

prohibited during the 1920s and 1930s, the Soviets enthusiastically agreed to it in 1929 and 1933, only to act contrary to their legal obligations in 1939 in an early version of Riepl's 'sledgehammer' option. An empire that is the size of the Soviet Union could in reality not afford to abandon war; it just never admitted to it and, to the contrary, understood the military activities that it had started as 'liberation'. In this sense, *jus ad bellum* and *jus in bello* are deeply and often problematically interconnected. The rise of *jus ad bellum* in some contexts has led to the decline of *jus in bello*, at least when imperial territorial interests of some countries were concerned. In Ukraine in 2022, the Russian Federation, in its official self-understanding, is not so far engaging in war; Moscow speaks of a limited 'special military operation'.

Michael Riepl has written an important book. Personally, I see the most useful future for international law scholarship in studies like Riepl's. We need more detailed studies on what international law means concretely – in concrete historical-spatial circumstances and settings. Therefore, besides the obvious interest that this book presents for students of IHL, Riepl's work is a successful example of how to usefully combine the study of international law with a knowledge of area studies.

Lauri Mälksoo

*Professor of International Law,
University of Tartu (Estonia)
Email: lauri.malksoo@ut.ee*

<https://doi.org/10.1093/ejil/chac050>

Emilia Justyna Powell. ***Islamic Law and International Law: Peaceful Resolution of Disputes***. New York: Oxford University Press, 2020. Pp. 314. \$78. ISBN: 978-0-19-006463-1.

The point of departure in Islam for the settlement of disputes among Muslims is the obligation to use peaceful means. This is enshrined in several verses of the Qur'an. The preferred method both in pre-Islam Arabia and after the birth of Islam was a mixture of arbitration, conciliation and mediation. However, in disputes between Islamic and other nations, war and diplomacy were for centuries the dominant option.

Emilia Justyna Powell presents an ambitious project to study the peaceful resolution of disputes in Islam. This she does through a comprehensive text of seven chapters. In addition to the introduction and the conclusion, the substantive part of the study includes in Chapter 2 a general presentation of international law, Islamic law and international Islamic law; the categorization of Islamic states, the role of Islamic law in Islamic states and the current significance of Islamic law and its relevance for international law. This is followed by a discussion in Chapter 3 of similarities and differences between Islamic law and international law. Chapter 4 addresses the question of the peaceful resolution of disputes in Islam, while Chapter 5 focuses on Islamic states' practice regarding the specific issue of peaceful resolution of territorial disputes. The

compared with that of the other systems, for today's dispute settlement mechanisms in international law has never been considered a significant issue. It is therefore understandable that any initiated observer with sufficient knowledge of international law and Islamic law may wonder what the author is to achieve by such comprehensive research and how the impact of Islamic law on international law in this respect – if there is any impact – differs from that of other legal systems.

To convince the reader of the need for an in-depth study of the subject, the author tries to answer the research questions by introducing a theory that 'constitutes a theoretical leap forward in the study of the Islamic milieu' (at 17). The theory, presented in detail in Chapter 4, basically means that 'the domestic balance of Islamic law and secular law expressed in each domestic legal system of ILS gets translated into their preferences with respect to international conflict management venues' (at 21). Based on this theory, Powell claims that Islamic states whose laws are most infused with tenets of Islamic law push back against the Western law of nations and challenge the decisions of international courts (at 91). This claim is repeated in several other places – for instance, when the author writes that 'ILS that incorporate sharia precepts in the national curriculum avoid the International Court of Justice' (at 282). By contrast, those Islamic states whose 'domestic legal systems feature important secular characteristics are more accepting of international legal mechanism' (at 21).

Connecting the choice of Islamic states to incorporate sharia or parts thereof in their domestic legal system to how they consider the possibility of accepting the jurisdiction of an international court such as the ICJ is undoubtedly problematic. However, having this connection as the main premise for a comprehensive research project is puzzling when one thinks about the usefulness of the findings of such a study. The author claims that the book has clear practical and crucial implications 'for practitioners of international law, states' legal advisors, judges of international courts, and people working for non-governmental organizations that promote peaceful conflict management' (at 287). This is so because the relation between ILS laws and modern international law prompts not only many theoretical questions, but also important policy-oriented concerns (at 285).

