

# THE CONCEPT OF ISLAMIC INTERNATIONAL CRIMINAL LAW

*A Comparative Study*

**Farhad Malekian**

*Graham & Trotman*

# The Concept Of Islamic International Criminal Law A Comparative Study

**M. Cherif Bassiouni**



## **The Concept Of Islamic International Criminal Law A Comparative Study:**

The Concept of Islamic International Criminal Law Farhad Malekian,1994 1 Declaration of War *Principles of Islamic International Criminal Law* Farhad Malekian,2011-06-22 While the system of international law is improving enormously and certain legal provisions are becoming an integral part of jus cogens norms this body of law must be studied together with other systems which have basically been effective in its development The principles of the rule of law must be evaluated collectively rather than selectively In fact most Islamic nations have ratified the ICC Statute They have thereby contributed to the establishment of the pillars of morality equality peace and justice At the same time those pillars may be strengthened by means of an accurate interpretation of the principles of international criminal laws by all parties The objective of these comparative philosophies is to examine their core principles similarities and differences The intention is to indicate that the variation in theories may not obstruct the legal implementation of international criminal law if their dimensions are judged objectively and with the noblest of motives towards mankind Corpus Juris of Islamic International Criminal Justice Farhad Malekian,2018-09-30 This pioneering scholarly oeuvre evaluates the major comparative philosophy of Islamic international criminal justice It represents an in depth analysis of the necessities of creating an Islamic international criminal court its possible jurisdiction proceedings judgments and sanctions It implies a court functioning under the legal personality of the International Criminal Court with comparative international criminal lawyers with basic knowledge of Shariah contributing to the prevention of crimes and impunity at an international level The morality and philosophy of Islamic justice are highly relevant with reference to the atrocities committed explicitly or implicitly under the pretext of Islamic rules by superiors groups and governments The volume focuses on substantive criminal law and three methods of the criminal procedure namely the inquisitorial adversarial and adquisitorial The first two constitute the corpus juris of civil and common law systems The third term presents a hybrid of the first two methods The intention is to enhance the scope of each method of the criminal procedure comprehensively The volume examines their variations and effects on a shared system of international criminal justice The inherence of comparable norms in the foundation of Islamic and international criminal law affirms their efficiency in the implementation of the essence of the complementarity principle This book will appeal to readers who are interested in comparative criminal law international criminal justice and Shariah criminal law It is recommended for course literature **The Emerging System of International Criminal Law** Lyal S. Sunga,2023-12-04

**The Rome Statute and Islamic Law** Majed Handi Alsolami,2024-09-16 This book examines in depth the degree of compatibility and incompatibility between the general principles and jurisdiction of Islamic law and international criminal law the Rome Statute It discusses the controversy related to the non ratification of the Rome Statute by some Islamic and Arab countries The author analyses arguments that maintain that Islamic law cannot be compatible with international criminal law and makes it clear that there are no fundamental differences between the principles of Islamic law and the principles of

