

CONTENTS

Glossary	XIX
Preface	XXI
Introduction	XXIII

PART ONE

THE DISCIPLINE OF COMPARATIVE PUBLIC INTERNATIONAL LAW

Chapter One. The Nature of Islamic International Law	3
1. Introduction	3
2. The Discipline of Islamic International Law	5
2.1. Siyar	5
2.2. Universality	6
2.3. Equal System	8
3. The Origin of Both Systems	10
3.1. Juridical Structure	11
3.2. Speciality of the System	12
4. The Legal Characterization	15
4.1. Codification	16
4.2. Self-Conductive Value	19
4.3. Moral Values of the System	22
4.4. Integration of Values	25
4.5. Similar Weight	26
Chapter Two. Principles of Islamic International Law.....	27
1. The Principle of Equality	27
1.1. Equality before the Law	27
1.2. The Basic Source of Equality	29
1.3. Equality in Sex	30
2. The Principle of Peace	30
2.1. Peaceful Relations	30
2.2. Peace As a Duty	31
2.3. Making Peace	32

3.	The Principle of Reciprocal Respect	32
3.1.	Mutual Understanding	32
3.2.	Mutual Consent	33
4.	The Principle of Self-Defence	34
4.1.	Sources of the Principle	34
4.2.	Positive Law	35
4.3.	Customary Law	36
4.4.	Implementation of Self-Defence	36
5.	The Principle of Proportionality	38
5.1.	Limitations	38
5.2.	Applications	39
5.3.	Misinterpretation of the Principle	39
6.	The Principle of Integrity of Agreements	40
6.1.	<i>Pacta Sunt Servanda</i>	40
6.2.	Integrity of Given Obligations	41
6.3.	Proper Consent	42
7.	The Principle of Justice	42
7.1.	Qualified Values	42
7.2.	Human Qualification	43
8.	The Principle of Diplomatic Immunity	44
8.1.	Evolution of Immunity	44
8.2.	Scope of Recognition	45
9.	The Principle of Unity of Muslims	46
9.1.	Unity of Nations	46
9.2.	The Purpose of Unity	47
9.3.	Interpretation of Unity	48
 Chapter Three. Islamic Philosophy of Law in Relation to Islamic International Law		51
1.	Introduction	51
2.	Internationalization	51
3.	<i>Sui Generis</i>	52
4.	Fixed Framework	53
5.	Classification	55
5.1.	Permission	56
5.2.	Abstention	56
5.3.	Discretion	57
5.4.	International Application	58
6.	Judicial Validity	58
7.	Universality	59

8. Legality.....	61
Chapter Four. Sources of Islamic International Law.....	63
1. Introduction	63
2. Constitution Machinery	63
2.1. Formal and Material Sources	64
3. The Primary Sources	65
3.1. <i>The Qur'an</i>	65
3.1.1. Prominent Source	66
3.1.2. Principles of Justice and Equality.....	67
3.1.3. Opposition to Inequalities	68
3.1.4. No Compulsion in Ideologies.....	69
3.1.5. Automatic Application	70
3.2. <i>Sunnah</i>	70
3.2.1. Wisdom	72
3.2.2. Custom	73
3.2.3. <i>Hadith</i>	74
4. The Subsidiary Sources	76
4.1. <i>Ijma</i>	76
4.1.1. Common Understanding of <i>Ijma</i>	76
4.1.2. Division of <i>Ijma</i>	76
4.1.3. Proving <i>Ijma</i>	77
4.2. Jurisprudential Analogy.....	78
4.3. International Custom	81
Chapter Five. Islamic International Law within Municipal Law	83
1. Introduction	83
2. No Issues of Municipal Law	84
2.1. Major Similarities	84
2.2. Major Implementation	85
3. Issues of Sovereignty.....	86
3.1. Doctrines	86
3.2. Spiritual Values	88
3.3. Superiority	90
4. Islamic Political Framework.....	91
4.1. <i>Tawhid</i>	91
4.2. <i>Risala</i>	92
4.3. <i>Khilafa</i>	92

Chapter Six. International Status of State Sovereignty	93
1. Personality and Recognition	93
2. Authority to Recognize	93
3. Accession	95
4. Characterization of Personality	96
5. Nationality	97
6. Equality of States.....	99
Chapter Seven. Subjects of the Law	101
1. Introduction	101
2. Evaluation	101
2.1. States	102
2.2. Individuals	103
2.3. Other Subjects	105
Chapter Eight. Human Rights Law.....	107
1. Introduction	107
2. Human Rights in International Law	108
3. Human Rights in Islamic International Law.....	110
3.1. Basis.....	110
3.2. Functions	111
3.3. Sources of Human Rights	113
3.4. Principles of Human Rights	114
3.4.1. Equality.....	114
3.4.2. Entitlement to All Rights and Freedoms	115
3.4.3. Right to Life	117
3.4.4. Right to Be Saved for Life	119
3.4.5. Rights of Children.....	120
3.4.6. Rights of Parents	121
3.4.7. Prohibition of Slavery	122
3.4.8. Just Legal Process	123
3.4.9. Right to Integrity.....	126
3.4.10. Rights to Remedy	127
3.4.11. Rights Not to Suffer from Deprivation	128
3.4.12. Rights to Cooperation and Non-Cooperation ..	128
3.4.13. Rights to Property.....	129
3.4.14. Rights to Privacy	130
3.4.15. Rights Not to Be Spied	131
3.4.16. Rights to Nationality	132
4. Rights within the <i>Sunnah</i>	132

