



## MUSLIM CONCEPTION OF INTERNATIONAL LAW

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### ABSTRACT

The present paper explains the meaning, origin, source and evolution of Muslim international law (Siyar). It further attempts to locate the role and place Muslim International law. It also concludes that since Islamic law is not only one of the principle legal systems in the world but also that Islam is one of the main forms of civilizations; therefore, Islamic law must be one of the sources of International law. Siyar (Muslim international law) only strengthens the obligations of Muslim states and does not impose Islamic law on non-Muslim states. It also discusses the some modern scholar's definitions of Muslim international law.

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### INTRODUCTION

In modern connotation, international law is defined as "it is the body of rules which are legally binding on states in their intercourse with each other. The Islamic law which regulate the intercourse of Islamic polity with other polities is known as *Siyar* (Muslim international law). When Islam spread with its universal appeal to the people of different parts of the world, it faced the problem that how the Islamic state would conduct its relations with the non-Muslim states and with the tolerated religious communities within its territory. Therefore the jurists developed a special branch of law, known as the *Siyar* a term which applied to Islamic law of nations or Muslim international law. Therefore the paper discusses the Muslim international law, its meaning, source, development and content comprehensively. Finally conclusion is given which contain the summary of the paper.

#### Concept and sources of Muslim International Law

The principles of *jus ad bellum* (law governing the resort to war) and the *jus in bello* (content of the law of war) were formulated by Muslims at a time when its contemporaries paid no heed to these rules.<sup>1</sup> Islamic law therefore, is the first to have formally established a comprehensive rules regarding hostile and peaceful relations between the Muslim and

non-Muslim communities.<sup>2</sup> *Siyar* (Muslim International Law) has been recognized as an essential part of Islamic law and Islamic jurisprudence.<sup>3</sup> This law, like other branches of Islamic law, is based primarily on the two fundamental sources—the Quran and the Prophetic traditions. Furthermore like other branches of Islamic law, its rules have been developed in accordance with the conduct or the „model example“ set by Prophet Muhammad (SAW) in his dealings with the non-Muslims.<sup>4</sup> The term *Siyar* (plural of *Sirah*, which literally means conduct or behaviour) itself indicate that the conduct of Prophet Muhammad (SAW) in his international dealings and constitutes the basis on which the detailed rules of law were developed.<sup>5</sup> Prophet Muhammad (SAW) fought battles with his enemies; sent legate and emissaries and wrote letters to his contemporary rulers; received delegation; led his followers, and himself participated, in negotiating various treaties and agreements of international import, and dealt with the questions of booty, prisoners of war, and acquisition of enemy property. This entire conduct, coupled with the general principles laid down in the holy Qur'an, provided the foundation for the branch of knowledge called as-Siyar. Besides Qur'an and Sunnah as primary source of Siyar, Islam also recognized other traditional sources such as consensus (*Ijma*), analogical reasoning (*Qiyas*).<sup>6</sup> There are also number of subsidiary sources of Muslim international law which include *Ijthad* (juristic opinions of eminent Muslim Scholars),

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<sup>1</sup> Muhammad Munir. "Cause of war in Islam: Infidelity or Defence of Faith," Retrieved from <http://SSrn.com/abstract=1802003> accessed on January 5, 2015.  
<sup>2</sup> Shaheen Sadar Ali and Javid Rehman, "The concept of Jihad in Islamic International law," Journal of Conflict and Security Law, 2005.  
<sup>3</sup> Ibid.  
<sup>4</sup> Imam Shaybani, *Siyar al Sagir: The Short Book on Muslim International law* translated by Mahmood Ahmad Gazi, Adma Publishers, New Delhi, 2004, p. 3.  
<sup>5</sup> Ibid  
<sup>6</sup> Ibid

Istihsan (juristic preferences of a strong principle), Istishab al-hal (presumption of continuity), Maslahah mursalah (extended analogy), Sadd al-dhar'ah (blocking the lawful means to unlawful end).<sup>7</sup> Dr Mohammad Hamidullah, however, has a more extended list of sources besides Qur'an, Sunnah, Ijma and Qiyas.<sup>8</sup> These include

1. The Orthodox practice of the early Caliphs.
2. The practice of other Muslim rulers not repudiated by the jurists.
3. The arbitral awards.
4. The treaties, pacts and other conventions
5. The official instructions to commanders, admirals, ambassadors and other state officials.
6. The internal legislation for conduct regarding foreigners and foreign relation.
7. Custom and usage.

