

## **Shari‘ah and the Nation-State: The Transformation of Maqasid Al-Shari‘ah Theory**

Prof.Dr.Muhammad Munir Director General Shari‘ah Academy International Islamic  
University Islamabad ([muhammadmunir@iiu.edu.pk](mailto:muhammadmunir@iiu.edu.pk))

### **Abstract**

*This work examines whether the current nation-state system has transformed the obligations of Muslim states regarding the protection of faith which is one of the higher objectives of Islamic law. Plurality of Muslim states was first discussed by the great Shafi‘i jurist Juwaini who is of the opinion that it is possible to have many Muslim states either to avoid strife or when it is not feasible for one ruler to govern people of faraway islands or places. Since all Muslim states are members of the United Nations they are under an obligation to maintain international peace and security as enshrined in the United Nations Charter and to fight to achieve it. Under Islamic law the preservation and defence of faith being the higher objective is mandatory for Muslim states. Thus, Muslim states’ duty to protect faith from external attack is extended to the maintenance of international peace and security under the UN Charter. In other words, the nation-state system has transformed the obligation of Muslim states not only to defend, preserve and maintain faith but also to keep up their obligations under the Charter. On the other hand, relations between Muslim states inter se are based on the principle of reciprocity. The same principle is applicable in relations between Muslim states and non-Muslim states.*

**Key Words:** Caliph, Caliphate, nation-state, shari‘ah, maqasid al-shari‘ah, higher objectives of Islamic law, darurat, hajat, tahsinat, Juwaini, Ghazali.

### **Introduction**

Many Islamist movements in the 20<sup>th</sup> century have been calling for the establishment of global Caliphate under the rule of one Caliph. These Pan-Islamist movements are found in many parts of the world. They however, differ on how to achieve this goal. The advocates of establishing one Caliphate or a super state believe that as a consequence of achieving this noble goal relations between the Muslims and non-Muslim communities have to be hostile; that Muslims are under an obligation to overwhelm the non-Muslims to establish the ideal super state and impose Shari‘ah on non-Muslims. Other advocates of this idea are of the opinion that we have to work for a revolution based on the Prophet’s Muhammad (PBUH)’s time in Makka and once we get the

strength we have to declare a war on all non-Muslims who are against the establishment of 'one Caliph's rule'.<sup>1</sup>

As a matter of fact the mainstream religious scholarship prefers an ideal of peaceful relations with non-Muslims and unity among Muslims to disunity. They are cognizant of the practical and political reality that has existed throughout the Islamic political history, that we have always had different states and empires. The realist school of thought always recognized differences and difficulties in establishing the 'one Caliph's rule' in the world. The idealist school has ideal goals that are not practicable in a world which comprises of more sovereign Muslim states than one. This paper gives a brief introduction of '*maqasid al-Shari'ah*', the higher objectives of Islamic law, theory and discusses the responsibilities of a Muslim state under it; it examines the arguments of the 'idealist school' in support of 'one Caliph's rule'; it discusses whether there is remote possibility of achieving this goal; it considers the arguments of the 'realist school' under the notion of nation-state system of our times; and finally, it focuses on how the higher objectives of Islamic law are affected in the current geo-political situation of the Muslim world. The work focuses on the opinions of selected jurists of Sunni schools of thought as the Shia'id do not agree to the notion of a Caliph. Instead they agree on the concept of *Imamat* or leader for the Muslims.

