

BOOK REVIEW

Islamic Law and International Law: Peaceful Resolution of Disputes by Emilia Justyna Powell, published by Oxford University Press, New York, 2020, xiv+314 pages.

Contemporary international law has obliged states to resolve their disputes between them exclusively by peaceful means. In contrast with the Western formal approach, the Islamic legal tradition follows a specific approach to conflict management, e.g., reconciliation, apology and constructive dialogue between disputants. As the peaceful settlement of disputes between states has become one of the fundamental principles of contemporary international law and Islamic Law States (ILS) have a vital role to play in the contemporary international system, there is an increasing need for non-ILS to cooperate with ILS. Cooperation is crucial not only for reducing the abundance of international disputes stretching from trade, human rights, environment to peace and conflict but also for expanding the plurality of international laws to ensure more justifiable and legitimate world order. For successful cooperation, also important is to acquire a deeper understanding of the variance and development of Islamic law in the ILS. Thus, through proper logic, mechanisms, causal explanation, and empirical investigation *Islamic Law and International Law: Peaceful Resolution of Disputes* brings light to the relationship between Islamic law and international law and how international law is perceived through the lens of the Islamic legal tradition.

The book spans a total of 314 pages, including an introduction followed by eight chapters. It is the outcome of Emilia Justyna Powell's motivation to study the relationship between Islamic legal tradition and international law during her conversation with colleagues, friends, family members, policymakers and practitioners of Islamic law.

The central argument of the book is the balance or amalgamation of secular law with religious law in the context of ILS that can explain their preferences for international conflict management methods. Thus, there seems to be no one easily identifiable attitude shared by all ILS. To this end, it provides comparative analyses of Islamic law and international law within the context of each of the ILS historically, over time and geographically across the Islamic milieu. In the introductory chapter, the author mentioned that the book is going to challenge some long-standing assumptions of the Western scholars that "there is no diversity within the Islamic milieu, they are Islamic in the same way and to the same degree", "all ILS are oft perceived as being ipso facto unfriendly toward international law." Throughout the book, these

assumptions are debunked in a very tacit manner through detailed information and precise evidence.

The eight chapters of the book illustrate different aspects of the relations between international law and Islamic law. The first chapter provides an overview of the book, its key arguments, organization and significance. The second chapter explains the concepts crucial to this study: international law, Islamic law, and the categories of the ILS. It projects international and Islamic law as dynamic systems that have changed over time and will continue to evolve. The third chapter explores the divergences and convergences of Islamic legal tradition and international law. The fourth chapter introduces the theory of Islamic dispute resolution and sheds light on how the Islamic approach to conflict settlement shapes contemporary interstate dealings of ILS. In the subsequent chapters five, six and seven, the author incorporates a series of statistical analyses to test the theory and hypotheses about the Islamic milieu's preferences with respect to international dispute settlement. In the concluding chapter, it summarizes the main arguments as well as the empirical findings, stressing the timeliness of insights gained through this research.

To set the context of the theory and analysis of the Islamic peaceful settlement of disputes, the book devotes significant concentration to the concept of Islamic law and international law. For instance, it argues that overall characters and functions of international law have changed since antiquity due to its adjustments with globalization and changes in the international system. Consequently, it takes a multi-layered character. Like international law, it also defines Islamic law officially as an ongoing, constantly evolving and dynamic entity. The book reflects the continuous evolution of the domestic legal system of the ILS on the constitutional as well as sub-constitutional levels. Hence, the author deserves a firm appreciation for precisely evaluating the development of both Islamic law and international law as legal systems.

In order to understand the relationship between Islamic legal tradition and international law, the book chooses the ILS categories because they embrace a unique relationship between secular laws and religious laws in its governance. To what extent Islamic law incorporates and implements in the domestic legal system vary from ILS to ILS. The ILS category includes states whose legal system charged to a higher degree with the obligatory implementation of sharia. For example, in Saudi Arabia, the 1992 Basic Law of Governance directly states that "the Holy Qur'an and the Sunna (Traditions) of the Prophet" form the constitution of the country. Other ILS like Qatar, Egypt and Morocco limit the direct, obligatory influence of sharia to a part of their official laws like personal law and criminal law. The category also adds states like Indonesia delegating decisions about sharia's presence in governance to the state's administrative subunits. Through examples of different categories of ILS, the

author rightly demonstrates that “there is not one Islamic law, but many Islamic laws—depending on how it is interpreted and amalgamated into a particular legal system within the ILS”.

