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# BOOK REVIEWS

Javaid Rehman, *Islamic State Practices, International Law and the Threat from Terrorism. A Critique of the 'Clash of Civilizations' in the New World Order*, Portland: Hart Publishing, 2005, ISBN 1841135011/9781841135014, 280 pp., $78.00.
Mashoof A. Baderin, *International Human Rights and Islamic Law*, Oxford: Oxford University Press, 2003, ISBN 9780199285402/0199285403, 302 pp., $60.00.
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The compatibility of Islam (or Islamic law) with human rights is a debate lined with misunderstandings and misconceptions. For instance, does one mean by Islamic law the law of Islamic countries or Islamic law itself? This is a relevant question, because many Islamic countries may violate human rights but few of these violations have an Islamic character. Torture, detainment without due process, and persecution of people because of their opinion or religion are not prescribed or sanctioned by Islamic law. And even if the regime of an Islamic country perpetrates these misdeeds in the name of Islam, Islam is not necessarily to be blamed for that.

Or take another question: is the Islamic law that allegedly violates human rights meant to be the Islamic law as laid down by Islamic scholars more than ten centuries ago, or is it the Islamic law as put into practice by contemporary Islamic countries? When these meanings are not clearly defined, confusion abounds, as is aptly illustrated by Javaid Rehman's book.

Rehman's study of 'modern Islamic State practices' is intended to prove that 'Islam per se' is not 'an aggressive religion advocating violence, terrorism and destruction', nor a religion that deserves to be equated with 'the wars of aggression, fanaticism, intolerance and violence'. The author takes the evidence to the contrary not from the theology, history, or politics of Islam, but from aspects of Islamic law (shariah) and *siyar* (Islamic international law) that relate to international terrorism and violations of human rights.

This approach, however admirable its ends may be, is lacking in means. First, what are 'Islamic states'? Are they the states with a majority Muslim population? These would include strictly secular states such as Turkey or the former Iraq. Or are they states with a decidedly Islamic character, either by adopting an Islamic form of statehood (Iran), or by implementing a certain degree of Islamic law (such as Saudi Arabia, Sudan, or Pakistan)? Rehman takes a short cut, and labels every member state of the Organization of the Islamic Conference (OIC) an Islamic state by virtue of subscribing to the Islamic character and principles of the OIC.

Rehman does not distinguish between the OIC members that violate human rights due to their application of Islamic principles or Islamic law (like Iran, Pakistan, Saudi Arabia, and Sudan, for instance), and those that do so while being strictly secular (like Turkey or Syria). That is unfortunate, because it seriously undermines his argument.

The author's assumption that 'Islamic states' form a coherent collection of countries that are somehow all motivated by Islam appears to be more wishful thinking on his part than congruent with facts. This shows for instance in the subsection headed 'The *Achille Lauro* incident [*sic!*] and Islamic State practices' – it is unclear what the Islamic states' practices were other than Libya and Syria refusing to allow the hijackers to dock, the Palestine Liberation Organization (PLO – as a member of the OIC also an 'Islamic state') denouncing the hijacking, and Egypt arranging for a safe passage to Italy. Apart from the fact that the hijackers were not acting in name of Islam but in the cause of Palestinian nationalism, the involvement of the Arab states mentioned had more to do with their proximity to the vessel or their affinity with the Palestinian cause than with religion.

This approach makes the study apologetic, with an academic argument that often lacks foundation and logic. Calling all OIC members 'Islamic States' and then arguing in lengthy chapters that Islam does not condone terrorism or religious intolerance suggests that these states by virtue of being Islamic are not guilty of such acts. The track records of human rights violations of some of these countries are nowhere to be found, let alone discussed.

Even if one agrees with the author's argument, there is a disturbing lack of coherence and academic solidity to the study. Some editing might have been useful, for instance to avoid the reader being presented twice with a list of the objectives and principles of the OIC or having an elaborate discussion on the (lack of) definition of terrorism in chapter 3 being continued in chapter 7.