### **Introduction to *Maqasid al-Shari'ah***

To gauge the importance of the higher objectives of Islamic law or *Maqasid al-Shari'ah* their brief introduction is necessary. The implementation of Shari'ah is driven by "*masalih*" (plural, singular *maslahah*) or benefits of the individual and the community. It is pertinent to explain the term "*maslahah*" (interest). *Maslahah* may be defined as the seeking of benefit and the repelling of harm. For Muslim jurists *maslahah* is the seeking of benefit and the repelling of harm as directed by the Lawgiver. Islamic law is devised in such a way so as to safeguard these benefits and assist advancement and perfection of the conditions of human life on earth. Muslim jurists have classified *masalih* (benefits) into *darurat* or 'necessary interests', *hajat* or 'supporting interests, and *tahsinat* or 'complementary interests'. The necessary interests are five, namely: faith, life, progeny, intellect and property. Islamic law protects and preserves these interests and validates measures taken by the Muslim state for their protection and improvement. *Darurat* or necessary interests are those without the protection of which there would be anarchy and chaos in society. Their collapse would cause the collapse of normal life in society. Islamic law protects each of the above interests in two ways: internally and

externally. For example, *hifz al-din* or the 'protection of faith or religion' is ensured by God through the prescription of '*ibadat* such as the five daily congregatory prayers, fasting, *hajj* and *zakat* for Muslims. To safeguard faith from external attacks, *jihad* has been prescribed. It is an obligation that is activated whenever religion is attacked. It is the duty of the *Imam* or the Muslim head of state to ensure proper conditions for both external and internal protections

Life is preserved through the provision of sustenance and the maintenance of good health, and penalties are imposed on those who destroy it without legal justification. A Muslim state must provide for the maintenance of good health of its public and prescribe rules for the protection of life. Similarly, *hifz al-nasl* or the protection of progeny is promoted through the maintenance of a healthy family life and the institution of marriage, and penalties are provided to those who corrupt it by engaging in adultery, fornication or similar practices.

Thus, the protection of progeny and thereby family life and the institution of marriage, which are meant to produce good children for the continuation of human life on earth, is one of the fundamental purposes of the *Shari'ah*. It is the duty of the Muslim state to protect, preserve, and promote it and take effective measures to safeguard it. *Hifz al-aqal* or the protection of intellect is achieved through the provision of education and salubrious conditions for its growth, whereas penalties are provided for those who consume substances that destroy intellect. This is why drinking alcohol and other intoxicants are prohibited. In the same vein, Islamic law has protected and preserved the right to acquire and hold wealth. As discussed above, the 'protection of person' as well as his 'rights' in Islam come under three objectives of Islamic law: the protection of progeny, life and intellect. If any of these fundamental objectives is undermined, life will become chaotic and the resulting suffering would be for both this world and the Hereafter.

Let us explain how the fundamental objectives of Islamic law, especially regarding child protection and how this is done by the Muslim state and what institutional mechanism and legislation should be in place for safeguarding them. It is the responsibility of every Muslim state to protect and preserve all the objectives of Islamic law. The institutional mechanism to achieve this is done in a three way process: first, for the purpose of our discussion, the state has to focus on the protection of person in Islam and thereby ensure the protection and preservation of life, intellect and progeny – three of the five core objectives of Islamic law. To safeguard and protect life the state has to have institutions of healthcare, and require its citizens through relevant legislation to make sure that their patients are taken to these facilities and complete care is taken of their health issues. Thus, the state has to make stringent

legislation for the health care of children and other persons and spend on the healthcare to meet the requirements imposed on it by Islamic law. On the other hand the state has to penalize anyone who neglects healthcare. The state must also penalize anyone who either destroys or injure or harm a person. This necessitates the promulgation of offences against the person such as murder, homicide, wounding and so on. Secondly, in order to ensure the protection and preservation of intellect, the Muslim state has to provide through legislation the provision of compulsory education to the level of basic education and then facilitate those who want to study further. However, the state should provide institutions of higher education to provide scientists, engineers, doctors, professors, technicians, and all other professionals needed to run the state, otherwise the state cannot function. Thus, legislation for compulsory and free education becomes necessary to achieve this goal. Such legislation may penalize parents who neglect or prevent their children from going to schools. Moreover, all those substances that interfere in intellect such as alcohol, drugs, and all other intoxicants that are prohibited by Islamic law must be enforced by the Muslim state otherwise, this fundamental objective will be lost and society will collapse. Finally, to safeguard and protect progeny the Muslim state has, through legislative mechanism, encourage couples to enter into marriage relationship. The state may have to provide for registration of such marriages; remove any obstacles in legal relationships; provide incentives for people to marry and reproduce children otherwise, if children are not born for a period of time the society will collapse as new workforce and professionals needed to run the Muslim state will vanish. In addition, the state has to make laws to penalize anyone who wants to interfere in the protection and preservation of progeny. This will necessitate the promulgation of laws prohibiting sex outside marriage. The above is a brief framework of *Shar'iah* and the obligations of the Muslim state for the protection and preservation of the fundamental objectives of *Shari'ah*. It is beyond the scope of this paper to discuss in detail how the Muslim state has to safeguard and promote *hajat* or 'supporting interests, and *tahsinat* or 'complementary interests'.

