

Islamic Perspective on the International Maritime Laws

From pictures taken of our planet from space, we see that a large part of our planet consists of the blue ocean and this is probably the reason why our world is called the blue planet. Undoubtedly, the seas are one of the blessings of Allah (swt) which Allah (swt) has created for our benefit. When we look at the entire human history from Hazrat Adam (a.s.) to today, we see that we get our Rizq from this sea in the form of fish, and our merchant ships roam around it and take our goods from one place to another. When the airplane was not invented and air travel was not common, People used to travel via sea for longer distances. Similarly, it is the navy that is built to conquer far-off areas. Also with scientific exploration, we found out that Allah (swt) has buried many treasures for us in the sea like petroleum, gas, and other mineral resources. And we also found out that it is the ocean that produces the major portion of oxygen so that we can breathe. ﴿فَبِأَيِّ آلَاءِ رَبِّكُمَا تُكَذِّبِينَ﴾ **“Then which of your Lord’s favors will you deny?”** [Surah Al-Rahman].

During the era of Caliph Hazrat Usman Ghani (ra), for the first time, Emir Muawiya, the Governor of Syria, was instructed to prepare a naval force, and after that the first Islamic army attacked Constantinople, fulfilling the commands of Prophet (saw), While continuing the Islamic expansion Caliph Amir Muaviyah conquered the islands of Cyprus in the Mediterranean Sea through Navy. Similarly, the conquest of Spain and Sicily was also made possible due to the Navy, while in the conquest of Sindh, the Navy provided logistical support.^[1]

Along with the navy, the Muslim merchants also made full use of sea routes in spreading the Islamic da'wah to the whole world. The message of Islam reached Southern India, Sri Lanka, the islands of Indonesia and Malaysia, and the southern regions of China through these Muslim merchants.

Since there is no concept of colonization in Islam, this is the reason that after the native population of these areas converted to Islam, the ruling structure was also naturally transformed according to Islam with local leadership assuming the power. The Arab traders who were also settled there smelt into the local environment and society according to Ahkam Sharia. And the native population never considered them as outsiders or colonialists because the Islamic law applies equally to all human beings and does not discriminate between people based on their color or race. It is different from when the European nations colonized many parts of the world including America, Africa, and Asia and created separate and discriminative laws for themselves and their conquered nations.^[2]

However, as mentioned, Muslims started their navy from the time of the Rashidun Caliphates, whereas it was the Umayyad Caliphate that ended the naval power of the Roman Empire resulting in Muslims being the only naval power in the world with control spread over the seas from the Mediterranean Sea to the Red Sea, the Persian Gulf and from the Arabian Sea to the Indian Ocean. This process continued in the Abbasid Caliphate until the Ottomans came. The East-West trade route was under the total control of Muslims i.e. the European traders had to pass through Islamic lands to reach India and China. However, there was one single and alternate option left, where they could avoid the Islamic lands and reach India and China, and that was Constantinople. But after the conquest of Constantinople by Sultan Muhammad Fateh in 1453, this route was also lost to Europe, meaning that Europe was now completely at the mercy of Muslims to trade with the Far Eastern nations by land and by sea.^[3]

But unfortunately at the same time, the Muslims of Spain were in a state of decline and after the fall of the last Muslim stronghold i.e. the Sultanate of Grenada in 1492, Europe acquired the treasure of knowledge left by Muslims in Spain, and out of this treasure Europe

inherited two powerful states, one was Spain and the other was Portugal. But even these states along with the other south European states were not powerful enough to compete with the Ottoman Navy in the open sea and let open trade routes for themselves. So searched for alternative trade routes to somehow bypass the Islamic lands to reach and enjoy the riches of India, China, and Far Eastern nations.