PART TWO

A COMPARATIVE EVALUATION OF
INTERNATIONAL CRIMINALIZATION

Chapter Nine. The Discipline of Islamic International Criminal Law	137
1. The Purposes of International Criminal Law	137
2. Definitions	139
2.1. Definition of International Criminal Law	139
2.2. Definition of Islamic International Criminal Law.....	143
2.3. A Comparative Definition of Both Systems	146
3. Sources	149
3.1. Sources of International Criminal Law	149
3.1.1. Conventions	149
3.1.2. Customs	149
3.1.3. Decisions	150
3.1.4. Publicists	152
3.1.5. Resolutions	152
3.2. Sources of Islamic International Criminal Law	153
3.2.1. The <i>Qur'an</i>	154
3.2.2. <i>Sunnah</i>	156
3.2.3. Consensus	158
3.2.4. Juridical Analogy.....	160
3.3. A Comparative Examination of Sources.....	162
4. Subjects of Both Systems	163
5. The Concept of Crimes in Both Systems.....	164
5.1. The List of Crimes	165
5.2. Differences	166
6. Punishment	167
6.1. Lack of Methods in International Criminal Law	167
6.2. Punishment in Islamic International Criminal Law.....	168
Chapter Ten. Aggression	171
1. Aggression in International Criminal Law	171
2. Aggression in Islamic International Criminal Law	175
2.1. Definition	175
2.2. Prohibitions.....	176
2.3. Peaceful Settlement of Disputes.....	177
2.4. Inevitable Situations	178

2.4.1. Defensive War	178
2.4.2. Assisting Victims	180
2.4.3. Protection of Fundamental Rights.....	181
2.4.4. Fulfilment of Serious Obligations	181
2.5. <i>Jihad</i>	182
2.5.1. Definition.....	182
2.5.2. <i>Jihad</i> As a Means of Defeating Aggressors	186
2.6. Acts Constituting Aggression	190
 Chapter Eleven. War Crimes	193
1. War Crimes in International Criminal Law	193
1.1. The First Development	193
1.2. The Second Development	194
1.3. The Third Development.....	196
1.4. The Fourth Development	196
1.5. The Fifth Development.....	198
1.6. International Criminal Tribunals	200
2. War Crimes in Islamic International Criminal Law	201
2.1. Codification	201
2.2. Acts Constituting War Crimes	203
2.3. Treatment of Prisoners	205
 Chapter Twelve. Unlawful Use of Weapons	209
1. International Criminal Law	209
2. Islamic International Criminal Law.....	210
3. Absolute Prohibition within Both Systems	211
 Chapter Thirteen. Crimes against Humanity	213
1. Criminalization in International Criminal Law	213
2. Criminalization in Islamic International Criminal Law.....	214
3. Islamic Elements of Crimes against Humanity	216
3.1. Wisdom of Committing a Wrongful Conduct	217
3.2. The Existence of the Principle of Intention	218
3.3. A Wrongful Conduct.....	218
3.4. A Criminal Plan	219
3.5. No Policy of Widespread	220
3.6. Policy of Systematic	221
3.7. A Wilful Blindness	221
4. List of Crimes against Humanity.....	222

Chapter Fourteen. Slavery	225
1. Slavery in International Criminal Law	225
1.1. Abolition	225
1.2. Criminalization	226
2. Slavery in Islamic International Criminal Law	229
2.1. Manumission	229
2.2. Abolition	231
2.3. Protection	233
2.4. Criminalization	235
Chapter Fifteen. Genocide	237
1. Genocide in International Criminal Law	237
2. Genocide in Islamic International Criminal Law	239
2.1. Prohibitions	239
2.2. Classification	240
2.3. Criminalization in Human Rights	240
Chapter Sixteen. Apartheid	243
1. Apartheid in International Criminal Law	243
2. Apartheid in Islamic International Criminal Law	246
3. Elements of Apartheid	248
Chapter Seventeen. Torture	251
1. Torture in International Criminal Law	251
1.1. Non-Criminalization	251
1.2. Criminalization	252
2. Torture in Islamic International Criminal Law	257
2.1. Definition	257
2.2. Administration of Justice	258
2.3. Prohibitions	259
2.4. Practice	261
2.5. Types of Torture	262
Chapter Eighteen. Crimes against Internationally Protected Persons	265
1. Criminalization in International Criminal Law	265
2. Criminalization in Islamic International Criminal Law	267
2.1. Immunity	267
2.2. The Scope of Protection	268
2.3. Criminalization	269

