Introduction

GENERAL

The year 1492 signaled a fundamental turning point in global and, more particularly, maritime history. It marked the expulsion of the Naṣrid dynasty (636–898 AH/1238–1492 CE) from Granada, the last Islamic stronghold in Spain, and the beginning of the great age of Christian maritime discoveries across the two shores of the Atlantic and Indian oceans. On August 3, 1492, Christopher Columbus embarked on a westward voyage to the Indian Ocean in search of alternative maritime routes that would circumvent traditional trade passages through Islamic territories to the Spice Islands. On a similar mission, the Portuguese navigator and explorer Vasco da Gama set sail from Lisbon on July 8, 1497, leading a flotilla of four fully equipped vessels; although, instead of following the steps of Columbus, da Gama sailed southward and circumnavigated Africa. After a lengthy journey with various stops in trading centres on African coasts, da Gama landed at Malindi, Kenya, on April 15, 1498; there he managed to secure a well-versed Arab *muʿallim*, who guided the Portuguese fleet across the Arabian Sea, finally arriving in Kappadu (Kappad), near Calicut,[1] on May 20, 1498.[2]

[1] Calicut (Arabic Qāliqūṭ), the modern city of Kozhikode in the province of Kerala, was the premier port on the Malabar Coast during the fifteenth century. Muslim travelers and envoys described Calicut as a large cosmopolitan center and trading hub, which attracted merchants from China, Java, Ceylon, the Maldives, Yemen, and Persia. Ibn Baṭṭūṭa stated that its "port is considered one of the largest in the world." Pepper, ginger, cinnamon, cardamom, tamarind, precious stones, seed pearls, cotton cloths, and porcelain were among its principal exports. See Abū ʿAbd Allāh Muḥammad ibn ʿAbd Allāh ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa: Tuḥfat al-Nuẓẓār fī Gharāʾib al-Amṣār wa-ʿAjāʾib al-Asfār* (Beirut: Dār Iḥyāʾ al-ʿUlūm, 1407/1987), 572, 575; Kamāl al-Dīn ʿAbd al-Razzāq ibn Isḥāq al-Samarqandī, *Maṭlaʿ al-Saʿdayn wa-Majmaʿ al-Baḥrayn* (*The Dawn of Two Auspicious Planets and the Meeting of the Two Seas*), in *India in the Fifteenth Century: Being a Collection of Voyages to India*, ed. and trans. R. H. Major (London: Hakluyt Society, 1857), 13–14; Anup Mukherjee, "Calicut," *Encyclopedia of World Trade from Ancient Times to the Present*, ed. Cynthia C. Northrup (London: Taylor and Francis, 2015), 1:137–139; Robert Wolf, "Da Gama's Blundering: Trade Encounters in Africa and Asia during the European 'Age of Discovery,' 1450–1520," *The History Teacher* 31 (1998), 300.

[2] Ḥasan Ṣ. Shihāb, *Al-Nūniyya al-Kubrā maʿ Sitt Qaṣāʾid Ukhrā Naẓm Shihāb al-Dīn Aḥmad Ibn Mājid* (Muscat: Wizārat al-Turāth al-Qawmī wa'l-Thaqāfa, 1413/1993),

The Portuguese circumnavigation of Africa and penetration of the Indian Ocean also marked a new chapter in maritime legal history.[3]

18–21; Abbas Hamadani, "An Islamic Background to the Voyages of Discovery," in *The Legacy of Muslim Spain*, ed. Salma K. Jayyusi (Leiden: E. J. Brill, 1992), 298; R. Sengupta, "History of Oceanography of the Indian Ocean," in *New Trends in Indian Art and Archeology*, ed. B. U. Nayak and N. C. Ghosh (New Delhi: Aditya Prakashan, 1992), 402–403; Ranabir Chakravarti, "An Enchanting Seascape: Through Epigraphic Lens," *Studies in History* 20 (2004), 306.

[3] Aḥmad ibn Mājid (823–914/1421–1509), the famous Arab pilot of the Indian Ocean, witnessed the eventual arrival of the Portuguese in the eastern seas and sensed the beginning of the end of the peaceful oceanic navigation therein. In several places in the Sufāliyya (Sufāla or Sofala, present-day Mozambique) poem he alluded to the prospective serious impacts and adverse effects of the Portuguese on the overseas trade and freedom of navigation, stating:

(27) [And the Franks] arrived at Calicut to acquire profit
in the year nine-hundred and six (AH), even later
(28) There they sold and bought, and displayed their power,
bought off the Zamorin, and oppressed the people
(29) Hatred of Islam came with them
and the people were afraid and anguished
(30) And the land of the Zamorin was snatched away from that of Mecca,
and Guardafui was closed to travelers.

See Shihāb, *Al-Nūniyya al-Kubrā,* 19; Ibrahim Khoury, *As-Sufāliyya: The Poem of Sofala: Arabic Navigation along the East African Coast in the 15th Century* (Coimbra: Junta de Investigações Científicas do Ultramar, 1983), 89–90; Edward A. Alpers, *The Indian Ocean in World History* (New York and Oxford: Oxford University Press, 2014), 69–74; Robert B. Serjeant, *The Portuguese off the South Arabian Coast: Ḥaḍramī Chronicles* (Oxford: Clarendon Press, 1963), 24. Apart from Ibn Mājid's testimony, foreign merchants in Calicut were alarmed at the first appearance of the Portuguese. With the Portuguese arrival in India, Muslims, who had carried out and mastered the transoceanic trade unchallenged for many centuries, felt threatened by the emerging Christian sea power from the Iberian Peninsula. The Muslims' suspicious attitude toward the Portuguese was projected in 1498 before Vasco da Gama himself touched the shores of Calicut. When the Portuguese fleet dropped anchor off the coast of Calicut, the first person ashore was the recent Jewish convert and convict Juao Nomez, the expedition's interpreter, who spoke Spanish, Portuguese, Hebrew, and Arabic. He was taken by two North African merchants from Tunis, who greeted him in Castilian Spanish with the curse: "May the Devil take thee! What brought you hither? They asked what he sought so far away from home, and he told them that we came in search of Christians and of spices." Álvaro Velho, *A Journal of the First Voyage of Vasco da Gama 1497–1499* (London: Hakluyt Society, 1898), 48–49; Bernard S. Cohn, "The Past in the Present: India as Museum of Mankind," *History and Anthropology* 11 (1998), 1; Charles R. Boxer, *The Portuguese Seaborne Empire 1415–1825* (London: Hutchinson and Co., 1969), 37; Ram P. Anand, *Origin and Development of the Law of the Sea* (The Hague: Martinus Nijhoff Publishers, 1982), 47. The Portuguese carried with them a deep antipathy to Islam and Muslims, and apparently the two Tunisian traders predicted the prospective consequences of the Portuguese penetration into the Indian Ocean. They envisioned the Portuguese shifting their colonial strategies and ambitions to the Indian Ocean as they

Contrary to the westward explorations, which revealed to the Spaniards hitherto unknown pre-Columbian cultures, da Gama introduced a new maritime passage to the western European nations, which led to the already known sources of spices and other luxurious commodities from Southeast Asia that previously had made their way to the West solely through the Muslim world. The Portuguese incursion into the Indian Ocean, followed by similar intrusions of other European sea powers, undermined the Muslim-run maritime trading system, disturbed the flow of spices from Calicut to the Red Sea, and produced new forms of naval strategies and powers.[4] Commanded by the viceroy Dom Francisco de Almeida, the Portuguese naval fleet surprised its Egyptian-Ottoman rival and defeated it in Diu on February 3, 1509;[5] this engagement is regarded

had done in Morocco from 1415 onward, when they took control of most of Morocco's Mediterranean and Atlantic ports through a combination of warfare and political and economic incentives offered to local rulers and nobles. For that reason the Maghribī merchants preferred the French and Venetian Christians over the Spaniards and Portuguese, who fueled the spirit of the Crusades in the West and subsequently expelled the Muslims from the Iberian Peninsula. For the Portuguese conquests on the North and Western coasts of Africa, see al-Ḥasan ibn Muḥammad al-Wazzān (Leo Africanus), *Waṣf Ifrīqiya* (Beirut: Dār al-Gharb al-Islāmī, 1983), 309–319; Jocelyn Hendrickson, "Muslim Legal Responses to Portuguese Occupation in Late Fifteenth-Century North Africa," *Journal of Spanish Cultural Studies* 12 (2011), 311–312; Barbara Fuchs and Yuen-Gen Liang, "A Forgotten Empire: The Spanish-North African Borderlands," *Journal of Spanish Cultural Studies* 12 (2011), 261–273.

[4] Charles H. Alexandrowicz, "Freitas *versus* Grotius," *British Yearbook of International Law* 35 (1959), 163; Walter J. Fischel, "The Spice Trade in Mamluk Egypt: A Contribution to the Economic History of Medieval Islam," *Journal of the Economic and Social History of the Orient* 2 (1958), 172–174; Frederic C. Lane, "Pepper Prices before Da Gama," *Journal of Economic History* 28 (1968), 590–597; Wan K. Mujani, "Some Notes on the Portuguese and Frankish Pirates during the Mamluk Period (872–922 A.H./1468–1517 A.D.)," *Jurnal Pengajian Umum Asia Tenggara* 8 (2007), 18–20. In addition to the Portuguese naval superiority, the flow of spices, pepper, textiles, sugar, and various luxury goods was partly interrupted by pirate raids carried out by European privateers against commercial fleets sailing to the Near East and Mediterranean countries.

