CHAPTER THREE

ISLAMIC PHILOSOPHY OF LAW
IN RELATION TO ISLAMIC INTERNATIONAL LAW

1. Introduction

We look here at the theories of Islamic law only and not any political or other interpretations and applications of the law. It has frequently been seen that the pure theory of Islamic jurisprudence pragmatically differs from its origin and various political authorities have taken different advantages and benefit from that division in the system.

In this chapter, as other chapters of this book, we deal exclusively with questions affecting the philosophy of Islamic law in the system of Islamic international law and thus do not bring into consideration political factors and the misuse of the sources of the law by those who commit serious crimes under the shadow of the umbrella of Islam. Although, we do not oppose the fact that the origin of Islam is the law of struggle against inequalities and immoralities, the same law has, in some countries, been the tool of certain authorities in order to monopolize the mechanism of the law for their own personal intentions. Therefore, the chapter exclusively throws some light on the principles of the Islamic philosophy of law and its peculiarities, framework, juridical validity and flexibility in order to adapt itself to changes of time.

2. Internationalization

Islam is in essence the philosophy of universal natural existence which also includes our global relations with one another.¹ The juridical philosophy of Islam is one of the most recognised subjects within Islamic law and has been treated by Islamic jurists in various ways. This philosophy essentially bases its values on various sources of Islamic law and in particular on the framework of the Qur’ān constituting the basic source of

¹ For some aspects of Islamic philosophy see W. Montgomery Watt, *Islamic Philosophy and Theology* (1962).
Islamic jurisprudence. The Qurʾān is a philosophy of social sciences for the rightful direction of mankind, pointing to and preventing unlawful and immoral acts which do not coincide with spiritual values.\(^2\)

The Islamic philosophy of law in relation to the Islamic international law must be seen from the perspective of the internationalization of the conduct of Muslim nations in their external relations with other nations of the world. This philosophy cannot, in general, easily be separated from its historical evolution and evaluation, concepts of control of power and jurisprudence in Islamic world. This is because both—Islamic law and Islamic international law—have basically similar sources for the interpretation, application and enforcement of their provisions. And as a whole, Islamic law has had the purpose of internationalizing law and legal order and creating universal justice based on the principles of human rights. Therefore, the maintenance of human rights depends on two key elements. These are the international character of the principles and equal treatment of those principles concerning all nations of the world.

3. **Sui Generis**

The Islamic philosophy of law is based on the theory that Islamic legal obligations are formulated in accordance with the substance and nature of human beings. These must rely on the guidance and commands of divine jurisprudence.\(^3\) In other words, legal obligations must correspond to the nature of man and should create equality, justice, brotherhood and peace at any level of human society. These are some of the most important principles of Islamic law and accordingly, no juridical system can be comprehensive if it does not fulfil these preliminary conditions of

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\(^2\) It is to be emphasised here that we are only dealing with the concept of Islamic law and jurisprudence and do not in any way present the exercise of the above values by individuals or Islamic states.

\(^3\) “The motto of Islam is summed up in the expression of the Qurʾān, ‘well-being in this world and well-being in the Hereafter.’ Islam will certainly not satisfy the extremists of either school, the ultra-spiritualists and the ultra-materialists, yet it can be practised by an overwhelming majority of mankind, which follows an intermediate path, and develops simultaneously the body and the soul, creating a harmonious equilibrium in man as a whole. Islam has not only insisted on the importance of both these constituents of man, but also on their inseparability, so that one is not sacrificed for the benefit of the other. If Islam prescribes spiritual duties and practices, these contain also material advantages; similarly if it authorizes an act of temporal utility, it shows how this act can also be a source of spiritual satisfaction.” *Publications of Centre Culturel Islamique—Introduction to Islam*, p. 34.