

Law schools need more faculty teaching and researching international finance law. Since 1982, the international financial system has proven itself to be highly volatile and crisis-prone with consequences that are damaging to the bottom line of the international banks and often catastrophic for the poor in the debtor nations. Yet as Professor Frank Partnoy has noted:³

Lawyers and legal academics are largely absent from the debate about financial crises. The commentary is dominated by economists, many of whom unfortunately vastly oversimplify or even misunderstand the role of law in recent crises.

Partnoy's complaint is a good one. Lawyers and legal academics need to get involved in the critical debate about the regulation and architecture of the world's financial system. Yet the simple fact is that there are far too few international finance lawyers in academe.

One reason is that international finance law became of widespread significance more recently than international trade law. Contemporary international trade law dates back to the establishment of the GATT in 1948. International finance law didn't really begin to become significant, as Doug Arner reminds us in his chapter, until the collapses of Bankhaus Herstatt in Germany and Penn Central in the US in the 1970s highlighted the real risks associated with the cross-border linkages that were beginning to form between institutions. In addition, the 1970s saw the collapse of the Bretton Woods system of fixed exchange rates managed with guidance from the International Monetary Fund that had worked well since the War. The breakdown of this system and the increasingly frequent crises which followed in the 1980s and 1990s thrust international financial law to the fore. To date, law schools are yet to respond by hiring and training more international finance law scholars.

This is an important book. It addresses a major *lacuna* in the literature, and does so well. Its contents are highly informative about the state and future of the discipline of international economic law, and what it doesn't contain tells us perhaps even more.

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Self-Defense in Islamic and International Law: Assessing Al-Qaeda and the Invasion of Iraq by NIAZ A SHAH [Palgrave Macmillan, New York, 2008, 192 pp, ISBN-13: 978-0-230-60618-0, ISBN-10: 0-230-60618-0, \$74.95 (h/bk)]

In the post-11 September 2001 context, books that deal with terrorism face the heady challenge of having to distinguish themselves in an increasingly voluminous literature. To contribute to scholarship in a unique and significant way, they must find a niche and convey tight, coherent arguments that are both accessible to the reader and sensitive to the complexities of our unsettled moment. Positions taken should be clear, yet not dogmatic to the point of precluding dissent. As Said asserts, '[f]ar from being merely additive or cumulative, the growth of knowledge is a process of selective accumulation, displacement, deletion, rearrangement, and insistence within what has been called a research consensus.'⁴

Niaz A Shah's book makes a welcome contribution to the existing scholarship and provides an original perspective on the role that Islamic and international law can play in effectively contributing to international peace and security. His second book in as many years on the intersection of these two important regimes of law,⁵ it further solidifies Shah's reputation as a scholar who can comfortably, and convincingly, converse in the languages of both Islamic and international law.

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³ F. Partnoy, 'Why Markets Crash and What Law Can Do about It' (1999–2000) 61 *University of Pittsburgh Law Review*, 741.

⁴ EW Said, *Orientalism* (Vintage Books, New York, 2003) 176.

⁵ His first book was NA Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Martinus Nijhoff Publishers, Leiden, 2006).

Students of Islamic and international law, as well as academics in diverse fields seeking to deepen their understanding, will benefit from the book. It has potentially significant policy relevance and is therefore also recommended to State officials.

The book follows a clear structure, divided into three core parts of two chapters each. Part I examines the principle of self-defence in Islamic law and critically assesses the theories of defensive and offensive *jihad*. It rejects an understanding of offensive *jihad* that would see Muslims committed to an almost messianic propagation of the faith by force on a global scale, a position that Sayyid Abul A'la Mawdudi and Sayyid Qutb advocate (23–32). Shah also contests Majid Khadduri's rigid separation of the world into Dar al-Islam and Dar al-harb, or a sphere of submission to Allah and a sphere of war (32–35), and challenges Abdullahi An-Na'im's position on abrogation, a position that would see later revealed, and bellicose, verses of the Koran override peaceful Meccan verses (35–42).⁶ The second chapter in Part I questions the legitimacy of Al Qaeda's political theology from the viewpoint of Islamic law and discusses militant Islamists' grievances.