[5] Deriving its name from the Sanskrit word "Dvipa" Diu/Div or al-Dyyb/Diyab, in Arabic and Geniza documents, Diu is a leading port lying at the mouth of the Gulf of Cambay in the union territory of Daman and Diu, western India. The city owes its importance to its strategic position on the trade routes of the Arabian Sea in the Indian Ocean. For further details on the role of Diu in domestic and international trade and its military importance, consult Edward D. Ross, "The Portuguese in India and Arabia between 1507 and 1517," *Journal of the Royal Asiatic Society of Great Britain and Ireland* 4 (1921), 547–557; Michael N. Pearson, "Brokers in Western Indian Port Cities: Their Role in Serving Foreign Merchants," *Modern Asian Studies* 22 (1988), 466–468; Ranabir Chakravarti, "Nakhudas and Nauvittakas: Ship-Owning Merchants in the West Coast of India (C. AD 1000–1500)," *Journal of the Economic and Social History of the Orient* 43 (2000), 44–45,

as one of the most decisive naval battles in the maritime and legal history of the Indian Ocean.[6]

The Portuguese penetration into the Indian Ocean ended the system of peaceful oceanic navigation that had been such a notable feature of that arena. Prior to this incursion, merchants at sea feared only pirates and natural hazards. Now, however, they were subject also to the threat of these new intruders, who imported the eastern Atlantic and Mediterranean models of trade and warfare and ended freedom of navigation in the eastern hemisphere. The Portuguese encroachment altered certain of the existing networking systems of maritime trade, as attested to by Sheikh Zayn al-Dīn al-Maʿbarī al-Malībārī in 993/1583:

> Now it should be known, that after the Franks had established themselves in Cochin and Cannanore (Kannur) and had settled in those towns, the inhabitants, with all their dependents, became subject to these foreigners, engaged in all the arts of navigation, and in maritime employments, making voyages of trade under the protection of passes from the Franks; every vessel, however small, being provided with a distinct pass, and this with a view to the general security of all. And upon each of these passes a certain fee was fixed, on the payment of which the pass was delivered to the master of the vessel, when about to proceed on his voyage. Now the Franks, in imposing this toll, caused it to appear that it would prove in its consequences a source of advantage to these people, thus to induce them to submit to it; whilst to enforce its payment, if they fell in with any vessel, in which this their letter of marquee, or pass, was not to be found, they would invariably make a seizure both of the ship, its crew, and its cargo.[7]

52, 55; Shelomo D. Goitein and Mordechai A. Friedman, *India Traders of the Middle Ages: Documents from the Cairo Geniza* (Leiden: E. J. Brill, 2008), 316, f. 24.

[6] Mujani, "Some Notes on the Portuguese and Frankish Pirates," 22; Malyn Newitt, *A History of Portuguese Overseas Expansion* (New York: Routledge, 2005), 70; Patricia Risso, *Merchants and Faith: Muslim Commerce and Culture in the Indian Ocean* (Boulder, CO: Westview Press, 1995), 78–80; Kirti N. Chaudhuri, *Trade and Civilization in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge: Cambridge University Press, 1985), 68–69; Kirti N. Chaudhuri, "The Portuguese Maritime Empire, Trade, and Society in the Indian Ocean during the Sixteenth Century," *Portuguese Studies* 8 (1992), 57–70; Ross, "The Portuguese in India and Arabia between 1507 and 1517," 545–562; Edward D. Ross, "The Portuguese in India and Arabia between 1517 and 1538," *Journal of the Royal Asiatic Society of Great Britain and Ireland* 4 (1922), 1–18.

[7] Aḥmad ibn ʿAbd al-ʿAziz ibn Zayn al-Dīn al-Maʿbarī al-Malībārī, *Tuḥfat al-Mujāhidīn fī Aḥwāl al-Burtughāliyyīn* (Beirut: Muʾassasat al-Wafāʾ, 1405/1985), 250. The English translation, which preserves the meaning of the original Arabic text, is quoted from Michael N. Pearson, *Merchants and Rulers in Gujarat: The Response to the Portuguese in the Sixteenth Century* (Berkeley: University of California Press, 1976), 40.

Sanctioned by Alexander VI's papal bull *Inter Caetera Divinae* (May 4, 1493),[8] the Portuguese tried to enforce a royal monopoly on trade in the East Indies by patrolling the ocean from strategic points in Hormuz, Goa, Ceylon, and Malacca, and assuming sovereignty over major trunk routes; ships navigating the main shipping lanes between the Indonesian archipelago and the Persian Gulf were required to obtain *cartaz*es.[9]

[8] Shortly after the discovery of the new world, the Spanish-born Pope Alexander VI (in office from August 11, 1492 to his death on August 13, 1503), being an instrument in the hands of King Ferdinand and Queen Isabella, promulgated the first bull *Inter Caetera Divinae* granting the Spanish monarchs exclusive jurisdiction over all lands discovered and to be discovered westward. The Spanish–Portuguese diplomatic negotiations over sovereignty of the newly discovered lands outside Europe culminated in the Treaty of Tordesillas (June 7, 1494). For further details, consult H. Vander Linden, "Alexander VI and the Demarcation of the Maritime and Colonial Domains of Spain and Portugal, 1493–1494," *American Historical Review* 22 (1916), 1–20; Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, 2nd ed., trans. G. L. Ulmen (New York: Telos Press Publishing, 2006), 88–89; Wilcomb E. Washburn, "The Meaning of 'Discovery' in the Fifteenth and Sixteenth Centuries," *American Historical Review* 68 (1962), 1–21; Alison Reppy, "The Grotian Doctrine of the Freedom of the Sea Reappraised," *Fordham Law Review* 19 (1950), 251–254; Tatiana Waisberg, "The Treaty of Tordesillas and the (re)Invention of International Law in the Age of Discovery," *Journal of Global Studies* 47 (2017), 1–12.

[9] The "protection of passes" described by Zayn al-Dīn al-Malībārī is known in Portuguese as *cartaz*. The word *cartaz* is derived from the Arabic *qirṭās* or *qarṭās*, which is originally derived from ancient Greek χάρτης (*chártēs*) denoting a writing, book, scroll, document, paper cone, or cornet. Some philologists and linguists argue that the word *qirṭās* (Qir-Ṭā-S) was borrowed and Arabicized by Arab sailors from the Hakka Chinese term Chi-Tan-Tsz, signifying paper memo or a merchant's paper/s. The term *qirṭās* occurs respectively twice in the Qurʾān in *sūra* 6. Its seventh verse reads as follows: "وَلَوْ نَزَّلْنَا عَلَيْكَ كِتَاباً فِي قِرْطَاسٍ فَلَمَسُوهُ بِأَيْدِيهِمْ لَقَالَ الَّذِينَ كَفَرُوا إِنْ هَذَا إِلَّا سِحْرٌ مُبِينٌ (If We had sent unto thee a written (Message) on parchment (*qirṭās*), so that they could touch it with their hands, the Unbelievers would have been sure to say 'this is nothing but obvious magic')." Verse 91 of the same *sūra* states: "وَمَا قَدَرُوا اللَّهَ حَقَّ قَدْرِهِ إِذْ قَالُوا مَا أَنْزَلَ اللَّهُ عَلَى بَشَرٍ مِنْ شَيْءٍ قُلْ مَنْ أَنْزَلَ الْكِتَابَ الَّذِي جَاءَ بِهِ مُوسَى نُوراً وَهُدًى لِلنَّاسِ تَجْعَلُونَهُ قَرَاطِيسَ تُبْدُونَهَا وَتُخْفُونَ كَثِيراً (No just estimate of God do they make when they say: 'Nothing doth God send down to man (by way of revelation),' Say: 'Who then sent down The Book which Moses brought? A light and guidance to man: But ye make it into (separate) sheets (*qarāṭīs*) for show while ye conceal much (of its contents)." Whereas the former refers to an imaginary book sent from Heaven, the latter is mentioned in relation to the scrolls (*qarāṭīs*) of the Jews. On the whole, the word *qirṭās* has always been used for papyrus, parchment, and paper. See Abū Manṣūr Mawhūb ibn Aḥmad ibn Muḥammad al-Jawālīqī, *Al-Muʿarrab min al-Kalām al-Aʿjamī ʿalā Ḥurūf al-Muʿjam* (Damascus: Dār al-Qalam, 1410/1990), 529; Abū al-Faḍl Jamāl al-Dīn Muḥammad ibn Mukarram ibn Manẓūr, *Lisān al-ʿArab* (Beirut: Dār Ṣāder, 2003), 12:73–74; Ary A. Roest-Crollius, *The Word in the Experience of Revelation in Qurʾān and Hindu Scriptures* (Rome: Universitá Gregoriana Editrice, 1974), 87; S. Mahdihassan, "Chinese Words in the Holy Koran: Qirtas, Meaning Paper, and Its Synonym, Kagaz," *Journal of the University of Bombay* 24 (1955), 149–151, 161; Federico Corriente, *Dictionary of Arabic and Allied Loanwords: Spanish, Portuguese, Catalan, Gallician and Kindred Dialects* (Leiden:

The Portuguese monopoly not only affected the indigenous peoples and foreigners, both Muslims and non-Muslims, but it also aimed to deprive

E. J. Brill, 2008), 80; Sebastião R. Dalgado, *The Influence of Portuguese Vocables in Asiatic Languages*, trans. Anthony X. Soares (Baroda: Oriental Institute, 1936), 82; Edward W. Lane, *An Arabic–English Lexicon* (Cambridge: Islamic Texts Society Trust, 1984), 2:2517–2518; Benjamin Jokisch, *Islamic Imperial Law: Harun al-Rashid's Codification Project* (Berlin: Walter de Gruyter, 2007), 401.

