

## *The Nature of Islamic International Law (Siyar)*

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### **Abstract:**

*In contemporary legal and political debate, the Islamic law is mostly linked to global violence defined in the matrix of global Islamic terrorism. In these academic and political debates, fundamental determinations of violence is predominantly related to the Sharia and Fikh, which are not part of divine Islamic law, but rather law specified through interpretation divine Islamic law (the Qur'an and Sunnah -practiced by Prophet Muhammad) by human agents, that produce consequences creating unrealistic concept of Islamic legal and moral doctrine. It's important to note that in Islamic legal and philosophy doctrine there are significant differences between Islamic philosophers and lawyers regarding of the interpretation of the meaning of certain provisions of the Qur'an and Sunnah in various historical circumstances, that leading to significant problems in understanding of Islamic divine law. In the line of diversity understanding of Islamic moral and legal norms, many legal schools have been created in Islamic legal theory. To understand and reconcile various interpretations of the Quran's and Sunnah provisions, special theory titled "asbab an-nouzoul", with the task of studying the conditions under which the Qur'an's provisions can be interpreted differently has been developed. Another school known as "Ijtihad" or the Innovation School has evolved in the line of the need to change the meaning some norms of the Qur'an in depending on historical time. Among the first who has gave a different interpretation of the Qur'an in different historical conditions of Muslims life, was the caliph Omar ibn al-Khattab and Imam Muhammad Ibn Idriz al Shafi'i, only 50 years after the death of Prophet Muhammad. These schools have opened larger space in communication between Islam and other civilizations, which will greatly contribute to a higher degree of cohabitation of the legal and moral norms between Islam and other civilizations. This moral and legal cohabitation has had a significance contribution to further development of Islamic Law and Islamic Philosophy.*

**Keywords:** *Fiqh, International Law, Islam, Shafi, Sunnah*

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## The Early Age of Islamic Civilization

The poor nomadic tribes who lived in the Arabian Desert for a long time were heavily politically and militarily influenced by the great early civilizations had been developed in the Euphrates and Tigris river valleys and the Middle East. Divided into conquered and belligerent clans, the Bedouin tribes maintained their independence in search of their own survival. Their survival depended predominantly on their ability to make other tribes weaker and less resilient to their constant movement through the Arabian desert. Under the command of their commander (sheik), these tribes lived in a simplified political organization with polytheistic religious views that made them mobile and belligerent with a high degree of survival in the harsh conditions of a desert environment.

The influence of early civilizations on these tribes would be particularly pronounced during their occasional arrival in large desert centers, such as Mecca and Medina, where Bedouins came to trade with caravans moving through the Arabian desert. They organized their prayers there in a large temple called Ka'ba. By establishing ever more dynamic relationships with numerous merchant caravans, these desert tribes will, over time, make Mecca the centerpiece of their trade and political activities.

A turning point in the early history of these Bedouin tribes was the appearance of the Prophet Muhammad (Muhammad ibn 'Abdullāh 570/571 - June 8, 632), who through the spread of Islam would unite all Arab tribes, making them the determining political force of the Arabian desert. On the postulates of Islam that there is no God except Allah, that Islam is superior religion, that every member of Islam must organize his life according to God's instructions, Islam will very quickly transform numerous polytheistic tribes into a monotheistic religion that will quickly grow into a the integrative political force of the Arab tribes and into the new great empire that was emerging on the horizons of the Arabian desert.

Thanks to the charisma and great ability of Prophet Muhammad and his vision of socially and politically organizing desert tribes into a modern political community, Islam will become a great religious, social and political force in a short period of time. With a strict obligation to pray to God five times a day, with a commitment of one month fasting every year, with a duty to help the poor, with a ban on dangerous games and dice, with a ban on the use of intoxicants and alcohol, with strict regulation of marriage, with strict

requirements for fair business conduct , with the utmost respect and respect for others, Islam will in a short time transfer the conflicting and divided warrior Bedouin tribes into an extremely coherent and disciplined community capable of surviving the harsh conditions of the wilderness, and impose rules of their lives and beliefs on other local tribes and communities.

Inspired by a new belief of a monotheistic religion Islam, the united Arab Bedouin tribes will create a great empire that will put Syria, Palestine, Egypt under military control in a short time, questioning the dominance of Byzantium in the Mediterranean. In the late 7th century A.D. the Islamic empire already controlled all of North Africa, penetrated the Indus River valley, and touched the borders of China, increasingly threatening the very center of the Byzantine Empire Constantinople.

