HISTORICAL SOURCE STUDIES OF THE LAW OF WAR
(Based on Abulhasan al-Mawardi's **al-Ahkam al-Sultaniyya wa al-Walayat al-Diniyya**
("The Rulings of Sultanate and Religious Administration"):
The Art and Law of War in the Governance of the Muslim East — Theory and Practice)

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Annotation

This article, entitled *"Historical Source Studies of the Law of War in the Memory of Generations and Chronicles of Victories (Based on Abulhasan al-Mawardi's al-Ahkam al-Sultaniyya wa al-Walayat al-Diniyya): The Art and Law of War in the Governance of the Muslim East — Theory and Practice,"* critically examines the assertion that throughout human history wars and armed conflicts have never truly benefited humanity. Rather, they have sown seeds of discord among individuals, states, and nations, while fostering hostility and enmity. As a constructive response, the article turns to historical sources and classical works from a scholarly perspective to propose paths grounded in mutual compassion, solidarity, loyalty, and human well-being.

Keywords

Epic of war, victory chronicles, military martial arts, law of war, rights of war, state of war, battle, warrior, combat situation, warfare, peace, agreement, military operations, fronts, weapons, soldier, army, types of troops, military power, stratagems and deception, *al-Ahkam al-Sultaniyya*, Alexander the Great, Alexander of Macedon, Prophet Muhammad (peace be upon him), Khalid ibn al-Walid, Ja'far ibn al-Husayn Said Battal Ghazi, al-Mawardi, Genghis Khan, Sultan Amir Timur, Babur, and others.

INTRODUCTION

History shows—regrettably—that from the very creation of humanity to the present day, internal and external contradictions have repeatedly given rise to bloody wars, massacres, and destruction. Across generations, one can observe periods in which such conflicts ended either with the victory of forces claiming justice or, at times, with the triumph of cruel and oppressive powers.

Whenever opposing sides prioritized peace and sought reconciliation through agreements and negotiations, devastating military actions were sometimes averted. Conversely, when such peaceful settlements failed to materialize, societies often descended into decline and crisis.

Not all members of society were invariably drawn into warfare. Entire populations were not always mobilized for combat; rather, many remained behind the front lines, providing systematic support to military forces by sustaining production and logistics necessary for victory.

When a state entered a condition of full-scale military engagement or war, all spheres of life—production, finance, economy, social relations, politics, and law—were placed under extraordinary and intensified control.

This inevitably raises a fundamental question: if the immense resources, time, and human potential expended on destructive wars had instead been devoted to mutual goodwill, peace, and constructive cooperation, would humanity not have transformed the world into a flourishing and harmonious place?

Negotiations

In **1035**, at the request of the Abbasid rulers **al-Qādir Billāh** and **al-Qāʾim bi-Amrillāh**, for the Seljuk sultans **Ṭughril Beg** and **Chaghri Beg**, the Abbasid state's *wazīr al-tafwīḍ* (chief minister), *aqḍā al-quḍāt* (chief justice), head of *Bayt al-Ḥikma*, leader of *Ahl al-Sunna wa al-*

Jamāʿa, and eminent scholar **Abū al-Ḥasan al-Māwardī** elaborated the theoretical and practical methods for establishing a just and centralized polity. These principles, which laid the foundations of political jurisprudence (*al-fiqh al-siyāsī*), were set forth in his work ***al-Aḥkām al-Sulṭāniyya wa al-Wilāyāt al-Dīniyya*** ("The Ordinances of Sovereignty and Religious Administration"). The work primarily focuses on developing the hierarchical systems of state governance, addressing who the head of state—the sultan—should be and what qualities he must possess, as well as how administratively divided systems of governance are to be entrusted to individuals by the will of the people and the Creator, through social, political-legal, elective, selective, and discretionary mechanisms.

Today, Abū al-Ḥasan al-Māwardī is increasingly recognized as a new phenomenon for Uzbek scholarship; yet historically he entered the record already renowned at the time of his birth under the famous epithet *al-Māwardī* (associated with the trade of rosewater and perfume). According to tradition, he was born in **974** in a family and neighborhood engaged in rose cultivation and rosewater commerce in **Vardgonze**, in present-day **Qashqadaryo region of Uzbekistan**.