The *cartaz* was in effect a trading license or navicert issued by the Portuguese commissioner or competent authority to ships sailing in the Indian Ocean in an attempt to control the trade carried out by local people in Asian waters and to finance the Portuguese Empire in Asia. It was used as a means by which a maritime power enforced its jurisdiction and protection of vessels on oceanic routes. According to the Portuguese practice, the process of issuing a ship's *cartaz* by a particular maritime power started with a detailed search of the foreign ship in question. If the inquiry carried out in a harbor was satisfactory and the relevant authority concluded that the ship's intended voyage would be undertaken in good faith, a safe-conduct was granted protecting the vessel from interference on her voyage. Sailing without it gave rise to the risk of being stopped, captured, and deprived of property, freedom, or life. The *cartaz* also served as a navicert, particularly in times of naval warfare in the Indian Ocean and Arabian Sea. A typical *cartaz* contains details regarding the name of the vessel and her tonnage, the place of origin of the cargo, the vessel's destination, types of shipments, identity of crews, shippers, and passengers, the approximate date of departure, the name of the issuing authority and Portuguese writer/s, and the document's date of issue. It should be noted that the *cartaz* was designed solely to protect shippers, crews, and shipowners from the Portuguese themselves, but not from other maritime actors in the Indian Ocean. Charles H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford: Clarendon Press, 1967), 71–73; Alexandrowicz, "Freitas *versus* Grotius," 176–180; Anand, *Origin and Development of the Law of the Sea*, 60–62; Heather Sutherland, "Geography as Destiny? The Role of Water in Southeast Asian History," in *A World of Water: Rain, Rivers and Seas in Southeast Asian Histories*, ed. Peter Boomgaard (Leiden: KITLV Press, 2007), 38–39; Pius Malekandathil, *Portuguese Cochin and the Maritime Trade of India, 1500–1663* (New Delhi: Manohar, 2001), 125–126; Pearson, *Merchants and Rulers in Gujarat*, 40–43, 70; Dalgado, *Influence of Portuguese Vocables*, 82; Mohammed H. Salman, "Aspects of Portuguese Rule in the Arabian Gulf, 1521–1622," (PhD diss., University of Hull, 2004), 132–137; Kuzhippalli S. Mathew, "Trade in the Indian Ocean and the Portuguese System of Cartazes," in *The First Portuguese Colonial Empire*, ed. Malyn D. Newitt (Exeter: University of Exeter Press, 1986), 69–84. Nearly a century earlier, King Manuel I (1469–1521) of Portugal promulgated a royal decree ordering the Moors who arrived at and departed from his coastal possessions in Morocco to be equipped with the permission of the Portuguese authorities when traveling by sea. Hendrickson, "Muslim Legal Responses to Portuguese Occupation," 313. It is plausible to hypothesize that the sixteenth-century *cartaz* may possibly owe its legal roots to the thirteenth-century Iberian safe-conduct (*guidaticum*), which apparently emerged from the Islamic *amān*. However, unlike the *amān*, which was free of charge, the Iberian *guidaticum* could be purchased by anyone for a given time, or permanently with an annual fee to ensure the safety of the vessels, their crews, and their shipments. On the basis of legal similarities between the Portuguese *cartaz* and the *guidaticum*, it is sensible to contend that the legal roots of the former might be attributed to the Spanish safe-conduct. Daniel J. Smith, "Heterogeneity and Exchange: Safe-Conducts in Medieval Spain," *Review of Australian Economics* 27 (2014), 190–192.

the newly arrived European Christian merchants from other states of the highly profitable Southeast Asian trade.[10]

The late fifteenth-century papal bull, as mentioned, which partitioned the new world between the Spaniards and the Portuguese, also denied other European nations rights of navigation and access to the newly discovered territories and maritime routes in the Atlantic and Indian oceans. In defence of the seizure of the Portuguese cargo vessel *Santa Catarina* on February 25, 1603, by three ships of the Dutch East India Company (*Vereenigde Oostindische Compagnie, VOC*) in the Singapore Strait,[11] and in response to the unjustified maritime claims of Spain and Portugal, the Dutch lawyer and humanist Hugo Grotius (1583–1645) wrote the *De Jure Praedae* (*On the Law of Prize and Booty*), wherein Chapter 12 deals with the freedom of the seas (*Mare Liberum/The Free Sea*).[12] Relying heavily on the Justinianic *Institutes* and *Corpus Juris Civilis*, from which he derived his legal references,[13] Grotius argued: (a) since the seas are open to all nations by command of the Law of Nations, the Portuguese have no valid title to confine access to the East Indies to themselves;[14] (b) the seas are not subject to appropriation by persons or states but are available to everyone for navigation, and therefore neither Portugal nor other nations can have exclusive rights of navigation whether through seizure, papal grant, prescription, or custom;[15] (c) non-Christians ("infidels" as termed by the author) cannot be divested of public or private rights of ownership merely because they are infidels, whether on grounds of discovery,

[10] Alexandrowicz, "Freitas *versus* Grotius," 178. Save for its monopolistic aspect, the *cartaz* system can be seen as an instrument of the Portuguese jurisdiction assumed in the Indian Ocean under their quasioccupation, and as a navicert assuring safety to vessels at sea during the Portuguese continuous crusade against the Muslim world.

[11] Peter Borschberg, "The Seizure of the *Sta. Catarina* Revisited: The Portuguese Empire in Asia, VOC Politics and the Origins of the Dutch–Johor Alliance (1602–c.1616)," *Journal of Southeast Asian Studies* 33 (2002), 31–36. For a deeper insight into the capture of *Santa Catarina* and the judicial consequences and judicial debates that ensued, refer to Martine J. Van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies* (Leiden: E. J. Brill, 2006), 1–52.

[12] Hugo Grotius, *The Free Sea*, trans. Richard Hakluyt, ed. David Armitage (Indianapolis: Liberty Fund, 2004); Hugo Grotius, *The Freedom of the Seas, or the Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, ed. and trans. Ralph V. Magoffin (New York: Oxford University Press, 1916).

[13] Robert Fredona, "Angelo degli Ubaldi and the Gulf of the Venetians: Custom, Commerce, and the Control of the Sea before Grotius," in *New Perspectives on the History of Political Economy*, ed. Robert Fredona and Sophus A. Reinert (New York: Palgrave Macmillan, 2018), 30–31.

[14] Grotius, *Freedom of the Seas*, 7–10. [15] Grotius, *Freedom of the Seas*, 15–60.

papal grant, or war;[16] and (d) no people can acquire a monopoly on commerce with any overseas country.[17] Following Grotius's contention, contemporaneous European lawyers sparked a legal debate, some challenging and others concurring with his position, leading to further scholarly contribution to the law of the sea. Both advocates and opponents of the freedom of navigation were inspired either by the natural law enshrined in the Justinianic *Institutes* and *Corpus Juris Civilis*, or the Hebrew Bible's concept of sovereignty on the open sea. British legal theoretician John Selden mentions both in his 1635 *Mare Clausum, Sive de Dominio Maris* (*The Closed Sea, or the Dominion of the Sea*).[18]

As mentioned earlier, freedom of navigation in the Indian Ocean was common practice until the arrival of the Portuguese in the eastern maritime arena. By the beginning of the seventeenth century and the appearance of the Dutch East India Company the concepts of *mare liberum* and freedom of commerce between littoral countries along the Indian Ocean were no longer confined to locals and Asians. The ocean, which was common to the peoples of Southeast Asia and the Near East, was now shared with the European naval powers, so that in 1615, the Makassarese sultan ʿAlāuddīn Tumenanga ri Gaukanna (1002–1049/1593–1639) asked the Dutch East India Company not to interfere with the ships of the Makassarese Kingdom of Goa on the high seas, declaring, "God made the earth and the sea, has divided the earth among mankind and given the sea in common. It is a thing unheard of that anyone should be forbidden to sail the seas."[19] By this statement, the sultan acknowledged that in

[16] Grotius, *Freedom of the Seas*, 22–44, 65, 66.

[17] Grotius, *Freedom of the Seas*, 69–76; Helen Thornton, "Hugo Grotius and the Freedom of the Seas," *International Journal of Maritime History* 16 (2004), 21–33.

[18] John Selden, *Of the Dominion or Ownership of the Sea* (London: William Du-Gard, 1652); Jonathan Ziskind, "International Law and Ancient Sources: Grotius and Selden," *Review of Politics* 35 (1973), 537–559; Abraham Berkowitz, "John Selden and the Biblical Origins of the Modern International Political System," *Jewish Political Studies Review* 6 (1994): 27–47; Mónica B. Vieira, "Mare Liberum *vs*. Mare Clausum: Grotius, Freitas, and Selden's Debate on Dominion over the Seas," *Journal of the History of Ideas* 64 (2003), 361–377; Charles Leben, "Hebrew Sources in the Doctrine of the Law of Nature and Nations in Early Modern Europe," *European Journal of International Law* 27 (2016), 79–106.

[19] Gertrudes J. Resink, *Indonesia's History between the Myths: Essays in Legal and Historical Theory* (Amsterdam: Royal Tropical Institute, 1968), 45; Leonard Y. Andaya, *The Heritage of Arung Palakka: A History of South Sulawesi (Celebes) in the Seventeenth Century* (The Hague: Martinus Nijhoff, 1981), 45–46; Ram P. Anand, "Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea," *The International and Comparative Law Quarterly* 30 (1981), 446; Zakaria M. Yatim, "The Development of the Law of the Sea in Relations to Malaysia," *Malaysian*

contrast to land, Islamic law considers the boundless sea to be the common heritage of mankind. No governing authority or nation could either claim proprietorship over it, or exclusive right of navigation; however, he did not elaborate on how the Islamic Law of Nature entitles human beings to share the sea and enjoy equal rights of exploration and exploitation of its natural resources. It may be assumed that the sultan was referring to the traditional freedom of navigation which had existed in the Indian Ocean on the eve of the European colonial era. Before the appearance of the European navies in the sixteenth century, the polities around the Indian Ocean had enjoyed the natural right to conduct maritime trade and navigate the vast ocean without molestation.