### **One Caliph's Rule and Islam**

Historically the notion of two caliphs in one Muslim state was discussed and rejected upon the death of the Prophet Muhammad (PBUH) when his companions got together at Saqif to choose his successor. Since the Prophet (PBUH) had not mentioned who should succeed him or how his successor be chosen his companions agreed after prolong discussion that Abu Bakr be the first Caliph. The differences of opinions and the subsequent battles between 'Ali b. Abi Talib and Amir Mu'awiya are well



known in Islamic political history. However, it is the downfall of the Ummiyad that resulted in establishing the 'Abbasid dynasty's rule in Baghdad. Although, the Kawarij (dissenters) as well as the Shi'aid were very much there they could do little to topple the 'Abbasids. It is pertinent to note that the Muslim governor of Muslim Spain<sup>2</sup> declared independence after the downfall of the Umayyad rule.<sup>3</sup> The Muslim rule in Spain co-existed alongside the 'Abbasid rule in the rest of the Muslim world for many centuries.

On the other hand the Salateen rulers of Delhi and other early rulers of India considered themselves as the vassals of the Caliphs in Baghdad. Nasiruddin Muhammad Humayun (d. 1556 A.D.) declared himself as an independent King of India when he was restored to power after defeating his rival in 1555 C.E.<sup>4</sup> Thus, in practice the then India was ruled by an independent ruler who did not pledge allegiance to the Muslim Caliph.<sup>5</sup> As a matter of fact many small independent Muslim states existed alongside the Caliphate throughout history. When the British withdrew from the subcontinent around 500 independent states and territories existed in what are now India, Pakistan and Bangladesh. The State of Amb, Dir, Swat, Chitral, Qalat, Haiderabad Daccan, Junagarh and Kashmir were some of the examples of independent states within the then British India.

The Prophet (PBUH) is reported to have said, "Whoever comes to you, and you are united under one man, and seeks to cause political dissention and separate your community (*jama'ah*), fight him." According to Imam Nawawi of the Shafi'i school of thought, this *hadith* refers to those who rebel against the leader.<sup>6</sup> According to the Shafi'i jurist Abu'l-Hasan 'Ali b. Muhammad b. Habib Al-Mawardi (d. 450 A.H./1058 C.E.), "If two Imamate are established in two countries none of the two is valid as it is not permitted for there to be two imams at one time, even though one group, who are an exception, do permit it."<sup>7</sup> Mawardi argues that the *fuqaha* differed on which one of the two will be the Imam. He mentions that according to one group of *fuqaha*, the one whose Imamate was established in the country in which his predecessor died as people there are more entitled to confirming the Imamate. Another group of jurists are of the opinion that each of the two should reject the imamate for himself and offer it to the other to prevent discord and strife: "in this way the people responsible for arranging contract of Imamate may elect one of them or someone other than these two. Others say that lots should be drawn...".<sup>8</sup> Mawardi's opinion regarding this matter is that "the Imamate belongs to the one who first received the oath of allegiance and the contractual agreement."<sup>9</sup> Mawardi argues that "this resembles the case in which two guardians marrying off a woman for it two of them marry her off the marriage is

only actually contracted by the first of the two.”<sup>10</sup> He argues that if both of them received allegiance at the same time, “then both contracts of Imamate are annulled and the contract is renewed with one of them or with someone other than these two.”<sup>11</sup>

