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STATES' CONCEPT EXAMINED UNDER THE ISLAMIC AND INTERNATIONAL LAWS

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Abstract

The concept of states in Islam is often times misinterpreted with the concept under International law. Statehood in Islam is further more found confusing by persons because of the division of the world into the territory of war and territory of peace. This brings a lot of question to the minds of students; do we have states in Islam? Are we just one single ummah? Is the existence of the states in line with the dictates of the Shariah. These among many other things are the question this work seeks to answer. The research work seeks to examine the concept of states under Islam and International law; in doing that, the meaning of states through it element is looked at as well as the relationship between states. Under the Islamic law, the classification of the world into the territory of war, peace and Islam is examined. The work further highlights the downfall of the Ottoman empire and how it led to the full recognition concept of states in Islam today. The work also highlighted the difference between states under the two systems and concluded by saying that the concept of states under International law borrowed from that of Islam.

Introduction

One of the effects of globalization in the world today is increased level of interactions as a result of increased level of transportation, communication, technology and media. Therefore, the rate at which group of persons settling in a community get to notice what they need from one another is on a high. Thus, in negotiating for whatsoever they need from one another, they need to come together as a unified body with one collective voice. It is unified body with common interest and goal that is referred to as a state.

States in International Law

To start with, International law can be defined as ‘the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors’¹. International law can also be

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¹Shaw M, ‘International Law’, <https://www.britannica.com/topic/international-law> accessed on the 15th of February, 2020.

described as a 'system of treaties and agreements between nations that governs how nations interact with other nations, citizens of other nations, and businesses of other nations'². The term international law was coined by Jeremy Bentham, where he defined International law as 'a collection of rules governing relations between states'³.

Simply put, it is a set of rules and norms that govern states in their relationship with one another. International law can be private or public. Private international law deals with conflicts and issues arising from private entities such as multilateral companies that deal with more than one state⁴. Public international law on the other hand deals with the relationship between states or states and its citizen our subject of other states⁵. This now takes us to the meaning of a state.

What is a State in International Law?

A state in the international law is the primary subject of international law having numerous rights and obligations, although they are not the only actor in the international community⁶. A state can be described as a politically organize group of persons leaving in a definite territory with a recognized government of its own. It should be noted that there is no exact definition of International law and as such no universally accepted definition. Therefore, Scholars in defining a state ends up in highlighting criteria that must be met by an entity before it can be referred to as a state⁷.

Under the traditional International Law, Scholars and Authors, an entity must meet up with four basic criteria before it can be referred to as a State⁸. This is what translated into Article 1 of the Montevideo convention on the Rights and Duties of States of 1933 which provides that the state as a person of International Law should have the following qualifications;

- a) Permanent Population;
- b) A defined territory;
- c) Government; and

² What is international law? <https://hirealawyer.findlaw.com/choosing-the-right-lawyer/international-law.html> accessed on the 15th of February, 2020.

³ Shaw M, 'International Law', <https://www.britannica.com/topic/international-law> accessed on the 15th of February, 2020.

⁴ What is international law? <https://hirealawyer.findlaw.com/choosing-the-right-lawyer/international-law.html> accessed on the 15th of February, 2020.

⁵ International Law, https://www.law.cornell.edu/wex/international_law accessed on the 15th of February, 2020

⁶ States in International Law, <https://www.britannica.com/topic/international-law/States-in-international-law> accessed on the 15th of February, 2020

⁷ COHEN R, 'THE CONCEPT OF STATEHOOD IN UNITED NATIONS PRACTICE', UNIVERSITY OF PENNSYLVANIA LAW REVIEW [Vol.109:1127-1961] p. 1127.

⁸ COHEN R, 'The Concept of Statehood in United Nations Practice', UNIVERSITY OF PENNSYLVANIA LAW REVIEW [Vol.109:1127-1961] p. 1129.

d) Capacity to enter into relations with other states.

Other attempt to provide other definition proves abortive and is in that light that this research work would also follow the above methodology. Therefore, the above criteria would be briefly examined.

- a) Permanent Population: for an entity to be conferred statehood i.e. be recognized as a state, it must have a definite population. It should be noted that the definition have to be stable i.e. it is not plunged by crisis⁹. It would be difficult to have a state without a physical presence. However, there is no requirement as to the number of persons that should be in the state.
- b) A defined territory: an entity that would be conferred statehood must have a definite territory that it calls its own. This is so as the requirement of permanent population cannot be defined in the absence of a defined territory¹⁰.