Christopher Columbus, an Italian navigator, led an expedition sponsored by the King and Queen of Spain in 1492 in search of an alternate sea route to Asia. However, instead of reaching India, he reached America. By that time, America had been already discovered by Muslim sailors and a few other nations. And they were also doing trade but on a lesser scale and it is important to note that the Muslims never colonized them. ^[4]

However, successive trips of Columbus to America resulted in the colonization of America by Spain whereas other European nations followed suit. On the other hand, Portugal was also looking for an alternative route to India, and their navigator Vasco de Gama, with the help of a Muslim navigator "Ahmed Ibn Majid", found it by going around the southernmost part of Africa through the Cape of Good Hope. It should also be noted that this route was also already in use by Muslim sailors and the West African nations used to trade with India through this sea route^[5]. However, Vasco de Gama's discovery of this route laid the foundation for the colonialization of the coastal areas of Africa by Portugal and later by other European nations.

Since Spain and Portugal were the two major maritime powers of Europe at that time, upon the discovery of new routes, the Kings of Spain and Portugal conflicted about who should control the trade and colonization of the new routes. Portugal was a greater sea power than Spain at that time. The Portuguese King sent a stern letter to his Spanish counterpart. The Spanish King realized that his state did not have enough naval power in the Atlantic Ocean to compete with the Portuguese. So Spain took the diplomatic channel. Both European powers were Roman Catholic Christians. Spain approached Pope Alexander VI to resolve the conflict. The Spanish were favorites to the Pope due to the Reconquista of Spain and the expulsion and forced conversion of Muslims and Jews in Spain. One of the reasons they were also given the title of "Catholic" by Pope Alexander VI.

On May 4, 1493, Pope Alexander VI drew a line roughly in the middle of the Atlantic Ocean, applying the West's most tested formula, I-e "compromise," and decreed that west of this line, All land belongs to Spain and all the land to the east of this line belongs to Portugal, i.e. the Pope divided the non-European world like a cake between Spain and Portugal. But Portugal was not happy with this demarcation, the Portuguese King continued direct negotiations with King Ferdinand and Queen Isabella of Spain. He wanted to extend the line further west so that he could capture more of the land.

Treaty of Tordesillas:

Consequently, in June 1494, a treaty was signed at the Spanish town (Tordesillas) which stipulated that the north-south line drawn by Pope Alexander VI would be maintained but moved further west 920 miles (1480 km). Thus all of Africa and Asia were given to Portugal, while North and South Americas were given to Spain.

At the same time, the Vatican Pope urged both Spain and Portugal to Christianize the natives in their colonies. These papal decrees were used by both Spain and Portugal to legitimize their colonization, with Spain claiming its colonization of the Americas and Portugal's colonization of Africa and Asia as their "divine right". So, it can be said that it was the "international law" of Europe at that time, which both Spain and Portugal promoted and defended so that no one violates this "law" and accept their rights on America, Africa, and Asia. Apart from these two countries, no one is allowed to build colonies and their monopoly over these seas should be accepted. ^[6]

Obviously, for the Ottoman Caliphate, all of these treaties and Pope decrees were rubbish and did not matter, because, for the Muslims, the only source of guidance is the Hukum of Allah (swt). And Allah (swt) has subjugated the seas for us that is why Muslims use their naval power and strength to maintain and perpetuate their supremacy over the seas, as the Muslims had done for centuries.

As a result, a series of intense naval wars between the Ottoman Navy and Portugal began on the coasts and seas of Africa and India. Since Spain's axis was America, in which the Ottoman Caliphate had no interest, the chances of conflict with Spain were less, except that the Ottoman Navy and Spain faced each other from time to time in the Mediterranean Sea. But since Portugal's axis was Africa and Asia, whose seas and lands were dominated by the Ottoman Caliphate, the situation with Portugal was more intense. [7]

