The pact of ʿUmar, traditionally called ṣhuṇaṯ ʿUmar, or the Stipulations of ʿUmar, is the title given to the canonical document that sets forth the rules and restrictions pertaining to non-Muslims living under Muslim rule from the ninth century onwards. This chapter will survey the process of the emergence of these rules until they became the accepted norm, will discuss their origins and finally will examine the question of their enforcement throughout the centuries.

The emergence of the pact

Background: the initial postconquest agreements

The Muslim conquest of the Near East, which lasted only a few decades, brought into power a small group of Muslims who now had to rule a large and heterogeneous population that included Christians, Jews and Zoroastrians. An effective mechanism needed to be found in order to enable a stable and long-lasting rule.

The immediate mechanism, already adopted throughout the conquest itself, was an ancient one with which the population in both the Graeco-Roman and the Sasanian world was well acquainted (Levy-Rubin 2011: 10–36). The conquest could be made either by force (ʿanwātan), if the population chose to resist, or through an agreement (ṣulḥān), if a city chose to surrender. The city’s delegates would usually negotiate the conditions of the surrender with the conquerors, then they received a written agreement (ʿahd or ʿaqd), a copy of which was held by both sides. Such agreements were common throughout the conquest. In return for surrender and the obligation to pay a special tax which was imposed upon the conquered (jīzāy), the conquerors committed to give the local population an assurance of safety (amān) for their lives and their possessions, including their prayer houses, and the right to continue their lives as before, according to their traditional mores. Besides these general terms, the contract also included various specific terms specifically relevant to the city in question, such as the specific amount of tax (jīzāy) agreed upon, the terms of retreat of the Byzantine army, obligations of the conquered to give hospitality or serve as guides in local territory, as well as other specific issues that were concluded in the negotiations, such as Muslim occupation of deserted houses or the prohibition on Jews from living in Jerusalem (Levy-Rubin 2009). At times, as in the case of Jerusalem, these agreements were quite detailed.
Although no original agreements have been preserved, there is ample evidence from both Muslim and non-Muslim sources to prove their existence (Levy-Rubin 2011: 36–57). Both sides preserved them for future reference, and during the second half of the ninth century they were still considered binding in Muslim courts of law (Levy-Rubin 2011: 40).

With time, however, this mechanism became more and more cumbersome for the Muslims. Following this initial period, which may have lasted several decades, or more in certain areas, a new process commenced. The Muslims, who were at first mostly conquerors on the move, were now settling down; although in some cases they established their own settlements and cities (amsār), the most prominent of which were Kūfah and Baṣra, they often settled in existing towns and cities, thus creating close proximity between the Muslim conquerors and the non-Muslim conquered inhabitants. Moreover, non-Muslims soon settled even in the newly founded Muslim settlements, again creating a situation in which Muslims and non-Muslims were coexisting side by side.

This situation, which was not accounted for in the first surrender agreements, aroused a growing need to draw the boundaries of these newly created encounters, which increasingly permeated the daily lives of both Muslims and non-Muslims. This state of affairs was especially threatening to the Muslims, who had previously agreed not to interfere with the lives of the conquered and now found themselves in insupportable situations where pigs and wine were sold in the open markets, Christians held loud and colourful liturgical processions, in which a proceessional cross with the figure of Jesus, as well as embroidered banners and icons of saints, were displayed throughout the main streets, and non-Muslims held high government positions and exercised formal authority over Muslims. The latter felt a need to restrict the behaviour of non-Muslims and prevent them from filling the public space with customs, ceremonies and other practices which they considered offensive. In addition, the management of a multitude of diverse contracts was undoubtedly cumbersome for the Muslims. It is under these circumstances that the pact was drawn (Levy-Rubin 2011: 58–87).

