

# Analysis of Origin, Development and Nature of Islamic International Law

Mr. Zahid Jalaly\*

## Abstract

*Modern scholars generally initiate history of almost all of the social sciences-related discourses with the ancient Greeks and the Romans and then jump to the modern era, thus other nations and civilizations are overlooked. The same happens with the international law discourse. Scholars of international law trace back the modern law of nations to the ancient Greeks and the Romans, while they both had no proper international law. On the other hand, Islamic Law of Nations<sup>1</sup> -which is a rich source of a proper international law- is omitted. The present paper explores definition, early development and sources of Muslim International Law in which it argues that Islamic International Law was developed as a separate branch of law by eighth-century Muslim jurists. It similarly explains the nature of the science of siyar, in which, it explores the vital characteristics of Islamic Law of Nations, which international law lacks, such as divinity, justice and stability. Then, this paper discusses the reality of bifurcation of the world into dar al-Islam as well as dar al-harb and its relations with the theory of perpetual war, in which it contends that it is merely for the purpose of defining jurisdiction. Finally, for those who are interested in further studying the subject, the paper provides a general literature review.*

**Key Words:** Islamic International Law, *Siyar*, Father of International Law, Imam Shaybani.

## 1. Introduction

Contemporary international law, as it is well-known, is the product of the European Christian civilization. Concepts of the sovereignty and the nation-state, which are basis of the modern international law, are born out of the Westphalia treaty of 1648 which formally announced the death of the Roman

---

\* The Author is Head Department of Political Science and International Relations. He is indebted to Dr. Muhammad Mushtaq Ahmad, Dr. Shahbaz Ahmad Cheema, Dr. Ahmad Khalid Hatam, and Mr. Rameen Javid for their valuable comments on the earlier drafts of this work. ■ ■ ■

Catholic Empire and gave birth to a new era in the political world history, as well as new legal history.

Although scholars of international law rooted its history and early development with the Greeks and the Romans, in reality, modern international law is an outcome of the developments of the last four hundred years, having little relevance to the Greeks and the Romans.<sup>2</sup> Hence, the foundation of modern international law was laid down by Francisco Vitoria (1480-1546), Luis Suárez (1548-1617), Alberico Gentili (1552-1608), the Dutch scholar Hugo Grotius (1583-1645) -the so-called father of international law, as well as a number of other scholars, most of whom were professors of theology in different European universities.<sup>3</sup> These scholars were Christian and European and did not believe in equality in ties with others. Even Grotius, who emphasized the law of nature as the basis of the modern law of nations, exhibited discriminatory treatment with non-Christian states; and Gentili, who is known as the one who secularized international law, attacked Francis I for making an alliance with the Ottoman Empire, because it was not a Christian Empire.<sup>4</sup>

As Dr. Muhammad Hamidullah (1908-2002) rightly states, the law European scholars called international law, was not “international” at all; because until the second half of the nineteenth century, it was merely applicable on Christian countries of Europe. It was only in 1856, when for the first time, the Europeans applied the same law on a non-Christian European country, i.e. the Ottoman Empire.<sup>5</sup> Then after a gap of nearly sixty years, the second non-Christian country, Japan, was to be worthy of the same treatment.<sup>6</sup>

With the passage of time, the League of Nations came into being as a natural development of the same law. With the outbreak of World War II and the failure of the League of Nations, the League was replaced with the United Nations Organization, in which at least two member states needed to sponsor a candidate country and both had to verify that the candidate state is civilized and therefore it deserves to be treated in accordance with international law.<sup>7</sup>

At the same time, a process of decolonization of Asian and African countries

started. Since all of the colonies belonged to the European countries, after decolonization the successors of colonial powers started following their predecessors' style of government. This is how Muslim Countries became part of the prevailing international system.

Imran Ahsan Khan Nyazee (b. 1945) aptly remarks:

Present day international law is enforced by the power of Western (Anglo-European) states. These states applied it originally through their military power and colonial domination. Muslim states are weak and had to accept it after their release from the suffocating clutches of colonization. The same applies to many other states that are neither in one group or the other. Today, if Muslim states were strong, international law would be based upon the norms of Islamic law. It may recognize the existing international law as "customary law" waiting to be Islamized.<sup>8</sup>

On the other hand, founders of the international law of Islam laid down its principles even before the inception of the Holy Roman Catholic Empire. Islamic international law was able to be equally applied on all nations, groups and individuals from the day first. Undoubtedly, it had characteristics of law<sup>9</sup> and was backed by executive authorities.

In the present paper, I will try to disclose the real face of international law of Islam and indicate that Muslim Jurists were pioneers of this science. To achieve this end, definition, early codification of Islamic international law, its founders and also sources of this science are more thoroughly explored. Later I look at the timeless and all-encompassing characteristics of Islamic International law, such as divinity and justice. Whether modern international law is really a law or merely a set of moral principles is an issue of heated debate among Western legal scholars; however, I argued that Islamic law has never faced with the same problems. Furthermore, I will discuss the private international law of Islam. The notions of *dar* (abode) in Islamic jurisprudence and its relationship with the theory of perpetual war, which is a vital issue in the international law of Islam, is also analyzed. The paper ends with a literature review.

Finally, I am citing nearly every aspect of the subject in comparison with the modern international law throughout this paper, because, this is how the distinctive features of Islamic international law could be highlighted.

## 2. Definition of *Siyar*

The rules of Islamic law of war, peace and what is known as ‘the conflict of laws’ are generally found in the chapters on *siyar* in the manuals of *fiqh*, as well as a number of other sources that have been written on the issue, under the same titling (which we will discuss afterwards). *siyar* is plural of *sirah* which literally means conduct and behavior.<sup>10</sup> It was named *siyar* because it contained conduct and dealings of the Prophet, his successors and other peoples leaving precedence in different situations. However this term was used for international law at least after first century of hijra.<sup>11</sup> Then almost all of the schools of Islamic Jurisprudence chose this term for this peculiar area of study and titled their works on international law as *siyar*. It’s only the *Khawarij* sect that titled their book on international law as “Book of Blood”, because it deals with<sup>12</sup> war exclusively.

