

## The Operations of Islam at State and State-System Levels

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### Introduction

The religion of Islam was founded in the seventh century A.D., although most recent than Christianity and Judaism, it is most vital of all the three monotheistic religious views. The internationalization of Islam began when it expanded from Medina in the Arabian Peninsula, to the Middle East, North Africa, Asia and southern Europe. What is remarkable about Islam however is the fusion of the political, legal and the spiritual into a religious unit herein lies the justification for the appellation that "Islam is a way of life."<sup>34</sup> The spiritual commitment of a Moslem to his entire being sets him apart from a Christian or the adherents of Judaism. For Christianity, there is clear difference between what is eclectic, sacerdotal and secular. In Islam all these are frontiers without any boundary, they are interwoven.

It is important to quickly express the interest of this paper at this juncture. Islam like all other religions before it is sectarian but when viewed from the state (private) level, this sectarianism is really not a fundamental challenge to international system. Therefore within its state, Islamic fundamentalism is not pronounced. The essay attempts to explain why Islam is no longer a belief system but a political ideology once the turf is the international system.

### Religion of Islam and State System

A Moslem state is remarkably different from the Islamic state. Although some authors<sup>35</sup> have denied the existence of Islamic state and contested if any state is qualified to be so called, there states that have declared that they are Islamic. A Moslem state is where a state has more Moslem population than other religions. An Islamic state portends general agreement that secularism has lost ground. It is a state which operates on an Islamic spiritual idiom.

In the context of this discourse, an Islamic state fits the state system model described here. It is also essential to note that some states may not formally declare themselves as Islamic, but a particular integral arrangement can qualify such states to be so classified. Association with organizations like Islamic Conference Organization, Bank of Islam, etc is clear tendency of an Islamic state tradition.

Islam seems not to have fared well in the present structure of international relations. Islam has recognized fundamental tendencies within the international system. But this fundamentalism is not exhibited where Islamic states meet in their exclusive affiliations e.g. Organization of Islamic Conference (OIC). The lack of fundamentalism in such associations suggests therefore that Islam is transnational and not necessarily anti international-relations. Within the present structure of the state system what we see are reactions to what is termed Islamic fundamentalism, leading to constant clashes between world leaders and leaders of Islamic states. A peaceful religion of Islam is now associated with terrorism, hostage situations and warfare.

It would be safe to say that Islamic states define their international relations on the basis of sympathy for Islamic rites. In the process a distinct inter-state process is imbued which permits no derogation to Islamic world view. This point translates therefore to a situation where Islamic states and states with sympathy for Islam begin to seek for a community or system that will accommodate what may be *ultra vires* by the standard of the present international laws. Quite fundamental is the fact that other nations that are not Islamic have shown considerable understanding of Islamic ethos but that also needs considerable re-development. For instance, such re-development should address why a cartoon of Prophet Mohammed (SAW) cannot be tolerated even though Jesus Christ has been cartooned.

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<sup>34</sup> This is a common view of Islam among Moslems.

<sup>35</sup> Muhammed Ayoob (2005) in the Political Islam denies that both Islamic States of Saudi Arabia and Iran are not truly Islamic States

### Islam and International Law

Jeremy Bentham (1780) provided the framework for understanding of international law. He opined that it is a system of rules that are regarded as binding on states and other agents in their mutual relations. Bentham however only developed what Hugo Grotius had defined as *De jure Belli a Pacis* (1625)<sup>36</sup>. What is the international law today evolved with the emergence in Europe of independent and powerful nation-states with incessant local rivalries occasioned by inordinate ambitions for territorial expansions of powerful nation-states.<sup>37</sup>

International law develops out of interactions of nation-states as a regulatory body. The evolution of modern state system is totally a development of Europe political scene. The Westphalia Peace of 1648 signed principally at Munster and Osnabruck ended the hostilities in the thirty years wars. It ended the overlordship of the Papal bull which came under the attack of the protestant Churches.<sup>38</sup>

The Peace Treaty of Westphalia was borne out of the anti hegemonic struggle against the Hapsburg aspiration for a supranational empire, thus marking the beginning of the modern state system. Super empires in Spain and Germany were fragmented into smaller units herein referred to as states. The treaty replaced for ever the medieval notion of universal religion, and established a secular concept of international relations based on the principles of territorial sovereignty.

