



## ABU BAKR SARAKHSI – THE FATHER OF INTERNATIONAL LAW

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### ABOUT ARTICLE

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**Abstract:** It is analyzed by analyzing the scientific activity of Abu Bakr Sarakhsi and comparing it with historical figures such as Hugo Grotius in the Western world. In doing so, Abu Bakr Sarakhsi's work "Sharh al-Siyar al-Kabir" and Hugo Grotius's "Works of War and Peace" are analyzed. This article is dedicated to the life and scientific legacy of Muhammad ibn Ahmad Abu Bakr Sarakhsi, who lived and worked in the 11th century. It describes Sarakhsi's services as a lawyer. Sarakhsi made a great contribution to the development of Islamic law and was the first in the Islamic world to establish the doctrine of international law. His works cover all sensitive aspects of law such as creation of norms, the methodology of understanding the law, scientific theoretical and practical issues of law. Central Asia, namely Uzbekistan, is, apparently, the homeland of International Law thanks to works of formidable scholar Muhammad ibn Ahmad Sarakhsi, so-called as «Father of international law». By interpreting Arabic scholar Muhammad Shaybani's book «Kitab al-Siyar al-Kabir», Sarakhsi was first to set forth the «Siyar» - «International Law» as an autonomous and legitimate discipline within the framework of law. The role of Imam Sarakhsi in international law is recognized not only by the East, but also by the West. Imam Sarakhsi's fundamental definition of al-Siyar al-Kabir by Muhammad Shaybani under comprehensive analysis still serves as the main pillar for international law. In our article, the French president's thoughts on this matter and

the works of international law representative Hugo Grotius are compared. Imam Sarakhsi left classic literature not only in the field of international law, but also in the field of Islamic law.

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## ABU BAKR SARAXSIY - XALQARO HUQUQNING OTASI

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### MAQOLA HAQIDA

**Kalit so'zlar:** xalqaro huquq, islom huquqi, yurist, manbalar, faqih, ta'limot, mujtahid, «Sharh as-Siyar al-Kabir».

**Annotatsiya:** Abu Bakr Saraxsiyning ilmiy faoliyatini tahlil qilish va G'arb olamidagi Gugo Grotsiy kabi tarixiy shaxslar bilan o'zaro taqqoslash usuli bilan tahlil qilingan. Bunda, Abu Bakr Saraxsiyning «Sharh as-Siyar al-Kabir» asari hamda, Gugo Grotsiyning «Urush va tinchlik asarlari» tahlil qilinadi. Ushbu maqola XI asrda yashab ijod qilgan Muhammad ibn Ahmad Abu Bakr Saraxsiyning hayoti va ilmiy merosiga bag'ishlangan. Unda Saraxsiyning huquqshunos sifatida xizmatlari bayon etiladi. Saraxsiy islom huquqining rivojlanishiga ulkan hissa qo'shish bilan birga, islom olamida birinchi bo'lib xalqaro huquq yo'nalishiga asos solgan. Saraxsiy asarlarida norma ijodkorligi, huquqni tushunish metodologiyasi, huquqning ilmiy nazariy va amaliy masalalari batafsil yoritilgan. Markaziy Osiyo, xususan, O'zbekiston «Xalqaro huquq otasi» deb nom olgan zabardast olim Muhammad ibn Ahmad Saraxsiy asarlari tufayli xalqaro huquq tug'ilgan vatandir. Saraxsiy arab olimi Muhammad Shayboniyning «Xalqaro huquq kitobi»ga sharhlar yozish asnosida birinchi bo'lib «siyar» - «xalqaro huquq»ni huquqning alohida va mustaqil sohasi sifatida ta'riflagan. Xalqaro huquqda Imom Saraxsiyning o'zini beqiyos ekanligini nafaqat Sharq olami balki, G'arb olami ham tan olib kelmoqda. Imom Saraxsiy har tomonlama chuqur tahlil ostida Muhammad Shayboniyning as-Siyar al-Kabir asariga bergan fundamental ta'rifi hali hamon xalqaro huquq uchun asosiy ustun bo'lib xizmat qilib kelmoqda. Imom Saraxsiy nafaqat xalqaro huquq sohasida balki, Islom huquqi sohasida ham mumtoz adabiyotlarni meros qilib qoldirgan.

