

The Evolution of Islamic Law of Nations and the Modern International Order: Universal Peace through Mutuality and Cooperation

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Abstract

As traditionally understood, the Islamic State and the Shari'ah have been seen inimical to contemporary international law, membership in the United Nations Organization, and the Universal Declaration of Human Rights. Hardline advocates of the Shari'ah argue that the institution of nation-state and modern internationalism are hostile to the Islamic polity. The position taken here, however, argues quite the opposite. Through looking at the theory and practice of Islamic Law, it is claimed that the Islamic Law of Nations is evolutionary in character. The participation of Muslim nations in the modern international order is not antagonistic to the principles of Shari'ah. Islamic law can accommodate the modern international order on the basis of cooperation and peaceful coexistence.

The traditional Islamic concept of polity is "Ummah" which is subsumed in the notion of governance, "*Khilāfah*" (Caliphate). Both were used to establish the universal nature of the Islamic world order on the basis that the Shari'ah "is intended to apply universally to all people of every time and place."¹ In interpreting this concept, the classical Islamic jurists divided the world order into two realms, i.e., the realm of Islam (*dār al-Islām*) and the realm of war (*dār al-harb*). While the Shari'ah applied fully within the Islamic realm, the jurists formulated an Islamic law of nations (*al-Siyar*),

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also based on the Shari'ah, to regulate, *inter alia*, the relationship between the Islamic realm and the non-Islamic realm. The traditional dominant perception of that world order was a single Islamic realm under one political authority and in a permanent state of hostility with the non-Islamic realm until the non-Islamic realm was converted into the Islamic realm.²

Today however, the Muslim world is divided into separate independent nations in a world order organized on the basis of equality of nation-states and internationalism. While the independence of nation-states is paramount, it is impossible for the nation-states of the world to be islands unto themselves. They must of necessity interact and share interests. This is the basis of internationalism, an appreciation of the necessity for external relations and the advocacy of a community of interests among nations. Today, the United Nations (UN) is the largest medium of internationalism to which almost all nation-states including every nation of the Muslim world belong.³ According to its charter, the UN is founded, *inter alia*, to be a center for harmonizing the actions of nations in the attainment and promotion of international peace and security, international human rights, international economic and social stability, international developmental cooperation, and international humanitarianism.⁴ Its objective is also "(t)o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."⁵ These objectives are no doubt very laudable and of common interest to every participant in the modern international order.

Despite the participation of Muslim nations in the modern international order, the urge for the establishment of the "true" Islamic State in accordance with the Shari'ah still persists within the Muslim world. Thus, fears have been expressed that the Islamic concepts of State and world order are inherently incompatible with the objectives of the modern international order, especially with the principles of international peace, equality, and friendly relations among nations.⁶ Khadduri and Habachy, two of the early post-UN commentators on Islamic law of nations, argue that "(t)he classical law of Islam recognises no other nation than its own,"⁷ and that the Islamic division of world order into *dār al-Islām* and *dār al-harb* "is opposed to a world organization and to a cooperation of Muslim States in the pursuit of peace and prosperity for all mankind within the framework of the United Nations."⁸ Anderson also expressed the view that the classical doctrine of the Shari'ah is "fundamentally incompatible with contemporary

International Law, with membership in the United Nations Organization or with the Universal Declaration of Human Rights.”⁹ Khadduri thus viewed the entry of Muslim nations into the UN as a significant phenomenon that constitutes a departure from the classical religious ideology of Islam and separation of religious doctrine from the conduct of foreign relations.¹⁰

There are also some Shari’ah advocates who hold the hard-line view that the institution of the nation-state and modern internationalism are in conflict with and in opposition to Islamic world order and, therefore, must be dismantled to facilitate the creation of a unified Islamic State. These views suggest that the needs of modern foreign relations and internationalism can only be fulfilled on the basis of total secularism and that Muslim nations cannot continue to adhere to the Shari’ah or the principles of Islamic law while participating in an international order based on friendly relations among nations.

This article argues to the contrary. The participation of Muslim nations in the modern international order does not constitute or even demand a departure from the Shari’ah or from the norms of the Islamic law of nations as such. It will be established herein that the theory and practice of the Islamic law of nations is evolutionary; it can accommodate and be sustained within the modern international order on the basis of cooperation, friendly relations, and peaceful coexistence among nations.

The thesis advanced herein is two-fold. First, it was not, and is still not, a rigid or unanimous doctrine of Islamic legal theory and political practice that Muslim nations shall maintain permanent or persistent hostile relations with non-Muslim nations. Second, the Muslim world is entitled and has an important role to play in the modern international order through an evolutionary interpretation and injection of the paradigmatic ideals of Islam into the pragmatic policies of the modern international order. The Shari’ah does not oppose the pursuit of peaceful coexistence and cooperation between nations and human beings. It can also be stated that neither the universal concept of Islam nor the principles of Islamic law of nations (*al-siyar*) specifically preclude the existence of other, non-Muslim, nations or international cooperation for the pursuit of security, peace, human rights, development, and the well-being of humanity as a whole. The Shari’ah actually encourages such cooperation on the basis of sincerity, equity, righteousness, and piety.¹¹ The State practice of the Prophet Muhammad during the very first Islamic State in Madinah serves as an important precedent for such cooperation.

The First Islamic State in Madinah

The Muslim Ummah was first recognized as a polity when the Prophet Muhammad and the early Muslims migrated from Makkah to Madinah (then Yathrib) after the thirteenth year of his mission (around 622 C.E.). Before the migration, Madinah was then inhabited by Jewish Arab tribes, some local Muslim converts, and the local pagan tribesmen between whom tribal wars were rampant.¹² After his arrival in Madinah, Muhammad was recognized as the chief administrator of Madinah and a historical document that has come to be known as “the constitution of Madinah” was formulated. This established an era of internal peaceful coexistence between the Muslims, the Jews, and the local tribesmen as members of the first Islamic State.¹³ This was a radical departure from the pre-Islamic, chauvinistic, and warmongering attitude of the traditional Arab society. Although the term “Ummah” was used in the “Constitution of Madinah” to describe the new polity that had emerged, it is correct to refer to this polity as a city-state in the context of modern international law. All the elements of statehood were present. There was a population consisting of Muslims and non-Muslims, which the document referred to as a single (political) Ummah.¹⁴ That political Ummah had a defined territory,¹⁵ a government,¹⁶ and the capacity to enter into relations with other States as depicted by the provisions of the document and as demonstrated in subsequent treaty relations with other States. Commenting on the early Islamic State of Madinah, Hodgson rightly identifies the political structure that the Prophet Muhammad was building as “clearly a state, like the states in the nations round about Arabia, with an increasingly authoritative government, which could no longer be ignored with impunity.”¹⁷ A formal recognition of the Islamic State of Madinah and the political leadership of the Prophet Muhammad was demonstrated later by the political authorities of Makkah and the other nations in Arabia through entering into different treaties of cooperation and peace with the Islamic State.¹⁸

