BOOK REVIEWS


Muhammad b. al-Hasan al-Shaybani’s monumental published work al-Siyar al-Kabir on Islamic international law is well-known to the students of Islamic law. The book under review is not the translation of this famous work, but a translation of his unpublished treatise entitled Abwāb al-Siyar fi Arḍ al-Iḥrāb (Chapters on the Siyar in the Territory of War). This is a portion of a larger work on Islamic law by the same author called the Kitāb al-Asl and often also called Kitāb al-Mabsūḥ (p. 70). Professor Khadduri has reconstructed the Arabic text from five variant manuscripts, basing himself mainly on Murād Mulla manuscript, as it was more complete than others (p. 71). The aim of bringing out this book has been explained by the author in the following words:

The authors of the Statute of the International Court of Justice had probably implied more than the clause literally meant when they stated that the court makes decisions, in addition to custom and conventions, on the basis of “the general principles of law recognized by civilized nations.” To achieve that purpose, the study of “general principles” of the public orders of various nations would be needed. It is the purpose of this work to present an annotated text in translation as well as a study of the jurisprudence of an original writer on the public law of Islam—a nation that played an important role in the past and produced a system of law that was no less significant than the Roman. (Preface, pp. xii-xiii).

The translation of the Arabic text is preceded by a comprehensive and illuminating Introduction dealing with Islamic law, the law of Nations, theory of the Islamic law of Nations, al-Shaybani’s life and writings, development of the concept of siyar and a description of the variant manuscripts of the Arabic text.

The main text can be divided into four correlated separated parts. The first part (chap. I) is devoted to the oral traditions of the Prophet and of the Companions and the Successors relating to specific questions on the law of war. They do not provide basic principles and general rulings on the conduct of war, but these can be derived from those cases. The learned translator has added useful cross-references to these traditions in his footnotes, but this reviewer feels that a critical study of these would have formed a more fascinating subject.

The second part (chap. II and chap. VIII) is the most important portion of the book. It deals with the problems relating to the conduct of war, spoil, relation between the dār al-Islām and the dār al-ḥarb, peace treaties, safe-conduct apostasy and highway robbery. These questions have been answered mostly on the basis of analogical reasoning in the form of a dialogue.

The third part of the book (chap. IX) is an addendum in which al-Shaybānī epitomizes the doctrines of Abū Ḥanīfah on the subject.

The fourth part (chap. X and chap. XI) is devoted to the questions of taxation.
which do not constitute an integral part of the *siyar*. Their relation to *siyar* seems to be that they deal with the status of the *dhimmis* and therefore are indirectly connected with the subject. Chapter X expounds the ideas of Abū Ḥanīfah on the subject. Al-Shaybānī reports them on the authority of Abū Yūsuf. Chapter XI is from the pen of Dāwūd b. Rushayd (d. 239 A.H.), a disciple of al-Shaybānī. It presents al-Shaybānī’s views on the problem of taxation which are not found in detail in his extant works.

Professor Khadduri rightly says that Abū Ḥanīfah and his disciples “seem to have been the earliest jurists to view Islam’s external relationships as a coherent system and to discuss its problems in terms of comprehensive doctrines” (p. 51). Having given the credit of pioneership to Abū Ḥanīfah in respect of the international law of Islam, Prof. Khadduri appreciates al-Shaybānī’s contribution by saying: “For students of Islamic law of nations Shaybānī’s contribution is invaluable for he was the first to consolidate all the legal materials relevant to the subject and to provide perhaps the most detailed and thorough study of it” (p. 56).

There are two important points on which the present reviewer finds it difficult to agree with Professor Khadduri’s contentions. On page 52 of his erudite Introduction he says that Abū Ḥanīfah “introduced” the notion of territoriality in the relationships between the Muslims and the non-Muslims. Professor Khadduri is right when he propounds that Abū Ḥanīfah and Abū Yūsuf were the exponents of the notion of territoriality and held that legal decisions could vary with respect to an act being performed in the dār al-Islām or the dār al-ḥarb, while al-Awzā‘ī held the contrary view. But the facts of the history of *Fiqh* contradict him when he claims that Abū Ḥanīfah was the first to introduce this notion. Ibrāhīm al-Nakha‘i (d. 96/714) about two generations earlier than Abū Ḥanīfah (d. 150-768) held the view that the *ribā* transaction was permissible between a Muslim and a non-Muslim in the dār al-ḥarb, while it could not be permitted at all in the dār al-Islām. Sufyān al-Thawrī (d. 161-778) a contemporary of Abū Ḥanīfah was of the same opinion. (al-Ṭahāwī, Mushkil al-Āthār, Hyderabad (Deccan), 1333 A.H., IV: 245). It is presumed that Abū Ḥanīfah and Sufyān al-Thawrī held this view on the authority of the practice of ‘Abbās, the uncle of the Prophet, who is reported to have carried on the transaction of *ribā* with the non-Muslims in Mecca before its conquest by the Prophet. (Al-Sarakhsī, al-Mabsūq, Cairo, n.d., XIV : 57). One can see the nucleus for the notion of territoriality in the following verse of the Qur’ān:

> It is not for a believer to kill a believer unless (it be) by mistake. He who has killed a believer by mistake must set free a believing slave, and pay the blood-money to the family of the slain, unless they remit it as a charity. If he (the victim) be of a people hostile to you, and he is a believer, then (the pance is) to set free a believing slave. And if he comes of a folk between whom and you there is a covenant, then the blood-money must be paid to his folk and (also) a believing slave must be set free. And who has not wherewithal must fast two consecutive months. A pance from Allah. Allah is Knower, Wise. (IV : 92).