Chapter Nineteen. Taking of Hostages	271
1. International Criminal Law	271
2. Islamic International Criminal Law.....	272
2.1. Principle of Inviolability.....	272
2.2. Principle of Integrity	273
Chapter Twenty. Drug Offences	275
1. Criminalization in International Criminal Law	275
2. Prohibitions in Islamic International Criminal Law.....	278
Chapter Twenty-One. Trafficking in Persons and Pornography	281
1. Criminalization in International Criminal Law	281
2. Prohibitions in Islamic International Criminal Law.....	284
3. Trafficking in Persons	286
Chapter Twenty-Two. Crimes against Natural Environments	289
1. Nature	289
2. Protection of Living Creatures	290
3. A Double Criminalization.....	291
Chapter Twenty-Three. Crimes against Foodstuffs	293
Chapter Twenty-Four. Criminalization of Alcohol Consumption ...	295
1. International Criminal Law	295
2. Islamic International Criminal Law.....	296
Chapter Twenty-Five. Piracy	299
1. Piracy in International Criminal Law	299
2. Land Piracy in Islamic International Criminal Law	300
Chapter Twenty-Six. Limitations of Hostilities in the Conduct of States	303
1. Declaration of War	303
2. Contraband of War and Trade	304
3. Self-Defence	305
4. Reprisals	307
5. The Principle of Proportionality	308
6. Self-Determination	309
7. Humanitarian Help.....	314

Chapter Twenty-Seven. Institution of Protections	319
1. Overview	319
2. Children	319
3. Refugees	322
4. Extradition	326
5. Quarter	327
Chapter Twenty-Eight. Humanitarian Protections of Prisoners of War	331
1. Prisoners of War in International Criminal Law	331
2. Prisoners of War in Islamic International Criminal Law	333
2.1. Definition	333
2.2. Protections	335

PART THREE

SUBSTANTIVE ASPECTS OF ISLAMIC CRIMINAL JUSTICE WITHIN THE ICC

Chapter Twenty-Nine. Islamic Criminal Jurisdiction within the ICC	341
1. The Establishment of International Criminal Courts	341
2. Islamic Norms Creating the ICC	342
3. Classification of Crimes in Islamic Law	344
3.1. <i>Hudūd</i>	344
3.2. <i>Qiṣāṣ</i>	345
3.3. <i>Ta’zīr</i>	346
4. Imperative Principles of Criminal Law	346
4.1. <i>De Lege Lata</i>	347
4.2. <i>Nullum Crimen sine Lege</i>	348
4.3. <i>Nulla Poena sine Lege</i>	349
4.4. <i>Ne Bis in Idem</i>	350
5. The ICC Substantive Crimes and Islamic Law	351
6. The Principle of Complementarity	352
6.1. Primacy of Jurisdiction	353
6.2. Prevention of Impunity	353
7. Admissibility	355
8. Hybrid Jurisdiction	356

Chapter Thirty. The Mechanisms of the Trial	359
1. The Legal/Moral Qualification of the Court	359
2. Qualifications of Judges	361
3. Prosecutors	362
4. Evidence	363
4.1. Nature	364
4.2. Confession through Consent	365
4.3. Testimony of Witnesses	366
4.4. Testimony of Judge	368
4.5. Testimony of Women	369
4.6. Other Evidences	371
4.7. Reliability of Evidence	372
Chapter Thirty-One. Rights of the Accused	375
1. Anatomy of Rights	375
2. Assembly of Rights	377
2.1. Rights to Counsel	377
2.2. Specific Rights	379
2.3. The Initial Rights	380
2.4. Women Rights	381
2.5. Rights to Certain Facilities	382
2.6. Rights under Procedures	383
3. Lawful Indictment	384
Chapter Thirty-Two. Basis of Criminal Accountability	385
1. The System of International Criminal Law	385
2. Islamic International Criminal Law	388
2.1. The General Concept	388
2.2. International Aspects	389
2.3. High Ranking Officials	391
3. Islamic Components of Responsibility within the ICC	393
3.1. Age of Criminal Responsibility	394
3.2. Intention	394
3.3. Participations	396
3.4. Mitigations	397
3.5. Joint Criminal Enterprise	397
Chapter Thirty-Three. Punishments	399
1. The Philosophy of Punishment	399
2. Reasons for Punishments	399

2.1.	Application of Human Rights	400
2.2.	Deterrent Philosophy	400
2.3.	Retributive Character	401
2.4.	Protective Validity	401
2.5.	Preventive Validity	401
2.6.	Restoration	402
2.7.	Elimination of Evil	402
2.8.	Rehabilitation.....	403
2.9.	Reformation of Norms	403
2.10.	Redressive Purpose.....	403
2.11.	Apology	404
2.12.	Compensation	404
2.13.	Amnesty	404
2.14.	Recreation of Civil Rights	405
2.15.	Methods of Punishment.....	405
2.16.	Abolition of Severe Penalties.....	407
	Chapter Thirty-Four. Conclusion	409
	Appendices.....	411
	The Cairo Declaration on Human Rights in Islam, 1990.....	411
	Arab Charter on Human Rights, 2004.....	418
	Bibliography	437
	Index	449