Long-term historical research and sources attest that his forebears in Baghdad were known under epithets such as *al-Rummānī* (pomegranate cultivator) and *al-Rawandī* (growers of medicinal herbs), and were distinguished scholars of their time in politics, law, finance and economics, Qurʾanic exegesis, theology (*kalām*), Islamic philosophy, and literature. From early childhood, Abū al-Ḥasan al-Māwardī studied religious and worldly sciences under their supervision; upon maturity he pursued advanced learning at Baghdad's **Bayt al-Ḥikma**. He devoted his life to public service, serving in diplomatic missions, judicial posts, ministerial offices, administrative institutions, and political-legal positions. He passed away in **1058** in Baghdad and was laid to rest in the renowned **Dār al-Ḥarb** cemetery.

In the preface to the Kuwaiti edition of the work, the publisher cites the following Qurʾanic verse as al-Māwardī's guiding principle:

"When you judge between people, judge with justice."

This verse underscores that justice constituted the primary criterion in the creation of this profoundly justice-oriented source.

For analytical purposes, the structure of the work may be examined as comprising **three parts**:

1. **Imamate/Sovereignty** (state leadership and government);
2. **Vizierate** (ministries);
3. **Administration** (*imāra*), consisting of administrative bodies and dīwāns operating within a hierarchical system.

Through chapters devoted to legislative, executive, judicial authority, and departments of justice, ***al-Aḥkām al-Sulṭāniyya wa al-Wilāyāt al-Dīniyya*** introduces constructive methodological innovations concerning systems of state governance. These include mechanisms of oversight over administrative-territorial units, separation of authority, and procedures for appointing the sultan's close officials—selection based on choice and consent, nomination, and voting.

Below, we briefly address the chapters in which al-Māwardī treats **military administration**, **planning**, and **the law of warfare**—topics that were operative throughout the Middle Ages and later participated in transformation processes influencing world constitutions. Specifically, we focus on **three chapters** dedicated to military command, the formation of defense capability, and wartime governance, beginning with:

Chapter Three

في تقليد الإمارة على البلاد — *On Appointing and Organizing Amirs and Viziers (Assistants/Deputies) over Regions/Territories.*

This chapter, entitled *"On Appointing and Organizing Amirs and Viziers (Assistants/Deputies) over Regions/Territories,"* consists of **two sections**. It provides valuable

information on emirate governance and its **tadbīr al-jaysh** (military mobilization measures) and **siyāsat al-raʿiyya** (policy of governing the populace); on the **amīr al-maqṣūra** (a special emirate with limited military authority); on the **amīr al-umarāʾ** (chief emir appointed as governor, ruler, or deputy over provinces); and on **istīlāʾ**—the establishment of an emirate by force—and the obligations incumbent upon such an appointment.

Traditions of Appointing Amirs to State Regions

There are **two methods** for appointing amirs to state regions: **general (ʿāmma)** and **special (khāṣṣa)**.

First Section — الإمارة العامة (al-Imāra al-ʿĀmma): General Emirate.

This category includes the following type:

1) الإمارة الاستكفاء (Imārat al-Istikfāʾ):

A form of general emirate effected by the Imam/Sultan's discretion—selection/appointment according to his will and authority—entailing limited duties and customary oversight.

Forms:

The sultan may dispatch a person as his trusted representative to govern a country or region, granting guardianship over its populace and authority to conclude agreements across domains.

Issue 1:

If the sultan appoints a person as head of a territory, the *wazīr al-tafwīḍ* (chief minister) has **no authority** to dismiss or transfer that appointee.

If the *wazīr al-tafwīḍ* appoints a person to head a territory, the circumstances must be carefully considered.

- If the appointment was made **with the sultan's permission**, dismissal, transfer, or relocation of that official is **not permissible without the sultan's consent**—it is permissible **only** with such consent.
- If the appointment occurred **without the sultan's permission**, then dismissal or transfer **is permissible**.