international criminal law The book considers Saudi Arabia as a case for reference **The Mirage of International Criminal Law** Farhad Malekian, 2018-10-01 This book explores from various perspectives Kant's codex of the categorical imperative and the supreme principle of morality in juxtaposition with the monopolisation of the rules of international criminal law Kant's reference to the term propensity to evil in human nature is a much more serious iniquity universally in the nature of the Security Council than the concepts of a mens rea and actus reus in criminal law His decisive warning foreshadows that the inclinations towards self interest self love and intent in collective mens rea within the resolutions of the Security Council prevent states from striving towards the supreme maxim of a genuine international moral worth The idea of international criminal law is thus viewed as a mirage Essentially certain rules of the United Nations Charter the system of international criminal justice human rights law and humanitarian law like a fata morgana are crucial if unattainable The permanent members of the Security Council are deceiving the world by propagating a variety of excuses with the core objective of economic gain This book will be of interest to anyone enthusiastic about positive law the nature of criminal justice classical moral philosophy politics and economics **Islam and International Law**, 2013-07-15 Islam and International Law explores the complex and multi faceted relationship of international law and Islam both as a religion and a legal order Current debates on Sharia Islam and the West often suffer from prejudice platitudes and stereotypes on both sides The present book seeks to engage such self centrism by providing a plurality of perspectives both in terms of interdisciplinary research and geographic backgrounds The volume thus brings together 20 contributions from scholars who cover pressing issues in fields such as the use of force in Islamic international law Islam's contribution to the development of diplomacy and the rule of law controversies as to the role of the individual human rights and international criminal law as well as Islamic visions of world order in a globalizing world Contributors Awn S Al Khasawneh Asma Afsaruddin Mohd Hisham Mohd Kamal Necmettin Kizilkaya Muhammad Munir Labeeb Ahmed Bsoul Khaled Ramadan Bashir Harriet Rudolph Irmgard Marboe Abdulmumini A Oba Javaid Rehman Lorenz Langer Abdul Ghafur Hamid Khin Maung Sein Mashood A Baderin Markus Beham Matthias Cernusca Maurits S Berger Gregor Novak Muddathir Abdel Rahim The Concept of Mens Rea in International Criminal Law Mohamed Elewa Badar, 2013-01-30 The purpose of this book is to find a unified approach to the doctrine of mens rea in the sphere of international criminal law based on an in depth comparative analysis of different legal systems and the jurisprudence of international criminal tribunals since Nuremberg Part I examines the concept of mens rea in common and continental legal systems as well as its counterpart in Islamic Shari'a law Part II looks at the jurisprudence of the post Second World War trials the work of the International Law Commission and the concept of genocidal intent in light of the travaux préparatoires of the 1948 Genocide Convention Further chapters are devoted to a discussion of the boundaries of mens rea in the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda The final chapter examines the definition of the mental element as provided for in Article 30 of the

Statute of the International Criminal Court in light of the recent decisions delivered by the International Criminal Court The study also examines the general principles that underlie the various approaches to the mental elements of crimes as well as the subjective element required in perpetration and participation in crimes and the interrelation between mistake of law and mistake of fact with the subjective element With a Foreword by Professor William Schabas and an Epilogue by Professor Roger Clark From the Foreword by William Schabas Mohamed Elewa Badar has taken this complex landscape of mens rea at the international level and prepared a thorough well structured monograph This book is destined to become an indispensable tool for lawyers and judges at the international tribunals From the Epilogue by Professor Roger Clark This is the most comprehensive effort I have encountered pulling together across legal systems the general part themes especially about the mental element found in confusing array in the common law the civil law and Islamic law In this endeavour Dr Badar s researches have much to offer us

A Bibliography of Islamic Criminal Law Olaf Köndgen, 2021-12-06 In A Bibliography of Islamic Criminal Law Olaf Köndgen offers the most extensive bibliography on Islamic criminal law ever compiled Drawing on a multitude of sources online and offline A Bibliography of Islamic Criminal Law covers in its thematic section not only the classical crime categories of *ud d qi* and *ta z r* but also a large number of newly emerging and related fields In a second section dedicated to countries and eras Köndgen comprehensively covers the historical and modern application of Islamic criminal law in all its forms Unlocking the richness of this sub field of Islamic law with the help of two detailed indices this innovative reference work is highly relevant for all those researching Islamic law in general and the application of Islamic criminal law over time in particular See also A Bibliography of Islamic Criminal Law Supplement

Supranational Criminal Law Roelof Haveman, Olga Kavran, Julian Nicholls (LL. M.), 2003 What exactly is the context in which all aspects of this new field of criminal law have to be interpreted What does the principle of legality mean in the context of supranational criminal law Which tradition lies at the basis of this new law system Is supranational criminal law as it grows the result of a deliberate policy tending towards a coherent system Or is it merely the result of crisis management Those are some of the questions that are highlighted in this first Volume of the Supranational Criminal Law series Answers are formulated with respect for the various law families and traditions taking into account the differences between e g inquisitorial and adversarial penal systems and between criminal law and international humanitarian law In doing so in this book full credit is given to the sui generis character of supranational criminal law The contributions have been written by a group of scholars and practitioners in the field of supranational criminal law This volume will therefore be very useful to lawyers judges prosecutors and academics who are confronted with the various aspects of this new and exciting penal system

