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## Modern International Law: The Muslim Legacy (Contribution of Dr. M. Hamidullah)

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# ***Modern International Law: The Muslim Legacy***

## ***(Contribution of Dr. M. Hamidullah)***

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### **Abstract**

International Law is a discipline whose foundational principles, as argued by several Muslim jurists, can be traced to early Islamic legal scholarship. Among the prominent scholars who systematically articulated this position was Muhammad Hamidullah (1908–2002), a distinguished Islamic jurist, historian, and researcher from the Indian subcontinent who later worked extensively in Europe, particularly in France. Trained in both traditional Islamic sciences and modern legal studies, Hamidullah made significant contributions to the study of Islamic international law (Siyar) by presenting it within the broader framework of contemporary international legal discourse. This paper argues that Hamidullah's central contribution lies not merely in asserting the precedence of Islamic international law, but in systematically documenting, editing, translating, and critically analyzing classical sources of 'Ilm al-Siyar to demonstrate its conceptual sophistication and historical depth. Through his numerous articles and books, Hamidullah highlighted the origins, principles, and development of 'Ilm al-Siyar, explaining its legal doctrines concerning war, peace, treaties, diplomacy, and the rights of non-Muslims. He further examined its influence and relevance to modern international law. This study, therefore, examines Hamidullah's intellectual project, evaluates his sources and methods, and assesses the significance of his work within the larger debate on the origins and development of international law. By placing Hamidullah's scholarship in its proper academic and historical context, this paper demonstrates that his work represents a major attempt to reclaim the contribution of Islamic legal thought to the discipline of international law.

**Keywords:** *International Law, Dr. Muhammad Hamidullah, 'Ilm al-Siyar, Diplomacy, Treaties, Peace.*

### **Introduction**

The science of "*Al-Siyar*" or International Law has always been a discipline associated with Muslims. This field of knowledge, known among Muslims as "*Ilm al-Siyar*," is commonly referred to in simple terms as International Law. International law is the body of rules that defines the relationships between different states.

The history of *Ilm al-Siyar* can be described as follows: When Islam began in Makkah, there were many practical difficulties because the Muslims did not have an independent state. They lived in a hostile city, Makkah. According to Dr. Hamidullah, they held the status of a "state within a state." That is, although the Muslims lived in the city of Makkah, they were not under its administrative system. They did not obey the ruler of

Makkah; rather, they turned to their own leader, the Prophet Muhammad (ﷺ) for all their needs. They had their own separate laws and organization. However, when they migrated to Madinah, within a few months, the Muslims established a formal state and even drafted a proper constitution. When this state was established, it soon had to face wars. In international law, there are mainly two areas of discussion, relations with others in times of peace and in times of war. Islam divides such states into three categories:

- First: **Dār al-Salam** (the Abode of Peace)
- Second: **Dār al-‘Ahd** (the Abode of Treaty)
- Third: **Dār al-Ḥarb** (the Abode of War)

**Dār al-Salam** is a state where Muslims hold authority and its defense lies in the hands of Muslims, in common terms, it is called an Islamic state.

**Dār al-‘Ahd** refers to a non-Muslim state that maintains relations with Muslims through some treaty or agreement.

**Dār al-Ḥarb** is a state ruled by non-Muslims, where Islamic laws are not enforced, and which has no treaty or agreement with the Muslims. <sup>(1)</sup>

After the establishment of the Islamic state, the Prophet (ﷺ) had only a few months of peace before a series of battles began. From the Prophet’s conduct, examples began to emerge showing what the laws of war should be. These instructions were sometimes conveyed through his sayings (hadith qawliyyah) and at other times through his actions (hadith fi‘liyyah). Gradually, Islamic law developed, and the concept of Islamic international law came into existence. <sup>(2)</sup>

In short, the ten years of the Prophet’s life in Madinah became the basis for defining and compiling most of the rules of Islamic international law. Later, when books began to be written on this subject, Muslim scholars first referred to the Holy Qur’an and then to the Sunnah of the Prophet (ﷺ).

