



ANALYTICAL STUDY OF ISLAMIC INTERNATIONAL LAW AND CONTEMPORARY INTERNATIONAL LAW

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ABSTRACT:

Islam has elaborated rules, when it comes to International law. From the times of Abu Hanifa RA, Islamic scholars have elaborated the term 'Siyar' for international law and parallel to these legal rules there is also religious perspective on international law. The authors will present the Islamic view and principles governing Islamic international law, its origin, sources, development and role played over the centuries. Islamic law perceives itself as an all-embracing and, as far as Sharia is concerned, as a divine legal order, for which no Islamic state can deviate. So, the Muslim states tend to avoid the conflict between their legal order and Islamic law by adjusting the former as far as possible according to the later. However, the relationship between Islamic law and contemporary international law becomes more complex and intricate. Here Islamic state/s cannot mold international law according to Islamic legal norms, so what is the way out? As far as, contemporary international law is concerned, it's not 'secular' in nature, rather its 'neutral' in which Islamic states are accommodated, whereas, Siyar only strengthens the obligations of Islamic state and does not impose Islamic law upon non-Muslim states. This paper tries to find out similarities and divergences between both Islamic international law and public international law and propose the ways as to how they can be subsumed into each other.

Key Words: Siyar; Islamic International Law; Contemporary International Law; Public International Law



INTRODUCTION:

In order to regulate the relationship between states and other subjects, international law is a tool and it comprises of different principles (whether enacted or not), rules, customary practices, judicial decisions and doctrines, which have evolved over the centuries and accepted by international community as a whole. The scope of this paper is to analyze the similarities and dissimilarities between Islamic international law as enshrined by Muslim scholars and prevailing international law. It should be noted from the very outset that Muslim scholars have not differentiated between public and private international law, whereas, Western jurisprudence has clear cut distinction between the two. This paper is divided into three parts; part one dealing with a very brief overview of contemporary international law; part two describes in bit detail the Islamic international law, its origin, historical development, sources, subjects and humanitarian law; and last part lists similarities and dissimilarities between the two. In the end, conclusion with suggestions has been provided.

1. CONTEMPORARY INTERNATIONAL LAW:

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There are about two hundred independent States in the world and just like human beings, a State cannot remain secluded or survive independently without having any relations with other States. The rules and laws which regulate the mutual relations of States are termed as, international law. Oppenheim defines International law as, “law of nations or international law is the name for the body of customary and treaty rules which are considered legally binding by civilized states in their intercourse with each other” (Dr. Agarwal, HO, 2017). It is basically meant to regulate the inter-state relationships and has been developed through ages. Over the past few years, it has drastically changed and new dimensions have been included into its ambit. Historically, only states were treated as its subjects, yet as the time has passed new players have been recognized as its subjects including but not limited to International Organizations, individuals and their groups to name a few. The sphere in which international law operates has added environment, climate change, space, human rights, humanitarian law and alike, over the past 100 years or so. Whereas, classical international law dealt with war, peace, diplomacy, treaties, law of sea, extradition and asylum, and nationality. The rules and principles pertaining to contemporary international law are ever changing, especially we have witnessed inclusion of new dimensions of preemptive self-defense after the 9/11. Inclusion of international organizations esp. UN has played a vital role in further development in this regard. Article 38 of statute of ICJ talks of sources of international law which include; international customs, international conventions, general principles of law recognized by civilized



states/nations, juristic works and judicial decisions. In addition to these many recent conventions have been guiding sources of its development.

It is pertinent to mention here that when we think of international law, the people who come into our mind include but not limited to, Shaw, Oppenheim, JL Brierly, Kelson, Phillip C Jessup, Grey, Hall, Starke, Leutcher patch etc. There has never been a mention of any Muslim scholar. The Muslims have also contributed a lot in the development of various concepts pertaining to international law. Rather it were the Muslims who started treating international law as a separate branch of knowledge and state-craftsmanship. Without going into unnecessary details on contemporary international law, we will provide a brief idea about Muslim International Law and then similarities and dissimilarities between the two will be discussed.

