

Importance of Diplomatic Immunities in Islamic Law (Shari'ah)

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Abstract

Diplomatic Immunity has always been emphasized in western countries. However, was originated by Islamic Law 1400 years ago with the advent of Holy Prophet Hazrat Muhammad (Peace Be Upon Him). Islamic Law formulated the bases of rights of diplomats, bestowed privileges to envoy of other countries, presented some ideal examples which has much importance and purposeful effects among the different nations, cultures throughout the history of Muslim Ummah. Islamic Law has formulated foundations and rules to protect the diplomats from any sort of harm, killing, damaging their properties instead they must be given privilege and protocol to perform their duties as diplomats in host countries without any fear. Furthermore, even after providing maximum protection, if envoys face a problem, there are laws to protect them in every type of situation including war and peace, chaos and harmony. Additionally, it has never been neglected in the Jurisprudence of Islam, that how the diplomats have to show in the best manner to represent one's own nation.

Keywords: Islamic; Diplomatic; Immunities; Protection; Importance

Introduction

Since the beginning of life on planet Earth, it has always been a great challenge for man to maintain a fully peaceful and harmonious society, internally and externally, within the boundaries of one's territory, as well as beyond it. History has proven that Muhammad (peace be upon him) was the most successful individuality in harmonizing the relations with other states even after hundreds of battles, utmost chaos, enmity, hatred and clashes of religions, races and cultures, between the extremely different tribes of people around him.

The Islamic Diplomatic Immunity was originated by the Holy Prophet Hazrat Muhammad (peace be upon him) a long time ago approximately 1400 years back and it was the time, yet civilization was unknown to the grounding rules for the welfare and betterment of humanity as a whole. Apart from this, Islam also offered conciliated solution to all those humanly problems which were aroused by the increased interaction among different communities and nations.

The only rule that Muhammad (peace be upon him) used was the Divine Rule, the Islamic Law, which was indubitably designed to suit the human being at every period, in every situation of life and to fulfil the human need indefinitely. Indeed, promoting successful relations with other countries is only possible through delegations, ambassadors and envoys. Keeping in view the current global situation, there is inevitably a dire need to create a worldwide peaceful environment and stability.

The term "diplomatic immunity" is being exercised almost all over the world. As western diplomatic immunity is concerned, its roots are engrossed in 1961 Vienna Convention¹ and the 1963 Vienna Convention on Consular Relations (VCCR) which provided privileged opportunities to diplomats' immunity from arrest, detention and prosecutions. Nevertheless, Anne Arundel County² suggested that immunity is a "complete personal inviolability, means that person may not be handcuffed (except in extraordinary circumstances), may not be arrested; and their property, (including vehicles), and residences may

not be entered or searched". Furthermore, "a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities both their official and to a large extent, their personal activities".

Throughout the history of Islamic Jurisdiction diplomats were granted protocols by the host community. Muslim administrators used to specify certain amount of money each year for the receiving missions and envoys to launch the Islamic rules and traditions. Muslim leaders always tried to take good care of the selection of diplomats. Additionally, diplomats must possess some fundamental qualities which are suitable to fulfil the responsibilities as envoy in host community. For example they must have knowledge, patience, wisdom, courage, persistency and even appearance etc.

That is why, it could be said that diplomatic immunity has greater importance in Islamic Law. Holy Prophet (Peace be upon Him) presented noble examples receiving, sending delegations and appointing protocol for the purpose of peaceful environment in surrounding territories and to spread the message of Allah SWT to the whole mankind.

Diplomatic Immunities in Islamic Law (Shari'ah)

The solicitude of the owners of diplomatic immunities in Islam started since the very early age of Islam, Allah the Almighty stated the significance in the Holy Qur'an thus:

{13 O mankind, indeed we have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted}³.

³Surah Al-Hujurat [49:13].

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¹Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95; Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261.

²Anne Arundel county police department written directive. "Definitions & immunity categories." Index Code 2001.1, dated 12-03-10. <http://www.aacounty.org/Police/RulesRegs/Sections2024/2001.1%20DiplomaticImmunity%2007-06-15.pdf> (2001)

Sheik Saadi also maintains that:

Allah made them into nations and tribes, (namely the small and big tribes), in order to know each other, where if each one of them would boarder himself, they would not get this acquaintance which is resulted by cooperation, inheritance, and the rights of relatives⁴.