**Principles of the pact**

Formed as a pact allegedly signed between the Muslim conquerors and the Christians of one city following the conquest, the document lists a series of obligations made by the conquered in return for the assurance of protection (amān) given to them by the Muslims. It includes clauses regarding the obligation to host Muslims and to be loyal to them, a list of restrictive measures regarding religious customs, such as praying quietly and refraining from beating the clapper (nāqūs) loudly in call for prayer and from conducting various public displays such as processions on holidays, funerals, crosses, lights on the roads, and sale of pigs and wine. There are clauses regarding behaviour in the presence of Muslims: an obligation to respect the Muslims and give them priority on the road as well as in seating, not to be buried next to them, not to peek into their houses, and not to own a Muslim slave. A series of clauses required the adoption of differentiating signs (ghiyār), including the prohibition on resembling the Muslims in appearance, the obligation to wear the zumār (girdle), the prohibition on using saddles, on using Arabic seals, on carrying weapons and on teaching their children Arabic.

**The dating of the pact**

The pact, traditionally attributed to ʿUmar ibn al-Khaṭṭāb (r. 634–44), is in fact in its final form a much later product portraying a state of established coexistence between Muslims and non-Muslims rather than the initial period of the conquest. However, the date of its writing is unclear.
The text of the pact exists in various versions (Miller 2000; Levy-Rubin 2011: 59–60). The most famous one, cited in the Appendix to this chapter, appears in al-Ṭūrūshī’s Sirāj al-mulāk (beginning of the twelfth century), although the earliest complete versions cited go back to the beginning of the tenth century (Cohen 1999: 137–46). It may well be that the pact existed even earlier, as the isnāds or lines of transmitters that appear in the various versions go back to the eighth century (Levy-Rubin 2011: 61).

Scholars have raised various suggestions regarding the date of the pact. Tritton (1930: 12), followed by Fattal (1958: 68), believed that the document was a product of junior jurists in the ninth century who practised drawing up pattern treaties and gathered restrictions on the dhimmīs from sundry sources and that the reference to ʿUmar is actually to the Umayyad caliph ʿUmar ibn Abd al-ʿAzīz (r. 717–20), who (according to them) initiated the ḡiyār, rather than to the second caliph, ʿUmar ibn al-Khaṭṭāb (Tritton 1930: 116; Fattal 1958: 97–8), and the pact dates to his time. Noth (1987: 290–315) followed by Cohen (2008: 57–8) believe that the pact does originally go back in parts to the time of the conquest. Their approach draws on those paragraphs in the pact which are similar to ones found in the conquest agreements, such as the obligation to host Muslims and not to harbour spies. However, they too concede that in its final form the document reflects a much later state of Muslim–dhimmī coexistence.

The formation of the pact

Restrictions such as the prohibition on the public display of crosses and their removal and on the employment of non-Muslims in the administration of the caliphate are known to have been imposed on the dhimmīs as early as the time of ʿAbd al-Malik (r. 685–705) (Levy-Rubin 2011: 100–3). Yet the first structured set of rules was promulgated by ʿUmar ibn ʿAbd al-ʿAzīz and concerned the ḡiyār or distinguishing signs imposed upon the dhimmīs. The ḡiyār were meant to allow the easy distinction between Muslims and the others and to emphasise, according to ʿUmar’s policy, the lordship of the former and the ‘humility and contempt’ (al-dhull wa-l-ṣaghār) of the latter (Levy-Rubin 2011: 88–98; Borrut 2013; Yarbrough 2014). Yet this set was just a partial though central element in the pact to be.

In fact, it seems that the ninth century was a period of heated debate regarding the place of the dhimmīs in Muslim society (Levy-Rubin: 58–87). By 800 there were several developed versions of the Pact which were intended to replace the individual agreements with a general formula, all but one claiming to draw on ancient sources. The purpose of these formulae was to provide a comprehensive document that would define the terms applying to dhimmīs living under Muslim rule in general and in places inhabited by Muslims in particular.

Several different versions, representing different approaches, were drawn up and circulated. The version of Abū Yūsuf (d. 798), the chief judge under the Caliph Hārūn al-Rashīd, is the most tolerant. It calls for respect of the original agreements and maintains that the limitations and restrictions imposed should apply only if Christians interfered directly with Muslim life and religion. The version of al-Shāfiʿī (d. 830), another important legal scholar, is somewhat less tolerant, imposing more restrictions on the dhimmīs. Nevertheless, he maintains that these restrictions should apply only in cases of Muslim–Christian coexistence and that all previous sūlḥ commitments should be respected. The ḡiyār restrictions form only a small and comparatively minor section in his version of the treaty, and the document bears a mutual character enumerating the rights and the obligations of both sides and emphasising the protection of Muslim society rather than its lordship.