When new European sea powers emerged in the 17th century, such as England, Netherlands, and France, they were Protestants and not Catholics. That is why they also rejected the Catholic Pope's decree. Meanwhile, the power of Spain and Portugal also began to decline, as a result, it became possible for the other European countries to colonize the territories controlled by Spain and Portugal. When the balance of power in Europe shifted, new laws regarding seas also emerged. In other words, the old powerful states used the Pope's decree, which they considered "international law", and the new powerful states started to write down new "international law" according to their own interest. [6]

And the most proactive in this was the Netherlands. Dutch jurist Hugo Grotius, who is also considered the founder of modern international law, was the first to propagate that coastal areas have a right to adjacent waters, the width of which is related to their ability to exercise effective control over it. Taking this point further, the Dutch jurist Cornelius van Bynkershoek put Grotius's idea into practice by stating that such effective control should be expressed with the extent of the coastal area's firepower. Italian lawyer Ferdinand Galiami estimated the range of the most advanced cannon of that time to be 3 nautical miles. This concept then became international law and was known as the "Canon shot rule". Around the 17th century, it was considered an internationally accepted standard of the width of the territorial sea. So the concept of "freedom of the seas" emerged that nation and state rights were limited to a certain strip of water that usually extended 3 nautical miles (3-mile limit) from a country's coastline. All waters outside state boundaries shall be considered international waters, which shall be accessible to all nations, and shall have no right or claim to anyone. [6]

In the early 20th century, some countries expressed a desire to expand national maritime boundaries to protect fish stocks and mineral resources, and provide a means of pollution control. The League of Nations convened a conference in The Hague in 1930 but no agreement was reached.

After World War II, the United States emerged as the greatest maritime power, and as has always been the principle of human history, i.e. the powerful make the rules and laws which they then call "international law". In 1945, US President Harry S. Truman extended US control to all natural resources in its continental geography, using traditional international principles of a nation's right to protect its natural resources.

Other countries were quick to adopt this strategy, some extending their fishing waters to 200 nautical miles, while others extended their national seas to 12 nautical miles.

After that, these concepts were legalized through three conventions, The Geneva Conventions of the High Seas in 1958, the Second Conference on the Law of the Sea in 1960, and the United Nations Convention on the Law of the Sea in 1982. [6]

Now, if we come to Pakistan, we find that Pakistan's maritime boundaries are also 200 nautical miles, which means that international water starts afterward, which means that

whatever activity takes place in this international water, Pakistan should have no concern over it, this is the reason that Indian submarines entered Pakistan's territorial waters from international waters twice in the past years, but our powerful navy only gave a warning and sent them back to international waters safely. In the same way, we keep hearing and reading in the news every day that Pakistani and Indian fishermen have entered each other's maritime boundaries, and are arrested by the Pakistani and Indian coast guards, and the poor fishermen on both sides suffer and rot a long time in prisons due to these so-called "international maritime laws".^{[8][9]}

Similarly, the Atlantic aircraft incident happened in 1999, when the transport aircraft of the Pakistan Navy was targeted by the Indian Air Force and 16 of our soldiers were martyred. As the debris of that aircraft was found in both Pakistani and Indian waters, the "International community" avoided blaming India while our rulers showed their usual cowardice and did little more than pay lip service.^[10]

In the same way, we see that the United States Navy and other Western imperialist countries stand in the same so-called international waters and bomb Muslim countries from their aircraft carriers and make us bleed, even their Navies also pass through the territorial waters of Muslim countries like the Suez Canal, the Straits of Hormuz and Malacca strait, and all this because of these puppet rulers imposed upon on us. ^[11]

Similarly, if we look at the global theatre, China is building artificial islands to claim its sovereignty in the South China Sea, so that it can expand its maritime boundaries, while the United States and the West are calling it a violation of international waters. Similarly, in the Arctic Ocean, there is a dispute over the maritime boundaries between the United States, Canada, Northern European countries, and Russia because the area is rich in oil. Therefore, the issue of 200 nautical miles maritime boundary causes serious complications and conflicts between countries that are very close to each other or whose maritime distance is less than 400 miles because in such a case both countries would lay claim to their territorial waters in each other's waters.^{[12][13]}