HUMAN RIGHTS AND THE ISLAMIC CUSTOMARY LAW OF THE SEA

Numerous studies have been written on human rights and freedom in Islamic law, few of which have touched on the issue of legal rights and the obligations of shipowners, crews, shippers, and passengers at sea with special reference to private commercial laws.[20] The issue of human rights is best and most succinctly addressed by the fourth Shiite *imam* and Prophet's great-grandson Zayn al-ʿĀbidīn ʿAlī ibn al-Ḥusayn ibn ʿAlī ibn Abū Ṭālib (38–95/659–713) in his *Treatise of Rights* (*Risālat al-Ḥuqūq*).[21] Canonically, Islam does not draw a distinction between

Management Journal 1 (1992), 88; Philip E. Steinberg, *The Social Construction of the Ocean* (Cambridge: Cambridge University Press, 2001), 48; Philip E. Steinberg, "Three Historical Systems of Ocean Governance: A Framework for Analyzing the Law of the Sea," *World Bulletin* 12 (1996), 8; Sutherland, "Geography as Destiny," 27; William Cummings (ed.), *The Makassar Annals* (Leiden: KITLV Press, 2011), 35, 315; William Cummings, "Islam, Empire and Makassarese Historiography in the Reign of Sultan Alaʾuddin (1593–1639)," *Journal of Southeast Asian Studies* 38 (2007), 207. Sultan ʿAlāuddīn's declaration was the result of the maritime conflict that took place on Rabi al-Awwal 28, 1024/April 28, 1615, between the VOC and the Makassarese, when the former captured the Malay harbor master Anciq Using and other notables resulting in a long period of simmering hostilities between the two rivals.

[20] Hassan S. Khalilieh, *Admiralty and Maritime Laws in the Mediterranean (ca. 800–1050): The Kitāb Akriyat al-Sufun vis-à-vis the Nomos Rhodion Nautikos* (Leiden: E. J. Brill, 2006), 45–84; Hassan S. Khalilieh, *Islamic Maritime Law: An Introduction* (Leiden: E. J. Brill, 1998), 42–57, 162–176; Hassan S. Khalilieh, "Legal Aspects from a Cairo Geniza *Responsum* on the Islamic Law of the Sea," *The Jewish Quarterly Review* 96 (2006), 180–202.

[21] Zayn al-ʿĀbidīn ʿAlī ibn al-Ḥusayn ibn ʿAlī ibn Abū Ṭālib, *Risālat al-Ḥuqūq (Treatise of Rights)*, narrated by the prominent Shiite traditionists Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn ibn Bābawayh, *Man lā Yaḥḍuruhu al-Faqīh* (Qumm: Jamāʿat al-Mudarrisīn fī

rights and obligations on land and at sea, but places them on an equal footing.[22] Human rights, as prescribed by law, are classified into three major categories: the rights of God, the rights of the individual toward himself (*al-nafs*), and the rights of humans or individuals (*ʿibād*); each of the three is further divided into subcategories.

Of interest are the rights of individuals and the community at large that define the relationship between individuals of the same or different religions and nationalities inter se, and those that define the relationship between the individual and the community and state. Among these rights ʿAlī ibn al-Ḥusayn counts the rights of superiors,[23] rights of dependents,[24] rights of relatives,[25] rights based on personal relationships,[26] and most importantly as far as this study is concerned, rights based on financial, judicial, and social relationships; these latter rights cover, among other things, topics associated with the rights of partners, associates, creditors, wealth, claimants, and defendants.[27]

Human rights laws cannot be separated from the customary law of the sea because the two overlap in many ways. One may consider, for instance, the right to life. Since time immemorial, rendering assistance to persons or ships in distress or danger on the high seas or in the territorial sea of a coastal state has been accepted as a common humanitarian norm. Providing assistance to ill-fated individuals at sea is considered by Islamic law to be a moral duty and a religious obligation; the law commands Muslims to render assistance insofar as the rescuers do not compromise their own safety.[28] The rights of individuals apply to the personal safety of

al-Ḥawza al-ʿIlmiyya, 1404/1983), 2:618–625, 3:3–4; Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn ibn Bābawayh, *Al-Khiṣāl* (Qumm: Jamāʿat al-Mudarrisīn fī al-Ḥawza al-ʿIlmiyya, 1416/1995), 2:564–570. In addition to Ibn Bābawayh's narration, this treatise is also narrated by the fourth-century Shiite traditionist Abū Muḥammad al-Ḥasan ibn ʿAlī ibn al-Ḥusayn ibn Shuʿba al-Ḥarrānī, *Tuḥfat al-ʿUqūl* (Qumm: Jamāʿat al-Mudarrisīn fī al-Ḥawza al-ʿIlmiyya, 1404/1983), 255–272.

[22] The Umayyad Caliph ʿUmar ibn ʿAbd al-ʿAzīz (99–101/717–720) was quoted as saying, "dry land and sea belong alike to God; He hath subdued them to His servants to seek of His bounty for themselves in both of them." Abū Muḥammad ʿAbd Allāh ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar Ibn ʿAbd al-ʿAzīz ʿalā mā Rawāhu al-Imām Mālik Ibn Anas wa-Aṣḥābihi* (Beirut: ʿĀlam al-Kitāb, 1404/1984), 86–87.

[23] Ibn Bābawayh, *Man lā Yaḥḍuruhu al-Faqīh*, 2:620–621.

[24] Ibn Bābawayh, *Man lā Yaḥḍuruhu al-Faqīh*, 2:622.

[25] Ibn Bābawayh, *Man lā Yaḥḍuruhu al-Faqīh*, 2:621–622.

[26] Ibn Bābawayh, *Man lā Yaḥḍuruhu al-Faqīh*, 2:622–623.

[27] Ibn Bābawayh, *Man lā Yaḥḍuruhu al-Faqīh*, 2:623–625; 3:2–4.

[28] Qurʾān 5:32: "مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا (if anyone slew a person – unless it be for murder or for spreading mischief in the land – it would be as if he slew the whole people. And, if anyone saved a life, it would be as if

Muslims and non-Muslims in the Abode of Islam and foreign territories, as they do to foreigners on Islamic soil. Every person is guaranteed safety and protection against physical harm to him and to his property, whether at sea or on land; any person violating these rights is subject to punishment.[29] In the event of robbery or piracy, for instance, jurists hold conflicting opinions with respect to the punishment of a bandit or a pirate who repents prior to being captured. One opinion rules that the rights of God and individuals are forgiven; another states that God's rights are forgiven, as are private rights, unless the act involves injury or death, and a third holds that Divine punishments are forgiven, while private rights pertaining to property, injury, or death are not. According to all opinions, compensation must be paid for the damages incurred by the victim.[30] The state normally carries out the punishment against the offender, irrespective of his creed or nationality.[31]

Other key issues that link the individual, community, and state to the customary law of the sea are the right to justice and equality in justice. Since the standards of justice in the Qurʾān transcend racial, religious, social, and economic considerations, Muslims are commanded to be just at all levels.[32] A Muslim acts more virtuously when he does justice to a party whom he disfavors,[33] or to non-Muslims, as pointed out in Qurʾān 60:8. Here the Qurʾān commands Muslims to deal kindly and equitably

he saved the life of the whole people)"; Khalilieh, *Islamic Maritime Law*, 155–157; Khalilieh, *Admiralty and Maritime Laws*, 206–207, 222; Bernard H. Oxman, "Human Rights and the United Nations Convention on the Law of the Sea," *Columbia Journal of Transnational Law* 36 (1998), 414–415; Tullio Treves, "Human Rights and the Law of the Sea," *Berkeley Journal of International Law* 28 (2010), 3.

[29] Qurʾān 5:32–33.

[30] Qurʾān 5:32–33; Anver M. Emon, "*Ḥuqūq Allāh* and *Ḥuqūq al-ʿIbād*: A Legal Heuristic for a Natural Rights Regime," *Islamic Law and Society* 13 (2006), 373–376. In the case of death, the Qurʾān ordains the judicial authorities to consider crucifixion, or exile from the land. For further details, see Chapter 3, 202–208.

[31] Majid Khadduri, "Human Rights in Islam," *American Academy of Political and Social Science* 243 (1946), 78.

[32] Qurʾān 4:135: "يَا أَيُّهَا الَّذِينَ آمَنُواْ كُونُواْ قَوَّامِينَ بِالْقِسْطِ شُهَدَاء لِلَّهِ وَلَوْ عَلَى أَنفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَى بِهِمَا فَلاَ تَتَّبِعُواْ الْهَوَى أَن تَعْدِلُواْ وَإِن تَلْوُواْ أَوْ تُعْرِضُواْ فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا (O ye who believe! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily God is well-acquainted with all that ye do)."

[33] Qurʾān 5:8: "يَا أَيُّهَا الَّذِينَ آمَنُواْ كُونُواْ قَوَّامِينَ لِلَّهِ شُهَدَاء بِالْقِسْطِ وَلاَ يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَى أَلاَّ تَعْدِلُواْ اعْدِلُواْ هُوَ أَقْرَبُ لِلتَّقْوَى وَاتَّقُواْ اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ (O ye who believe! Stand out firmly for God, as witnesses, to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to Piety: and fear God, for God is well-acquainted with all that ye do)."

with the unbelievers, since this is an inherent right of all human beings under God's law. Notably, as shall be comprehensively explained in Chapter 2, the Qurʾān calls for preservation of the earlier revelations and advises Muslims strongly not to intervene in the judicial affairs of the People of the Book (*Ahl al-Kitāb*), but to grant them legal autonomy to administer justice and to execute judgment pursuant to their own law.[34]

One way to promote trade, improve diplomatic relations with foreign countries, enhance cultural exchange and, most importantly, propagate religion is through the free movement of peoples.[35] Free movement of merchants can enhance trade, create wealth among nations, and improve the living standards of citizens. It is the natural right of human beings to travel within and beyond their countries according to their free will when seeking knowledge, earning a livelihood, or achieving other things.[36] Qurʾān 67:15 rules regarding the freedom of travel that: "It is He Who has made the earth manageable for you, so traverse ye through its tracts and enjoy of the Sustenance which He furnishes: but unto Him is the Resurrection (هُوَ الَّذِي جَعَلَ لَكُمُ الأَرْضَ ذَلُولا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِن رِّزْقِهِ وَإِلَيْهِ النُّشُورُ)." Islamic law mandates that women, who are forbidden to travel alone, always be accompanied by husbands or unmarriageable male kin (*maḥārim*).[37] Additionally, people are strongly advised not to set off if they might be faced by danger.[38]

It is generally recognized by the Law of Nature and the Law of Nations that individuals, communities, and nations have an inherent right to navigate the seas freely and to take advantage of their natural resources. These rights are perhaps best stated in Qurʾān 16:14: "It is He Who has made the sea subject, that ye may eat thereof flesh that is fresh and tender, and that ye may extract therefrom ornaments to wear; and thou seest the ships therein that plough the waves, that ye may seek (thus) of the bounty of God and that ye

[34] Qurʾān 5:42–49.