2. ISLAMIC INTERNATIONAL LAW:

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The Muslim jurists were among the very early scholars who treated this branch of law as a separate subject (Gilani, p.281), long before many Western philosophers. They discussed it in their writings and elaborated the rules of conduct under the light of teachings of Islam, thus they formulated their own system of international law differentiating it with international relations. Muslim international law is that law which a Muslim state observes while entering into relationship with other States whether Muslim or non-Muslim.

2.1. Meaning and Concept

International Law means the rules which states, in mutual dealings, follow. *Islam* has expounded its unique system of public International law, which can be defined as, “*That part of law and customs of the land and treaty obligations, which a Muslim State observes in its dealings with other States.*” The term used by Muslim scholars for *International Law* is “*Siyar*” which is plural of *Sirat* meaning, conduct. The Western scholars have also explained the scope and objects of international law, such as, Shaw (Shaw, 2007; pp.1) states, ‘it is the law that operates outside and between States, international organizations and, in certain cases individuals’.

It is the will of an Islamic state upon which this international law depends. However, the will of state is controlled by Sharia, which is the supreme law of that land. In Islamic literature there is amalgamation of both public and private international law and both are dealt in the same works as *Siyar*. Munir (2012) is of the view that *siyar* does not impose



Islamic law on non-Muslim states rather it strengthens the obligations of Islamic state towards them.

3.2. History of Muslim International Law

The history of Muslim international law can be traced from the ancient history of Arabs along-with their usages and customs, which later on mingled with the rules developed by Muslim jurists, giving rise to a unique system of conduct of State. The glimpses of which are as under:-

- There were international usages in Pre-Islamic Arab, but those could not transform into an elaborated system.
- As soon as, Islamic state was formed and started relations with others, the Muslim scholars gave the name of *Siyar* to its conduct during those relations.
- *Hazrat Abu Hanifa* (RA) is known to be the 1st who designated the term *Siyar*. These were the lectures on war and peace delivered by him over the period of time, which were later edited by several pupils of his and books like, *Kitab-ul-Sair-us-Sagheer* and *Kitab-us-Sair-il-Kabeer* were compiled in the light of those lectures.
- The term *Sirat* (conduct) acquired later the limited sense of conduct of the Prophet (PBUH) during wars and those of Muslim rulers especially the pious Caliphs in international affairs.

3.3. Objects and Aims of International Law

The Muslim scholars have mentioned many aims and objects of international law, including peaceful preaching of Islam and co-operation with non-Muslims. The relations between two States may be peaceful or hostile, and this international law aims to regulate the behaviour of state in both circumstances. Basically, Muslim international law aims at the most just possible conduct of the Muslim ruler in his international intercourse (Hameed Ullah, pp. 16).

3.4. Relationship between Muslims and non-Muslims

The relationship between Muslims and non-Muslims has several aspects (Rahim, 1911 pp. 302.), including but not limited to the relations of Muslim state:-

- (a) With an alien non-Muslim State
- (b) With alien non-Muslims living temporarily in its jurisdiction
- (c) With its non-Muslim subjects



While at individual level a Muslim enters into relationship with non-Muslim citizens, of either Muslim State or non-Muslim State, which is also dealt with under the Muslim international law.

3.5.Sources of Islamic International Law

Hameedullah (2011) discusses following major sources from which Islamic international law derives its rules:-

- (i) Quran
- (ii) Sunnah
- (iii) Orthodox practice i.e. practices of pious Caliphs
- (iv) Practices of other Muslim rulers
- (v) Opinions of jurists in the shape of
 - (a) Qiyas
 - (b) Ijma
 - (c) Ijtihad
 - (d) Fatawa and collection of judicial decisions, case law and alike
 - (e) Works on public law, international relations, and allied subjects
- (vi) Treaties and conventions
- (vii) Arbitral awards
- (viii) Customs and usages
- (ix) Official instructions to different State officials
- (x) Books and articles.

2.6. Subjects of International Law

The people upon which this part of law applies include:-

1. Every independent state
2. Part sovereign states, having at least a restricted right pertaining to foreign relations
3. Belligerent rebels
4. Highway men and pirates
5. Resident aliens who are living in Islamic state
6. Muslim citizens residing in foreign states
7. Apostates
8. Privileged non-Muslims or Zimmis

2.7. Sanction of International Law under Islamic Law



Islamic law emphasizes on after-life and judgment day, which is real sanction behind it. So, spirituality coupled with consciousness along-with deterring factors play a vital role in this regard.