Previous practice has shown that the existence of fully defined boundaries is not much of a factor and the most important thing is to have an ‘effective political authority having control over a certain portion of land’¹¹.

Much of the controversy which surrounded the application of the newly proclaimed state of Israel for membership in the United Nations stemmed from doubts as to whether it met the requirement of a defined territory. The Arab states, led by Syria, contended that since Israel's borders were contested, its statehood must be denied. The United Kingdom also offered this as the reason for its refusal either to recognize the state of Israel or to support its application for admission. Other representatives, construing the territorial requirement more liberally, thought that the General Assembly resolution of 1947 conferred territory upon Israel and that it did not matter that certain details as to the delimitation of this territory remained unsettled. When, after postponement of the issue, consideration of the application was taken up again, Israel's request for membership was granted¹².

In 1913, Albania was recognized as a state by many countries even though it does not have a settled territorial boundary. Also, the size of a state does not matter in the requirement of a definite territory and that the coastal boundaries of a state are part of its territories.

- c) Government: In the words of Thomas Hobbes,

⁹Abdulrahim W, ‘A State as a Subject of International Law’ <https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/5-a-state-as-a-subject-of-international-law> accessed on 15thof February, 2020.

¹⁰*Ibid.*

¹¹ *Ibid*

¹² COHEN R, ‘The Concept of Statehood in United Nations Practice’, UNIVERSITY OF PENNSYLVANIA LAW REVIEW [Vol.109:1127-1961] p. 1134.

Man left in a state of nature, our lives would be nasty, brutish and short¹³.

To that extent, Man must not be left in a state of nature where everyone struggles for himself and there is no coordination whatsoever. Therefore, before an entity can be referred to as a state, there must be a stable and effective government¹⁴. The government must be such that is strong and so strong to the extent that it can control its territories without foreign assistance¹⁵.

However, a state is still in existence and would not be deprived of the recognition as one because of a temporal absence in government that can arise as a result of civil war¹⁶.

d) Capacity to enter into relations with other states. The state must be able to have external relations without influence from some force behind. Furthermore, later Jurists have added some additional criteria that must be met before conferring statehood. This requirements includes; independence, sovereignty, recognition and self-determination¹⁷.

Some Jurists consider Independence as the most important criterion for having a state. To them, it is only an independent state that can have the ability to enter into external relations without interference as well as having a stable and effective government.

The notion of “state sovereignty” is the basic concept of modern international law and as such should be criteria for conferring statehood¹⁸. In Soviet and Russian international legal literature the most frequently cited definition of sovereignty is given by Professor G. Tunkin. He characterizes state sovereignty as ‘... the inherent supremacy of the State in its territory and independence in international relations’¹⁹. Recognition as a criterion is like the final stage of the creation of a state in that it is the recognition that makes an entity becomes a state in the international law with the attendants’ obligations.

¹³ Science shows Thomas Hobbes was right – which is why the Right-wing rule the Earth, <https://www.telegraph.co.uk/science/2016/09/29/science-shows-thomas-hobbes-was-right-which-is-why-the-right-wi/> accessed on 15th of January, 2020.

¹⁴ COHEN R, ‘The Concept of Statehood in United Nations Practice’, UNIVERSITY OF PENNSYLVANIA LAW REVIEW [Vol.109:1127-1961] p. 1135.

¹⁵ Abdulrahim W, ‘A State as a Subject of International Law’ <https://sites.google.com/site/walidabulrahim/home/my-studies-in-english/5-a-state-as-a-subject-of-international-law> accessed on 15th of February, 2020.

¹⁶ *Ibid*.

¹⁷ *Ibid*

¹⁸ Gevorgyan K, CONCEPT OF STATE SOVEREIGNTY: MODERN ATTITUDES, http://www.y-su.am/files/Karen_Gevorgyan.pdf accessed on 15th of February, 2020.

¹⁹ *Ibid*

Relationships between States in International Law.