Sarakhsi (d. 1096), the renowned jurist of Islamic international law, who dictated a detailed commentary on “*al-Siyar al-Kabir*,” says in his *al-Mabsoot* that this part of the law is called *siyar* because it explains the behavior of Muslims in dealings with non-Muslims from among the belligerents and those who have a pact with Muslims, among them the *musta'min*'s<sup>13</sup> and the *dhimmi*'s<sup>14</sup>; it also deals with the apostates and the rebels.<sup>15</sup>

*Hedaya*, the *Magnum Opus* of Hanafi Jurisprudence, says about *siyar* that it is specified to the conduct of the Prophet in his wars.<sup>16</sup> Imam Kasani (d. 587 AH) says in his *Badai' al-Sanai'*<sup>17</sup> that *siyar* is also known as the “Book of Jihad”<sup>18</sup>. This is, as Philip Jessup (1897-1986) has remarked, for the reason that they lived in such a time, that relationship between Muslims and non-Muslims was war<sup>19</sup> and it does not necessarily meant that theoretically *dar al-Islam* is in state of war with *dar al-Kufr* perpetually.<sup>20</sup> This fact is further evidence of a war situation behavior when Muslims discuss peace treaties with *dar al-*

*harb*, where Muslims give *aman* to *harbis*, and in other situations of peace, as mentioned in the same book.

However, there are also some Modern definitions of *siyar*. For example, some Muslim scholars/jurists such as Abu Zahrah (1898-1974), in his introduction to the commentary of the greater book of *siyar*, defines *siyar* perhaps in a detailed way. According to him, it is:

The rules of jihad and war, what is allowed in it and what is not, and the rules of [permanent] peace treaties and temporary truce, and the rules of who should be granted alien status and who should not, the rules of war booty, ransom and enslavement, as well as other problems that arise during wars and its aftermath. In short, it designates the rules of international relations between Muslims and other [communities] during peace and war, although most of the discussion is about the war.<sup>21</sup>

Muhammad Hamidullah, the eminent modern scholar of Islamic international law, to whom is given the title of “Shaybani of the twentieth century” by Professor Ghazi (1950-2010) defines “Muslim International Law” in his *Magnum opus* “*Muslim Conduct of state*” as: “That part of the law and custom of the land and treaty obligations which a Muslim *de facto* or *de jure* state observes in its dealings with other *de facto* or *de jure* states.”<sup>22</sup> The definition provided by Dr. Hamidullah seems to be comprehensive.

### 3. Early Development of *Siyar*

Due to many<sup>23</sup> reasons, a great number of Muslim literary heritage was damaged and hence did not reach us. For this reason, we can't say who exactly the first writer on the science of *siyar* is. However, the earlier extant work on *siyar* is Imam Zayd ibn Ali's (d. 120 AH) *al-Majmu fil-Fiqh*, a book of Jurisprudence, compiled by his student Abu Khalid Al-Wasiti<sup>24</sup> which is presumably compiled in the early years of the second century of Hijrah.<sup>25</sup> However, some scholars are skeptical about the authenticity of the book.<sup>26</sup> Imam Zayd is the grandson of Imam Husayn and founder of *Zaydi* school of Islamic Law.<sup>27</sup> He was a great

jurist. His *al-Majmu* contained a chapter on Islamic international law, titled *siyar*; So the earlier jurist who used the term *siyar* to convey the meaning of international law, most likely, was Zayd.

But as a separate science and independent subject of study, we come across it with Abu Hanifah (80-15- AH) and his contemporaries - perhaps for the first time in the Islamic annals.<sup>28</sup> Abu Hanifah and his pupils worked on the subject and made it a separate branch of Islamic law. Therefore, today most of the earliest manuscripts of this branch of law belongs to the *Hanafi* School of Islamic jurisprudence. However, the precise<sup>29</sup> book written by Imam Abu Hanifah on *siyar* is not preserved in its original form.<sup>30</sup> This book of Abu Hanifah was the cause of a major outbreak of a great intellectual discourse between scholars of this science.

Abu al-Wafa al-Afghani (1310-1395 AH) is of the view that Abu Hanifah dictated lectures on the subject of *siyar* to his famous pupils. Everyone had his own editions which were known by the names of their respective compilers.<sup>31</sup> Shaybani prepared the lectures in a book called *Kitab al-Siyar al-Saghir*. Imam Sarakhsi writes in his preface to the commentary of *al-Siyar al-Kabir* that when Shaybani compiled his *al-Siyar al-Saghir*, Imam Abd al-Rahman al-Awzai (d. 157 AH), a prominent scholar of international law, who was settled in present-day Beirut<sup>32</sup>, received a copy of the book, he asked: “to whom belongs this book?” They said: “to Muhammad of Iraq” then he replied: “What have the people of Iraq to do with writing in this subject? They have no knowledge of *siyar* because the wars of the Prophet and his companions took place in the Hijaz and Syria, while Iraq is conquered recently.” When Imam Shaybani received this comment, he did not like it and wrote this book (*al-Siyar al-Kabir*).<sup>33</sup>

Ghazi says:

Beirut was center of intense commercial and diplomatic activity. It was also center for Muslim navy which was engaged in naval operations against Cyprus and other islands where pirates and outlaws took shelter. In such a situation Awzai was the nearest available authority to give rulings on issues that come up time and again<sup>34</sup>

It was for this reason that Imam Awzai indicated that people of Iraq have no knowledge of International law, in the reaction of which *al-Siyar al-Kabir* came to being. Awzai also wrote a book refuting views of Abu Hanifah. Imam Abu Yusuf (113-182 AH) did not agree with most of the criticism of Awzai about his master. Then he compiled a refutation titled “*al-Radd ala Siyar al-Awzai*”<sup>35</sup> which is a unique book of Imam Abu Yusuf. It was edited by Abul Wafa al-Afghani and published in Deccan.

Unfortunately, like that of Abu Hanifah, the treatise of Awzai is also not preserved in its original form. All that we have are excerpts from the two works in Imam Shafi’s book *Kitab al-Umm*, which sheds light on issues on which the two jurists disagreed.<sup>36</sup>

#### 4. Father of International Law

Modern writers of international law credit the Dutch writer Hugo Grotius as the father of international law. Honoring a writer of seventeenth century as the father of international law is not accepted by Muslim scholars of this subject. Because the first writer who codified international law in a detailed way was Muhammad b. Hasan al-Shaybani the pupil of Abu Hanifah who died almost eight centuries before the birth of Hugo Grotius.

Imam Muhammad b. Hasan al-Shaybani was one of the principal students of Abu Hanifah. Unlike his other students, al-Shaybani worked more extensively on compilation of Islamic law. He left behind a great number of books. The six books of *Zahir al-Riwaya*, which constitute the foundation on which Hanafi school of jurisprudence rests, is also written by al-Shaybani.<sup>37</sup> Among other students of Abu Hanifah, al-Shaybani compiled special lectures delivered by his master on the Islamic law of war and peace in two books, namely, *al-Siyar al-Saghir* and *al-Siyar al-Kabir*. These facts qualify al-Shaybani to be called “Father of International Law”, not only of Islam, but also throughout the history of international law.