2.8. Concept of Dar-ul-Harab and Dar-ul-Islam (Niazi, pp-297-300)

In the classical literature, there is division of whole world into two territories i.e. *dar-ul-harab* and *dar-ul-Islam*. First being territory of war or unrest and second being territory of Islam and peace. The later jurists have also discussed another territory by the name of *dar-ul-ahd* or *dar-ul-aman*. Muslim scholars have discussed in detail the rules and nature of relationship between *dar-ul-harab* and *dar-ul-Islam*. Some scholars declare that *dar-ul-harab* is a part of *dar-ul-kufr*, which is at war with Islamic State till predominance of *dar-ul-Islam*, as they divide *dar-ul-kufr* into two parts, first being *dar-ul-harab*, second being *dar-ul-hudna* the territory with which Muslims have peace treaty. The recent literature depicts Islam as very rigid and fundamentalist, where as in reality it is religion of peace, where war is only resorted to as a last resort.

2.9. Diplomatic Relations (Gilani, pp. 322-323)

The book, '*Rusul al-Mulukwa man yuslahulir-Risalah was-Sajarah*' by Ibn-al-Farra is the first classical work on diplomacy. Following points must be noted regarding diplomatic relations:-

1. Non-Muslims may be appointed as ambassadors
2. The gifts presented by foreign envoys go to state treasury
3. Envoys to be entertained officially
4. Envoys enjoy complete immunity
5. Import duty is not levied on property of envoys (Hameed Ullah, pp. 152)
6. In extra-ordinary cases, the envoys may be detained
7. Now-a-days many international treaties and conventions regulate diplomatic relations.

2.10. Treaty

Treaty (Gilani, pp. 346-353.) is a contract or settlement between two nations about an existing dispute or any future event. According to Islamic legal theory, there is a state of war between *dar-ul-Islam* and *dar-ul-harab* until latter is overcome by the former. When *dar-ul-harab* disappears, the state of war ends and supremacy of Muslims is acknowledged. The main aim of Islam is to procure peace instead of war and establishment of peace is carried out by *treaty*, which is also one of the main sources of international law. Sometimes treaties are mutual settlements and other times they are



international, but irrespective of their nature, all contain duties, liabilities and rights of the parties involved. In Islamic international law many rules have been formulated regarding formation, termination and carrying into effect of treaties. As per Islamic classical concept, resort to treaties is done, where required. Therefore, a Muslim country can enter into a treaty whether it may be after end of war or about some mutual relationship, according to laws prescribed by Sharia and, therefore, it is treated as a source of Muslim international law. As per Al-Shaibani, “*treaties were regarded as temporary arrangement, while the state of war as the normal relationship between the dar-ul-harab and dar-ul-Islam*”. So, it is impossible to enter into a treaty for an alliance which is of perpetual nature with non-Muslims (Hassan, SR, 1974).

2.10.1. Treaty of Hudeybia

It was a sort of multilateral treaty, as some tribes had adhered on the side of Medina, while others on the side of Mecca. In 2 AH, Zeqaad (Islamic month), the Holy Prophet (PBUH) accompanied 1400 companions for the performance of Umra. They took camels with them for sacrifice. They reached Sanyat-ur-marar, which is the slope of Hudeybia and is just below Mecca. There a Qureshi leader from the people of Taif named, *Urwat-bin-Masuud-us-Saqba* came to the Holy Prophet (PBUH) and said,

“Quresh has took oath that they will never allow You to enter into Mecca”.

After telling this he went and told Quresh about the respect given by companions of Muhammad (PBUH) to Him (PBUH). The Prophet (PBUH) sent Hazrat Usman Bin Affan RA to Mecca, to tell them the true purpose of Muslims. The Quresh arrested him, but the Holy Prophet (PBUH) came to know that they had killed him. On this, Holy Prophet (PBUH) gathered His companions and Bait-e-Rizwan was made. After this, it was revealed that Usman was alive and Suhail-bin-Umro came to the Prophet (PBUH) with some clauses and Hudeybia Treaty was signed. Some of its important clauses are as under:-

- (a) Muslims will not perform Umra this year
- (b) They will come next year to perform their religious duty
- (c) If a Qureshi will come to Muslims, Muslims will be bound to give him back
- (d) On the other hand, if a Muslim will come to Quresh, they will not return him
- (e) Muslims and Quresh will not attack each other for next ten years
- (f) In case of fight with any other tribe, none of these two will help that tribe against each other.