In contrast, the classic text of the Pact, which seems to have been one of these competing versions, is completely unilateral. The promise of security on the part of the Muslims can only be
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surmised from such a request made in the opening section of the document, while the dhimmīs take upon themselves a long and detailed list of restrictions. The differentiation between Muslim and non-Muslim cities is often obscured, most restrictions being applicable to all dhimmīs wherever they are; nor does there seem to be any obligation to honour the original agreements. A large number of the restrictions that appear in the pact no longer function as protectors of Muslim society but rather as a means of emphasising Muslim dominance and sovereignty, as opposed to dhimmī subordination and subservience.

It seems therefore that at the end of the eighth and beginning of the ninth centuries there was no consensus regarding a general formula which would take the place of the original surrender agreements and that the issue was being intensively debated.

It seems that it was not until the middle of the ninth century – during the reign of al-Mutawakkil (r. 847–61) – that šurūṭ ʿUmar acquired priority, gradually pushing aside other versions that presented more liberal and tolerant approaches, and finally obtained exclusivity.

The origins of the clauses of the pact (see translation of the pact in appendix)

What were the origins of these restrictions, and which social values and conventions did they represent? Before all, it needs to be stressed that documents regarding the status of minorities or subordinate groups are not attested before the coming of Islam. We are thus seemingly faced with a unique phenomenon.

Nevertheless, an analysis of the clauses shows that they reflect various Byzantine as well as Sasanian laws and conventions in addition to some Arab and Islamic elements. Thus, the differentiation based on religious identity was well established in both Byzantine and Sasanian society. Additionally, the distinction between pagans (mushrikūn) and the People of the Book (ahl al-kitāb) who are awarded this protection is totally in concert with the special status of the Jews under Byzantine rule (Linder 1987: 230–1). Similarly, the protection of existing prayer houses and the prohibition to build new ones (clause 1) is identical to the Byzantine law regarding synagogues (Linder 1987: 269, 297, 400–1), while the prohibition against the owning of Muslim slaves (clause 13) is mirrored in both Byzantine (Linder 1987: 84–5) and Zoroastrian law (Perikhanian 1997: 28–9). The prohibition on holding public office is also identically imposed on non-Christians in the Byzantine Empire (Linder 1987: 75–6). Clause 2, regarding the right of passage of Muslims, the duty to supply them with board and lodging for three days, and the commitment not to give shelter to spies or to conspire against Muslims, is clearly a remnant of the early agreements, as has already been noted (Noth 1987). Other clauses – clause 9, prohibiting the selling of wine or the rearing of pigs in the vicinity of Muslims; clause 3, the prohibition on ‘teaching the Qurʾān to our children’; the clause on displaying crosses; or that concerning polytheism, which does not appear in al-Ṭūthūshī’s version – are likely to be an adoption and extension of the Byzantine prohibitions on contempt of the local religion and cult (Linder 1987: 237, 284–5), although they may well have developed independently, being natural and intuitive measures aimed at protecting the ruling religion and asserting its supremacy (Levy-Rubin 2011: 126).

We are still left with a significant number of clauses which are not accounted for. The roots of all these, all ghīyār or distinguishing marks, are to be found in the social ideology that prevailed in Sasanian society before the conquest, an ideology which promoted explicit distinction and immobility among the four classes of society. Thus, in Sasanian society, the inferior social status of the lower classes was to be made salient by means of ‘the dress of baseness’ (ībās al-madhallā), while the nobility kept for itself exclusively magnificent clothing, trappings and honours. Having adopted this ideology, the Muslims now took the place of the upper classes in Sasanian society,
while the non-Muslims were allotted the position of the lower class (ṭabaqa) (Levy-Rubin 2011: 130–44). The unaccounted for clauses can all be placed within this system:

Clause 5: The obligation to show respect to the Muslims and give them priority in seating, or calling on Muslims in their homes.

Seating arrangements and the number of seat cushions were a central feature in Iranian court hierarchy and class distinctions (Levy-Rubin 2011: 145–6).

Clause 6: The requirement not to resemble the Muslims in dress, hairstyle, speech, or kunyas (patronymics). Listed specifically here are the qalansuwa, the turban (ʿimāna), footwear, and the parting of the hair.