The great Shafi‘i Imam and jurist Juwaini known as Imam al-Haramayn (d. 478 A.H.) has discussed the issue of appointing leader for the Muslims and opines that Muslims must appoint one leader and that the appointment of one leader is the ideal situation as he would keep Muslims united.<sup>12</sup> He argues that in case of a dispute regarding the leadership if the aspirants fight it will lead to destruction which will be the worst situation, “so, it is permissible to appoint two leaders (*Imamayn*) [for the Muslims within one state] to put an end to evilness (*fasad*).”<sup>13</sup> He opines that when “two leaders (*Imamayn*) are appointed so that the orders of each one of them will be implemented in the country, it will lead to infighting and dispute.”<sup>14</sup>

He argues that if it is not possible to appoint an Imam because one part of the state is separated from the rest or one Imam cannot govern the whole state because of its enormous size or because a non-Muslim state is situated between the main Muslim state and the rest of the state “and it became difficult to appoint a single Imam to keep the country and the subjects united, then it is permissible to appoint one leader (*Imam*) for one part of the [Muslim] state according to the needs and appoint another leader (*Imam*) for the other part of [the] state; if there is no agreement on the appointment of anyone of them... so as a matter of principle, one of them is not the [rightful] Imam because Imam is the one on whom all the Muslims agree.”<sup>15</sup>

Juwaini goes on to state his personal opinion in the matter when he asserts that “I am not against the appointment of two Imams if it is unavoidable and the enforcement of their decisions according to Shari‘ah. And this however, be considered as an interregnum without an overall Imam [for the Muslim].”<sup>16</sup> Moreover, “if the two [Imam] agree to appoint an Imam over them, it is a right for.”<sup>17</sup> Thus, for Juwaini it is better to have two leaders in order to avoid ‘*fitna*’ (evilness). Juwaini substantiates the possibility of more than one Imam by saying that if it became difficult for a single Imam to govern the state because the state is extended and Islamic order is established in far away places or distant islands or if there is a non-Muslim state between the main Muslim state and a part of it. In all such cases the Muslim population of such a far away region may choose their own leader (Imam).<sup>18</sup> Juwaini mentions that this is also the view of his teachers Abul Hasan and Abu Ishaq al-Isfirayni and others.<sup>19</sup> The crux of what Juwaini is saying may be summarized as follows:

First, it is preferable to appoint a single leader for Muslims but in case of disagreement to appoint one Caliph for the entire Muslim state it is allowed to have two leaders (Imams) for the Muslim. Secondly, that the main Caliph should not object to the appointment of leaders by local Muslims in case he (the Caliph) is unable to govern them for their geographical location and strategic situation. Thirdly, it is allowed if the two leaders agree on the authority of an Imam over them. Fourthly, it is permitted to divide a big Muslim state for administrative purposes so that the leaders would be able to easily manage and rule the different regions. Finally, Muslims should always have a leader or leaders whatever the circumstances.

There is a saying of the Prophet (PBUH) in which he is reported to have said: "Whoever left obedience to the Imam and separated from the community and then died, then his is a death of pagan in ignorance." But what is the meaning of the phrase 'left obedience to the Imam ...'? Muhammad b. Isma'el al-San'ani (d. 1186 A.H.), while commenting on this *hadith* mentions that "'left obedience ...' means obedience to the Caliph with whom there is agreement. And the implication here is that the Caliph referred to here is that of a particular region because the people have never agreed on a single Caliph in all the lands of Islam since the time of the 'Abbasid State. Rather the people of every region were independent with someone over their affairs.'"<sup>20</sup>

According to Imam Shawkani (d. 1250 A.H./1834 C.E.), "As for when Islam spread and its territories expanded and its regions became distant [from each other], then it is known that in all of these regions loyalty was given to an Imam or Sultan... So there is no harm in the multiplicity of Imams and Sultans and it is obligatory for those people in whose land his orders and prohibitions become effective to give obedience to him after having giving pledge of allegiance (*bay'ah*) to him. It is the same for the people of all the other regions."<sup>21</sup>

Is Caliphate a Central Aspect of Faith?

