

The Classical and Contemporary Approaches towards International Law: Conceptual and Thematic Study of Siyar (Islamic International Law)

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Abstract

This precise research work elucidates the derivation, sources, and gradual development of Islamic international law, which is also termed as “(Siyar).” This article is a humble endeavor to discover the position and role of Islamic International Law (Siyar). It debates about the pioneers and sublime jurists who treated Siyar as a distinct legal discipline and who methodically clarified the basic rubrics of Siyar. This research concludes that as Islamic legal principles are not only one of the leading legal schemes across the globe but also that Islam positions its illustrious place among different creeds and cultures of the world, Islamic jurisprudence is one of the leading sources of international law. The research is qualitative and interpretative, in which authors have relied on the classical and modern writings and have analytically scrutinized them in the modern context. Surely, this article debates that since public international rules are not irreligious in nature, these are “neutral” so as to “go with the flow” of Muslim countries. Siyar only fortifies the commitments of Muslim countries, at the same time; non-Muslim countries are not obligated to follow Islamic law.

Key words: Siyar, Islamic international law, role of Siyar,

Introduction

The aim of Islamic International Law is to spotlight those valid rules of a worldwide community in which both non-Muslim and Muslim countries survive. In most of its overseas terms, the Islamic state is supposed to follow those rules and regulations that are derived and implemented from the different contemporary or conventional origins of public international law. Islamic International Law signifies all those guidelines administering the transnational relations of an Islamic state that were developed by the Holy Prophet Muhammad (PBUH) during the decade of His political life in Madina, and the very first Muslim state came into existence as the Prophet Muhammad (PBUH) migrated to Madina. On the contrary, modern international law considers enforceable any contract that is being agreed upon between two or more than two or more associates of the international community and legally binding on the parties to the contract. It is an undeniable fact that the issues of contemporary and Islamic international law are quite dissimilar and distinct. This article spotlights on introducing the baseline components of Islamic international law which is also known as *Siyar* (Al-Dawoody, 2011).

Islamic International Law delivers absolute standing orders about mutual associations between a Muslim country and non-Muslim or secular states both during peace and war. Islamic International Law has a detailed set of instructions and procedures about avoiding any armed clash (*jus ad bellum*) and making contracts. Islamic international law answers the following questions:

- How to conduct a war (*jus in Bello*), particularly who must not be assassinated during the war?
- What items must not be harmed?
- What are the privileges of war prisoners, how their detention can be terminated, and how can a war affect the engaged parties? (Azadikalkoshki & Hosseinabadi, 2018).

Islamic International Law, backed by Shari'ah rules, also explains comprehensively how to deal with apostates and rebels through a set of obligatory instructions for managing the Muslim country. Islamic international law also directs the ruler of an Islamic state on how to treat the non-Muslim citizens living in an Islamic country (as this concern was also a matter of serious consideration for *Siyar* during the early era of Islam). Islamic International Law also delivers applied guidance on how to take care of non-nationals, particularly financiers from non-Muslim states who come to the Islamic country for corporate purposes or seek asylum or fortification from any Muslim or Islamic country. Besides this, Islamic International Law offers exemption to diplomats, territorial jurisdiction, and addresses various other issues of international importance that are indispensable for administering the affairs of an Islamic country in this global arena. These laws were intended to have the same status as other laws of Islamic law and to get the complete support of the Muslim state (Baderin, International Law and Islamic Law, 2008).

Meaning of Siyar

As far as lingual meanings are concerned, *Siyar* is the plural form of the word *Sira*, which connotes practice, conduct, comportment, and a way of life, a mental and practical attitude, or tolerable behavior, and the phrase *siratanhasanatan* means to act in a polite way or behave in a well-mannered way. *Sira* also denotes state, condition, situation, or external appearance. In Shari'ah, *Siyar* discusses matters related to the war rules. This is the reason; some academics penned the title *Kitab al-Jihad* instead of *Kitab al-Siyar* with a view to defining the laws of war (Badar, 2013).

