
An analytical study of Dr. Hameedullah's views in Islamic International Law

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Abstract

Human is a social animals, hence wants to live in close association with their fellow beings. On the other hand conflict of interests is inevitable which leads to altercations. The same holds true for countries of the world; conflicts, if left unresolved, may lead to cold wars and armed battles. Since a war causes damage to the triumphant opponent too, it is always preferable to avoid it. Here comes the need and role of International Law. The principles, rules and regulations employed for resolution of conflicts are collectively called International Law.

Islam, too, has defined principles and a code of conduct for dealing with nations of the world. Referred to as '*Islamic International Law*', it has always been in practice and a lot of literature has been written on it in the second and third centuries. But we do not find considerable work on the interpretation and elaboration of Islamic International Law in the backdrop of the modern, developed and technological world. However, Dr. Hameedullah, a great contemporary researcher, historian and jurist, has made valuable contribution in this field. This article discusses the same.

Keywords: International law, Islamic law, jurisprudence, Peace and Harmony

Introduction to International Law – An Evolutionary Overview

"Law" or "rule" is the base which human beings accept as a standard for dealing with different aspects of life and hence refrain from transgressing mutual limits. Consequently, it helps in achieving aims and objectives and there arises no need to exploit others. A human possesses both angelic and devilish instincts. There does come a stage in their life where they have to protect their own interests while transgressing others' limits and resorting to exploitation. Arbitration and mediation is also a long-living concept in the human history, and as old is the practice of nepotism and preference of personal interest while resolving conflicts and cases. From decision-making of the ancient tribes and civilizations to arbitration, friendly or opponent relations between nations and countries of the modern-day civilized, developed world, the factors of preferring personal interest while making decisions, supporting others or approving or refusing others' standpoint definitely is present in all existing forms of arbitration and support. That is why law is the boundary or line of distinction through which it gets ensured that individuals, nations or countries do not exploit each other. Kant has expressed this very concept in a different manner in his book named Jurisprudence. He says:

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"The chief purpose of law is the provision of a field of free activity for the individual without interference by his fellow men" ¹

It can be inferred² that law-making is as old as human settlement in this world because human beings are inclined towards social life. Since the time the Creator of the Universe³ has created humans, He has taught them the way of living too. This we get to know through the divine revelation⁴ in the Holy Quran:

وأنزلنا إليك الكتاب بالحق مصدقا لما بين يديه من الكتاب ومهيمنا عليه فاحكم بينهم بما أنزل الله ولا تتبع أهواءهم عما جاءك من الحق لكل جعلنا منكم شرعة ومنهاجا ⁵

And we have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method.

Through this it can be easily inferred that humans have, in every era, accepted certain standards or rules and regulations for social life. International Law is also a set of rules and regulations which nations of the world consider a standard while dealing with each other. When we look closely in human history we find that law takes birth from the decisions taken, limitations imposed, and instructions given by the head of families, for which content is provided by tribal rituals and traditions, while these traditions came into being from the needs of life of the tribes, and this is how the foundation of law was laid. Then, with the passage of time, the evolutionary journey of law continued. Tribal laws varied mutually, based on the wants and needs of the tribes. Following this path, law matured to its current form. Abdul Qadir 'Oodah⁶ has elaborated this aspect as follows:⁷

"The foundation of human-made law was laid from the time when small societies of people started organizing themselves. Human-made laws kept on getting organized along with the organization of these social groups. Although laws were quite weak in this form from the legal aspect but with the passage of time and the expansion and development of thought of the tribes, these laws kept on getting developed too."