This clause reflects the Iranian habit of identifying social strata by special headgear, outer garments, trousers and footwear, as well as by their patronym (Kalfon Stillman 2000; Levy-Rubin 2011: 146–50).

Clause 7: The prohibition on the use of saddles, girding swords or carrying arms.

Riding on a fine horse and bearing daggers and swords were the marks of Iranian nobles and were their exclusive prerogative. It is therefore no wonder that these were prohibited to non-Muslims.

Clause 8: The prohibition on possession of seals engraved in Arabic.

Seals or signet-rings were an ancient sign of authority. Having an Arabic seal was therefore also the exclusive prerogative of the ruling class.

Clause 10: The requirement to ‘clip the [hair at the] front of the head’ (presumably to cut the hair across the forehead short, i.e. to wear a fringe).

Cutting the forelocks marked among Arabian tribes someone who was taken captive and was generously freed by his captor. The dhimmīs were conquered people who owed their freedom to the generosity of the Muslims. Unlike the rest of the clauses, this one stems from the Arabian ethos.

Clause 11: The requirement ‘to dress the same way wherever we may be and to bind the zunnār around our waists’.

The zunnār (Greek zonarion, Persian kustīg, Aramaic hanyānā) was originally the sacred girdle, common among Christians, Jews and Zoroastrians, and used for ritual purposes. Under the Muslims it had become a manifestation of the new social order, a distinctive mark of the newly created lower class. The Muslims, on the other hand, adopted for themselves a different type of belt – the Persian kamar, the official belt of the nobility, which marked the high position of their owners. This type of belt was called in Arabic minṭaqā. The girdles, which had been worn in the past by the believers of various confessions of their own will, had become obligatory and served to distinguish the non-Muslims from the Muslims, who wore no such girdles. The imposition of the zunnār was therefore accompanied by the prohibition on wearing a minṭaqā, a prohibition which was no doubt relevant to many non-Muslims who had previously worn them to mark their distinction and wanted to go on doing so.

Clause 12: The prohibitions on conducting religious processions, especially on Palm Sunday and at Easter, on using clappers loudly, on the raising of voices in church services in the presence of Muslims, or during funerals, or the showing of lights in Muslim roads or markets.
This clause is made up of several parts: 1. processions – this should be seen in the context of the *mawkib*, the procession or the retinue of the ruler. These magnificent processions were a privilege of those holding authority and in consequence forbidden to non-Muslims, who were second class citizens (Levy-Rubin 2011: 157–9); 2. clappers – beating drums, blowing trumpets or horns – were also a royal prerogative (Levy-Rubin 2011: 159–60); 3. raising the voice – raising your voice in the presence of a Muslim is equivalent to raising your voice in the presence of the Caliph, which was considered in Iranian culture insolent and disobedient (Levy-Rubin 2011: 160–1); 4. funeral processions – this was a result of the general principle that rituals and customs of the *dhimmīs* should not offend Muslim feelings or ‘contaminate’ the public sphere (Levy-Rubin 2011: 161–2). While Muslim rituals were a public issue, those of the *dhimmīs* were to be tolerated only if they were performed quietly behind closed doors. Just as non-Muslims had to make way for the Muslims, give up their seats for them, and speak quietly, so they were expected to keep their public rituals as invisible as possible – so as not to offend the Muslims or threaten their superiority.