## АБУ БАКР САРАКСИ-ОТЕЦ МЕЖДУНАРОДНОГО ПРАВА

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**О СТАТЬЕ**

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**Ключевые слова:** международное право, исламское право, юрист, источники, правовед, учение, муджтахид, «Шарх ас-Сияр ал-Кабир».

**Аннотация:** Проанализирована научная деятельность Абу Бакра Сарахси методом анализа и сравнения с такими историческими личностями, как Гуго Гроций в западном мире. При этом анализируются произведения Абу Бакра Сарахси "Шарх ас-Сияр аль-Кабир" и "Произведения войны и мира" Гуго Гроци. Статья посвящена жизни и научному наследию Мухаммада ибн Ахмада Абу Бакра Сарахси, жившего и ведшего научную деятельность в XI веке. В ней описываются заслуги Сарахси как юриста. Сарахси внес большой вклад в развитие исламского права и первым в исламском мире утвердил доктрину международного права. Его работы охватывают все аспекты права, такие как нормотворчество, методология понимания права, научно-теоретические и практические вопросы права. Центральная Азия, а именно Узбекистан, является родиной международного права, благодаря трудам выдающегося ученого Мухаммада ибн Ахмада Сарахси, так называемого «Отец международного права». Интерпретируя книгу арабского ученого Мухаммада Шейбани «Китаб ас-Сияр аль-Кабир», Сарахси первым сформулировал «сияр» - «международное право» как автономную и легитимную дисциплину в рамках права. Роль Имама Сарахси в международном праве признается не только Востоком, но и Западом. Согласно глубокому анализу Имама Сарахси, фундаментальная интерпретация ас-Сияра ал-Кабира Мухаммадом Шайбани по-прежнему остается основным столпом международного права. Имам Сарахси оставил наследие классической литературы в области международного права и исламского права.

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## INTRODUCTION

In the history of mankind, there has been a need to regulate the relationships that arise between independent political and territorial structures when they interact and cooperate with each other. This process has increased the need for the development of international regulatory mechanisms and the development of universal laws and regulations over the years. Therefore, human history cannot be imagined without international law. Since international law is international law by its name, it serves as a guarantee of ensuring peace and security and sustainable development. Since international law has a universal character, it must be reliable and robust.

The research conducted in recent years on the history of international law in the world, including in our country, has prompted us to study this field more deeply. When studying the evolutionary development of international law, we first need to deeply understand the essence of the concept of international law. Thus, international law is a set of norms of international customs, international treaties and generally recognized principles that arise by coordinating the will of states and other subjects of international law, regulating various relations between them. International law is a field of science formed on the basis of international legal relations and legal provisions. This science studies and investigates the main content, principles, and stages of development of international law. If we look at the stages of the gradual development of international law, we can see several elements of Roman law in its history. However, this is not a fundamental work that contains general ideas. We will analyze the role of the illuminated works that have remained relevant to this day and have their place in international legislation and jurisprudence.

## MAIN PART

Looking at the history of the emergence of an idea of international law, researchers cite European scholars as examples of the founders of common rules regulating relations between independent political-territorial units. In the West, the period from the formation of international law between in the 16th-17th centuries and 18th century is called the **“epic period of international law,”** and it is stated that famous scholars in this field have emerged[1]. Among such scholars, we can mention Hugo Grotius, Francisco de Vitória, Alberico Gentili, Pierre Bale, and others. One of the theoreticians of natural law, the Dutch lawyer and diplomat Hugo Grotius (1583-1645) is referred to in many literature as the “Father of International Law”[2]. He published his masterpiece, *On The Law of War and Peace (De Jure Belli ac Pacis)*, in 1625. Hugo Grotius took a direct part in the fierce Thirty Years' War, which swept across Europe. This book shows the theory of natural law as the foundation of the existence of international law[3]. It can be said that the foundations of the field of international law were laid in the works of Spanish theologians

Francisco de Vitoria (1483-1546) and Suárez (Suarez, 1548-1617) before Grotius. In this analytical work, we will analyze the fundamental works of international law.

