

Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought, by Hassan S. Khalilieh (Cambridge & London: Cambridge University Press, 2019), xvi + 326 pp., ISBN: 978-1108481458, \$81.03 (hb), doi: 10.1017/9781108630702

The vast literature available on the historical evolution of international law of the sea has mainly derived from the viewpoints of European jurists of the age of enlightenment in the 17th century and those ideas are strongly rooted in the core concepts developed in 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.

Currently, there has been increasing discourse on deconstructing Eurocentrism in international law. Scholars mainly from the Global South representing different civilizational, religious, and cultural values have written various reinterpretations of international law. At such a crucial juncture in academia, which has taken a revolutionary step toward deconstructing the Eurocentric narratives in the discipline, this book by Hassan S. Khalilieh is a promising work that unfolds Islamic thought on the law of the sea. Given the vast complexity of Islamic jurisprudence, the task undertaken by Khalilieh is absolutely praiseworthy. The cardinal argument that stems from his work is based on comparing and contrasting the Islamic legal principles on the law of the sea with Western concepts. In performing this task, the author aptly uses Qur'ānic references to the sea and water that later provided the ground rules for Islamic legal principles of the law of the sea: "A Qur'ānic verse (21:30) states: '*We have made from water every living thing*'" (p. 30). In addition to illustrating references from the Qur'ān 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 Muḥammad. In fact, the author provides a comprehensive account of the

Ilahiyat Studies

p-ISSN: 1309-1786 / e-ISSN: 1309-1719

Volume 11 Number 1 Winter / Spring 2020

DOI: 10.12730/13091719.2020.111.204

Copyright © Bursa İlahiyat Foundation

To cite this article: Amarasinghe, Punsara. "Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought, by Hassan S. Khalilieh." *Ilahiyat Studies* 11, no. 1 (2020): 151-153. <https://doi.org/10.12730/13091719.2020.111.204>

development of the Islamic jurisprudential approach to the law of the sea from the time of the Prophet Muḥammad to the post-prophetic era, when Muslim jurists created different narratives based on geopolitical divisions. The historical analysis presented by Khalilieh shows the extent to which Islamic rulers developed their penchant for systematically organizing maritime affairs as a result of the expansion of Islamic empires.

The second chapter of the book addresses offshore sovereignty and the territorial sea in the context of the development of Islamic legal principles prior to European ideas on laws relating to territorial seas and sovereignty. In particular, the author provides a palpable analysis of how Islamic jurists distinguish between territorial seas and high seas. Khalilieh uses the writings of the 15th-century Islamic jurist Ibn Mājid (d. 1500) to elucidate the Islamic notion of territorial and high seas. In discussing Ibn Mājid's concept of territorial and high seas, the author states, "In saying that the sea 'is not peculiar to anyone of these people,' Ibn Mājid plainly precluded the right of any political authority or nation to claim possession of any part of the high seas" (p. 105).

In the international law of the sea under UNCLOS, treaties often expressed 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 navigation. The author has vividly described the treaty practices that existed under the Islamic rulers in the heyday of the Almohads dynasty in the Iberian Peninsula as the Almohads rulers made a series of diplomatic and commercial treaties with the Pisa Duchy in Italy to recognize each other's sovereign rights to a belt of water adjacent to the shoreline of the respective state, although the outer boundaries remained unspecified.

The third chapter of the book mainly discusses the Islamic legal implications for piracy in the high seas. The issue of piracy appears to be one of the most crucially important issues in modern international law of the sea. While presenting the Islamic legal interpretation and practices of pirates, the author illustrates how those practices evolved through implicit references in the Qurʾān (p. 173). In particular, he clearly presents the acts that constitute the elements of piracy under Islamic law of the sea practices in this chapter. Relying on Qurʾānic references and Islamic juristic writings developed in the post-

prophetic age, author states, “A pirate is therefore a *muḥārib* who commits armed robbery and spreads evil and violates the primordial order and logic existence set by the Divine Text” (p. 179).

Another important aspect of the book is that it provides a fair answer to the common misconceptions prevailing in academia regarding some of the concepts of Islamic law and its practices. For instance, the author refutes some of the academic myths justifying the connection between piracy and the Islamic concept of *jihād* (p. 180). In the concluding chapter, Khalilieh claims that Grotius’s doctrine of freedom of the seas was rooted in a non-European setting, and he further elaborates the manner Muslims adopted in preserving the universality of the sea as a divine gift to all humankind (p. 216). Additionally, the author 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 regarding territorial seas are akin to those that the classical Muslim theologians and jurists ascribed to the Hijaz by asserting *de jure* and *de facto* possessory control over a large portion of the Red Sea bordering Arabia (p. 217).

Overall, the book provides a comprehensive account of the Islamic legal approach to the law of the sea from a historical perspective that aptly reveals a different civilizational narrative existing beyond Eurocentric scholarship in international law. Hence, this book is likely to become classic reading on the subject of the law of the sea and international law. Nevertheless, in our 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. It is true that tracing Qurʾānic principles to prove the authenticity of Islamic legal practices on the law of the sea reveals the sources of legal practice, but the vast number of explanations and their theological meanings present a tiresome task for a reader who has not been exposed to Islamic jurisprudence or Islamic theology.

Punsara Amarasinghe

Sant Anna School for Advanced Studies, Pisa-Italy

punsaraprint10@gmail.com

<https://orcid.org/0000-0002-9539-7770>