The oldest known writing on ‘Ilm al-Siyar (the science of international or war law) is a chapter in Imam Zayd ibn ‘Ali’s book “Al-Majmū‘ fī al-Fiqh”, which was titled Kitāb al-Siyar. However, the first independent book written specifically on ‘Ilm al-Siyar was authored by Imam Abu Hanifa. Some of the points in Imam Abu Hanifa’s book were strongly opposed by his contemporary, Imam al-Awza‘i, who even wrote a treatise in refutation of it. However, both of these books no longer exist today.

Another student of Imam Abu Hanifa, Imam Abu Yusuf, wrote a book titled “Al-Radd ‘ala Siyar al-Awza‘i” (Refutation of al-Awza‘i’s Views on Siyar) in response to Imam al-Awza‘i’s arguments. This book by Imam Abu Yusuf has been preserved and is still available today. Through it, the points of disagreement between Imam Abu Hanifa and Imam al-Awza‘i become clear. Similarly, in Imam al-Shafi‘i’s book Al-Umm, a few excerpts from Imam al-Awza‘i’s treatise are also found. Three other students of Imam Abu Hanifa also wrote books on the subject of ‘Ilm al-Siyar. These include Imam Muhammad al-Shaybani, Imam Zufar, and Imam al-Fazari. Among them, Imam Muhammad al-Shaybani wrote two famous books on this subject, Al-Siyar al-Kabir (“The Major Book of Siyar”) and Al-Siyar al-Saghir (“The Minor Book of Siyar”). It is a fact that Imam al-Shaybani was the only jurist who wrote in full detail about the principles of Islamic international law (Qanun Bayn al-Mumalik). For this reason, he is rightly regarded as the founder of Islamic international legal thought. Both of the aforementioned works of Imam al-Shaybani were commented upon by the famous fifth-century Hijri Hanafi jurist Imam al-Sarakhsi. Today, his commentary “Sharh al-Siyar al-Kabir” is considered the oldest surviving and published book in the world on this subject.

Several other scholars and jurists also worked on this subject. For example, Imam Malik wrote a book titled “Kitab al-Siyar”, but this work has now been lost. Similarly, one of his contemporaries, the historian al-Waqidi, also authored a book called “Kitab al-Siyar”, which too is now rare and unavailable. However, in Imam al-Shafi’i’s “Al-Umm”, there is a lengthy excerpt quoted from “Siyar al-Waqidi”. Dr. Hamidullah considers these books and treatises on ‘Ilm al-Siyar as belonging to the early and later phases of the subject. According to him, for a certain period, independent works were written on this science due to specific needs of the time; later, as those needs diminished, the practice of writing separate books on the subject gradually came to an end. <sup>(3)</sup>

However, this view is not entirely accurate, because Muslims continued to show great interest in this field. This is evident from the fact that in every book of Islamic jurisprudence written from the earliest times until today, there is always a chapter dedicated to Kitab al-Siyar. Even in the seventeenth-century compilation “Fatawa-e-Alamgiri”, a special chapter was devoted to this subject.

In the modern era, the thinker who undoubtedly made the most significant and comprehensive contribution to ‘Ilm al-Siyar was Dr. Muhammad Hamidullah. Almost all contemporary scholars and intellectuals who have commented on Dr. Hamidullah’s work have described it as multidimensional, because in the field of research, he presented remarkable and ground-breaking findings. <sup>(4)</sup> It can be said without fear of contradiction that Dr. Muhammad Hamidullah devoted the first fifteen to twenty years of his academic life, indeed, his entire lifetime, to the research and study of ‘Ilm al-Siyar. He chose this very subject for his D.Phil., D.Litt., and Ph.D. degrees.

He entered Osmania University as a student of Islamic Studies and obtained his B.A. degree from the same department. However, for his Master’s studies, he chose both the Department of Islamic Studies and the Department of Law, attending classes in both disciplines simultaneously.

In view of the rapidly changing international circumstances, the Department of Law at Osmania University was also very active and responsive to the needs of the time. After the First World War, when the League of Nations was established and discussions on international law were revived, the then head of Osmania University’s Faculty of Law, Professor Husain Ali Mirza, took the initiative to introduce Public International Law as a compulsory course in the LL.B. curriculum.