After the collapse of the Byzantine Empire, which showed signs of waning, a new period of empowerment and dramatic penetration of Islam into North Africa and the Iberian Peninsula began. Under the command of the splendid military leader Uqbah ibn Nafi, the territory of Tunisia, Algeria, Morocco and Spain was occupied (670 A.D.).

Between 661 and 750 A.D. the center of Islamic expansion was Syria, which was ruled by the Omayyads family where the Caliphate was headquartered. The period of the Omayyad's rule was marked by major conflicts between Islam and Christianity. In the great naval battle (Battle of Dhu-al-Sawary), the powerful Byzantium was defeated, opening the way for the further expansion of Islam. At the same time, Islam was spreading like wildfire on the Asian continent. Reaching Indus River valley, Turkmenistan, Baluchistan and Pakistan. At the beginning of the 8th century A.D. the borders of Islam stretched from the Iberian Peninsula to India, keeping all of North Africa, Egypt, Central and Southern Arabia, Asia Minor and Persia under control. This was the period of Arab domination in the Islamic world.

Shortly after the invasion of Spain, Islam reached the very borders of the great Frankish Empire, occupying 759 A.D. a significant military fort of Narbonne, organizing from there military invasions deep into the territory of the Franks. However, Islam's further breakthrough into Europe was halted by a major internal conflict between Arab tribes that broke out between 734-742. A.D.

In the great battle of Tours, 732 A.D. Islam's penetration into Europe was stopped by the Frankish tribes. After the defeat from weak Byzantium under the walls of Constantinople, the Arab empire was forced to withdraw

from Europe and Asia Minor, leading to a phase of a gradual withdrawal of Islam from the conquered territories, which would result in the gradual loss of Arab prestige in Islam.

However, despite the stalled military expansion, Islam as a religion has seen still great expansion. Due to the higher degree of flexibility towards the population in the occupied territories and the great dissatisfaction of the population within the Eastern Roman Empire, many peoples within Byzantium accepted Islam as religion improving their living conditions. The Islamic empire's strategy not to intervene in the local affairs of the subjugated tribes was particularly acceptable, which opened wider spaces to the influence of Islam.<sup>1</sup>

### **Cultural and Political Background of Islamic International Law**

In the first phase of the development of Islamic law, the centers of Islamic civilization were Damascus, led by the Omayyads dynasty, who ruled the Empire until 750 A.D. During this dynasty, the Empire had a developed tax system, a strong bureaucratic structure with a centralized judicial system, with a powerful army and navy, which had a special influence in the rapid spread of Islam in the first tages of the development of Islamic civilization. The centers of Islamic culture in that period were Baghdad, Cairo, Cordoba and later Delhi and Constantinople. From these centers strong cultural impulses of Islam spread, creating a great Islamic civilization whose influence on the development of the modern world will be of great importance.

In 747. A.D. there is a major rebellion of the Abbasids tribe with which the rule of the large Omayyads family had be definitely overthrown. Caliphate headquarters will be moved from Damascus to Baghdad 762 A.D. With the coming to power of the Barmakis family, led by Khalid ibn Barmak who was the great patron of literature, Islamic literature and culture will experience a great expansion. During the reign of this family, a major Islamic epic `` Arabian Nights " was created.

The Abbasids dynasty will rule until 1258 A.D. leading to major political, cultural and military changes in the politics of the great Islamic Empire.

The period of domination of the Abbasid Caliphate (750-1258 A.D.) is a period of great attrition and internal strife in Islam. It is a period of Oriental despotism during the reign of the famous Grand Caliph Harun al-Rashid who ruled the Grand Caliphate in the period 786-809. A.D. It is a period of great persecution of Siia (Shi'ites). This was the time of the establishment of the

independent caliphate of the Corday under the control of the Omayyads (Abd al-Rahman 756-788 A.D.), the establishment of the independence of Morocco under the rule of Siia (788 AD) and the independence of Tunisia and India. It was also a period of great counter-attack and Christianity's campaign against Islam and a period of withdrawal of Islam from Spain. (945 A.D.). This was the period when Baghdad came under the control of the Siia clan of Buyids from Iran, which diminished the power of the ruling The Abbasids dynasty.. In 1055 A.D. the powerful penetration of the warrior tribe of the Seljuk Turks brought new changes and opened a new era of the militant spread of Islam. It was a period of Islam's re-invasion of North Africa and Europe, but also an era of great social changes inside of Islamic civilization. It will have a great historical impact on the further position and role of Islam in the further development of mankind.