It was seen from the clauses of the treaty of Hudeybia that it was against the interests of



Muslims. But, in the long run, it had been proved that it was actually the best example of diplomatic prudence of the Prophet (PBUH) and was actually in favour of Muslims, which in one way made them secure for ten long years against their open enemy i.e. Quresh and on the other hand, Muslims became free to preach Islam in other parts of Arabia.

“O! The believers! Perform your contracts” (Al-Maida:1)

One must also realize that this treaty is the manifestation of the concepts like extradition, asylum, sovereign equality, diplomatic protections and *pactasuntservandato* name a few, as prevalent in contemporary international law.

2.11. Concept of War in Islam

The word jihad is derived from ‘*juhud*’ meaning hard work and struggle in the path of Allah by different means (HameedUllah pp. 163). Jihad is an attempt and hard work, in the path of God, in order to preserve the religion, Ummah and spread the teachings of Islam. A person who takes part in jihad is termed as mujahid, if he comes back alive, he is called, ghazi, whereas, in case of death, is respected as, shaheed. The Muslim law of war clearly differentiates between combatants and non-combatants. It should be noted that, even since the Prophetic time, women used to take part in battles in different capacities such as, cooks, water suppliers, nurses, transporters of wounded and the dead, general servants and in some cases as fighters (Hameedullah, 2011).

2.12. Humanitarian Law

‘The object of Muslim international law is to ensure universal peace, for which the Muslim State requires that it should organize itself in a way that it should stand on so powerful footings that it is in a position to watch the interests of Islam and deal with the enemies of Allah everywhere. This entire effort is summarized in the phrase, ‘jihad’ or struggle in the path of Allah (Gilani, pp. 325-326)’. War is the most important topic discussed in length by the Muslim writers in the books of fiqh. It is allowed in extraordinary circumstances, when there is no other peaceful option (Gilani, pp. 323-325), including negotiation, mediation, pressure or arbitration, left for the settlement of dispute or stopping violence, tyranny or attack. Holy Quran has emphasized on the importance of jihad at various places, such as, ‘*and fight in the way of Allah against those who fight against you, but begin not hostilities, Lo! Allah loves not the aggressors* (Quran, 2:190)’ and, ‘*permission (to fight) is given to those on whom war is made* (Quran, 22:39)’. In such cases, the primary goal of the Muslim community, is to spread



the word of Allah through jihad (Niazi, IAK, 2000) and preserve religion. The hostile relations (Gilani, pp. 332-333) among states may take various forms including; reprisals, pacific blockade, miscellanea and war.

2.12.1. Code of Conduct during and after War

Actually it was the Muslims who gave the world the very first International Humanitarian Law regarding code of conduct during war and this was centuries ago from the Western States, who have recently started emphasizing on code for army during war. We can say that the concept of IHL is borrowed from the Islamic law by the Western States and have presented by them as if it is their brainchild. Long before the international conventions, treaties and protocols in this regard, Muslim Jurists elaborated a complete code of conduct to be observed during war by the Muslim army. There is rich traditional material available in Muslim literature, which sets the ethical principles of military engagement, circumstances in which war can be waged and code of conduct for Muslim soldiers, as Holy Quran categorically states.

'whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as though he had killed all of mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind (Quran, 5:32).'

2.12.2. Practice of the Holy Prophet (PBUH)

The Holy Prophet (PBUH) provided a framework which a Muslim soldier must resort to in context of battle, through His (PBUH) instructions to Muslim soldiers in different battles in following forms:-

'Do not kill any child, any woman, or any elder or sick person (Abu Daood).'

'Do not practice treachery or mutilation. Do not uproot or burn palms or cut down fruitful trees. Do not slaughter a sheep or a cow or a camel, except for food (Al Mauta).'