In array of modern Islamic scholars, Jamal badr and Farooq Hassan conceptualize Muslim international law with different perspective as compared to conservative body of scholars. Jamal Badr believes that the Islamic law of nations is not part of the dogma of Islam but "Muslim international law is the product of a continuing process of juridical speculation by authoritative jurists over the ages. The Islamic international law is part of the corpus of Islamic law just as the original Jus gentium was a branch of municipal Roman law. Islamic law is a religious law only in the sense that its basic ethical grounds and some of its general principles are to be found in the Qur'an and in the pronouncements of the Prophet Muhammad (SAW). Beyond that, the corpus of Islamic law as it developed over the ages is „manmade“ in the sense that it resulted from the efforts of the jurists of the various schools of law. If civil law can be described as a legislator's law as to its source and common law as a judge's law, then Islamic law is a jurist's law. There is very little that is rigid and immutable in Islamic law."<sup>9</sup>

Prof Farooq Hassan expresses similar view while discussing Muslim international law. He argues that:

"Though the basis of every norm of Islamic law is by theory derived directly or indirectly from God's wishes for His peoples, in arriving at what a particular norm is for a given society, the mind of the jurist is obviously visible. Therefore, the mechanics of Islamic jurisprudence, functionally speaking, are similar to the contemporary working of the law of a country possessing a common law system or a civil system of law. The character of the rules of Islamic law is therefore not spiritual but clearly secular, in the sense that such rules are made for the utilitarian purposes of a society by jurists through the use of the same techniques as employed in other legal systems; however, there is a priori, a fundamental assumption that the rules so made are ultimately based on the holy Quran or Prophetic traditions. The human element in Islamic law is, therefore, as pronounced as it is in any other major legal system of the world"<sup>10</sup>

<sup>7</sup> Muhammad Munir. "Cause of war in Islam: Infidelity or Defence of Faith," Retrieved from <http://SSrn.com/abstract=1802003> accessed on January 5, 2015.

<sup>8</sup> Muhammad Hamidullah, The Muslim Conduct of state. 6th ed., Sh. Muhammad Ashraf sons: Lahore, 1973 p. 4.

<sup>9</sup> Shaheen Sadar Ali and Javid Rehman, "The concept of Jihad in Islamic international law," Journal of Conflict and Security Law, 2005.

<sup>10</sup> Ibid.

Therefore adopting sources other than Qur'an and Sunnah for further development in Muslim international law to cope with the new and peculiar circumstances does not mean delinking from original source i.e. (Qur'an and Sunnah) but the ultimate guiding principle behind all other sources of as-siyar was and should always be the same. The canon of Islamic jurisprudence is such that they have enormous room for further development and adaptation to new circumstances.<sup>11</sup> But the definition of as-Siyar (Muslim International Law) should not lose sight of the historical framework of Islam.

### **Meaning Development and Content of Muslim International Law**

Islamic law provides comprehensive rules for regulating relations between an Islamic state and non Muslim state both during war and peace. The law which specifically deals with the international relation of Islamic state is known by name of as-Siyar. Literally Siyar is the plural of sira which means conduct, practice, comportment, behaviour, way of life, attitude or accepted behaviour and an alternative meaning in its plural form is campaigns.<sup>12</sup> The words sair, sairura, maser, masira, masaran, tasyar-are used to denote moving(on), setting out, to strike out, to start, to march, depart; leave.<sup>13</sup> In Islamic Shariah, Siyar refers to issues regarding the laws of war.<sup>14</sup> Dr Hamidullah defines Siyar as "That part of the law and custom of land and treaty obligation which a Muslim de facto or de jure state observes in its dealings with other de facto or de jure state."<sup>15</sup> Muslim Scholars of the early second century adopted the word Siyar as the name for that branch of Islamic law which specifically deals with the relationship of the Muslim community with other international entities and communities.<sup>16</sup> Perhaps the first Muslim jurist who used the term Siyar for Muslim international law in any extant legal compendium was Zayd ibn Ali and by the middle of the second century this term had become an accepted appellation for Muslim international law.<sup>17</sup>