This early precedent established by the Prophet in Madinah serves as an important reference point for the Islamic State practice of promoting internal peaceful coexistence and human rights ideals. The enactment of the “Constitution of Madinah” by the Prophet during the very beginnings of the nascent Islamic State in Madinah demonstrates constitutionalism, a positive step toward a specific identification of the rights and duties of the people, and a basis for peaceful coexistence. The document clearly defines certain basic rights and duties of the members of the community and some funda-

mental principles of State that can be easily referred to by all members of the community. Al-Ghunaimi points out the importance of such a document in ensuring the specific guarantee of rights of every member of the community by referring to the statement of Abu Bakr (the subsequent first Caliph after the Prophet) to Finhas, a Jewish Arab of the Banu Qaynuqa' during a quarrel. Abu Bakr is reported to have said to Finhas in anger that "if it were not for the charter (i.e., the Constitution of Madinah) between us and you, I would have cut off your head." Also, on the basis of the violation of the provisions of the document some of the Jewish tribes were expelled from Madinah on grounds of acts that were by modern standards comparable to crimes of treason.¹⁹

The promotion of external peaceful coexistence with other nations was also demonstrated by the Prophet Muhammad at Hudaibiyyah in 629 C.E. when the political authority of Makkah prevented the Muslims from entering Makkah to perform the pilgrimage, despite the fact that the Prophet himself and many of the Muslims with him were Makkans by birth. On this occasion the patience of the Muslims was greatly tested. They were inclined to war but the Prophet preferred peace. The famous Treaty of Hudaibiyyah was agreed to and signed by the leaders of Makkah and the Prophet Muhammad as the leader of the Islamic State. Indications lead to the reasonable conclusion that the political authority of Makkah on this occasion considered Muhammad to be a political rather than a religious personality. In this treaty the Prophet was referred to as "Muhammad the son of Abdullah." The Makkani representative to the treaty, Suhail ibn Amr, objected to the insistence of 'Umar ibn al-Khaṭṭāb (the subsequent second caliph after the Prophet) that the Prophet should be referred to in the treaty as "Muhammad the Prophet of God." Suhail argued that if they (the Makkans) had recognized Muhammad as a prophet they would not have been against him *ab initio*. Thus the Prophet agreed to the former designation insisted upon by the Makkans. An agreement of peaceful coexistence was signed for a period of ten years, unprecedented in the pre-Islamic, war-mongering tradition of the Arabs. Breaching of this treaty by the Makkans led to the bloodless and revenge-free conquest of Makkah by the Muslims a year later in 630 C.E.

Historical sources indicate that despite the contemporary custom of waging wars, the Prophet developed a policy of maintaining peace alliances with non-Muslim Arab tribes, with Christian and Jewish communities around Madinah, and with leaders of other foreign nations up to the time of

his death.²⁰ From this foundation, the Ummah evolved into an empire that extended beyond Arabia. While the Ummah maintained its Islamic identity, it was not isolated from the sociopolitical conditions that surrounded it. As a polity, the Ummah witnessed periods of peace and war. It experienced internal and external crises. Eventually, it went through a period of subjugation and colonization that led to the abolition of the Caliphate and the emergence of independent nations under the institution of the modern nation-state.²¹ We shall now examine the status of the modern Muslim nation and its relationship to non-Muslim nations within the framework of Islamic legal theory.

Status of Modern Muslim Nations

The Muslim world reemerged after colonization divided it into independent nation-states steeped in nationalism and devoid of the Islamic community cohesion that defined itself as the Ummah under the Caliphate system. This has been confronted, for over half a century, with calls for a return to a unified Islamic Ummah under a single political authority. For example, in 1950, Khaliquzzaman, a leader of the then Pakistan Movement, stated that “if the Muslims started recognizing Pakistan, Egypt, Saudi Arabia, Syria, Iraq, Iran, Turkey, or Afghanistan, which are Muslim states, as Islamic states, they would be guilty of dividing the Muslim polity for all time to come.”²²

Also, in 1985, the Muslim Institute Conference claimed that “[the] major goal of the Ummah in the next phase of history is to abolish and dismantle the nation-states that now govern the Muslim areas of the world and to create a unified *dār al-Islām*.”²³

Based on these statements Ann Mayer concluded that “the nation-state ... has never been definitely reconciled with Islamic theory, which in its traditional formulation recognized only the Umma, or community of believers. There have been Muslims who, despite the entrenched character of the system of nation-states in the modern world, still adhered to the traditional opinion that any political subdivisions of the Islamic Umma were inimical to Islam. Others have accepted these divisions or tolerated them on the assumption that they are a temporary phenomenon.”²⁴

A reexamination of the history of the Ummah will, however, reveal that the political subdivision of the Islamic polity is not an entirely new or a postmodern phenomenon. After the death of the Prophet, the era of the Islamic Caliphate began. Upon the appointment of Abu Bakr as successor

to the Prophet (*Khalifat al-Rasul*), it became an institution with centralized authority in Madinah. The political order was sustained as a monist institution for the first thirty years or so, during the rule of the first four Caliphs. As early as the mid-eighth century, the center could no longer hold sole authority over the Ummah. Due to the expansion of the Islamic empire and internal political turmoil, the Caliphate split into two with one center of political authority in Baghdad and another in Cordova.²⁵ Thus arose the question of the legality of a decentralized political authority within the Ummah, and the counter-question of whether it was realistic to insist on the continuance of the Islamic State under a single political authority in these circumstances.

Two opinions were generated. One school of thought insisted on the monist conception of the Caliphate with a centralized authority. Another school of thought, which highlighted the expansion of the Islamic Ummah and the difficulty of exercising political control over the large and diverse territory of its realm, supported political decentralization and recognized the possibility of having more than a single political authority. Political and administrative realities shifted the balance of juristic opinion in favor of the second school of thought. By the early ninth century, separate dynasties had further emerged in Khurasan and Transoxania; by the late eleventh century, there existed many independent kingdoms within the Ummah, such as the Idrisi dynasty in Morocco, the Aghlabid dynasty in Tunisia, the Fatimid dynasty in Egypt, the Hamadanid dynasty in Syria, the Salinku dynasty in Anatolia, and the Safavid dynasty in Persia and Sicily in the Mediterranean. By the sixteenth century the Ummah was fully decentralized into separate Muslim political entities.²⁶ During his own time (the fourteenth century), Ibn Taymiyyah observed that although the caliphate was a single political entity at the time of the early ancestors, "it had become fragmented during the course of time into a number of independent states." Thus he concluded that it was not obligatory to insist on a single political authority within the Islamic polity.²⁷ Thus the Caliphate had already been subdivided into smaller semi-independent or independent kingdoms before the era of colonization in the Muslim world. Therefore, before the era of colonization, the Ummah consisted of what could be territorially described as a group of nations that were, in the words of Bedjaoui, "organized in accordance with the model of a community" under Islamic law.²⁸ It must be noted, however, that although the center was often very weak, sometimes with more than one province claiming central authority, there was a strong Islamic com-

munity attachment between the different political divisions within the Caliphate. During the period of colonization that community attachment became weaker and weaker until eventually, in 1924, the Turkish Grand National Assembly abolished the institution of Caliphate, thus paving the way for the domination of nationalism in the Muslim world and the establishment of the modern institution of State power that dealt the final blow to Islamic community affiliation.

