

Contents

<i>Foreword</i>	vii
<i>Preface</i>	xi
<i>List of Abbreviations</i>	xxi
<i>Table of Cases</i>	xxv
<i>Table of Treaties and Instruments</i>	xxix

1 Introduction	1
-----------------------	----------

PART ONE

UN AND OIC INSTITUTIONAL LAW-MAKING	11
--	-----------

2 UN and OIC Law-Making Concepts	13
I. Terrorism	13
A. UN Approaches to Terrorism	13
B. Defining Terrorism	16
II. Foundational Islamic Concepts	26
A. 'Islamic' and 'Muslim'	27
B. <i>Ummah</i>	29
C. The Islamic <i>Shari'ah</i>	33
i. Legal Sources of <i>Shari'ah</i>	33
ii. Differing Approaches to Interpreting <i>Shari'ah</i>	34
iii. <i>Shari'ah</i> Characteristics with Potential Law-Making Significance	36
D. 'Islamic International Law'	39
III. Institutional Legal Orders	43
A. UN Legal Order	43
i. UN Law and UN Law-Making	47
B. OIC Legal Order	47
i. OIC Law and OIC Law-Making	48
IV. The Nature and Law-Making Function of Values, Principles, and Rules	48
A. Values	50
i. UN Legal Order	50
ii. OIC Legal Order	51
B. Principles	53
i. UN Legal Order	53
ii. OIC Legal Order	56

C. Rules	57
i. UN Legal Order	57
ii. OIC Legal Order	59
3 The OIC as an International Organization	63
I. The Creation of the OIC	64
II. The OIC's Basic Institutional Qualities	67
A. The OIC as an International Organization	67
i. OIC's General Secretariat	72
B. Classification of the OIC	74
C. The OIC's membership	77
III. OIC Law-Making and OIC Law	81
A. The Concepts of OIC Law-Making and OIC Law	81
B. The OIC's Law-Making Powers	84
i. Express Powers	86
ii. Implied Powers	87
IV. The Forms and Characteristics of OIC Law	90
A. Consensus and Institutional Law-Making	90
B. OIC Law-Making Processes and Instruments	93
i. Treaties	94
ii. Customary OIC Law	97
iii. Resolutions	98
C. Mechanisms for Reconciling Diverse Jurisprudential Approaches of <i>Shari'ah</i>	107
D. Enforcement of OIC Law	108
V. OIC Approaches to Internal and Inter-State Crises and Disputes	110
A. Crises and Disputes Involving only OIC Member States	112
B. Crises and Disputes between OIC and Non-OIC Member States	121
C. The Future Role of the OIC in Dispute Settlement and Conflict Resolution	126
PART TWO	
THE LAW-MAKING RELATIONSHIP BETWEEN THE UN AND THE OIC: CONFLICTING OR COOPERATIVE LEGAL ORDERS?	
	133
I. Cultural Relativism	134
II. Politicization of Religion and Culture	136
III. Fragmentation of International Law	139
4 The Relationship between <i>Siyar</i> and International Law	143
I. Relationship between Legal Sources	143

A.	Article 38(1)(a): Treaties	146
B.	Article 38(1)(b): Customary International Law	151
C.	Article 38(1)(c): General Principles	154
D.	Article 38(1)(d): Judicial Decisions and Eminent Jurists	155
E.	The Sources of <i>Siyar</i> and the OIC	157
II.	Other Key Principles Underpinning <i>Siyar</i>	158
III.	Legitimacy	162
A.	UN Conception of Legitimacy	162
B.	Islamic Conception of Legitimacy	164
C.	Secular versus Religious Approaches	167
D.	Principle of Justice	171
5	Conflicting or Cooperative Norms?	179
I.	The Notion of Conflicting Norms	181
II.	Peremptory Norms in International Law	183
A.	Key Characteristics of Peremptory Norms	183
B.	Resolution of Conflict—Peremptory Norms	188
III.	Peremptory Norms in <i>Shari'ah</i>	190
A.	Hierarchy of Islamic Norms	190
B.	Peremptory Norms in <i>Shari'ah</i>	193
C.	Resolution of Conflict—Islamic Peremptory Norms	197
D.	Resolution of Conflict—OIC	201
6	Conflicting or Cooperative Legal Orders?	209
I.	Monism and Dualism	209
A.	International Law	209
B.	<i>Siyar</i>	211
II.	Article 103 UN Charter	213
A.	Article 103 UN Charter	213
B.	Article 103 UN Charter and the Resolution of Conflict	214
i.	Article 103 UN Charter and the Security Council	219
ii.	The Relationship between the UN and Other Legal Orders	222
iii.	Summary of the Current Position	236
iv.	Article 103 UN Charter and the OIC Legal Order	238