Making Caliphate a central aspect of faith and treating those who do not agree with this notion as infidels or rejecting any kind of political leadership is an extreme opinion. Abu Hamid Mohammad Al-Ghazali (d. 1111 A.D) has explained it in this way:

"Know, however that error regarding the status of the Caliphate, whether or not establishing this office is a (communal) obligation, who qualifies for it, and related matters, cannot serve as grounds for condemning people as unbelievers. Indeed Ibn al-Kaysan<sup>22</sup> denied that there was any religious obligation to have a

Caliphate at all; but this does not mean he must be branded an Unbeliever. Nor do we pay any attention to those who exaggerate the matter of Imamate and equate recognition of the Imam with faith in God and his messenger. Nor do we pay any attention to those people who oppose these people and brand them Unbelievers simply on the basis of their doctrine on the Imamate. Both of these positions are extreme. For neither of the doctrines in question entails any claim that the Prophet perpetrated lies.”<sup>23</sup>

### **The Nation State System and Globalization**

What is a nation-state? The terms nation, state, country and nation-state are used to refer to political, economic social and cultural actors in the international system. The “modern nation-state refers to a single or multiple nationalities joined together in a formal political union.”<sup>24</sup> The nation-state determines an official language or languages, a legal system, a single currency system, uses bureaucracy to run the affairs of the state and society, and fosters loyalties to abstract entities like “Pakistan” and “Indonesia,” and so on. Nation-state has been the mainstay of international system since the Peace of Westphalia 1648. It has remained relatively stable despite the fact that it has witnessed the rise and fall of empires, wars, economic turmoil, and political chaos. Nation-state had been responsible for neo-colonialism and imperial legitimacy by invoking political sovereignty. However, the core foundations of the nation-state are challenged by the emergence of globalization. Globalization has had an enormous impact upon the way nations interact, communicate, govern, and negotiate with each other. These impacts are both positive and negative.

The technological advancements due to globalization has improved commerce through increased FDI (Foreign Direct Investment) in economically challenged nations, targeted infrastructure development, advanced literacy, inspired democratic movements via social networks, and created emerging middle class in rising powerhouses such as India and China. These are the positive effects of globalization.

The negative attributes of globalization are that it has pulled and tugged at the local, social, and economical moral fabrics of a nation-state which in turn causes unrest, financial meltdown, poverty, hunger, dissension, and interstate wars between ethnic, tribal, and religious groups due to the inability of the current structure of the nation-state to effectively harness its destructive elements. Globalization has challenged the political validity of the nation-state. The new political construct of

national sovereignty recognizes the importance of the nation-state and stability of international order.

### Transformation of *Maqasid al-Shari'ah* and the Nation-state

How did the plurality of Muslim states transform the theory of *maqasid al-Shari'ah*? There are 57 independent Muslim states today and all of them have committed themselves to the Charter of the United Nations. The Charter governs, *inter alia* the rules governing the resort to war in its chapter seven. Under Article 2(1) of the Charter the UN is based on the sovereign equality of all Member states. Thus a Muslim state is not given more privileges over any non-Muslim state. Under Article 2(4) of the Charter "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." All Muslim states are members of the United Nations and are bound by the same obligation. More importantly, the Charter prohibits threat to international peace, breaches of international peace and acts of aggression against any Member of the UN.<sup>25</sup> However, the use of force is allowed under Article 42 of the Charter if authorized by the Security Council<sup>26</sup> and in self-defence under Article 51.