Issue 2. It is permissible for an amir to appoint for himself a *tanfīdh* (executive) minister (assistant) even without obtaining the sultan's permission. However, with regard to appointing a *tafwīḍ* minister (general chief minister), the permission of the sultan is required.

Issue 3. If an amir wishes to increase his income and resources, the matter must be carefully considered. If there is no valid reason, it is not permissible; if there is a reason, it should be examined. If the reason necessitates it and there is an expectation that something may be lost or diminished—such as in cases of rising prices—then it is permissible. If such an increase is intended to be permanent, it is not permissible, except with the explicit permission of the sultan.

Issue 4. If an amir appoints an official prior to the sultan's appointment, that official is not dismissed upon the death of the amir, even if the appointment was made before the minister. However, upon the death of the minister, that official is removed from office.

Second: Imārat al-Istīlāʾ (The Emirate of Conquest): Duties and Conditions

This form of emirate arises out of necessity and becomes complex, because the amir—having been entrusted by the sultan with leadership, warfare, and the administration and politics of a region—seizes the territory through force and military domination. By acquiring power through conquest, the amir becomes autocratic and coercive in governance, while implementing religious rulings with the sultan's permission. In order to eliminate corruption (analogous to contemporary forms of corruption), it is deemed permissible to establish peace and prosperity, to move from insecurity, prohibitions, and persecution toward the rule of law, and to create broad opportunities for social order.

What this Emirate must do:

1. Preserve the position of the Imam/Sultan as the heir to prophetic authority.
2. Establish religious obedience.
3. Unite the community around mutual assistance, support, and compassion, and resolve conflicts.

4. Conclude contracts concerning religious guardianship/governance and ensure the implementation of their legal provisions within the region.

5. Ensure the lawful and just collection of revenues.

6. Enforce criminal penalties and ensure that restrictions are genuinely implemented and supervised.

7. Stand among the ranks of the pious in defending and preserving religion.

Differences between the Istikfāʾ Emirate and the Istīlāʾ Emirate

1. In the Istīlāʾ emirate, the administrator governs a specifically seized territory; in the Istikfāʾ emirate, authority is defined and limited by the voluntary appointment of the sultan.

2. The Istīlāʾ emirate (conquest) encompasses territories acquired through victory over the population and military forces of a region, whereas the Istikfāʾ emirate governs only those territories explicitly stipulated in a contract concluded by the sultan.

3. The Istīlāʾ emirate includes the administration of annexed or conquered regions under contractual terms, a situation that occurs rarely; the Istikfāʾ emirate is limited to fulfilling agreed duties within specified territories.

4. A *tafwīḍ* ministry has the authority to revoke governance from an Istīlāʾ emirate, but it lacks a legal basis to revoke authority from an Istikfāʾ emirate.

Second Section: al-Imārah al-Khāṣṣah (The Special/Exclusive Emirate)

The authority of this special emirate is limited in the following respects:

1. Administration of the army.

2. Governance of the subjects.

3. Protection of the tribe and avoidance of prohibited acts.

4. Refraining from obstructing the enforcement of criminal penalties and from acting contrary to Sharīʿa rulings.

5. Refraining from objections in the collection of land tax (kharāj) and other taxes.

6. Ensuring border stability and regulation, including:

– Giving due attention to cases involving human rights such as slander and

retaliation, examining claims and seeking solutions;

– Permitting recourse to the amir instead of the judge (qāḍī) if requested;

– Not permitting turning away from the amir to appeal directly to the judge;

– In cases involving fixed divine punishments (*ḥudūd*), such as those for adultery, the amir is considered more entitled to execute them than the judge.

7. If rulings are implemented and accepted by judges and executors, the head/judge of the *Mazālim* institution (comparable today to a public prosecutor) may review complaints and exercise oversight.

8. Organizing and facilitating the transport of pilgrims for ḥajj and ʿumrah.

9. Leadership of congregational prayers, Friday prayer, and the two ʿĪd festivals by the Imam/Sultan:

– According to the Ḥanafīs, the amir is more suitable;– According to the Shāfiʿīs, judges are more suitable.