Literature Review

Owing to some harsh political reasons, a considerable amount of Islamic literature was intentionally destroyed, and that was the reason we could not inherit it from our ancestors. Therefore, it is difficult to ascertain, who was the pioneer writer on the science of *Siyar*? Nevertheless, the earlier surviving work on *Siyar* was done by Imam Zaidibn Ali (d. 120 AH). His renowned book on jurisprudence was "al-Majmufil-Fiqh," which was compiled during the early phase of the 2nd century of Hijrah by his pupil Abu Khalid Al-Wasiti. Though there are some academics who question the legitimacy of this book, being the grandson of Imam Hussain, Imam Zaid founded the Zaidi school of thought in Islamic jurisprudence. His book al-Majmu covered a comprehensive section on *Siyar* as Islamic international law. So the very first jurist who can be credited with using the term "*Siyar*," which is quite identical to the denotation of international law, was undoubtedly Imam Zaid(Baderin, International Human Rights and Islamic Law, 2003).

However, as a distinct topic and distinguished theme of research, the jurist who contributed the most was Imam Abu Hanifah (80-150 AH) and his peers. Imam Abu Hanifah and his followers penned valuable literature on this topic and endorsed it as a separate section of Islamic jurisprudence. For that reason, a substantial amount of the earliest texts and scripts of Islamic international law comes from the Hanafi School of thought. This is also a fact, since the book written by Imam Abu Hanifah on the topic of *Siyar* is no longer available in its original form. This book, written by Imam Abu Hanifah, was the main cause of a great academic debate between academics of Islamic jurisprudence (Bashir, 2018).

Abu al-Wafa al-Afghani (1310- 1395 AH) has expressed that Imam Abu Hanifah delivered his knowledgeable orations on the topic of *Siyar* to his renowned pupils. Resultantly, every disciple came up with his own explanations and amended versions, which were publicized by the titles of their specific compilers. Later on Shaybani outlined the discourses in a book called *Kitab al-Siyar al-Saghir*. In the preface to the annotation of this book, Imam Sarakhsi has mentioned that when Shaybani edited his book *al-Siyar al-Saghir*, Imam Abd al-Rehman al-Awzai (d. 157 AH), who was a high-profile researcher of international law, and was settled in Beirut at that time, happened to receive a manuscript of that book, so he questioned: "Whose book is this? He was informed that Muhammad of Iraq wrote that, and then he remarked, "Why should an Iraqi write on this topic?" Since they were not proficient enough to hold a debate on *Siyar*, as the battles at that time were conducted by the Prophet Muhammad (PBUH) and his companions in Syria and Hijaz, whereas Iraq was conquered lately." (Basic, 2020).

The moment when Imam Shaybani heard what Al-Awzai commented, it was quite obvious that he did not appreciate it, so he composed this other book called *al-Siyar al-Kabir*. The judgmental remarks of Imam Al-Awzai about Imam Shaybani prompted the latter to write a detailed book on Islamic international law. Awzai also penned a manuscript disproving the perspectives of Imam Abu Hanifah. Later on, Imam Abu Yusuf (113-182 AH), who was the student of Imam Abu Hanifa utterly contradicted most of the censure recorded by Awzai about Imam Abu Hanifa. While rebutting the views of Al-Awzai, Imam Abu Yusuf composed a detailed refutation entitled “*al-RaddalaSiyar al-Awzai*,” which is a tremendous work contributed by Imam Abu Yusuf on the topic of Islamic international law. Later on, it was revised and abridged by AbulWafa al Afghani and got printed in Deccan (India). Regrettably, the works of Awzai are not available with their original wordings and details, just as the literary contribution of Abu Hanifah lacks originality (Bakircioglu, 2014). As far as Imam Sha’bi is concerned, he was a prominent authority on Islamic rules and regulations from Kufa and was commissioned as an ambassador to the Roman Empire by Abdul Malik Ibn Marwan, who was a famous Umayyad Caliph. Imam Sha’bi was quite knowledgeable about different campaigns steered by the Holy Prophet Muhammad (PBUH). Though analysts defined him as having proficiency in *Siyar*, his knowledge is confined only to the armed operations conducted by the Prophet Muhammad (PBUH). Moreover, these sources do not indicate that he had any dexterity about the intricate rules of Islamic international law. Precisely, the only Muslim jurist who can be credited with exploring and treating Islamic international laws as a distinct legal science is Iman Abu Hanifa, a proficient expert on Islamic international law, as well perhaps an important *mujtahid* of all time who later on educated and trained others as well (Bhatti, 2018).