The commercial postulate that the progress of each individual can only be achieved through personal work, fair trade, and the prohibition of usury, will bring great economic prosperity to Islam. In that era, the trade links of the Islamic empire were developed with India, Southeast Asia, China, Byzantium, Europe, Russia and Central Africa. The merchant navy of the Islamic empire reaches the southern shores of the African continent, to the shores of the Mediterranean Sea. The monopoly over the trade in cotton, wool, silk, glass, ceramics, soap, various types of metals and perfumes was held by traders from Islamic countries. Cordoba, Cairo, Toledo, Damascus, Baghdad, Samarkand, Bukhara, **Kūfah**, Basra, have grown into major world trade centers.

The Great Silk Way, the most famous trade transfer between Europe and Chinese civilization, was at the same time a channel of cultural influence and spread of Islamic civilization and its permeation with powerful influences coming from Buddhist and Hindu civilization. The production of paper paved the way for the development of a modern educational system that began to expand first in large mosques and then developed through a system of schools and universities. A large number of books from ancient Hellenistic culture have been translated into Arabic and published in the Islamic world. With the introduction of Arabic as the official language of communication, the cultural unification of Islamic civilization was gradually created, in which many of the cultural legacies of ancient civilizations were translated into Arabic. Banning the translation of the Qur'an into other languages and banning communication in the languages of ancient Mesopotamian, Egyptian, Hellenistic, Roman,

Jewish and Indian cultures, Islamic civilization will make its cultural legacy less influential on the further development of humankind.

With the development of commerce and coming into contact with other great civilizations, Islam expanded its cultural and spiritual influence while creating own system of moral and legal norms and customs that governed trade and commercial relations. By delimiting jurisdiction in various types of legal disputes, regulating relations during the war between Islamic and non-Islamic states, regulating the treatment of prisoners of war and the population of occupied areas, a system of Islamic international law was gradually created.

In Islam, there has been a great interest in the development of science from the earliest days. All the legacies of early civilizations (Mesopotamia, Egypt, Greece, Rome, India, Persia) had been collected and served Islamic scholars to make a significant original contribution to science and art in Islam. Many translated scientific and artistic works from the ancient period into the Arabic language were now available throughout the Islamic vast empire, which constituted a new contribution of Islam to the spread of the science and art of ancient civilizations.

A particular high interest in medicine developed in Islam. The famous Baghdad physician al-Razi (865-925) wrote over 120 medical books, including the first books on measles. The doctor and professor Abu Ali ibn Sina (979-1037) wrote the first medical canon to synthesize classical and Islamic knowledge in the medical sciences. This book was translated into Latin in the 12th century and has been Europe's leading textbook for over 500 years.

In other sciences, great progress has been made in Islamic civilization. The first chemical laboratories are established in Islamic countries and the first laboratory research is conducted. The first classification of matter (Al-Razi) was made. The first scientific explanation of the theory of human eyesight and the first explanation of the refraction of the light in the atmosphere and the eclipse of the sun are given (Ibn al-Haytham, 1039). Islamic scholars have also made a major fundamental contribution in the mathematical sciences. By adopting the Arabic and Indian numerical value systems, using zero and decimal in mathematical operations, adopting geometry and trigonometry from the Greeks, arithmetic and algebra will be developed in Islam through the works of Muhammad ibn-Musa al-Khwarizmi (780-850 A.D.). In the later works of a large number of Islamic mathematicians, especially in the works

of Abdul Ruyhan Muhammad in Ahmad al-Beruni, as the most significant mathematician in the Islamic world, analytical geometry, algebra (al-Khwarizmi) and trigonometry had been developed. Research in astronomy (al-Battani), geography, mineralogy, chemistry, optics, botany, medicine (al-Razi) also reach the highest level in Islam.<sup>2</sup>

The early philosophical thought in Islam, which relies heavily on the philosophy of ancient Greece, especially the traditional thought of Plato and Aristotle, also attracts full attention. Among the most famous Islamic philosophers of the time were Abu 'Ali al-Husayn ibn Sina (980-1037)<sup>3</sup> and Abu al-Walid Muhammad ibn Ahmad Ibn Rushd (1126-1198 AD)<sup>4</sup>. During this period, a special expression in architecture was achieved through the construction of many beautiful mosques and magnificent grand palaces, such as Alcazar in Seville and the Alhambra in Grenada.<sup>5</sup> Early Islamic art and culture are for the most part a reflex of the creative synthesis of many cultural traditions.