Part II adopts a wholly international law perspective. Its first chapter looks at the *jus ad bellum*, specifically the debates surrounding self-defence under article 51 of the Charter of the United Nations and customary international law, the principles of necessity and proportionality, and the lawfulness of anticipatory self-defence and pre-emptive self-defence. Shah takes a pragmatic stance, accepting anticipatory self-defence in law but exhibiting caution as regards pre-emptive self-defence. The subsequent chapter applies the law on the use of force rules to the 2003 armed conflict in Iraq. Shah provides a balanced approach in this case study, giving both sides of the argument as to legality, but clearly sides with the view that the use of force by the United States-led Coalition violated international law. He does this by providing background to the conflict and an examination of the weapons of mass destruction argument and by exploring the question whether there was a 'revival' in law of authority to use force that culminated in Security Council Resolution 1441 (2002). Attention, although not much, is also given to the argument that the invasion was legally justified on self-defence grounds.⁷

The final part of the book is also the shortest. Its first chapter summarizes the arguments contained in Parts I and II and reaffirms Shah's view that Islamic and international law are fundamentally compatible. The last chapter of the book provides a vision of an international legal order based on fairness that, in Shah's view, would lessen the attractiveness of terrorism and instability. Topics covered in this chapter include the nuclear weapons regime, representation in international institutions, and democracy and Islam.

Three shortcomings in the book should be highlighted, namely its understanding of Al Qaeda's ideology, its insufficiently nuanced treatment of the circumstances in which non-State actors can use force against a State in the context of 'occupation', and its overly-confident reliance on a 'contextual,' Koranic perspective to resolve issues.

As regards the first point, the book's understanding of Al Qaeda's ideology mainly relies on two key documents, the 1996 'Ladenese Epistle' and the 1998 World Islamic Front statement. From these, Shah concludes that 'Al-Qaeda [has] never advocated for a world Islamic state' (63) and that its grievances are essentially limited to United States foreign policy prerogatives 'over there.' This thinking, however, overlooks Al Qaeda's wider ideological aims, which Osama bin Laden clearly articulates in his 2002 'Letter to America.' In that document, bin Laden rhetorically asks: 'What are we calling you to, and what do we want from you?'⁸ He gives a clear seven-point

⁶ On abrogation in Islam, see D Bukay, 'Peace or Jihad?: Abrogation in Islam' (2007) Middle East Quarterly <<http://www.meforum.org/article/1754>>.

⁷ For other discussions applying the law on the use of force rules to the 2003 armed conflict in Iraq, see D McGoldrick, *From '9-11' to the Iraq War 2003: International Law in an Age of Complexity* (Hart Publishing, Oxford, 2004) 47–86; A Bianchi, 'Enforcing International Law Norms Against Terrorism: Achievements and Prospects' in A Bianchi (ed), *Enforcing International Law Norms Against Terrorism* (Hart Publishing, Oxford, 2004) 491, 502–03.

⁸ 'Full Text: Bin Laden's "Letter to America,"' *Observer*, 24 Nov 2002 <<http://observer.guardian.co.uk/worldview/story/0,11581,845725,00.html>>.

agenda, beginning with '[t]he first thing that we are calling you to is Islam'⁹ and '[t]he second thing we call you to, is to stop your oppression, lies, immorality and debauchery that has spread among you.'¹⁰ The foreign policy concerns that Shah raises do form part of the grievances mentioned in the 'Letter to America,' but they cannot be separated from the sweeping programme of action that clearly does require conversion to Islam, something which Salman Rushdie has referred to as a striving for a 'new religious, fascist rule over the planet, [...] the Caliphate, the Talibanization of the earth.'¹¹ To quote bin Laden at the conclusion of his 'Letter to America,' '[i]f you fail to respond to all these conditions, then prepare for fight with the Islamic Nation.'¹²

