

Book Review

Reviewed Work(s): *Muslim Conduct of State* by Muhammad Hamidullah.

Published by: Islamic Book Trust

Length: 386 pages

ISBN: 978-967-5962-88-9

Review by: Fajri Matahati Muhammadin*

Fiqh al-Siyar and Where Hamidullah Stands

The edition reviewed is published in 2012, but the book was first published by the Sh. Muhammad Ashraff Publisher in 1977 and the author passed away in 2002. As far as contemporary books are concerned, this book may seem, at face value, quite old. His work is, nonetheless, more important than ever and is seminal in the current development of international law scholarship.

Over a thousand years ago, *fiqh al-siyar*, especially works of Imam Shaybani, heavily influenced not only the Muslims but also the global civilization.¹ As centuries passed, the Europeans conquered the world and held hegemonic domination of many aspects of life including international law.² The Muslims, on the other hand, fell into a decline and were largely colonized by Europe.

The recent decade witnessed a rise of international law scholars criticizing the current construct of international law, arguing that it is

* Lecturer at the Department of International Law, Faculty of Law, Universitas Gadjah Mada, Indonesia. Email: fajrimuhammadin@ugm.ac.id.

¹ See: Mashood A. Baderin, "Muhammad Al-Shaybani (749/50-805)," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2013); Khaled Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani's Siyar* (Cheltenham: Edward Elgar Publishing Ltd, 2018).

² See *inter alia*: Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (New York: Cambridge University Press, 2004).

‘Eurocentric’ and was not inclusive to non-European ideas and thoughts. Some of these scholars demand that Islamic law should have a role in the development and construction of a more universal international law.³

A question remains: To what extent can *fiqh al-siyar* take part in the development of international law?

Contemporary Islamic scholarship seems to only have very few works on *fiqh al-siyar*, and they are usually very short and not very comprehensive.⁴ This makes it very difficult to find Islamic international law literature to refer in general international discussions, except perhaps some very general principles.

It is under this circumstance that Muhammad Hamidullah comes into the picture. Hamidullah is an Indian scholar from a family full of ‘ulama for generations, and he has also received Western-style education. He was a very prolific writer, but this review focuses on his book “Muslim Conduct of State” which is perhaps the most important contemporary work of *fiqh al-siyar* so far. As is explained in this review, its contents represent a sufficiently wide and deep discussion of *fiqh al-siyar* which are usually absent in other works.

A Peek into The Book

The book starts with Part I titled “Introductory” explaining not only the basics of *fiqh al-siyar* but also how it relates to general international law. This is important because the entire discipline of *fiqh al-siyar* is about how Muslims relate to other nations, hence it is essential to

³ Muslim scholars include: Awn S. Al-Khasawneh, “Islam and International Law,” in *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, ed. Marie-Luisa Frick and Andreas Th Müller (Martinus Nijhoff Publishers, 2013), 29–44. Non-Muslim scholars include: Julie Fraser, “A Seat at the Table: Islamic Law’s Neglected Potential in Universalising International Humanitarian Law,” in *Human Rights and International Humanitarian Law: Challenges Ahead (UPCOMING PUBLICATION)*, ed. Norman Weiss and Andreas Zimmermann (Edward Elgar Publishing, 2021).

⁴ See *inter alia*: Ali Ali Mansur, *Syari’at Islam Dan Hukum Internasional Umum* (Jakarta: Penerbit Bulan Bintang, 1973); Ahmad Azhar Basyir, *Ikhtisar Hukum Internasional Islam* (Yogyakarta: UII Press, 2010).

comparatively perceive how those other nations practice their international law.

The following Parts outline the main areas of *fiqh al-siyar* where all the rulings are contained. Most of the legal rulings are discussed by compiling all relevant sources from the Qur'an, *sunnah*, and a wide array of works of classical as well as contemporary scholars. The literature he refers to is so rich in variety of types, while also knowing where to go especially deep. For example, the reference to *turath* is very strong, ensuring that this work is not detached from the thousand years Islamic intellectual tradition. However, he also refers to Deutch, French, and English literature so there is strong links to the actual contemporary context in which the book was written.

Part II is titled "Peace", discussing the Islamic rulings concerning peaceful relations between nations such as laws of property and diplomacy. It also addresses the issue of territory and its acquisition, independence, jurisdiction, and the legal status of persons. These are usually also the basic concepts in international law. Part III is titled "Hostile Relations". Here, Hamidullah begins by establishing the different kinds of hostile relations, then continues to explain the concept of war and the requirements to lawfully wage war. He then proceeds to elaborate the Islamic rulings related to the conduct of war, apostasy (which many might not realize this can be a *siyar* issue), numerous aspects of rulings related to civil wars and rebellions, and various others until matters surrounding the end of war. Part IV is the last Part titled "Neutrality", where Hamidullah explains the notions of neutrality from the perspective of the Qur'an and Sunnah, practice of the *salaf al-salih* (pious predecessors), and works of jurists.