The term relationship simply means a way in which two or more persons should behave with each other. Therefore, by extension the Relationship between states basically means the way states should behave with each other. The relationships between states in Islamic law as been provided for by the Draft Declaration on Rights and Duties of States, 1949²⁰ in a way of the Rights and Obligations of states viz;

- Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government²¹.
- Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law²².
- Every State has the duty to refrain from intervention in the internal or external affairs of any other State²³.
- Every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife²⁴.
- Every State has the right to equality in law with every other State²⁵.
- Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion²⁶.
- Every State has the duty to ensure that conditions prevailing in its territory do not menace international peace and order²⁷.
- Every State has the duty to settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered²⁸.
- Every State has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order²⁹.
- Article 10 Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 9, or against which the United Nations is taking preventive or enforcement action³⁰.

²⁰https://legal.un.org/ilc/texts/instruments/english/draft_articles/2_1_1949.pdf accessed on 15th of February, 2020.

²¹ Article 1 of the Draft

²² Article 2 of the Draft

²³ Article 3 of the Draft

²⁴ Article 4 of the Draft

²⁵ Article 5 of the Draft

²⁶ Article 6 of the Draft

²⁷ Article 7 of the Draft

²⁸ Article 8 of the Draft

²⁹ Article 9 of the Draft

³⁰ Article 10 of the Draft

- Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9³¹.
- Every State has the right of individual or collective self-defence against armed attack³².
- 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 or its laws as an excuse for failure to perform this duty³³.
- Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law³⁴.

States In Islamic Law

Generally, Islamic International relations are governed by the Law of war and Peace. Scholars are of the view that the entire Muslim *Ummah* is one and as such we just have a single Islamic State; to them we just have the Islamic State and Non-Islamic state.

The jurists are of the opinion³⁵ that the world is divided into *Dar al-Kufr*³⁶ and *Dar al-Islam*³⁷; this division was necessitated by the Islamic conquest of vast areas of land in the Seventeenth century and the need to regulate the relationship between themselves and their neighbours³⁸.

However, a new category was introduced to regulate the relationship with states that were at peace with the Islamic state. These three classifications would be examined thus;

- a) *Dar al-Islam* (Territory of Islam) simply means a domain of the believers where Muslims must be able to enjoy peace and security³⁹. Scholars are not in agreement as to the meaning⁴⁰; to some, it is a territory that the basis of their laws is the Shariah, while some say that any territory that is dominated by Muslims is a territory of Islam while the last set of

³¹ Article 11 of the Draft

³² Article 12 of the Draft

³³ Article 13 of the Draft

³⁴ Article 14 of the Draft

³⁵ It was propounded by Imam Abu Hanifa.

³⁶ Land of disbelief or war.

³⁷ Land of Islam.

³⁸ International Relations under Islamic Law (Shari'a): Dar al-Harb (House of War) vs. Dar al-Islam (House of Islam) <https://www.loc.gov/law/help/islamic-law/international-relations.php> accessed on 16th February, 2020.

³⁹ Khalil A, 'Dar Al-Islam And Dar Al-Harb: Its Definition and Significance', <https://en.islamway.net/article/8211/dar-al-islam-and-dar-al-harb-its-definition-and-significance> accessed on 16th February, 2020.

⁴⁰ International Relations under Islamic Law (Shari'a): Dar al-Harb (House of War) vs. Dar al-Islam (House of Islam) <https://www.loc.gov/law/help/islamic-law/international-relations.php> accessed on 16th February, 2020.

scholars are of the view that it is any territory that Muslims live peacefully and enjoy maximum security.

- b) *Dar al-Kufr* (Territory of Islam) on the other hand is the abode of non-Muslims whether or not they are in war with Muslims⁴¹. This is a territory that Muslims are not allowed to practice their religion freely or they are not safe therein or a territory that attacks the *Dar al-Islam*. this classification is justified by the Locus Classics verse of the Qur'an where Allah says;

Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being righteous toward them and acting justly toward them. Indeed, Allah loves those who act justly⁴².

- c) *Dar al-Sulh*⁴³ (Territory of Peace) is the third classification that was later introduced. These are territories that have entered into peace treaties with the territory of Islam⁴⁴. The authority for this is rooted in *Suratul Taubah*, verse 1-5 where Allah enjoined Muslims to honour treaties entered into with non-Muslims except where they betray.

However, with the downfall of the Islamic Ottoman Empire in the early twentieth century, the above principles diminished and we began to have the establishment of nation states⁴⁵.