**Classical Morality in International Peremptory Criminal Law** Farhad Malekian, 2018-10-09 This book begins with the belief that if a moral principle cannot be identified in the language of the law if law is not underpinned by a moral understanding of the norm if the moral accusation is not attached to the violations of certain indispensable norms of the law then we are violating the

peremptory character of the universality of the moral law The book vicariously objects to any dispute for the advantage of the impunity of those who have cruelly contravened the corpus juris of international peremptory criminal law What justifies the law in recognizing certain principles as peremptory derives from the highest genetic merit for the international human community as a whole Here the term peremptory for classical morality is seen to encompass love for the spirit of truth for the strength of equality of arms and for the reaffirmation of the value of the essence of man where its infringements violate the indispensable universal rights of nature This is regardless of whether its perpetrators are Western or non Western

International Human Rights and Islamic Law Mashood A. Baderin, 2003-09-11 This volume examines the important question of whether or not international human rights and Islamic law are compatible It asks whether Muslim States can comply with international human rights law whilst adhering to Islamic law The traditional arguments on this subject are examined and responded to from both international human rights and Islamic legal perspectives The volume engages international human rights law in theoretical dialogue with Islamic law facilitating an evaluation of the human rights policy of modern Muslim States International Human Rights and Islamic Law formulates a synthesis between these two extremes and argues that although there are differences of scope and application there is no fundamental incompatibility between these two bodies of law Baderin argues that their differences could be better addressed if the concept of human rights were positively established from within the themes of Islamic law rather than by imposing it upon Islamic law as an alien concept Each article of the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights as well as relevant articles of the Convention on the Elimination of All Forms of Discrimination against Women are analysed in the light of Islamic law The volume concludes that it is possible to harmonise the differences between international human rights law and Islamic law through the adoption of the margin of appreciation doctrine by international human rights treaty bodies and the utilization of the Islamic law doctrines of maq sid al shar ah the overall objective of Shar ah and maslahah welfare by Muslim States in their interpretation and application of Islamic law respectively Baderin asserts that Islamic law can serve as an important vehicle for the guarantee and enforcement of international human rights law in the Muslim world and the volume concludes with recommendations to that effect International Law and Islamic Law

Mashood A. Baderin, 2017-07-05 The relationship between modern international law and Islamic law has raised many theoretical and practical questions that cannot be ignored in the contemporary study and understanding of both international law and Islamic law The significance and relevance of this relationship in both academic and practical terms especially after the terrorist attacks of 11 September 2001 is now well understood Recent international events in particular corroborate the need for a better understanding of the relationship between contemporary international law and Islamic law and how their interaction can be explored and improved to enhance modern international relations and international law The articles reproduced in this volume examine the issues of General Principles of International Law International Use of Force

International Humanitarian Law International Terrorism International Protection of Diplomats International Environmental and Water Law Universality of Human Rights Women's Rights Rights of the Child Rights of Religious Minorities and State Practice The essays have been carefully selected to reflect as much as possible the different Islamic perspectives on each of these aspects of international law

**The Shari'a and Islamic Criminal Justice in Time of War and Peace** M. Cherif Bassiouni, 2014 Shows that the shari'a and Islamic law are compatible with contemporary international human rights laws and norms and appropriate for use in Muslim societies

**Akehurst's Modern Introduction to International Law** Peter Malanczuk, 2002-04-12 First published in 2002 Routledge is an imprint of Taylor Francis an informa company

