

Foreword

I rarely get the opportunity to introduce a work that should justly redefine an entire field of study. But Khaled Ramadan Bashir's book on Islamic International law is such a work. For many years, the standard work in the West on Islamic International law has been that of Majid Khadduri, who had written on the *Siyar* of Shaybani and the Islamic law of war and peace. And for better or worse, Khadduri has influenced generations of scholars who have taken his representations of Islamic international law to be established truth. But Khadduri's failures in understanding and representing the nuances of Islamic legal discourses have contributed to the dissemination of entrenched false paradigms about Islamic International law. The current book by Khaled Ramadan Bashir does not only surpass the achievement of Khadduri, but materially reforms and in many regards, nullifies and negates it. The truth is that Khadduri's writings on the *Siyar* are so incomplete as to be seriously flawed. The present work by Bashir comes as an urgently needed corrective, not just to Khadduri's work but to all previous scholarship on Shaybani and his transformative contributions to the law of nations. No scholar can afford to write on the subject of Islamic International law or indeed the history of the law of nations without referring to Bashir's authoritative study. Bashir convincingly demonstrates that Shaybani's discourse on the law of nations not only pre-dated Gratian, Aquinas, and Vitoria but it was much more comprehensive, developed, and complete. Shaybani's work is comparable only to Grotius' famous treatise, *The Law of War and Peace*, except that Shaybani wrote his work in the eighth century while Grotius wrote his treatise in the 17th century. Bashir's scholarship forces us to reconsider the often-repeated thesis that the law of nations is rooted exclusively in the Christian Natural law tradition and to acknowledge the pivotal significance of the Islamic contribution to the law of nations as a discipline and field. Bashir's scholarship will also challenge all those who are prone to the argument that the roots of the law of nations can only be found in the Judeo-Christian tradition. It is due time that the Islamic contribution to the field of international law be given its full weight and credit, but in order for this to take place, the history of the law of nations must be substantially re-thought and re-written but from a

non-Eurocentric perspective. However, a fair and inclusive historiography of the law of nations is not possible unless Western writers resist the temptation of triumphalism, and civilizational and cultural puritanism.

Aside from the issue of historical lineage and recognition, Bashir's meticulous analysis of Shaybani's seminal work, the *Siyar*, challenges all stereotypical caricatures of the Islamic law of nations as being purely functional or pragmatic. It is abundantly clear that Shaybani, like generations of classical jurists after him, wrestled with what they perceived as a supreme Higher law, the Law of God, that governs the interactions and struggles of human kind, and that this law was seen as imposing moral standards beyond the simply opportunistic or pragmatic. It is axiomatic in Shaybani's thought that the prevention of conflict and the avoidance of war and wanton destruction is the calling of the Higher law. The same can be said about what Shaybani deontologically saw as the rules of honor, chivalry, and conduct becoming a Muslim. Shaybani struggled with striking the balance between a lawless world in which God and God's Higher law would cease to exist, and an inflexible and blind adherence to ideals that could be unworkable. If the ideals of the Higher law were invoked and asserted dogmatically, these ideals would be liable to being entirely ignored by the political authorities of Shaybani's day and age. Shaybani did not fossilize Islamic International law into a set of immutable and eternal rules. Rather, he searched for the balance between eternal and supernal principles, and functional and practical applications. As such, Shaybani's impressive corpus of work is really a study in the methodology of Islamic legal thinking and the dynamism and creativity of Islamic law.

The inestimable value of Bashir's book is not just that it challenges simplistic historical outlooks that anchor the growth of international law solely in European narratives, or that imagine that there is a fundamental civilizational breach between Islam and the West, but Bashir's work also reminds Muslims of the rootedness of international law principles in Islamic normativities. Shaybani was a prominent judge of the Hanafi School who played an influential role in the early Abbasid dynasty during the reign of the famed Caliph Harun al-Rashid. Yet Shaybani was not the first jurist to write on Islamic international law. The Syrian Awza'i has reportedly pre-dated him in writing on the Islamic law of nations although his works have been lost. Some of Awza'i's positions and arguments have reached us only through the rebuttals of his opponents. But other than Awza'i, there is cumulative evidence to suggest that early Muslim jurists such as al-Shaabī, Sufyān al-Thawrī, and Abū Hanīfah made critical contributions to the discourses on the Islamic law of nations. Moreover, Shaybani's own discourses continued to evolve and

develop through the centuries in the works of generations of jurists who were forced to wrestle with historical circumstances and contexts that were very different than those that Shaybani dealt with. What does remain constant through the centuries of jurisprudential discourses is the innate understanding that there are basic universal laws that call upon human beings to temper the vicissitudes of power struggles and human conflict through the application of higher ethical principles. This is indeed the basic premise at the heart of all efforts at accomplishing a regime of international laws applicable to all humankind. The very fact that generations of Muslim jurists insisted on subjugating politics and war to the rule of law is a profound civilizational achievement. The development and persistence of this intellectual and moral enterprise throughout the existence of the Islamic civilization is a stark reminder that far from endorsing the logic of unfettered political opportunism or all-out warfare, Muslim jurists consistently searched for the boundaries that demarcate the difference between ethical and unethical conduct.

Khaled Ramadan Bashir's invaluable study offers us the first real opportunity to properly value Shaybani's contributions to the development of the law of nations as a principled human engagement. But more than this, Bashir's work comes as a stark reminder that international law is truly the collective inheritance of the entire human race.

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