Although the difficulty of insisting on a single political authority within the Islamic polity was appreciated quite early in the history of the Islamic State, the Qur'anic passage: "Certainly this community of yours is a single community, and I am your Lord, so worship me" (23:52) is often cited as evidence for the will within the Muslim world to reestablish a monist Islamic State under a single political authority. Compared with the difficulties of those early times, the political realities of today's world and the geographical spread of the modern Muslim nations make it even more difficult to think of the Islamic State in a monist perspective under one political authority.²⁹ More realistically, the Islamic State may be thought of as a "community of Muslim nations" unified ideologically by the common heritage and culture of Islam under the Shari'ah. The contemporary Islamic thinker Isma'il al-Faruqi had also considered it more realistic to conceive the Islamic polity, or the Caliphate theory of today's Ummah, in the form of a "macro-Islamic state" consisting of several "micro-Islamic states" or Muslim nations.³⁰ Viewed in this perspective, the independent modern Muslim nations are sustainable within both Islamic legal theory and political practice. The desire to reestablish a unified Islamic realm, therefore, does not necessarily require the difficult demand of physically dismantling the present modern nation-states of the Muslim world. The most important need and more feasible approach is the reestablishment of the community affiliation among modern Muslim nations, in the words of Khaliqzaman, "not for aggression, not for exploitation, but to discharge the (collective) duty which has been cast on them by the Divine Will."³¹ This includes the duty of humanitarianism, cooperation for the guarantee of international justice, peace, security, and welfare for all human beings against the misuse of individual State power in the Muslim world.³² The gateway to this is the establishment of a central authority in the Muslim world for the achievement and promotion of these ideals and for ensuring the correct relationship between Muslim and non-Muslim nations within the modern international order.³³ This brings us to examine what relationship under Islamic political

and legal theory can be said to exist, or should exist, today between Muslim and non-Muslim nations. Defining this relationship is an important element in the requisite international cooperation for the achievement of international justice, development, peace, security, and international humanitarianism.

Islamic Concepts of “Dar al-Islam” and “Dar al-Harb” and Modern Internationalism

As earlier indicated, many scholars of the Islamic law of nations address the concepts of *dār al-Islām* and *dār al-harb* from the perspective of permanent hostilities between the Islamic and non-Islamic realms. That view, though dominant, is not unanimous and has been challenged by scholars on the subject. It has been weakened in both theory and practice. Relying on the opinions of some classical jurists, many contemporary scholars disagree that Islamic law specifically prescribes a permanent state of animosity between the Islamic and non-Islamic realms.³⁴ The first school of thought (i.e., the “hostility school”) interprets jihad warfare as an offensive war while the second school of thought (i.e., the “nonhostility school”) interprets it as a defensive war.³⁵ We shall examine the two views in perspective.

Traditional “Hostility” View

Advocates of this view paint a picture of perpetual hostility between Muslim and non-Muslim nations. They maintain that any period of peace between the two realms is temporary. This view translates the participation of Muslim nations in the present international order, their membership in the UN and their covenant of peace with all other nations of the world under the UN charter, into a temporary relationship of peace. For example Khadduri, relying strictly on the opinion of the Shāfiʿī school, observes that Islamic law only allows for a peace treaty concluded between Muslims and non-Muslims for a period not exceeding ten years.³⁶ Notably, the stated opinion of the Shāfiʿī school is not a unanimous opinion among Islamic jurists; there are other authoritative legal opinions on the matter.

Both the Hanbali jurist Ibn Qudamah and the Maliki jurist Ibn Rushd explain that there are other flexible opinions on this issue, such as that of Imam Abu Hanifah, to the effect that there can be peace treaties for unlimited periods between *dār al-Islām* and *dār al-harb* depending on the wel-

fare (*maṣlahah*) of the Islamic State.³⁷ Ibn Qudamah quotes Imam Abu Hanifah to indicate that the *maṣlahah* of the Ummah can be served better in peace than in war.³⁸ The inclination for peace finds support in the Qur'anic injunction that states: "If they incline to peace, then you also incline to it and put your trust in Allah" (8:61).³⁹ Even in domestic affairs the Qur'an says: "Making peace is better" (4:128). Thus the principle of *al-sulh* or *al-'ahd* (i.e., compromise [for peace] or covenant [of peace]) is usually advanced to impugn the hard-line view of permanent hostility between *dār al-Islām* and *dar al-harb*. In line with this, there is evidence from the practice of Muslim caliphs from as early as the ninth century of signing peace treaties between the Muslim and the non-Muslim realms. This falls within the scope of the Islamic politico-legal principle of *al-siyāṣah al-shar'īyyah* by which the ruling authority has capacity under the Shari'ah to exercise discretion in matters of public law taking into consideration the *maṣlahah* of the Ummah. The Ummayyad caliph al-Hakam is recorded to have concluded a peace treaty of unlimited period with Charlemagne in the year 812 C.E.⁴⁰ For more than four centuries, Muslim nations consistently supported the preference for perpetual peace between Muslim and non-Muslim realms.⁴¹ A significant instance is the peace treaty of Küçük Kaynarca, signed in 1774 between the Ottoman Empire and Tsarist Russia, ending the six-year war between the Islamic and Russian empires. The treaty indicates an intention of ceasing hostilities, not temporarily but permanently, between the two realms. Article I of the treaty states, *inter alia*:

From the present time all the hostilities and enmities which have hitherto prevailed shall cease forever, and all hostile acts and enterprises committed on either side, whether by force of arms or in any other manner, shall be buried in an eternal oblivion without vengeance being taken for them in anyway whatever; but, on the contrary there shall always be a perpetual, constant, and inviolable peace, by sea as well as by land. In like manner there shall be cultivated between the two High Contracting Parties, as well as between the two Empires, their states, territories, subjects, and inhabitants, a sincere union and a perpetual and inviolable friendship, with a careful accomplishment and maintenance of these Articles; so that neither of the two Parties shall, in future, undertake with respect to the other any hostile act or design whatsoever, either secretly or openly.⁴²

A third realm known as *dār al-sulh* or *dār al-'ahd* (realm of compromise or realm of covenant) was actually recognized by some classical Islamic jurists.⁴³ This above treaty was formed when aggressive war was consid-

ered legitimate within the world order, so how much more appropriate is it today when every effort is being made to limit war and promote peaceful coexistence between nations. Today, the UN Charter stands as a multilateral treaty calling on UN member states to abstain from war (except in self-defence) and to maintain perpetual peace between each other.⁴⁴ Thus, even under the traditional “hostility” view, the modern Muslim nations, as UN member states, are considered under a peace treaty of unlimited duration with every other nation that cannot be violated except in self-defence. Accordingly, the non-Muslim nations are considered to have transformed into the *dār al-ṣulh* or *dār al-‘ahd*. This is entirely lawful under the Islamic political-legal principle of *al-siyāsah al-shar‘iyyah*, provided the covenant of peace is mutually respected.