Additionally, there is also a reference verse where Allah the Almighty says:

{1 O you who have believed, fulfill [all] contracts} ⁵.

This is the order of Allah for believers to fulfil and maintain the covenant and we are obliged to do so⁶. This is reflected in the way the Prophet (peace be upon him) sent Othman bin Affan (may Allah be pleased with him) on appointment as envoy and to serve his country and his religion. Therefore, the importance of the rights of a diplomat is clear. As such, the diplomat should be granted what he preserves concerning the rights, because it resolves a lot of the outstanding issues between the states through his word and his dialogue. Indeed Allah the Almighty said:

{24 Have you not considered how Allah presents an example, [making] a good word like a good tree, whose root is firmly fixed and its branches [high] in the sky?} ⁷.

Based on the Qur'an's verse, Allah the Almighty likened the impact of a good word that binds the heart of the people with a blessed tree that bears fruit that benefits people⁸. Thus, this is the role of a diplomat and his immunity, and this role is not subject to changes, whether in time of peace or war and its importance is not less than the military importance as Ibn Qudamah reiterated in this book⁹.

The Prophet's concerns was about the right of the seekers of immunities, such as apostles and the envoys in which he offered the gifts to them thereafter. He (the Prophet (pbuh)) took care of them and showed appreciation to them due to the significant role of the apostles especially for the external relations of the states. Therefore, the decision was made concerning the prohibition of killing of the apostles. Instead, they must be protected absolutely and the sanctity of their blood became mandatory. This is because the immunity of the Apostles in Islam is not based on courtesy, or the right of the Islamic state of sovereignty over its territory, but it is based on the sanctity of blood in Islam and the principle of forbidding the killing of the Apostles¹⁰. This principle was stated in the Qur'an:

{32 whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely} ¹¹.

In other word, the opinions circulated by contemporary scholars¹² buttressed the claim further. It is said: "indeed, Islam takes into account the humanitarian principle in securing the Apostles" [1]. It is this fact that gives credence to the religion of Islam in terms of giving importance and concerns to the seeker of immunity as far as the Prophet Muhammad (pbuh) is concerned. This can be witnessed through what the Prophet

instructed upon the safety of receiving delegations and missions that were sent by their countries. This is what is called in today's diplomatic parlance the Protocol of Reception which had started in Islam before the year 1400. The western version only came into being in 1961 Vienna Convention. The system of receiving delegations was developed by the Prophet (pbuh) as a good system in the treatment of delegations. Such system was based on the following points:

1. Receiving delegations: the Messenger of Allah S.A.W appointed some of his companions to receive delegations when they arrive into the city in order to facilitate their livelihood during their stay in the city of the Messenger of Allah (pbuh).¹³

2. Providing an accommodation for the delegations: The Messenger of Allah (PBUH) prepared a number of the city's role to accommodate the delegations, including the house of Ramlah bint Al- Harith Al-Najjaria. It was a wide house, which had a palm and cereals. The delegations of Salaman, Tamim bin Uyaina bin Hisnin and delegation of Bani Kilaab lived in that house. Apart from this, the house of Mughira bin Shu'ba was occupied by the descendants of Thaqeef delegation. Likewise the house of Abu Ayyub al-Ansari was occupied by a delegation. Najran, also including the house of Yazid ibn Abi Sufyan, and of Hamdan, as well as the house of Bilal, and the King Eilah, were also used as an abode for Syrian and Yemeni people.¹⁴

3. Honoring the delegation: The Prophet (PBUH) ordered his companions to improve the reception of delegations and honor them. Thus, they complied in the best way they could. Ibn Sa'd mentioned in his book, *At-Tabaqat*, that the delegation of Bani Hanifa lived in the house of Ramlah. They used to eat bread and meat once or bread and milk sometimes, and they eat bread and margarine once.¹⁵ It is stated in this book that the Prophet (peace be upon him) welcomed the delegation of Tajeeb and honored them and then ordered Bilal to improve their hospitality.