For a curious and probably perplexed reader, one main question concerns the bases of the many assertions in the book – namely, the author's sources. In regard to international law, Powell refers to 'international conventions, treaties, international custom' (at 101). Other confusing concepts, such as the 'law of scholars' (at 21), may be considered as a reference to sources. Being a political scientist as well as a lawyer, it is not surprising that Powell has not limited herself to traditional legal sources. The text is strongly influenced by approaches and methods that are common in studies of international relations and political science but are not usually found in international law texts. Powell describes the book as a 'scholarly work that utilizes an empirical quantitative approach' (at 276). Statistics, mathematical tools and models and terminologies such as 'coefficient', 'P-value', 'Markov transitional logit model' and so forth (for example, at 230) are used to build up arguments in a work whose title promises a study of international law.

It is highly questionable whether, by applying mathematical models, research methods of social sciences and several statistical tables, one can carry out research about the relation between Islamic law and international law and draw viable conclusions based on the results of such research. Some of the author's conclusions offered in the book are questionable. For instance, the proposition that 'ILS whose leaders are constitutionally required to profess Muslim faith are less likely to commit to the ICJ either through the optional clause or through treaties' (at 229) is difficult to understand when, for example, Iran, with a Muslim religious authority as its leader, has been a claimant in four cases before the ICJ in the past four decades. It is equally difficult to accept that the low number of Islamic states that have accepted the compulsory jurisdiction of the ICJ could be explained by references in their constitutions to Islamic or sharia-based education (for example, at 196, 227).

With respect to sources, interviews with various people, mostly Arab specialists, take a considerable place in this study. One function of these interviews could be to compensate a lack of direct reference to original standard commentaries by authorities on Islamic law. The problem is the quality of the content of most of these interviews, which often reflect elementary, basic and obvious facts (for example, at 162–163, 231–232) or simply a lack of reasonable sense (for example, the lengthy citation at 161). Even the author's citations of casual and generally formulated statements by certain celebrities such as former ICJ justice Awn Shawkat Al-Khasawneh and former United Nations legal counsel Hans Corell (for example, at 112) show that the interviewees' positions have been more important than what they have had to say. This is quite obvious, for example, in the following direct quotation from Hans Corell, who opines the similarities between Islamic law and international law: 'Yes, I think we should definitely look at the similarities.'

The study is not limited to how international disputes are resolved by Islamic states *inter se*. Cases of disputes between ILS and other states are also addressed. Given the significance of Islamic state practice for the legal analysis in this study, one expects all relevant cases and arbitral awards to be covered. The online version of the book was published in 2019, but certain important statistics are old (for example, at 219). The statistics of the book are generally limited to 2012 (or 2014 in regard to the tables concerning ICJ practice, at 209–210). Thus, more recent information, for example on the *Bay of Bengal Maritime Boundary* arbitration between Bangladesh and India (2014), the *Certain Iranian Assets* case between Iran and United States (2016) and the recent ICJ cases brought in 2018 by Qatar against the United Arab Emirates and by Bahrain, Egypt, United Arab Emirates and Saudi Arabia against Qatar, are not included.¹ These cases would weaken the author's earlier claim.

¹ *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Arbitral Tribunal constituted under annex VII of the UN Law of the Sea Convention, Award of 7 July 2014, PCA Case No 2010-16; *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, ICJ, pending; *Application of the International Convention on All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, ICJ Reports, 2021, at 71; *Appeal Relating to the Jurisdiction of ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, ICJ Reports, 2020, at 81; *Appeal Relating to the Jurisdiction of ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, Judgment, ICJ Reports, 2020, at 172.