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The Pact of `Umar was meant to serve first and foremost as a succinct and clear set of rules that *dhimmīs* as well as Muslims should abide by in their everyday life. As noted, the first set of regulations based on the Pact was issued by the Caliph al-Mutawakkil between 850 and 854. While the Pact gives only basic information regarding the appearance requirements of non-Muslims, this set included clauses regarding specific dress requirements, the most prominent of which was the yellow-coloured patch or other yellow dress appurtenances which was to be their mark. They were not to ride horses, only mules and donkeys, were to be ousted from public office, their children were not to be taught in Arabic and they were to affix special devil figures to their door posts (Kramer 1989: 89–90, 93, 128; Ibn al-Jawzī 1992: 222–3, 238, 265, 270; Levy-Rubin 2011: 104–8). Sources such as the Coptic chronicler Severus ibn Muqaffā’ and the Syrian Bar-Hebraeus refer to the enforcement of these in their communities. A contemporary Samaritan account gives a detailed description of the strict enforcement of the restrictions in the provincial area of Samaria in Palestine, far from the big metropolises of the caliphate. The Samaritan chronicle describes the strict enforcement of an almost identical set of rules by Ahmad ibn Tūlūn, ruler of Egypt (868–905) and Palestine (878–84). Similar regulations, described less exhaustively, were issued by al-Muqtadir (r. 908–32), al-Ikhshīd (r. 934), al-Mu’izz (r. 953–75), al-Ḥākim (r. 996–1020), al-Mustanṣir (r. 1086) and al-Muqtadī (r. 1091) (Levy-Rubin 2011: 108–12). It seems therefore that from al-Mutawakkil’s time onwards the Pact of `Umar was viewed by Muslim rulers as the rule and guide regarding the treatment of non-Muslims.

Nevertheless, despite all this, a survey of the enforcement of the Pact throughout the medieval period proves that this was far from systematic or consistent. Much depended not only on the attitude of the caliph or ruler but on the policy of the local governors, their relations with the non-Muslim population, their dependence at times on local non-Muslim functionaries, especially in the administration, on international politics on the public atmosphere and on the geographical location.

A review of the enforcement of the main clauses of the Pact from its beginning until the fifteenth century exemplifies this. Two of the clauses seem to have been consistently applied: the first is the prohibition on proselytization, which was enforced very strictly. Only those who were forced to convert were allowed to revert back to their former religion. This was the case following the forced mass conversion at the time of the Fāṭimid Caliph al-Ḥākim and was probably also the case with Maimonides, who was forced to convert under the Muwaḥḥiddīn in Spain, though
later, having fled to Egypt, returned openly to Judaism (Fattal 1958: 163–8; Rabinowitz 2007: 381–2). The second regards the employment of Muslim slaves. This prohibition was applied even to young captives who could potentially be converted to Islam (Fattal 1958: 149–50).

The prohibition on wine was at times applied rigorously and at others disregarded, often because the sale of wine was lucrative. Nevertheless, from the eleventh century onwards the prohibition becomes more strict and consistent (Fattal 1958: 151–4).

The ghiyār or distinguishing signs formed the heart of the pact. Yet despite information on the enforcement of the ghiyār by various rulers there are many testimonies that much of the time life was conducted in disregard of the ghiyār regulations. References in the Genizah demonstrate that during the Fāṭimid and Ayyūbid periods (mid-tenth–twelfth century) Jews and Muslims dressed alike and there were no differences in their outer appearance (Cohen 2008: 63–4). We hear at times especially of respectable dhimmīs – position holders, physicians or wealthy merchants who dress extravagantly and ride in a grand retinue, at times raising the anger of the crowds (Tritton 1930: 115–26).

The holding of public offices in the administration by dhimmīs was a longstanding tradition. Despite the strong discomfort it aroused, it could not easily be abolished, and often rulers depended greatly on their dhimmī courtiers. The latter paid at times dearly for these honours (Tritton 1930: 18–36; Fattal 1958: 240–63; Cohen 2008: 65–8).

Despite the well-defined clause in the Pact, in reality the attitude towards non-Muslim prayer houses was chaotic. While some rulers tried to abide by it, others confiscated churches, looted and destroyed them and then regretted and rebuilt them; some punished those who tore down churches while others gave orders to rebuild them. New prayer houses were built despite the prohibition even in cities founded by Muslims (amṣār) such as al-Kūfa or Cairo. Yet from the tenth century onwards we hear more and more of riots and of crowds attacking churches and tearing them down. This trend will reach its peak during the Mamlūk period (Tritton 1930: 38–60; Fattal 1958: 180–203; Cohen 2008: 58–9).

Public display of other religions was a sensitive issue. This was true especially as regards display of crosses and the sounding of the nāqūs, particularly during the Muslim call to prayer. Yet, although we hear of protests against religious processions at festivals or funerals, these do not seem to have been prohibited most of the time. Moreover, there were holidays and festivals of non-Muslims such as Christmas, ḫīḍ al-ghiṭās, Nawrūz and more that were celebrated jointly, often with the participation of the ruler himself (Tritton 1930: 100–14; Fattal 1958: 205–11).