One of the great scholars of the Hanafi Madhab (school) “Shams ul-Aimma” (“Sun of Imams”) Muhammad bin Ahmad bin Abi Sahl Abu Bakr Al Sarakhsi was born in Transaxonia (c. 1010 AD and died in 1096 AD)[4]. At this time, the Karahanid dynasty (927-1212) ruled in Transaxonia. From childhood, Muhammad was thirsty for knowledge and had a sharp mind. Later, he perfected his knowledge in various cities of Transaxonia, including Samarkand and Bukhara. He lived in Bukhara for a long time. He learned from the sciences of fiqh, usul al-fiqh, hadith, kalam Abu Muhammad Abdulaziz bin Ahmad Bukhari (1057) and became one of the most mature scholars of fiqh of his time[5]. Sarakhsi was a disciple of the renowned Hanafi jurist Shams al-Aima Khalwani[6]. He completed Khalvani's “Madinat al-Ulum” and became a scholar with his discussions and books[7], After many years of scientific research the scholar received the title of “Sun of Imams” from his teacher[8].

“Sharh al-Siyar al-Kabir” by our great compatriot Muhammad Abu Bakr Sarakhsi al-Hanafi on international law, his classic work, is a fundamental, basic guide to international law. This is a work of “Comments on International Law” and is recognized as the first encyclopedic work dedicated to Islam and international law, classified as “commentary” based on the work of Muhammad Shaybani (750-805), known in the field of Islamic law as both a theorist and a practitioner. Sarakhsi's contribution to Islamic international law is enormous. For his unparalleled contributions to this field, the great thinker was nicknamed “Hugo Grotius of the Islamic world”. In this “commentary” of Sarakhsi, it is noted that peace treaties should be drawn up for a period of no more than 10 years. In this case, peace treaties are concluded for specific purposes. This work consists of a total of 5 volumes and is the first doctrinal work in the history of Islamic law dedicated to as-Siyar (international law). Each volume of the work is dedicated to a separate theme, primarily covering topics such as defensive peace and the establishment of peace. The scholar began writing this work in prison in the city of Özgänd and completed it in Fergana.

It was during these periods that relations between Islamic states grew, and the need for international legal norms for diplomatic relations was significantly increased. Diplomatic relations, as a means of foreign policy and international relations, played an important role in Islamic statehood. Therefore, diplomatic and consular law developed in accordance with the principles of Islamic law. By the time of the Umayyads and the Abbasids, mutual relations with the Arab Caliphate in Western and Eastern countries had ascended. In particular, between the Umayyads and their local governors, between 59 and 132 AH, 62 diplomatic visits were organized, and 59 exchanges of letters were carried out. In Islamic law, ambassadors are granted unparalleled immunity and privileges. Some of them are still used in practice today, while others have been

abolished over time. This, in turn, requires full recognition of the fact that Islamic international law was formed at that time and scientifically analyzed on a systematic basis by our compatriot through its classification. This fact has been recognized in various works of that age and by many scientists and politicians. In this regard, it is useful to compare the views of the representative of the Eastern and Islamic world - Sarakhsi and the Western classical scholar - Hugo Grotius on various issues of international law. In matters of war and peace, Grotius believed that only just wars should be allowed. Hugo Grotius advocated that war should be perceived as a means of solving problems. As a basis for this, he claims that there are no courts to legally resolve disputes between nations, on the other hand, he expresses his opinion that the causes of war should be limited only to the causes that can be brought to court. For example, he argues that the protection and restoration of property is the cause of war, and also developed a theory of punishment and crime[9]. However, five centuries ago, the first volume of Abu Bakr Sarakhsi's valued work "Sharh al-Siyar al-Kabir" was dedicated to the law of war, which discussed preparations for war, military actions, and the legality of the use of weapons. It discusses issues ranging from preparing horses for war to weapons used in battle, and emphasizes that the outcome of the war should correspond to the goals of Islam[10]. The work contains ideas about the just conduct of war, the absence of harm to civilians, and the priority of human rights. Volume 2 of the book also discusses trophies captured during the war.