'Do not kill the monks in monasteries, and do not kill those sitting in the places of worship (MasnadIbneHanbal).'

'Do not destroy the villages and towns, do not spoil the cultivated fields and gardens, and do not slaughter the cattle (SahihBokhari).'

The books on Ahadees are full of traditions, which depict the practice and conduct of Holy Prophet (PBUH) during wars, which provide a legal as well as, ethical code of conduct during war to Muslim army.



This code comprises, but not limited to, following:-

- (a) Acts permitted during war
- (b) Acts forbidden during war
- (c) Treatment with prisoners of war

2.12.3. Acts Permitted During War

Following acts are permitted for a Muslim army indulged in actual warfare:-

- (i) Propaganda
- (ii) Night attacks
- (iii) Use of necessary weapons
- (iv) Destruction of property where necessary
- (v) Sending secret agents and spies
- (vi) Gaining food and other necessary stuff from enemy territory
- (vii) Killing all those who participate in war from the enemy side
- (viii) Enemy soldiers may be wounded and made prisoners
- (ix) As per some authorities, supply of water may be cut off (Hamidullah, pp. 228)
- (x) Take possession of enemy property
- (xi) Build pressure on enemy through blockade and alike
- (xii) Persons or localities may be separately or collectively fined or punished for being hostile or helping enemy army
- (xiii) Ambush may be laid for enemy

2.12.4. Acts Forbidden during War

The Holy Quran provides a clear message regarding those acts which are prohibited during war, as, '*take not life which God hath made sacred, except by way of justice and law; this He has commanded you that you may understand (Quran, 6:151)*'. And further advises that, '*fight in the way of God against those who fight against you, but begin not hostilities. Lo! God loveth not aggressors (Quran, 2:190)*'. And, '*if [non-Muslims] withdraw from you and do not war against you and offer your peace, God alloweth you no way to [war] against them (Quran, 4:90)*'.

In short following acts are strictly prohibited for a Muslim soldier taking part in war:-

- (i) Unnecessary and cruel ways of killing
- (ii) Killing non-combatants and civilians
- (iii) Killing enemy hostages
- (iv) Treachery and perfidy



- (v) Excess and wickedness
- (vi) Initiating war without proper and formal ultimatum
- (vii) Killing envoys and delegates
- (viii) Any sort of inhumane treatment with residents of enemy territory
- (ix) Mutilating dead bodies
- (x) Cannot charge for food and clothes form prisoners of war
- (xi) Not allowing the prisoners and residents of area under occupation, to perform their religious prayers etc.
- (xii) Unnecessary restrictions on the legal as well as, equitable rights of residents of enemy territory
- (xiii) Doing acts against treaties regarding behaviour during war
- (xiv) Burning of houses and religious places
- (xv) Destruction of harvest and trees
- (xvi) Unnecessary slaughtering cattle and animals
- (xvii) Committing rape and other heinous crimes of like nature
- (xviii) Killing peasants, traders, merchants, women, children, old and sick, when they do not fight
- (xix) Manslaughter is forbidden
- (xx) Use of weapons of mass destruction, without intimating the enemy (HameedUllah, pp. 207)
- (xxi) Unannounced man slaughter of civilians is also prohibited
- (xxii) Muslims cannot start war without a clear declaration or warning of war

The list provided above regarding acts permitted and forbidden is not exhaustive as these are only a few cases mentioned.

2.13. Enemy Persons

Hassan, SR (1974) states enemy persons may be found in either the Muslim state, enemy state or in the war zone. Their treatment depends upon the circumstances under which they come under the control of Muslims. These enemy persons may be classified into:-

- (a) Musta'min, who are resident alien enemy and such person is safe during the war as before;
- (b) Enemy at home, they have to bear the incidents of siege and their treatment depends upon terms of surrender; and
- (c) Enemy in war zone, if they are minors and women, they should not be slayed, otherwise war rules apply.

