# Islamic Jurisprudence

## **An International Perspective**

### C. G. Weeramantry

Vice President, International Court of Justice, The Hague Formerly a Justice of the Supreme Court of Sri Lanka

Foreword by

### M. Hidayatullah

former Chief Justice and Vice-President of the Republic of India

Message from

His Eminence the Grand Sheikh of Al-Azhar University, Cairo



## Library of Congress Cataloging-in-Publication Data Weeramantry, C. G.

Islamic jurisprudence: an international perspective / C. G. Weeramantry: foreword by M. Hidayatullah: message from His Eminence the Grand Sheikh of Al-Azhar University.

ISBN 0-312-01204-7: \$39.95 (est.)

1. Islamic law. 2. International law (Islamic law) I. Title LAW <ISLAM 7 Weer 1988> 340.5'9--dc19

First Published by Macmillan, London & St. Martin's Press, New York. 1988

Re-Published by Sarvodaya Vishva Lekha. 1999

Reprinted 2002

ISBN 955-599-166-9

Printed by



41, Lumbini Avenue, Ratmalana, Sri Lanka.

## Table of Contents

roreword			
	Preface		
	essage from His Eminence the Grand Sheikh of Al-Azhar		
	University	xvii	
1	The Origins of Islamic Law		
1	The Shari'a	1	
	Arabia Before and After Islam	1	
	The Prophet Muhammad	2 3	
	The Qur'an	5	
	Submission to God	8	
	The Territorial Expansion of Islamic Law	9	
	The Territorial Expansion of Islamic Law	,	
2	The Arabic Resurgence of Learning	14	
-	The Explosion of Knowledge	14	
	Arabic Libraries	15	
	The Synthesis of Knowledge	17	
	The Entry of Arabic Knowledge into the West	19	
	The Religious Stimulus to Learning	26	
	The Place of Jurisprudence in the Realm of		
	Knowledge	27	
		-	
3	The Sources of Islamic Law	30	
	The Primary Sources	32	
	(a) The Qur'an	32	
	(b) The Sunna	34	
	The Dependent Sources	39	
	(a) Ijma (Consensus)	39	
	(b) Qiyas (Reasoning by analogy)	40	
4	The Schools of Law	46	
	Sunnis and Shi'ites	47	
	The Sunni Schools	49	
	(a) The Hanafi School	49	
	(b) The Malikite School	51	
	(c) The Shafi'ite School	52	
	(d) The Hanhalite School	54	

### Contents

	Institutions of Learning	54
	The Role of the Jurist	55
	The Legal Profession	56
5	Some Basic Islamic Legal Ideas	59
	The Notion of Sharing	59
	The Notion of Caring	60
	The Notion of Trusteeship of Property	61
	The Notion of Brotherhood and Solidarity	62
	The Notion of Universalism	62
	The Notion of Fair Industrial Relations	63
	The Notion of Human Dignity	63
	The Dignity of Labour	64
	The Notion of the Ideal Law	65
	The Notion of Fair Contract	65
	The Notion of Commercial Integrity	66
	The Notion of Freedom from Usury	66
	The Notion of the Rights of Women	68
	The Notion of Privacy	71
	The Notion of Abuse of Rights	72
	The Condemnation of Anti-Social Conduct	72
	The Notion of Charitable Trust	73
	The Notion of Juristic Personality	74
	The Notion of Individual Freedom	75
	The Notion of Equality Before the Law	76
	The Notion of Legal Representation	77
	The Presumption of Innocence	78
	The Notion of Non-retroactivity	78 79
	The Notion of the Supremacy of the Law	79
	The Notion of Judicial Independence	80
	The Notion of Judicial Impartiality	81
	The Notion of Limited Sovereignty	01
	The Notion of Bidding unto Good: Am I my	83
	Brother's Keeper?	85
	The Notion of Tolerance	92
	The Notion of Democratic Participation	
6	Islamic Influences on European Legal Philosophy and	0.4
	Law	94
	Revealed Law and Human Reason	95
	The Doctrine of Double Truth	93