Sarakhsi expresses his views on issues that are important to be agreed upon in the negotiation process, which is the first stage of concluding international treaties. In his opinion, at the stage of negotiation - compromise, the agreement of the parties on the purpose of concluding the contract, its subject, conditions, composition of the text, the consent and obligations of the parties to ensure the execution of the contract, the grounds for termination of the contract, measures to prevent and resolve disputes arising from it must be agreed in advance. Each situation in diplomatic law is clearly explained in the works of Sarakhsi. The rights and duties of rulers and imams in relation to the ambassador are also indicated. According to Sarakhsi, the imam is equally responsible for both the Muslim people and the musta'min with the aman (peace) label. Therefore, the imam is obliged to protect the ambassador of another country[11]. From today's perspective, these provisions (respecting and protecting the honor of the embassy, providing the ambassador with additional funds and vehicles in case of need, and protecting his personal safety) described in the works of Sarakhsi are consistent with Articles 22 (paragraph 2) and 44 of the current Vienna Convention on Diplomatic Relations of 1961[12].

Another issue raised by Sarakhsi is the concept of the principle of reciprocity in international law ("muzaja" in Arabic). The principles of interstate relations are of great importance in international law. By promoting the concept of reciprocity, he promoted the ideas of tolerance and

good neighborliness between people belonging to different religious beliefs and cultures from the highest tribune. Another issue of international law is the institution of arbitration (in Arabic “Taufiq”) for resolving disputes. The Sarakhsi developed specific requirements for performing the role of arbitrator. According to him, the referee should be smart, healthy and respected among the people. The institute of arbitration was later developed by another of our compatriots, Burhaniddin Marginani. In his work “Hidaya” Marginani writes about the arbitrator's impartiality: "If the arbitrator acts before the consent of the parties, or if his father, mother, wife, or child are involved in this dispute, his decision on this dispute is unacceptable.”[13]. Sarakhsi tries to explain issues of peaceful settlement of disputes and arbitration on the example of certain legal cases, and in doing so, he used mental observation method called “istihsan” effectively. Thus, based on the analysis of the work, we can see that the work “Sharh al-Siyar al-Kabir” is the first fundamental work of international law.

Five centuries after the writing of this work, we can see another fundamental work, "De Jure Belli ac Pacis" (War and Peace). In the true sense, this work is one of the main texts in the field of international law and political philosophy. This work, together with the concepts of war and peace, is primarily aimed at creating a legal framework for the conduct of war and ensuring peace between states. This work reveals the essence of the political and religious contradictions in Europe. Grotius' main work was published in France in 1625 by Louis XIII[14]. In the book “On the Law of War and Peace”, a system of principles of natural law, international law, and aristocratic law is developed. By writing it, the Dutch scientist pursued the following goals: he put forward theories that it is necessary to solve the pressing problems of the international community and develop the order of the war. Hugo Grotius lived during the Eighty Years’ War between Holland and Spain and the 30th Anniversary of the War between the Protestants of Kololiks and Karopa, he condemned aggressive wars and believed that such conflicts should only be fought once[15]. The doctrine of natural law forms the basis of the work “On the Law of War and Peace.” Former United Nations Secretary-General Pérez de Cuely wrote: “The ideas enshrined in the UN Charter seemed fantastic, even unnatural, at some stage in the development of human society. These ideas arose in the minds of scholars such as G. Grotius and Immanuel Kant. Unfortunately, the ruling class paid little attention to these ideas”[16].

The work “On the Law of War and Peace” can be divided into three main parts. The first section discusses the conduct of war or the nature of war. The first question in Part I of Hugo Grotius is devoted to "What is war, what is law?" In it, the issues of war, peace, border, nation were raised. The definition of war refers to conflicts between people, non-unified under one order of law or people of different nationalities, aristocrats, and free citizens of the republics[17].