2.13.1. Treatment with Prisoners of War (POW)



The person taken as hostage by a Muslim State may be a Muslim taking part from enemy side or a non-Muslim. The Islamic State has to treat them equally; however, it can make slightly different rules for both. The Head of Islamic State has full discretion to decide their fate in the shape of: (a) they be beheaded; (b) enslaved; (c) exchanged with Muslim States' prisoners; (d) released gratis; or (e) released on payment of ransom. Following treatment is prescribed in this regard:-

- (i) Providing proper food and medical aid
- (ii) Should not be charged for food
- (iii) Proper protection from heat and cold i.e. extreme weather
- (iv) Proper clothes must be provided
- (v) Near relatives must not be separated from each other
- (vi) No labor is to be exacted from them
- (vii) Their respect and dignity be upheld
- (viii) If they break rules, they can be punished
- (ix) They must not be stopped from making wills for the property at home
- (x) Mothers can never be separated from their children

The Holy Quran has also mentioned about prisoners of war in few verses like:-

'Now when ye meet in battle those who disbelieve, then it is the smiting of the necks until ye have routed them; then making fast of bonds; and afterwards either grace or ransom till the war lay down its burdens (Quran, 47:4).'

And, *'it is not for any Prophet (AS) to have captives until he hath routed (the enemy) in the country (Quran, 8:67).'*

And, *'Lo, the righteous shall...(go to paradise)...(because) they perform the vow and fear a day whereof the evil is wide spreading, and feed with food the needy, wretch, the orphan and the prisoner, for love of Him, (saying): we feed you, for the sake of God only, we wish for no reward not thanks from you (Quran, 76:5-9).'*

At international level, first rules regarding POWs were framed in the *Brussel's Conference 1874*. *Hague Conference 1899* adopted them, then in 1907 made additions hence, *Hague Rules* came which were replaced by *Geneva Convention of 1929* and *Geneva Convention 1949* superseded those of 1929. These contained a code of principles for the fate and humane treatment of POWs. It is clear that Islamic provisions are much ahead of these conventions. It must be remembered that, according to Quran and Traditions of the Holy Prophet PBUH, these POWs may either be released gratuitously or on ransom or in exchange of Muslim prisoners.



III. SIMILARITIES AND DISSIMILARITIES BETWEEN ISLAMIC AND CONTEMPORARY INTERNATIONAL LAW

The major question for Islamic state is as to how it can gel into the essentially un-Islamic legal regime? There have been people who are of the opinion that there is no relationship between Islamic International law and contemporary international law, yet with keen observation we can find out that the aim of both is the same i.e. to establish cordial relations among states and do justice. One aspect upon which public international law is silent is the relationship of conscience and public officials' legal obligations, which are discussed under Islamic international law (Westbrook, 1993). Islamic law provides a different perspective of the world order from which one can learn many things to be implemented into the public international law. Such as, Islamic traditions are more alive in conduct of war; in Siyar there is a lot of discussion on conduct, types and rules of warfare and there are the areas where both contemporary and Muslim international law converge. The ultimate concerns for both public international law and siyar for use of force are same, as discussed by Mohammed Bedjaoui, ICJ judge while analyzing 1980-88 Gulf War.

For treaties the principles of *rebus sic stantibus* and *pactasuntservanda* are applied in Islamic international law, as without reasonable grounds, to be conveyed to enemy, a treaty cannot be denounced (Khadduri, 1966). It is to be further noted that, with few differences, Khadduri treats Shaybani as Islamic Hugo Grotius, whereas Shaybani lived on this earth almost 800 years before Hugo and no doubt Shaybani is to be treated as father of Islamic law of nations.

Islamic concept of war can be equated with the concept of just war in public international law as in Islam war for aggression and occupation is not allowed. It is only permitted where absolute necessity has arisen. Hameedullah (1973) has tried to converge Islamic siyar with public international law whereas, Moinuddin, H (1987) states siyar is only restricted to confrontation between Islamic states and their enemies; whereas generally Islamic states did not rely upon siyar for the external relations in modern times. For him resort to siyar is not itself reintroduction of classical doctrines but reinforcement of legal principles as available with ethical content. He considers siyar as the outcome of Abbassid jurists, hence invalid for contemporary relations. Moinuddin (1987) argues that Western conception of law were influenced by Islam, so one can say that public international law is essentially Islamic at places.