Following this decision, Dr. Muhammad Hamidullah was among the first batch of students, and in the same year (1930) he obtained both his M.A. in Islamic Studies and LL.B. degree simultaneously. He stated that when he studied International Law, he found it to be closely similar to Islamic history and Islamic jurisprudence (Fiqh). He discussed this matter with his teacher, Professor Husain Ali Mirza, and it was upon his encouragement that Dr. Hamidullah began writing on this subject, eventually authoring several articles related to it. <sup>(5)</sup>

This marked the beginning of his interest in International Law (‘Ilm al-Siyar). Subsequently, he wished to pursue his Ph.D. at Osmania University on the same subject, and he was granted permission to do so. However, at that time, the libraries of Hyderabad Deccan did not possess sufficient or satisfactory research material on the topic. He mentioned this matter to his teachers, and upon their advice, he submitted a request to Osmania University for permission to travel abroad to collect research material. His request was approved, and thus he travelled to Hijaz, Syria, Palestine, Egypt, and Turkey, gathering valuable material for his dissertation.

Seeing his deep interest and dedication, Osmania University granted him a scholarship to help him complete his Ph.D. studies. With this support, Dr. Hamidullah went to Germany, and within just nine months, in August 1933, he submitted a portion of his thesis, which dealt with the principles of neutrality, and was awarded the D.Phil. degree.<sup>(6)</sup> The title of his dissertation was “The Principles of Neutrality in the International Relations of Islam.”

After obtaining his D.Phil. degree, Dr. Hamidullah still had some scholarship funds remaining, as well as time allotted for his research work. Therefore, he went to Paris (France), where he awarded his D.Litt. degree in 1935 from one of the University of Paris. This time, the title of his dissertation was “Islamic Diplomacy during the Prophetic Period and the Caliphate of the +-Rightly Guided Caliphs.”<sup>(7)</sup>

### **Dr. Muhammad Hamidullah’s Contributions to ‘Ilm al-Siyar**

Dr. Muhammad Hamidullah rendered remarkable and unparalleled services in the field of ‘Ilm al-Siyar, the Islamic law of nations or international law. His research not only stands out for its academic depth and authenticity, but also played a pioneering role in introducing and explaining the principles of Islamic international law to the modern world.

After obtaining his D.Phil. and D.Litt. two of the highest academic distinctions- Dr. Muhammad Hamidullah returned to his homeland and joined his alma mater, Osmania University. There, he was appointed as a professor of International Law (Qanun Bayn al-Mamalik). At that time, a few books on the subject were available in English, but, according to Dr. Hamidullah:

“These books, written twenty years earlier, were no longer capable of meeting the demands of the modern age.”<sup>(8)</sup>

Here, a brief overview of Dr. Muhammad Hamidullah’s scholarly contributions to the discipline of Ilm ul Siyar (Islamic international law) is being presented.

#### **1. “Qanun Bain al-Mamalik ke Usool wa Nazirein”**

“Qanun-i-Bain al-Mamalik ke Usool wa Nazirein” (Principles and Precedents of International Law) is Dr. Hamidullah’s earliest and most renowned book. There was no book on this subject existed in Urdu. Therefore, keeping in view the needs of his students, Dr. Hamidullah wrote the first ever Urdu book on International Law, titled “Qanun Bain al-Mamalik ke Usool wa Nazirein” (Principles and Precedents of International Law). Astonishingly, he completed this book in just twenty-five days. Its first edition was published by Maktaba Ibrahimiyah, Hyderabad, in 1936, and the second edition appeared in 1945.

#### **2. Modern International law (Translation)**

Another significant contribution of Dr. Muhammad Hamidullah in this field was his Urdu translation of a French book on modern international law, written by the renowned Orientalist Ernest Nys. Explaining the importance of the book and the need for its translation, Dr. Hamidullah stated:

“Firstly, this book is an authentic and authoritative work on its subject, one that is frequently cited by scholars. But even more admirable is the author’s broad-mindedness he does not hesitate to acknowledge the shortcomings of his own people and the virtues and contributions of others. Very few Western writers have recognized, appreciated, and demonstrated the profound Eastern influences on modern international law as he has.”<sup>(9)</sup>

Dr. Muhammad Hamidullah further explained that since Ernest Nys was not familiar

with Eastern languages, he was unable to benefit from original Eastern sources and relied only on a few well-known works available to him. As a result, some factual errors appeared in his writings. He accepted hearsay as fact and recorded it as such <sup>(10)</sup> Dr. Hamidullah, with great scholarly fairness, acknowledged that Ernest Nys's mistakes were not due to bias or hostility, but rather stemmed from a lack of access to authentic information. Throughout the translation, Dr. Hamidullah provided detailed footnotes, in which he corrected and clarified the original text wherever necessary, while also presenting the Islamic perspective on the issues discussed.