*Al-Siyar al-Kabir* was translated to the Turkish language in 1825 by Muhammad Munib Ayntabi to be used as a source of laws of war and peace for Ottoman

Empire. The famous Australian Historian Hammer Purgstall (1774-1856) was so impressed by Shaybani's work that he conferred him the title of the Hugo Grotius of the Muslims. Dr. Ghazi', while correcting this, remarks: "it is not Shaybani who should be called the Grotius of the Muslim east, rather it is Grotius who deserves to be honored with the title of Shaybani of the Christian West."<sup>38</sup>

Dr. Hamidullah, who strongly denied the view that Islamic law is influenced by Roman law<sup>39</sup>, contends that on the contrary, the founders of modern international law were influenced by Islamic law. He further argues that the early writers of modern international law were the product of the renaissance which was a reaction to the impact of Islam on the Christian Europe.<sup>40</sup> Also, Dr. Muhammad Munir is of the view that Vitoria, whom, according to Munir deserves more credit than Grotius, "seems to be familiar with *siyar*: he suggested that it was unlawful to kill Muslim children (who are innocent) and women (who are presumed innocent)."<sup>41</sup> Justice Weeramantry (b. 1926), who was a judge at the International Court of Justice from 1991 to 2000 and its Vice-President from 1997 to 2000, gives 16 reasons to prove that Hugo Grotius was possibly influenced by *siyar*.<sup>42</sup>

## 5. Sources of *siyar*

There are a number of sources of Islamic law from which the *siyar* is based upon. Primary among them are the *Qur'an* and the *Sunnah* are two undisputed sources of Islamic international law. Where these two primary sources are silent on a particular topic, then other means are sought to find coverage of that topic within these two primary sources. Some of those means include Consensus (*ijma*), analogical reasoning (*qiyas*), the practice of the Companions (especially of the four rightly-guided Caliphs and their successors, the early *Umayyads*) are also added as its sources.<sup>43</sup>

Hamidullah presented a lengthy list of sources of *siyar* in which he adds the practice of other Muslim rulers not repudiated by jurist-consults, the opinion of celebrated Muslim jurists,<sup>44</sup> the arbitral awards, treaties, official instruments, the



internal legislation for conduct regarding foreigners and foreign relations and customs are also placed alongside the aforementioned sources.<sup>45</sup> Reciprocity or what Muslim jurists call *m'ujazah* is also a valid source of Muslim International law.<sup>46</sup> There are many verses in the Qur'an that allow reciprocity. The second caliph, Omar also issued some directives on the basis of it<sup>47</sup> and Muslim jurists<sup>48</sup> also declared it a valid source of *siyar*.<sup>49</sup> However, it is not an absolute source of *siyar*.<sup>50</sup>

## 6. Nature of *Siyar*

Islamic international law is not like contemporary international law, which governs relations between different sovereign states. Islam has a different world view and it is a distinguished civilization. Islamic international law is not to regulate the relationship of nation-states and their obligations towards each other, but it provides Muslims with a code of conduct.<sup>51</sup>

Jurists used the term *siyar* to discuss the rules of Islam in interaction with other nations,<sup>52</sup> aliens, rebels and apostates... Hence, Islamic international law has its own terminologies,<sup>53</sup> such as *dar al-Islam*, *dar al-harb*, *dhimmi* and *mustamin*, which would be discussed later.

Here, we would discuss some of the vital characteristics of Islamic International Law. Islamic Law, as it is well-known, is a religious law. One of the greatest characteristics of *siyar* is its divine roots. Islamic Law is primarily based on the Qur'an and the Sunna, for this reason it is stable, it also has great guidance for justice and morality and generally, these roots make this law special and perfect. Here, we will discuss some important characteristics of Islamic Law of Nations.

### 6.1. Divinity, Justice, Morality and stability

Modern International Law is secular by nature. It is not based on any religion and has no morality. The main idea behind this system is the ideology of European Nationalism which primarily believes in the interest of a particular state, thus it has nothing to do with the principles of justice and morality.<sup>54</sup> This godless idea caused in the outbreak of two great and deadliest world wars. On the other

hand, one of the most important characteristics of Islamic international law is that it is a divinely revealed law and has vital principles for justice, morality and virtue.

Divinity of Islamic Law has a great role in its stability. Unlike modern international law,<sup>55</sup> Islamic International Law is not changeable and not evolutionary. Its solid principles are laid down by the Qur'an and the Prophet and interpreted by the jurists. Principally it is a stable law. Only a narrow portion of *siyar* is changeable, the remaining parts of this law is stable and unchangeable, which made it a complete and perfect law. For instance, from the onset *siyar* addresses states, groups and individuals. While in modern international law, until recent decades was merely addressing the states. Now, while international law is developing and accepts individuals as its addresses, it continues to have flaws.<sup>56</sup>

Similarly, the principles of justice and morality, which are parts of the revealed law, have an important role in the *siyar*. Qur'an guides Muslims to "help one another in goodness and piety, and do not help one another in sin and aggression; and fear Allah."<sup>57</sup> Islam repeatedly guides Muslims to fear Allah, be just, do not transgress limits and help others.

Even if war is allowed, it has its principles and rules. Again Qur'an says: "Fight in the way of Allah those who fight you but do not transgress limits; for Allah does not love transgressors."<sup>58</sup> Qur'an instructed Muslims even in the time of war. Not only this instruction, Islam laid down the principles *Jus ad Bellum* (causes of war) and *Jus in Bello* (conduct of war).

In a nutshell, all the divine principles of justice, morality and virtue that laid down by Islam, limited effects of wars throughout the Islamic history and Muslim army always treated hostile nation and even hostile army in a very humane way.

## 6.2. Law or Positive Morality?!

In Western jurisprudence, the question of whether international law is truly law, is an issue of great debate. John Austin (1790-1859), one of the founders of

positivist legal theory, defined law as: “command of sovereign enforced under threats of sanctions.”<sup>59</sup> According to this definition, international law ceases to be called a true “law” because it’s neither “command of sovereign”, nor “backed by sanction”. That’s why he does not call it a law, instead it’s according to him, “positive morality”<sup>60</sup> and hence not binding on states.