PART THREE

**VALUES, PRINCIPLES, AND RULES UNDERPINNING
UN COUNTER-TERRORISM RESPONSES 243**

7	Counter-Terrorism Values	245
I.	Promotion of Democracy	247
A.	UN Legal Order	247
B.	OIC Legal Order	250

i.	OIC Practice	250
ii.	Explanation	254
II.	Respect for Human Rights	263
A.	UN Legal Order	263
B.	OIC Legal Order	266
i.	OIC Practice	266
ii.	Explanation	275
III.	Rule of Law	289
A.	UN Legal Order	289
B.	OIC Legal Order	292
i.	OIC Practice	292
ii.	Explanation	296
IV.	Tolerance	301
A.	UN Legal Order	301
B.	OIC Legal Order	304
i.	OIC Practice	304
ii.	Explanation	318
8	Counter-Terrorism Principles	337
I.	Introduction	337
II.	Overview of Key Principles	338
A.	Principle of Self-Determination	338
i.	UN Principle of Self-Determination	338
ii.	Islamic Principle of Self-Determination	345
B.	Use of Force and Self-Defence	350
i.	UN Principles on the Prohibition against the Threat or Use of Force, and Self-Defence	350
ii.	Islamic Principle of <i>Jihad</i>	353
III.	Background to Armed Self-Determination Struggles	358
A.	1960–1985	360
B.	1985–1991	361
C.	1991–Present	362
i.	Post-9/11 Context	364
IV.	Armed Self-Determination Struggles: The Grounds	365
A.	UN Legal Order	366
B.	OIC Legal Order	370
i.	Colonialism and Racism	370
ii.	Foreign Occupation and Alien Domination	371
iii.	Oppression, Liberation, Persecution, and Humiliation	373
C.	Conflict or Cooperation?	377
V.	Armed Self-Determination Struggles: Self-Defence	382
A.	UN Legal Order	383

i.	Non-State Actors and Article 51 UN Charter	383
ii.	Fulfilling the Requirement of 'Armed Attack'	384
iii.	Non-State Actors and the Use of Forcible Measures	386
iv.	Summary of Legal Position	393
B.	OIC Legal Order	394
i.	Initial Observations	395
ii.	Grounds for Legitimate Forcible Self-Determination Struggles	396
iii.	OIC Support of Non-State Actors	399
C.	Conflict or Cooperation?	408
9	Counter-Terrorism Rules	415
I.	OIC Law	418
A.	Soft, Non-Formally Binding Law	418
B.	Customary OIC Law	425
C.	OIC Treaty Law	426
II.	UN Conventions	433
B.	UN Human Rights Conventions	435
i.	OIC Member State Practice within the UN Legal Order	435
ii.	UN Counter-Terrorism Law-Making Implications	438
B.	Hostages Convention 1979	445
C.	Terrorist Financing Convention 1999	453
D.	Draft UN Comprehensive Convention	460
III.	UN Counter-Terrorism Rules within the OIC Legal Order	469
A.	Hostages Convention 1979	470
B.	Terrorist Financing Convention 1999	473
C.	Draft UN Comprehensive Convention	476
IV.	UN Counter-Terrorism Implications	481
A.	Weakening the Effectiveness of the UN Counter-Terrorism Legal Framework	481
B.	Breaches of International Law Obligations	484
C.	Cooperation	489
V.	Conclusion	491
10	Conclusion: Conflicting or Cooperative Legal Orders?	495
I.	The OIC as an International Institutional Law-Maker	496
II.	Normative (Ir)relevance of OIC's Islamic Nature and Goals	498
III.	Cooperative or Conflicting Legal Orders or Norms?	506
IV.	Law-Making Implications of the Findings	514
A.	Conflict or Reconciliation?	514
B.	Furthering UN CT Strategy Goals	517
C.	Wider Implications	520

V. Looking Forward	521
<i>Bibliography</i>	523
<i>Index</i>	575

<http://www.pbookshop.com>