Laws differ from each other (“*facultas*” and “*aptitude*”), the first being a moral quality inherent in a person, thanks to which one can legally own something or act in one way or another. This right is inherent in the individual, although it is often associated with things, such as services that lie in ownership and, unlike other rights, are called purely personal rights. In natural things, the first corresponds to action, and the second is opportunity.

The second part of the “*On the Law of War and Peace*” is covered more widely, it also contains doctrines such as the law of the small river and sea, the law of people and the law of ambassadors. If we look at the opinion expressed on the right to servitude, it is said that someone can purchase something originally by establishing a servitude or pledge; however, the property owner's property right remains in the account. The servitude, in that context, can be applied to all material objects the sea, river, material objects in one form or another. Article 4 of the United Nations Convention on the Law of the Sea (United Nations Convention on the Law of the Sea) is the modern-day appearance of this doctrine [18] in other words, we can see that the external boundaries of the territorial seas (the common property of humanity) are regulated.

Chapter VIII of Part II is dedicated to the theme: nations and it emphasizes the opinions of Roman jurists. The question of the rights of people is not actually a “right” but a phenomenon related to its establishment by the will of the people. The fact that the rights of people can exist through the method of appropriation is the acquisition of what belongs to no one. This method is undoubtedly natural in the above sense after the introduction of private socialization, suggesting that no law remains the same until nothing else is established[19]. According to the Romans, as soon as wild animals return to the state of natural freedom, our right to them ends. (L. Quod enim. D. de acqui. dom. 1. L. Pomponius. D. of acqu. Poss.).

Chapter XVIII is dedicated specifically to the “*Law of Ambassadors*,” emphasizing that the legal content of the embassy or its subject is derived from the law of nations. The rights of ambassadors include not only natural rights, but also divine rights. When referring to embassies, it was considered that they are sacred, that the rights of peoples, divine and human rights should be compulsory in relation to them. In the treaties, the ambassadors are said to be sacred personalities. In his speech on the “*Answers to Garuspics*” Cicero says: “As I have said, the rights of ambassadors are secured by the protection of men and protected by divine law.” Therefore, its violation is not only criminal, but also divine[20]. It was noted that the appointment and dispatch of ambassadors was unique to the kings of the country and was an important mediator between these countries.

## CONCLUSION

In conclusion, the scientific works of thinkers who contributed to the gradual development of international law with their fundamental works are undoubtedly worthy of praise. As the first



foundational work, we analyzed the unique works of Abu Bakr Sarakhsi, Hugo Grotius, Pufendorf, Wolf, Emmirex de Vattel, and Jeremy Bentham. We can see scientific innovations that are unique to each work. Especially if the scientific approach of Abu Bakr Sarakhsi is broad, then the creative direction of Jeremy Bentham is dedicated to covering the topic in a narrow sense in the theory of international law. The epic period of international law was a space for the main fundamental works, and at the same time, the 11th century still remains a rare idea of international law. Currently, the role of these classical and fundamental works is reflected in all international treaties and conventions. The fact that international law was first formed by natural legal theory, and later by the norms of positive law, indicates that it has become a single entity after several turns. When studying international law, of course, we need to study the scientific views of these individuals, their methods of legal approach.

In particular, the fact that our country has been a center of science and that we had the best scientists for every era is both an honor and a responsibility. As we all know, the leaders of many fields of science are from our lands. With the rational use of the current conditions and opportunities, we need to deeply study the life of Abu Bakr Sarakhsi, the leader of the field of law, and the great legacy he left for us, descendants, and to further glorify the name of our country on the international stage.

At this point, the limitation of some Western researchers to one-sided research hinders the implementation of scientific objectivity. Although the works of Western scholars in the field of international law are recognized, the significance of works written in the field of law by scholars of our country who lived several centuries ago is undeniably huge. As proof, we can cite the works of Imam Sarakhsi, which we have highlighted above. In addition, various issues of international law are illuminated in the works of such great scholars in the field of law as Burhaniddin Marghinani, Abu Bakr Kasani, and others. This, in turn, testifies to the incomparability of the research, works, and scientific legacy left by Eastern scholars in the field of international law. In the field of Islamic international law, our scientists have led the world, and their scientific discoveries still amaze the world community.

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