All other international regimes reechoed in some form the peace treaty of Westphalia. The Versailles Treaty signed on the 28 June 1919 in the Hall of Mirrors<sup>39</sup> at Versailles recognized the Peace Treaty of Westphalia as the basis of settlement arrangement. The Versailles Treaty established the Covenant of the League of Nations in 1919. After the demise of the League, the United Nations came to replace it in 1945.

The net implication of the above is that the Westphalia system which is global now is primarily a Christian and European codification of rules. It was not meant to apply, *stricto sensu*, to Islam or the rest of the world.

It would appear that new states including Islamic have come to embrace the concept of sovereignty, territorial integrity, equality and the rest as the original participants at Westphalia in 1648. We should be aware however that such embrace of the present order is a reflection of despair rather than hope. The international order which created the international law is such a resilient force and so unwilling to supervise the liquidation of the status quo.

The conflict arising from Islam and international law/relations is better understood if we look closely at the relationship between Municipal law and International law.

### Islamic Law, Municipal Law and International Law

Islamic jurisprudence is based on the provisions of the Quran and Hadith. Islam does not have a legal system outside these holy testimonies. Islamic legal system is therefore a spiritual framework. We would recall that the Peace Treaty of Westphalia was to establish a secular legal and political order based on the history of Christendom.

Municipal law is a local law set out for legal use of internal affairs of a nation.<sup>40</sup> In Islamic states, Islamic laws are therefore Municipal laws. International law is that which enjoys primacy in international courts. The transnational application of international law however does not accept the view that sovereignty is based on law and exercisable with its limits. Presently admission to the United Nations suffices the acceptance of all obligations arising from the association.

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<sup>36</sup> Graham Evans & Jeffrey Newham (1998). *The Penguin Dictionary of International Relations*. Penguin

<sup>37</sup> Howard Perkin & Gurina Palmer (2005). *International Relations*. A.I.t.B.S. Publisher Delhi, p. 211

<sup>38</sup> Papp Daniel (1988) *Contemporary International Relations*. Macmillan

<sup>39</sup> Graham & Newham (1998). *Penguin Dictionary*, p. 264.

<sup>40</sup> Umozurike U.O. (2005). *Introduction to International Law*. Spectrum

There is a global pretence that there is harmonization between International and Municipal laws. This theory tends to promote a blissful relationship between the two. The harmony exists only when there is no contradiction and when there is. It is the duty of the states to bring their constitution in harmony with international law. International law therefore is not a subsidiary to states constitutions.<sup>41</sup>

International tribunals acknowledge the primacy of international law over municipal law and any inconsistency is treated as a dereliction on the part of the state.

What seems to be the greatest conspiracy against municipal law is that the UN (the custodian of international law) now has supranational status and gradually giving enforcement to its legal provisions. In the past, lack of sanctions for breaches of international law had led positivists like Hobbes, Pufendorf and Austin to conclude that there was nothing like international law but international morality.<sup>42</sup>

The above analysis of Municipal a la Islamic law and International law gives a clearer picture of the irrevocable schism between the two. Just as Islam and its laws try to exert that international law should be exercisable within the nations that subscribe to it. International system's rules are binding on all states with or without their consent. Now while there are some international laws that may not be inconsistent with Islamic laws like the law of the sea, there are some that run counter to Islamic principle of justice. For instance, most war crimes are established where fundamental human rights are abused. Most nations subscribe to this through the Rome statute. It is the same statute which is demanding the arrest of the Sudanese leader on the basis of the warrant of arrest which the International Court of Justice handed down.

International law is very clear on municipal laws that run counter to international body of rules, e.g., Article 13 of the Draft Declaration on the Rights and Duties of States 1944 says

“every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution as its laws as an excuse for failure to perform its duty.”

The Vienna Convention in the law of Tries 1969 in Article 27 provides that:

“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

All municipal laws including Islamic are greatly encumbered by these provisions. The other option is to revolt.

There is a new direction in Islamic revivalism as Islamic scholars (especially immediately after the September 11 attack) are coming out with literatures to justify the fact that Islam is not against international laws and relations. These literatures as it were, appear to be taking a subjunctive look at the dichotomy that exists between Islam and the international system. Sheikh Wahbeh al-Zuhili<sup>43</sup> in his work *Islam and International Law* dismissed the fears that there is lost of humanitarian value in Islam. He paid special attention to rules in the Islamic system that relate to international order.