Hence law has been like the child who gradually recovers from the frailty of a new-born and gains vigour and health with the passage of time. Likewise, human-made law kept on developing along with the growth and needs of societies. Today's laws are not in their original shape but have travelled thousands of years to reach the current form

Islam and International Law

The terminology used in Islamic jurisprudence for International Law is *سيار* (*siyar*). Imam Sarakhsi has defined *siyar* as:

قال الشيخ الإمام الأجل الزاهد شمس الأئمة وفخر الإسلام أبو بكر محمد بن أبي سهل السرخسي - رحمه الله تعالى - اعلم أن السير جمع سيرة وبه سمي هذا الكتاب لأنه بين فيه سيرة المسلمين في المعاملة مع المشركين من أهل الحرب ومع أهل العهد منهم من المستأمنين وأهل الذمة ومع المرتدين ⁸

"*Siyar* is the way Muslims deal with non-Muslim nations of hostile territory or those non-Muslims with whom Muslims have entered into an agreement, that is, those who are residing in Muslim territory whether temporarily, that is, *mustaamin* ⁹, or permanently, that

is, *zimmi* ¹⁰. *Siyar* also includes dealings with those who have turned away from the Islamic faith and with rebels.”¹¹

The beginning of Islam and International Law

The foundation of International Law got laid right in the beginning era of Islam. The first and second Pact of 'Uqabahin Makkah can be quoted as an example in this regard which were purely of the nature of International Law. Later, after the establishment of Muslim state in Madinah, the agreements which the Holy Prophet ﷺ made with entirely autonomous tribes are also pertinent instances. The divine commandments revealed during the battles of Badar and Uhud in Madinah are the fundamentals of Islamic laws based on which International dealings were undertaken during the later phase of Islamic history.

Although experts of Islamic laws, commonly called *fuqahaa* (jurist), did not write specifically on this topic in the beginning but later not only these laws were compiled under the heading of “*seerat*” but the process of developing congruity between incidents and laws was also carried out. In the later eras, books on this topic were specially written under the heading “*siyar*”

The oldest available such book is كتاب المجموع (*kitaabulmajmoo'*) written by Imam Zaid bin Ali (deceased 120 *hijri*). Later, Imam Abu Haneefah's book كتاب السير (*kitab us siyar*) سیر ابي حنیفہ (*siyaruabihaneefah*) gained wide recognition. During this era the acclaimed jurist of Syria and Palestine Imam Auza'eewrote, based on disagreement with Imam Abu Haneefah, كتاب سير اوزاعي (*kitabusiyaariauza'ee*). After this, Imam Abu Yousuf, a student of Imam Abu Haneefah, wrote الرد على سير الاوزاعي (*arraddu 'alasiyarilauzaa'ee*) defending Imam Abu Haneefah's standpoint. This book is available today but the two books mentioned earlier are no more intact. This we get to know by the writings of the eminent scholar of *hadees* (sayings of the Holy Prophet) and historian Hafiz Ibn e Hajr 'Asqalaani (deceased 852 *hijri*). The book of Imam Abu Yousuf was preserved by Imam Shaf'ee but it is not a purpose-written book on this topic, and the other two books are not available otherwise those would have been the oldest existing books on the topic of International Law. Imam Muhammad, the student of Imam Abu Haneefah, republished his teacher's book كتاب سير لابي حنیفہ, which he had studied directly from him, with some changes, deletions and explanatory notes.¹² When this book gained wide acceptance, Imam Muhammad wrote another book السير الكبير (*as-siyar-ulkabeer*) which, apart from being purpose-written, is such a comprehensive book on this topic that the Abbasid caliph Haroon-ur-Rasheed had commented: One of the great successes of my regime is this book.”

Another detailed and celebrated book on this topic is شرح السير الكبير (*sharh-us-siyar-ulkabeer*) written by a *hanafi* (belonging to the jurisprudence of Imam Abu Haneefah) jurist Imam Sarakhsi who resided in an area called Auzjand near Tashkent. This book was written during imprisonment. Imam Sarakhsi had declared the taxes imposed by the ruler of Auzjand illegitimate and consequently the ruler put him behind bars. The students of Imam Sarakhsi studied Imam Muhammad's book السير الكبير from Imam Sarakhsi during his

imprisonment, and during these session the book شرح السير الكبير got evolved. This book is basically an explanatory version of السير الكبير in which Imam Sarakhsih has discussed the following topics:

1. Dealing with the army of the non-Muslims
2. *Khiraaj* and related matters

Matters related to reconciliation and friendship between heads of kingdoms

1. Entry of members of non-Muslim state in Muslim state for the purpose of trade in case of *amaan* (declared peace), and religious conjunctions related to their marriage in Muslim state which is the topic of Private International Law
2. Religious conjunctions related to the penalty for an apostate
3. Conjunctions related to slaves
4. Religious conjunctions related to breach of agreement by a *zimmi* (a non-Muslim who lives in a Muslim state and pays tax (*jizyah*) in return of the responsibility which the state undertakes regarding him¹³)

The above-mentioned conjunctions are those that are related to the International Law of Islam which Imam Sarakhsi has discussed in his book *كتاب السير*.