As mentioned earlier, Hamidullah explains a great deal of details often missed by others. For example, as a very fundamentally important matter to begin a law book with, his first Part includes a chapter elaborating the 'Roots and Sources' of *fiqh al-siyar*, practically a chunk of *usul al-fiqh*, in a distinctively holistic manner. For example, Hamidullah discusses the issue of academic scholarship, arbitral awards, "international legislations and unilateral declarations", treaties, customs and usage, and other international law-related instruments and how they are perceived as sources of *fiqh al-siyar*. It is difficult to find such a comprehensive list of sources of law not just

in other contemporary *fiqh al-siyar* books,⁵ but also many books on general *usul al-fiqh* which usually dedicate big portions on sources of law.⁶

A more practical example of detail is, when elaborating rulings related to the conduct of armed conflict, the author discusses the necessity for combatants to wear distinct uniforms to identify themselves as combatants. Meaning, to distinguish them from non-combatants. There are other contemporary works specifically dedicated to discussing the Islamic laws of war but missing this issue.⁷

Hamidullah also explains various issues related to how Islamic law relates to general international law. For example, he expands the discussion of agreements during warfare to not only include classically practiced ones (e.g., peace treaties, ceasefires, *jizyah*). Rather, he also discusses that there may be treaties regulating certain aspects of the conduct of warfare itself. This is a 'nod' towards modern international humanitarian law (IHL) which, through the Geneva Conventions 1949 and its Additional Protocols and other conventions, provides much detailed rules regarding the conduct of warfare.

Even the Appendices are very beneficial. The first is a compilation of documented narrations containing instructions to commanders (from the *salaf* era), and the second is the Islamic notion of conflict of laws.⁸ This is a rich resource from which to work from.

Some Shortcomings

While there are many strengths in Hamidullah's work, there are some shortcomings which need to be addressed.

⁵ See *inter alia*: Mansur, *Syari'at Islam Dan Hukum Internasional Umum*; Basyir, *Ikhtisar Hukum Internasional Islam*.

⁶ See for example: Imran Ahsan Khan Nyazee, *Islamic Jurisprudence* (Selangor: The Other Press, 2003).

⁷ See *inter alia*: Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York: Palgrave Macmillan, 2011); Yusuf Al-Qardhawi, *Fiqh Jihad* (Bandung: Mizan, 2010).

⁸ One may wonder why Hamidullah put this as an Appendix, while it would work very well in Part II: Peace as well, considering there is an extensive portion discussing jurisdiction.

The first problem is that sometimes he cites non-authentic narrations as the basis for his arguments. An example is the first Appendix which includes the statements of the first khalifah Abu Bakr al-Siddiq, giving the famous ten commands regarding humane conduct of warfare (one to Yazid ibn Mu'awiyah and another to 'Usamah ibn Zayd). A critical examination towards the *sanad* of these narrations reveal that neither of these commands are authentically attributed to Abu Bakr.⁹

A similar type of mistake but worse is when justifying the prohibition against killing injured people, Hamidullah quoted a letter attributed to the fourth khalifa 'Ali ibn Abi Talib. As authority for that attribution, he cited a book titled *Muruj Al-Dhahab* by Abu al-Hasan Al-Mas'udi.¹⁰ Al-Mas'udi is both a Rafidi Shi'a and Mu'tazila at the same time (each are deviant heretical sects),¹¹ nullifying any credibility as a narrator.¹² He also lived around two hundreds of years after 'Ali died (i.e. never met him directly), making a disconnected chain which is another problem in the authenticity of this attribution. These are only three from among many potential problems in this regard.

The second problem concerns the depth of the general international law discussed. While it is very much appreciated that Hamidullah has already included some international law discussion in his analysis, there are much depth and details missing which are actually extremely essential to the contemporary discussion of *fiqh al-siyar*. An example of this problem flows from the issue of treaties concerning conduct of war mentioned earlier. While the general idea

⁹ Fajri Matahati Muhammadin, "Fiqh Al-Jihād In The Contemporary World: Addressing The Gaps In The Regulations On The Means And Methods Of Warfare" (Ph.D Thesis, International Islamic University of Malaysia, 2020), 105–7.

¹⁰ Abu al-Hasan Al-Mas'ūdī, *Muruj Al-Dhahab*, vol. 4 (Beirut: Dar al-Kutub 'Ilmiya, n.d.), 316–17.

¹¹ Ibn Hajar Al-'Asqalanī, *Līsān Al-Mīzān*, vol. 4 (Beirut: Mu'assasah al-A'lami li al-Mathbu'at, 1390), 225. See also in Shī'a sources: Jamāl al-Dīn Ḥasan ibn Yūsuf Al-Ḥillī, *Khulasah Al-Aqwal* (Nashr al-Fiqahah, 1431), 186.