4. Willingness of meeting the delegation: The Prophet (peace be upon him) prepared a Dome in the Prophet's Mosque for receiving delegations and appointed Khalid bin Said bin al-Aas to receive them, and making arrangement for their meeting with the Messenger of Allah (peace be upon him). So, he used to ask the Messenger of Allah permission on their behalf. The Prophet Muhammad (peace be upon him) used to wear the best clothes when he met with the delegation and ordered his companions to do so. He (the Prophet (pbuh)), Abu Bakar and Umar wore Yamani suits while receiving a delegation of Kinda. The companions built a bench of clay for the Messenger of Allah, (pbuh) and sat there while receiving the delegations.

5. Listen to the delegation first: Based on Ghalush Ahmad, the Prophet (peace be upon him) received the delegation, and listened to him first to know the subject matter and then replied to him, or he ordered one of his companions to respond¹⁶. This is what the Companions (may Allah be pleased with them and those who came after them) did during the lifetime of the Prophet. The Muslim leaders maintained such protocols, in fact they budgeted certain amount of money each year to spend for receiving missions and hosting them based on accurate rules and traditions which are followed in order to achieve what is marked by an Islamic state [2]. This concern was not limited to this, they took

⁴Shiek Saadi, *Tafsir Teisair Alkarim Alrhmman*, p802.

⁵Surah Al-Ma'idah: [5: 1].

⁶Shiek Saadi, *Tafsir*. p218.

⁷Surat Ibrahim [14:24].

⁸Tafseer Al-Qurtubi vol 9, p 359.

⁹Ibn Qudamah, *Almughni, Ahmad Abu al-Wafa'*, *al-Qanun al-Diplomasy al-Islami*, (Dar Anahdah, 1992), p 607.

¹⁰Ahmad Salim Ba Umar, *al-Fiqh al-Siyasi li al-Hasanat al-Diplomasiyah*, p 99.

¹¹Surat Al-Ma'ida [5:32]. *Tafseer Al-Qurtubi* vol 6, p 145.

¹²Umar Kamal Tawfeeq, Ahmad Salim Muhammad Ba-Umar, *Fawey Al-Malah*.

¹³Ghalush, Ahmad Ahmad. (2004) *Assirah Al-Nabawiyah Wal Da'awatu Fil Ahdil Madani*. Mu'assasat Al-Risalah, p 660.

¹⁴Ibid. Ghalush, Ahmad Ahmad. p 660.

¹⁵Ahmad Salim Ba Umar, *al-Fiqh al-Siyasi li al-Hasanat al-Diplomasiyah*, p 99.

¹⁶Ghalush, Ahmad Ahmad. *Assirah Al-Nabawiyah Wal Da'awatu Fil Ahdil Madani*. Mu'assasat Al-Risalah. 2004.P. 660.

care of the selection of envoys who represented them and enjoyed those immunities in order to be eligible for immunity which they deserved and represented the Islamic state in the right way.

The above practices here encouraged the countries which were dealing with the Islamic states because they got immunity within the Islamic state. They were eligible and represented their countries in the form of better representation. This is what is considered in our time and it is called the Rule of Reciprocity. In other word, it is the practice of exchanging things with others for mutual benefit, especially privileges granted by one country or organization to another. Thus, this selection, specifications and conditions that were placed to the Islamic diplomats who were messengers and envoys since the time of the Prophet (peace be upon him) until our time did not come from a vacuum but it is derived from divine revelation. Allah the Almighty says:

{124 Allah is most knowing of where He places His message}¹⁷.

And He says further:

{75 Allah chooses from the angels messengers and from the people}¹⁸

The scholars of Qur'an interpretation have also maintained that¹⁹: "the Almighty chooses messengers from angels as he pleases and wills, and also chooses from the people to convey His message". Indeed Allah listens: He says: "Allah is most knowing of where He places His message"²⁰. And He says further: "He knows what is [presently] before them and what will be after them. And to Allah will be returned [all] matters"²¹. He knows how to treat His Messengers for what He sent them for. Based on this, here are the following conditions of selecting the envoy 1. Calling people to Islam, Allah says:

{108 Say, "This is my way; I invite to Allah with insight, I and those who follow me. And exalted is Allah; and I am not of those who associate others with Him"²².