Need and Importance

The importance of International Law in today's modern world has increased manyfold as compared to the past, and it will continue to increase primarily because countries have moved closer, matters of mutual interest and needs have increased, the nature, types and proportion of crimes have increased, and developed forms of technology are creating new issues for states day by day.

On the other hand, the execution and regulation of conventional laws have created a situation of anxiety in the Muslim world, not only in the form of non-execution of religious laws but also unavailability of justice. Another fundamental factor is the orientalist or advocates of the western philosophy and education who opine that Islam lacks the capacity to fulfill the needs of today's modern world.

Today, when the non-Muslim countries of the world have gathered as one nation or community under one umbrella to address global issues and have also carried out legislation in this regard, and these laws have specially been compiled, and considerable time period has been consumed in the process of compilation of law and the commitment to implement it, and the world has witnessed many wars too during this time period and also observed the laws made and implemented by the international community along with their results, it becomes all the more important to consider whether the law made by human intellect is preferable or that

revealed by divine intervention. In other words, the world needs to think where the real solution of our problems is possible collectively.

The work of Doctor Muhammad Hameedullah in the field of International Law

Doctor Muhammad Hameedullah is a prominent name among the scholars who have worked in the field of International Law. He has put in great efforts in research for contemporary International Law in the light of Islamic teachings. "Muslim Conduct of State" is his renowned literary work which is basically his Ph.D thesis that he pursued from a German university. The fields of International Law in which he has contributed are as follows:

Law between Countries

Doctor Hameedullah has adopted the terminology 'Law between Countries' for International Law. He is of the opinion that this field of law regulates relations between countries instead of nations. Whether during peace or war, this field of law discusses mutual interests and matters between countries purely, and it has got no linkage with the citizens of states.¹⁴

As for the definition of Law between Countries, Doctor Hameedullah writes:

"By International Law are meant those legal regulations which organize the mutual relations of countries and International personalities."¹⁵

The Sources of Islamic International Law

Doctor Hameedullah has pointed out the following sources of Islamic Law between Countries:

- Quran
- *Hadees* (sayings of the Holy Prophet ﷺ)
- Actions of the Rightly Guided Caliphs

Actions of Muslim caliphs which have been formalized on the basis of opinions of jurists

- Opinions of Muslim jurists which are based on *Qiyas* (inference), *Ijtihad* (interpretation) or *Ijmaa'* (unanimity)
- Resolutions of conflicts
- Agreements and concords
- Official instructions given to ambassadors and military officers
- Interior legislation of Muslim countries which is carried out to organize relations with non-Muslims
- Norms and customs¹⁶

The scope of Islamic International Law

Which matters does Islamic International Law relate to, and which matters can be discussed under this law? What is the scope of this law? The opinions of Doctor Hameedullah about these questions is summarized as follows:

- Independent states which have relations with other independent states
- Semi-independent states which have to right to establish international relations
- Rebel groups which occupy a territory and take its state affairs in their control
- Dacoits, robbers and highway men
- *Mustaamin*, that is, foreigners residing in a Muslim state whose responsibility for peace is undertaken by the state
- Diplomacy representatives
- Muslims residing in non-muslim states
- *Ahl-uzzimma*, that is, those foreigners residing in Muslim countries who are entitled to privileges from the Islamic state
- Organizations of nations of the world, like the United Nations, Arab League, Commonwealth etc.