Islamic international law, or *Siyar*, is an integral part of Islamic jurisprudence. As perceived by the Muslim jurists; international law was utterly an additional topic within the Islamic legal studies. Moreover, a phenomenon that serves Islamic international law a distinguished identity: it was operational as a section of an Islamic state’s local legal arrangement, whether or not non-Islamic countries acknowledged it as obligatory. Quite a few intellectuals researched for standards of Islamic international law in different Islamic documented sources, and when their research could not produce substantial results, they applied a cognitive approach or depended on customary rules or traditional codes (Lahrichi, 2017). Regrettably, as a set of norms and rules, Islamic international law has attained significantly less intellectual consideration as compared to other practical branches of Islamic jurisprudence. It is a noticeable fact that contemporary Muslim jurists have not framed a rational body of up-to-date Islamic international law, and such endeavors, according to some academics, are implausible. Rather, modern Muslim jurists emphasize their core consideration of whether the specific accomplishments of Muslim countries are parallel to their comprehension of Islamic law” (Ali, 2000).

In modern times, Islamic international law governs the overall conduct of countries representing the Islamic legal practice and the concerned entities in the worldwide arena. From a chronological perceptiveness, *Siyar* is somewhat equivalent to *jus gentium* according to ancient Roman law, the rules and regulations that govern associations between foreigners and

Roman citizens, as well as mutual relations between foreigners (Kassam & Farage, 2017). Islamic international law, or *Siyar*, covers various fundamental concerns, including treaty commitments, naval investigation and the safety of political agents. Though what differentiates its principles and standards from standard international law is that Islamic international law, comparable to any other branch of Islamic jurisprudence, has always presented the added influence of religious sanction (al-Zuhili, *Islam and international law*, 2005).

Islamic international law is moderately rooted in religiousness and divine power. All the authority and power in the native and international territories is derived from Allah; He offers a moral, legal and ethical baseline for all rules and regulations. There is an exceptional concept of justice-Islamic justice—that infiltrates the foundation of *Shariah*. Ultimate submission and absolute obedience to Allah rests at the heart of this concept of justice. This notion of justice embraces an incomparable legal reasoning of holiness from revelation (Jalaly, 2018). Notably, Islamic law does not establish any effort to determine the standards and policies followed by countries because the current practices may not be consistent with Allah's will. Obviously, the presentation of the theories of state sovereignty and nation-state obligated that Islamic international law and Muslim jurists—who originated and endorsed the basic rules of the law—acclimate to the modern realities (Cravens, 1998). Therefore, the rationalization and normativity of different countries' actions are weighed through the wide-ranging lenses of Islamic morals, justice and ethics. Islamic jurisprudence has coexisted with Western international law for centuries. As a result of this shared existence, the constant interaction has exposed certain key dogmatic dissimilarities as well as opinions of convergence that influence the preferences of Muslim states towards global conflict resolution policies (Ismail, 2016).

In order to validate the Islamic international law or *Siyar* as a distinct legal science, Muslim jurists like Imam Abu Hanifa, Imam Sha'bi, Imam Al-Awzai, Imam AbdurRehman, Imam Yusuf, Imam Al-Farazi, and many others played their significant role (al-Zuhili, *Islam and international law*, 2008).