Allah said to His Messenger, Prophet Muhammad (pbuh), that he had been sent to the whole of mankind and the jinn. Commanded him to tell the people that this is his path and whoever follow shall be granted the desired rewards in this life and the hereafter. Therefore, the propagation of Islam (Da'awah) becomes obligatory for every Muslim man and woman, including ambassadors and envoys. However, this obligation is determined based on the abilities of preachers or messengers. Accordingly, the messengers and envoys sent by the Prophet (peace be upon him) to Kings and princes of his time were elites²³.

2. Eloquence and clarity: The clarity of precision and meanings to listeners is a basic condition for a man who may be appointed to the diplomatic mission. The Prophet (peace be upon him) used to choose ambassadors and envoys of Arabs who were brought up on the island and with the Bedouins sometimes because they were the owners of the pureness of logic and speech [3].

3. Knowledge: Knowledge is the way of transferring the idea and principle and this is evident from the choice of Ja'far ibn Abi Talib by the Prophet (peace be upon him) to interview the King Negus (Najjaashi). This is based on his knowledge and was asked to recite Surat Maryam

to Negus because of the mentioning of Jesus and Mary in the Surah. This was to inform King Nerus of the awareness of Islam about the prophethood of Isa, the son of Maryam.²⁴.

4. Good manners: The ethics of the Prophet's ambassador has been stated in the Qur'an and elaborated by the Messenger of Allah, (peace be upon him) in the *Sunnah*. The most important of these ethics for the Ambassador and Envoy are: honesty and humility.

5. Patience and firmness: Allah S.W.T says:

{35 So be patient, [O Muhammad], as were those of determination among the messengers and do not be impatient for them}²⁵.

6. Courage: Courage is necessary for envoys in peace as it is a necessity in the war. Thus, the ambassadors of the Prophet (peace be upon him) who were sent to the Kings were not afraid of anybody.

7. Wisdom: The most important character that should be applied by ambassadors and envoys is wisdom and its derivatives was mentioned in the Holy Qur'an 210 verses²⁶.

8. Perception capacity and consideration: Diplomat must be aware of the dimensions of things, careful, reticent, and nimble [4].

9. Appearance: Allah S.W.T says:

{3 He formed you and perfected your forms; and to Him is the [final] destination}²⁷.

The Prophet's ambassadors were characterized by the purity of detection. The Prophet (peace be upon him) chooses ambassadors among the companions who has the recipe of beauty, formal and good characters with high mental and psychological traits²⁸. Ibn Al-Fara' said: "An Ambassador (Envoy) must be smart and cunning not being despised by the eyes of others or to be criticized by his experience. It is also recommended to be chaste, good tongue, intelligent, understands gesture and jaw-jaw with the Kings. Furthermore, his appearance must be charming and attractive because the audiences are more focusing on the uniform rather than adequacy and competency and must be expanded in the capital in which that he would not even need to have what people might offer to him which results in his weakness on their eyes²⁹.

The concern about the holder of immunities in Islamic law is not limited to this, it is much wider than and beyond the expectations of contemporary law scholars. Rather, the concern encompasses all what surrounds the personal qualities of envoys, as well as assigned task that should be carried upon the countries that they were sent to. Islamic law has paid great attention to the diplomatic rescuer as it is called the

²⁴Ibid.p114.

²⁵Surat Al-Ahqaaf (35).

²⁶Bundaaq, Muhammad Salih. Hidayatu Al-Rahmaan Li Al-faaz wa Aayatil Qur'an, p115.

²⁷Surat At-Taghabun (3)

²⁸Umar Kamal Taufeeq, (N.P:1986, N.D), al-Diplomasiyyat al-Islamiyyah, Wal Alaqaat Al silmiyyah Ma'al Salibiyyin: Dirasat Tahliyyat Watha'iqiyyah Fi Tarikh al-Diplomasi, P 121-120.