[35] Michael N. Pearson, *The Indian Ocean* (London: Routledge, 2003), 62–63, 75–78, 81, 101; Michael N. Pearson, "Islamic Trade, Shipping, Port-States and Merchant Communities in the Indian Ocean, Seventh to Sixteenth Centuries," in *The New Cambridge History of Islam: The Eastern Islamic World – Eleventh to Eighteenth Centuries*, ed. David Morgan and Anthony Reid (Cambridge: Cambridge University Press, 2011), 3:329–330, 333–334.

[36] Abdul-Aziz Said, "Precept and Practice of Human Rights in Islam," *Universal Human Rights* 1 (1979), 71–73.

[37] On the travel of Muslim women by sea, consult the article: Hassan S. Khalilieh, "Women at Sea: Modesty, Privacy, and Sexual Misconduct of Passengers and Sailors Aboard Islamic Ships," *Al-Qantara* 37 (2006), 137–153.

[38] Khalilieh, *Admiralty and Maritime Laws*, 121–131.

may be grateful (وَهُوَ الَّذِي سَخَّرَ الْبَحْرَ لِتَأْكُلُواْ مِنْهُ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُواْ مِنْهُ حِلْيَةً تَلْبَسُونَهَا وَتَرَى الْفُلْكَ مَوَاخِرَ فِيهِ وَلِتَبْتَغُواْ مِن فَضْلِهِ وَلَعَلَّكُمْ تَشْكُرُونَ)." With the exception of a limited offshore zone, the high seas and associated assets are among the greatest bounties that God has bestowed on human beings; individuals and nations have the right to use and benefit from them, but that right is not exclusive. Neither the high seas nor their natural resources are subject to dominion and appropriation by one nation or another.[39] Indeed, from the dawn of ancient civilization to the present day, the practices and customary law of the sea, together with Islamic law, are not only about the utilization of the natural resources of the seas and oceans, but also about an individual's rights and liberty to freely navigate and exploit these resources.

CUSTOM AS A SOURCE OF ISLAMIC LAW

Islamic expansion into the former Byzantine and Sassanid territories was not destructive, and so the administrative systems and cultural norms existing in the territories taken over by Muslims were sustained. The early caliphate succeeded by the Umayyad dynasty preserved the governmental system prevailing in the former Byzantine territories along the Mediterranean, and also the Persian administrative counterpart in the eastern provinces of the Islamic Empire. Without the retention of the existing legal, financial, and administrative institutions and practices of the conquered territories, one may surmise that Muslim dominion over a vast, diverse ethnocultural and geographical space would not have survived for such a long period of time.[40] The natural inclination of the peoples who came under Islamic authority or adopted the most recent Divine monotheistic faith, was to maintain the status quo, in their legal relationships, customary practices, and long-standing traditions, and this was merely confirmed and strengthened by the rigidity of *Sharīʿah* provisions.[41]

[39] Said, "Precept and Practice of Human Rights in Islam," 71, 73–75.

[40] Khalilieh, *Admiralty and Maritime Laws*, 18–19.

[41] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 8, 11, 61–62; Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 4, 24–25, 32–33; Noel J. Coulson, "Muslim Custom and Case-Law," *Die Welt des Islams* 16 (1959), 16–17. The word *Sharīʿah* is derived from the root *sh.r.ʿa.*, meaning "to start, to enter, or to go"; the noun *shāriʿ* signifies "road, way, or path"; *sharaʿa* designates "to introduce, to enact, or to prescribe." *Sharīʿah* also denotes a non-exhaustive water spring, or the path to the water source since the water is considered as the element vital to life, so is the worldly human life, which cannot exist without the path to righteousness (Qurʾān 6:153). If the water is so vital for every living thing, the *Sharīʿah* is, by the same token, the life for souls of

Islamic maritime achievements in the Mediterranean Sea and the Near Eastern seas did not change the material culture of the occupied countries abruptly: instead, there was cultural continuity in various aspects of life for centuries, in spite of the gradual processes of Islamization and Arabization. The non-Muslim subject populations retained their traditional legal institutions, including ecclesiastical and rabbinical tribunals,[42] whereas the jurisdiction of the qadi extended to Muslims and civil cases involving Muslims and non-Muslims. Until the turn of the eighth century, Umayyad qadis gave judgments according to their own discretion (*raʾy*), basing them on Qurʾānic regulations, Prophetic traditions, and customary practices that did not contradict Islamic principles.[43]

With the Islamic expansion in the Mediterranean world and Asia from the seventh century onward came the gradual process of mutual acculturation, by which Muslims absorbed and accommodated to themselves local customs that became an inseparable part of social and legal norms.[44]

Muslims and humanity (Qurʾān 21:107). The *Sharīʿah* in the generic religious context designates the straight path to happiness and good life which Muslims cannot achieve without following the Path of God and the Sunna of His Messenger (Qurʾān 59:7). The *Sharīʿah* is like running water, which remains fresh due to its constant flow. It is dynamic in nature, evolves with human evolution and the changing world, and responds to the challenges and needs not only of the Islamic *ummah*, but also of all mankind across the universe at all times. The *Sharīʿah* comprises the final revelation from God (Qurʾān) and the Prophet's recorded teachings.

[42] In addition to their contribution to the development of Islamic naval activity, the *dhimmī*s – mainly native Christians of Syria, Egypt, and North Africa – preserved the maritime laws instituted in the Justinianic Digest, as well as local customs, for centuries to come. With the establishment of the *madhāhib* from the eighth century onward, many canonical regulations and practices were "Islamicized," as long as they did not contradict the sacred law.

[43] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 22–30; Hallaq, *Origins and Evolution of Islamic Law*, 44–45, 53–54, 56; Robert S. Lopez, "Byzantine Law in the Seventh Century and Its Reception by the Germans and the Arabs," *Byzantion* 16 (1942–1943), 451; Shameem Akhtar, "An Inquiry into the Nature, Origin, and Source of Islamic Law of Nations," *Islamic Studies* 10 (1971), 32–33.

[44] ʿAbd al-Raḥmān ibn Khaldūn, *Tārīkh Ibn Khaldūn al-Musammā Kitāb al-ʿIbar wa-Dīwān al-Mubtadaʾ waʾl-Khabar fī Ayyām al-ʿArab waʾl-ʿAjam waʾl-Barbar wa-man ʿĀṣarahum min Dhawī al-Sulṭān al-Akbar* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1413/1992), 1:29–30. On the acculturation process he states: "The condition of the world and of nations, their customs and sects, do not persist in the same form or in a constant manner. There are differences according to days and periods, and changes from one condition to another. Such is the case with individuals, times, and cities, and it likewise happens in connection with regions and districts, periods and dynasties. … The new power, in turn, is taken over by another dynasty, and customs are further mixed with those of the new dynasty. More discrepancies come in, so that the contrast between the

Both Muslim legal and ruling authorities not only retained pre-Islamic customs and traditions, but also adapted and Islamicized laws and customs so long as they were in conformity with the Qurʾān and Sunna.[45] This may explain why jurists and judges often consulted, in the course of resolving specific legal cases, general custom (*ʿurf ʿāmm*), specific custom (*ʿurf khāṣṣ*), jurists' custom (*ʿurf al-fuqahāʾ*), artisans' custom (*ʿurf al-ṣunnāʿ*), merchants' custom (*ʿurf al-tujjār*), etc.[46]

The influence of custom is tangible in Islamic maritime law. In the introductory chapter of *Kitāb Akriyat al-Sufun* (The Treatise on the Leasing of Ships), the author Muḥammad ibn ʿUmar al-Kinānī al-Andalusī al-Iskandarānī (d. 310/923) emphasized the role of local custom and practices in the conclusion of commercial contracts.[47] The jurist went further by claiming that custom could replace and even supersede an

new dynasty and the first one is much greater than that between the second and the first one. Gradual increase in the degree of discrepancy continues. The eventual result is an altogether distinct (set of customs and institutions). As long as there is this continued succession of different races to royal authority and government, changes in customs and institutions will not cease to occur." The English translation, which is compatible with the Arabic text, is quoted from Franz Rosenthal, *The Muqaddimah: An Introduction to History* (Princeton: Princeton University Press, 1967), 25–26; for the electronic version, see: https://asadullahali.files.wordpress.com/2012/10/ibn_khaldun-al_muqaddimah.pdf.

[45] The Qurʾān validates customary practices inasmuch as they are consistent with Islamic principles, namely the sacred text and the Prophetic Sunna. Of all the Qurʾānic verses where derivatives of the term *ʿurf* occur, one *āyah* (Qurʾān 7:199) deserves a closer examination: "خُذْ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنْ الْجَاهِلِينَ (Hold to forgiveness, enjoin *ʿurf*, but turn away from the ignorant)." The great majority of exegetes argue that the word *ʿurf* is related to the term *maʿrūf*, meaning "good, upright, or beneficial." That is to say, the *ʿurf* cannot be quoted as textual authority for custom as such. Nevertheless, there are some commentators who contend that the term *ʿurf* may also signify "custom" in the true sense of the word, arguing that "what the Muslims deem to be good is good in the sight of God," said ʿAbd Allāh ibn Masʿūd, a prominent Companion of the Prophet. Ayman Shabana, *Custom in Islamic Law and Legal Theory* (New York: Palgrave Macmillan, 2010), 50–58; Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), 215–235; Mohammad H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1997), 256; Majid Khadduri, "Nature and Sources of Islamic Law," *George Washington Law Review* 22 (1953), 3–4; Taiwo M. Salisu, "*ʿUrf*/*ʿAdah* (Custom): An Ancillary Mechanism in *Sharīʿah*," *Ilorin Journal of Religious Studies* 3 (2013), 137–142; ʿAbdullāh ʿA. Ḥajī-Ḥassan, "Sales and Contracts in Early Islamic Commercial Law," (PhD diss., University of Edinburgh, 1986), 18–20; Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law," *Islamic Law and Society* 4 (1997), 131–155.