“Nonhostility” View

The nonhostility school proceeds from the perspective that the division of the world order into *dār al-Islām* and *dār al-harb* is not specifically sanctioned in the Qur’an nor demonstrated in the practice of the Prophet. The division is considered to be a later innovation of the Abbasid legists reflecting the realities of those times.⁴⁵

Viewed from the fact that warfare and conquest were a recognized means of acquiring territory until the early years of the twentieth century,⁴⁶ it is reasonable to conclude that the Abbasid division of the world into *dār al-Islām* and *dār al-harb* in Islamic political-legal theory, was an interpretation of the universalization of Islam in the context of the prevailing and universally accepted standards of those times. Had the universalization of Islam been interpreted otherwise then, Islam would have stood the danger of being overrun through warfare by the competing ideologies of the times.⁴⁷ In this sense, the division of the world order into *dār al-Islām* and *dār al-harb* does not necessarily mean a division of the world into friends and foes, but a division denoting territorial demarcation in terms of the war-prone tendencies of the times. It means that *dār al-Islām* was territory in which war was prohibited or impossible between Muslims due to the unifying factor of Islam in that territory. As a consequence of Islamic control, that territory was the realm of peace. Conversely, *dār al-harb*, being outside Islamic control, was territory in which war was possible due to the prevalence of the doctrine of conquest in that territory. Perceived in this way, the concepts of *dār al-Islām* and *dār al-harb* are an attempt to exclude the prevalent warfare of those times from the Islamic realm. In fact, evi-

dence from classical juristic expositions indicate that the Abassid legists were not establishing a principle of permanent hostility between the Islamic and non-Islamic realms as is commonly connoted, but were making a distinction mainly for administrative exigencies. For instance, Hamidullah quotes one of the classical jurists, Al-Dabūsiy, who stated that “the distinguishing factor between the Muslim and non-Muslim territories (the two *dārs*) is the difference of authority and administration.”⁴⁸

On the question of warfare, views are recorded of many early Islamic jurists, as well as established opinions of the schools of Islamic jurisprudence that do not support a permanent state of animosity between the Islamic and non-Islamic realms. Eighth century jurist and traditionalist Sufyān al-Thawrī, and others such as ‘Ibn ‘Umar, ‘Ata’, ‘Amr ibn Dinar, and Ibn Shibrimah hold the opinion that war against non-Muslims is not an obligation except in self-defence.⁴⁹ Khadduri points out that the principle of maintaining a permanent state of hostilities with the non-Islamic realm is not even specifically indicated in al-Shaybāni’s famous *classicus* on Islamic law of nations *Al-Siyar*.⁵⁰ Among the late nineteenth to twentieth century advocates of the doctrine of peaceful coexistence between Muslim and non-Muslim nations, except for defensive purposes, are Muhammad ‘Abduh and Rashīd Rida.⁵¹ Mahmūd Shaltūt also, after analyzing the Qur’anic verses on warfare in his *al-Qur’an wa al-Qitāl* (The Qur’an and Warfare), concludes that there are only three reasons for which the Islamic State may go to war: to counter aggression against it, to protect the religion of Islam, and to defend religious freedom.⁵²

Contemporary Islamic historian al-‘Umari, however, objects to the view that jihad warfare is limited to self-defense purposes. He contends that advocates of this view “are yielding to concepts which dominate the twentieth century, the ideologies that are affected by man’s hatred of war and its evil effects in destroying civilizations, the maiming and killing of people, and the creation of refugees.” He concludes that such advocates are apologetic and “are affected by the emergence of international organizations which are concerned with reconciling the conflicting interests of nations, helping to establish international peace, and replacing wars with negotiations in order to solve international problems.”⁵³ The arguments against the nonaggressive conception of jihad are also often hinged on the contention that it will lead to the oblivion of the Islamic doctrine of jihad altogether, and is thus considered contradicting the Prophet’s Tradition which states that “jihad shall remain valid till the day of resurrection.”⁵⁴ A number of

both Muslim and non-Muslim scholars are often quick to label as apologetic, attempts at evolving alternatives to traditional interpretations of the Islamic law of nations in accordance with evolution in time and modern international political realities.⁵⁵ Such charges amount to scholastic brow-beating, capable of thwarting efforts to evolve Islamic law and thus indirectly keep it from making any contributions to contemporary international legal development. Advocating an Islamic view of nonaggression between Muslim and non-Muslim nations is, in our view, not necessarily apologetic, nor is it an abandonment of the Shari'ah. Rather, in the sense analyzed above, it is a constructive, functional, and pragmatic interpretation of the doctrine of jihad and principles of the Islamic law of nations in accordance with evolution in time and practice, and justifiable within Islamic legal theory. The aim of jihad, as al-'Umarī himself pointed out, is not to force Islamic belief on anyone or to expand territory, but to remove obstacles that prevent the spread of Islam and to establish universal truth and justice. It is well established that whenever that objective can be achieved through peace rather than war, Islam advocates the path of peace.⁵⁶ This does not mean that the Islamic State will go to sleep thereafter, dreaming of perpetual peace and completely forgetting about the possibility of war; a pacifist's world is utopian. Instead of dreaming, the Islamic State will still be ever ready to counter aggression against it or against the religion. In essence, this will still keep the doctrine and principles of jihad valid and perpetually applicable in accordance with the Prophetic tradition earlier cited.