Under Article 43(1) of the Charter "All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security." Thus maintaining of international peace and security is responsibility of all Member states including all Muslim states. They have to provide "armed forces, assistance, and facilities" necessary to achieve this end. As mentioned above, under the theory of '*maqasid al-shari'ah*' it was the duty of the Imam to defend faith (religion) against external aggression. However, under Article 43(1) head of any Muslim state, if requested by the Security Council, has to provide armed forces and other assistance needed to maintain international peace and security. This has transformed the obligation of the Muslim states to defend not only Islamic faith but also international peace and security. The mainstream Muslim scholars have accepted this transformation.

On the other hand under Islamic law the Imam has to defend religion against external attack to protect and preserve faith. This right is kept intact by Article 51 of the Charter. Under the strict interpretation of Islamic law the right to resort to war is available in case of actual attack



from the enemy but Article 51 has given the possibility of pre-emptive attack as well. Article 51 states that:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

The right of pre-emptive attack, if accepted to be available under Article 51 is also a transformation of the obligation to defend Islamic faith if attacked. The most difficult situation for the Muslim state is when it is attacked by another Muslim state. This is totally different when rebels take on the central government of a Muslim state.

On the other hand all Muslim states have ratified the four Geneva Conventions regarding the conduct of war.<sup>27</sup> The Geneva Conventions are regarding the conduct of war in general and about the rights of combatants and non-combatants. These conventions fully endorse the Islamic *jus in bello*. International humanitarian law (IHL) makes distinction between combatants and non-combatants. It allows targeting the former and sparing the later. Islamic law has the same principle which IHL has endorsed many centuries later.<sup>28</sup> Thus, non-combatants are protected in war and shall not be targeted during military operations. Here there is no transformation in the theory of *maqasid*.

Under Islamic law relations between Muslim states and non-Muslim states and Muslim states *inter se* are based on the principle of reciprocity. This principle is based on the *Qur'an*, the *Sunnah* of the Prophet Muhammad (PBUH) and *Siyar* (the conduct of the Prophet and his successors in their dealings with the non-Muslims). The *Qur'an* says, “*So long as they remain true to you, be true to them.*”<sup>29</sup> This is exactly about bi-lateral relations. The same is true about hostile as well as peaceful relations. Thus, if the enemy attacks the Muslim state, they (Muslim) are under an obligation to fight.<sup>30</sup> Similarly, if the enemy wants peace Muslims have to agree to peace. Imam Muhammad ibn Hassan al-Shaybani (d. 189 A.H.) and Imam Sarakhsi while explaining this principle assert that “*(li anna al-amra bainana wa bainahum mabniun ‘ala al-muajazat)* because relations between us [Muslims] and

non-Muslims are based on reciprocity.”<sup>31</sup> Businessmen from *ahl al-harb* were charged exactly the same annual tax as Muslim businessmen were charged by the government of *ahl al-harb*. Sarkhasi mentions this ruling and the principle of reciprocity.<sup>32</sup> The transformation here is that relations between Muslim states are based on the same principle of reciprocity. This was unthinkable in early Islam. Muslim states enter into treaty relations with each other just like Muslim and non-Muslim states enter into treaty relations. All states, including Muslim states have signed hundreds of trade, business, investment, and communication treaties. The principle of reciprocity applies to relations between all states, including relations between Muslim states.

Since Muslim states are members of the international community they have recognized each other just like they have recognized non-Muslim states. This is another application of the principle of reciprocity between Muslim states inter se. This is would be the practical implication of what is said above by Juwaini.

The independent Muslim states have entered into treaty relations regarding trade, commerce, communication, aviation, immigration, and so on. This has far reaching implications. These agreements are signed by Muslim states because they are beneficial for the citizens of these states. Thus, what used to be done by one Muslim state is done by all Muslim state. Muslim states being cognizant of the prevailing situation that there cannot be a single Muslim state with only one head of state have founded their own organization, i.e. the Organization of Islamic Cooperation (OIC)<sup>33</sup> and the Charter of the OIC has largely borrowed from the Charter of the United Nations. The OIC Charter states in its preamble that the Organization “be guided by the noble Islamic values of unity and fraternity, and affirming the essentiality of promoting and consolidating the unity and solidarity among the Member States in securing their common interests at the international arena.” In addition, the preamble states that the Member States are determined: ... “to respect, safeguard and defend the national sovereignty, independence and territorial integrity of all Member States; and to contribute to international peace and security, understanding and dialogue among civilization, cultures and religions and promote and encourage friendly relations and good neighbourliness, mutual respect and cooperation.”<sup>34</sup> Although most of the objectives are lofty goals nonetheless they are entirely based on the principles of international law.