[46] Shabana, *Custom in Islamic Law*, 156–157; Salisu, "*ʿUrf*/*ʿAdah* (Custom)," 135–137.

[47] Muṣṭafā A. Ṭāher (ed.), "*Kitāb Akriyat al-Sufun wa'l-Nizāʿ bayna Ahlihā*," *Cahiers de Tunisie* 31 (1983), 6–7, 10–11.

explicit stipulation.[48] Citing the prominent North African jurist Saḥnūn ibn Saʿīd al-Tanūkhī (160–240/776–854), the author of the treatise added that "if hiring arrangements are to be admitted solely on the basis of analogy (*qiyās*), most will be invalidated [only recourse to custom makes them licit]."[49] Accordingly, in the absence of a written contract and explicit stipulations, jurists and judges would normally resort to local custom.[50]

The process of the reception and assimilation of foreign laws, especially Byzantine and Persian laws, is discernible in the realm of Islamic *siyar* (Law of Nations). Early authors of *siyar* literature not only recognized custom as a source of law but also endorsed it as a decisive authority so long as it did not contradict or override the *naṣṣ*.[51] In order to validate custom and make it legally binding, jurists ruled that custom must be: (a) sensible and consistent with the *Sharīʿah*; (b) implicitly or expressly accepted by the Islamic State; (c) dominantly and frequently practiced in interstate relations; and (d) in use before or at the time of the conclusion of an international treaty.[52] To a great degree, the *siyar* share similarities with the Roman *jus gentium*, which regulated relations between Roman citizens and foreigners, with a cardinal difference in that the former addressed legal issues between the *ummah* and non-Islamic states, as shall be elaborated in due course.[53]

PURPOSE, STRUCTURE, AND METHODOLOGY OF THE STUDY

Grotius's reliance on Romano-Byzantine legal codices leaves the impression that the Law of Nature and Law of Nations governing access to the sea are a European establishment. He advertently or inadvertently tended to

[48] Ṭāher, *Akriyat al-Sufun*, 14.
[49] Ṭāher, *Akriyat al-Sufun*, 15; Khalilieh, *Admiralty and Maritime Laws*, 277–278.
[50] Abū al-Qāsim ibn Aḥmad al- Burzulī, *Fatāwā al-Burzulī: Jāmiʿ Masāʾil al-Aḥkām li-mā Nazala min al-Qaḍāyā bil-Muftīn waʾl-Ḥukkām* (Beirut: Dār al-Gharb al-Islāmī, 2002), 3:464.
[51] Anowar Zahid and Rohimi B. Shapiee, "Considering Custom in the Making of *Siyar* (Islamic International Law)," *Journal of East Asia and International Law* 3 (2010), 125, 127; Akhtar, "Nature, Origin, and Source of Islamic Law of Nations," 34.
[52] Zahid and Shapiee, 128–129; Anowar Zahid and Rohimi B. Shapiee, "Customs as a Source of *Siyar* and International Law: A Comparative of the Qualifying Criteria," *International Journal of Civil Society Law* 8 (2010), 44–45.
[53] Muḥammad Ḥamīdullāh, *The Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf, 1968), 3, 7.

overlook the contribution of the "infidels,"[54] as he called the non-Christian nations and societies, to the development of the customary law of the sea despite his awareness of the long tradition of freedom of navigation that had existed in the Islamic Mediterranean as well as in the Indian Ocean, prior to the intrusion of the European naval powers.[55] In response to the widely accepted legal theory that the doctrine of the freedom of the seas was initiated and promoted by early modern European lawyers, this study aims primarily to achieve an understanding of the theoretical and practical concepts of the Islamic customary law of the sea that are absent not only from the writings of the influential Dutch humanist but also from pre-modern and contemporary Western legal literature.

In order to eliminate any possible confusion on the part of the reader, this study will deal solely with the Islamic concept of the "law of the sea," as opposed to the concept of "maritime law."[56] Despite the fact that the

[54] Grotius (2004), *Free Sea*, 8, 15, 17, 19, 52. He argues that the Portuguese can neither claim exclusive access to the eastern seas by virtue of discovery, nor deprive the infidels, who are partly pagans and partly Muslims, of the right to navigate the sea and carry out commercial transactions.

[55] Ram P. Anand, "The Influence of History on the Literature of International Law," in *The Structure and Process of International Law*, ed. R. St. J. MacDonald and D. M. Johnston (The Hague: Martinus Nijhoff Publishers, 1986), 345–347.

[56] "Maritime law" is a body of private law that governs relationships between parties and private entities engaged in carriage by sea. Among the major areas it encompasses are shipbuilding, hire of crew, charterparties, transport of passengers, carriage of goods, jettison and general average rules, collision, salvage, maritime *qirāḍ* and partnership, and sea loans. One of the oldest treatises, which treats legal aspects of shipping and maritime commerce in the early Islamic Mediterranean, was composed by Muḥammad ibn ʿUmar al-Kinānī al-Andalusī (d. 310/923) and titled: *Kitāb Akriyat al-Sufun wa'l-Nizāʿ bayna Ahlihā (The Treatise on the Leasing of Ships and the Claims between [Contracting] Parties)*, which was edited and published by Muṣṭafā A. Ṭāher in his *Akriyat al-Sufun*; an English translation of the treatise is published in Khalilieh's *Admiralty and Maritime Laws*, 273–330. In addition to the foregoing sources, also consult Khalilieh's *Islamic Maritime Law*, 23–115; Deborah R. Noble, "The Principles of Islamic Maritime Law," (PhD diss., University of London, 1988); Muhammad M. El-Ghirani, "The Law of Charterparty with Particular Reference to Islamic Law," (PhD diss., Glasgow College, 1990); Jamal al-Sumaiti, "The Contribution of Islamic Law to the Maritime Law," (PhD diss., University of Wales, Lampeter, 2004); Muṣṭafā M. Rajab, *Al-Qānūn al-Baḥrī al-Islāmī ka-Maṣdar li-Qawāʿid al-Qānūn al-Baḥrī al-Muʿāṣir* (Alexandria: Al-Maktab al-ʿArabī al-Ḥadīth, 1990); Abraham L. Udovitch, "An Eleventh Century Islamic Treatise on the Law of the Sea," *Annales Islamologiques* 27 (1993), 37–54; ʿAbd al-Raḥmān ibn Fāyiʿ, *Aḥkām al-Baḥr fī al-Fiqh al-Islāmī* (Jeddah: Dār Ibn Ḥazm, 1421/2000); Olivia R. Constable, "The Problem of Jettison in Medieval Mediterranean Maritime Law," *Journal of Medieval History* 20 (1994), 207–220. As regards the Islamic maritime practices

two terms may appear similar to non-experts, they are actually two distinct fields of law with substantially different connotations. This study investigates exclusively the doctrine of the commonality of the seas and freedom of navigation and right of mobility as established by the Islamic Law of Nature and the *siyar*. Gaining a comprehensive understanding of the way that Islamic tradition perceives the high sea and offshore marine spaces, both in theory and practice, requires us to address several key issues: first and foremost, how does the Qurʾān view the legal status of the sea? Did naval supremacy and military expansion empower or entitle a state to claim dominion over the sea? How did the Prophet Muḥammad contribute to the foundations of the Islamic tradition and customary law of the sea despite the fact that he never experienced the sea? Under Islamic law, did vessels enjoy legal immunity while at sea, in ports, or on navigable rivers? What legal measures were employed to protect aliens in the Abode of Islam and at sea, or Muslim subjects in foreign countries? Why does the *Sharīʿah* favor legal pluralism as opposed to a unified judicial system? How did legal pluralism have a significant impact on the exercise of the right to freedom of the seas, ultimately promoting commercial activities? What were the circumstances in which a coastal state could claim jurisdiction over waters adjoining its shoreline? Was that claim exclusive? Did the coastal self-ruling or independent entity have a right to deny access or bar foreign vessels from sailing through its territorial sea? If a ship was exposed to man-made or natural dangers, was she granted permission to seek refuge? What were the legal and practical means employed by authorities to fight, suppress, and even eradicate piracy? What was more meritorious, fighting piracy or launching a war against enemies, and why?

in the Arabian Sea and Indian Ocean, see Liaw Y. Fang, *Undang-undang Melaka (The Laws of Melaka)* (The Hague: Martinus Nijhoff, 1976), 2–7, 33, 38, 40, 48–49, 65, 79, 87, 119, 121, 123, 135; Sir Stamford Raffles, "The Maritime Code of the Malays," *Journal of the Straits Branch of the Royal Asiatic Society* 3 (1879), 62–84; Richard Winstedt and P. E. de Josselin de Jong, "The Maritime Laws of Malacca," *Journal of the Malayan Branch of the Royal Asiatic Society-Singapore* 29 (1956), 22–59; Mardiana Nordin, "Undang-undang Laut Melaka: A Note on Malay Maritime Law in the 15th Century," in *Memory and Knowledge of the Sea in Southeast Asia*, ed. Danny Wong Tze Ken, Institute of Ocean and Earth Sciences Monograph Series 3 (Kuala Lumpur: University of Malaya Press, 2008), 15–21; Badriyyah H. Salleh, "Undang-undang Laut (Melaka Maritime Laws/Code)," in *Southeast Asia: A Historical Encyclopedia from Angkor Wat to East Timor*, ed. Ooi Keat Gin (Santa Barbara: ABC-CLIO, 2004), 1360–1361; Robert B. Serjeant, "Maritime Customary Law off the Arabian Coasts," in *Sociétés et compagnies de commerce en orient et dans l'océan indien*, ed. Michel Mollat (Paris: S. E. V. P. E. N., 1970), 195–207.