From the perspective of international law, Chapter 5 on territorial disputes and Chapter 6 on the relation of Islamic states with the ICJ are particularly relevant. Territorial disputes are typically among the most common sources of conflict among states. Thus, the choice of such disputes for closer scrutiny is appropriate. According to Powell, 'for ILS that are seeking to settle a territorial dispute, the most vital concern is extending sovereignty over a contested piece of land' (at 177). One wonders whether there is any difference between the Islamic states and other states in this respect. Despite the reference to 'a contested piece of land', the author seems to have adopted a broad definition of 'territorial' disputes. As an example, she mentions the dispute over water rights in the Helmand River between Iran and Afghanistan, which is not about a disputed piece of land or the exact place of the border; it is about the interpretation of an agreement from 1972 with respect to the extent of the rights of the parties to the water of the river (at 165).

Powell confesses early in Chapter 5 that 'ILS do not have a uniform attitude toward international models of dispute settlement that is somehow distinct from non-ILS' (at 166). She argues that ILS preferences partially differ from those of other states, adding that it 'is the commitment to Islamic law that explains this partial departure' (at 127). The author supplies several tables with detailed information about Islamic states' post-World War II attempts to achieve peaceful resolution of territorial disputes and compares the use of non-binding third-party methods with the use of binding ones. Such statistics are of course useful and interesting with respect to the Islamic states, but, in order to draw a viable general conclusion, one needs to compare these states' practice with that of another comparable group of states. However, given the considerable difference in the number of Islamic and non-Islamic countries, any comparison between the practice of these two groups should be adjusted to avoid misleading results, as seems to be the case with respect to statistics regarding how often states resort to the binding dispute settlement mechanisms (at 181).

When it comes to the ICJ and Islamic law, the author mentions occasions on which states have invoked Islamic legal rules and traditions before the Court in support of their positions. The examples provided include the *Western Sahara* advisory proceedings, *Territorial Dispute (Libya v. Chad)*, *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)* and *Maritime Delimitation (Qatar v. Bahrain)* (at 178–179).² It is noteworthy that, in all these cases, except for *Qatar v. Bahrain*, the ICJ rejected the assertions of the parties in regard to the applicability of Islamic laws and refused to make any reference to these laws (at 208).

A theme in the book is that Islamic norms of dispute resolution match international non-binding third-party methods of mediation and conciliation. This is particularly elaborated in Chapter 4. However, not all the author's examples support this position. For instance, in regard to the 1975 Algiers Agreement between Iran and Iraq, Powell

² *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, ICJ Reports, 1994, at 6; *Sovereignty over Pulau Ligitan and Pulau Sipadan/Indonesia/Malaysia*, Judgment, ICJ Reports, 2002, at 625; *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Merits, Judgment, ICJ Reports 2001, at 40.

refers to Merrills' book on dispute settlement and writes that 'Algeria, a neutral state, was an ideal mediator in the dispute between Iran and Iraq over their border *precisely because of the common Islamic heritage of all parties involved*' (at 149; emphasis added).³ It is true that Algeria facilitated negotiations between Iran and Iraq, and the resulting legally binding agreement was signed in Algiers, but this had nothing whatsoever to do with the Islamic character of the involved countries. All three states were at that time among the most secular members of the Organization of Islamic Conference.

Powell sees it as her task to challenge what she considers a presumed perception among many legal scholars that Islamic states constitute a homogenous group and that the presence of sharia in their national laws shapes their preferences in a uniform manner (at 127). We are not clear how many, if any, legal scholars with knowledge of Islamic law have made such an assertion that should now be challenged. What is clear is that the author finds it 'troublesome that some scholars claim that sharia-based law and international law constitute two separate legal domains, without much in common' (at 93). Thus, Powell's book is to fill 'the lacunae of the literature by, first of all, going beyond historical and normative description and moving toward developing a generalized theory' (at 16). The purpose is obviously to show that there is much in common between Islamic law and international law. Powell is certainly not alone in this respect; many Muslim lawyers, obviously even those interviewed, have a strong tendency to claim that Islamic law and international law are in harmony. However, state practice and the jurisprudence of international courts and tribunals hardly support this proposition in all respects. A good example is the jurisprudence of the European Court of Human Rights on the relation between Islam and human rights as enshrined in the European Convention on Human Rights and Fundamental Freedoms.⁴

