

International Law and Maqasid Al-Shariah

by

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Abstract:

This article undertakes a preliminary analysis of the concept of Maqasid Al-Shariah (The Objectives of Islamic Law) and how they align with contemporary International law. The five core objectives of Maqasid Al-Shariah, as expounded by Islamic jurists, particularly Imam Ishaq al-Shatibi, are the protection of religion, life, intellect/mind, genealogy/dignity, and property. These objectives resonate with the international law governing human rights, religious freedom, intellectual protection, proprietary rights, and legal norms upholding human dignity. By bridging Islamic principles with the laws governing the international legal system, this article evaluates the overlaps and natural connectivity underlying objectives served by Shariah and International law. As a normative juridical legal research, uses a conceptual, comparative, and statutory approach. From this discussion, it is concluded that contemporary international treaties mostly contain Maqasid Al-Shariah principles, and even a product of an international agreement can be, even though an Islamic country or Muslim did not initiate the agreement, aligned with Maqasid Al-Shariah .

Key Words: International Treaties, *Maqasid Al-Shariah* , Islamic Law, International Conventions.

Introduction

The concept of *Maqasid Al-Shariah* , or the objectives of Islamic law, represents a profound philosophy underpinning the principles and applications of Shariah. Rooted in the Quran and Sunnah, these objectives aim to protect and promote human welfare by ensuring the well-being of individuals and society at large. This framework not only aligns with various aspects of international law, particularly human rights law, but more significantly relating to religious and ethnic minorities. Further, in recent years the doctrine of Maqasid has entered the domains of

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finance, bio-ethics, commerce and legislative jurisprudence, underscoring the importance of this topic in contemporary legal discourse.

In the realm of Islamic jurisprudence, *Maqasid Al-Shariah* has undergone a significant evolution through centuries of scholarly work, particularly between the 4th and 9th centuries AH. The objectives, traditionally agreed upon by classical scholars, include the protection of religion (*deen*), life (*nafs*), intellect (*aql*), lineage (*nasal*), and property (*maal*). These foundational goals are derived from the Quranic injunctions and the Sunnah of the Prophet Muhammad (PBUH), which provide comprehensive guidance for human conduct and governance.

***Maqasid Al-Shariah* and International Law**

Maqasid Al-Shariah may also be described as the Philosophy of Law or wisdom behind legislative acts. It gives direction to legislators' and jurists' efforts to make law meaningful and tailor it to the needs of human beings and societies.

Maqasid Al-Shariah, reflected in International law, is described below:

The five tenants of *Maqasid Al-Shariah* and International law

Protection of life (*nafs*)

The protection of life (*nafs*) is a paramount objective in Islamic law. The Quran explicitly prohibits unlawful killing, emphasizing the sanctity of human life. Surah Al-Isra states, "And do not kill the soul which Allah has forbidden, except by right."³ Similarly, Surah Al-Maidah asserts, "Whoever saves a life, it will be as if they saved all of humanity."⁴ These verses underline the intrinsic value of life and the duty to safeguard it. This objective parallels Article 3 of the Universal Declaration of Human Rights (UDHR)⁵, which proclaims the right to life, liberty, and security of a person. Similarly, Article 6 of the International Covenant for Civil and Political Rights (ICCPR)⁶ says, "Every human being has the inherent right to life." The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment further emphasizes the protection of life and physical integrity by prohibiting torture and inhuman treatment. Such congruence underscores the universal commitment to protecting life and ensuring safety and security for all individuals.

³ Qur'an 17:33

⁴ Qur'an 5:32

⁵ UN General Assembly, Resolution 217A (III), Universal Declaration of Human Rights, A/RES/217(III) (December 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁶ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR].

Protection of religion (*deen*)

Another objective of *Maqasid Al-Shariah* is protecting religion (*deen*) and ensuring freedom of religion. Religious freedom is safeguarded in multiple international legal frameworks, including Article 18 of the ICCPR⁷ and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, adopted by the UN General Assembly in 1981.⁸ These instruments echo the Islamic principle of religious freedom, ensuring that individuals have the right to practice their religion without coercion or discrimination.

Protection of Intellect (*aql*)

This *Maqasid Al-Shariah* involves safeguarding the intellect as it will lead to the promotion of education and knowledge. The protection of intellect is addressed in international drug control treaties such as the Single Convention on Narcotic Drugs (1961)⁹, the Convention on Psychotropic Substances (1971)¹⁰, and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)¹¹. These treaties aim to prevent substance abuse and protect mental health, aligning with the Islamic prohibition of intoxicants. Additionally, the right to education, as enshrined in Articles 13 and 14 of the ICESCR¹² and Article 26 of the UDHR¹³, emphasizes intellectual development and the pursuit of knowledge, which is the ultimate goal of this Maqsid.