In the early period of the Islamic Empire, Lex Romana already existed, largely relying on the legal and moral corpus of the Sumerian, Babylonian, and Egyptian empires and the legacy of the prosperous Hellenistic civilization. Following largely the customary rules and legacies of the moral code of early civilizations, Islamic International Law (Siyar) will largely incorporate new customary rules and its own moral and legal code into regulating relations with other states and peoples in times of peace and war.

### **The Transition of the Norms of Islamic Law into Islamic International Law**

Islamic International Law (Siyar) derives from Islamic law (Shari'ah), which regulates relations between state and humans within the Islamic community. This process of growing Islamic Law into Islamic International Law, which regulates relations between Islamic and non-Islamic states, is accompanied by numerous contradictions in both international law theory and international relations practice.<sup>6</sup>

In the first stage of the development of Islam of great importance was the power and intensive expansion of the Islamic empire that grew into a military and conquering force. The Islamic empire increasingly restricted the military power of Christianity and Christian states. At the same time, the power of the Islamic empire was limited by the military power of Christian communities. On the other side, the Islamic empire has grown into a powerful civilization with a new system of cultural, moral and legal

norms. The sublimation of imperial military power and the great spiritual and cultural inspiration that developed within the Islamic empire and its contact with cultures of other empires and civilizations leaves a special mark on the legal norms of Islamic International Law.<sup>7</sup>

From the outset, Islam was confronted with large and powerful empires that greatly reduced its power, which greatly influenced the development of a special dimension of Islamic international law, both during peace and during conflicts between Islamic and non-Islamic countries. Unlike the ancient Greek civilization and the Roman empire, which at the peak of their power did not have powerful external opponents, the Islamic empire had no unlimited power of its own action in any period of its expansion. This external restriction on military power left a major impact on the first legal norms of Islamic international law.

Although Islam, as a universal religion, tended to spread, like all other major religions, its expansion did not depend solely on the military power of the Islamic empire. The spread of Islam also depended on the acceptability of its religious, legal and moral code for tribes in the surrounding area. The benefits which were offered by Islam, as a religious-philosophical value system, to neighbouring peaceful and warlike tribes and empires will make their resistance to Islam indulgent. Thus, the Qur'an's provisions on the flexibility of Islam to make peace with non-Islamic tribes who do not want war will come to the fore (The Qur'an viii. 61). Similarly, strict adherence to the peace and non-Islamic treaties concluded with non-Islamic countries (The Qur'an iv 90, 92,) will make relations between Islamic and non-Islamic countries easier and more open.

Flexibility in regulating war conflicts, restrictions on the killing and persecution of civilians, the prohibition of destruction and slavery will contribute to the further spread of Islam. Hence, one of the essential determinants of the non-violent spread of Islam, which is emphasized in the Quran, could be seen as the first beginning of diplomacy in *Lex Islamica*. For the same reasons, the asylum institute will be highly developed in Islam. Every human being could count on getting protection within the Islamic community in the event of persecution by another state. The inclination to the non-violent spread of Islam was driven also by the needs of a new, still weak, Islamic empire to gain the affection of tribes who lived in the environment, as well as the necessity to survive in a hostile environment.



Issue of nature relations between Islamic and non-Islamic communities is one of the most controversial issues in Islamic international law. Several diametrically opposed views have been developed on this issue. One, referring to the provisions of the Qur'an and the practices implemented during the life of the Prophet Muhammad and his successors, will argue that the normal relationship between Islam and non-Islamic countries is a relationship of peace rather than hostility and permanent war. Proponents of this concept do not deny that the relationship between Islam and non-Islamic countries in the first stage of the development of Islam was predominantly a relationship of hostility and war, which was characteristic of that period of human history. However, they believe that Islam did not even treat the state of permanent war with non-Islamic communities as normal.<sup>8</sup>

Others will also refer to the provisions of the Qur'an<sup>9</sup> and the practice of the Holy Prophet Muhammad, pointing out that relations between Muslims and non-Muslims are relations of permanent hostility, and that relations between the land of peace (dār al-Islām) and the land of war (dār al -harb) are relations of war and enmity.<sup>10</sup>

Between these two concepts, a major theoretical debate has developed in Islamic International Law, which continues to this day. Proponents of the concept of perpetual war between Islam and non-Islamic countries consider that the Qur'an provision concerning the perpetual struggle against paganism and idolatry (Qur'an 9: 5) applies directly to members of other religions as well (Qur'an (9:29)).