Islamic State Practices, International Law and the Threat from Terrorism Javaid Rehman, 2005-05-31 In the post 9/11 legal and political environment Islam and Muslims have been associated with terrorism Islamic civilization has increasingly been characterized as backward insular stagnant and unable to deal with the demands of the twenty first century and differences and schisms between Islam and the west are being perceived as monumental and insurmountable 9/11 terrorist attacks have unfortunately provided vital ammunition to the critics of Islam and those who champion a clash of civilizations In this original and incisive study the author investigates the relationship between Islamic law States practices and International terrorism It presents a detailed analysis of the sources of Islamic law and reviews the concepts of Jihad religious freedom and minority rights within Sharia and Siyar In eradicating existing misconceptions the book provides a thorough commentary of the contributions made by Islamic States in the development of international law including norms on the prohibition of terrorism It presents a lucid debate on such key issues within classical and modern Islamic State practices as diplomatic immunities prohibitions on hostage taking aerial and maritime terrorism and the financing of terrorism The book surveys the unfairness and injustices within international law a legal system dominated and operated at the behest of a select band of powerful States It forewarns that unilateralism and the undermining of human rights values in the name of the war on terrorism is producing powerful reactions within Muslim States the new world order presents a dangerous prognosis of the self fulfilling prophecy of an inevitable clash of civilizations between the Islamic world and the west

Akehurst's Modern Introduction to International Law Alexander Orakhelashvili, 2022-02-28 First published in 1970 Akehurst's Modern Introduction to International Law rapidly established itself as a widely used and successful textbook in its field Being the shortest of all the major textbooks in this area it continues to offer a concise and accessible overview of the concepts themes and issues central to the growing system of international law while retaining Akehurst's original positivist approach that accounts for the essence and character of this system of law This new ninth edition has been further revised and updated by Alexander Orakhelashvili to take account of a plethora of recent developments and updates in the field accounting for over forty decisions of international and national courts as well as a number of treaties and major incidents that have occurred since the eighth edition of this textbook was published Based on transparent methodology and with a distinctive cross jurisdictional

approach which opens up the discipline to students from all backgrounds this engaging well structured and reputable textbook will provide students with all the tools methods and concepts they need to fully understand this complex and diverse subject It is an essential text for all undergraduate and postgraduate students of international law government and politics and international relations This book is one of the only textbooks in international law to offer a fully updated bespoke companion website [www.routledge.com/cw/orakhelashvili](http://www.routledge.com/cw/orakhelashvili)

**The Global Community Yearbook of International Law and Jurisprudence 2014 (Volume 1)** Giuliana Ziccardi Capaldo, 2015-09-15 The 2014 edition of The Global Community Yearbook both updates readers on the important work of long standing international tribunals and introduces readers to more novel topics in international law This edition includes expert introductory essays by prominent scholars in the realm of international law on topics as diverse and current as the intervention of the United States and coalition partners in territories under the control of the Islamic State of Iraq and the Levant ISIL to the weak area in the institutional and normative framework of the Revised Treaty of Chaguaramas

**Globalization of Criminal Justice** Michael Bohlander, 2017-05-15 Genocide crimes against humanity war crimes ethnic cleansing are terms which in recent years have entered common usage The worst cases of these crimes seen in the Yugoslav secession conflict and the Rwandan slaughter resulted in attempts by the international legal community to initiate an international mechanism for establishing criminal accountability In 1998 after many States signed the Rome Statute it was expected that justice would prevail over state power and impunity be eliminated However there is a serious question mark over the effectiveness of this process That is the starting point for this collection It is not an acclamatory collection that is meant to celebrate the undoubted advances of international criminal justice The articles in the first part show the importance of comparative criminal law research to the development of international criminal justice and in the second part they deal with the foundations substantive and procedural aspects of international criminal law

Prosecuting International Crimes Robert Cryer, 2005-06-30 This 2005 book discusses the legitimacy of the international criminal law regime It explains the development of the system of international criminal law enforcement in historical context from antiquity through the Nuremberg and Tokyo Trials to modern day prosecutions of atrocities in the former Yugoslavia Rwanda and Sierra Leone The modern regime of prosecution of international crimes is evaluated with regard to international relations theory The book then subjects that regime to critique on the basis of legitimacy and the rule of law in particular selective enforcement not only in relation to who is prosecuted but also the definitions of crimes and principles of liability used when people are prosecuted It concludes that although selective enforcement is not as powerful as a critique of international criminal law as it was previously the creation of the International Criminal Court may also have narrowed the substantive rules of international criminal law



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