A second shortcoming in the book is its insufficiently nuanced treatment of the circumstances in which non-State actors can use force against a State in the context of 'occupation.' Shah, effectively describing Afghan President Hamid Karzai and Iraqi Prime Minister Nouri al-Maliki as stooges of their Anglo-American masters, argues that '[t]he governments of Afghanistan and Iraq neither wield power nor represent the will of their nations, as they are seen to have come to power with the help of invaders/victors' (62). He even goes as far as to suggest that, '[i]f the occupation of Muslim lands continues, it is probable that Muslim leaders, not Al-Qaeda or pro-Western Muslims [sic] rulers, by consensus, may declare *jihad*. If such a consensus declaration is made, it will be Koranic (legitimate). International law will also be on the side of the Mujahidin' (78. See p 23). It is difficult, however, to accept this position, and not only because of the multiple elections that have taken place in Afghanistan and Iraq in recent years. Neither Afghanistan nor Iraq can be considered 'occupied territory,' certainly if Security Council Resolutions control, which, as a matter of treaty law, they do.¹³ These Resolutions consistently reaffirm the Security Council's 'strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan'¹⁴ and the 'independence, sovereignty, unity, and territorial integrity of Iraq.'¹⁵

A final shortcoming that should be mentioned is the book's overly-confident reliance on what Shah calls an authentically 'contextual,' Koranic perspective to resolve issues. His perspective focuses on social and historical context and asks 'when and why a particular verse permitting the use of force was revealed [...] and [...] inquires into] the overall approach of the Koran toward the use of force' (5). He focuses on the Koran alone and ignores the other sources of Islamic law so that his narrative can resonate with Muslims of all sects. As an interpretative rubric, however, a 'contextual' perspective merely shifts the language of argument and does not, and cannot, conclusively resolve issues. Shah's position may be asserted, as it is, as being authentically 'contextual,' but it seems simplistic to then so easily dismiss other interpretations of Islam as somehow then being, by definition, 'out of context.' As Mawdudi notes, '[o]ne can hardly point to a single Qur'anic verse of legal import which has received complete unanimity as regards its interpretation.'¹⁶ Indeed, a more 'in context' understanding of Islam might suggest an examination of sources outside of the Koran, such as the hadith. As but one example of this possibility, consider that the hadith play an important role in understanding Hamas' ideology.¹⁷

⁹ *ibid.*

¹⁰ *ibid.* This second point includes 'reject[ion of] the immoral acts of fornication, homosexuality, intoxicants, gambling's [sic], and trading with interest.' *ibid.*

¹¹ S Rushdie, 'Secular Values, Human Rights, and Islamism,' Voices of Reason Lecture of Center for Inquiry (New York) 6, 11 Oct 2006 <http://www.centerforinquiry.net/uploads/attachments/Salman_Rushdie_Transcript.pdf>.

¹² 'Full Text' (n 5).

¹³ The Charter of the United Nations requires Member States to 'accept and carry out the decisions of the Security Council in accordance with the present Charter.' Charter of the United Nations art 25.

¹⁴ SC Res 1806 (20 Mar 2008) pmb1.

¹⁵ SC Res 1790 (18 Dec 2007) pmb1.

¹⁶ SA A'la Mawdudi, 'Understanding the Qur'ān – An Introduction' in 'AY' Alī (ed), *The Meaning of the Holy Qur'ān* (Islamic Foundation, Leicester, 2002) xiii, xxxvii.

¹⁷ For example, article 7 of Hamas' 1988 *Charter of Allah: The Platform of the Islamic Resistance Movement* states that '[t]he prophet, prayer and peace be upon him, said: The time will not come until Muslims will fight the Jews (and kill them); until the Jews hide behind rocks and trees, which will cry: O Muslim! there is a Jew hiding behind me, come on and kill him! This will not apply to the Gharqad, which is a Jewish tree (cited by Bukhari and Muslim).' <<http://www.palestinecenter.org/cpap/documents/charter.html>>.

Islamic and international law share in common, to various degrees, a certain elasticity in interpretation and understanding. The line between orthodoxy and apostasy, the lawful and unlawful, can often be a matter of degree rather than of kind. Shah's book will help the curious, the specialist and non-specialist alike, navigate both regimes with a greater degree of confidence.

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