Proponents of the concept rejecting the thesis of permanent war between Islam and non-Islamic communities strictly distinguish between the Qur'an command commanding a permanent fight against idolatry and the Qur'an command commanding a fight (qital) <sup>11</sup> against non-Muslims, located in occupied areas that refuse to pay taxes (jizyah) to the Islamic empire (Qur'an 2: 190), or who breach peace treaties and lead aggression against the Islamic empire.<sup>12</sup>

Qur'an strictly adheres to the peace treaties.<sup>13</sup> In the case of non-Islamic countries violating peace treaties with the Islamic empire or its allies, the obligation to respect the treaty obligations automatically ceases, meaning the right to a defensive war, according to supporters of the bellum

iustum concept in *Lex Islamica*.<sup>14</sup> The use of military force in conflicts of war under Islamic International Law is intended not primarily to physically destroy the enemy, but above all to provide protection for Muslims and to weaken the military power of the enemy in order to provide such protection. As soon as this is secured, the war must cease.<sup>15</sup>

### **Character of Islamic international law norms**

Bearing in mind that the norms of Islamic International Law in early stage had regulated relations between Islamic states and relations with non-Islamic communities and states, which have been limited to narrower geographical areas, some authors will dispute the international legal character of the norms of this branch of Islamic Law. They proceed from the view that the *Siyar* norms were primarily aimed at regulating relations between Islamic communities (states) and non-Islamic communities (states) within the narrow geographical regional frameworks, failing to reach the level of generally accepted norms of global rules accepted by international community. They thus challenge the international legal character of Islamic International Law.<sup>16</sup> However, bearing in mind that during that period, relations between countries, objectively due to technical constraints, were reduced to narrower geographical areas, so in that period the definition of the international community was reduced primarily to relations between states and communities that existed in to their mutual knowledge, some authors, predominantly Islamic, felt that this argument could not be used to eliminate the international legal character of early system of Islamic International Law. This group of authors believes that in proving the international character of a moral and legal norms and customary rules, it should be a criterion indicating the ability, or vitality, of certain moral and legal norms, as well as the customary rules, to survive the epoch of its origin. In this context, they find it difficult to challenge the international legal character of the system of customary, moral and legal standards developed under Islamic International Law in the earliest period.

Also, the same authors reject the argument that *Siyar* norms cannot be viewed as norms of international law because of the absence of "legal equality and reciprocity" of states in their creation since *Siyar* derives from *Sharia's* internal Islamic legal corpus, which was developed within Islam as a religion but not in relations between independent states as was the case with Public International Law. Although the Arabs speak the same language, share the

same racial, cultural ethnic background with the same tradition, the high degree of autonomy of the Arab communities made their relations no less international relations than those established between Christian communities, these authors pointed out.<sup>17</sup>

Although Islamic law accepts the concept of personal (divine) rather than territorial (state) sovereignty, Islamic international law plays a significant role in the development of the philosophy and source of Public International Law. As God is sovereign, he transfers his sovereignty to the individual (human) but not to a group (government) that could rule in the name of God, which opens wide space for the development of modern democratic thought in Islam. It follows that every individual owes loyalty not only to the state but exclusively to God to whom he is directly responsible, which results in the responsibility of the government (state) to the people, which makes democracy in Islam not only compatible with the concept of modern democracy, that is, majority rule, but original and authentic democracy, which will have a significant impact on the authenticity of Islamic international law and international relations.<sup>18</sup>

Understanding the concept of personal (divine) sovereignty, where God remains supreme sovereignty, with the transfer of sovereignty to all people, the issue of internal territorial divisions and the creation of more Islamic states with territorial demarcation within the Islamic territorial empire, takes on a completely different meaning. This does not diminish the importance of Islam as an integrative religion with global aspirations, whose absolute personal divine sovereignty extends to where Muslims live,<sup>19</sup> but the relationship between Islamic states or the rulers of Islamic states seems rather vague, causing many problems and conflicts in Islam throughout history.

