

## Book Review:

### Emilia Justyna Powell, *Islamic Law and International Law: Peaceful Resolution of Disputes*

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Dr. Ioannis Konstantinidis

Assistant Professor of International Law, College of Law, Qatar University

Email: ikonstantinidis@qu.edu.qa

The settlement of inter-state disputes is an integral part of the international legal system. The obligation of States to settle their disputes peacefully is enshrined in Article 2(3) of the Charter of United Nations. In turn, Article 33 of the Charter identifies different means that can be employed by United Nations Member States with a view to peacefully resolving inter-state disputes, including, *inter alia*, “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement”.<sup>1</sup>

Since the adoption of the Charter, much ink has been spilled on the classification and definition of the aforementioned methods. While all of them have a common overarching objective, their modalities, as well as the effect of their respective outcomes, vary. On the one hand, States can employ diplomatic means for the settlement of their disputes, with the participation or not of a third party. On the other hand, arbitration and judicial settlement (adjudication) entail binding decisions on the parties to a dispute. In the constellation of international dispute settlement mechanisms, the International Court of Justice (ICJ or the Court) - the principal judicial organ of the United Nations - has an important role to play. It stands as *primus inter pares* in the multitude of international courts and tribunals that coexist without a formal hierarchy.

What are the factors affecting the choice of dispute settlement methods by States? Emilia Justyna Powell invites us to explore this timeless question from a particular angle. Her book titled *Islamic Law and International Law: Peaceful Resolution of Disputes* (Oxford University Press, 2020) attempts to answer this question by examining the attitude of a specific group of States, the *Islamic Law States*, towards the methods of resolution used in inter-state disputes. The term *Islamic Law States* is thoroughly defined by the author. While acknowledging the plethora of existing definitions, she explains that Islamic Law is the “religious law of Islam, with all the cultural attributes associated with societies that practice the Muslims faith” (p. 33). For the purposes of her research, an Islamic Law State is defined as State “with identifiable substantial segment of its legal system that is charged with obligatory implementation of Islamic Law and where Muslims constitute at least 50% of the population” (p. 42). The proposed definition explains that the determinant criteria is not exclusively

<sup>1</sup> United Nations Charter, Article 33(1).

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the religious preference of citizens. Rather, it focuses on the extent to which a country directly applies Islamic Law as a substantial part of other areas of law. For the avoidance of any doubt, she further explains that this term is employed only for empirical reasons, and acknowledges its contested nature. A careful reading of Chapter 2 does justice to the definition for the purposes of this book. Most importantly, the list of Islamic Law States encompasses States from different parts of the world (Africa, Middle East, Asia), where the nexus between Islamic Law and secular law in their legal system varies. According to the author, this nexus and its different variations do have a role to play in the preferences of Islamic Law States with respect to the means of settling inter-state disputes.

In order to decipher this nexus and its variations, Professor Powell, examines not only the constitutions of these countries but also their overall legal systems. This is key to her approach, as it distinguishes her work from other similar attempts. In examining the constitutions, an array of parameters are taken into account, including *inter alia*: mentions of Sharia/Islam and its supremacy, the requirement of Oaths to God, the Muslim head of State requirement, Islamic education, references to customary law, the rule of law, the existence of supreme courts, the composition of the judiciary etc. By following this methodology, the author successfully demonstrates the uniqueness of Islamic Law States. This is the prism through which the author endeavors to decode the way this uniqueness shapes their preferences with respect to the settlement of disputes.

Chapter 3 of the book provides the reader with a *vue d'ensemble* of the differences and similarities between Islamic law and international law. Of note is the manner in which the author delves into their interrelation with respect to the role of scholars and customs. Do these differences and similarities have an impact on the choice of dispute settlement methods? Understanding this question is an indispensable prerequisite that actually further buttresses the author's theoretical approach, as exposed in Chapter 4, and empirical analysis in Chapters 5, 6 and 7 of this book.

In Chapter 4, titled "A Theory of Islamic Peaceful Resolution of Disputes", Professor Powell highlights the "non-confrontational practices of conflict management embraced by the Islamic legal tradition and the confrontational litigation culture present in the West" (p. 126). Indeed, she argues that the "brotherly informal settlement" associated with the Islamic tradition does have an impact on the methods employed by Islamic Law States in the settlement of inter-state disputes. She contends that Islamic Law States with a greater degree of Islamic values embedded in their legal systems are inclined to opt for third party non-binding dispute settlement methods. In the same vein, she argues that Islamic Law States with more secular characteristics are likely to accept dispute resolution procedures entailing binding decisions (arbitration, adjudication). In order to reach this conclusion, she succinctly describes the main characteristics of international dispute settlement and Islamic dispute resolution. Readers unfamiliar with Islamic dispute resolution have a unique opportunity to explore the way it operates and the values upon which it relies, including the non-confrontational approach and the concept of collected embeddedness of the third party. These factors are of pivotal importance, because, in the author's view, they legitimize the settlement process. On the contrary, international dispute settlement methods, especially adjudication, may not necessarily reflect this approach. In the author's view, international adjudication is likely to be taken by Islamic Law States *cum grano salis*, as several of its characteristics (composition of courts, procedure) create uncertainty as to the conduct and outcome of the process. This may not be fully embraced by a great number of scholars. One could equally argue that, nowadays, international courts and tribunals strive to promote certainty in order to reduce this source of skepticism.