It appears that the author does not have a clear overview of the available literature on Islamic law and human rights. He sometimes refers to obsolete works dating from the early twentieth century while omitting pertinent studies that have been published in the past decade, such as Abdullahi An-Na'im's *Toward an Islamic Reformation*, Sami Abu Sahlieh's *Les musulmans face au droits de l'homme*, Katerina Dalacoura's *Islam, Liberalism and Human Rights*, or Shaheen Sardar Ali's *Gender and Human Rights in Islam and International Law*. The same applies to relevant articles by scholars such as Donna Artz, Heiner Biellefeldt, or Fred Halliday. The main study in the field, Ann Mayer's *Islam and Human Rights. Traditions and Politics*, is mentioned in the bibliography but hardly at all in the book itself.

Even the use of footnotes is awkward at times. Four authors are needed as a reference for the factual statement that 'Islam means "submission" or "surrender" to the Almighty and the one who surrenders is called a Muslim'.

How different, then, is Mashoof Baderin's *International Human Rights and Islamic Law* (2003), in approach as well as academic quality. He discusses Islamic law in its two manifestations: as an ancient scholarly law, and as put into practice by the few (not all!) Muslim states 'that apply Islamic law fully or partly as state law'. Baderin's

study, like Rehman's, is meant to make a point in favour of Islam and Islamic law, but Baderin is more focused and practical: he wants to advance 'a proposition to reconcile the differences of Islamic law and international human rights' (p. 2).

Baderin carefully lays out the field of opposing views regarding human rights. On the one hand there are the adherents of universal human rights who claim that these rights are the same everywhere, both in substance and application. On the other hand are the – mostly in non-Western states – proponents of cultural relativism, contending that human rights are not exclusively rooted in Western culture, but are inherent in human nature and based on morality and thus cannot be interpreted without regard to the cultural differences of people. Rights and rules about morality are encoded and this depends on cultural contexts.

Baderin does not take sides. He is critical of both universalism and cultural relativism, and calls 'for a multicultural or cross-cultural approach to the interpretation and application of the international human rights' (p. 28). Human rights can only be universal if they are universally accepted. The bottom line of universal acceptance – that is, the standard on which all cultures will agree – Baderin argues, is human dignity. This also applies to Islamic law.

Human rights as laid down in the International Covenant on Civil and Political Rights (ICCPR) 'should, prima facie, raise no problems in the light of Islamic law. They theoretically reflect humane ideals that are compatible with the general teachings of Islam' (p. 167). Human dignity is indeed the essence of Islam, Baderin argues: the ultimate objective of the shariah is to realize the well-being of human beings. It is, however, the interpretation that poses difficulties.

Baderin then continues to discuss all the relevant articles of the ICCPR in the light of Islamic law. This makes a very interesting read, especially because both the scholarly version of Islamic law and its variety of contemporary practices are neatly expounded.

An interesting example is Article 3 of the ICCPR, which calls for equality of rights between men and women. This might indeed be called the issue of greatest contention between 'Islam' and 'the West'. Baderin discusses the issue from a variety of angles. Historically, he says,

> Islamic law had, over fourteen centuries ago, addressed the problem of gender discrimination and established the woman's position as a dignified human being sharing equal rights with her male counterpart in almost all spheres of life. However, due to factors such as patriarchal conservatism, illiteracy, and poverty, women in most parts of the Muslim world suffer one form of gender discrimination or the other. (p. 61)

This may very well be the case, but does not deny the fact that according to Baderin, the point of concern for Muslim states is predominantly family and society – these are based on principles that are held dear by religion as well as the state and its individual subjects: 'No impetuous change in these two institutions, that is family and society, can thus occur in Muslim states without prompting serious debates on its Islamic legality' (p. 62).

Baderin fails to explain, however, why this is more a source of concern nowadays than it was thirty or forty years ago – which incidentally was the time when

most Muslim states ratified the ICCPR without any reservation. The author's implicit suggestion of a continuous concern with Islamic values regarding family and society does not hold, and it would have done him credit if he had somehow acknowledged that the concern with Islamic values is a novelty dating from the 1970s and has since then found its way into the discussion of Islamic law and human rights.

Still, Baderin must be applauded for his effort to bridge the two legal systems. He stands in a tradition of Islamic scholarship that is both proud of itself and aware of modern times and demands.