Although Austin’s notion of international law is criticized by different scholars, nevertheless, they cannot deny the weaknesses that international law faced. Martin Dixon, a modern scholar of international law aptly remarks: “It would be a mistake to conclude that international law is a perfect system.”<sup>61</sup> He indicates some problems of international law in which he says: “There is no formal legislative body, as yet no court machinery with general compulsory jurisdiction and no police force.”<sup>62</sup> For these reasons international law faced strong criticism challenging its very existence.<sup>63</sup>

On the other hand, scholars of Islamic international law claim that *siyar* did not face such problems. Professor Ghazi in his introduction to *al-Siyar al-Saghir* says:

Muslim international law, *siyar* as it was called, was accepted as law in every sense of the term from very beginning. From the early stages of its emergence it has had all the characteristics of law which European international law lacked... Muslim international law never faced the problem of lacking proper sanctions and judicial forum to adjudicate disputes under it.<sup>64</sup>

According to Hamidullah: “[t]o a certain extent the sanction of the Muslim International Law is the same as that of the ordinary Muslim law of the land. It is especially so as regards the relations of foreign residents with the state in which they reside.”<sup>65</sup> It means that judicial department of Muslim state had jurisdiction over cases of International law. It is for the reason that Islamic International law is a part of domestic law.

### 6.3. Private International Law of Islam

Public international law is known as “the body of rules which are legally binding

on states in their intercourse with each other. These rules are primarily those which govern the relations of states... International organizations and to some extent, also individuals may be subjects of... international law.”<sup>66</sup> On the other hand, private international law, which is also known as conflict of laws, is that part of the law which comes into operation whenever the court is faced with a case involving one or more foreign elements.<sup>67</sup> Unlike public international law, it is a part of the private law of a country and in each country it differs, which caused great problems.<sup>68</sup>

Muslim scholars of international law also dealt with the subject of private international law or conflict of laws in their books of *siyar*. No hard line can be drawn between the public and the private international laws. It is perhaps due to this fact that the classical Muslim jurists did not treat them separately.<sup>69</sup> Nearly all of the last part of the Shaybani’s *Kitab al-Siyar al-Kabir* deal with the private international law. And if, for instance, one picks the book of *ar Radd ala Siyar al-Awzai* written by Imam Abu Yusuf, will find that a great part of the refutation consists of issues of private international law, e.g. inheritance, marriage and fiscal issues. The reason for this is that a great part of this law consists a foreign element.

Muhammad Hamidullah, who intensely worked on international law of Islam, included an appendix of sixteen pages, in his “Muslim Conduct of State” in which he precisely discussed the private international law of Islam. The appendix discusses several issues, namely:

1. Nationality
2. Status of Resident Aliens
3. The Conflict of Laws, in which he discussed conflict between Muslim and non-Muslim laws, between various non-Muslim laws, between two Muslim laws and also issue change of religion and its legal implications have been explored; and
4. The Status of citizens of Muslim state, in another Muslim state and in a non-Muslim state.<sup>70</sup>

As per my knowledge, not a separate treatise is written on private international law of Islam, as is written on Muslim public international law. Hence, this part of *siyar* science is not further developed. This area of Islamic law is a workable portion for legal researchers and in need of exposition.

## 7. The Concepts of *Dar al-harb* and *Dar al-Islam*

Islamic International Law represents a different worldview. As mentioned before, by Islamic International Law, Muslim jurists never meant the law which governs relations of two or more states in different situations. It is simply for the reason that Islam is a religion and an ideology, thus, it has its own system of International Law, which was developed throughout many centuries of Muslim rule.

While exposing the nature of Islamic International Law, Hamidullah says:

Muslim International Law depends wholly and solely upon the will of the Muslim State which in its turn is controlled by the Muslim Law (*Shariah*). It derives its authority just as any other Muslim Law of the land. Even the obligations imposed by bilateral or multilateral (international) treaties have the same basis; and unless they are ratified and executed by the contracting Muslim party, they are not binding; and their non-observance does not create any liability against the Muslim State. Of course it does not matter whether the acceptance is expressed or tacit. It may be added that the promulgation and execution of international law with the consent of all the state of the world is an ideal which has never been achieved, even for short term, in the long annals of man.<sup>71</sup>

The discussion on *dar al-Islam* and *dar al-harb* is one of the most important discourses of Islamic International Law. Here, we will precisely elaborate the notion of *dar* in Islamic law, especially in the *Hanafi* Jurisprudence and will see that this division is on the basis of territorial jurisdiction.

World according to Islamic law –especially *Hanafi* School of Law- is divided into two *dar* or two domains, namely, *dar al-Islam* (domain of Islam) and *dar*

*al-harb* (domain of war).<sup>72</sup> It forms the very basis of this system.

Ibn Abidin (1784-1836), a renowned *Hanafi* Jurist precisely defines the concept of *dar al-Islam* and *dar al-harb* as “a territory which is under effective control of Muslims [dar al-Islam] or which is under effective control of infidels [dar al-harb].”<sup>73</sup> Imam Shaybani has also defined it in the similar way. Accordingly, the concept of *dar* is based on rule and control of any state, not on the number of residents.<sup>74</sup>

The word *dar al-Islam* was used for the first time by a Muslim commander, Khalid ibn al-Walid (d. 629)<sup>75</sup> and these concepts were initially developed by Hanafi Jurists to differentiate between the territorial jurisdiction of Muslim State and non-Muslims State(s). The great Hanafi Jurist of the eleventh century, al-Dabusi (d. 1039) says: “The principle according to our jurists is that the world is bifurcated into two *dar*: *dar al-Islam* and *dar al-harb*. And according to al-Shafii the entire world is a single *dar*.”<sup>76</sup>

This has some implications. For instance, according to Imam Abu Hanifa and Imam Shaybani there is no penalty for offences liable to *hudood* if committed in *dar al-harb*, even if perpetrated by Muslim inhabitant of *dar al-Islam*. Generally, courts of *dar al-Islam* would not take into cognizance those offences which its penalties are waived on account of *Shubha*, if committed in the *dar al-harb*.<sup>78</sup> Not only this, Abu Hanifah also decreed that it's allowed for a Muslim who enters into *dar al-harb* with *aman*, to receive money by way of *riba*, because, he contends, Islamic Law does not apply to *dar al-harb*.<sup>79</sup>

In short, according to Abu Hanifa and Shaybani, Islamic Law only applies to the territory of Islam, not that of war. But many orientalist misunderstood it. They argue that this division indicates the relationship between Muslim and non-Muslim state which, they continue, is hostility.