Methodology

The authors have used qualitative, analytical and interpretative methodology, where primary qualitative research methodology is used to collect and analyze data. This research is conducted to understand behavior, belief and opinion from the perspective of study participation themselves. This research is based on interpretive paradigm, trying to interpret phenomena in terms of the meaning people brought to the *siyar*. .

The Sources of Islamic International Law (*Siyar*):

Since Islamic international law, or *Siyar*, occupies a considerable section of the Islamic corpus juris, its origins are same as the sources of Islamic jurisprudence. Islamic jurisprudence is derived from three main sources, namely, the Holy Qur'an, the *Sunnah*, and *Ijma* which is also phrased as "consensus." Moreover, *Qiyas* (analogy), *Masalaha* (public interest), and custom (*urf*) are considered the ancillary sources of Islamic jurisprudence. These are the same sources of Islamic international law. However, a thorough reading of works contributed by Abu Yusuf, Shaybani, and other renowned Islamic jurists makes

evident that these intellectuals explored other sources as well (Farrar, 2014). These determinants consist of:

- The conduct and practice of the Caliphs during the initial era of Islam;
- Arbitral decisions;
- Contracts and agreements;
- Traditions and rituals.

Samour (2014) has also cited other sources, for instance,

- How other Muslim leaders handled the facts that were not disclaimed by the jurists,
- Authorized orders to commanders, administration, diplomats and related state representatives;
- Reciprocation; and
- Interior law-making of a transnational nature and independent pronouncements.

Nevertheless, these sources were already implicit in the overall administrative conduct of all the Caliphs (Samour, 2014).

Islamic International Law (Siyar) as a Source of Local Law:

It is quite remarkable to probe about the stance of *Siyar* itself as an exceptional source of jurisprudence, particularly in the cases of domestic nature engaging inter-state links as well as in law-making processes at the worldwide level (Hamoudi & Cammack, 2018). While adjudicating a domestic-level case by the Pakistani Supreme Court, Justice Afzal Zullah quoted Islamic international law precisely. In *A. M. Qureshi vs. Union of Soviet Socialist Republics*, a Pakistani plaintiff demanded damages owing to the violation of an agreement against the one-time USSR and its corporate official. This agreement was about the sale of combative paraphernalia from the Soviet Union to Pakistan. The Soviet Union asked for state immunity under the rules of general international law and the provisions of the CPC 1908 (Sabuj M. , 2021).

Siyar as a Possible Source of International Law:

There are some academics who are of the view that the Islamic *jus in bello* (guidelines dealing with the overall conduct of war) has impacted European laws and political praxis since the era of the Crusades. Baron Mikhail Alexandrovich de Taube, a reputed Russian lawyer, expresses that the contemporary public international law that deals with the declaration of war was galvanized from Islamic credenda, through chivalric practices for the period of the Crusades, via the Christian church, and consequently into the modernized rules of war. This reality cannot be overlooked: Islamic states did not play any substantial role in outlining international law as a whole (Rehman, 2005).

The reasons for this dormant conduct were obvious: Turkey, being a representative of Sunni Muslims overall, embraced European public law (international law) in 1856. The Country played a pivotal role in evolving international humanitarian laws subsequently. No Turkish official attended the 1863 conference that established the Red Cross Committee. Later, in 1865, Turkey sanctioned the Geneva Convention of 1864. Iran, the 2nd most important Islamic country, followed Turkey in 1874. Since that time, Turkey has taken part in every international meeting until the Caliphate rolled back in 1924 and Turkey emerged as a secular state. Many Muslim countries that were autonomous in those days were occupied by

powerful countries and could not play any significant role in the process of international legislation (Hamzah, 2021). Though, during the 2nd half of the 20th century, Islamic states started participating in the composition of international law. For instance, when the United Nations' Declaration on Social and Legal Principles about adoptive settlement was under discussion, many Islamic countries, including Pakistan, declined to approve the provisions of "adoption" and confirmed them as being objectionable to the ethics and standards of Islamic jurisprudence. Subsequently, the UN General Assembly acknowledged the "*Kafala*" codes of Islamic canons as comparable humanitarian standards that could be practiced by the countries observing Islamic laws. Furthermore, quite a few Muslim member countries of the United Nations, as well as Pakistan, have expressed their apprehensions about the Convention on the Prevention of All Forms of Discrimination against Women (1979) and the Covenant on Social and Political Rights (1966). Additionally, Islamic countries also overlooked the 1980 Hague Convention on Civil Aspects of International Child Abduction owing to its contradictory provisions to the norms of Islamic jurisprudence (Bagheri, 2021).