### 3. Charter of the United Nations (Translation into Urdu)

Dr. Muhammad Ilyas Azmi, in his research paper titled "Dr. Muhammad Hamidullah and International Law," mentions that after the Second World War, the importance of international law was keenly felt throughout the world. Consequently, the United Nations was established, and its Charter was drafted a document laying down principles for the stability of international relations and the resolution of global issues and disputes. Dr. Muhammad Hamidullah translated this Charter of the United Nations into Urdu, making it accessible to Urdu-speaking scholars and students, thereby contributing further to the understanding of modern international law in the light of Islamic scholarship. <sup>(11)</sup>

Dr. Subhi al-Salih published a critically edited version of Allama Ibn al-Qayyim al-Jawziyyah's famous book "Ahkam Ahl al-Dhimmah" (The Regulations Concerning Non-Muslim Citizens). The introduction to this work was written by Dr. Muhammad Hamidullah, and it is regarded as a deep and insightful scholarly essay that reflects his profound understanding of international affairs. In this preface, Dr. Hamidullah discussed in great detail the Islamic principles of national and international law, as well as the relations between Muslim and non-Muslim governments, and the rights and legal status of Ahl al-Dhimmah (non-Muslim citizens under Muslim rule). His analysis demonstrated both his mastery of Islamic jurisprudence and his broad, globally aware legal vision. <sup>(12)</sup>

### 4. "Al-Wathā'iq al-Siyāsiyyah fī al-'Ahd al-Nabawī wa al-Khilāfah al-Rāshidah"

Another significant work of Dr. Muhammad Hamidullah is his famous book "Al-Wathā'iq al-Siyāsiyyah fī al-'Ahd al-Nabawī wa al-Khilāfah al-Rāshidah" (The Political Documents of the Prophet's Era and the Rightly Guided Caliphate). This book is divided into two parts:

- The first part contains the letters of the Prophet Muhammad (ﷺ) and their responses, as well as proclamations, treaties, invitations to Islam, appointments of officials, grants of land, covenants of protection (amān), and wills.
- The second part compiles official documents from the period of the Rightly Guided Caliphs.

This work is considered a unique and invaluable historical source, as it preserves authentic records of the diplomatic, administrative, and legal practices of early Islam. <sup>(13)</sup>

### 5. "The Muslim Conduct of State"

"The Muslim Conduct of State" is another well-known and highly respected book by Dr. Muhammad Hamidullah. In this work, he discusses in detail the purpose, foundations, and sources of Islamic International Law (ʿIlm ul-Siyar). Dr. Hamidullah also sheds light on the history of international law before the advent of Islam, explaining how Islamic teachings later refined, systematized, and elevated those principles to establish a just and comprehensive framework for relations between states and nations. In this book, Dr. Muhammad Hamidullah presents an in-depth discussion and scholarly

analysis of various important aspects of Islamic international law, such as freedom, sovereignty, diplomacy, warfare, rebellion, piracy, treatment of prisoners of war and enemies, the role of Muslim women in the army, and many other related subjects. Commenting on this remarkable work, Maulana Abul Jalal Nadwi writes:

“This is the first book on the international constitution of Muslims, written with full consideration of the needs of the modern age. In a world torn by global conflicts arising from narrow racial and geographical nationalism, humanity is now gradually turning towards the ideal of internationalism an ideal that can truly be realized only within the framework of Islam. Therefore, presenting and explaining the Islamic principles of international law in such a comprehensive manner is indeed a great scholarly contribution.”<sup>(14)</sup>

The popularity and significance of this book can be gauged from the fact that by 1996, six editions of it had already been published. It was printed not only in Pakistan and India, but also in Turkey and Germany. With each new edition, Dr. Muhammad Hamidullah made additions and revisions, continually refining and improving the work to keep it up to date and more comprehensive.