Majid Khadduri (1909-2007), is among those scholars who believed that the bifurcation of world into two *dar* is based on the theory that normal relations between Muslim and non-Muslim state(s) is war, at least in theory.<sup>80</sup>

On the other hand, theory of perpetual war is refuted by scholars of Muslim International Law. Wahba al-Zuhayli (1932-2015) in his Ph.D. dissertation specifically points out the theory of perpetual war of Khadduri and conclusively refutes it, saying that normal relations between Muslim and non-Muslim state is based on treaties, thus it is peace not war.<sup>81</sup> Dr. Ghazi also indicates that the concept of *dar* in Islam, like the concept of territorial jurisdiction, came in the modern times.<sup>82</sup>

Dr. Munir in his discussion on the notions of *dar al-harb* and *dar al-Islam* maintains that division of world into *dar al-harb* and *dar al-Islam* was based on the prevailing situation of war between the Islamic and the non-Islamic territories and it is derived by the jurists themselves, thus it's no longer relevant today. He, while discussing the implications of division of the world, says that "it is never mentioned anywhere by the great jurists that there should be permanent enmity and hostile relations between the two rival domains."<sup>83</sup>

On the contrary, Dr. Muhammad Mushtaq Ahmad believes that division of world into *dar* is still relevant. Like Ghazi, he asserts that this division is based on territorial jurisdiction. In his article on Notions of *dar al-harb* and *dar al-Islam*, in concluding remarks, he says:

The Division of the world by Muslim jurists into *dar al-Islam* and *dar al-harb*, especially as expounded by the Hanafi jurists, has no necessary link with the view that the Islamic state should normally be looked in hostility with non-Islamic states. This division rather represented an affirmation of the principle of territorial jurisdiction.<sup>84</sup>

To conclude, bifurcation of the world into two *dar* is based on the principle of territorial jurisdiction and has some legal implications, as Muslim Scholars have indicated, and it has no necessary link with the theory of perpetual war, as conceived by some orientalist.

## 8. Literature Review of *Siyar*

Much has been written on the Muslim international law in the early times of its development. It's perhaps due to the deep relations of the science of *siyar*

with politics of the time<sup>85</sup> which made it an issue of intense debate and heated discussions. However, unfortunately, a vast part of the written materials did not reach us. As mentioned before, neither the book of Imam Abu Hanifah, nor the book of Imam Awzai is available today. However, Imam Shafi mentioned some quotations from the mentioned books in his *Kitab al-Umm*. Some other books<sup>86</sup> also contain sayings about *siyar*.

There also is a contemporary discourse on *siyar*, and while the discourse is not as vast as it should be, still there are some great works among modern literature. Here, I would shed some light on classical and contemporary works on *siyar*.

### 8.1. Classical Works

The greatest book written on the *siyar* is the *Kitab al-Siyar al-Kabir*; the *Magnum Opus* of Imam Shaybani, which is the Imam's last book.<sup>87</sup> Imam Sarakhsi dictated commentary and a short introduction on it. The edited version of the book is published by *dar al-Kutub al-Ilmiyah* in Beirut. *Kitab al-Siyar al-Saghir* is of the same writer. It was written before *al-Siyar al-Kabir*. It was edited and also translated in English by Dr. Ghazi and published by Islamic Research Institute in Islamabad in 1998. Additionally, Dr. Ghazi has written a comprehensive introduction of 39 pages on it.

Imam Abu Yusuf's refutation of Awzai, *al Radd ala siyar al-Awzai* is also a sourcebook of Islamic international law and presumably the oldest available book on *siyar*. It is very important, especially for going through views of Abu Yusuf regarding different topics of the subject, which were omitted in *al-Siyar al-Kabir*.<sup>88</sup> It was edited by Abul Wafa al-Afghani and for the first time published in Deccan. Afghani also has written a fruitful introduction to it, in which he refuted the allegation of Imam Awzai regarding the lack of *siyar*'s knowledge of Iraqis.

Also, *Kitab al-Kharaj* (the Book of Taxation) of Imam Abu Yusuf is worth mentioning. However, its title indicates different contents, but its last part is totally devoted to the international law of Islam.



*Kitab al-Siyar* of Abi Ishaq al-Fazari is also available. It was edited by Faruq Hammadah and published by al-Risalah in Beirut in 1987, but it is not complete work of Fazari.

## 8.2. Contemporary Works

The abovementioned works are the major parts of the classical works on *siyar* that are preserved and published. Some new books are also written by modern writers, especially by Muhammad Hamidullah. He re-codified Islamic international law and made it understandable for modern readers. His *The Muslim Conduct of State* is really a *Magnum Opus*. It was printed dozens of times since its first edition was published in Deccan. He divided his book into four parts i.e. introductory part, Peace, Hostile Relations, Neutrality and also an appendix on the private international law of Islam. This work is a main source of *siyar* or modern international law of Islam. Modern writers extensively used this book as a source of Muslim international law, e.g. Dr. Ghazi in the introduction to *Kitab al-Siyar al-Saghir* mostly relies on *The Muslim Conduct of State*, even to the extent that Ghazi's lectures of Bahawalpur on Islamic international law could be called a summary of this book. Additionally, the present paper primarily relies on the works of Hamidullah.

Further, Hamidullah's collection of lectures of Bahawalpur contains a lecture on *siyar* in which he presented a better sketch of Islamic international law. These lectures are translated and published by Islamic Research Institute of Islamabad. It is titled *The Emergence of Islam*.

Another modern writer who worked on the subject in depth is Majid Khadduri. His book of *The Islamic Law of Nations: Shaybani's siyar* which is published by John Hopkins in 1966, is also an important modern book. It was long believed –by some scholars - that it is Imam Shaybani's *Kitab al-Siyar al-Saghir*. But Ghazi indicated that what Khadduri published as Shaybani's *siyar* only contains chapters on *siyar*, *Kharaj* and 'Ushr from Shaybani's *Kitab al-Asal* which is a different work from his *al-Siyar al-Saghir*.<sup>89</sup>

Khadduri has also written *War and Peace in the Laws of Islam*, which is a

source of Muslim law of nations. It was published prior to the abovementioned book, in 1955 by the same publisher. Khadduri discussed Islamic international law in three parts; first introductory section and then laws of war<sup>90</sup> and peace. Further, he contributed an article to the subject, entitled: *Islam and the Modern Law of Nations*, in which he discussed Islamic law of Nations, its implications in modern times, relations of Ottoman Empire with Christian Europe and then modern times and Muslim's reaction to the League of Nations and United Nations. It was published by *The American Journal of International Law* in 1956.

Dr Wahba al-Zuhaili, an eminent scholar of Levant has compiled his PhD thesis on Islamic Law of war, entitled *Aasar al-harb Fi 'l-Fiqh al-Islami*. This book is a source of modern Muslim international law, especially Islamic laws of war, in which he has discussed apostasy, rebellion, debates regarding dar al Islam, *dhimma* and *aman* (asylum), POW's and other issues related to war in Islam.

