THE ISLAMIC LAW OF NATIONS. By Majid Khadduri. [Baltimore: The Johns Hopkins Press. 1966. xviii + 311 pp. US$8.00.].

GROWTH OF INTERNATIONAL LAW AND PAKISTAN. By Mohammed Ahsen Chaudhuri. [Karachi: University of Karachi. 1965. xi + 140 pp. Rs. 10.].

With the increase in the number of new States each enjoying membership in the United Nations, and with the adoption of the Principles of International Law concerning Friendly Relations — many of which are almost diametrically opposed to what were formerly regarded as rules of international law — pressure has been stepped up for a widening of the sources of international law. It is being suggested (Chaudhri, p. 85) that traditional international law is too firmly footed in the political, philosophical and economic backgrounds of the western world, and that it is time attention were paid to the practice and theory of Asia and Africa.

Too often the excuse put forward by western thinkers to justify their ignorance of writers from other parts of the world has been linguistic ignorance. They have tended to disregard the fact that some of the moneys expended on translating, for example, *Oppenheim* into other languages could with equal or greater value have been expended on translating Japanese, Arabic and other writings into English or French. Dr. Khadduri, already the author of a work on *War and Peace in the Law of Islam*, has now placed the entire western academic world in his debt with his *Islamic Law of Nations.* He has provided a translation of *Shaybani's Siyar* written in the eighth century, which gives the views of Islam on such matters as war, peace treaties, safe conducts, apostasy, rebellion and the royal prerogative. Equally valuable are Dr. Khadduri's own comments on Islamic Law and the law of nations, as well as an assessment of Shaybani's role in its development.

Among the classical writers of the law of nations as normally understood in the West, the need to regulate war has played a major part in developing international law. Since the non-Islamic world was the dar al-harb or territory of war (pp. 11-12) "the Islamic law of nations [too] was essentially a law governing the conduct of war and the division of booty. This law was designed for temporary purposes, on the assumption that the Islamic state was capable of absorbing the whole of mankind; for if the ideal of Islam were achieved, the *raison d'être* of the war of law, at least with regard to Islam's relations with non-Islamic states, would pass out of existence. The wave of Islamic expansion did not succeed however, in encircling the globe and the Islamic state had to accommodate its relations with other nations on grounds other than those envisaged in the ***jihād*** or law of war." (p. 5)

There are some monists who argue that international and municipal law are not distinct systems, but part of one whole. It depends on the view of the commentator which is regarded as the system of which the other constitutes part. Islam is a monist system, and "the Islamic law of nations is not a system separate from Islamic law. It is merely an extension of the sacred law, the ***sharī'a,*** designed to govern the relations of Muslims with non-Muslims, whether inside or outside the territory of Islam. . . . The *siyar* . . . was the ***sharī'a*** writ large.... [It] was a self-imposed system of law, the sanctions of which were moral or religious and binding on its adherents, even though the rules might run counter to their interests" (p. 6). On the other hand, it is interesting to note that while the concept of ***jihād*** was a sacred duty directed at achieving the universalisation of the faith, it did not necessitate actual hostilities between the faithful and non-believers. It could be a war of words as well as of the sword (p. 15) — perhaps this explains the rather peculiar interpretation of some of the Arab States as to their 'state of war' with Israel, particularly when the latter tends to take their assertions seriously.

Having drawn attention to some of Dr. Khadduri's general remarks, it is perhaps sufficient for the purposes of this review to mention a few of the principles to be found in the *Siyar* and which are relevant today. In waging war, "do not cheat or commit treachery, nor should you mutilate anyone or kill children" (p. 76); as to captives who are unable to walk, the Imam "should kill the men and spare the women and children, for whom he should hire means for carrying them" (p. 98), and the Imam should examine whether it is advantageous to the Muslims that captives should be killed or taken for division among the troops, but if Muslims testify that they have been given safe-conducts, even though they are still capable of fighting, the captives should be set free (pp. 100-1). As to inhabited cities, it is permissible "to inundate a city in the territory of war with water, to burn it with fire, or to attack (its people) with mangonels [a type of cannon] even though there may be slaves, women, old men, and children in it ... [and even] if those people have among them Muslim prisoners of war [, . . . for] if the Muslims stopped attacking the inhabitants of the territory of war for any of the reasons . . . stated, they would be unable to go to war at all, for there is no city in the territory of war in which there is no one at all of these" (pp. 101-2). By virtue of *postliminium*, Muslim prisoners would retain their legal *status quo ante* after the signing of a peace treaty with their captors (p. 131), but Islam would recognise the manumission of a slave captured from the Muslims and freed by his new owner (p. 132). but if the purchaser became a Muslim and joined the Muslim ranks his ownership would be valid against the original owner from whom the slave was captured (p. 133). Peace treaties should not be made with non-believers on condition that the latter could treat their inhabitants in ways that would not be permitted in Muslim territory (p. 153), and if the signatory gave assistance to the enemies of the Muslims, this would not constitute a violation of the pact, "but the Muslims should punish him for so doing and throw him into prison" (p. 153). While safe conducts given by individual Muslim merchants or captives living in a territory of war would not be valid. those given by a Muslim commander to the inhabitants of a besieged city would (p. 158) : in the same way an emissary from an enemy ruler found in Islamic territory would be entitled to a safe-conduct until his message was delivered and he returned (p. 170) — a practice not always followed in modern times. At a time when civil war is fairly common it may be of interest to point out that according to Islam a female rebel combatant should be imprisoned and not executed, and when all fighting stops she should be released (pp. 233-4).

Pakistan is committed to the maintenance of Islamic principles, but there is nothing in Dr. Chaudhri's *Growth of International Law and Pakistan* to indicate that its approach to international law is in any way conditioned by the *Islamic Law of Nations.* In fact, of the five essays in this little book only the last of 15 pages refers specifically to international law and Pakistan. This is primarily concerned with citing the arguments put forward by Pakistani delegates in the Sixth (Legal) Committee of the United Nations, as for instance during the debates on the desirability of a definition of aggression, when they supported the United States in opposition to such a definition, but "without presenting any concrete arguments to support its stand" (p. 93). The most positive contribution by the Pakistan delegation seems to have been the speech made by Mr. Brohi in support of the draft convention on arbitral procedure (p. 95).

If Dr. Chaudhri's summary is a fair account of Pakistan's contribution to the development of international law, one can only agree with him that "it would be to Pakistan's advantage to take more interest in the work of the Legal Committee". (p. 98)

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