The numerous wars between Islamic independent states, as well as the conflicts of numerous tribal groups within Islamic countries, required clear legal regulation of the relationship between the God supreme divine authority, the authority of the rulers of autonomous Islamic communities (states), and the people to whom the sovereignty of God was transferred. For the famous Islamic lawyer Abu Hanifa, God's sovereignty was delegated to the authority of a local ruler who governs the Islamic community (state) on behalf of all Muslims living in that community (state). This legal view in Islamic jurisprudence will have controversial implications for the further development of Islamic legal theory, where the right to rebel against rulers remains questionable.<sup>20</sup>

As the Islamic concept of personal (divine) sovereignty is universal, all the legal, political, diplomatic and military activities of Islamic states are regulated in accordance with the unique Islamic legal and moral code as the ultimate expression of God's universal sovereignty. All Muslims and rulers of Islamic states must obey it. With the disintegration of the Ommajads, and later the Abbasids empire, many provinces became independent Islamic states that ruled their territory independently, decided wars independently, and had full authority to enter into treaties, with both Islamic and non-Islamic states.

This controversial relationship between the concept of divine sovereignty and the political organization of the Islamic empire will produce numerous legal problems, which will lead to a great legal conflict in the Islamic Law. This legal conflict will be reflected as legal misunderstanding regarding the relationship between the norms of divine Islamic law (Qur'an and Sunnah), and Islamic jurisprudence (Sharia and Fikh,) as legal rules created by the interpretation of divine law by the human, where possible human errors in the interpretation of the meaning and application of divine law. Two law schools have emerged to solve this problem. According to one of these schools (**themukhatti'ah**), the law applied by the state is only potentially God's law and is subject to verification and challenge. According to the other school (**musawwibah**), a law applied by the state is not subject to review and contestation unless the person to whom that law applies considers it not God's will and command. With this interpretation, absolute preference for Islamic divine law (Quran & Sunnah) over Islamic jurisprudence (Sharia & Fikh) is given, which makes rebellion against the state permissible insofar as the provisions of jurisprudence contravene divine Islamic law.

The obligation to live in accordance with the law of God, which is determined by the interpretations of Islamic divine law by human practitioners (Shari'ah and Fiqh), leaves much room for human error in the interpretation of divine law. According to Islamic law, all Muslims, regardless of living in different independent Islamic states and non-Islamic states, form a single Islamic community (Ummah), to which the unique moral and legal norms of Islamic divine law apply. This has led to frequent conflicts between political and religious elites, causing major problems for the Islamic world, making Islamic international law one of the most contradictory legal branches in Islamic law.<sup>21</sup>

Here, it is very important to distinguish between the application of the norms of Islamic divine law (Qur'an and Sunnah) and those of Islamic law that

have arisen through human interpretation of divine law (Shari'ah and Fiqh) in different social, historical and political settings. On this issue, two concepts of interpretation of Islamic law are identified in Islam: static and dynamic conceptions. The dynamic interpretation of the relationship between divine Islamic law and Islamic jurisprudence is particularly important for the development of Islamic international law because of its commitment to the diversified interest of Islamic states arising from the different historical, political, economic and social environments of particular Islamic countries, enabling them to more effectively respond to the challenges of modern times, thereby more effectively protecting the fundamental values of Islamic divine law.<sup>22</sup>

Resolving this legal conflict between Islamic divine law and Islamic jurisprudence, could open a much wider space for determining the responsibility of rulers in Islamic legal doctrine.

### **Instead of a conclusion**

The entire history of Islamic civilization is marked by permanent renewal (taidid), reform (islah) and renaissance (nahda). In the earliest times of Islam, the dimensions of social egalitarianism, that is, equality among people, were emphasized, which was especially promoted in the speeches of Prophet Muhammad (Hadith). From the earliest days in Islam, the development of various social categories, such as the category of common goods (maslah `amma), the category of compassion (rahma), the category of human well-being (masali'h al-`ibad), the category of religious minorities (ahl al- dhima), social justice (`adl), and other numerous legal and moral institutes, have been particularly important.

With the spread of Islam to areas inhabited by peoples of different cultural and religious identities, there was a need for a high degree of flexibility in Islamic canons, which would result in the development of different schools of Islamic jurisprudence, such as Hanafi, Hanbali, Maliki and Shafi'i.

Within these law schools, through the development of consensus principles (Ijmā) and consultation methods in decision-making processes (shūrā), which are based on the justice system (haqq), the inventive system (talfiq), and the reasoning model based on the principles of Quranic verses (kiyas) ), Islam introduces a new philosophical dimension to relations between different cultures and civilizations, growing into a defining

component of the global modern political-philosophical concept of democracy in the 21st century. From these turbulent internal legal, moral, political and social vibrations of Islamic society, Islamic international law emerges as one of the most vibrant legal disciplines in the modern Islamic legal system.