Contemporary scholar of Muslim International law, Dr. Muhammad Mushtaq Ahmad has extensively worked on Islamic laws of war. His *Jihad, Muzahmat aur Baghawat* is first of its kind. In the mentioned book, he discussed in detail notions of *dar*, *jus ad bellum* and *jus in bello* of Islam, self-defense, rebellion, civil wars in addition to some other important contested areas. His LLM thesis and other articles are notable contribution to the subject.<sup>91</sup>

*Imam Muhammad b. al-Hasan al-Shaybani wa Asarohu Fi 'l-'Alaqaat al-Dawliyyah* is a PhD dissertation of Usman Jumaa al-Damiriyya submitted to al-Azhar University, Egypt and published by dar al-Maali in Jordan, 1999. In this dissertation, he discusses Islamic International law in a detailed way in two chapters, namely: war and peace. He has also presented a detailed biography of Imam Shaybani.

Khaled Abu el Fadl (b. 1963) has in his book *Rebellion and Violence in Islamic Law* discussed in details issues of rebellion in Islamic law. The book is published by Cambridge University Press in 2001.

*The siyar — An Islamic Law of Nations?* Is a scholarly research paper on *siyar*,

written by Anke Iman Bouzenita (b. 1969) which is basically a chapter of her doctoral dissertation. Her treatise was written on Ab darrahman al-Awzai and his contribution to the *siyar*.<sup>92</sup>

A noteworthy paper is written by Muhammad Munir on Muslim international law. It is titled *Islamic International Law (siyar): An Introduction* published by Hamdard Islamicus in 2012. The author has discussed some hot issues of Islamic international law. Also his *Public International Law and Islamic International Law: Identical Expressions of World Order* published in *Islamabad Law Review* in 2003, is a must read.

## 9. Conclusion

Muslim jurists have played a pioneering role in the development of international law. It is Imam Muhammad b. Hasan al-Shaybani who deserves to be called “Father of International Law”, not Hugo Grotius, who was born almost eight centuries after the demise of Imam Muhammad. Islamic law of nations emerged as a separate branch of law nearly thirteen centuries before. It was a time when no nation had such a legally organized law for dealing with other nations. It was jurists of *Hanafi* School of Islamic jurisprudence, especially Imam Abu Hanifah, who treated this subject as a separate science and started a hot intellectual discussion that caused in the development of the *siyar* and hence, the richness of Islamic legal heritage. Even the founders of contemporary international law had been influenced by *siyar*. Further, Muslim international law never faced the problems that modern international law faced, which challenges its existence. *siyar* presents a stable and viable alternative for some complicated issues faced by International law today and hence there is a need to seek assistance from this rich heritage which would convert the contemporary International law into a true International law.

## **Notes and References:**

<sup>1</sup>. *Siyar*, Islamic International Law, Muslim International Law and Islamic Law of Nations are interchangeably used in this paper.

<sup>2</sup>. Because the Greeks had a law regulating relations of a territory, where one nation, having one language was residing under different sovereign city states, not other peoples were treated in accordance with that law, for the reason that they were barbarians according to them. In the Roman's era, there was no need for international law according to Professor Oppenheim. He contends, that at that time the world was Roman sphere and no one needs international law in its own territory. However, they had laws of war and peace, but it was not the same for all. For detailed assessment of the issue, see: Muhammad Hamidullah, *The Emergence of Islam* (Islamabad: Islamic Research Institute, 3<sup>rd</sup> revised Edn., 2010), 131-134.

<sup>3</sup>. Malcolm Shaw, *International Law* (Cambridge: Cambridge University Press, 2008), 22-23.

<sup>4</sup>. Majid Khadduri, "Islam and Modern Law of Nations", *The American Journal of International Law*, 50 (1956), 362.

<sup>5</sup>. For comments and reactions of European scholars on this recognition, again see: Khadduri, "Islam and Modern Law of Nations", 365-67.

<sup>6</sup>. Hamidullah, *The Emergence of Islam*, 133-34.

<sup>7</sup>. Ibid.

<sup>8</sup>. Imran Ahsan Khan Nyazee, "Islamic Law is International Law", 2009. Available online at: <<http://www.nyazee.org/islaw/international/islint.pdf>> (Last accessed: 20.07.2018)

<sup>9</sup>. Mahmood Ahmad Ghazi, *The Shorter Book on Muslim International Law*, (Islamabad: Islamic Research Institute, 1998), 2.

<sup>10</sup>. Muhammad Hamidullah, *Muslim Conduct of State* (Lahore: SH Muhammad Ashraf, 2011), 9.

<sup>11</sup>. Ibid. 10.

- <sup>12</sup> Hamidullah, *The Emergence of Islam*. 137.
- <sup>13</sup> He is a non-Muslim who resides outside *Dar al-Islam* and enters to *Dar al-Islam* after taking permission from Muslim authorities. Muhammad Mushtaq Ahmad. "The Scope of Self-defence: A Comparative Study of Islamic and Modern International Law," *Islamic Studies*, 49:2 (2010), 182.
- <sup>14</sup> He is a non-Muslim who resides in Dar al Islam.
- <sup>15</sup> Sarakhsi, *al-Mabsoot*, 10<sup>th</sup> volume, 2. Shamila.
- <sup>16</sup> Borhan ud-Din al-Marghinani, *al-Hedaya* (Karachi: Maktabath al-Boshra, 2008), 04:191.
- <sup>17</sup> For English translation of the book of *Siyar* from the *Badai' al-Sanai'*, see: unpublished LLM dissertation of Pir Khizar Hayat submitted to the Faculty of Shariah and Law at International Islamic University, Islamabad at 2012.
- <sup>18</sup> Ala al-Din Abi Bakr Ben Saud al-Kasani, *Badai' al-Sanai'* (Quetta: Maktaba al-Hanafiya) 06:57.
- <sup>19</sup> Foreword to Majid Khadduri, *Islamic Laws of Nations: Shaybani's Siyar* (Baltimore: John Hopkins Press, 1966), ix.
- <sup>20</sup> For detailed analysis of notions of *Dar*, see: Muhammad Mushtaq Ahmad, "The Notions of *Dar al-Harb* and *Dar al-Islam* in Islamic Jurisprudence with Special Reference to the Hanafi School" *Islamic Studies*, 47: 1 (2008).
- <sup>21</sup> Muhammad Munir, "Islamic International Law (*Siyar*): An Introduction", 9.
- <sup>22</sup> Hamidullah, *The Muslim Conduct of State*, 3.
- <sup>23</sup> One such reason is the destruction of libraries of Baghdad by the Mongols in 1258. The books from Baghdad's libraries were thrown into the Tigris River in such quantities that the river ran black with the ink from the books. The world will never truly know the extent of what knowledge was lost forever when those books were thrown into the river or burned. See for details: "The Mongolian Invasion and Destruction of Baghdad." *Lost Islamic History*. 17 Nov. 2012. Accessed: 18 Oct. 2015. Available online at: <<http://lostislamichistory.com/mongols/>> (Last accessed: 16.07.2018).