Our study does not seek to survey and address Islamic maritime heritage in the western and eastern hemispheres, a subject which has received a fair amount of attention from contemporary scholars.[57] Rather, its aim

[57] The literature on the history of Islamic maritime civilization in the Mediterranean Sea from the seventh to the fifteenth century CE is far too extensive to cite in detail, but consider for example the following selected bibliography: ʿAbd al-ʿAzīz Sālim and Aḥmad ʿAbbādī, *Tārīkh al-Baḥriyya al-Islāmiyya fī al-Maghrib wa'l-Andalus* (Beirut: Dār al-Nahḍa al-ʿArabiyya, 1969); ʿAbd al-ʿAzīz Sālim and Aḥmad ʿAbbādī, *Tārīkh al-Baḥriyya al-Islāmiyya fī Miṣr wa'l-Shām* (Beirut: Dār al-Nahḍa al-ʿArabiyya, 1981); Wilhelm Hoenerbach, *La Marina Arabe del Mar Mediterráneo en Tiempos de Muʾāwiya* (Tetuan: Instituto Muley el-Hasan, 1954); Aḥmad R. Aḥmad, *Tārīkh Fann al-Qitāl al-Baḥrī fī al-Baḥr al-Mutawassiṭ 35–978/655–1571* (Cairo: Wizārat al-Thaqāfa, 1986); Aly M. Fahmy, *Muslim Sea-Power in the Eastern Mediterranean from the Seventh to the Tenth Century A.D.* (Cairo: National Publication and Printing House, 1966); Aly M. Fahmy, *Muslim Naval Organisation in the Eastern Mediterranean from the Seventh to the Tenth Century A.D.* (Cairo: National Publication and Printing House, 1966); Maḥmūd A. ʿAwwād, *Al-Jaysh wa'l-Usṭūl al-Islāmī fī al-ʿAṣr al-Umawī* (Hebron: Al-Adabiyya lil-Ṭibāʿa wa'l-Nashr, 1994); Christophe Picard, *La mer et les musulmans d'Occident au Moyen Âge* (Paris: Presses Universitaires de France, 1997); Christophe Picard, *La mer des califes: Une histoire de la Méditerranée musulmane (VIIe–XIIe siècle)* (Paris: Seuil, 2015); an English version of this book is titled *Sea of the Caliphs: The Mediterranean in the Medieval Islamic World* (Cambridge MA: Harvard University Press, 2018); Archibald Lewis, *Naval Power and Trade in the Mediterranean A.D. 500–1100* (Princeton: Princeton University Press, 1951); Olivia R. Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula 900–1500* (Cambridge: Cambridge University Press, 1994); Jorge Lirola Delgado, *El poder naval de Al-Andalus en la época del Califato Omeya* (Granada: Universidad de Granada, 1993); Vassilios Christides, *The Conquest of Crete by the Arabs CA. 824: A Turning Point in the Struggle between Byzantium and Islam* (Athens, 1984); Aziz Ahmad, *A History of Islamic Sicily* (Edinburgh: Edinburgh University Press, 1975); ʿIṣām S. Sī-Sālim, *Juzur al-Andalus al-Mansiyya: Al-Tārīkh al-Islāmī li-Juzur al-Balyār 89–685/708–1287* (Beirut: Dār al-ʿIlm lil-Malāyīn, 1984); Shelomo D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza: Economic Foundations* (Berkeley: University of California Press, 1967); Lawrence I. Conrad, "Islam and the Sea: Paradigms and Problematics," *Al-Qanṭara* 23 (2002): 123–154. Concerning the eastern seas, refer generally to George F. Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Early Medieval Times*, 3rd ed. (Princeton: Princeton University Press, 1995); Gerald R. Tibbetts, *Arab Navigation in the Indian Ocean before the Coming of the Portuguese*: Being a Translation of Kitāb al-Fawāʾid fī Uṣūl ʿIlm al-Baḥr wa'l-Qawāʿid of Aḥmad Ibn Mājid al-Najdī (London: Royal Asiatic Society of Great Britain and Ireland, 1971); Janet Abu Lughod, *Before European Hegemony: The World System A.D. 1250–1350* (Oxford: Oxford University Press, 1989); Chaudhuri, *Trade and Civilization in the Indian Ocean*; Roxani E. Margariti, *Aden and the Indian Ocean Trade: 150 Years in the Life of Medieval Arabian Port* (Chapel Hill: University of North Carolina Press, 2007); Risso, *Merchants and Faith;* ʿAbd al-ʿAzīz Sālim, *Al-Baḥr al-Aḥmar fī al-Tārīkh al-Islāmī* (Alexandria: Muʾassasat Shabāb al-Jāmiʿa, 1990); René J. Barendse, *The Arabian Seas: The Indian Ocean World of the Seventeenth Century* (Armonk, NY: M. E. Sharpe, 2002); Pearson, *Indian Ocean*; Pearson, "Islamic Trade,

is twofold. Its primary purpose, as already stated, is to highlight the Islamic legal doctrine regarding freedom of the seas and its implementation in practice, and to divulge how the rights of individuals are protected within and beyond the maritime boundaries and territorial jurisdiction of the state. The second objective is to prove that many of the fundamental principles of the premodern international law governing the legal status of the high seas and the territorial waters originated in the Mediterranean world, though they are not a necessarily European creation. The fading away of the Byzantine maritime hegemony, the Islamic military expansions along the eastern, southern, and western shores of the Mediterranean, and the Christian–Islamic naval rivalries over the Middle Sea, particularly from the second half of the eleventh century onward, undoubtedly gave rise to the introduction of unprecedented legal norms and rules governing the law of the sea.

This work comprises three chapters, with an introduction and a conclusion. Chapter 1 treats the commonality of the sea in the Qurʾān, the genesis of the freedom of navigation, and the immunity of civilian subjects of the Abode of Islam, neutral countries, the Abode of Covenant, and the Abode of War on land and at sea. In addition, it examines the flag state's jurisdiction over national ships, their contents, crew, and passengers. Chapter 2 analyzes the Islamic concept of the territorial sea, its seaward breadth, and the state's sovereignty over offshore zones adjoining the coastal frontiers, with an emphasis on the exclusive jurisdiction over that part of the Red Sea stretching along the coast of the Hijaz (also Ḥijāz/Hejaz). The chapter describes the regime of passage through international straits, which as in the past plays a vital role today in global trade networks; in addition, the chapter investigates the judicial system in Islam and expounds the reasons why the Qurʾān and judicial authorities favor legal pluralism as opposed to a single unified legal system, and the way that the legal theory has been translated into practice. Piracy and its legal, financial, and social implications are treated in Chapter 3; the discussion revolves around the factors fostering piracy and the methods employed to combat and reduce sea robbery.

Shipping, Port-States and Merchant Communities," 3:317–365; Dionisius A. Agius, *Classic Ships of Islam: From Mesopotamia to the Indian Ocean* (Leiden: E. J. Brill, 2008); Abdul Sheriff, *Dhow Cultures of the Indian Ocean: Cosmopolitanism, Commerce, and Islam* (London: Hurst and Company, 2010); Goitein and Friedman, *India Traders*.

Methodologically, coping with the foregoing themes cannot be achieved unless disciplinary boundaries are transcended through an interdisciplinary approach. The primary source upon which this study is based comes from the *Sharīʿah*, which is composed primarily of the Qurʾān and the Prophetic Sunna. Even though the Qurʾān constitutes the cornerstone and foundation of Islamic legislation it should not be approached solely as a book of law,[58] since the majority of it focuses on human moral values and ethics.[59] With regard to the subject matter of this study, however, the Qurʾānic verses analyzed are confined exclusively to the topic of the commonality of the sea highlighting principles of natural and universal laws.[60] The Qurʾānic verses will be quoted in the original Arabic, accompanied by an English translation,[61] in order to maintain their true meaning and avoid depriving the reader of the Divine spirit of the original text. Word-for-word translations of the Qurʾān have traditionally been rejected by Muslim theologians and intellectuals from the eighth century to the present day, the argument being that: (a) the translations could result in a semantic change and therefore ruin the intended meaning; (b) no matter how precise the translation, it can never produce a second original, either in form or in content; (c) the translator's scholarly background of Islamic theology and tradition and linguistic skills in both Arabic and English may directly affect the quality of the translation; a translator who

[58] Classical Muslim jurists and modern intellectuals count some 500 verses with legal prescriptions pertaining to family law, penal law, civil law, constitutional law, jurisdiction and procedure, international relations, and economic and financial order. Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazālī, *Al-Musṭaṣfā min ʿIlma al-Uṣūl* (Jeddah: Sharikat al-Madīnah al-Munawwara, 1413/1993), 4:6; Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 3, 10; Khizr M. Khan, "Juristic Classification of Islamic Law," *Houston Journal of International Law* 6 (1983–1984), 27.

[59] Qurʾān 16:89: "وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِلْمُسْلِمِينَ (and We have sent down to thee a Book explaining all things, a Guide, a Mercy, and Glad Tidings to Muslims)."

[60] For further details on the sea in the Qurʾān refer to Omri Abu Hamad, "The Sea and Marine Environment in the Qurʾān and the Ḥadīth and Their Reflections in the Classical Geographical and Astronomical Sources and Pilot-Books," (PhD diss., University of Haifa, 2014) (Hebrew); Agus S. Djamil and Mulyadhi Kartanegara, "The Philosophy of Oceanic Verses of the Quran and Its Relevance to Indonesian Context," *Analisa* 2 (2017), 103–121; Karen Pinto, "In God's Eyes: The Sacrality of the Seas in the Islamic Cartographic Vision," *Espacio Tiempo y Forma* 5 (2017), 55–79.