To explain the ILS’ behaviour towards international law, the book attempts to measure the presence of Islamic law and secular law in the officially recognized legal system. In this regard, it comprehensively identifies the elements of Islamic law and secular law. The elements of Islamic law include mention of sharia and Islam, holy oath, Muslim head-of-state requirement, Islam/sharia education and customary law in the constitution. On the other hand, secular laws’ features include rule of law, supreme courts, secular courts, peaceful resolutions of dispute, women in the judiciary and education in the constitution. For a proper understanding, the author, in chapter two, presents a series of figures illustrating the extent to which Islamic law and secular law are present in the ILS domestic legal systems from 1945 to 2012.

A major focus of the book is detailing the differences and similarities between the Islamic legal tradition and international law. In doing so, the author finds that there are clear divisions in the literature. There are scholars portraying Islamic law as fundamentally inconsistent with international law, while others dismiss existing differences. In contrast with the existing literature, it identifies three points of convergence, i.e., the law of scholars, customs and rule of law where Islamic legal tradition and international law coexist and complement without conflict. At the same time, there are three points of divergence—the relations between law and religion, sources of law, and religious features in the courtroom (i.e., religious affiliation, gender judges and holy oaths). By providing a comparative analysis, it claims that ILS’ use of international legal mechanisms lies in the similarities not much in the differences between Islamic law and international law.

Taking into account the constitutions and legal institutions of the ILS, the book formulates a distinct theory that places law at the centre of the inquiry. In essence, the author develops the theory through a two-stage process. In the first stage, it counts the extent of Islamicness across twenty-nine states in the post-World War II period. The second stage correlates domestic legal arrangements with ILS behaviour on the international stage. While formulating the theory, the book limits itself into four distinct legal features defining the most preferred form of social interaction for ILS: a unique logic of justice, non-confrontational dispute settlement, collective embeddedness of the third party and incorporation of Islamic religious principles into the resolution process. The book theorizes that ILS, whose domestic legal system is highly infused with a version of sharia, will most firmly adhere to Islamic law-inspired elements in the international arena. Thus, ILS most committed to the Islamic legal tradition domestically is naturally attracted to third party non-binding methods, e.g., mediation

and conciliation. These methods fulfil the preferences of ILS regarding the nature of social interaction by incorporating principles of sharia in dispute resolution. While international legal mechanisms, e.g., adjudication and arbitration tribunals are unlikely to bear these expectations of ILS as these are, to a great extent, based on the Western legal logic. In contrast, for ILS, whose domestic legal systems incorporate strong secular laws, international legal mechanisms provide acceptable settlement venues. Hence, each domestic legal system in the ILS amalgamates secular law with religious law in a different way which fundamentally shapes the state's view of international conflict management. There is no uniform way by which Islamic legal tradition shapes ILS views to international settlement venues as the incorporation of Islamic law in the domestic law varies across time and space.

Though the book is about explaining the legal factors determining ILS choices of settlement venues, it does not totally discard non-legal factors. It identifies power relations between disputants, strategic considerations, the strength of legal claims, concern for domestic politics, regime type, the cost and length of proceedings and feasibility of future compliance as important factors to exert influence on states' choices. However, it would be intriguing to have further discussion on these non-legal factors.

To test the theory, the book incorporates a series of statistical analyses in the context of territorial disputes. In this regard, it considers elements of Islamic law and secular law as independent variables and bilateral negotiations, non-binding third party methods (inquiry, good offices, conciliation, mediation) and binding third-party methods (arbitration, adjudication) as dependent variables. The pattern of evidence supports that secular legal features, e.g., presence of secular courts, constitutional mention of the Supreme Court and peaceful resolution of dispute, attract the ILS to arbitration and adjudication because these features have a deep connection with international formal venues. On the other hand, the opposite situation is observable to the ILS, whose legal system is tied with traditional Islamic precepts, e.g., principles of Islamic law into the education system and religious requirement in their state leader, preferring less formalized venues. Importantly, among all the elements of Islamic law's presence in ILS' domestic legal system, commitment to sharia-based education plays a primary role in shaping ILS' preferences.

The book also elaborates the main judicial organ of the United Nations (UN), the International Court of Justice (ICJ) to examine Islamic law and international law nexus. In this regard, it identifies compulsory jurisdiction and compromissory jurisdiction as dependent variables. The compulsory category comprises two types of states. The first category of states accepts the compulsory jurisdiction with or without reservation. The second category states do not recognize the Court's jurisdiction.