#### **6. “The First Written Constitution in the World”**

Another important work by Dr. Muhammad Hamidullah is his book titled “The First Written Constitution in the World.”<sup>(15)</sup> In this book, he presents a comprehensive and detailed study of the Constitution of Madinah (Mithaq-e-Madinah), the charter established by the Prophet Muhammad (ﷺ). Dr. Hamidullah demonstrates through solid evidence that this document was indeed the world’s first written constitution, and he establishes that Madinah holds the unique distinction of being the first multi-national, multi-ethnic, and multi-religious federation in human history.

#### **7. The Prophet Establishes a State and His Succession”**

Another notable work in the same series is “The Prophet Establishes a State and His Succession,” published by the Hijra Council in Islamabad, Pakistan. Several of Dr. Muhammad Hamidullah’s other writings, which may appear at first glance to focus mainly on the biography of the Prophet (ﷺ), such as:

- “The Political Life of the Holy Prophet,”
- “The Battlefields of the Prophet’s Era,”
- “The System of Governance in the Prophetic Period”

also contain extensive discussions on various aspects of Islamic international law (‘Ilm al-Siyar).

Dr. Hamidullah’s style was highly scholarly, logical, and evidence-based, and all his writings bear testimony to his rigorous academic approach. In particular, his work in the field of Islamic international law stands out as unique among contemporary scholars. He also made valuable additions to the classical theory of Siyar, and it would not be an exaggeration to say that Dr. Muhammad Hamidullah played a pivotal role in the development, evolution, and reconstruction of Islamic international law in the modern era.

In this paper, I will rely on Dr. Muhammad Hamidullah’s writings and lectures to substantiate my argument, and I will attempt to summarize them in the following key points:

1. Dr. Hamidullah deliberately used the term “Qanoon Bain al-Mamalik” (Law between States) instead of the commonly used term “International Law.” He explained that this branch of law actually deals with the relations between

empires or governments, not with the individual citizens of those states—whether in times of war or peace. In other words, it concerns itself not with the relations between two nations as peoples, but rather with the affairs and interests of two states. Therefore, the term “Qanoon Bain al Mamalik” is more appropriate. <sup>(16)</sup> In the beginning, Dr. Hamidullah even preferred to use the expression “Inter-State Law” instead of “International Law.” <sup>(17)</sup>

2. The fact is that the international law (Ilm al-Siyar) was first introduced by Muslims as an independent branch of knowledge. However, in contrast, Western scholars and thinkers strongly assert that modern international law is the result of Western intellectual efforts. They claim that this discipline was founded by a 17th-century thinker, Hugo Grotius (1583–1645). Dr. Hamidullah, through his writings, refuted this claim and proved that international law, in its universal and global form, is actually indebted to the Muslims, and that it was the Muslims who first developed and codified it long before the West. Dr. Hamidullah further writes that ‘Ilm al-Siyar (the Law of Nations) is an integral part of Islamic Shariah, and it is equally applicable to all nations. It is binding upon every Islamic state and every Muslim ruler to adhere to it. <sup>(18)</sup>

3. Some Western scholars also claim that this discipline was first introduced by the Greeks, but Dr. Hamidullah disproved this assertion as well. According to these Western writers, the Greek city-states did have certain principles governing their mutual relations, but these applied only among the Greeks themselves. They regarded all other peoples of the world as barbarians, unworthy of being treated under any legal system.

In other words, If the Greeks did have certain rules, those rules were limited to their own race and did not extend to other nations. <sup>(19)</sup>

The greatest Greek philosopher, Aristotle, even said about non-Greeks that

“Nature has created them to be slaves, implying that Greece could deal with them in any manner it pleased. <sup>(20)</sup>

4. He also rejected the claim made by European authors that this law was the achievement of the Romans. Dr. Hamidullah explains that although the Romans did have certain rules regarding war and peace, those rules were not meant for the whole world; they applied only to those states with which the Romans had agreements. At this point, Dr. Hamidullah, referring to the famous jurist Oppenheim (who authored a major work on international law), states that the Romans claimed the entire world as their property — and naturally, no one applies international law within their own home. <sup>(21)</sup>

5. After this, Western historians make a sudden leap of a thousand years and claim that international law began in the fourteenth and fifteenth centuries, yet they make no mention of the Islamic era in between. However, what these Western historians call modern international law, Dr. Hamidullah refuses to accept as such. His reasoning is that until 1856, the established rules in Europe only applied to relations among Christian states—they did not apply to non-Christian states. It was only in 1856, for the first time and out of necessity, that European Christian powers acknowledged the application of these laws to a non-Christian state, namely the Ottoman Empire. However, for the next sixty to seventy years, no other non-Christian state was considered eligible for this law. <sup>(22)</sup>