The Downfall of the Islamic Ottoman Empire

The Ottoman Empire is one of the longest empires⁴⁶ in Islamic history having lasted from the late 13th century to the 20th century⁴⁷. The empire began as a small state that was founded by Osman Gazi⁴⁸. The Ottomans after escaping from Central Asia; a region previously under the Byzantines rule, settled in Anatolia⁴⁹.

'In 1453, Mehmed II the Conqueror led the Ottoman Turks in seizing the ancient city of Constantinople, the Byzantine Empire's capital. This put an end to 1,000-year reign of the Byzantine Empire. Sultan Mehmed

⁴¹ Khalil A, 'Dar Al-Islam And Dar Al-Harb: Its Definition and Significance', <https://en.islamway.net/article/8211/dar-al-islam-and-dar-al-harb-its-definition-and-significance> accessed on 16th February, 2020.

⁴² Surah Al-Mumtahana Verse 8.

⁴³ Also referred to as *Dar al-Aman*.

⁴⁴ Dar al-Islam, Dar al-Harb, <http://worldmuslimcongress.blogspot.com/2008/01/dar-al-islam-dar-al-harb.html> accessed on 16th February, 2020.

⁴⁵ International Relations under Islamic Law (Shari'a): Dar al-Harb (House of War) vs. Dar al-Islam (House of Islam) <https://www.loc.gov/law/help/islamic-law/international-relations.php> accessed on 16th February, 2020.

⁴⁶ Unlike the Ummayyads, Abbasids, Mamluks and Mughal that didn't last more than three generations.

⁴⁷ Umar M. 'The Decline of the Ottoman Empire', https://www.researchgate.net/publication/329365451_The_Decline_of_the_Ottoman_Empire accessed on the 16th February, 2020.

⁴⁸ *Ibid*

⁴⁹ *Ibid*

renamed the city Istanbul and made it the new capital of the Ottoman Empire. Istanbul became a dominant international center of trade and culture',⁵⁰.

Furthermore, it was during the period of Suleiman that the Ottomans reached prominence; military, socially, economically and politically⁵¹. Throughout Sultan Suleiman's rule, the empire expanded and included areas such as Turkey, Greece, Bulgaria, Egypt, Hungary, Macedonia, Romania, Jordan, Palestine, Lebanon, Syria, Some of Arabia and a considerable amount of the North African coastal strip⁵².

However, the retrogression of the empire can be traced to the 17th century due to economic and political reasons. Politically, the struggle for succession became tensed, the Sultans focused more on the luxury of the palace than state affairs⁵³. They did not focus on their strengths and began to lost battles.

In 1683, the Ottoman Turks were defeated at the Battle of Vienna. This loss added to their already waning status. Over the next hundred years, the empire began to lose key regions of land. After a revolt, Greece won their independence from the Ottoman Empire in 1830. In 1878, the Congress of Berlin declared the independence of Romania, Serbia and Bulgaria. During the Balkan Wars, which took place in 1912 and 1913, the Ottoman Empire lost nearly all their territories in Europe⁵⁴.

The main source of their income was from the spoils of war, thus as the territory begin to spread and could not control a whole lot as they use to, they began to experience serious economic meltdown⁵⁵. Another factor that led to the downfall of the empire was the European industrial revolution; they began to

⁵⁰ Ottoman Empire, https://www.history.com/topics/middle-east/ottoman-empire#section_9 accessed on the 16th February, 2020.

⁵¹ Umar M. 'The Decline of the Ottoman Empire', https://www.researchgate.net/publication/329365451_The_Decline_of_the_Ottoman_Empire accessed on the 16th February, 2020.

⁵² Ottoman Empire, https://www.history.com/topics/middle-east/ottoman-empire#section_9 accessed on the 16th February, 2020.

⁵³ Umar M. 'The Decline of the Ottoman Empire', https://www.researchgate.net/publication/329365451_The_Decline_of_the_Ottoman_Empire accessed on the 16th February, 2020.

⁵⁴ Ottoman Empire, https://www.history.com/topics/middle-east/ottoman-empire#section_9 accessed on the 16th February, 2020.