Khalid Sulayman al Fahdawi. Al-Fiqh al-Siyasi Lil watha'iq an Nabawiyyah: al-Mu'ahadaat - al-ahlaaf - al-Diplomasiyyat al-Islamiyyah. p115. See also: Al-Rajhi, Salih bin Abdullah. Al-Diplomasiyyah; Anwa'uha wa Marahilu Tatawwuriha, p35. The year 380 AH

²⁹Ibn Al-Fara', Muhammad bin al-Hussein bin Mohammad bin Khalaf bin Ahmad, Judge Abu Ali, al-Baghdadi, al-Hanbali. Known as Ibn fara'. He is one of the Hanbali jurists in the second Abbasid era. He was born in the year 457 AH and died. His Book: Al-Ahkaam Al-Sultaniyyah, second edition, publisher Dar Kutub Al'Ilmiyyah, Beirut. P. 35. See also: Al-Qalqashandee, Ahmed bin Ali bin Ahmed Fazari. Subhul Aasha Fi Sina'atil Insha'. Vol 1, P. 116.

¹⁷AL-An'aam [6:124].

¹⁸Al-Hajj [22:75].

¹⁹Ibn Kathir, Tafsir al-Qur'an al-Azim .Vol 5, p398

²⁰AL-An'aam [6:124].

²¹Al-Hajj [22:76].

²²Surat Yusuf: 108.

²³Ibn Kathir, Tafsir al-Qur'an al-Azim.part4.p361.

correspondence and speeches. This implies that the Muslim Ummah have been ordered by Allah SWT to seek for knowledge, especially learning, reading and writing. Allah the Almighty said:

{1 Nun. By the pen and what they inscribe}³⁰.

Al-Tabari said: "the first thing that Allah created was a pen, therefore, it wrote everything"³¹. Also Allah S.W.T said:

{1 Recite in the name of your Lord who created – 2 Created man from a clinging substance. 3 Recite, and your Lord is the most Generous – 4 Who taught by the pen – 5 Taught man that which he knew not}³².

Read O Muhammad and glorify your Lord (who taught by the pen) He taught His creation the writing and calligraphy by Pen³³. This is the guidance of Allah Almighty in this full comprehensive Shariah concerning religious and worldly matters.

Hence the Arabs of the earlier generations knew the value of writing and calligraphy and considered it as something beneficial. Accordingly, the Prophet (peace be upon him) is the most fluent in terms of language and speech. Thus, he was oratorical and had the gift of garb. Aisha R.A narrated: "The words of the Prophet, (pbuh) are clear and understandable for each and every one who hears"³⁴. This fluency reflected in the messages sent by the Prophet (peace be upon him) by the ambassadors to the Kings, Sultans, and the Heads of the tribes. It was a clear vision, summary in the saying, and goal setting. This basis became "a beacon of modern diplomacy" which keeps away from unbearable prolongation, fillers, and ambiguity in the meanings and purposes. In this way, Islam focused primarily on science, arts and diplomatic relations.

Due to this significance, the prophet (pbuh) appointed the best writers and editors for narrating his messages and revelations. The first generations of these people were Abu Bakr, Omar, Othman, Ali, Abdullah ibn Abi Arqam and Zaid ibn Thabit. All this is due to the importance that was attached to the right of envoys and to protect them from all sides. Some scholars stated that the Prophet's concern towards the messengers and envoys is the message being sent to him which recorded several results³⁵. It enabled the Prophet (peace be upon him) to know the policies of these kings, princes, and the like, as well as their orientation towards him. So, it was a test for them. It is considered by many analysts as an example of the sublime Islamic media that laid the foundation for the art of human relations, in both internal and external³⁶. Hence, it can be inferred that the Prophet's diplomatic instructions focused on the religion and humanitarian part which cannot be separated in terms of human rights³⁷ and this is especially what the researcher is going to discuss in further in this study.

While it can be regarded as the foundations of securing the envoys in international law and as casual defects that may not be applied in

every circumstance and works³⁸, so that if the treachery in the general rights of the people is rejected, it also must be rejected as a right of ambassador. Hence, according to Islamic law (Shariah), the envoys of enemies should not be betrayed even if the enemies killed Muslim hostages³⁹, and this was confirmed by Ali bin Abi Talib (May Allah be pleased with him) when he said: fulfilment of the promise with non-treachery is better than treachery by treachery⁴⁰. Therefore, it of interest to emphasize Islamic law (Shariah) of protecting the envoys and their immunity, and also in the maintenance of lives [5] from the attacks. This protection has its ways and means based on its circumstances. Some scholars⁴¹ divided it into three cases:

The first case: the attack on the Muslim ambassadors, immunity and how to respond to them in Islamic Law.