## Conclusion

Since it is legal under Islamic law to have multiple Muslim states with their own Imams to be chosen by the Muslims of those places consequently the Imams of all these Muslim states are under an obligation to protect and preserve the fundamental objectives of Islamic law. Thus, the Imams have to provide for the protection and preservation of faith, life, progeny, intellect and property. All Muslim states have to take measures for the protection and improvement of these objectives. Similarly these states have to strive for *hajat* or 'supporting interests, and *tahsinat* or 'complementary interests' as well. All these states are individually responsible for doing this. The major transformation in the objectives of *Shari'ah* is the obligation of all the Muslim States to defend international peace and security if requested so by the UN Security Council. Under the theory of *Maqasid al-Shari'ah* the Muslim state was under an obligation to defend faith against external attacks.

## References & Notes

- <sup>1</sup> In Pakistan Tanzeem e-Islami founded by Dr Israr Ahmad is working on this model since 1971. See, their website at <http://www.tanzeem.org/> (last visited 08-11-2014).
- <sup>2</sup> For how Muslim conquered Spain, see, Nazeer Ahmad, "The Conquest of Spain", in *Encyclopedia of Islam*, available at <http://historyofislam.com/contents/the-age-of-faith/the-conquest-of-spain/> (last accessed 26-10-2014).
- <sup>3</sup> Muslim rule in Spain was a succession of different rules and not a single period. The Dependant period lasted from 711-756; the Independent period (756-929); the Caliphate period (929-1031); the Almoravid period (1031-1130); and decline (1130-1492). See, "Muslim Spain", available at [http://www.bbc.co.uk /religion/religions/islam/history/spain\\_1.shtml](http://www.bbc.co.uk /religion/religions/islam/history/spain_1.shtml) (last accessed 26-10-2014).
- <sup>4</sup> See, "The Muslim Period in Indian History", available at [http://www.gatewayforindia.com/history/muslim\\_history.htm#Return of Humayun](http://www.gatewayforindia.com/history/muslim_history.htm#Return of Humayun) (last accessed 26-10-2014).
- <sup>5</sup> At the time of the death of Humayun the Ottoman Caliph Sulyman I Qanuni was ruling. See, "List of Rulers of the Islamic World", available at < [http://www.metmuseum.org/toah/hd/isru/hd\\_isru.htm](http://www.metmuseum.org/toah/hd/isru/hd_isru.htm)> (last accessed 26-10-2014).
- <sup>6</sup> Nawawi, *Al-Minhaj bi Sharh Sahih Muslim bib al-Hajjaj* (Beirut: Dar al-Ma'rifah, n.d.)444.
- <sup>7</sup> Abu'l-Hasan 'Ali b. Muhammad b. Habib Al-Mawardi, *Al-Ahkam as-Sultaniyyah wa'l-Wilayat al-Diniyyah*, trans. Asadullah Yate (London: Ta-Ha Publishers, n.d.), 16.
- <sup>8</sup> Ibid., pp. 16-17.
- <sup>9</sup> Ibid., p. 17.

