

ish to criticise the author for excessively caricaturising the purely Aristotelian sense of philosophy in the falsafa tradition. In this sense, Bashier is engaged in much more than Islamic intellectual history; he is caught within a contemporary Arab debate about the

very nature of turāth or the heritage of the modern Arab world. This, rather inevitably, leads to generalising and simplifying the position of one's opponent. Once one recognises this, *The Story of Islamic Philosophy* will prove to be a fruitful read.

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## Principles of Islamic International Criminal Law: A Comparative Search

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By Farhad Malekian

Leiden-Boston: BRILL, 2011, 412 pages, ISBN 978 9004203969.

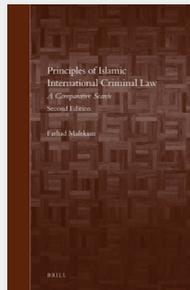
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Reviewed by Ayşegül Çimen

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AS ONE of the major components of the Islamic state, Islamic law has drawn considerable attention from different scholars both in the East and West. Particularly, comparative studies on the historical evolution of Islamic law and its application in modern legal systems are some of the major topics in the last two decades. Peters' *Crime and Punishment in Islamic Law: Theory and Practice from Sixteenth to Twenty-First Century*, Millers' *Legislating Authority: Sin to Crime in the Ottoman Empire and Turkey*, Hallaq's *Shari'a: Theory, Practice, Transformations*, and Naim's *Islam and the Secular State: Negotiating the Future of Shari'a* are some of the prominent books in the field.

In the literature of Islamic law, such works generally present the history of Islamic law, the processes of codifications and compiling of Islamic law in the modern legal context, the application of Islamic law in different territories, and its challenges in secular-modern nation-states. Although Farhad Malekian's book also deals with Islamic law and modern international law, it is considerably different



from previous works both in scope and sources. Rather than describing Islamic law and its application vis-à-vis modern legal systems, the author defines and elaborates on 'international criminal law' and 'Islamic international criminal law' (terminology belongs to Malekian).

First and foremost, the author regards the system of international law as necessary to generate a sense of order in international relations without giving superiority to any of the legal systems of sovereign states. In this respect, international criminal law and Islamic international criminal law are studied comparatively in terms of principles, definitions, subjects, crimes, and sources. In fact, the book could be regarded first comprehensive study in its field.

The body of international law and its application prior to domestic law is one of the central questions, particularly for Islamic states. Although there is not an agreement, in general terms, on international crimes, international criminal law was accepted as part of international public law. International criminal law

is concerned with the criminal responsibility of people in international crimes. Some of the specific offenses accepted as international crimes to be prosecuted under international law in international tribunals are genocide, war crimes, crimes against humanity, and aggression. Although the majority of the states welcomed the International Criminal Court (ICC), Islamic states were reluctant to join. To a great extent, the reason of this reluctance was the spirit of the ICC. The principles and rules the ICC is supposed to apply are essentially derived from a Western inspired “universal law.” In this respect, the concerns of Islamic states in ratifying the ICC can be summarized in two postulates: the difficulty of introducing a universal law with Western inspiration; and the inconsistency of Islamic law with this universal law. The arguments on these postulates vary. Malekian’s argument is explicit; it is based on the idea of the compatibility between international public law and Islamic law.

The book comprises three parts: “The Discipline of Comparative Public International Law,” “A Comparative Evaluation of International Criminalization,” and “Substantive Aspects of Islamic Criminal Justice within the ICC.” These parts are elaborated with thirty-four chapters in total. The number of headings and some of the repetitions under those headings are confusing.

Malekian’s book presents the similarities and differences between international criminal law and Islamic international criminal law in a comparative approach. The author aims to examine some of the provisions of these two legal systems considering the growing importance of international criminal law and the ICC. He seems determined to prove how insignificant the differences and conflicts between these two legal systems are. The author believes these problems are the result of

ideological, political, and procedural questions. More importantly, to him, it is the consequence of the misconstruction of the two legal systems. Malekian’s main suggestion in proving this comment is predominantly based on the foundational elements of both systems: both international criminal law and Islamic international criminal law signalize equality of arms, states, nations, religions, ideologies, races, traditions and cultures. Moreover, the main objective of both systems is to ensure freedom for all human beings and release all forms of insubstantial differences and ignorance (p. 24). The author’s attempt to illustrate how Islamic criminal law and international criminal law operate in a harmony relies on his argument that international criminal law does not disregard Islamic criminal law; rather, it emphasizes respect to the coexistence of sovereign states.

In proving the similarities between Islamic law and public international law, Malekian mostly uses the main source of Islamic law, the Qur’an. To indicate the compatibility of the two legal systems, he quotes verses from the Qur’an (pp. 27-49). However, major fiqh books are also remarkable in the evolution of Islamic law. Fiqh primarily focuses on comprehending ‘God’s’ will as a guide to generate and sustain peaceful relations among human beings in this world, while considering the hereafter. For an academic work, the lack of fiqh sources in such a comparative study is a fundamental shortcoming. Additionally, one can also bring other verses from the Qur’an to prove the opposite view. To be more specific, the principles of Islamic international law, such as universality, equality, peace, reciprocal respect and self-defense, were dealt by comparing the texts of the UN’s charter and the Qur’an, but not within an analytical framework. Malekian’s one explanation on the coherence of Islamic criminal jurisdiction and

the ICC is even more problematic: "... the Statute of the Court would not have been ratified, if there were serious contradictions between these two separate legal systems" (p. 343).

The reader could easily grasp the author's hope to bring "justice into peace and peace into justice" in the book. The secondary sources in the literature and the text of the Charters may help to clarify this hope. However, modern philosophy with regard to Islamic law must be paid more attention. The author claims that the Islamic concept of criminal law is subtle and can adapt itself to the needs of modern philosophy of human rights norms (p. 169). In the history of Islamic law, one can find commuting punishments, but to claim that this represents a modern human rights concept is problematic because of the lack of analytical framework. The international criminalization of various crimes

is addressed in a detailed way with regards to Islamic and international criminal law comparatively in the second part of the book. Islamic classification of crimes, mechanism of trial, rights of the accused and punishments are some of the topics of the third part.

Malekian's book is significant, particularly by contributing to the growing literature of international relations of the Islamic states. International criminal law, criminal courts, and tribunals have been consolidated in accordance with the need for peace and justice. However, there is still a lack of accountability for crimes against humanity and individuals. Apart from this, academic studies are not sufficient regarding the concept of human rights in Islamic law. Thus, Malekian's study is valuable for the reader of international law and Islamic international law with the given original texts in the appendix.

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## Filistin Politikamız: Camp David'den Mavi Marmara'ya

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By Erkan Ertosun

İstanbul: Kaknüs Yayınları, 2013, 349 pages, ISBN 9789752563971.

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Reviewed by Salim Çevik

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THE ISRAELI-PALESTINIAN conflict is presumably the most problematic and persistent theme in Middle Eastern politics. Thus, the conflict is one of the most studied topics in academic literature on the region. In this light, it is all the more surprising that the current study of Erkan Ertosun is the first book-length work on Turkey's Palestinian policy. It is also a very timely contribution as Palestine becomes an ever more central topic in Turkish foreign policy.



The author claims that he has attempted a holistic analysis in which domestic, regional and international factors are integrated. However, despite this claim, the real emphasis of the book is on international affairs and rightfully so.

One of the strongest parts of the book is that its analysis, unlike many other works that are shaped by contemporary developments, is based on historical analysis. Thus, the book covers the fifty years of the problem's