Some academics perceive the incorporation of Islamic countries into the contemporary international order as a sort of suppression, i.e., "a type of Europeanization founded on the re-formation of the Muslim Umma in separate nation-state divisions." It is a fact that it is "modification" instead of "obliteration," the former being a more fitting definition to pronounce the condition as opposed to the latter. The disagreement of over suppression is grounded on the suppositions that public international law is an irreligious commandment, Islamic countries are doubtful about its legitimacy and authenticity and Islamic international law was intended for implementing Islamic jurisprudence on non-Islamic states (Glahn, Emon, & Ellis, 2015). As far as the assumptions are concerned, these conjectures are inconsistent and faulty since public international law is not laical in nature as it has adjusted all main cultures and social orders of the world. The 9th Article of the Permanent Court of International Justice's statute had declared that in every election, the voters were expected to observe this compulsion that not only should all the individuals elected as adherents of the Court had the required credentials, but the entire entity should also signify the leading cultures and civilizations and the main legal systems across the globe. (Powell, Islamic Law and International Law: Peaceful Resolution of Disputes, 2019).

Since 1945, quite a few Islamic nations have been distressed regarding their contractual obligations with other states, though at times they have forced certain modifications in the drafts and most of their allegations were founded on Islamic jurisprudential reasons (An-Na'im, 1987).

Islamic countries have every so often played a notable role in the process of international law making. This has been made more apparent while outlining the 1st Article of the Additional Protocol in the Geneva Conventions, which provided people resisting colonial hegemony, foreign occupation or racist governments with the fortifications of International Humanitarian Law. Moreover, the function, presence and importance of the non-state actors were acknowledged initially by international humanitarian law (Sabuj M. Z., 2021).

Quite interestingly, European academics on international law during the early era, such as Hugo and Vitoria, were very familiar with Islamic international law (*Siyar*), as their works reveal that they were influenced by the norms and concepts of Islamic international law. It is

an undeniable fact that the Turkish Ottoman Empire, owing to its system of caliphate, has played a considerable role in designing the overall portfolio of international humanitarian laws. As mentioned before, Islamic countries have always been averse to ratifying certain international conventions if their provisions are inconsistent with their jurisprudential prestige (Stumpf, 2005). There are some intellectuals who are of the view that the contribution of Muslim states to public international law is the result of any suppression, but this is not the case. The involvement of Islamic states in contemporary international legislation cannot be labeled as an overthrow by the Western school of thought on international law, but it is a type of adaptation by the Islamic legal system since Islam owns this capacity to modernize its standards and norms according to the needs of time (Weeramantry, 1988).

International law has developed with the passage of time in order to deal with the needs and demands of modern issues and contemporary situations faced by the international community as a whole, with the expectation of reinstating, revitalizing and maintaining global peace and harmony. During the course of this prompt progress and evolution, international law as a detailed and in-depth mechanism has switched from its theological baselines to an extra-secular set of rules and regulations (Emon, 2021). It is a noticeable fact that norms and rules of international law transform with every passing year, contrary to irreversible and divine veracity as the foundation for law. Nevertheless, the boundaries of the law are not impervious. Different legal norms and concepts journey through different legal systems, so the dissimilarities progressively become less marked and the resemblances steadily offer a resilient cohesive strength (Westbrook, 1993).