Imam Abu Hanifa was the first Muslim jurist who taught Siyar as a separate legal science. His disciple Imam Shaybani was perhaps the first jurist whose book Kitab AlSiyar Al-Saghir becomes widely known as the first authentic book on as-Siyar. Dr Hamidullah ascribes the origin of Muslim international law to the Prophet's period of Madina, where Muslim confronted with a war and many problems had to be answered; for instance, should war be declared? And after the war ended it had to be decided whether only adult capable of bearing arms should be killed or should the same fate be meted out to all enemy men, women and children? How is one to treat prisoners of war? <sup>18</sup> In short the host of questions relating to the conduct of war had to be answered. The practice and pronouncements of the Prophet Muhammad (SAW) provided the guidelines for law which came into being

<sup>11</sup> Shaheen Sadar Ali and Javid Rehman, "The Concept of Jihad in Islamic International Law," Journal of Conflict and Security Law, 2005.

<sup>12</sup> Muhammad, Munir, "Islamic International law (Siyar): An Introduction," Hamdard Islamicus, Vol. XXXX,

No.4, October-December 2012, pp.37-60

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Muhammad Hamidullah, The Muslim Conduct of State, Sh. Muhammad Ashraf Sons, Lahore, 1973, p. 1

<sup>16</sup> Imam Shaybani, Siyar al Sagir: The Short Book on Muslim International Law translated by Mahmood Ahmad Gazi, Adma Publishers, New Delhi, 2004, p. 7.

<sup>17</sup> Ibid.

<sup>18</sup> Muhammad, Hamidullah. The Emergence of Islam, Adam Publishers and Distributors New Delhi, 2010, p.136

and thus was born the concept of Muslim international law.<sup>19</sup> Regarding the content of Muslim international law, it has an elaborate set of rules concerning the resort to war (jus ad bellum), treaties, the conduct of war (jus in bello), rights of prisoners of war, termination of captivity, and the effects of war. Muslim international law deals with the host of other issues that are essential for conducting the affairs of an Islamic state in the international arena.

*Siyar (Muslim international law) as a possible source of international law*

Some scholars are of the opinion that Islamic jus in bello (rules governing the conduct of war) has influenced European laws and customs since the time of the crusades.<sup>20</sup> According to Baron de Taube the modern public international law of declarations of war was adopted from Islamic doctrine, having passed into chivalric codes during the crusades, through the Christian church, and subsequently into the modern law of war.<sup>21</sup>

**CONCLUSION**

The Muslim international law far predate a similar codification. As Kruse concludes, “the positive international law of Europe had more than eight centuries later not yet reached the high degree of humanitarianization with which the Islamic law of war was imbued. Further as far as Muslim international law is concerned, according to classical Muslim jurists *Siyar* means the conduct of the Prophet (PBUH) and his successor during war and peace in their relations with non-Muslims, rules of dealing with rebels ,apostates, foreigners as well as non-Muslim citizens of a Islamic state. Muslim international law, like other branches of Islamic law, is based primarily on the two fundamental sources—the Quran and the Prophetic traditions. Further the canon of Islamic jurisprudence is such that they have enormous room for further development and adaptation to new circumstances.<sup>22</sup> Islamic law provides comprehensive rules for regulating relations between an Islamic state and externals i.e. non Muslim state both during war and peace. Zayd ibn Ali was perhaps the first Muslim jurist who used the term *Siyar* for Muslim international law in any extant legal compendium and by the middle of the second century this term had become an accepted appellation for Muslim international law.<sup>23</sup> Moreover a relevant definition of Muslim international law (*Siyar*) would be, the rules of Law that regulates relations of a Muslim state with other states and that are binding on the Muslim state under Shari’ah, and therefore this can be appropriately stated to be Muslim international law.

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<sup>23</sup> Ibid.