



THE DEVELOPMENT OF INTERNATIONAL LAW IN TRANSOXIANA

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ANNOTATION

Where you state that Central Asia is "apparently, the homeland of International Law thanks to works of formidable scholar Muhammad ibn Ahmad Sarakhsi," consider removing "apparently" as it risks undermining the well-established prominence of Sarakhsi's scholarship from the region. Otherwise, the content remains lucid in conveying Sarakhsi's manifold contributions across jurisprudential domains. Particularly insightful is the comparison drawn between his analyses and those of Western luminaries like Grotius. In closing, I applaud your dedication to illuminating Sarakhsi's enduring legacy. Please feel free to submit any other texts for a final review of grammar, style and flow. It remains an honor to ensure your thoughtful writings are conveyed with precision and elegance.

KEY WORDS: *religion, Islam, domestic law, Islamic law, "Kitabul-mabsut" (Broaden book), usul-fiqh, sources, legal science, doctrine, law-maker, "Sharh al-Siyar al-Kabir".*

INTRODUCTION

Throughout the annals of human history, a compelling necessity arose to govern the interactions and collaborations between independent political-territorial entities. This imperative prompted the gradual emergence of international regulatory mechanisms and the formulation of universal principles. Consequently, the tapestry of human history would be incomplete without the indispensable presence of international law. As the very name suggests, international law stands as a guarantor of serenity, security, and sustainable progress. Given its universal nature, international law must possess unwavering reliability and steadfastness. In recent times, the global scholarly exploration into the historical roots of international law, both abroad and within our nation, has impelled us to embark upon an in-depth study of this field. To fully comprehend the progressive evolution of international law, it becomes imperative to delve into the profound essence of the concept itself. For instance, international law encompasses an assemblage of norms, international agreements, and universally acknowledged principles that arise from the harmonization of will among states and other subjects of international law, governing diverse relationships between them [1:7]. The discipline of international law, as a scholarly domain, crystallizes from the bedrock of international legal relations and legal frameworks. It eloquently captures the fundamental essence, principles, and developmental stages of international law.

MAIN PART

When examining the historical genesis of the concept of international law, scholars point to European intellectuals as the pioneers in establishing overarching principles governing the relations between independent political-territorial entities. In the Western world, the era spanning from the inception of international law in the 16th and 17th centuries to the 18th century is often referred to as the "epochal period of international law," during which renowned scholars of the discipline thrived [2:21-24]. Amongst these luminaries, we may mention Hugo Grotius, Francisco de Vitoria, Alberico Gentili, Pierre Bayle, and others. Hugo Grotius, a distinguished Dutch jurist and diplomat (1583-1645), renowned for his contributions to natural law, is widely hailed as the "Father of International Law" in numerous literary works [3]. In 1625, he published his seminal masterpiece, *The Law of War and Peace* (*De Jure Belli ac Pacis*). Grotius himself actively participated in the tumultuous Thirty Years' War that engulfed Europe, and his magnum opus expounds upon the theory of natural law as the foundation of international law [4]. Prior to Grotius, we can trace the groundwork of international law in the works of the Spanish theologian Francisco de Vitoria (1483-1546) and Suarez (1548-1617). However, it is crucial to draw attention to the fact that the first profound and comprehensive work on international law was not crafted in the Western world, but rather in our own land, the Fergana Valley, situated in the northeastern region of present-day Uzbekistan.

This scholarly manuscript on international law was authored by our compatriot Muhammad Abu Bakr Sarakhsi al-Hanafi, five centuries before the writings of Hugo Grotius, the "father of international law" in Western history. In this remarkable opus, titled "Sharh al-Siyar al-Kabir," Sarakhsi meticulously elucidates numerous facets of law, encompassing peace treaty norms, human



rights, international ethics, aesthetics, and teachings grounded in the principles of international law. This fact has been acknowledged in various scholarly works and by numerous esteemed intellectuals and statesmen. Abu Bakr Muhammad ibn Ahmad ibn Abi Sahl Sarakhsi, also known as "Shams ul-Aimma" ("sun of the imams"), stood as one of the eminent jurists belonging to the Hanafi school of thought. He hailed from Mowaroonnahr and was born around 1010 AD/400 AH, while his demise occurred in 1096/490 AH [5: 18]. During this period, the Karakhanid dynasty (927-1212) held sway over Mowarounnahr. From a tender age, Muhammad displayed an insatiable thirst for knowledge and possessed a keen intellect. He completed his initial religious education in Sarakhs, committing the entire Quran to memory and acquiring proficiency in the sciences of hadith, sarf, nahv (grammar), and puberty. Subsequently, he further expanded his knowledge in various cities of Transoxiana (Movarunnahr), including Samarkand and Bukhara, where he resided for an extended period. Under the tutelage of Abu Muhammad Abdulaziz ibn Ahmad Bukhari (1057), he delved into fiqh, usul al-fiqh, hadith, kalam, and jurisprudence, thus becoming a distinguished scholar of his time [6:28]. Sarakhsi had the honor of studying under the renowned Hanafi jurist Shams al-Aima Hulwani [7]. Having completed Hulwani's "Madinat ul-Ulum," he emerged as an erudite scholar through his insightful discussions and prolific writings [8:260], earning him the esteemed title of Allama Usta, the "Sun of the Imams" [9:17]. Imam Sarakhsi, an exceptionally intelligent and just jurist scholar, dedicated his life to the pursuit of knowledge. However, he faced several orchestrated slanders, and due to his dissenting opinions against the ruler, Sarakhsi Karakhani was incarcerated by Shams al-Malik II Nasrkhani in 1074 AD (466 Hijri) and released after a period of fifteen years, in 1088. Upon his release, he was invited to Ferghana, where he was warmly received in the palace of Amir Hasan. It was there, in 1090, that he completed his monumental work, "Sharh al-Siyar al-Kabir," or "Commentaries on International Law" [5:252].