The view of nonhostility does not, therefore, invalidate the concepts of *dār al-Islām* and *dār al-harb* and jihad as established doctrines of the Islamic law of nations. Rather, it argues that those doctrines do not advocate a strict or unanimous principle of aggression or perpetual hostility between Muslim nations and non-Muslim nations. Where there is a sincere intention of peaceful coexistence and nonhostility against Islam from the non-Islamic realm, the principle of peace must prevail over that of war. The Qur'an states:

Allah does not forbid you to deal justly and kindly with those who fight not against you on account of religion nor drive you out of your homes. Verily, Allah loves those who deal with equity. It is only as regards those who fought against you on account of religion, and helped to drive you out, that Allah forbids you to befriend. (60:8–9)

Historical records show that as early as the tenth century, the traditional interpretation of the dialectic *dār al-Islām* and *dār al-harb* began to change in accordance with the realities of the time. The decentralization of political authority in *dār al-Islām* was acknowledged, and the view of a permanent state of hostility with *dār al-harb* was changing. By the sixteenth century, *dār al-Islām* had "accepted the state of peace rather than the state of war as the permanent basis for its relationship with the *dār al-harb*" and the Islamic realm's recognition of the non-Islamic realm on the basis of reciprocal peaceful coexistence had been established.⁵⁷ Thus the twentieth century endeavor to establish an international community, under the auspices of the UN, restricting warfare and promoting internationalism on the basis of peace and cooperation, is not alien to the legal theories and practices of the Islamic law of nations.

Today, the prohibition against the use of force is well established in international law. Advocating universal cooperation and offering a positive Islamic contribution toward the achievement of international peace would better serve humanity than advocating hostility within the international world order. Still, the modern international system needs some restructuring to facilitate a more equitable and cross-civilizational approach to internationalism. This has given rise to the championing of the notion of a new international order devoid of any exclusive predispositions. During the commemoration of the 50th anniversary of the UN (in 1995), most of the statements delivered by the UN member states reflected the need for an accommodation, cooperation, and community within the international order in the next millennium.⁵⁸ In this respect the Muslim nations individually and collectively have important contributions to make for the realization of universal ideals of the envisaged new international order.

Muslim Nations' Community in the Modern International Order

Although the nation-state is strongly entrenched in the modern international order, the Vattelien absolutist concept of statehood has diminished considerably. Humanity is the hallmark of the envisaged new international order whereby nations are encouraged to move closer together to pursue, *inter alia*, new equitable humanitarian, economic, and development goals, aimed at the universal well-being of humanity. While collectivity is an important factor in this respect, the perennial problem of diversity in civilization continues to hinder the achievement of these ideals.⁵⁹ A relatively

easier way of overcoming the problem of diversity is through regional and transnational groupings and arrangements. This proves the inevitability of the community approach as a vehicle to universal cooperation. The community approach is already demonstrated through the different regional and transnational groupings, whereby States cooperate on the basis of their common heritage and historical traditions to achieve international and universal ideals.⁶⁰ Thus, the community approach does not constitute a deviation from the concept of internationalism; rather, it narrows down the diverse cultural differences and difficulties that confront the achievement of universal ideals. The UN Charter accommodates and actually encourages such arrangements.⁶¹ Although the UN Charter speaks of regional arrangements, practice shows that rather than mere geographical proximity, the basis for cooperation includes political, social, cultural, economic, and moral ideals as well as a common heritage. This has been well demonstrated in the area of international human rights, which is one of the major purposes of the UN.

After the adoption of the UN Universal Declaration of Human Rights (UDHR) in 1948, the Council of Europe quickly demonstrated the utility of the community approach through the adoption of a European regional convention as a necessary step toward the collective enforcement of human rights in European nations. An important motivation for this was, as stated in the preamble of the European Convention, that the governments of European countries "are like-minded and have a common heritage of political traditions, (and) ideals," which could promote a collective enforcement of human rights amongst European nations.⁶² Likewise, the common heritage of the American people contributed to the adoption of the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights. Also, the African nations adopted the African Charter on Human and Peoples' Rights in 1982 "(t)aking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights."⁶³

The Islamic culture and civilization transcend geographical boundaries and have always been recognized as creating a very strong bond between the Muslim nations. Hurewitz observes that "all the countries of North Africa and most of those of the Middle East are Arab and view themselves as belonging to a regional community of states. (T)he Arab states, moreover, form part of a bigger yet more deeply fractured Islamic world."⁶⁴

Despite their geographical spread and fracture, the historical and civilizational bond of Islam provides the modern Muslim nations with a sense of commonality. This was what actually held them together in the past as a single community under the Caliphate. Thus, rejuvenating the Islamic community of nations not only fulfils the desire for a unified Muslim Ummah but also affords the utilization of the community approach to realize modern international ideals in the Muslim world. A trend in this direction has been the establishment of the Organization of Islamic Conference (OIC) founded "to consolidate cooperation in the economic, social, cultural scientific and other vital fields of activities" among Muslim nations.⁶⁵ This provides a community framework among the modern Muslim nations within the modern international order.

The Organization of Islamic Conference (OIC)

The charter establishing the OIC entered into force on February 28, 1973. By October 1999, it had a total of fifty-six Muslim nations, all of whom were also members states of the UN.⁶⁶ This includes almost one-third of the membership of the UN, an indication of the importance of the OIC as a platform to reestablish the Islamic community affiliation among Muslim nations, and an opportunity to effectively inject the many laudable Islamic political and legal ideals of justice and equity into the modern international order. The preamble of the OIC Charter declares, *inter alia*, that the member States are:

Convinced that their common belief constitutes a strong factor for rapprochement and solidarity between Islamic people;

Resolved to preserve Islamic spiritual, ethical, social and economic values, which will remain one of the important factors of achieving progress for mankind;

Reaffirming their commitment to the UN charter and fundamental human rights, the purposes and principles of which provide the basis for fruitful cooperation among all people;

Determined to consolidate the bond of prevailing brotherly and spiritual friendship among their people, and to protect their freedom and the common legacy of their civilization founded particularly on the principles of justice, toleration and nondiscrimination;

In their endeavour to increase human well-being, progress and freedom everywhere and resolved to untie their efforts in order to secure

universal peace which ensures security, freedom and justice for their people and all people throughout of the world.⁶⁷

While the member States reaffirm their commitment to the UN Charter in the above preamble, they also resolve therein "to preserve their Islamic spiritual, ethical, social and economic values" which they believe "will remain an important factor of achieving progress for mankind." In essence, this repudiates any suggestion that, by their entry into the UN, the Muslim nations have departed from the Shari'ah or from the norms of Islamic law of nations.⁶⁸ As analyzed earlier above, the evolutionary nature of the Islamic law of nations accommodates and permits international relations that ensures the welfare and humanity of the Muslim Ummah under both the Islamic legal principle of *maṣlahah* and the political doctrine of *al-siyāsah al-Shar'iyyah*.