As per Abu Sulayman, if rules of interpretation are amended, Islamic law can become more adaptable and broader to align with contemporary international law (Westbrook, 1993). It is further stated by Abu Sulayman that for Muslims, the authority is necessary for



both law and politics; which ultimately rests in Almighty for which Muslim state is always responsible before Him. So, in contemporary international law this problem of exercising this authority limits the autonomy of state. Hence, for Muslims to fully adopt contemporary international law is like abandoning their own rules which place them at the crossroads. Whereas, An-Naim (1990) is of the view that Sharia (fiqh) should be taken as developed by jurists of that particular time, who interpreted it as per that historical time and context; so it is possible to reconstruct rules as per fundamental sources of Islam and meet the needs of modern times. For him, today's Muslim must not look into classical siyar but to Islam for taking guidance, as Islam is till the day of judgment and siyar was formulated for that time and context. Westbrook (1993) is of the view that in classical Muslim literature, the spread of Islam by sword and over run the dar-ul-harab for the establishment of universal Umma cannot be done today, so Muslims will have to leave the classical version and adopt to modern trends in this regard especially when they talk of war. He has tried to explain the answers of two questions in detail i.e. (1) public international law is seem as a foreign entity by Islam, of which a response is necessary and (2) Islamic international law and contemporary international law have same ultimate object i.e. global justice. Yet, Islamic international law concentrates on individual, whereas, contemporary international law is built upon institutions especially states, which differentiates these two. Further, Islamic international law's ultimate goal is to realize God's command i.e. Sharia, which is not the case with contemporary international law, which in essence is secular or one can say neutral. The concepts of Umma and globalized community cannot reconcile.

Muslim international law can be helpful in the areas of human rights and individuals as subjects of public international law, as it emphasizes on these and revolves around individuals; these areas especially role of individuals in contemporary international law has always been problematic for the West. Further, role of moral principles in international law, can be stressed by Muslim scholars in this regard to help the contemporary international law. Contemporary international law is mostly consensual; whereas, in Islamic international law consent has less role to play as it's the divine legal principles which play key role in establishing relations with other states, which restricts the institutional powers within Islamic international law. It is further argued by many that the conception of law in West is different from the concept given by Muslims, hence this also applies to international law. Professor Vogel (1993) calls it as rule-law vs instance-law (Westbrook, 1993). It is argued that Islamic principles cannot serve as basis of contemporary international law, because Muslims look back in history to find authority, whereas public international law is prospective in nature. In short it can be stated that there is no place of institutions in Islamic international law; there is no constitutional myth; whereas public international law rests upon both. The concepts like extradition, asylum,



humanitarian law, treatment with prisoners of war, many aspects of law of treaty, diplomatic protections, behavior of combatants and protections to non-combatants and role of individuals are the areas in which we find many similarities between both Islamic international law and public international law. It can further be stated that rules of Siyar can legally be applied in cases where Article 38 of ICJ statute allows stating general principles of law recognized by civilized nations, especially where contesting states happen to be Muslim.

CONCLUSION:

International law has two major branches i.e. public and private international laws. The scope of the first is very wide dealing with treaties, war, organizations, cases of jurisdiction, settlement of disputes, diplomatic relations, extradition, asylum, blockade etc. to name a few, while the second one deals with the rules elaborating the relationship with foreign citizens, their contractual, family, proprietary, business disputes etc (Niazi, LAK, 2009). The Muslim international law declares that Muslim and non-Muslim States are equal in all respects while entering into relationship. There have been major theoretical and conceptual differences between the Muslim International law and public international law as applied today. Yet there are certain points upon which both converge as the aim of both are the same i.e. to establish healthy and fruitful relations among its subjects and establish ultimate peace. It is therefore, emphasized that Muslim scholars have to re-interpret its classical literature on siyar and introduce progressive and modern explanations to the rules devised in the past so that both public and Muslim international law can complement each other. As, the recent developments after post 9/11, the emergence of preemptive self-defense doctrine and war on terrorism, has shattered all the settled norms of international law and the international law is in the transitory period of reshaping, reformulating and remodeling. With the advent of modern international law (post 1850s) and due to independence of many States in the post second world war era, the relations among States have become more complicated and intricate. It is important for Muslim scholars to opt for modern interpretations of classical rules to align Muslim international law with changing trends in the realm of public international law.



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