Through empirical analyses, the book points that legal convergence between Islam and international law pulls ILS to ICJ. It infers that the presence of secular legal features influences ILS' decision to accept the jurisdiction of the ICJ. For example, ILS with constitutional mentions of peaceful resolution of disputes and rule of law are more likely to embrace the ICJ. On the contrary, embedded Islamic law features into ILS' domestic legal systems discourage these countries from accepting the Court's jurisdiction.

In order to go beyond the particulars of secular law and international law within ILS domestic legal systems, it considers the Islamic school of jurisprudence as an independent variable to understand the views of ILS towards international mechanisms for conflict management. The empirical analysis suggests that Islamic schools of jurisprudence have no influence on ILS' views of international conflict management as it has substantially weakened overtime. Consequently, scholars have few opportunities for influencing formal state governance on the issue of international conflict management.

The book rigorously explains the ample influence of the regional particularities of the Middle East, Asia/Oceania, and Africa's ILS behaviour towards the international conflict management, particularly in the context of peaceful settlement of disputes. Islamic legal tradition has been remade and reconfigured across regions. Over time, the region-based plurality of sharia had settled deeply into the domestic legal system of the ILS. Such regional divergence of preferences derives from pluralism of cultures, traditions and customs specific to each region. Based on the empirical evidence, the author argues that Middle Eastern states are more likely than other ILS to attempt mediation and conciliation in resolving territorial disputes. On the contrary, ILS located in Africa and Asia/Africa favours the binding third-party methods. Through assessing regional variance, the book successfully moves beyond the particulars of the secular law-Islamic law relations within ILS' domestic legal system.

The book is thematically well-organized, rich in information and empirical evidence. It is also written in a reader-friendly style. As far as the objectives are concerned, the book is a commendable initiative. It is simple enough to the readers unfamiliar with Islamic law and at the same time solid enough to those who have expertise in the study of Islamic law. The title of the book is also consistent with the basic ideas, arguments and discussions. The findings of the book are the outcome of a well-conducted research. Conducting in-depth research through collecting both qualitative and quantitative data regarding the presence of Islamic law and secular law in constitutions, legal practices and institutions of the thirty ILS is challenging. The author excels in this area and successfully arranged several interviews comprised of Islamic law scholars, practitioners of international law, including judges of the

ICJ, States' Legal Counsels in the ICJ and international arbitration tribunals, the Legal Advisor of the UN and several policymakers and religious leaders performing various functions in ILS and non-ILS. With a multi-method approach, the book not only addresses the lacunae of the existing literature through going beyond historical and normative description and moving forward formulating a generalizable theory but also assists the scholars and policymakers of the international law community to understand the uncommon attitude of ILS towards international law and its dispute resolution venues.

Although the book is precise, compact and rigorous, it is not beyond limitations. Considering editorial mistakes, there are few spelling and grammatical errors that should be revised in its second edition. The main criticisms lie in the conceptual stance and methodology. The book is focused extensively on the concept of international law, peaceful settlement of the international dispute, Islamic law, Islamic law state, but it lacks an adequate discussion on the origin of sharia, rule of law and debates over its meaning. Though the book describes the methodology, it misses a detailed discussion of it in the introductory chapter. Though the book offers many promising insights into Islamic law, secular law and how these laws are incorporated in the domestic legal system of the ILS, there are scopes to conduct empirical research on implications of these laws in determining the relations between ILS and non-ILS. Another point that can be illustrated is the feasibility of building up the entire analysis through coding information from 172 constitutions and major constitutional amendments of the ILS. Because there are limits to the information that such data can provide and many dynamics remain unexplored.

The book *Islamic Law and International Law: Peaceful Resolution of Disputes* has definitely added value to the existing literature on international law, political science, Islamic law, comparative law, Islamic studies, international relations, and peace and conflict studies. With its multidisciplinary approach, it develops some considerable hypotheses as well as a theory that marks several exceptions compared to the prevailing perspectives. For instance, in contrast with other literature on Islamic law and international law, this book acknowledges the diverse attitude of ILS towards international law and international settlement venues. It can, thus, be identified as a point of departure for further research and a paramount reference point portraying the relations between Islamic law and international law in the context of peaceful resolution of disputes.

Reviewed by
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