It is important to note, however, the resentment, pessimism, and fears of subjugation that many Muslims harbor against the present international order under the control of the UN, particularly, because of the nonrepresentation of the Muslim world on the Security Council, which is the highest decision making body of the UN on peace and security matters.⁶⁹ The Muslim nations have three possible options respecting their resentment against the modern international order: pull out of the UN and constitute an alternative superior international order; remain in the UN as mere acquiescing or protesting nations; or remain in the UN and positively assert their Islamic identity through the interpretation of the paradigmatic ideals of Islam into pragmatic international policies that will enhance the present international order. The last option is strongly proposed. The Muslim world needs to transform from nations of protest to nations of power and influence through cooperation, assertiveness, and positive Islamic precepts. In addition, within the present international order, there needs to be sincere mutuality and equity that promotes positive contributions from all participants in the international system. The benefits of such international cooperation are expressed by Ibn Taymiyyah in the introduction of one of his early works, *al-Ḥisbah fī al-Islām* (Public Order in Islam), in which he says:

None of mankind can attain complete welfare, whether in this world or in the next, except by association, cooperation and mutual aid. Their cooperation and mutual aid is for the purpose of acquiring things of benefit to them and their mutual aid is also for the purpose of warding off things injurious to them.⁷⁰

What may be considered as a positive step in this direction is the adoption of a resolution by the UN General Assembly in November 1998, proclaiming the year 2001 as the Year of Dialogue Among Civilizations.⁷¹ The resolution was proposed by President Khatami of the Islamic Republic of Iran in his speech to the UN General Assembly and must have been motivated by the Qur'anic injunction that directs Muslims toward mutuality, even in matters of faith.⁷² The formulation and proposal of such a resolution is an example of the pragmatic interpretation of a Qur'anic norm into a *principle of international relations*.⁷³ The appreciation of such a principle in the modern international order introduces a new paradigm into international relations. It also provides a platform for Muslim nations to interpret the often generalized Islamic political and humanitarian ideals into specific and pragmatic policies for possible adoption into the envisaged new international order. The follow-up of the OIC in this respect is encouraging. In May 1999, the organization adopted a "Declaration on Dialogue among Civilization"⁷⁴ in which it identified the following eight areas needing international dialogue:

1. Responding to the common longing of humanity for faith and ethics;
2. Enhancement of mutual understanding and knowledge about various civilizations;
3. Cooperation and mutual enrichment in various fields of human endeavor and achievement: scientific, technological, cultural, social, political, economic, security;
4. Promotion of the culture of tolerance and respect for diversity;
5. Cooperation to arrest threats to global peace, security and well-being: environmental degradation, conflicts, arms, drugs, and terrorism;
6. Confidence-building at regional and global levels;
7. Promotion and protection of human rights and human responsibility, including the rights of minorities and migrants to maintain their cultural identity and observe their values and traditions; and
8. Promotion and protection of the rights and dignity of women, safeguarding the institution of family, and protection of the vulnerable segments of the human population: the children, the youth and the elderly.⁷⁵

The organization also identified nine critical areas of international relations to which the principle of dialogue among civilizations need be applied, namely:

1. Determination of various actors at the international scene to build a global order based on inclusion, dialogue, mutual understanding and respect

instead of the outdated doctrines of exclusion, rivalry, power politics and selfish pursuits of narrow interests;

2. Nonresort to war and the threat or use of force in international relations, except in self-defence;
3. Global commitment to peaceful settlement of disputes in accordance with principles of justice and international law;
4. The imperative of respect for justice and the rule of law in international relations and rejection of policies of discrimination and double standard;
5. Recognition of the right of peoples under alien domination or foreign occupation to self-determination;
6. The speedy withdrawal of Israel, in accordance with the relevant UN Security Council resolution and international law, from the occupied Palestinian, Syrian and Lebanese territories, in particular al-Quds al-Sharif, and enabling the Palestinians to establish their independent state with its capital al-Quds al-Sharif, which has historically been and should once again become the cradle of dialogue and the epitome of tolerance, inclusion and understanding;
7. Commitment to a world free from all weapons of mass destruction, through global cooperation to eradicate these weapons and prevent their proliferation without any discrimination between states;
8. Eradication of the global menaces of all forms and manifestations of terrorism, organized crime and drug trafficking through serious, comprehensive and nondiscriminatory global cooperation; and
9. Application of the principles of equity, transparency and democratic representation in various global institutions.⁷⁶

In addition to the above, the OIC has declared the intent of its member States to contribute positively to the programs of the UN Year of Dialogue among Civilizations, and will prepare a draft Universal Declaration of Dialogue among Civilizations "to be submitted after consultation with various interested States and international organizations to the 56th Session of the United Nations General Assembly for adoption during the commemoration of the UN Year of Dialogue among Civilizations in 2001."⁷⁷

The UN has also demonstrated the desire to cooperate with the OIC in the search for solutions to global problems. Such cooperation can be traced back to 1975 when the General Assembly adopted a resolution to invite the OIC to participate in the sessions and work of the General Assembly and of its subsidiary organs in the capacity of observer.⁷⁸ From 1982, the General Assembly has also adopted resolutions in cooperation with the OIC and continues to include on its agenda the item titled "Cooperation

between the United Nations and the Organization of the Islamic Conference."⁷⁹

The above endeavors of cooperation and mutuality are fully accommodated within the founding objectives of the OIC without discarding the Islamic religious ideology of its member States. Such cooperation and mutuality are also encouraged by the Shari'ah and the principles of Islamic law on the basis of equity and sincerity. The immediate challenge confronting the Muslim nations, collectively through the OIC and individually as participants in the modern international order, is to interpret the general "Islamic spiritual, ethical, social and economic values" which they hold as "one of the important factors of achieving progress for mankind,"⁸⁰ into specific and pragmatic international policies that will influence and improve the modern international order. On the one hand, this can be achieved through sincerity, cooperation, and mutuality under the adopted principle of dialogue among civilizations. On the other hand, the standard of cooperation, inclusiveness, and mutuality in the new international order would demand a representation of all major civilizations on the Security Council of the UN to ensure equity of arms among civilizations in international decision making. No doubt, such aspiration will form an important part of the dialogue on the part of the Muslim world.

Notes:

1. See D.A. Funk, "Traditional Islamic Jurisprudence: Justifying Islamic Law and Government," *Southern University Law Review* 20 (1993): 213 and 220; and S. Habachy, "Comments of Dr. Saba Habachy," *Proceedings of the American Society of International Law* 53 (1959): 59.

2. See e.g., Ibn Khaldūn, *The Muquaddimah*, trans. F. Rosenthal, vol. 1 (London: Routledge & Kegan Paul, 1958), 473.

3. The UN was founded in 1945. Its Charter was signed on June 26, 1945 and entered into force on October 24, 1945. The UN presently has 188 member States, 56 of which are classifiable as Muslim nations based on their membership in the Organization of Islamic Conference (OIC). The first objective of the OIC charter is "to promote Islamic solidarity among member States." See Article II (A)(1) Charter of the Organization of Islamic Conference, UNTS 914 (1974) 111-116. As amended available at Office of the OIC Permanent Delegate to the UN, Geneva.