The bottom line is that there is no such thing as international law or international waters, rather the only principle which is applicable throughout human history is "Might is Right", i.e. whoever exercises power will make laws. All the rules and laws of the present era have been created by the United States and the West keeping in mind their imperial benefits, which then they present to the rest of the world as international law as if it is in their interest as well so that they also adopt these laws as their laws. Obey it, propagate it and defend it, as if their survival depended upon it. As a result, the United States and the West have not only imposed their imperial laws on the world but made them accept them and take their ownership, as a result, the entire world is keeping the imperialism of the United States and the West in the name of international laws. It is just like they are enslaving themselves by putting handcuffs on their own hands and also validating the legality of their own slavery.

Just like the borders drawn by colonialists on the land are invalid, so are these maritime boundaries. Just like it is Haram to consider these Westphalian land borders sacred, it is also Haram to consider these sea borders based on the Treaty of Tordesillas as sacred. Just as the concept of nation-states was intended to stop the growth of the Ottoman Caliphate into Europe. The concept of demarcation of maritime boundaries was also intended to end the supremacy of the Ottoman Navy from the seas.

Therefore, it is not permissible for the Muslims to accept and believe in these laws made by Taghut and turn to them for the settlement of their problems, as Allah (swt) says, **﴿الَمْ تَرَ إِلَى الَّذِينَ يَزْعُمُونَ أَنَّهُمْ آمَنُوا بِمَا نُزِّلَ إِلَيْكَ وَمَا أَنْزَلَ مِنْ قَبْلِكَ يُرِيدُونَ أَنْ يَتَحَاكَمُوا إِلَى الطَّاغُوتِ وَقَدْ أُمِرُوا أَنْ يَكْفُرُوا بِهِ وَيُرِيدُ الشَّيْطَانُ أَنْ يُضِلَّهُمْ ضَلَالًا بَعِيدًا﴾** **"Have you not seen those who claim to have believed in what was**

revealed to you, [O Muhammad], and what was revealed before you? They wish to refer legislation to Taghut, while they were commanded to reject it; and Satan wishes to lead them far astray” [Surah Al-Nisa: 60]

As far as the future state of Khilafah (Caliphate) is concerned, whose establishment is very close InshaAllah, its Maritime policy will be the same as that of the Muslims of early centuries, which is based on this saying of Allah (swt), ﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ﴾ **“And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows”** [Surah Al-Anfal: 60].

Therefore, the naval policy of the Islamic State of Khilafah is based on this verse, in which Muslims are given a general command to gain full strength against the Harbi Kuffar. For this, modern warships, submarines, and aircraft carriers should be prepared so that the domination of Islam is established on the seas in the same way that domination of Islam is established on land. Likewise, the authority of Kufr should be demolished through Jihad, as Allah (swt) says, ﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةً وَيَخُونَ الدِّينَ لِلَّهِ﴾ **“Fight them until there is no [more] fitnah and [until] worship is [acknowledged to be] for Allah”** [Surah Al-Baqarah: 193].

But at the same time, the state of Khilafah will also make sure that no one is exploited because the state of Khilafah is not a colonial and imperial state. Also, the state of Khilafah will respect international norms as far as the Sharia allows it. Therefore, since the ocean has been declared public property by Allah (swt) for all human beings, the state of Khilafah will not prevent anyone from benefiting from it. Therefore, those poor fishermen who are even related to Harbi Kuffar (belligerent) will not be prevented from getting Rizq from the sea. [14] However, they will be prevented from obtaining the mineral reserves such as petroleum and gas, from which the belligerent states can gain power. Likewise, the Khilafah State itself will promote scientific research in the sea and will not stop other nations in this regard. As far as commercial ships are concerned, the state of the Khilafah will deal with them as per the following four categories given below:

1. Merchant ships belonging to the citizens of the Khilafah State, whether Muslims or non-Muslims, shall be provided with facilities and ease for doing business and it is Haram to levy any kind of taxes on them.