It needs to be said here that the international order which the professor refers to only contains details of the relationship between Moslem communities with people of the book (Christians) and guide to Moslem communities relations with the people of Covenant (those that were conquered I suppose). Now, this passes successfully for inter-group relation and not international relations.

Whatever convergence that exists between Islam and international relation is an accident occasioned by the humanitarian values in the two. Islam was not set up to corroborate an international system that is designed for the growth and development of Christian ethos.

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<sup>41</sup> Umozurike, U.O. p. 34

<sup>42</sup> Graham E. & Newham (1998). Penguin Dictionary, p. 301.

<sup>43</sup> Wahbeh al Zuhili “Islam and International Law” International Preview of Red Cross, Vol. 87, No. 858 (2005), pp. 270 – 283.

### **International Law and International Revolt**

History has provided that the international system is an orthodox system that could not be readily submerged in the events of clashes. The emergence of the Soviet Union in 1917 was the first comprehensive attempt to challenge the international order. But because international law was founded on the state system, it became difficult for any ideology or people to change it without changing its traditional base – namely state system. What communism was able to achieve was to seek for modification of international law when it realized it was ill-equipped to change it. What the Soviet Union did especially under Stalin was to accept the validity of the system (international) but modified it as capitalist exploitative medium. Soviet Union rested the case by accepting the notion that capitalist and socialist international systems are remarkably different from one another. But it was the class system that the Soviet Union was set to abolish initially.

The third world attack on the international system could be located within the context of their revolt against imperialism and colonialism. Evolution of modern state system in Africa is traced back to the Berlin Conference of 1885 where African nations were partitioned. This partitioning incidentally was legitimized by the prevailing international legal system. The Third World countries just like the Soviet Union operated within the existing international order and unlike the Soviet Union could not even achieve any form of modification.

Samuel Huntington (1993) and Bernard Lewis (1990)<sup>44</sup> had examined clashes of civilizations in a thesis and article respectively and they seemed to have concluded that the Western civilization in the context of international system always appear victorious where others capitulated. The success of Western value is predicated on the fact that the world community has continued to relate with the international system which evolved out of the state system created by European nations in the 19<sup>th</sup> century.

The gross implication of the above is that most states are beginning to see the international system as imposition of the West ideology on them; of course the attendant effect is international system/law is now in a state of flux with widespread skepticism about its effectiveness.

### **Islam: The Peaceful, the Warring and the Fundamentalist**

At a personal level and even state level, Islam is clearly a religion of peace. A Muslim is a peaceful person. An Islamic state is at peace with itself. But at the state system level, there are obvious fundamental trends and tendencies associated with Islam. However, rather than associate these with the religion, fundamentalism should be analyzed in the context of international revolt. In this sense therefore, the communist attacks on the West has an evidential value to support a fundamentalist thesis. The creation of Israeli state in 1948 more than any event is responsible for the creation of Islamic fundamentalist. The creation of Israel again was done in line with what had been established in Munster and Osnabruck during the Westphalia Settlement of 1648, namely: that a people must be brought together for administrative convenience.

This system translated to colonialism elsewhere thus the creation of Israel was not without imperial intentions. The first symptom of Islamic fundamentalism came in form of Islamic nationalism.

In spite of the irredentist posture of the Islamic community to the creation of Israel, the religious schism exacerbate their grievances. Since the system that created Islamic litany of fears was a very formidable one, the Islamic fundamentalists resorted to employing the extremes with no respect to humanitarian value.

Islamic fundamentalism has been seen by contemporary authors in international relations as a form of political agitation hence the terminology “Political Islam.”

Francois Burgat<sup>45</sup> sees the fundamentalism of Islam as Islam reaction to Western domination. Graham Fuller<sup>46</sup> did not even see why Islam which he referred to as an “adaptive religion” could not operate

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<sup>44</sup> Akadiri, O. (2003). *Diplomacy, World Peace and Security*. Ondo State

<sup>45</sup> Burgat Francois (2003). *Face to Face with Political Islam*. I.B. Tauris, p. 27.