Protection of property (*maal*)

The protection of property (*maal*) is also the objective of Shariah, which seeks to ensure the fair distribution and protection of wealth and resources. The Quran prohibits unjust consumption of wealth, as stated in Surah Al-Baqarah, "And do not consume one another's wealth unjustly."¹⁴ Additionally, the prohibition of usury in Surah Al-Baqarah¹⁵ aims to prevent exploitation and ensure economic justice. These principles are reflected in various international legal instruments, including bilateral and regional investment treaties that protect private and public investments. Article 17 of the UDHR states, "Everyone has the right to own property alone as well as in association with others" and "No one shall be arbitrarily deprived of his property." Such alignment

⁷ Ibid

⁸ United Nations General Assembly. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*. A/RES/36/55. November 25, 1981.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination>.

⁹ United Nations. *Single Convention on Narcotic Drugs*. 1961. <https://www.unodc.org/unodc/en/treaties/single-convention.htm>

¹⁰ United Nations. *Convention on Psychotropic Substances*. 1971. <https://www.unodc.org/unodc/en/treaties/psychotropics.html>.

¹¹ United Nations. *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. 1988. <https://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>.

¹² United Nations General Assembly. *International Covenant on Economic, Social and Cultural Rights*. Resolution 2200A (XXI). December 16, 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹³ United Nations General Assembly. *Universal Declaration of Human Rights*. Resolution 217A. December 10, 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹⁴ Qur'an 2:188

¹⁵ Qur'an 2:275

underscores the shared commitment to economic justice and the protection of property rights. Treaties and conventions regarding intellectual property, such as patents, copyrights, and trademarks, also safeguard property rights. Articles 1(2) and 9 of the ICESCR¹⁶ recognize the right to freely use, transfer, and inherit property, further underscoring the importance of protecting property rights in international law.

Protection of lineage-including dignity/honor (*nasal*)

Lastly, the protection of lineage, including dignity/honor (*nasal*), in *Maqasid Al-Shariah* aligns with multiple articles of the UDHR that focus on safeguarding human dignity and personal integrity. Islamic teachings emphasize the sanctity of honor and dignity, as illustrated in Surah Al-Hujurat, "Do not defame one another, nor call each other by offensive nicknames."¹⁷ Similarly, Surah Al-Hujurat¹⁸ condemns backbiting and suspicion, highlighting the importance of maintaining personal honor. These protections are reflected in Article 12 of the UDHR¹⁹, which protects against arbitrary interference with privacy, family, home, or correspondence. Furthermore, various international legal instruments include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁰ and the Convention on the Rights of the Child (CRC)²¹.

Scope of *Maqasid Al-Shariah*

Beyond these traditional objectives, contemporary scholars point out that the field of *Maqasid Al-Shariah* is not static or closed. In recent times, many authors such as Jesser Auda, Ibn Ashur, Muhammad Hashim Kamali, and many others have opined for widening the scope of maqsid and including such maqsid as human rights, good governance, justice, and freedom etc in the scope of *Maqasid Al-Shariah*. However, these are individual efforts, and to date, no consensus has emerged among the scholars on the extended scope of maqsid expounded by modern scholars.

Nevertheless, the convergence of *Maqasid Al-Shariah* and international law highlights the universal nature of these objectives and the potential for cross-cultural and interfaith dialogue in promoting global justice and human welfare. By recognizing the shared values between Shariah

¹⁶ United Nations General Assembly. *International Covenant on Economic, Social and Cultural Rights*. December 16, 1966. United Nations Treaty Series, vol. 993, p. 3. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹⁷ Qu'ran 49:11

¹⁸ Qur'an 49:12

¹⁹ Ibid.

²⁰ United Nations General Assembly. *Convention on the Elimination of All Forms of Discrimination Against Women*. December 18, 1979. United Nations Treaty Series, vol. 1249, p. 13. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

²¹ United Nations General Assembly. *Convention on the Rights of the Child*. November 20, 1989. United Nations Treaty Series, vol. 1577, p. 3. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

and international legal standards, we can foster a more inclusive and harmonious global legal framework that respects and upholds the dignity and rights of all individuals.

Conclusion:

This preliminary paper leads us to conclude that *Maqasid Al-Shariah* is not in deviation from modern international conventions and treaties or, for that matter, vice versa. Each Maqsad can be advanced further through the use of more than one international treaty. In this paper, a deliberately selected sampling of such treaties with the relevant maqasid is being made to be a starting point of, perhaps, a more comprehensive study. Interestingly, hardly any work is found in which these long-standing *Maqasid Al-Shariah* have been compared systematically with modern international law instruments. This study is an initiative to fill that gap. It is rather assuring to note that the *Maqasid Al-Shariah* work done by legendary scholars carries inherent flexibility and conceptual depth to conveniently accommodate the modern treaties, the institution that they establish, the detailed procedure they bring about, and the corresponding domestic law through which they are implemented.