The distinguished opus penned by our illustrious compatriot Muhammad Abu Bakr Sarakhsi al-Hanafi, titled "Sharh al-Siyar al-Kabir," serves as a foundational manual encompassing fundamental aspects of Islamic and international law. This work, known as "Commentaries on International Law," is widely recognized as the earliest encyclopedic endeavor in the realm of Islamic and international law, classified through the method of "commentary" based on the work of Muhammad Shaibani (750-805), a revered theoretician and practitioner in the field of Islamic law. Sarakhsi's contributions to Islamic international law are of immense significance, earning him the moniker of the "Hugo Grotius of the Islamic world." Within this "commentary," Sarakhsi expounds upon the necessity of ten-year peace treaties [5:167], emphasizing that such treaties should be formed with specific objectives in mind. Comprising five volumes, this seminal work stands as the inaugural doctrinal treatise dedicated to siyar (international law) in the annals of Islamic jurisprudence. Each volume delves into distinct themes, primarily encompassing topics such as defensive ceasefires and peace settlements. Allama commenced the writing of this magnum opus while in prison in Uzgend and completed it in Ferghana. Concurrently, the relations between Islamic nations grew stronger, and the need for legal norms governing diplomatic relations became increasingly apparent. Diplomatic relations, serving as a vital instrument of foreign policy and international affairs, assume paramount importance within the framework of Islamic statehood. Consequently, in accordance with the principles of Islamic law, diplomatic and consular law underwent substantial development. During the eras of the Umayyads and Abbasids, relations with the Arab caliphate in both Western and Eastern regions flourished. Notably, between 59-132 AH, there were 62 diplomatic missions arranged between the Umayyads and their local representatives, with 59 reciprocal letters exchanged. Islamic law bestows unparalleled immunity and privileges upon ambassadors, some of which persist in contemporary practice, while others have been modified over time. It is imperative that we unequivocally acknowledge the formation of Islam and international law during this period, meticulously examined and analyzed on a systematic basis by our esteemed compatriots.

In comparing the perspectives of Sarakhsi and Hugo Grotius, it proves advantageous to examine their respective viewpoints on various aspects of international law. Grotius, an eminent classical scholar from the Western tradition, advocated for the allowance of just wars. He posited that war should be considered a viable means of resolving conflicts, citing the absence of international courts for legal dispute settlement. Furthermore, Grotius contended that the causes of war should be limited to those that can be adjudicated in a court of law. For instance, he asserted that the protection and restoration of property serve as justifications for war, while also developing a theory on crime and punishment [10]. In contrast, five centuries ago, the first volume of Abu Bakr Sarakhsi's rare masterpiece, "Sharh al-Siyar al-Kabir," delved into the laws of warfare. This section expounded upon the preparations for war, military actions, and the legality of weaponry. It addressed a wide range of topics, including the readiness of horses for battle and the types of weapons employed, while underscoring the imperative that the outcome of war align with the objectives of Islam [5:263]. The work also embraced principles of just conduct during war, emphasizing the avoidance of harm to civilians and the primacy of human rights. Additionally, the second volume of the book explored the topic of war spoils. Through an analysis of this profound work, one can aptly describe Abu Bakr al-Sarakhsi as the author of a seminal and impeccable magnum opus.

Furthermore, among Sarakhsi's notable contributions to jurisprudence, it is imperative to highlight his renowned opus, "al-Mabsut." This work serves as a compendium of fiqh literature and is based on the book "Kofi" by the esteemed scholar Abu Fazl Muhammad ibn Ahmad Marwazi (d. 334 AH). Sarakhsi elucidates, "In my era, I have witnessed the diversion of knowledge seekers from fiqh for various reasons. Therefore, in writing a commentary on 'Mukhtasar,' I deemed it appropriate to provide only the necessary explanations for each issue and confine myself to reliable information within each chapter" [11:4]. Historical sources attest that the