¹² 12 Ibn Hajar Al-'Asqalanī, *Tahdhib Al-Tahdhib*, vol. 9 (India: Dā'irah Al-Ma'ārif Al-Nizamiyah, 1326), 94; Muḥammad ibn Aḥmad ibn 'Uthmān Ibn Al-Dhahabī, *Mīzān Al-I'tidāl*, vol. 1 (Beirut: Dar al-Ma'rifah li al-Thiba'ah wa al-Nashr, 1382), 5–6.

to obey agreements is a well-established rule in Islamic law, but modern IHL treaties contain numerous rules which may be compatible with Islamic law in some parts but not in other parts.¹³

The aforementioned example is but a symptom of a bigger issue. Contemporary law-making treaties in general have introduced numerous new legal regimes which would require thorough examination. This is important firstly to examine the detailed rules contained in the treaties, and secondly to be cautious of the oppressive legal regime being constructed in contemporary international law-making.¹⁴ Hamidullah did not even seem to caution readers to generally inspect treaties for provisions incompatible with the Shari'ah. This is also a problem shared by other contemporary *fiqh al-siyar* books.¹⁵ Meanwhile, the invalidity of treaties incompatible with the Shari'ah is also an established rule in Islamic law.¹⁶

The Academic Relay Race: Hamidullah's Baton

Upon the death of Prophet Muhammad ﷺ, nobody on earth is *ma'sum* (perfection in conveying the *diin* of Islam). None among the 'ulama is free from mistakes. Rather, scholarship is like a relay race. Each scholar receives a baton from a previous scholar, makes her/his run, then passes it on to the next scholar. The problems of Hamidullah's work is, in reality, him passing on the baton of *fiqh al-siyar* to future scholars.

The first problem concerns authentic attribution. It is a general notion in academic practice and ethics that an opinion should be attributed to the correct person (i.e. the actual person who held that

¹³ Further discussion on IHL and Islam compatibilities and incompatibilities: Fajri Matahati Muhammadin and Thara Kunarti Wahab, "Fiqh Al-Jihād in Modern Warfare: Analyzing Prospects and Challenges with Reference to International Humanitarian Law," *IIUM Law Journal* 26, no. 2 (2018): 241–74.

¹⁴ Fajri Matahati Muhammadin, *Mukadimah Fikih Siyar: Pokok-Pokok Hukum Internasional Islam Kontemporer* (Yogyakarta: Bentala Tamadun Nusantara, 2021), 18–31.

¹⁵ See *inter alia*: Mansur, *Syari'at Islam Dan Hukum Internasional Umum*; Basyir, *Ikhtisar Hukum Internasional Islam*.

¹⁶ Aḥmad ibn 'Abd al-Ḥalīm Ibn Taymiyyah, *Majmu' Al-Fatāwa*, vol. 31 (Dar al-Wafa, 1426), 19.

opinion). In an Islamic context, Imam Ibn Mubarak said that *sanad* (chain of narration) is part of the *diin*.¹⁷ Sanad criticism, whether it be concerning the *hadith* of Prophet Muhammad ﷺ, practices of the *salaf al-salih*, or often even sayings of past ‘ulama, has always been among the most important and sophisticated disciplines among the Islamic sciences.

The ‘ulama throughout Islamic history have criticized each other for many things including authenticity of narrations which may, among others, affect legal rulings. The purpose of this is none other than to seek the blessings of Allah by improving academic works throughout the ages. It is only fitting those contemporary scholars should continue this work by ensuring all citations are as authentic as possible.

The second problem concerns the depth and width of scope of *fiqh al-siyar* elaboration. The relation between Islam and modern IHL is its own discourse, requiring in depth examination. The question of Islam and human rights is a never-ending debate with so (or too) many controversies. The scholarship of *fiqh mu‘amalah* has always developed very rapidly, today discussing very recent issues like cryptocurrency or everlasting contemporary issues like Islamic banking. However, there is very few scholarships examining the extent to which the World Trade Organization principles, let alone the detailed agreements, are compatible with Islam. This list can go on.

The voices calling for Islamic law to have a stronger role in the development and construction of a more universal international law did not seem to exist much during Hamidullah’s lifetime. Perhaps a very few may have emerged close to the time of his departure in 2002, but it has increased exponentially in the recent decade. The demand is there and this book, as said earlier, is an important steppingstone. Perhaps future scholars could develop Islamic international law either by making an expanded commentary (*sharh*) of this book or basing future books on its model.

With the Muslim Conduct of State (and other works), Muhammad Hamidullah *rahimahullah* has passed on his baton. It is imperative that today’s scholars continue the race.

¹⁷ Muslim ibn al-Ḥajjāj Al-Naysābūrī, *Sahih Muslim*, vol. 1 (Riyadh: Darussalam, 2007), 55.