<sup>46</sup> Graham Fuller (2004). *The Future of Political Islam*. Macmillan

within the international system. Fuller, a former Central Intelligence Agency (CIA) agent maintained that Islam has the capacity to work within modern institution whether democracy or quasi democracy. He concluded that what appears to the world as anti internationalism in Islam, is actually a political protest of Islamic religion.

Fawaz Gerges<sup>47</sup> agrees that Islamic fundamentalism is a political reaction to Western domination of international system but he questioned the rationale behind the use of violent tactics especially in Al-Qaeda. He later wondered if the fundamentalist would survive an onslaught of the West militarily.

Professor Bassam Tibi<sup>48</sup> a German international relations scholar opined that there is a fundamental revolt not only against Western political power but also against Western culture and values because it challenged the Western-based notion of a world order of nation-state. He argues further that Islam is increasingly rejecting the political boundaries created by the West. The German scholar advised that Islam should be seen as a cultural force to be cultivated rather than threat to be feared.

The submissions of all these authors go further to underscore the reaction of Islam to state-system.

The question is often asked: why is Islam revolting against the international system? Some analysts like Zuhili as we have pointed out above did not see any revolt as they maintain that Islam is not incompatible with the international system. Fuller too shares this view. But the argument that Islam is an adaptive religion becomes flawed since we are not told of other religions that are not adaptive.

To that extent, one can ask why has the international system not witness a revolt from the adherents of Hindu, Confucian or even Judaism. The possible answer to this question is that these religions have not featured in international controversies as Islam because they are basically a set of belief system. All these religions do not feature in international discourse and they have no utility whatsoever in international politics. In the course of writing this paper, attempts were made to check the relevance of these religions to international affairs, none was found.

Islam however is more complex than all other religions. A tradition has also evolved from this complexity. Islam impinged upon all aspects of society. A true Moslem has his life circumscribed by Islamic law, politically, economically, socially, religiously and even culturally. Infact, economic adventures like interest on loan, buying of shares, etc. are said to be unislamic. An interest in international affairs reveals that the greatest dilemma of an Islamic state within the international system is how to resolve the dichotomy of sacred/secular or the state/spiritual, but for Islam, the state is a religious entity. What is clear is that this setting will produce clashes, for instance, what happens if a Moslem chose to obey a fatwa passed on anyone but the international law recognizes the fundamental human right of that person? Or on the other hand if a man (Moslem) is facing trial at The Hague for crime against humanity and others perceive him as fighting for liberation? This is what is referred to as issue area in empirical political science.

### **Concluding Remarks**

This essay explains the growth of back of the basis in Islam usually referred to as fundamentalism as a means to revolt against the international system. In spite of its religious background, the international system appears to be a secular concept but then Islam would still have preferred its own sets of rules never minding the fact that the system has its laws referred to as international law. Again this essay explains why the religion of Islam is moving towards a political ideology rather than a belief. To achieve this, a framework was created with the creation of the state of Israel in 1948. At this juncture, we should then ask, what would have been the relationship between Islam and international relation without the creation of Israel.

There is the need for the international system to seek points of convergence and divergence with Islam. An international system skewed against Islam is likely to continue to bring disorder rather than order. The first step towards achieving this is for Islamic scholars to drop the pretence that there is no

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<sup>47</sup> Fawaz, Serges (2005). *Why Jihad Went Global*. Cambridge University Press, p. 358.

<sup>48</sup> Tibi Bassam (2002). *The Challenge of Fundamentalism: Political Islam and The New World Order*. University of California Press, p. 256.

controversy between Islam and International System. This much is glaring when one considers the fact that the international system itself evolved from an exclusive history of the Church.

There are basic principles in the international system that are alien to Islam, for instance, the whole gamut of liberal democracy, state system and even sovereignty have different application in pristine Islamic life.

Islam on the other hand should identify the rationale behind creating a system from international relations. All sovereign states are so-called because they have been admitted by the United Nations. The international system has been designed in such a way that states that wish to redefine or disaggregate it can easily be accused of encouraging anarchy.

All states seek independence and sovereignty, as soon as they are admitted by a supranational organizational as the U.N., that put paid to all encumbrances arising from independent status of a state. The U.N. again legitimizes a state and also establishes its rules in those states. Treaties, conventions, protocols and rules must be obeyed by all states.