Muslim researchers, who trace legal supremacy to Allah as the Supreme Power, are unable to dichotomize belief and law so easily. Muslim scholars cannot accept the norms and standards of public international law after setting aside the devotional side of their overall vision of law. It is quite remarkable that for Muslim intellectuals, international law is a persistent effort to harmonize Islamic thoughts with a Western outlook on jurisprudence (Malekian, 2011). These Muslim scholars seem to vacillate while adapting the Western clarifications about international law. Their opinions about Western jurisprudence are not convincing to a Muslim. The assertions they make as Muslims do not necessarily provoke the political union of the modern world.

Muslim jurists not only introduced legal innovations in the arena of international association but also highlighted the Islamic legal system as a primary, coherent, ordained system across the globe that has delivered the notion of comprehensive recognition (*de jure*) to Western political cultures and standards. Islam has duly assured the privileges and civil liberties of other nations on the basis of sanctified obligation both during peace and wartime (Vanhullebusch, 2015).

Conclusion and Recommendations

Islamic international law evolved and flourished in reaction to how the old Muslim society would conduct its relations with non-Muslim societies outside and within its own region. Consequently, Islamic international law (*Siyar*) came into existence and matured with the

passage of time and through the prestigious literary works of Muslim jurists who were duly inspired by the main sources of Islamic jurisprudence. Islamic international law (*Siyar*) established dynamic rules to deal with diplomats, prisoners, migrants and detainees of war; the privilege of asylum; overall demeanor during war; and the fortification of children, women, and neutral civilians (Moschtaghi, 2009). Although Islamic international law (*Siyar*) has never been codified in any precise enactment, it has enunciated applied standards and pragmatic principles and certain comprehensive protocols of conduct that enclose a variety of current topics of existing international law. Moreover, a chronological analysis of Islamic international law has also revealed that the research about the historical records of international law has floundered to seize the growth of the rules and values of *Siyar* that subsequently appeared to be perceived as the rules of armed clash. As mentioned by Dr. Ignacio de La Rasilla, “the Euro-oriented and state-based pattern that controlled the research of the historical records of international law all the way through most of the 20th century has endured a dual exclusionary partiality about time and space in the annals of public international law.” It is a proven fact that international law cannot be categorized as utterly Western. In order to comprehend the rules of Islamic international law, circumstantial and not exact parallels need to be acknowledged via a historical lens (Na'im, 2019).

If the target of international law is to attend to the benefits of an assorted worldwide community across the globe, then jurists and intellectuals are supposed to observe beyond the euro-based historiography of public international law. Islamic international law, undoubtedly, serves as a sound baseline for framing practical rules to satisfy the needs of modern transnational links. By implementing a comprehensive and adaptive Islamic approach to coping with modern links among nations, a harmonious association among nations at the global level can be anticipated (Powell, Islamic Law and International Law, 2020).

To conclude, as per classical Muslim legal experts, Islamic international law (*Siyar*) means the overall code of conduct of the Holy Prophet Muhammad (PBUH) and His descendants all the way through the time of peace and war and in their associations with non-Muslim rulers, envoys and foreigners. It also covers their directions and etiquettes for handling rebels, apostates and non-Muslim nationals of a Muslim state. Though some of the subjects of Islamic international law have moved to the community rules and regulations of countries, they are still not dealt under the banner of Islamic international law (*Siyar*), which is all about mutual links between an Islamic country and other nations on the globe. A pertinent demarcation of Islamic international law (*Siyar*) is:

“The strategic guidelines and standard procedures of Islamic jurisprudence that normalize and control the coherent propinquity of a Muslim country with other nations and the consequent terms and conditions are obligatory on the Muslim country under the divine rules of Shari’ah; this reciprocal association among Muslim and non-Muslim nations can be aptly identified as Islamic international law.”

Now the world has become a global village; different nations with diverse ethnicities, multilingual people and followers of umpteen religions are living together. With a view to addressing their social, economic and political needs at an international level, situations are supposed to be examined across a broader spectrum. In this scenario, Islamic international law with the connotation of a Westernized approach to international law can work for a better

world to live in because Islamic international law is proficient enough to integrate contemporary norms of transnational relationships.

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