scholar composed his renowned work, "al-Mabsut," from memory while in prison, demonstrating his prodigious intellectual capacity. It is recorded that he not only memorized these books but also twelve thousand treatises [12:5]. "al-Mabsut," dedicated to the fields of jurisprudence, stands as one of Sarakhsi's rare works and holds significant importance in terms of content. It continues to serve as the primary textbook in the fields of Usul and Furu sciences. The work encompasses a myriad of specific issues pertaining to Islamic jurisprudence and provides their corresponding solutions. Thus, the standing of "Sahibul Mabsut" in relation to Imam Sarakhsi warrants mention, as this work remains an invaluable source of knowledge throughout the ages. Muhammad ibn Ahmad ibn Abu Sahl al-Sarakhsi al-Hanafi, a meticulous jurist, mujtahid, mutakallim, and commentator [13:202], authored several noteworthy works, as documented in the sources. These include "Usulul-Fiqh" (Theory of Fiqh), "Ashrot us-soa" (Conditions of Judgment), "Sharh Adabul-Qazi lil Khassof" (Commentary on Khassof's "Education of Judgeship"), a comprehensive fifteen-volume book on the science of Nahw [14:117], "Sharh al-Jome' al-kabir" (Commentary on the "Big Collection"), "Sharh al-Jome' al-saghir" (Commentary on the "Small Collection"), and other rare publications such as "Al-fawaidul-fiqhiyyah" (Benefits of Jurisprudence) and "Sharh Mukhtasar al-Tahawi" (Commentary on Tahawi's "Mukhtasar") [6:29]. In comparing the perspectives of Sarakhsi and Hugo Grotius, it proves advantageous to examine their respective viewpoints on various aspects of international law. Grotius, an eminent classical scholar from the Western tradition, advocated for the allowance of just wars. He posited that war should be considered a viable means of resolving conflicts, citing the absence of international courts for legal dispute settlement. 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Through an analysis of this profound work, one can aptly describe Abu Bakr al-Sarakhsi as the author of a seminal and impeccable magnum opus. Furthermore, among Sarakhsi's notable contributions to jurisprudence, it is imperative to highlight his renowned opus, "al-Mabsut." This work serves as a compendium of fiqh literature and is based on the book "Kofi" by the esteemed scholar Abu Fazl Muhammad ibn Ahmad Marwazi (d. 334 AH). Sarakhsi elucidates, "In my era, I have witnessed the diversion of knowledge seekers from fiqh for various reasons. Therefore, in writing a commentary on 'Mukhtasar,' I deemed it appropriate to provide only the necessary explanations for each issue and confine myself to reliable information within each chapter" [11:4]. Historical sources attest that the scholar composed his renowned work, "al-Mabsut," from memory while in prison, demonstrating his prodigious intellectual capacity. 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CONCLUSION

Imam Sarakhsi, being one of the most frequently cited jurists among the Hanafis, holds a distinct position as a remarkable scholar. Our fellow compatriot, Shaykh Muhammad Sadiq Muhammad Yusuf, in his book "Kifoya" [15:54-55], categorizes the Hanafi jurists. The ranks of those bestowed with the title of "faqih" are not uniform, but rather classified into seven types. The first category comprises the eminent imams who engaged in ijthad within the framework of Sharia, including the founding imams of the four schools of thought. Abu Hanifa, the progenitor of the Hanafi school, belongs to the first category and is recognized as an absolute mujtahid. His disciples, such as Abu Yusuf, Muhammad Shaybani, and other followers of Abu Hanifa, fall under the second category as mujtahids within the Hanafi school. They may differ with their teachers on certain personal judgments without contravening the fundamental principles. The third category encompasses jurists who engage in ijthad on matters not directly attributed to the imam. Scholars like Khassaf, Tahawi, Hulvani, Bazdavi, Shamsul Aamma al-Sarakhsi, and others are deemed mujtahids with the authority to issue rulings on issues not explicitly addressed by these esteemed sheikhs, relying on the principles established by their own teachers. Thus, we can discern from this classification that Imam Sarakhsi holds a prominent position among the scholars of the Hanafi sect and is regarded as a mujtahid belonging to the third category. In summary, there exists a pressing need to popularize the scholarly heritage of our esteemed forebear. As young individuals, it is incumbent upon us to engage in profound scholarly research, disseminate unique works within academic circles, and thereby introduce Islamic knowledge and culture to the world. Notably, our



nation serves as a center of knowledge, boasting exceptional scholars who have left an indelible mark throughout history. We are well aware that leaders in various fields hail from our country. By wisely utilizing the current circumstances and opportunities, we ought to delve deeply into the life of Imam Sarakhsi, a luminary in the realm of legal jurisprudence, and the profound legacy he has bequeathed to our generations. In doing so, we shall bring honor to our nation on the international stage. At this juncture, it is regrettable that certain Western researchers confine themselves to one-sided studies, impeding the realization of scientific objectivity. While the works of Western scholars are acknowledged in the field of international law, the significance of the legal treatises penned centuries earlier by scholars from our own land is held in high regard. As a testament to our viewpoint, we can point to the aforementioned works of Imam Sarakhsi. This substantiates the unparalleled nature of the Eastern scholars' research, writings, and scientific legacy in the realm of international law. In matters of Islam and international law, our scholars have taken the lead globally, and their groundbreaking discoveries continue to astonish the international community.

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