- <sup>10</sup> Ibid.
- <sup>11</sup> Ibid.
- <sup>12</sup> Abdul Malik b. 'Abdullah al-Juwaini, *Giyath al-Umum fi al-Tiyath al-Zulm*, ed., Mustafa Hilmi & Fu'ad 'Abdul Mun'im (Iskandariyah: Dar al-Da'wah, 1400 A.H.), pp. 126-127. His nickname was Imam al-Haramayn because he has been leading prayers at the two grand mosques of Masjid al-Haram at Makka and Masjid al-Nabawi at Madina at different times of his life. See, Juwaini, *Giyath*, p. 11.
- <sup>13</sup> Ibid., p. 127.
- <sup>14</sup> Ibid., p. 128.
- <sup>15</sup> Ibid., p. 130.
- <sup>16</sup> Ibid., p. 130.
- <sup>17</sup> Ibid., p. 130.
- <sup>18</sup> Ibid., p. 128.
- <sup>19</sup> Ibid., p. 128.
- <sup>20</sup> Muhammad b. Isma'el al-San'ani, *Subul al-Salam sharh Bulug al-Maram* P3:499
- <sup>21</sup> Shawkani, *Al-Sayl al-Jarrar*, vol. 4, p. 512.
- <sup>22</sup> Abu Bakr 'Abdur Rahman Ibn Kaysan al-Asamm (d. 200-1/816-818), a famous Mu'tazilite theologian, exegete, and jurist. See, al-Murtada, *Tabaqat al-Mu'tazila*, 56-7. See also, Al-Baghdadi, *Usul al-din*, 271 where he confirms that al-Asamm's rejection of the obligation to establish a Caliphate. "Al-Asamm claimed that were the people to desist from wrongdoing each other, they would be freed of any need for a Caliph (Imam)."
- <sup>23</sup> Abu Hamid Al-Ghazali, *Faysal al-Tafriqa Bayna al-Islam wa al-Zandaqa*, (On the Boundaries of Theological Tolerance in Islam), tran., Sherman A. Jackson (Karachi: Oxford University Press, 2002), 113.
- <sup>24</sup> See, definition of nation-state available at <http://www.towson.edu/polsci/ppp/sp97/realism/whatisns.htm> (last accessed 18-10-2014).
- <sup>25</sup> See Articles 39-50 of the United Nations Charter.
- <sup>26</sup> Subject to the procedure laid down in Articles 39-43 of the Charter.
- <sup>27</sup> The four Geneva Conventions are: 1. Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; 2. Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; 3. Convention relative to the Treatment of Prisoners of War; and 4. Convention relative to the Protection of Civilian Persons in Time of War. All of them were signed in Geneva on 12 August 1949.
- <sup>28</sup> See, this author's, "The Protection of Civilians in War: Non-Combatant Immunity in Islamic Law", *Hamdard Islamicus*, vol. XXXIV, no. 4, (October-December, 2011), pp. 7-39.
- <sup>29</sup> 9:7
- <sup>30</sup> 2:190
- <sup>31</sup> M. Ibn Al-Hasan Al-Shaybani, *Kitab al-Siyar Al-kabir*, commentary by Sarakhasi, (Beirut: Dar al-kutub 'Elmiya, 1997), 5:285, 286. Here the context is interesting. Shaybani mentions that a tax collector at the time of 'Umar asked him about how

much tax to charge to businessmen coming from *dar al-harb* – literally the abode of war but technically from outside the territorial jurisdiction of the Muslim State. See, for a very fine discussion of the technical meaning of *dar al-harb* Abu Bakar Al-Sarkhasi, *al-Mabsut*, (Beirut: Dar Ihya Al-Turath al-‘Arabi, 2002), 10: 85-94 and Sayyid Mawdudi, *Sud*, (Urdu), (Lahore: Islamic Publications, 1973), 312-313).

<sup>32</sup> Sarkhasi gives the reason for this ruling and cites the above principle. He further argues that if our own businessmen were not charged any tax, we should not charge any; and if the others side charged us 5% we have to charge them 5%. Similarly “their businessmen should be charged taxes only once every year even if they visited our land several times because they charge our businessmen only once a year; *because relations between us and them are based on reciprocity.*” Shaybani, *Kitab al-Siyar*, 10:85-94.

<sup>33</sup> It was formerly known as the Organization of Islamic Conference.

<sup>34</sup> See, the Charter of the OIC available at  
< <http://www.oic-oci.org/is11/english/Charter-en.pdf> > (last visited 08-11-2014).