2. Merchant ships belonging to countries with which we have treaties and agreements will be treated in accordance with them, i.e. duties and levies are imposed as per agreement.

3. The merchant ships belonging to imperialist states, whom we are not currently in a state of war: all precautions will be taken regarding them, their ships will be searched to see if any such goods are being carried by which they are gaining military strength, and their merchant ships will be taxed based on tit for tat policy.

4. Merchant ships belonging to countries with which we are in a state of war, those merchant ships shall be seized with their cargo and their crews shall be made prisoners of war.^[15]

5. In summary, Allah (swt) has sent his beloved Messenger and Prophet Muhammad (saw) as a mercy to all mankind and the Shariah is the legal code for all humankind, following which is Khair for this world and the hereafter. So, just as our beloved Prophet (saw) conveyed the message of Allah to us, now it is our duty to convey it to all mankind and enlighten them with the light of Islam, from the darkness of Kufr. And the method that Islam has given us for this is Da'wah and Jihad. So, just as the Muslim merchants of the early centuries brought the Islamic call to the islands of the Far East nations through the sea, and conquered Spain in the West

through Jihad. These examples are a criteria for us today that we should also spread the religion of Islam to the rest of the world through Da'wah and Jihad by all possible means. And it can only be possible once the Khilafah state is established because the ummah pledges allegiance to the Khaleefa on the basis that he will implement Islam internally and use all possible means to spread it externally to the whole world.

But at the same time we need to understand the reality of the current world order, its history and background, and its illusions so that we can acquire the intellectual and political vision with which we can strengthen the upcoming Khilafah state. And be able to advise and persuade the Khaleefa on the basis of strong intellectual and political arguments. And to identify the Khaleefa's intellectual and political mistakes to correct him and hold him accountable. Because these were the factors whose gradual decline and absence in the last period of the Ottoman Caliphate led to its downfall and restoring them will be the factors whose presence will lead to the revival of the Ummah.

**Written for the Central Media Office of Hizb ut Tahrir by
Muneeb ur Rehman**

References:

1. سيرة الصحابه خلفائے راشدین (شيخ شاه معين الدين احمد ندوی)
2. Islamic State (Sheikh Taqiuddin An-Nabhani)
3. سلطنت عثمانیہ (ڈاکٹر علی محمد الصلابی)
4. The African, and Muslim, Discovery of America – Before Columbus, Book by Dr. Abdullah Hakim Quick
5. مسلمان جہاز ران (تابش صدیقی)
6. Elements of Blue Economy by Vice Admiral Retd Iftikhar Ahmed Rao
7. <https://historyofislam.com/contents/onset-of-the-colonial-age/the-portuguese-devastations-in-the-indian-ocean>
8. <https://www.dawn.com/news/1678075>
9. <https://www.dawn.com/news/1698694>
10. https://en.wikipedia.org/wiki/1999_Pakistan_Breguet_1150_Atlantic_shootdown
11. <https://maritime-executive.com/editorials/beyond-the-gulf-broadening-u-s-maritime-security-ops-in-the-mideast>
12. <https://www.aljazeera.com/news/2021/11/19/china-supports-maritime-militia-to-assert-south-china-sea-claim>
13. [https://en.wikipedia.org/wiki/Territorial_claims_in_the_Arctic#:~:text=The%20status%20of%20certain%20portions,km\)%20or%20internal%20waters.](https://en.wikipedia.org/wiki/Territorial_claims_in_the_Arctic#:~:text=The%20status%20of%20certain%20portions,km)%20or%20internal%20waters.)
14. The Shar'i Principles for dealing with Rivers (Sheikh Ata Bin Khalil Abu Rashtah)
15. Introduction to Constitution, Vol:2, Article 189 (Sheikh Taqiuddin An-Nabhani)