Chapters 5 and 6 constitute the core of the empirical analysis of this research. Professor Powell applies her theory to the facts focusing, in particular, on two topics. She examines mainly the approach of Islamic Law States to resolving territorial disputes (Chapter 5) and the attitude of Islamic Law States towards the jurisdiction of the ICJ (Chapter 6). She explains that territorial disputes are of a particular nature, because they relate to Statehood, and she provides us with an analysis of Islamic Law States' attempts to peacefully settle their territorial disputes from 1945 to 2012. Its objective is not only to document the efforts undertaken by Islamic Law States and the preferred means of dispute settlement in each case,

but also to shed light on the notion of territory and sovereignty under Islamic law. The conclusions of this chapter regarding the nexus between Islamic law and secular law and its variations, as well as their impact on the choice of dispute settlement methods are particularly enlightening. This applies equally to Chapter 6 dealing with the acceptance of the compulsory jurisdiction of the ICJ by Islamic Law States. States may accept the jurisdiction of the Court in various ways. The analysis concentrates on acceptance by means of a declaration under Article 36(2) of the Court's Statute, via a compromissory clause included in an international treaty and via agreement of the parties to a dispute to recognize the jurisdiction of the Court in a specific case. The author provides us with an in-depth analysis of Islamic Law States' choices through the prism of the nexus between Islamic Law and secular law (and the variations already set out in Chapter 4) in the legal systems of Islamic Law States.

Following her rigorously documented analysis, the author, in Chapter 7, seeks to navigate a relatively uncharted area relating to the impact Islamic schools of jurisprudence may have on the attitude of Islamic Law States towards methods of resolution of inter-state disputes. Does geography matter? The author provides us with a preliminary empirical analysis that can certainly result in future pieces of research.

Powell's *Islamic Law and International Law: Peaceful Resolution of Disputes* is indubitably an important piece of research in an area that remains relatively unexplored. The relationship between Islamic Law and international law has been certainly debated and discussed. However, this is the first systematic and comprehensive effort to analyze this relationship and shed light on the dispute resolution preferences of a category of States defined by the author as Islamic Law States. The structure of the book and the topics covered render it an indispensable reading for experts in Islamic law, international law, international dispute resolution and international relations. In order to achieve her objective, the author relies on a series of interviews with international judges, Islamic law scholars and international law practitioners. Hence, her contribution appeals to the curiosity of a wide range of readers.

The author of the present review understands that this book was accomplished prior to the emergence of the 2017 Gulf Diplomatic Crisis (the Blockade<sup>2</sup>). The Islamic Law States involved in this crisis have had the opportunity to employ different dispute settlement methods with a view to settling their disputes. It is of note that several of these disputes are nowadays pending before different international dispute settlement fora, including *inter alia*: the International Court of Justice, the World Trade Organization, the Council of the International Civil Aviation Organization, arbitral tribunals constituted pursuant to the Constitution of the Universal Postal Union, and the Committee on the Elimination of Racial Discrimination. Could this case study add another dimension to the author's findings?

Much emphasis is placed in this book on the ICJ and its secular *modus operandi*. This debate is an ongoing one and I am confident that this book constructively contributes to it. It would be desirable to see a special analysis of the profiles of *ad hoc* judges appointed by Islamic Law States in cases brought before the Court. One would expect that the great majority of *ad hoc* judges in those cases come from an Islamic Law State. Is this the case? An *ad hoc* judge is, in principle, appointed by a State that does not have a judge of its nationality sitting on the bench. Have Islamic Law States appointed their nationals or nationals of other Islamic Law States as *ad hoc* judges? Such an analysis could contribute to certain of the research questions posed.

The acceptance of the jurisdiction of the ICJ by Islamic Law States constitutes, unquestionably, a significant case study. However, as underlined by the author, the ICJ is a court that was created without the participation of Islamic Law States. Once they gained independence, States wanted to actively participate in the creation of new international institutions, including international courts and tribunals. The International Tribunal for the Law of the Sea (ITLOS), established pursuant to Annex VI of the United Nations Convention on the Law of the Sea (UNCLOS), is one of them. ITLOS was created following the entry into force of UNCLOS in 1994. It is a newly established institution. Islamic Law States did participate

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2 By use of the term "Blockade" for purposes of this review, the author does not refer to a "blockade" as understood under the international law of armed conflict.

in its creation! What is the attitude of these States towards ITLOS so far? How do Islamic Law States perceive Part XV of UNCLOS, which provides for a comprehensive system for the settlement of law of the sea disputes? Part XV of UNCLOS is an interesting case study as it provides for both diplomatic and legal means of dispute settlement. State Parties to UNCLOS have the right to exclude certain types of disputes from third party procedures entailing binding decisions (adjudication and arbitration). How have Islamic Law States approached this matter so far?

Last but not least, it should be noted that Islamic Law States have concluded a series of treaties between themselves, ranging from treaties establishing intergovernmental organizations (the Arab League, the Organization of Islamic Cooperation, the Gulf Cooperation Council are just a few examples) to treaties promoting investments. Dispute resolution provisions are an integral part of these treaties. Do they adopt an Islamic non-confrontational approach to dispute settlement?

The aforementioned comments and questions in no way diminish the uncontested value and contribution of the book under review. *Tout au contraire*, they further reinforce it. Powell's *Islamic Law and International Law: Peaceful Resolution of Disputes* is a solid piece of research that is indispensable in order to *decrypt* the choice of dispute settlement methods by Islamic Law States.