6. Dr. Hamidullah criticizes the international law of the League of Nations and the United Nations. His position is that, in the United Nations, no country is granted membership in its own right; unless at least two states that are already

members of the UN recommend it and provide assurance that the applying state is truly a civilized nation and deserving of being treated according to international law, it cannot be admitted. In contrast, Islamic international law allows no such distinction or discrimination based on whether another country complies with the standards and regulations set by Muslims or not. <sup>(23)</sup>

7. After discussing all these points in detail, he argues with evidence that the law which is truly inter-state in nature and a complete legal system actually begins with the life of the Prophet Muhammad (ﷺ). Before the Hijrah, in Makkah, there existed a situation similar to ‘a state within a state,’ and after the establishment of the Islamic state in Madinah, relations of peace and war with other countries and autonomous entities formally began. Every action of the Prophet thus became a foundational precedent for this law. In other words, first in the practice (Sirah) of the Prophet, and later in the policies of his rightly guided successors, all the principles were laid down upon which later jurists continued to build. In this way, a truly universal kind of international law came into existence the law that Muslims named ‘Ilm al-Siyar’

8. Islamic international law applies equally to all Muslim and non-Muslim governments alike. It recognizes no discrimination based on religion, territory, or race. <sup>(24)</sup> Since it is a part of Islamic Sharī‘ah, adherence to treaties with non-Muslim nations is just as obligatory as the observance of other acts of worship. Dr. Hamidullah concluded that the purpose of Islamic international law is to establish relations with non-Muslim nations on the basis of justice and fairness. This law possesses a strong and effective enforcing authority: on one hand, the power of the state and its legal system, and on the other hand, concepts such as moral responsibility and accountability before God. <sup>(25)</sup>

9. According to some Orientalists, the concept of neutrality does not exist in Islam; they assert that Islam divides the world into two hostile blocs Dār al-Salām and Dār al-Harb and does not acknowledge the existence of any third category. This view was presented by the Orientalist Majid Khadduri in his book "Islamic Law of War and Peace", published in 1955. Another Orientalist, Bernard Lewis, expressed a similar idea in his book "The Political Language of Islam", published by the University of Chicago in 1988, wherein he portrayed Islam as a colonial system. Dr. Hamidullah responded to these misunderstandings in his thesis titled ‘The Principles of Neutrality in the International Relations of Islam’.”

10. Dr. Hamidullah explains clearly that although the message of Islam is universal and aims to spread the religion of God throughout the world, this in no way means that non-Muslims should be deprived of their rights. Islam instructs Muslims to maintain peaceful relations with all nations that refrain from waging war against them and wish to live in peace. In other words, it can be said that in the Islamic concept of Siyar, the principle of peaceful coexistence among states is fully acknowledged.

Dr. Hamidullah presented this concept with strong reasoning to scholars and the people of Europe, and it has had a profound influence on modern theories of international law.”

## Conclusion

In short, Dr. Muhammad Hamidullah is the first modern-era Muslim scholar who truly mastered international law. Due to his familiarity with multiple languages, he was able to study the principles, concepts, and laws of international relations found among both ancient and modern nations. He wrote numerous papers and books on this subject. <sup>(26)</sup>

He compared Islamic international law with both ancient and contemporary European systems and clearly demonstrated that Islamic laws are superior in every respect. In explaining international law, he argued not only from European and American sources, but also from Islamic history and Islamic jurisprudence. He fully understood that Western writers generally overlook the merits of Islamic history. And because he was well-aware of the scholarly methodology of Orientalists, he responded to them with strong evidence, citing original sources, and addressing them according to their own academic standards. Dr. Mahmood Ahmad Ghazi says:

"Without any hesitation, Dr. Muhammad Hamidullah can be regarded as the reviver and the founder of Islamic international law in the modern era. If Imam Shaybani was the founder and compiler of the classical science of siyar, then Dr. Hamidullah is undoubtedly the founder and compiler of modern Islamic international law, and he fully deserves to be called the Shaybani of the twentieth century." (27)

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