## References & Notes

1. "Islam demonstrated an amazing power to win converts. Its success did not usually depend on force, since Arab conquerors seldom insisted that their subjects accept the new religion. At first, most Christians, Jews, Zoroastrians, and Hindus continued to worship as they had in the past. The conquerors demanded only that their non-Muslim pay a special tax for the privilege of retaining their old religion and accept exclusion from government position. As the years passed, however, most devotees of other religions were converted. Perhaps the tax penalty was too great a burden. Perhaps the exclusion from high position was unbearable. But perhaps more significantly, Islam had universal appeal as a religion. In time, the overwhelming majority of man in the vast conquered area stretching from Spain to India became Muslims." (John B. Harison and Richard E. Sullivan (1971), *A Short History of the Western Civilization*, Alfred.A. Knopf, New York, p260)
2. Richard L. Greaves, Robert Zaller, Jinnifer Tolbert Roberts (1992), *Civilizations of the West*, Harper Collins Publishers, New York, p. 205).
3. Abu 'Ali al-Husayn ibn Sina is better known in Europe by the Latinized name "Avicenna." He is probably the most significant philosopher in the Islamic tradition and arguably the most influential philosopher of the pre-modern era. Born in Afshana near Bukhara in Central Asia in about 980, he is best known as a polymath, as a physician whose major work the *Canon (al-Qanun fi'l-Tibb)* continued to be taught as a medical textbook in Europe and in the Islamic world until the early modern period, and as a philosopher whose major *summa* the *Cure (al-Shifa')* had a decisive impact upon European scholasticism and especially upon [Thomas Aquinas](#) (d. 1274). The philosophical space that he articulates for God as the Necessary Existence lays the foundation for his theories of the soul, intellect and cosmos. Furthermore, he articulated a development in the philosophical enterprise in classical Islam away from the apologetic concerns for establishing the relationship between religion and philosophy towards an attempt to make philosophical sense of key religious doctrines and even analyses and interpret the Qur'an. (Internet Encyclopedia of Philosophy)
4. Abu al-Walid Muhammad ibn Ahmad ibn Rushd, better known in the Latin West as Averroes, lived during a unique period in Western intellectual history, in which interest in philosophy and theology was waning in the Muslim world and just beginning to flourish in Latin Christendom. Just fifteen years before his birth, the great critic of Islamic philosophy, al-Ghazzali (1058-1111), had died after striking a blow against Muslim [Neoplatonic philosophy](#), particularly against the work of the philosopher [Ibn Sina \(Avicenna\)](#). From such bleak circumstances emerged the Spanish-Muslim philosophers, of which the jurist and physician Ibn Rushd came to be regarded as the final and most influential Muslim philosopher, especially to those who inherited the tradition of Muslim philosophy in the West. (Internet Encyclopedia of Philosophy)