Second case: the attack on the immunity of ambassadors in the Islamic country. The third case: the attack on the immunity of the Apostles in the Muslim relations with each other⁴².

All of this division is to clarify the protection towards envoys, and how to ensure the maintenance of their lives in these ways and situations. The researcher will address the details and implications concerning assault on them.

Conclusion

The Islamic Law had already been introduced, applied successfully and bore fruitful results about fourteen centuries ago, harmonizing the utmost chaotic state of world. The receiving of foreign delegations, sending delegations to other countries to spread the message of peace and to represent one's country has always been given very much importance throughout the Islamic history. Islam has provided rights of delegations and has implemented rules to deal with delegations in the best possibly manner. Receiving delegations, listening to their demands, facilitating them, giving them protocol, making them feel like at home, providing services and protection, hence there is no room left to make the envoys feel uncomfortable or stranger during the whole stay in hosting country. Not just that, Islamic Law has encouraged greatly making it comfortable and easy for others to receive one's delegations. Pointedly, the appearance, manners, behaviour, thinking, capabilities, courage and patience are the characteristics to be looked upon when choosing envoys.

Concerning the protection and maintenance of lives of the envoys, there are further laws in Islamic Law which describe how to deal with situations, when a foreign ambassador is attacked while under hosting territory or when an envoy is in danger. Hence, the Islamic Law has not only laid down the bases but has provided the full script and model on how to immunize the delegations in the most successful ways, yielding the best results in the form of peaceful, harmonious worldwide relations.

³⁰Surat Al-Qalam: (1)

³¹Al- Tabari, Abu Ja'far Muhammad bin Jarir ibn Yazid ibn Ghalib. Tabari (Jami'ul Bayaan Fee Ta'weelil Qur'an), Vol 23, p 5.

³²Surat Al-A'laq: (1-5).

³³Al-Tabari, ibid, Vol. 24, P. 519 24.

³⁴It was related by Abu Daud, Hadith (4839).

³⁵Hassan Mohammed Saleh. *Diplomacy in the Islamic Sharia* (Journal of Tikrit University Legal and Political Science – issue 4) p.5 <http://www.iasj.net/iasj?func=fulltext&aid=20641>

³⁶Ambassador Dr. Ahmed MahmoudJuma. *almohar'ratal- diplomaceh bain al-aThabat wa Tatawwur*. (Second Edition, Dar al Arabiyyah, 2013. 1434AH).P.12-16.

³⁷Ambassador Abdulkadir salah, (1997) *Qawa'idu Al-Suluk Al Dibliomasi Fil al-Islam*. Dar Annahdh al Arabiyyah, p. 41,42

³⁸This means that the reasons for securing the envoys might be fleeting petition don't tied to the side of religion, such as what is the situation in secured in Islam. So are granted in Islam on the basis of religious and humanist.

³⁹Associate Prof. Dr. Galal Ibrahim Fakirah (in the interview: 2016) he believed should be adhering to the *Sunnah* of the Prophet, peace be upon him to protect the envoys, because we as Muslims must follow the Prophet in giving these rights. P.300.

⁴⁰Shaibani, Al-Sairul Kabir, vol. 1, p. 320_ Abu Yusuf, Al-kharaj, p 188_Al-armnazi, Al-Shar'u Al-Daouli, p 188_Abu Dawood, Sunan Abi Dawood, v. 2, p. 76. Alurgelani says: If we entered in their country safely, or messengers, or the taking of our prisoners, we must not betray nor cheat. Alurgelani, Yousef Bin Ibrahim, Al-Dalil Wa Al-Burhan, Muscat: Ministry of Heritage and Culture, vol. 1, p. 93. Ahmad Salim Ba Umar, Ibid, p100

⁴¹Islamic scholars:Ibn Al-Fara', Muhammad bin al-Hussein.

⁴²Ahmad Abu al-Wafa. p472.

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