
Siyar or the International Law of Islam is an integral part of the Islamic legal heritage. Muslim jurists over a millenium ago took pains to elaborate the principles and rules that should govern the relations of an Islamic state with non-Muslims, especially non-Muslim collective entities. Imám Muhammad ibn al-Hasan al-Shaybání’s celebrated works on siyar are pioneering contributions to the field of International Law that emerged long before the subject became a serious concern of western jurists. There is no denying the fact that many of the modern concepts and theories of contemporary international law had already been treated by Muslim jurists of the eighth and subsequent centuries. Unfortunately, most of the modern western works on International Law proceed on the assumption that it is the West which first triggered off the development of international law and formulated its theory. Western writers trace the origin and development of international law in the writings of Grotious (1583-1645), a Dutch jurist of seventeenth century. Most of them do not seem inclined to give Muslims any credit for its development.

The book under review attempts to highlight the contribution of Islam to the discipline of International Law, especially in the field of treaties between the Islamic state and non-Muslims nations and states. It aims to establish that Islam has provided a whole set of principles to govern the treaties with non-Muslim entities and that those principles are not only compatible with the contemporary norms in the sphere of international law but in many respects go beyond them, laying down the groundwork for establishing a peaceful international legal order.

The book is divided into eight chapters, followed by an epilogue that rounds off the main arguments. In the first and opening chapter the author has discussed the attitude of the West towards Islam and the Muslims’ response to it. In this regard, A. Hamid asserts that the West, after losing its military and political hegemony over the Muslim world in the second half of the 20th century, started unleashing attacks on the religion of Islam which prompted the Muslims to rise in response. Its most vicious attacks were aimed at the legal system and the political structure of the Islamic state. In the words of the author:
... the Western jurists, and political thinkers were selective in their targets. They zeroed their intellectual guns on the targets they thought were most vulnerable. The first target they selected was the political structure of the Islamic State, and in particular, its dealings with other non-Muslim states. It was generally maintained by them that the attitude of Islamic International law towards treaty-making with non-Muslim states was dictated by the doctrine of Jihād which implied the existence of a permanent state of war between the Muslim and non-Muslim States (p. 5).

The author holds this to be a distorted and wrong impression about Islam. He regards this as a part of western effort to frustrate the attempts of the Muslims to retrieve their past glory and to thwart the independence movements in the Islamic world (p. 4). He attributes this attitude on the part of western writers to their fanaticism and hostility towards Islam which stems from the political and military setback the West suffered at the hands of the liberation movements in the Muslim world (pp. 4-5).

Here the reader would be justified to expect the author to identity and specifically enumerate the charges levelled by western jurists against Islam, especially in the field of Muslim foreign relations. The author, however, fails to illustrate his assertions by reference to any such writings. Besides, the author also does not show how western writings on Islam are a counter measure to frustrate the Muslim victory over colonial powers, and how these writings could be linked with the defeat of the colonial powers in the Islamic world. In our view, the style and tone of the author might have some appeal for ordinary Muslim readers but will hardly carry any appeal for neutral, let alone Western readers. The writer should have presented his case objectively instead of simply accusing western scholarship of fanaticism towards Islam, especially when he has not pointedly discussed their viewpoints in his study.

The author has accused western jurists of projecting a distorted image of jihād. In his view, the concept of permanent jihād was a deliberate misrepresentation of the western scholars, especially their portrayal of the Muslim division of the world into Dār al-Islām and Dār al-Ḥarb so as to show that no treaty was permitted with non-Muslims (p. 6).

In our view, while it is true that the western thinkers hold an inaccurate conception of jihād, it is also a fact that the idea of jihād has been the subject of an intense and multifaceted debate among Muslim scholars and jurists themselves with the result that there exists a diversity of views on the subject. Many jurists tend to deny the legality of a permanent treaty with non-Muslim nations because such a treaty might frustrate the cause of jihād. The only permanent treaty they acknowledge is the treaty of the Islamic State with abl al-dimmah (non-Muslim subjects) who acquire that status as a result of this
treaty. In the view of these jurists, true peace (salām) is attainable only when human beings surrender to God’s will and live according to God’s laws. World peace is reached only with the submission of all mankind to Islam.

