V. GOOD FAITH IN A WIDER CONTEXT

In his book *Masadar al haqq*, the Egyptian jurist Al-Sanhuri identified five junctures in contract, which attract the application of good faith:

(a) good faith in the conclusion of the contract and the systems of *khyarat*;
(b) good faith in the performance of the contract (corresponding in part to the principle of *pacta sunt servanda*);
(c) good faith in the termination of the contract, whether voluntary or as a result of *force majeure*;
(d) the notion of *riba* or usury; and
(e) the notion of *gharar* (uncertainty in transactions; a contract where the outcome is not known).

In the Shari'ah, a treaty, like a contract, originates from agreement and consent and not necessarily from the observance of any specific form or procedure. Once the provisions of the treaty are agreed upon, the treaty becomes binding on both parties. The writing as well as the signing and the dating and in some cases the witnessing of the treaty are not necessarily legal prerequisites; they are merely to indicate that an agreement has been reached, as well as to record the actual terms of the treaty and its duration.

Once the treaty is concluded Muslim authorities are strict in regard to the necessity of living up to its terms. The Qur'an urges the Muslims "not to break oaths after making them" [Qur'an XVI:93], and if the other party does not break them, then to fulfill their agreement to the end of their term [Qur'an IX:4]. Thus the principle *pacta sunt servanda* is inherent in the conception of a treaty and is recognized by all Muslim jurist-theologians.

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46 The singular "Khiyar" indicates a legal term which means an option or right of withdrawal, i.e. a right to terminate a legal act unilaterally.

Referring Principles:

- I.1.1 - Good faith and fair dealing in international trade
- IV.1.2 - Sanctity of contracts
- IV.4.1 - Freedom of form