4. See generally, Chapter 1 of the UN Charter on the Purposes and Principles of the UN. The UN Charter is reproduced in M.D. Evans (ed.), *Blackstone's International Law Documents*, 3rd ed. (London: Blackstone Press, 1981), 8.

5. *Ibid.*, Art. I(2).

6. See e.g., Moinuddin, *Charter of the Islamic Conference* (Oxford: Clarendon Press, 1987), 3; and M.T. al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach* (The Hague: Martinus Nijhoff, 1968), 222-223.

7. M. Khadduri, "The Islamic System: Its Competition and Co-existence with Western Systems," *Proceedings of the American Society of International Law* (1959): 49

8. Habachy, "Comments of Dr. Saba Habachy."

9. Anderson's Foreword in al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, vii.

10. See M. Khadduri, *War and Peace in the Law of Islam* (Baltimore: John Hopkins Press, 1955), Preface.

11. See Qur'an 5:2: "and cooperate in righteousness and piety but do not cooperate in sin and enmity."

12. See e.g., W.M. Watt., *Muhammad at Medina* (Karachi: Oxford University Press, 1981), 155–158.

13. *Ibid.*, 221–228.

14. The opening parts of the document provided that:

- (1) This is a document by Muhammad the Prophet, between the believers and Muslims of Quraysh and Yathrib, and those who followed them and joined them and struggled with them.
- (2) They are one community (Ummah) to the exclusion of all others.
- (25) The Jews are one community (Ummah) with the believers. (The Jews have their religion (*din*) and the Muslims have theirs.)

See M. Hamidullah, *Majmū'ah al-Wathā'iq al-Siyāsīyah* (Beirut: Dār al-Irshād, 1969), 41–47. An English translation of the full text of the document can be found in A.D. al-'Umari, *Madīnan Society at the Time of the Prophet*, trans. H. Khattāb, vol. 1 (Virginia: International Institute of Islamic Thought, 1995), 107–110; M. Hamidullah, *The First Written Constitution in the World* (Lahore: Ashraf Printing Press, 1981); W.M. Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1980), 130–134; and A. Bulac, "The Medinan Document," in *Liberal Islam, A Sourcebook*, ed. C. Kurzuman (Oxford: Oxford University Press, 1998), 169–178. The recognition of Muslims and non-Muslims as one community (Ummah), was a reference to the political community as a whole. The different religious communities within the political community were mentioned in the subsequent provision of the document.

15. It is reported that the Prophet actually ordered a companion named Ka'ab ibn Malik to plant some markers to define the territory of Medina. See Hamidullah, *Le Prophet de l'Islam* (Paris, 1959) cited in al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, 54; and Bulac, "The Medinan Document," 170.

16. The document addressed, *inter alia*, issues on defence, legislation, and administration of justice.

17. M.G.S. Hodgson, *The Venture of Islam*, vol. 1 (Chicago: University of Chicago Press, 1974), 193.

18. See al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, 54–70.

19. See *ibid.*, 56–61; and Watt., *Islamic Political Thought*, 208–220.

20. See H. Moinuddin, *The Charter of the Islamic Conference* (Oxford: Clarendon Press, 1987), 36–37; al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, 42–43; and A. al-Ahsan, *OIC: The Organisation of Islamic Conference, An Introduction to an Islamic Political Institution* (Herndon: The International Institute of Islamic Thought, 1988), 9.

21. See M. Khadduri, *The Islamic Law of Nations: Shaybānī's Siyar* (Baltimore: The John Hopkins Press, 1966), 19–20 (hereafter referred to as *Siyar*); Al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, 38–54; and generally, Watt, *Islamic Political Thought*.

22. C. Khaliqzaman, "My Conception of a Quranic State," *Islamic Review*, January (1950): 22.

23. Inquiry 2, No. 9, September 1985, p. 63 cited in T. Sonn, "Irregular Warfare and Terrorism: Asking the Right Question," in *Cross, Crescent and Sword*, eds. J.T. Johnson, and J. Kelsay (New York: Greenwood Press, 1990), 129 and 139.

24. A. Mayer, "War and Peace in the Islamic Tradition of International Law," in *Just War and Jihad*, eds. J. Kelsey, and J.T. Turner, (New York: Greenwood Press, 1991), 195 and 212.

25. See e.g., al-Ahsan, *OIC: The Organisation of Islamic Conference, An Introduction to an Islamic Political Institution*, 9.

26. See A.S. El-Kosheri, "History of the Law of Nations, Regional Developments: Islam," in *Encyclopaedia of Public International Law*, ed. R. Bernhardt, vol. 2 (Amsterdam: Max Planck Institute, 1995), 809; and generally, M.G.S. Hodgson, *The Venture of Islam*, vol. 2, *The Expansion of Islam in the Middle Periods* (Chicago: The University of Chicago Press, 1974), particularly 18–21 for a "Chronology of the Individual States" within the Islamic empire from 945–1118.

27. See A.K.S. Lambton, *State and Government in Medieval Islam* (Oxford: Oxford University Press, 1981), 146 ff; also generally, Q. Khan, *The Political Thought of Ibn Taymiyyah* (Lahore: Islamic Book Foundation, 1983).

28. M. Bedjaoui, "The Gulf War of 1980-1988 and the Islamic Conception of International Law," in *The Gulf War of 1980-1988*, eds. I.F. Dekker, and H.G. Post (Dordrecht: Martinus Nijhoff, 1992), 296. It must be noted that all the nations of the Muslim world today are developing nations that share an era of colonial or semicolonial past.

29. Despite the obvious difficulty that confronts the theory of a monist Islamic State within the present international political dispensation, advocates of the monist theory of the Islamic State trust that it is achievable through the divine assistance of God.

30. See e.g., M. Al-Rashid, "Faruqi's Conception of the Islamic State," *Al-Mizan* 1/2 (1995): 23 and 25. Similar views had been expressed by earlier 19th century Islamic thinkers such as Jamāl al-Dīn al-Afghānī (1838–1897) and Muhammad Iqbal (1838–1897).

31. Khaliqzaman, "My Conception of a Quranic State."

32. See e.g., Qur'an 5:2 and 5:8.

33. It is identified below that the OIC is already moving in that direction but needs to be invigorated to perform a more authoritative central role within the Muslim world.

34. See e.g., A.A. AbūSulaymān, *The Islamic Theory of International Relations*, ch. 2 (Herndon: The International Institute of Islamic Thought, 1987); and Moinudeen, *Charter of the Islamic Conference*, 20–53; also see D.A. Westbrook, "Islamic International Law and Public International Law: Separate Expressions of World Order," *Virginia Journal of International Law* 3 (1993): 819 and 831–858 for a critique of the two views.