To sum up, it should be said that despite the inconsistent and quite chaotic nature of the enforcement of the Pact, it is nevertheless evident that the general treatment of non-Muslims in Muslim society becomes harsher and more intolerant with time, especially following the Crusades, from the period of the Mamlūk Sultan Baybars (r. 1260–77) onwards. At this time, jurists start interpreting the pact more strictly, while rulers and crowds become more and more intolerant and aggressive towards the non-Muslim population.

In the following centuries the pact continued to serve as the main guideline to the treatment of non-Muslims in Muslim lands. This situation changed only towards the middle of the nineteenth century due to pressure applied by European powers.
APPENDIX
al-Ṭurṭūshī’s version of *Shurūṭ ‘Umar*

This translation of *Shurūṭ ‘Umar* is based on Lewis’ translation of al-Ṭurṭūshī’s version in *Sīnāj al-mulāk* (Lewis 1974: 217–19). The list of restrictions in the text is divided into clauses for reference only and is not found in the original. Select additions are given in parentheses: IM=Ibn al-Murajjā, *Faḍā’il bayt al-maqdis*; IQ=Ibn Qayyim al-Jawziyya, *Aḥkām ahl al-dhimma*.

*Shurūṭ ‘Umar*

We heard from ‘Abd al-Rahmān ibn Ghanam [d. 78/697] as follows: When ‘Umar ibn al-Khaṭṭāb, may God be pleased with him, accorded a peace to the Christians of Syria, we wrote to him as follows:

In the name of God, the Merciful and Compassionate. This is a letter to the servant of God ‘Umar, Commander of the Faithful, from the Christians of such-and-such a city. When you came against us we asked you for safe-conduct (*amān*) for ourselves, our descendants, our property, and the people of our community, and we undertook the following obligations toward you:

1. We shall not build, in our cities or in their neighbourhood, new monasteries, churches, convents, or monks’ cells, nor shall we repair, by day or by night, such of them as fall in ruins or are situated in the quarters of the Muslims.

2. We shall keep our gates open wide for passers-by and travellers. We shall give board and lodging for three days to all Muslims who pass our way. We shall not give shelter in our churches or in our dwellings to any spy, nor hide him from the Muslims.

3. We shall not teach the Qur’ān to our children.

4. We shall not manifest our religion publicly nor convert anyone to it. We shall not prevent any of our kin from entering Islam if they wish it.

5. We shall show respect towards the Muslims (IM: and we shall show them the way), and we shall rise from our seats when they wish to sit.

6. We shall not seek to resemble the Muslims by imitating any of their garments, the *galaimun*, the turban, footwear, or the parting of the hair. We shall not speak as they do, nor shall we adopt their *kunyas*.

7. We shall not mount on saddles, nor shall we gird swords nor bear any kind of arms nor carry them on our persons.
8 We shall not engrave Arabic inscriptions on our seals.
9 We shall not sell fermented drinks (IM, IQ; nor shall we keep pigs in their vicinity).
10 We shall clip the fronts of our heads.
11 We shall always dress in the same way wherever we may be, and we shall bind the *zunnār* round our waists.
12 (a) We shall not display our crosses or our books in the roads or markets of the Muslims (IM, IQ; nor shall we conduct processions (lit. go out) on Palm Sunday and Easter): (b) We shall only use clappers in our churches very softly (IM, IQ; and we shall not display the cross on them); (c) We shall not raise our voices in our church services or in the presence of Muslims, nor shall we raise our voices when following our dead; (d) We shall not show lights on any of the roads of the Muslims or in their markets; (e) We shall not bury our dead near the Muslims.
13 We shall not take slaves who have been allotted to the Muslims.
14 We shall not build houses overtopping the houses of the Muslims.

When I brought this letter to ʿUmar, may God be pleased with him, he added: ‘We shall not strike any Muslim.’

We accept these conditions for ourselves and for the people of our community, and in return we receive safe-conduct. If in any way we violate these undertakings for which we ourselves stand surety, we forfeit our covenant (*dhimma*) and we become liable to the penalties for contumacy and sedition.

References


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Further reading