- Vatican City State with whom diplomatic relations of Islamic countries are established

Relations of Islamic state with the above-mentioned countries, groups and organizations may be friendly, non-friendly or neutral. Islamic International Law provides guidance about how to organize the level of relations with these countries, groups and organizations.¹⁷

Contribution of Muslims in the Evolution of International Law

Doctor Hameedullah has discussed at length on this aspect which has been presented in the end of this thesis. Also, it has been discussed in the first chapter "The History and Evolution of Islamic Law" how Muslims have introduced Islamic International Law to the world as an organized and practical law between nations in essence, and have established its comprehensiveness, that it is complete from all aspects, and its unchangeability, that it is not a creation of human intellect which requires modification with the passage of time.

International Relations during Peace

The Islamic state advocates equality with respect to rights and responsibilities of other states, whether a country is stronger or weaker in the financial, military or population front. Although it is an established rule from the philosophical point of view that every state is autonomous in its internal and external matters and the global community will respect their autonomy, but in practice it is not followed. Relations between states are anyhow influenced by the imbalance of power between them. Islam, however, does not advocate this methodology and lays the foundations of mutual relations on the principle of equality. Doctor Hameedullah presents the example of the letters of the Prophet ﷺ that they were sent to both stronger and weaker states and he has addressed the heads of those states with official titles and protocols giving similar respect.

Diplomacy

Islam has not only maintained the rights and privileges which diplomats were entitled to before Islam but has also given such rights and privileges which, before the Vienna Convention, did not exist even in the contemporary International Law.

- Diplomats have been exempted from state taxes
- Life security
- Liberty of faith

Doctor Hameedullah has mentioned that Islam gives the above-mentioned privileges to diplomats.

Apart from this, in the early years after the demise of the Prophet ﷺ, citizens of the states with whom the Islamic state had friendly relations used to get privileges for documentation-free temporary entry and residence in the Muslim state. Such residence could be terminated in the following cases:

- Conclusion of period of residence
- Violation of conditions of entry in the Islamic state
- Fake documents
- Conspiracy against Muslims or the Islamic state¹⁸

Agreements:

The Limits and Authority of the Islamic State

The opinion of Doctor Hameedullah regarding limits of the Islamic state is summarized as follows:

- Deployment of borders of countries is done through international agreements. If there is a river on the border, the middle of the river will be considered the border.
- As per the Islamic law, water will be considered part of the land, and whatever water body is annexed with a part will be considered the property of that state.
- The territory which comes under the occupation of Muslims will be considered part of the Islamic state. Things of public use like paths, canals, etc cannot become property of individuals but will be under the control of the Islamic state. Non-Muslims will also be allowed to use it but they will have to pay tax for it.
- Territories can be made part of the Islamic state by way of war, agreement, consent of the residents or purchasing.¹⁹

Autonomy and Independence

According to Doctor Hameedullah, the autonomy and independence of a country can be gauged by whether or not it is autonomous in establishing its foreign policy and international relations. If yes, it will be considered an autonomous state, otherwise it will be called semi-autonomous.²⁰

Doctor Hameedullah's idea of the Islamic concept of autonomy is, "A state which is not bound by the opinion of a higher power while taking decisions regarding its internal and external affairs"²¹

As reference for the above, he has quoted Ibn-e Khaldoon: ولا تكون فوق يده يد قاهره

Existence of more than one Islamic States

According to Doctor Hameedullah, Muslim jurists advocate the establishment of a single Islamic State and a unity but at they also approve of simultaneous existence of other Muslim states as well as carrying out dealings with them. In this regard, Doctor Hameedullah quotes Abu Moosa:

لان الدارين في الاصل ما امتازا الا باجراء الاحكام و تنفيذ الولايات و كذلك الولايات المختلفة في دار الاسلام بين ملوك الاسلام لا تمتاز الا بالغلبة و اجراء الاحكام²²

The point of distinction between Muslim and non-Muslim territories is the difference between power and authority. Similar distinction is true between Muslim territories in which the Islamic ruler is different with respect to his scope and power. Doctor Hameedullah presents the following references as evidence:

- Establishment of Islamic state in Andalusia along with the downfall of the Umayyad state
- Autonomy of regional governors in the last years of the Abbasid Empire
- Idrissi Kingdom of South Africa - an autonomous Islamic state - between Umayyad