The second point on which this reviewer could not be convinced by the learned Professor’s elaborate arguments (pp. 17-19), is in respect of his assumptions:
'in accordance with Islamic legal theory a state of war exists between the dār al-Islām and the dār al-ḥarb until the time when the former overcomes the latter' and (ii) 'peace-treaties regardless of the number of renewals, were regarded as temporary arrangements, while the state of war was regarded as the normal relationship between the dār al-Islām and the dār al-ḥarb.' Based on these assumptions is the Professor's contention that neutrality had no place in Islamic legal order. The Professor has marshalled the legal cases recorded in the Fiqh literature and the historical experiences of the Muslims at the time of their political expansion and military superiority, in support of his contention. But the question arises: whether the opinions of the Muslim jurists and the historical experiences of the Muslims could be held as normative for the Islamic legal order when the Qurʾān explicitly propounds a contrary view? In this respect the following verses of the Qurʾān give quite clear injunctions:

If they hold off from you, and do not fight you, and offer you peace, then God assigns not any way to you against them (IV : 90).

God forbids you not, as regards those who have not fought you in religious cause, nor expelled you from your habitations, that you should be kindly to them, and act justly towards them; surely God loves the just (LX : 8).

The Sunnah of the Prophet, as well, bears out the fact that Islam enjoins upon its followers to maintain friendly relations with other communities provided they are not hostile to its [Islam's] existence. Dr. Muhammad Hamidullah has listed these cases of the Prophetic Sunnah in his scholarly work: Muslim Conduct of State, Lahore, 1955, pp. 301-307.

There are some minor points which need elucidation. Al-Shaybānī's Kitāb al-Radd 'alā Ahl al-Madīnah which could not reach the learned Professor (p. 37) is being published by the Lajnah Iḥyā al-Maʿārif al-Nuʿmāniyāh, Hyderabad (Deccan) in several parts under the title Kitāb al-Ḥujjah 'alā Ahl al-Madinah. Part I of the book appeared in 1965. Brockelmann mentions a number of manuscripts of this book (GAL. I : 180 and S, I : 291). Earlier it was published long ago in India, a copy of which is in possession of my friend Maulana Abdur Rashid Nuʿmānī of Jami'ah Islāmiyah, Bahawalpur (Pakistan).

On pp. 38ff Professor Khadduri discusses the concept of siyar developing into the Islamic law of nations. He depicts the rise and development of this concept from the earliest days of Islam. He tries to explain its two-fold meaning in the second century of the Hijrah. But he does not present a comparative study of the terms magḥāzi, sirah and finally siyar, their interchangeable use, the stage when their meaning shifted and the reason why the term siyar was adopted by the jurists for the cases of Jihiḍ and external affairs.

On p. 70 the Professor remarks: "It is fortunate that when Islam and Christendom, following a long period of competition and rivalry, finally learned to divorce ideology from the principles and practices governing their foreign relations, both find themselves confronted by the rise of a new ideology which its followers appear to insist on reintroducing in the intercourse among nations." In the opinion of this reviewer, the present situation with the change of socio-political structure of the Muslim world indeed requires a shift from the legal decisions taken by the early jurists under the pressure of their own historical
experiences but not from its basic principles and values, since ideology cannot be separated from the values of a system.

Since the text has not been published with the translation, it is difficult to say anything about its precision. Whatever we could compare from the cross-references given in the footnotes, the translation was found a masterly and meticulously exact rendering. The annotation is elaborate, explaining the difficult terms and giving cross-references of the text to various other authorities, as we stated earlier. Had the translation been published with the text, it would have been more beneficial from the research point of view.

The name of the Companion ‘Abd Allah b. Abi Awfā has been shown as ‘Abd Allāh b. Abi Awfī (pp. 91, 293) which must be a printing mistake.

The book provides an excellent study of the early Islamic law of nations as introduced by the eminent scholar of the second century of the Hijrah and the author deserves the deepest gratitude of all the students of Muslim law and jurisprudence for this.

RAWALPINDI

AHMAD HASAN


This standard work on the Caliphate was first published in 1924 when the khilafat question was very much alive and agitated the Muslim mind a good deal. The work has long been out of print, its republication now with an additional chapter on the aftermath of the abolition of the Caliphate would therefore be welcomed by students and scholars of Islam.

The author begins his treatise with a discussion on the similarities and dissimilarities of the Holy Roman Empire and the Caliphate in order to delineate the nature and special characteristics of the latter and discuss in perspective its origins as well as its theological sanctions in the Qur’ān and the Sunnah. "Unlike the Holy Roman Empire, the Caliphate," maintains Arnold, "was no deliberate imitation of a pre-existent form of civilization or political organization. It was the outgrowth of conditions that were entirely unfamiliar to the Arabs, and took upon itself a character that was exactly moulded by these conditions." As a political institution, it was thus "the child of its age" (p. 11).

With the rise of the Umayyads, the institution of Caliphate underwent a radical transformation. Election to the office was now sometimes secured by force and fraud and became crystallized into a sort of legal fiction. Under Byzantine influence, the caliph became a sort of "king", one Heraclius following another, and the Caliphate "a kingdom characterised by violence and tyranny" (p. 107); at its best it was an Arab hierarchy dominated by the powerful Umayyads, and guided by narrow tribal sympathies.

In 750 A.C. the Caliphate passed on to the ‘Abbāsids after the battle of Zāb, and for five long centuries "each successive Caliph was a member of this family" (p. 55). Beyond "the substitution of a Muslim kingdom for an Arab kingdom", the rise of the ‘Abbāsids did not mean any significant change in the