10.   For *jihād al-dafʿ* (defensive jihad/homeland defense), the sultan's permission is required. However, for immediate defense against an enemy in personal or local incidents, the sultan's permission is not required.

Issue 1. In the special emirate (Imārat al-Khāṣṣah), in addition to two primary conditions, the conditions considered within the Ministry of Execution (Wizārat al-Tanfīdh) are also applicable and relevant: Islam and freedom.

Issue 2. The conditions of the special emirate differ from those of the general emirate (Imārat al-ʿĀmmah) in that one condition is restricted to knowledge.

Issue 3. These two emirates—the special and the general—are not permitted to do the following:

- According to contract or custom, the emirate leadership is not obliged to report to the sultan, at the amir's discretion, the details of actions taken or expenditures made out of necessity.
- Only in non-discretionary cases—when there is fear that extraordinary, accidental rebellions or disturbances may spread, or when calamities occur—must they await and inform the sultan.

Debate

It is no secret to history that the valuable information recorded in Abū al-Ḥasan al-Māwardī's *al-Aḥkām al-Sulṭāniyyah wa-l-Wilāyāt al-Dīniyyah*, analyzed above, reflects just processes that occurred during and prior to the author's lifetime amid wars and conflicts.

The Seljuk Turks were the first to make effective use of this work, achieving remarkable success after being granted the title of sultan for the first time in history. Subsequently, other dynasties—the Ghaznavids, Khwarazmshahs, Amir Timur and the Timurids, Ẓahīr al-Dīn Muḥammad Bābur and the Baburids—also attained victories. Sources likewise indicate that the work gained wide circulation during the periods of the khanates of Khiva, Bukhara, and Kokand.

Discussion

Due to limitations of length, this article has not been able to address many issues in greater detail. Readers interested in expanding their knowledge are encouraged to consult materials published in academic journals and monographs available in print.

In conclusion, in this scientific article we provided a brief introduction to three chapters of Abū al-Ḥasan al-Māwardī's renowned work *al-Aḥkām al-Sulṭāniyya wa-l-Walāyāt al-Dīniyya*—a treatise on the law of imperial governance that was effective in its own era, throughout the Middle Ages, and later participated in processes of transformation into the constitutional traditions of the world. Specifically, we focused on the chapters devoted to the governance and planning of military operations, the legal framework of warfare, the role of the military commander, the formation of defense capability, and issues related to the state of war. The reason for choosing this work is that, today, it is difficult to find a state that has not benefited from its ideas in one way or another. Therefore, in the present article we approached, from a scholarly perspective, questions such as how military operations should be governed and what war itself means, while also presenting substantial quotations from the treatise for the reader's consideration.

The following international scientific conference and its published materials demonstrate, in my view, another academic attempt to ensure that the memory of world wars is recorded and preserved in the consciousness of generations, and to prevent further global conflicts and mass violence against humanity.

The conclusions drawn from studying historical sources and the works of authors who produced monumental writings that have reached us suggest one fundamental principle: under no circumstances is it permissible to suppress social, political, legal, economic, financial, or territorial problems and contradictions by military force. Such problems should always be addressed through political and intellectual means—by uniting scholars, specialists, and statesmen around round-table discussions. This is a requirement of our time.

In any situation, contributing to humanity and to progress is a duty of global public opinion. Wars and armed conflicts are condemned throughout the world as crimes against humanity and are regarded as obstacles to life and the future.

Peace and harmony befit all peoples, all humanity, and all living beings. Ensuring broad prosperity, enabling people to live in mutual unity, and creating opportunities for such coexistence constitute the demands of today's conscious world. I would not be mistaken in stating this.

Renouncing every form of evil that hides under the mask of "noble ideas"—wars aimed at territorial expansion, attempts to seize lands that have become the property of other nations, coveting and appropriating the wealth of others, enslaving peoples, and any practice that obstructs development—is the requirement of the era and the judgment of history and time.

O humanity! In these wars and battles, countless scholars—young and old, specialists, and future intellectuals—who could serve the people, society, life today, and future generations, perish prematurely. Let us not become condemned to accountability before life and the future. Let the global public unite against evil.

Thank you for your attention!

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