⁵⁵ Umar M. 'The Decline of the Ottoman Empire', https://www.researchgate.net/publication/329365451_The_Decline_of_the_Ottoman_Empire accessed on the 16th February, 2020.

emulate the west which spelt doom for them. The downfall was summarized by Umar as;

..the decline of the Ottoman Empire was the gradual outcome of a complex and centuries-long series of miscalculations, wrong decisions, and intellectual and technological stagnation. In addition, there existed several more factors that led to the decline of the Ottoman Empire. From its political and economic retrogression and corruption, to the issue of succession and governmental decentralisation, both included corruption on a social and political level. Moreover, the stoppage of military conquests and decisive victories in the battle put an end to the modes of production and the main source of economic income. Likewise, the industrial revolution in Europe shifted state investment from army and taking taxes to the private sector and factories. Thus, expansion of territory came to a halt, with major defeat and loss over at the Mediterranean front. Ironically, all this occurred primarily after Suleiman the Magnificent death. Nonetheless, as eluded to earlier, there still remains a large gap in recent academic studies on Ottoman civilization⁵⁶.

The empire officially ended on the 1st November 1922, when the Ottoman sultanate was abolished and Turkey was declared a republic⁵⁷. The Ottoman caliphate continued as an institution, with greatly reduced authority, until it too was abolished on the 3rd March 1924.

Furthermore, it was the fall of the Ottoman Empire that led to the rise of nation-states where we began to have various states in the Islamic states (which shall be in turn referred to as Islamic states henceforth in this work). Therefore, the concepts of states as they are in the conventional world cannot be directly imported in the Islamic world. The concept of states within an Islamic state was developed as a 'child of necessity' in that as the concept of state is developing in the conventional world, a name was also needed in the Islamic world.

However, before a state can be referred to as an Islamic state; the state must have all the characteristics of an Islamic state; the basic of which is the total compliance and adherence to the principles of the *Sharia* amongst all other features. In line with the above, one can say without any fear of contradiction

⁵⁶*Ibid.*

⁵⁷Ottoman Empire (1301-1922), https://www.bbc.co.uk/religion/religions/islam/history/ottomanempire_1.shtml accessed on the 16th February, 2020.

that there is no Islamic state per se, at best what we have are Muslim states. The reason for this is not farfetched; most of the states claiming to be Islamic states do not follow the dictates of the *Shariah*, what then is Islamic about the state if they cannot follow the principles of *Shariah*.

Differences between States in Islamic Law and International Law

The concepts of states in Islam and International law as stated earlier are two different things. Statehood in Islam has been in existence centuries before the evolution of the concept in International Law. The following differences are what the writers can deduce;

Basis of Laws: The basis of the laws of an Islamic state is the *Shariah* which is divinely inspired and must be followed religiously. However, the state under the conventional law abides by laws that are drafted by Human beings.

State Religion: In an Islamic state, Islam must be the official state religion. Although, this does not preclude others from practicing religion of their choice. However, in the contemporary states; the concept of state religion is usually avoided.

Sovereignty: Islamic political thinkers believe that *ummah* was the basic 'collective religio-political unit in Islam'⁵⁸. The concept of Sovereignty extends over the universe, therefore an Ideal Islamic States foresee a Universal state that houses all Muslim⁵⁹. The Amir is the leader of the various States in an Islamic state and act as a vicegerent for Allah. Therefore, sovereignty lies with Allah. However, in the modern day International law; sovereignty lies with the people

Also, the way the public treasury is administered in an Islamic state is different from that of the modern state.

Lastly, another difference is the status of the constitution. The constitution is supreme in the modern state while the Qur'an supersedes the Constitution in an Islamic state in that the constitution is a mere child of necessity in the Islamic state.

⁵⁸'Islamic Concepts of Government and State', <http://www.upenn.edu/emeritus/IslamConcepts.pdf> accessed on the 16th February, 2020.

⁵⁹Khan M. Z, 'Islamic Concept of the State', <https://www.alislam.org/articles/islamic-concept-state/> accessed on the 16th February, 2020.

Conclusion

The existence of the principles of statehood⁶⁰ has been in existence as far back as the time of the Prophet (SAW). It is these principles that the modern international law modified into the various treaties that established the concept of statehood.

Flowing from the above, it is safe to conclude that the concept of state under the Islamic law is more developed than the concept under International law. This is evident from the elements of a state in the two systems: unlike in Islamic law, where the definition of a state is settled as to what makes an entity a state; under the International law, the elements of a state⁶¹ are still not settled as they are usually contained in treaties and conventions that do not encapsulate all the necessary criteria.

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⁶⁰Population, territory and government.

⁶¹ What an entity must possess before it can be referred to as a state.

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