35. This includes anticipatory self-defence of which the Islamic State has the right to determine. See e.g., Moinuddin, *Charter of the Islamic Conference*, 28; and S. Mahmassani, "International Law in the Light of Islamic Doctrine," *Academie de Droit International, Recueil des Cours* 117 (1966): 277–299.

36. Khadduri, *Siyar*, 17. See also M.A. Ibn Qudāmah, *Al-Mugnī*, vol. 8 (Riyadh: Maktabah al-Riyādh al-Hadithah, 1981), 460.

37. See Ibn Qudāmah, *Al-Mugnī*; R. Peters, *Jihad in Classical and Modern Islam* (Princeton: Markus Wiener Publishers, 1996), 38–40; and AbūSulaymān, *The Islamic Theory of International Relations*, 18.

38. *Ibid.*; Al-Jazāirī also shares this opinion. See A.J. al-Jazāirī, *Minhāj al-Muslim*, 8th ed. (Dar al-Fikr, 1976), 309.

39. The "hostility school," however, holds that this verse, the "peace verse," has been abrogated by the "sword-verse" (9:29), which says: "Fight those who believe not in God nor the Last Day, nor hold that forbidden which has been forbidden by God and His Messenger, nor acknowledge the Religion of Truth from among the People of the Book, until they pay *jizyah* with willing submission and feel themselves subdued." For analysis on the differences of opinion on the doctrine of abrogation in Islamic law and the errors and dangers of its exaggerated application see M.H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), 149 and especially 162–165; W.B. Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997) 68–74; and AbūSulaymān, *The Islamic Theory of International Relations*, 36 and 107.

40. El-Kosheri, "History of the Law of Nations, Regional Developments: Islam," 812.

41. Ibid., 814. See also J.C. Hurewitz (ed.), *The Middle East and North Africa in World Politics: A Documentary Record*, vols. 1 & 2 (New Haven: Yale University Press, 1975).

42. Hurewitz, *The Middle East and North Africa in World Politics: A Documentary Record*, 1:93–101.

43. D.B. MacDonald, "Dār al-Sulh," in *The Encyclopaedia of Islam*, eds. Lewis, Pellat, and Schacht, 2d ed., vol. 2 (Leiden: E.J. Brill, 1965), 131; and M. Khadduri, "Sulh," in *The Encyclopaedia of Islam*, eds. Bosworth, Donzel, Heinrichs, and Lecomle, vol. 9 (Leiden: Brill, 1997), 845–846.

44. See Articles 2(3), 2(4) and 51 of the UN Charter.

45. See e.g., Khadduri, *Siyar*, 19; and al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, 184.

46. See e.g., D.J. Harris, *Cases and Materials on International Law*, 5th ed. (London: Sweet and Maxwell, 1998), 218.

47. See A.A. Sachedina, "The Development of Jihad in Islamic Revelation and History," in *Cross, Crescent and Sword*, 35 and 36ff for similar argument concerning the impact of "sociopolitical realities of the Islamic political order" on the traditional interpretations adopted by the classical Islamic exegetes and jurists.

48. A. al-Dabūsīy, *Kitāb al-Asrār fī al-Furū'* (Istanbul: Waliuddin) cited in M. Hamīdul-lah, *Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf, 1953), 83.

49. AbūSulaymān, *The Islamic Theory of International Relations*, 19.

50. Khaddūrī, *Siyar*, 52.

51. See e.g., Peters, *Jihad in Classical and Modern Islam*, 6; also M.A.Z. Badawi, *The Reformers of Egypt* (London: Croom Helm, 1978).

52. M. Shaltūt, *Al-Qur'ān wa al-Qitāl* (Dār al-Kitāb al-Arabī, 1951). For an English translation see R. Peters, *Jihad in Classical and Modern Islam*, 60-101. See also generally, Mahmassani, "International Law in the Light of Islamic Doctrine."

53. Al-'Umari, *Madinan Society at the Time of the Prophet*, 2:14.

54. Abū Dāwud, *Sunan Abū Dāwud*, trans. Ahmad Hasan, vol. 2 (Lahore: Ashraf Press, 1984), 702, hadith no. 2526.

55. See e.g., Mayer, "War and Peace in the Islamic Tradition of International Law," 199.

56. See Qur'an 8:61.

57. Khadduri, *Siyar*, 22.

58. For the electronic version of statements, speeches and addresses of the UN member States during the UN's 50th anniversary celebration see website gopher://gopher.undp.org/11/un50/comm/speeches/ visited for this research on October 16, 1999.

59. See e.g., S.P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 1996).

60. For example, the European Union (EU), the Organization of American States (OAS), the Organization of African Unity (OAU), and the League of Arab Nations (LAN).

61. See Article 52 of the UN Charter.

62. See §6 of the Preamble of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ETS No. 5).

63. §4 of the Preamble of the African Charter on Human and Peoples' Rights (1981).

64. Hurewitz, *The Middle East and North Africa in World Politics: A Documentary Record*, vol. 1, xvii.

65. Art. II (A) (2) of the OIC Charter.

66. This is with the exception of Palestine, which is not a full member of the UN yet but has only an observer status.

67. OIC Charter.

68. Article II of the OIC Charter for the Objectives and Principles of the Organization reflects commitment to Islamic principles in their international relations.

69. Most Muslims interviewed for this research expressed this resentment against the present international order.

70. Ibn Taymiyyah, *Al-Hisbah fi al- Islām* (Maḍinah al-Munawwarah: al-Jāmi' al-Islāmiyyah, n.d.), translation quoted from Lambton, *State and Government in Medieval Islam*, 147.

71. UN Doc. A/RES/53/22 of November 16, 1988.

72. See Qur'an 3:64 which says: "Say, O People of the Book, come to common terms as between us and you."

73. For an electronic version of this address see website <http://www.un.int/iran/statements/ga/ga53001.html> visited for this research on October 16, 1999.

74. Adopted in Tehran at the conclusion of the Islamic Symposium on Dialogue among Civilizations, May 3–5, 1999.

75. Par. B of Tehran Declaration on Dialogue Among Civilizations. See OIC website at <http://www.oic-un.org/news.htm> visited for this research on October 16, 1999.

76. See Par. E of Tehran Declaration on Dialogue Among Civilizations.

77. See Par. F (2) of Tehran Declaration on Dialogue Among Civilizations.

78. Res. 3369 (XXX) of October 10, 1975.

79. See e.g., A/RES/53/16 of November 11, 1998. See also the Report of the UN Secretary General A/53/430 of September 24, 1998 on Cooperation between the United Nations and the Organization of the Islamic Conference.

80. See §4 of the Preamble of the OIC Charter.