It would thus not be fair to hold that the division of the world into Dār al-Islām and Dār al-Harb is an entirely western fabrication for it was indeed introduced by the early Muslim jurists. Moreover, the category of Dār al-‘Abd (territory of peaceful arrangement) as contemplated by Imām al-Shāfī‘ī cannot also be equated with the sovereign states of modern times where relations between states are established on the basis of sovereign equality of the states concerned. Dār al-‘Abd, according to Shāfī‘ī, is a territory which could not be conquered by the Muslims and whose inhabitants entered into a treaty with the Muslims whereby they agreed to pay land tax (kharāj) to the Islamic State in lieu of the protection provided to their lives and properties by the Muslims. Thus, for instance, according to Dr Wahbah al-Zu‘ayl, a renowned contemporary scholar of Islamic Law, Dār al-‘Abd states do not possess complete sovereignty, and consequently they are not identical with modern sovereign states. As regards the nature of jihād in Islam, the author asserts that fighting against non-Muslims is lawful only when the security of Islamic state is threatened or in some cases the right of the Muslims to preach Islam is obstructed. Thus, a war is permissible only as a defensive measure (p. 8). In his own words:

Jihād implies two fold significance in Islam. In the first place it implies purely missionary activities of a Muslim and secondly, it implies defence of the faith in the physical sense, when necessary. In the first stance it is the duty of every Muslim to invite people to accept Islam. This is a permanent duty imposed on all Muslims of all ages. In this sense Jihād may be considered as a permanent phenomenon. However, no force is used in this kind of Jihād as it is clear from Qur’ānic injunction which ordains that: “There is no compulsion in religion” (pp. 7-8).

The author has rejected the criticism of the West that Islam has a rigid and stagnant doctrine of international conduct which is incapable of being practiced in modern times. He rightly believes that through the instrument of ijtihād Islamic law can adapt itself to the changing needs of the society (p. 6). As regards the competent authority to undertake ijtihād, the author is of the view that the parliament alone is such an authority. He does not seem ready to assign the task of ijtihād to the ‘ulamā’ because they, in his words, “do not possess more than, at best, perfunctory knowledge of the modern concepts of the western economic, political and legal thought and are, therefore, unaware of the problems and complexities facing the contemporary world” (p. 16). In
the opinion of the author, the juristic basis for investing the parliament with the authority to undertake *ijtihād* is a verse of the Qurʾān which asserts that the believers conduct their affairs by mutual consultation (42: 38).

It goes without saying that on the whole the members of present-day parliaments do not possess sufficient knowledge of Islam. In this situation how can the task of *ijtihād* be assigned to them? The author has also left unanswered the question as to what qualifications should the members of a parliament have in order to undertake *ijtihād*.

The second chapter of the book deals with the development of the treaty law in the west. The author gives a glimpse of the evolution of the treaty law in the Greek and Roman periods. He laments the attitude of western writers on international law for their disinclination to recognise the contribution of Islam to international law and their disposition to ascribe its formulation to western political philosophers. He believes that the rules and norms of conduct developed by the early Muslim jurists for foreign relations were much wider in scope and application than those developed by the Greeks and Romans and practiced by the Christian states of Europe in the medieval times. Islam not only recognizes the conclusion of treaties with non-Muslims but makes their faithful implementation a religious duty. Since Islam does not approve any discrimination on the basis of caste, colour or creed, there can be no problem in entering into legitimate treaties with people of other races and religions. On the other hand, the international legal norms of the Christian states and the colonial powers until recent times were too restrictive in their scope and application (p. 35).

The third chapter of the book deals with the development of treaty law in Islam. In this chapter, the author has discussed the sources of Muslim law of Siyar. He mentions that Qurʾān, Sunnah, *Ijmaʿ*, *Qiyās*, and custom and usage are the sources of Islamic international law. While discussing the Qurʾān and the Sunnah as the primary sources for the law of Siyar, the author has not identified any rule or principle taken from the Qurʾān and the Sunnah pertaining to international relations, nor has he discussed the early development of Islamic law of Siyar.

