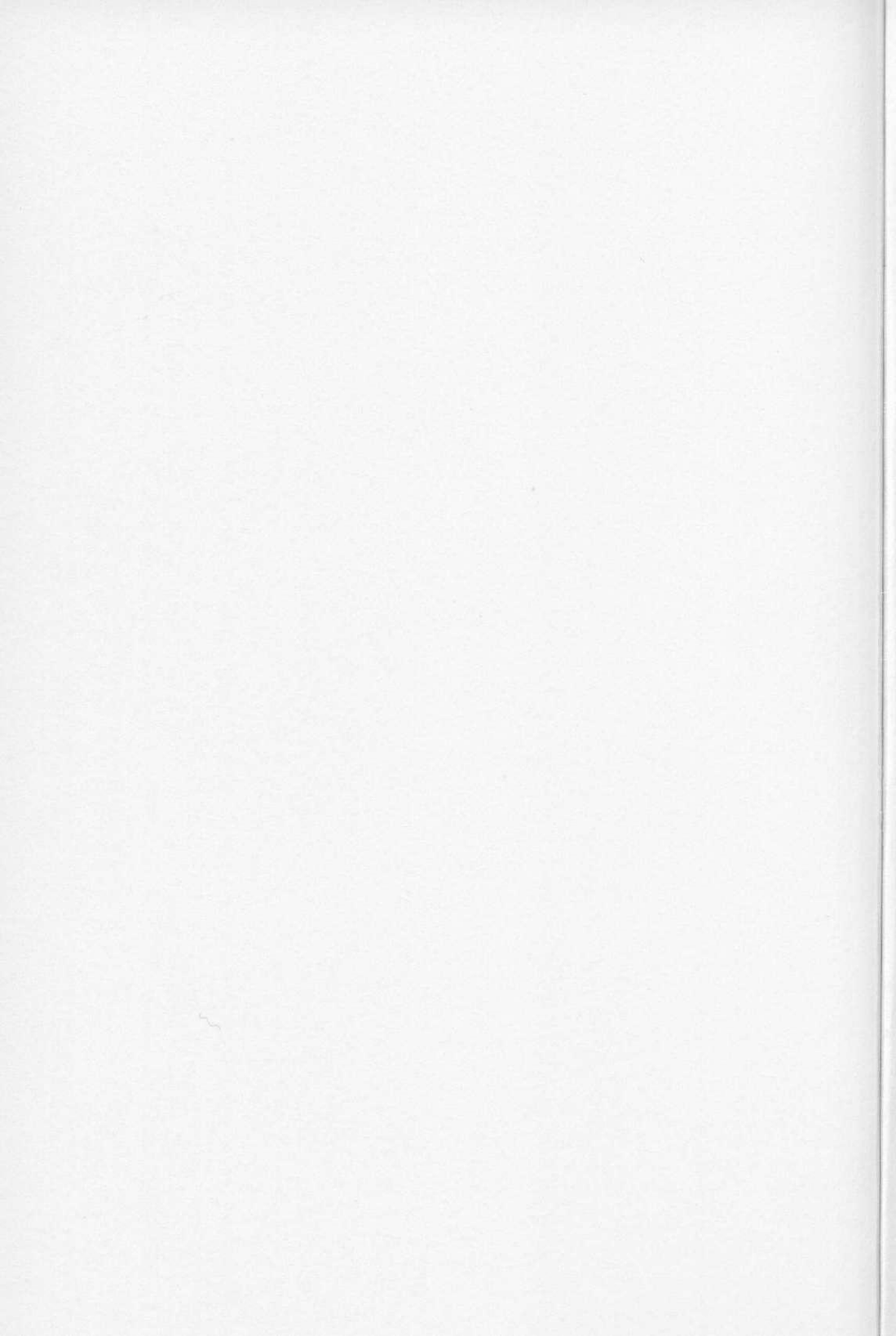
And then in the next six months, there was a battle between Muslims and Jews, and of course by the grace of God, Muslims won the battle. This was possible because there had been a pact with the infidels of Mecca – of a no-war pact – that Muslims won. And then, of course, Mecca was conquered.

What lesson do we derive [from] this incident? The lesson is [that] when there is a crisis, wisdom is a much better way than emotion. Therefore, on this occasion, a strategic decision is to be taken . . . And it is said that if you are facing two problems [the US pressure and Kashmir] and you have to choose one, then it is better to take the lesser evil . . . ^{43a}

Musharraf, like Arafat, wanted to use Hudaibiyya as an example of strategic wisdom, and to a certain extent he also misinterpreted historical events.

In summary, I believe that the reference to Hudaibiyya in Arafat's speech in Johannesburg should be understood as deliberately ambiguous.





“The rulings of Islamic law cited in this book serve as a textual and intellectual basis for the public discourse on peace between Israel and the Palestinians and Arab states. The book is a must for every scholar and student of the Middle East as well as for Israeli and Arab statesmen who deal with the question of peace on a daily basis.”

***Efraim Halevy, Head of the Shasha Center for Strategic Studies,
The Hebrew University of Jerusalem and former Head of the Mossad,
Israel's national intelligence service***

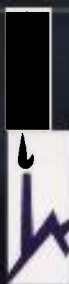
Yitzhak Reiter presents and analyses *fatwas* – rulings of Islamic law – issued by religious sages and clerics on issues of war and peace in regard to the actual or future possibility of conducting a peace agreement between Muslim states and Israel. The analysis highlights Islamic law's adaptation to changing political realities to the modern model of international relations; the changing concept of jihad and the current role of political *fatwas*. It deals with the *shari'a* interpretations regarding war and peace in theory and practice; the *Hudaybiyya* Pact of 628 between the prophet Muhammad and the Quraysh infidels; Egyptian *fatwas* from 1947 to 1979 regarding peace with Israel; the 1995 debate between the late mufti of Saudi Arabia 'Abd al-'Aziz ibn Baz and the popular Islamist scholar Dr. Yusuf al-Qaradawi over the Oslo Accords; the Hamas *hudna* concept; the debate between Saudi Arabian *muftis* and Hezbollah sages over Israel's second war in Lebanon (2006); and a comparative study of the agreements that were signed between the Algerian leader 'Abd al-Qadir and the French in the 1830s. This important book

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