Chapter 5

Dār al-Islām and the West: A Contractual Relationship

Our scholars, may God have mercy on them, have decreed that the fatwa changes according to time and place, with the greatest difference regarding the place being that between dār al-islām and what lies outside of it.¹

With these words, Yūsuf al-Qaraḍāwī (b. 1926) draws the territorial boundaries underlying his concept of minority fiqh (fiqh al-aqalliyyāt), that is an interpretation of the shari‘a specifically tailored for Muslims living in non-Muslim majority societies. Suggesting that Europe lies beyond what he considers to be dār al-islām, al-Qaraḍāwī and other prominent fuqahā’ involved in the Islamic legal discourse on Muslims in the West follow the path laid down by the Islamic legal tradition of dividing the world along geo-religious lines that differentiate between “Islamic” and “non-Islamic” territories. Unlike the proponents of the dualist conception of territories presented in the preceding chapter, however, these scholars reinterpret this tradition in a less antithetical way. By explicitly taking account of today’s geo-political situation that is characterized by sovereign territorial states and an unprecedented system of international relations grounded in UN conventions and other international treaties, these scholars strive to adjust traditional territorial concepts – particularly the “territory of treaty” (dār al-‘ahd) – so as to bring their Islamic legal heritage into line with the current world order and render it meaningful to Muslims today.

As this chapter will show, this notion of Western countries as being inherently different from, but, at the same time, a contractual partner of, Muslim majority countries represents the dominant position among minority fiqh advocates. Before Part 3 of this study will elaborate on the functions this conception of territories fulfills, inter alia with regard to the legitimization

of minority fiqh, this chapter takes a close look at how these scholars redraw traditional territorial boundaries: how far does al-Qaraḍāwī's distinction between “dār al-islām and what lies outside of it” reproduce the binary paradigm that was dominant in the early centuries of Islamic history, and how far does this approach differ from the one discussed in Chapter 4? What are the historical or normative sources proponents of this view draw on, and how do they justify their reinterpretation?

5.1 Prominent Proponents

This approach has been advocated by prominent, internationally renowned fuqahāʾ who have played important roles in shaping the Islamic legal discourse on Muslims in the West, more particularly on minority fiqh, and enjoy popularity both in Muslim majority countries and among Muslims in the West. Since the mid-1980s, some of them have shown particular interest in, and pointed to the importance of, the territorial question by addressing it explicitly in their writings, fatwas, lectures, and interviews. Besides the Egyptian Yusuf al-Qaraḍāwī, they include other well-known ‘ulama’, such as the late Lebanese scholar Fayṣal Mawlawī (1941–2011) and the Mauritanian ‘Abd Allāh Bin Bayyah (b. 1935). On the institutional level, this approach has been purported by the European Council for Fatwa and Research (ECFR, al-Majlis al-ūrūbbī li-l-iftāʾ wa-l-buḥūth), a heterogeneous body of fuqahāʾ, including these three scholars. While the majority of ECFR members are based in Western Europe, the most prominent advocates of this approach thus form a multinational group of fuqahāʾ who have never, or only for a limited time, themselves lived in the West. Though they have always been based in different countries in the Middle East and North Africa, they have been closely interlinked by their common interest in the situation of Muslims in the West and through various institutional networks, including the ECFR, the International Union of Muslim Scholars (IUMS, al-Ittiḥād al-ʿālamī li-ʿulamāʾ al-muslimīn) and the Maqasid Research Centre (Markaz dirāsāt maqāṣid al-sharīʿa al-islāmiyya).2

2 While this chapter focuses primarily on the scholars mentioned above, this approach to territoriality is similarly endorsed by numerous less well-known authors who have contributed to the Islamic legal discourse on Muslims in the West. See, e.g., Khalid Muḥammad ʿAbd al-Qādir, Fiqh al-aqalliyyāt al-muslima (Tripoli: Dār al-Imān, 1998), 66–67. An abbreviated version of this book was translated into English by ‘Alī ‘Alī Shaʿbān, the dean of the Faculty of Languages and Translation at al-Azhar University in Cairo, and published by the Egyptian