As regards the legitimacy of *ijmāʿ* (consensus of opinion), the author has cited the verse: “For each We have appointed a Divine law and a traced-out path” (5: 48) (p. 51). It is not clear how one can derive the legitimacy of *ijmāʿ* from this verse. The *ahādīth* on the authority of *ijmāʿ* have also been quoted, but without reference to any authentic source. (p. 52). The author claims that *ijmāʿ* was practiced in a limited sphere during the period of the Holy Prophet (peace be on him) (p. 53). The fact is that *ijmāʿ*, according to all legal theorists, is possible and permissible only after the death of Holy Prophet (peace be on
him). It cannot be regarded as an independent source of law during the Prophet’s own life-time, since then the Prophet’s own guidance was available, and hence there was no reason to have recourse to *ijmā‘*. It also seems that the author has confused *ijmā‘* with the concept of *shūrā*. The Holy Prophet (peace be on him) certainly consulted his Companions on important political and strategic issues, but he did not necessarily assign any legislative authority to them. *Ijmā‘* appeared as a source of Islamic law only after the life of Holy Prophet (peace be on him). In the author’s opinion, since the monopoly of ‘*ulamā‘* on *ijmā‘* is no longer recognized, therefore, consensus among other segments of the society who have acquired intellectual excellence may also be regarded as valid *ijmā‘* (p. 52). This is obviously a departure from the classical concept of *ijmā‘* which regards the consensus of the qualified Muslim jurists alone as *ijmā‘*.

Chapters four to six deal with the structure of treaty in the modern law. The author has constructed his study in these chapters mainly on the law of treaties of Geneva Convention. In chapter four he has discussed the elements of treaty in the modern international law such as legal capacity, preamble, operative part of treaty, etc. The chapter primarily deals with the position of modern law on the elements of treaty. Islamic law has not been given any significant place by the author in the treatment of this subject. It would have been appropriate if the author had attempted an exposition of the Islamic law of contract, especially the principles that govern contract in Islam. The author has also not identified as to which kinds of treaties are permissible in Islam and which are not.

Following the scheme and structure of modern law which requires the ratification of every treaty by the parliament of the state before its coming into effect, the author claims that the treaties concluded by the Holy Prophet (peace be on him) in most cases were referred to *Shūrā* for ratification. This is a claim which is not established by any reliable source. On the whole, the Islamic treatment of the issues addressed in this chapter leaves a great deal to be desired. Besides, references and citations are incorrect (see p. 63 and nn. 4, 5). Similarly many quotations and passages are without reference.

Chapter five of the book discusses the duration of the treaty. Here the viewpoint of the author is that a treaty in Islam can be made for an indefinite period. This viewpoint is commonly upheld by modern Muslim jurists such as Wahbah al-Zuḥaylī, ‘Abd al-Wahhāb Khallāf, Muhammad Hamidullah and some other prominent scholars. However, the classical jurists were generally inclined to specifying a definite term for the validity of a treaty. The author has discussed in detail the viewpoints of various schools of law on the time-
limits for the duration of treaties. This part of the book is mainly based on the study of the subject by Dr ‘Abdul Ḥamid ’AbūSulaymān, in his book *The Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought*.

Chapter six is about the termination and withdrawal of treaty. Here the author has discussed the circumstances under which a treaty can be terminated. He has enlisted two methods for the termination of treaty in modern law, namely (a) termination by mutual consent, and (b) termination by the operation of law. In Islam a treaty can be terminated on account of treachery or breach of the provisions of the treaty by the other party.

In chapter seven, the author has stressed that it is a religious obligation to fulfil treaties with non-Muslim nations. An Islamic State is under religious and legal obligation to adopt all necessary measures to ensure that the treaty is implemented both in letter and spirit.

Chapter eight of the book discusses limitations on a treaty. In the modern international law a treaty is void if it conflicts with a peremptory norm of general international law or violates the constitutional law of any one or more of the states that are parties to it. On the other hand, a treaty in Islam must not violate any explicit text of the Qur’ān, or the Sunnah or objectives of the *Shari‘ah*. Just as a treaty against fundamental human rights cannot be regarded as valid, similarly a treaty violating any of the objectives of the *Shari‘ah* cannot be held as valid in Islam.

The book is clearly structured on the modern international law in so far as it is primarily concerned with modern legal concepts. Islamic concepts have been occasionally discussed, and one might even venture to add, without much depth. No serious and sustained effort has been made to highlight and explain the concepts pertaining to foreign relations based on the classical Islamic juristic literature. The work provides no evidence that any of the primary sources of Islamic law were consulted during the course of preparing the book. All the major ideas of Islamic law have been taken either from the *Muslim Conduct of State* by Hamidullah or *The Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought* by ‘Abdul Ḥamid ’AbūSulaymān. The book also suffers from methodological flaws pertaining to citations, referencing and transliteration. The bibliography has also not been arranged according to any recognized scheme.

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