<sup>24</sup> Munir, “Islamic International Law (Siyar): An Introduction”, 13; Usman Jumah Dhamiriah, *Usul al-Alaqaq al-Dawliyah fi Fiqh al-Imam Muhammad Bin al-Hasan al-Shaybani*, (Amman: Dar al-Maali, 1999), 253.

<sup>25</sup> Ghazi, *The Shorter Book on Muslim International Law*, 6.

<sup>26</sup> Munir says: “There are two problems apparent in this work: first, Abu Khalid cannot be accepted as the narrator of Majmu’ because he is accused by the Sunni scholars of fabricating *ahadith*, whereas he is trustworthy for the Zaydiya (the followers of Imam Zayd Ibn ‘Ali); and secondly, the way this book was compiled is also questionable. Is it compiled by Imam Zayd and Abu Khalid simply recorded and compiled it from him? Or did he (Imam Zayd) dictate it to his pupils and one of them edited and arranged it later on? However, recent research shows that Abu Khalid’s narration cannot be accepted because he has been known to tell lies and fabricate *ahadith*.” “Islamic International Law (Siyar): An Introduction”, 14. Also Usman Jumah Dhamiriah discussed al-Majmu. His findings indicate that presumably the book was derived by a Shiite jurist from Sunni sources, especially al-Aasar of Imam Shaybani. For details see: Dhamiriah, *Usul al-Alaqaq al-Dawliyah fi Fiqh al-Imam Muhammad Bin al-Hasan al-Shaybani*, 253-54.

<sup>27</sup> Hamidullah, *The Emergence of Islam*, 137.

<sup>28</sup> Hamidullha, *The Muslim Conduct of State*, 61-62.

<sup>29</sup> Hamidullah believes it was between 20-25 pages. See, *The Emergence of Islam*, 139.

<sup>30</sup> Ghazi, *The Shorter Book on Muslim International law*, 8.

<sup>31</sup> Abu l-Wafa al-Afghani, *Introduction to Abu Yusuf’s al-Rad ‘ala Siyar al-Awza’i* (Deccan: Lajnat Ihya al-Ma‘arif al-Nu‘maniyyah).

<sup>32</sup> Ibid. 8.

<sup>33</sup> Imam Sarakhsi, *al-Siyar al-Kabir*, 4. The Imam continues to say that the book was sent to the Caliph, he liked it and send his sons to Imam Shaybani so they would learn it from him. Ibid.

<sup>34</sup> Ghazi, *The Shorter Book on Muslim International Law*. 8.

<sup>35</sup> Literally means: Refutation of Awzai's Siyar.

<sup>36</sup> Hamidullah, *The Emergence of Islam*, 138.

<sup>37</sup> Ghazi, *The Shorter Book on Muslim International Law*, 26.

<sup>38</sup> Hamidullah, *The Emergence of Islam*, 32-33.

<sup>39</sup> Dr. Hamidullah talks about influence of Roman law over the Islamic Law in question's session of the Bahawalpur lectures. He denied it in these points: 1- The Roman Law was written in Latin, and no translation into Arabic or any other oriental language is traceable right till the second-half of the twentieth century. 2- In the places of Islamic conquest Christians were legally autonomous. If the parties to a dispute were Christians, their own law was applied. 3- The other point of difference in terminologies. Romans use the term *Jus* for law, which means rights; while Muslim use the terms *Fiqh*, which means "to understand". 4- All the contents of a book on Roman law could be classified under three categories, Persons, Property and Acts. On the contrary, the first subject in a book on *ibadah*. This is followed by civil transactions and then criminal law. 5- Another factor that Hamidullah mentions is that the territories conquered by Muslims, that once formed Parts of Byzantine Empire, Roman law was not operative in those areas. (Hamidullah, *The Emergence of Islam*. 150-151)

<sup>40</sup> Hamidullah, *Muslim Conduct of State*, 70.

<sup>41</sup> Munir, "Islamic International Law (Siyar): An Introduction", 15-16.

<sup>42</sup> Ibid. 16. Munir continues to presents some other reasons to prove that Grotius was influenced by Islamic law.

<sup>43</sup> Ghazi, *The Shorter Book on Muslim International Law*, 3.

<sup>44</sup> Hamidullah includes *Ijma'* and *Qiyas* in this category.

<sup>45</sup> Hamidullah, *The Muslim Conduct of State*, 18.

<sup>46</sup> Ibid. 33.

<sup>47</sup> Ghazi, *The Shorter Book on Muslim International Law*, 3.

<sup>48</sup> Egyptian Scholar Muhammad Abu Zahra (1898-1974) says, it is on the basis of reciprocity that Islam allowed Muslim army to make slaves of prisoners of war,

but if hostile army agreed upon not making slaves, Muslims should refrain from it. See: Muhammad Abu Zahra, *al-Alaqaq al-Dawliyah fi al-Islam*, (Cairo: Dar al-Fikr al-Arabi, 1995), 39.

<sup>49</sup>. Muhammad Mushtaq Ahmad, *Jihad, Muzahamat aur Baghawat* (Jihad, Resistance and Rebellion) (Gujranwala: Al-Shari'ah Academy, Second Edn., 2012), 358-66.

<sup>50</sup>. Reciprocity is not allowed in some circumstances, especially in the cases of violation of humanitarian laws or penetration of atrocities that are not legally allowed. It means, if hostile army kills civilians, Muslim army is not allowed to do so. For comprehensive appraisal of this issue again see: Mushtaq, *Jihad, Muzahmat aur Baghawat*, 358-70.

<sup>51</sup>. Nahed Samour, "Modernized Islamic International Law Concepts as a Third World Approach to International Law" *ZaöRV*, 72 (2012), 546.

<sup>52</sup>. Nyazee states that the word *state* was intentionally omitted, because then the concept of state did not exist and hence Islam does not address states. "Islamic Law is International Law", 1.

<sup>53</sup>. For nature of Islamic International Law, see: Nyazee, "Islamic Law is International Law". He briefly discusses nature of Islamic Law, its comparison with contemporary international law and a few basic features of the Islamic model.

<sup>54</sup>. This is rooted in the Positivist Theory of Western Jurisprudence which does not believe in the role of religion and morality. Jeremy Bentham (1748-1832) believes that only in the greatest happiness of the greatest number. Only Happiness and utility is the basis of his legal theory. For details see: L B Curzon, *Jurisprudence* (London: Cavendish Publishing Limited, 1995), 59-64.

<sup>55</sup>. This flexibility is rooted in the Western Jurisprudence. In the last fifty years, people witnessed great changes in the laws of different western countries. Most recently, same-sex marriage was legalized in the USA and possibly, polygamy would be the next, while Islam was intensively criticized for it and this is why, many Muslim reformists endeavored to declare it abolished in Islam.