Caliphate and Abbasid Caliphate of Andalusia in the era of Harun-ur-Rasheed

Based on the above-mentioned historical references, Doctor Hameedullah deduces that Muslim jurists have, along with advocating the concept of Islamic State, presented laws for regulating mutual relations of Islamic states as well as with non-Muslim states.²³

International Relations during War

- Types of war
- Treatment of prisoners of war
- The Islamic principles of non-bias / neutrality

All Muslims are citizens of the Islamic State:

All Muslims are part of the Muslim *Ummah* (community). If a Muslim, whether they originate from any country, region or territory, enters the Islamic State and gets settled and starts living there, they become the citizen and resident of the Islamic State. Doctor Hameedullah supports this standpoint of his by the following statement from the Quran:

“All Muslims are brothers (mutually).”²⁴ *انما المؤمنون اخوة*

Doctor Hameedullah has presented instances from the past too when residents of Muslim states used to move freely between other Islamic states and no legal objection was raised. Hence, local and foreign Muslims were equal from the aspect of law.²⁵

Before Islam, the Roman, Greek and European International Law, on one hand, had limitations with respect to implementation, and, on the other, were discriminating for other nations too.

Conclusion:

The United Nations were established with the objectives of promoting peace and prosperity in the world, eliminating war and atrocity, and enabling the humanity to live with harmony. But time has testified that these objectives have not been achieved.

The Islamic ideology of human welfare, and the system which Islam has for implementing that ideology, is the real solution of the problems faced by the world.

Recommendations:

- One of the objectives of the UN is to take such steps by which the world gets an opportunity to witness, in true and unbiased sense, the Islamic laws related to international community, and to arrange situations which convince people to implement those laws in their jurisdiction.
- Another objective is to eradicate the problem of global unrest, and to arrange practical situations for creating awareness of the Islamic international law for establishing world peace.

The need of the hour is to develop global consensus on international law and ensure its

implementation by an enforcement body so that it fits in the western definition of law and gets the status of law along with becoming reliable for the nations of the world as well as guaranteeing peace for them.

References

- ¹: Mahajan, Principles of Jurisprudence (1962) p 588
- ²: Inferring is required because human history was compiled very late after human settlement.
- ³: in the context in which humans are followers of heavenly religions
- ⁴: that source of divine order from which religious commandments descend
- ⁵: 5(al-maaidah):48
- ⁶: Shaikh Abdul Qadar Awodamisri Shaheed (1906-1954) was the popular revolutionary leader of the Muslim world.
- ⁷: Awoda Abdul Qadir, Al-tashria-al-jinai-al-Islamimuqarinanbilqanoonalwaziedarulqatibalarabi, baroat, vol:1, p:15
- ⁸: AL Sarkhsi, Al Mabsoot, Darul marifa Bairoot, vol 10, p 2
- ⁹: the one who has been given the guarantee of peace
- ¹⁰: the one whose responsibility has been undertaken by Muslim state in return of a defined compensation
- ¹¹: It was the norm those days that students used to add explanatory notes to a book during studying it from their teacher.
- ¹²: Imam Sarkhsi, al-mabsooth vol: 10 darulmarifa, baroat, 1414 hijri
- ¹⁴: Muhammad Hameedullah, khutbaa't-e-bahaawalpur, idaratehheqat-e-islami, 8th edition,
- ¹⁵: Muhammad Hameedullah, qanoonbainalmumalikkaeasoolawrnazerain, maktabaibrahimiya, haidarabad dhakan 1346 hijri, p:89
- ¹⁶: Hamedullah, Muslim Conduct of State, p:18-23
- ¹⁷: Hamedullah, muslim conduct of state, p:13-14
- ¹⁸: Sarkhsi, al-mabsooth, vol:4, p:226-227
- ¹⁹: Hamedullah, Muslim Conduct of State, p:97-109
- ²⁰: Hamedullah, Muslim Conduct of State, p:80
- ²¹: Hamedullah, Muslim Conduct of State, p:82
- ²²: Hamedullah, Muslim Conduct of State, p:88
- ²³: Hamedullah, muslim conduct of state, p:89-92
- ²⁴: Alhujurat:10
- ²⁵: Hamedullah, Muslim conduct of state, p:29