It is therefore unfortunate that he omits to pinpoint the main obstacle to reconciliation between Islamic law and human rights, which has to do with a major point of theological doctrine in Islamic law. As Baderin indicates, most rules in Islamic law are indeed adjustable to modern times. This is in accordance with Islamic legal doctrine that rules may change with time and place. However, there is broad consensus among the Islamic scholars of both ancient and modern times, as well as the modern higher courts in Muslim countries (which often tend to be quite liberal in their interpretations of Islamic law), that no interpretation or adaptation is possible of rules of Islamic law that are considered 'fixed and irrefutable'. This is a theological term for those rules which are expressly mentioned in the two sacred sources of Islamic law, the Qur'an and the Sunna (sayings of the Prophet).

The reasoning behind this is as follows. In legal terms the sacred sources of Islamic law are not always that explicit and clear. During the first centuries of Islam, legal scholars developed methods of interpretation to deduce rules from the more general tenets and injunctions mentioned in the Qur'an and the Sunna. These rules make up the greater part of the corpus of Islamic law. And since these rules have been developed by man, it is doctrinally accepted that man may develop them differently in other times or other places.

This does not apply, however, to the rules in the sacred sources that are indeed explicit, or 'fixed and irrefutable' in Islamic legal and theological jargon. These rules are deemed to be God's unambiguous commands, and are therefore not interpretable or changeable – ever. Granted, these rules are very few compared with the large bulk of rules developed by centuries of scholarly work. But it is precisely these explicit rules that often constitute a contradiction with human rights, such as the inequality between men and women, the inequality between Muslims and non-Muslims, and the harsh punishment for certain misdeeds such as adultery, theft, or robbery.

How can one adapt Islamic rules on the basis of 'human dignity' in order to reach a basis of consensus with international standards, when specific rules that do not conform with contemporary standards of human dignity are explicitly excluded from change by Islamic law itself? Baderin thinks that 'moderate, dynamic, and constructive interpretations' of Islamic law can make the necessary changes. However, he does not mention how this specific set of unchangeable and non-interpretable rules is to be tackled.

Baderin also calls for 'an accommodative and complementary approach to achieve the noble objective of enhancing human dignity' but it would have been so much more interesting if he had provided examples of the accommodations that he thinks need to be made by international human rights lawyers. After reading all the

comparisons and explanations of the differences between Islamic and international legal rules, one would like to know Baderin's suggestions as to how, for instance, Article 6 of the OIC's charter of human rights (the so-called Cairo Declaration of 1990), which states that 'Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform', can be accommodated with or made complementary to the equality of men and women as mentioned in the international human rights treaties.

*Maurits S. Berger**

Biman N. Patel (ed.), *India and International Law*, Leiden: Martinus Nijhoff, 2005, ISBN 9004145192, 380 pp., €130.00 (hb).
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## 1. INTRODUCTION

*India and International Law* brings together a variety of perspectives and topics which reflects both the traditional Indian scholarly approach to 'India and international law' and the new zeal in the 'Indian perspective' on international law.

The collective effort of the authors reflects the traditional approach to India and international law, in that the historical greatness and contribution of India to the development of international law is still repeatedly recited. As such the publication fits in the tradition of Chacko's 1958 *Recueil des Cours* article, 'India's Contribution to the Field of International Law Concepts',[1] Nagendra Singh's *India and International Law*,[2] and, more recently, R. P. Anand's monograph, *Development of Modern International Law and India*.[3] That descriptive and uncritical tradition is found in most of the contributions. The 'new' zeal – on the other hand – is especially found in the choice and multitude of topics. India and international law is presented as a subject that is not (any longer) restricted to developmental issues, human rights, and the environment. Modern India and modern international law is also about trade in services, patents, satellite systems, and commercial arbitration. It is that multitude of topics and the connection with India's emerging status as an economic and political power that sets this publication apart from previous accounts of India and international law. As such *India and International Law* fits the new influx of all kinds of legal, political, economic, and cultural (semi-)academic publications which seek to grasp the 'new' India. The publication of *India and International Law* could not have been timelier in that respect.

Hereunder, I shall (i) present an overview and summary of the book's content, (ii) provide a critique of its rather descriptive and uncritical character, and (iii) comment on some technical aspects such as the lack of an index and a bibliography.

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* LL M; senior research fellow with the Netherlands Institute of International Relations 'Clingendael', The Hague.

1. J. Chacko, 'India's Contribution to the Field of International Law Concepts', (1958-I) 93 *Recueil des Cours* 121.
2. N. Singh, *India and International Law* (1973).
3. R. P. Anand, *Development of Modern International Law and India* (2005).