The main question remains whether the subject of the study is worth the commendable effort that the author has put into researching the wealth of the sources mentioned at the end of the book. In this reviewer's view, Islamic states choose to go or not to go to international courts for the same reasons as all other states. The status of Islamic laws and traditions in the laws of a country play scant role in this respect. Having said that, it should be conceded that the author offers a valuable and careful study of the scope and place of Islamic law in the domestic laws of several key Islamic states such as Saudi Arabia, Sudan, Iran, United Arab Emirates and Kuwait (at 50–55). Powell has rightly observed changes in the constitutions of several Islamic states such as Nigeria and Bahrain in the past two decades to bring them more into harmony with Islam and Islamic laws (at 64). She further elaborates on the provisions in some Islamic constitutions about supremacy of Islamic laws over all other laws and the requirement of oath to Islam for judges and leaders (at 80–81). Although such information may not have a direct bearing on the specific subject of the book, it is insightful and of use to interested readers.

³ Iran and Iraq, Treaty Concerning the State Frontier and Neighbourly Relations (with Protocol Concerning the Delimitation of the River Frontier), 13 June 1975, 1017 UNTS 14903.

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms 1950, 213 UNTS 222.

The presentation of the development of international law until the Treaty of Westphalia, which was the turning point for shifting moral and religious arguments towards the consideration of legality, is clear and fully sufficient for the purpose of this study (at 97–100). Powell states that there are ‘myriad crucial topics awaiting scientific exploration in the context of linkage between sharia and international law’ (at 50). This is true with respect to certain subjects such as human rights and Islam. However, the subject of the book under review does not belong to this category. Based on the research, Powell’s most important policy advice is that international courts must open a place for Islamic laws in their practice, at least when one of the parties is an Islamic state. She believes this would enhance the legitimacy of these courts (at 287–288). The likelihood of international courts following this advice is not great.

Said Mahmoudi, LL.D

Professor Emeritus of International Law,
Faculty of Law, Stockholm University
Email: Said.Mahmoudi@juridicum.su.se

<https://doi.org/10.1093/ejil/chac055>

Erika de Wet. ***Military Assistance on Request and the Use of Force***. Oxford: Oxford University Press, 2020. Pp 272. £84.00. ISBN: 9780198784401.

It is fair to say that the law governing the use of interstate force (*jus ad bellum*) is one of the most widely written upon – not to mention, controversial – sub-disciplines within international law. Within the voluminous literature, there exists a notable interest in the two established exceptions to the general prohibition of the threat or use of force found in the 1945 Charter of the United Nations and self-defence and the use of force under the auspices of the United Nations (UN) Security Council.¹ Much debate continues to take place regarding the breadth and scope of these exceptions, particularly that of self-defence,² but their existence as limited exceptions to the general prohibition is rarely questioned.³

¹ See, e.g., C. O’Meara, *Necessity and Proportionality and the Right of Self-Defence in International Law* (2021); N.M. Blocker and N.J. Schrijver (eds), *The Security Council and the Use of Force: Theory and Reality – A Need for Change?* (2005).

² For example, whether the right of self-defence is permitted against the actions of non-state actors. For a contribution on this issue by the author of the book under review, see de Wet, ‘The Invocation of the Right to Self-Defence in Response to Armed Attacks conducted by Armed Groups: Implications for Attribution’, 32 *Leiden Journal of International Law (LJIL)* (2019) 91.

³ There is, however, an ongoing debate as to whether there is an additional exception of humanitarian intervention. For a recent contribution on this issue, see O’Meara, ‘Should International Law Recognize a Right of Humanitarian Intervention?’, 66 *International and Comparative Law Quarterly* (2017) 441.