5. “Muslim civilization reached its apogee in the ninth and tenth centuries. Thereafter it began to suffer a variety of internal dislocations which sapped its energies and permitted outsiders to take advantage of it. ...Despite the afflictions besetting Muslim society after the eleventh century, the immense achievements of the preceding centuries Muslim civilization a permanent place in the history of human accomplishment.” (John B. Harison and Richard E. Sullivan (1971), *A Short History of the Western Civilization*, Alfred.A. Knopf, New York, p263)
6. Christopher G Weeramantry, *Islamic Jurisprudence: An International Perspective* (1988).
7. “The general principle followed in Islam is that any good practice in any other culture or religion should be taken to be part and parcel of the Islamic tradition. Imam Ahmad has quoted in his well known collection, the Prophet (peace be upon him) as saying: “The excellences and the moral virtues of the days of Ignorance (before Islam) or the Jahiliyyah, will be acted upon in Islam”. Thus, it may be considered to be a part of Islamic cultures. Under this principle also, all positive and humane aspects of today’s international humanitarian law would form part of the Islamic law.” (Mahmood A. Ghazi, *The Contribution Of Islamic Law, To The Emergence Of International Humanitarian Law*, Research Papers, Vol. VI, No. 1-2(2006)
8. ‘Abd al-Wahhāb Khallāf, *al-Siyāsah al-Shar’iyyah* (1397), Abū Zahrah, *al-‘Alaqāt al-Dawliyyah* (1384); Wahba al-Zuhaylī, *al-‘Alaqāt al-Dawliyyah fī al-Islām* (1981); Āthār al-Harb (1992); Zafar al-Qāsimī, *al-Jihād wa al-Huqūq al-Duwaliyya al-‘Ammah fī al-Islām* (1982); Mahmood Ahmad Ghazi, *Khutbat-i-Bahāwalpur II: Islām kā Qānūn Bayn al-Mamālik* (1997).
9. “Then, when the sacred months are drawn away, slay the idolaters wherever you find them, and take them (captive), and besiege them, and lie in wait for them at every place of ambush”. [ Qur’an, 9:5]
10. Sulaymān ivb Hamdān, *Dalālat al-Nusūs wa-al-Ijmā’ alā Fard al-Qitāl lil-Kufr wa-Difā’*, (1382); ‘Abd al-Karīm Zaydān, *Majmū’ah Buhūth Fiqhiyyah 54* (1402) ‘Uthmān Jumu’ah, *Majmū’ah Buhūth Fiqhiyyah 385-429* (1402).
11. *Qitāl* means fighting while *jihād* means striving (in the path of Allah). *Jihad* has a wide variety of meanings. Another word that is used as interchangeable is war. For the sake of consistency therefore ‘*jihād*’ and ‘war’ shall be construed to mean ‘*qitāl*’. ( Muhammad Munir, *Islamic jus ad bellum and jus in bello*, Research Papers, Vol. VI, No. 1-2 (2006)
12. “And fight in the way of God with those who fight with you, but aggress not: God loves not the aggressors”; Qur’an (9:13)
13. “Freedom from (all) obligations (is declared) from Allah and His Messenger to those of the Mushrikeen (polytheists, pagans, idolaters), with whom you made a treaty. So travel freely (O Mushrikin) for four months (as you will) throughout the land, but know that you cannot escape from the punishment of Allah; and Allah will disgrace the disbelievers. And a declaration from Allah and His Messenger to mankind on the greatest day (the 10th of Dhul- Hijjah – the 12th month of Islamic calendar) that Allah is free from (all) obligations to Mushrikin and so is His Messenger. So if you (Mushrikin) repent, it is better for you, but if you turn away, then know that you cannot escape (from the punishment of) Allah. And give tidings (O Muhammad) of a painful torment to those who disbelieve. Except those of the idolaters with whom you have a treaty, and who have not subsequently abated nothing of your right nor have supported anyone against you.

So fulfill their treaty to them till their term. Surely, Allah loves those who keep their duty (unto Him). [Qur'an 9:1-4

14. Will you not fight a people who have violated their oaths (pagans of Mecca) and intended to expel the Messenger while they did attack you first? Do you fear them? Allah has more right that you should fear Him if you are believers". (Qur'an 9:13).

15. Muhammad Hamidullah, *Ahd-i-Nabawi Men Nizam-i-Hukmrani*, Karachi, 1981, pp. 229, 234-253.

16. Majid Khadduri (1996), *The Islamic Law of Nations*, The Johns Hopkins Press, pp2-3

17. Muhammad Hamidullah, *The Muslim Conduct of State*, Lahore 1996, p51

18. M.A. Muqtedar Khan, in Khaled Abou El Fadl, "Islam and the Challenge of Democracy", Princeton University Press, 2004

19. "Lo! The earth is God's. He giveth it for an inheritance to whom He will (Qur'an, vii 128) And when thy Lord said unto the angels: Lo we have set thee as a viceroy in the earth (Qur'an, ii 30) And God said unto him: O David! Lo! We have set thee as a viceroy in the earth: therefore judge aright between mankind and follow not desire that beguile the from the way of God (Qur'an, XXXViii 27), Say: O God Owner of Sovereignty (mulk)! Thou givest sovereignty unto whom Thou wilt, and Thou withdrawest sovereignty from whom Thou wilt. Thou exaltes whom Thou wilt and Thou abasestwhom Thou wilt. In Thy hand is the good. Lo! Thou art Able to do all things (Qur'an, iii.26) .

20. "All parts of the Muslim territory are under the authority of the Imam (Ruler) of the Muslims, and his authority is the authority of the community of the Muslims". (Abu Hanifah)

21. "The Messenger of God was asked: Some people fight to show their bravery other in sympathy for their relatives, and yet other fight for ostentation: which of them is to be considered in the path of the God? The Prophet replied: Only the one who fights in order that the word of God should prevail." Tirmidhiy, bk "Fada'il al Jihad", in (Muhammad Hamidillah, "The Muslim Condu of State", Lahore, 1996, p144, footnote no. 12)

22. Vidjeti vise u Abdurrahman Wahid, "Reflection on the Need for a Concept of Man in Islam", 1983.