### Contents

	The Kindling of the Scientific Spirit	96
	The Islamic Encyclopaedists	98
	The Reaction of Orthodoxy	99
	Islamic Aristotelianism	100
	Averroism and Thomistic Philosophy	102
	The Influence of Islamic Concepts on European	102
	Philosophers of Liberty	105
	The Influence of Islamic Law on Modern	
	International Law	109
	The Influence of Islamic Law on Modern	
	Commercial Law	110
	The Birth of Sociological Thought	111
7	Islam and Human Rights	113
	Individual Dignity	114
	Justice in Rulership	115
	The Theocentric Approach	116
	The Islamic Theory of the State	117
	The Lack of Formalism	118
	Alternative Routes to Human Rights Doctrine	120
	The Universal Islamic Declaration of Human Rights	121
	The Conduct of State Business	123
	Some Islamic Contributions to Contemporary Human	105
	Rights	125
8	Islamic International Law	128
	Past and Current Misconceptions	128
	The Nature of Islamic International Law	131
	The Oneness of Mankind under Islamic Law	133
	The Content of Islamic International Law	134
	(a) The Law of War	134
	(b) The Law of Peace	138
	Private International Law	144
	Islamic Law and Internationalism: The Notion of	145
	Jihad	145
	The Impact of Islamic International Law on Western	140
	International Law	149
	(a) Some General Observations	149
	(b) The Possible Impact upon Grotius	150
	Islam and the Contemporary World Order	158

#### Contents

9 The Valu	e of Islamic Jurisprudence to the Non-Islamic				
World		164			
Knowle	edge of the History of Ideas	164			
Compa	rative Law	165			
Practica	al Diplomacy	166			
The Gr	rowing Influence of the Islamic World	167			
Prevent	ting the Breakdown of a Global Concept of an Rights				
		168 168			
Ochera	Generating Mutual Appreciation and Understanding				
Potenti	al Contributions to Human Rights	169			
Appendix A	Documents				
	The Bedrock of Islam: The Qur'an	171			
	The Farewell Sermon of the Prophet				
	Mohammed at Arafat	172			
	The Hadiths or Traditions	173			
	Directions of a Caliph to a Judge	174			
Appendix B	Universal Islamic Declaration of Human				
	Rights	176			
Appendix C	Protection of Human Rights in the Islamic	1,0			
III Milani	Criminal Justice System	184			
Appendix D	Key Words in Islamic Law	186			
Bibliography and References					
Index		189 201			

The events of September 11, 2001 caused the whole world to focus its attention on the importance of cross-cultural understanding, lack of which is a prime cause of many of the tensions that exist in the world today. This incident dramatically highlighted the age old wisdom that humanity cannot divide itself into compartments functioning in cultural isolation from each other but must see itself as one large family with an enormously rich cultural inheritance drawn from all the world's civilizations. This is the common inheritance of all and no parts of this culture are the exclusive preserve of some.

This age of massive destructive weaponry demands a re-orientation of our thinking from the catastrophic spectre of a clash of civilizations to the constructive vision of a confluence of civilizations – a corning together of all the elevating influences that have ennobled the human race.

This book focuses attention powerfully on the confluence of civilizations by showing how the much misunderstood Islamic civilization was a powerful fertilizer of world culture and indeed the very progenitor of the discipline of international law.

1. His Excellency Dr. Ahmed S. El-Kosheri, President of Senghor University, Alexandria and Judge Ad Hoc of the International Court of Justice.

I have the pleasure to address to your Excellency the present letter expressing my true and sincere feelings after re-reading your most appreciated book on Islamic International Law during the past few weeks which followed the terrorist attacks of September 11th, 2001.

I honestly consider your book the best study written on the subject throughout the last century, not only in English but also in all other languages available to me, including the Arabic language, which is my mother tongue.

Therefore, I do believe that it would be important for humanity at large and international lawyers in particular to have access to your book, not only in its original English version, but also in other languages. I hereby confirm my willingness to assist in undertaking the measures necessary to prepare an Arabic translation of the book if your kind self and your editor would be agreeable to grant the permission required for that purpose.

2. Dr. M. Hidayatullah, former Chief Justice of India and Vice-President of India.

'The book has made a definite advance on other books in this field. Books on Islamic jurisprudence have been written before and, in India. Abdur Rahim's book Muslim Jurisprudence has been for a long time the only book suitable for scholars. However, it did not deal adequately, it at all, with Islamic jurisprudence in an international setting. This want has now been removed by Professor Weeramantry.'

Dr. Inamullah Khan, Secretary General of the World Muslim Congress in The Muslim World, July 1989

'This book will be of immense guidance to all belonging to the legal profession, be they lawyers or judges. It is equally good for non lawyers as it is couched in simple language and gives a broad based picture of Islamic Jurisprudence. This valuable book deserves to be in all the important libraries of the world.'

ISBN 955-599-166-9

