

Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought – A Book Review

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The vast literature available on the historical evolution of international law of the sea has been derived mainly from the viewpoints of 17th century European jurists, whose ideas are strongly rooted in the core concepts developed in the Enlightenment European intellectual order that legitimized the national interests imbued with accumulation of wealth. For instance, when the 17th century Dutch Jurist Hugo Grotius wrote “*Mare Liberum*” which gave birth to the freedom of the seas, his argument was bolstered by the mercantile interests of the Dutch Republic.

Today, there continues to be a greater discourse on deconstructing the Eurocentrism in international law, with scholars from the Global South representing different civilizational, religious and cultural values writing various reinterpretations of international law. At such a critical juncture in academic Eurocentric deconstructivism, the book written by Hassan S. Khalilieh titled “*Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*” is a promising work which describes the influence of Islamic thought on the law of the sea. Given the vast complexity of Islamic jurisprudence, the task undertaken by Khalilieh is a praiseworthy one, comparing and contrasting the relevant Islamic legal principles on the law of the sea with Western concepts. In doing this task, the author has aptly referred to Quranic verses pertaining to the sea and water that later provided the ground rules for Islamic legal principles of the law of the sea. A Qur’anic verse (21:30) states: “We have made from water every living thing.”¹ Besides illustrating references from the Quran as the prime source, Khalilieh traces the historical development of the Islamic jurisprudential approach to the freedom of navigation during the time of the Prophet Mohammed (PBUH). As a matter of fact, the author has given a comprehensive account of the development of Islamic jurisprudential approach to law of the sea from the time of the Prophet

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¹ Hassan S. Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge University Press 2019) 30.

Mohammed to the post-prophetic era, where Muslim jurists created different narratives based on the geopolitical divisions. The historical analysis given by Khalilieh shows how Islamic rulers developed their penchant to systematically organise maritime affairs as a result of the expansion of Islamic empires.

The second chapter of the book deals with the concept of ‘offshore sovereignty’ and the territorial sea in the context of the development of Islamic legal principles prior to European ideas on such laws. The author has given a palpable analysis on how Islamic jurists distinguished between territorial seas and high seas. Khalilieh has taken the writings of 15th century Islamic jurist Ibn Majid to elucidate the Islamic notion of territorial and high seas. In discussing Majid’s concept of territorial and high seas, the author states, “In saying that the sea ‘is not peculiar to anyone of these people,’ Ibn Ma’jid plainly precluded the right of any political authority or nation to claim possession of any part of the high seas.”²

In the international law of the sea, treaties express the agreements of states concerning rules pertaining to territorial claims over offshore marine zones. Privileges were normally granted to one city or state, and often brought with them exclusive rights of trade and navigations. The author has vividly described the treaty practices that existed during the Almohad dynasty in the 12th and 13th centuries in the Iberian Peninsula: Almohad rulers made a series of diplomatic and commercial treaties with the Pisa duchy in Italy recognizing each other’s sovereign rights over a belt of water adjacent to the shoreline of the respective state, albeit that the outer boundaries remained unspecified.

The third chapter of the book mainly discusses the Islamic legal implications for piracy in high seas. The issue of piracy appears to be one of the most important issues in modern international law of the sea. While providing the Islamic legal interpretation and practice of pirates, the author illustrates how these practices evolved through some implicit references mentioned in the Quran.³ He has clearly stipulated the acts which constitute the elements of piracy under Islamic law of the sea practices in this chapter. Relied on Quranic references and Islamic juristic writings developed in post prophetic age, author states “A pirate is therefore a *muharib* who commits armed robbery and spreads

² Ibid, 105.

³ Ibid, 173.

evil and violates the primordial order and logic existence set by the Divine Text.”⁴

The author has also provided a fair answer for the common misconceptions prevailing in academia regarding some concepts of Islamic law and its practices. For instance, the author has refuted some of the academic myths justifying the connectivity between piracy and Islamic concept of Jihad.⁵ In the concluding chapter, Khalilieh claims how Grotius’ doctrine of ‘freedom of the seas’ was rooted in a non-Europe setting and he further elaborates the manner which Muslims adopted in preserving the universality of the sea as a divine gift to the whole mankind.⁶ The author also makes a rather astute comparison between modern international law of the sea practices and the Islamic notion of the law of the sea in the concluding remarks. In doing so, he frames a picture of how the features of UNCLOS III on territorial seas are akin to those that classical Muslim theologians and jurists ascribed to the Hijaz, by asserting *de jure* title and *de facto* possessory control over a large portion of the Red Sea bordering Arabia.⁷

In conclusion, Khalilieh’s book provides a comprehensive account of the Islamic legal approach to law of the sea from a historical perspective that aptly reveals a different narrative existing beyond Eurocentric scholarship in international law. Hence, this book is likely to become a classic text on the subjects of the law of the sea and international law. Nevertheless, in my opinion the book would have been much more coherent if the author had reduced the amount of Islamic theological references showing the sources of Islamic law of the sea. While the tracing of relevant Quranic principles to prove the sources and authenticity of the Islamic law of the sea was necessary, the vast number of explanations and their theological meanings seem to be a tiresome task for a reader who has not been exposed to Islamic jurisprudence or Islamic theology.

⁴ Ibid, 179.

⁵ Ibid, 180.

⁶ Ibid, 216.

⁷ Ibid, 217.