

BOOK REVIEW

***Islamic Law and International Law: Peaceful Resolution of Disputes.* By Emilia Justyna Powell (Oxford University Press, New York, United States of America) 2020.**

I am extremely honoured and privileged to be contacted by the learned author - Dr. Emilia Justyna Powell, Associate Professor of Political Science and Concurrent Associate Professor of Law at the University of Notre Dame - to review her scholarly book entitled: "Islamic Law and International Law: Peaceful Resolution of Disputes" published by Oxford University Press. In fact, it is a daunting task for any scholar to embark on an academic journey investigating the nexus of Islamic law and international law empirically and scientifically. As far as my humble reading experience is concerned, this is a pioneering work which identifies similarities and differences between Islamic law and international law in peaceful resolution of disputes and investigates the attitudes of the Islamic milieu empirically in international conflict management venues in the English language. It consists of seven chapters in 328 pages with an excellent index.

The author begins the book with an introductory chapter which sheds light on the important of having clear understanding on both international law adopted with some degree of variation in different jurisdictions, and Islamic laws derived from the primary and secondary sources of *Shari'ah* and adopted with numerous variance in different Islamic countries.

In the following chapter, the author portrays a brief nature and development of international law together with some remarkable definitions. Special emphasis is given to the various peaceful means of international disputes settlement under Articles 2(3) and 33 of the Charter of the United Nations (UN). Article 33(1) obliges Members of the UN to seek a solution to their international disputes by 'diplomatic means', i.e. negotiation, enquiry, mediation, conciliation; by 'adjudicative means', i.e. arbitration, judicial settlement; by 'political means', i.e. resorting to regional agencies or arrangements; or even by 'any other peaceful means' chosen by the disputants. Then, the author attempts to simplify the definition of Islamic law by referring to several contemporary literatures for the purpose of providing casual readers with the straightforward understanding on how the Islamic laws are generally developed and why it is varied from one jurisdiction to another. This aspect is crucial to comprehend due to the fact that each of the Islamic countries has its own way of harmonising religious law with secular law and thereby resulting many forms of Islamic law

unique to the respective jurisdiction. Albeit it is subjective to draw a clear line as to which country is considered 'Islamic Law State' (ILS), the author affords to define and categorise some countries as ILS by looking at the extent and degree of the influence of *Shari'ah* on their domestic legal systems and also noting that there may be variances among them. After laying down this groundwork on how Islamic laws are developed and applied differently in different jurisdictions, the author begins to introduce 'Islamic international law' (*siyar*) which is considered as a part of Islamic law and another topic within the Islamic legal system by Muslim jurists.

In the next chapter, the author generally identifies considerable details of similarities and differences between international and Islamic law. It is noted that some commentators assume classical Islamic law is fundamentally incompatible with contemporary international law while others dismiss such a claim. The author undertakes a comparative study to show the areas where these two systems diverge from one another and where exactly the Islamic legal tradition and international law can coexist without conflict. This is an objective approach acknowledging that although both systems may not be identical in nature but they may complement each other for the better governance of the world at the international arena.

The subsequent chapter narrowed down the focus into the theory of peaceful dispute resolution in Islam. Taking note of the fact that modes of peaceful settlement of disputes available under the *Shari'ah* may not be equivalent to those available under contemporary international law, the author underlines some classical methods such as reconciliation, apology, and constructive dialogue between disputants used in dispute settlement in accordance with Islamic teachings. Therefore, Islam teaches to resolve disputes, as much as possible, in amicable ways by informal settlement without resorting to formal adjudicative venues such as courts, arbitrations, and tribunals.

In the following chapter, the author - through an empirical study conducted by focusing on the territorial disputes involving some selected ILS - proves that the ILS whose domestic laws embrace traditional Islamic law principles are more likely to resort to diplomatic means in attempting to settle their territorial disputes while the ILS whose domestic laws incorporate secular principles are more likely to resort to adjudicative means in doing so.

In the next chapter, the author focuses on the International Court of Justice (ICJ), the primary judicial organ of the UN, and its relation to the Islamic milieu. It discusses how the ICJ was established under the umbrella of the UN with the view to adjudicate international disputes among States and how it would claim jurisdiction. Similar to the previous chapter, the author - through an empirical study conducted by focusing on the various international

disputes involving some selected ILS - proves that the ILS whose domestic laws embrace traditional Islamic law principles are less likely to accept the jurisdiction of ICJ in settling their international disputes while the ILS whose domestic laws incorporate secular principles are more likely to accept the jurisdiction of the World Court in resolving their international disputes. Nevertheless, it is noted that ISL share more or less the same attitude like non-ILS in determining whether to accept the jurisdiction of the ICJ as majority of States around the world are still quite reluctant to accept the compulsory jurisdiction of the Court.

In the subsequent chapter, the author explores different 'Islamic schools of jurisprudence' such as Hanafi, Hanbali, Maliki, Shafi, Jafari, Zaidi, as well as Ibadi, and 'geographic locations' such as Middle East, Africa, and Asia/Oceania with the intention to investigate how these factors might influence the choice of peaceful dispute resolution methods made by certain ILS.

In the concluding chapter, the author proposes that Islamic law and international law should play hand-in-hand in complementary manner - as there are more similarities between these two legal systems than their differences - to bring about a more peaceful world.

In a nutshell, the book deliberates on the key characteristics of the Islamic legal tradition and how it relates to contemporary international law particularly in the context of peaceful settlement of international disputes. Albeit this book does not engage all sources of *Shari'ah* from which the Islamic laws derived as the study of Islamic jurisprudence - being the divine jurisprudence - would require more than a lifetime dedication and endeavour for the process of learning and relearning, discovering and rediscovering, defining and redefining, interpreting and reinterpreting and the list can go on and on; this hard work makes it simple to grasp fundamental aspects of Islamic law and its relation to international law in resolution of international disputes. This comparative study identifies not only some important differences between Islamic law and international law but also outlines several crucial similarities. It is acknowledged that both systems are dynamic legal traditions that have changed over the years and will continue to evolve in the future.

In the context of peaceful settlement of international disputes, this book reveals that litigation is at the centre of the contemporary administration of justice under international law by following the Western legal traditions such as common law and civil law. Islam, on the other hand, encourages using amicable methods of dispute resolution such as negotiation, mediation, conciliation and alike over the litigation. Accordingly, I recommend this book as a source of reference not only for the scholars but also for the policymakers and other stakeholders especially in terms of comprehending well on how the

258 / Book Review

various countries in the Islamic milieu interpret and view contemporary international law and international dispute resolution venues.

Muhamad Hassan Ahmad

Assistant Professor

Ahmad Ibrahim Kulliyah (Faculty) of Laws

International Islamic University Malaysia

E-mail: mdhassan@iium.edu.my



This document was created with the Win2PDF "print to PDF" printer available at <http://www.win2pdf.com>

This version of Win2PDF 10 is for evaluation and non-commercial use only.

This page will not be added after purchasing Win2PDF.

<http://www.win2pdf.com/purchase/>