<sup>56</sup>. For instance, international criminal law applies on individuals, but it does not treat all equally. Nuremberg and Tokyo trials are criticized for being bias and some call it justice of victors. Africans are against the ICC, because they believe it is a



conspiracy against Africa. Till now, international criminal law is a tool in the hands of great powers.

<sup>57</sup> The Qur'an, 5:02

<sup>58</sup> The Qur'an, 2:190

<sup>59</sup> Imran Ahsan Khan Nyazee, *Jurisprudence* (Rawalpindi: Federal Law House, Second Edn., 2010), 86.

<sup>60</sup> Boleslaw A. Boczek, *International law: a dictionary* (Oxford: The Scarecrow Press, 2005), 01.

<sup>61</sup> Martin Dixon, *Textbook on International Law* (London: Blackstone, 2000), 12.

<sup>62</sup> Ibid.

<sup>63</sup> Ghazi, *The Shorter Book on Muslim International Law*, 2.

<sup>64</sup> Ibid.

<sup>65</sup> Hamidullah, *The Muslim Conduct of State*, 17.

<sup>66</sup> Tim Hillier, *Sourcebook on Public International Law* (London: Cavendish Publishing Limited, 1998), 5.

<sup>67</sup> Abla Mayass, *Principles of Conflict of Laws* (London: Cavendish Publishing Limited, Second Edn., 1996), 01.

<sup>68</sup> For example, if two Englishmen make a contract in France to sell goods situated in Paris, an English court would apply French law as regards validity of that contract. Shaw, *International Law*, 02.

<sup>69</sup> Hamidullah, *The Muslim Conduct of State*, 312.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid., 04.

<sup>72</sup> This division is according to the Hanafi School of Law, while according to Shafi'i all the world is a single *Dar*.

<sup>73</sup> Dhamiriah, *Usul al-Alaqaat al-Dawliyah fi Fiqh al-Imam Muhammad Bin al-Hasan al-Shaybani*, 316.

<sup>74.</sup> Change of Dar is a contested issue among Muslim Jurists. Abu Yusuf and Shaybani are of the view that *Dar al-Islam* would change to *Dar al-Harb* in case non-Muslims conquer the same and establish their rule, while Imam Abu Hanifah disagrees. He argues that *Dar al-Islam* will change to *Dar al-Harb* if: 1. Un-Islamic laws apply to it, 2. It is neighboring with Dar al-Harb, and 3. Muslims and *Dhimmi's* are living not on *Aman* of Muslims. Again see: Dhamiriah, *Usul al-Alaqaq al-Dawliyah*, 327-33.

<sup>75.</sup> Muhammad Munir, "Islamic International Law and Public International Law: Identical Expressions of World Order", *Islamabad Law Review*, 1 (3 & 4) (Autumn & Winter 2003), 404.

<sup>76.</sup> Imam al-Dabusi, *Ta'sis al-Nazar* (Beirut: Dar Ibn Zaidun, ny), 118.

<sup>77.</sup> Imam Sarakhsi, *Sharh al-Siyar al-Kabir* (Beirut: Dar al-Kutub al-Ilmiyah, 1997), 05:108.

<sup>78.</sup> Ibid., 121.

<sup>79.</sup> Abu Yusuf, *al-Radd 'ala Siyar al-Awza'i*, 96.

<sup>80.</sup> He presented this view in his two famous books: *Islamic Law of Nations: Shaybani's Siyar* and *War and Peace in the Law of Islam*. He has also authored an article entitled *Islam and Modern Law of Nations* on his views.

<sup>81.</sup> Wahba al-Zuhayli, *Aathar al-Harb fi al-Fiqh al-Islami* (Damascus: Dar al-Fikr, 1998), 97-103.

<sup>82.</sup> Ghazi, *The Shorter Book on Muslim International Law*, 05.

<sup>83.</sup> Munir, "Islamic International Law and Public International Law: Identical Expressions of World Order, 403-409.

<sup>84.</sup> Muhammad Mushtaq Ahmad, "The Notions of Dar al-Harb and Dar al-Islam in Islamic Jurisprudence with Special Reference to the Hanafi School" *Islamic Studies* (2008), 47:1, 36; Also, Mushtaq, *Jihad, Muzahmat or Baghawat*, 83-148.

<sup>85.</sup> For study of political arena of the time and its relations with the early development of the science of *Siyar*: see; Hamidullah, *The Emergence of Islam*, 137-38.

<sup>86.</sup> For instance, Ibn Hajar al-'Asqalani, *Tawalli at-Ta'sis*.

<sup>87.</sup> Sarakhsi, *Sharh al-Siyar al-Kabir*, 03.

<sup>88.</sup> Imam Sarakhsi in his introduction to the commentary on *al-Siyar al-Kabir*

mentions the ground due to which the views of Imam Abu Yusuf were omitted. See for further details, *Ibid.*, 03-04.

<sup>89</sup>. Mushtaq, “The Scope of Self-defence: A Comparative Study of Islamic and Modern International Law”, 155.

<sup>90</sup>. As mentioned in the nature of *Siyar*, Khadduri, along with Bernard Lewis and others, in his different books and articles advocated theory of perpetual war in Islam. He is of the view that the division of world into *Dar al-Islam* (domain of Islam) and *Dar al-Harb* (domain of war) is based on this theory (perpetual war) or in other words, normal relations between Domain of Islam and Domain of Kufr is hostility. He continues that *Dar al-Islam* is in a state perpetual war with *Dar al-Harb*, at least in theory. For clarification of notions of *Dar* in Islam see: Muhammad Mushtaq Ahmad, “The Notions of *Dar al-Harb* and *Dar al-Islam* in Islamic Jurisprudence with Special Reference to the Hanafi School”; Mushtaq, *Jihad, Muzahamat aur Baghawat*; Muhammad Munir, “Islamic International Law and Public International Law: Identical Expressions of World Order”, *Islamabad Law Review*, 1 (3 & 4) (Autumn & Winter 2003).

<sup>91</sup>. His master’s thesis is entitled “Use of Force for the Right of Self-determination in Shariah and International Law: A Comparative Study” submitted in the Faculty of Shariah and Law at the International Islamic University, Islamabad in 2006. His other notable articles are “Notions of *Dar al-Harb* and *Dar al-Islam* in Islamic Jurisprudence with Special Reference to the Hanafi School” published by the Islamic Studies in 2008 and “The Scope of Self-defence in Islamic and Modern International Law” also published in Islamic Studies in 2010.

<sup>92</sup>. The treatise is initially written in German language. It is primarily based on Abu Yusuf’s refutation of Awzai. To my knowledge, it has not been translated into English language yet.