[61] The English translation of the quoted Qurʾānic verses relies almost solely on ʿAbdullāh Yūsuf ʿAlī, *The Meaning of the Holy Qurʾān* (Brentwood: Amana Corporation, 1991), which is considered to be one of the most accurate, authentic, and reliable translations.

lacks the necessary academic background may utterly change the meaning of the verse and provide a totally different translations when the verse itself is very clear; and (d) inaccuracies may occur due to the translator's sectarian and personal biases or sociopolitical interests.[62] All these and other reasons make the English translation interpretive rather than an equivalent text of the original Arabic. As a consequence, the Qurʾān repeatedly asserts why it was revealed to the "Seal of the Prophets (خَاتَمَ النَّبِيِّينَ)"[63] "in the perspicuous Arabic tongue (بِلِسَانٍ عَرَبِيٍّ مُّبِينٍ)."[64]

As a supplement to the Qurʾān, the Sunna of the Prophet constitutes the second fundamental and indispensable source of Islamic law.[65]

[62] From the publication of the first English translation of the Qurʾān in 1649 until the present day, more than seventy English versions have seen the light. Alexander Ross, who published the first version, did not translate the Qurʾān from the original Arabic but from the French, thus missing the actual sense of the Divine Words. However, only in 1734 did George Sale translate the Qurʾān directly from the original Arabic, though he was considerably influenced by Marracci's Latin interpretation of the Holy Book. Not until 1905 did Mohammad Abdul Hakim Khan, the first Muslim translator of the Qurʾān, publish his English version, including the Arabic text, in India. Almost all English editions of the Qurʾān are different from each other and vary in wording and quality. Iman N. Khalaf and Zulkifli M. Yusoff, "The *Qurʾān*: Limits of Translatability," *International Journal of Quranic Research* 2 (2012), 73; Ali Y. Aldahesh, "(Un) Translatability of the Qurʾān: A Theoretical Perspective," *International Journal of Linguistics* 6 (2014), 26–30. For a deeper insight into the subject of translatability and untranslatability of the Qurʾān, consult Muḥammad Ṣ. Al-Bundāq, *Al-Mustashriqūn wa-Tarjamat al-Qurʾān al-Karīm* (Beirut: Dār al-Āfāq al-Jadīda, 1403/1983); Hussein Abdul-Raof, *Qurʾān Translation: Discourse, Texture and Exegesis* (Richmond: Curzon Press, 2001); Tariq H. El-Hadary, "Equivalence and Translatability of Qurʾānic Discourse: A Comparative and Analytical Evaluation," (PhD diss., University of Leeds, 2008); Stefan Wild, "Muslim Translators and Translation of the Qurʾan into English," *Journal of Qurʾānic Studies* 17 (2015), 158–182; Khaleel Mohammed, "Assessing English Translations of the Qurʾan," *Middle East Quarterly* 12 (2005), 58–71; Muhammad T. Saleem, "The English Translations of the Holy Qurʾan: A Critique," *Al-Idah* 27 (2013), 77–98.

[63] Qurʾān 33:40.

[64] Qurʾān 26:195; Q 41:3: "كِتَابٌ فُصِّلَتْ آيَاتُهُ قُرْآنًا عَرَبِيًّا لِّقَوْمٍ يَعْلَمُونَ (A Book, whereof the verses are explained in detail – a Qurʾān in Arabic for people who understand)"; Q 43:3: "إِنَّا جَعَلْنَاهُ قُرْآنًا عَرَبِيًّا لَّعَلَّكُمْ تَعْقِلُونَ (We have made a Qurʾān in Arabic that ye may be able to understand and learn wisdom)."

[65] Qurʾān 16:44: "وَأَنزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ (And We have sent down unto thee (also) the Message; that thou mayest explain clearly to men what is sent for them, and that they may give thought)." It is clearly evident from this verse that the Prophetic tradition can be viewed as an interpretation and explanation of the Qurʾānic injunctions by God's Messenger. Its primary purpose is, therefore, to clarify the meaning of the Qurʾānic verses and remove any probable confusion that may arise from the brevity, ambiguity, and hidden meaning/s of these verses.

Many Qurʾānic verses explicitly equate obedience to God with obedience to His Messenger and command all Muslims to hold tight to his tradition and heritage.[66] Most relevant to our study are specific documents and treaties suggested to have been issued by the Prophet, specifically the 9 AH/630 CE guarantee of protection, which the Prophet granted to Yūḥannā ibn Ruʾba, the Patriarch and governor of the port city of Aylah (present-day ʿAqabah). All of the recorded diplomatic treaties, truces, correspondences, and safe-conducts formulated and endorsed by the Prophet reflect his actual attitude and conduct (*Sīra*),[67] served as the model and basis for later Islamic *siyar*, and were accepted as a customary practice for over a millennium. The vast majority, if not all, of the international treaties concluded in the post-Prophetic era between Muslim central and peripheral authorities on the one hand, and foreign empires, states, and self-ruling entities on the other, seem to have followed the same legal pattern and format introduced by the Prophetic *Sīra*.[68] Historically, being part of Islamic law, the *siyar* was contemporaneously pioneered by early jurists prior to the formation of the *madhāhib*, namely, by Abū ʿAmr ʿĀmir ibn Sharāḥīl al-Shaʿbī (21–103/641–721), Abū Ḥanīfa al-Nuʿmān ibn Thābit (80–150/699–767), Ibn Isḥāq (85–151/704–768), ʿAbd al-Raḥmān al-Awzāʿī (88–157/707–774), Sufyān al-Thawrī (97–161/716–778), Abū Isḥāq al-Fazārī (d. 186/802), Wāqidī (130–207/747–822), Muḥammad ibn al-Ḥasan al-Shaybānī (131–189/749–805), and Ibn Hishām (d. 218/833).[69] The topics

[66] Qurʾān 3:32, 132; Q 4:13, 59, 69, 80; Q 5:92; Q 8:1, 20, 46; Q 24:52, 54, 56; Q 33:71; Q 47:33; Q 48:17; Q 49:14; Q 58:13; Q 64:12. A good narration attributed to the Prophet states: "I have left behind me two things; if ye maintain will not go astray, the Book of God and my Sunna." Muḥammad Nāṣir al-Dīn al-Albānī, *Al-Ḥadīth Ḥujjatun bi-Nafsihi fī al-ʿAqāʾid wa'l-Aḥkām* (Riyad: Maktabat al-Maʿārif lil-Nashr wa'l-Tawzīʿ, 1425/2005), 30–31; Hallaq, *Origins and Evolution of Islamic Law*, 47–49.

[67] *Sīra(h)*, of which the *siyar* is the plural, has two different meanings. First, it signifies a life account or biography; and, second, the behavior and conduct of the ruler during wartime and external and internal affairs of the state. When Muslim jurists use the term *sīra*, they chiefly refer to the conduct of the Prophet and his Rightly Guided Successors (Pious Caliphs) in their wars, and in their relations with foreign states, rules of dealing with rebels, apostates, and non-Muslim citizens and aliens within the Islamic territory.

[68] An analytical treatment of the Prophet Muḥammad's documents – contracts, grants of land, safe-conducts, diplomatic correspondences, and personal letters – is so far best addressed by Sarah Z. Mirza, "Oral Tradition and Scribals Conventions in the Documents Attributed to the Prophet Muḥammad," (PhD diss., University of Michigan, 2010).

[69] Majid Khadduri, *The Islamic Law of Nations: Shaybānī's Siyar* (Baltimore: Johns Hopkins Press, 1966), 22–26; ʿUthmān J. Ḍumayriyya, *Usūl al-ʿAlāqāt al-Duwaliyya fī*

covered by the *siyar* are best summarized by Muḥammad ibn Aḥmad al-Sarakhsī (d. 490/1096) as follows:

> Know that the word *siyar* is the plural form of *sīra(h)*. (*Imam* Muhammad al-Shaybānī) has designated this chapter by it since it describes the *behavior of the Muslims* in dealing with the Associators (non-Muslims) from among the belligerents as well as those of them who have made a pact (with Muslims) and live either as Resident Aliens or as non-Muslim Subjects; in dealing with Apostates who are the worst of infidels, since they abjure after acknowledgement (of Islam); and in dealing with Rebels whose position is less (reprehensible) than that of the Associators, although they be ignorant and in their contention on false ground.[70]

Islamic law covers all areas of human conduct, rules of ritual purification, and rules governing interhuman relations and dealings (*muʿāmalāt*). What matters for this study are two themes that neither the Qurʾān nor the recorded Sunna has treated in straightforward manner: the division of the world, and the sovereign and jurisdictional rights over the Arabian side of the Red Sea, specifically the offshore marine zone adjacent to the Hijaz. Furthermore, the use of early and classical jurisprudential manuals can shed light on the conduct of war, enemy alien merchants and travelers in the Abode of Islam and at sea, the judicial autonomy of non-Muslims and foreigners in Islamic territories, and issues related to piracy.

Surviving international diplomatic and commercial treaties that have come down to us from the pre-Ottoman Mediterranean world contain the most significant legal details and historical facts regarding the legal status of persons, merchant vessels, and property on the high seas, territorial seas, and inland waters. The vast bulk of the Islamic–Christian international treaties cited or quoted in this study deal with the maintenance of peace and security between the contracting parties, the promotion and facilitation of trade, freedom of navigation, protection of persons, vessels, and properties at sea and in inland waters, the suppression and deterrence of piracy, and above all, the implementation of reciprocal interests and mutual respect for state sovereignty and territorial integrity. Moreover,

Fiqh al-Imām Muḥammad Ibn al-Ḥasan al-Shaybānī (Amman: Dār al-Maʿālī, 1419/1999), 245–254; Labeeb A. Bsoul, "Historical Evolution of Islamic Law of Nations/*Siyar*: Between Memory and Desire," *Digest of Middle East Studies* 17 (2008), 57–61; Anke I. Bouzenita, "The *Siyar* – An Islamic Law of Nations?" *Asian Journal of Social Science* 35 (2007), 22–26; Akhtar, "Nature, Origin, and Source of Islamic Law of Nations," 31–34.

[70] Ḥamīdullāh, *Muslim Conduct of State*, 12; for the original Arabic text see Muḥammad ibn Aḥmad ibn Abū Sahl al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Maʿrifa, 1409/1989), 10:2.

a thorough scrutiny of these treaties enables us to learn how classical Islam and medieval Europe theorized the concept of the territorial sea and whether sovereignty over a limited marine zone contiguous to the coastal frontier was awarded international recognition. Familiarity with these sources will contribute significantly to our understanding of how the sea is conceived in the Islamic Law of Nature and the Law of Nations.