ISLAMIC VIEWS OF GLOBAL ORDER AND THEIR IMPACT ON INTERNATIONAL LAW

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What is the actual and potential influence of Islamic views of global order on international law? This question is part of a broader discussion concerning the relationship between religion and international law, keeping in mind that Islam is seen by some as an “all-embracing body of duties that comprises ordinances regarding worship and ritual, as well as political and [...] legal rules”. Kooijmans identifies two reasons which may explain the recurrent interest in the study of the relationship between religion and law in general: On the one hand, the historical connection between religion and law with respect to the “basis of obligation in law”, and on the other, the recurrent “problem of the quality of law, i.e. the problem of justice.” However, in the context of the secular international legal order, whose major function is to provide for stability and predictability in an international system embracing numerous actors with diverging value systems, references to religious authority are rightly challenged. The present contribution focuses neither on strictly historical nor on legal theory-oriented perspectives. It treats Islamic law and international law as separate legal orders, and considers any influence of the former on the latter to be one of static incorporation of substantive (primary) rules of Islamic law through one of the traditional sources of international law, rather than a dynamic incorporation of any “divine” law.

1 E.g. Joseph Schacht, An Introduction to Islamic Law (Oxford: Clarendon, 1982), 1. However, this should not be taken to mean that other religions do not seek to be “all-embracing” or offer precepts that relate to public and private life.

2 Pieter Hendrik Kooijmans, “Protestantism and the Development of International Law”, Recueil des cours 152 (1976): 87; see also on this topic Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Request for the indication of provisional measures, Order, 18 July 2011, not yet published in the ICJ Reports, Separate opinion of Judge A. A. Cançado Trindade), including further references.

3 See e.g. the discussion, with further references, in Mashood A. Baderin, “Religion and International Law: An Analytical Survey of the Relationship”, in Routledge Handbook of International Law, ed. David Armstrong (New York: Routledge, 2009), 168.

The following part provides an outline of the three main concepts employed throughout this contribution. Subsequently, the context of the discussion is set out by identifying three basic lenses through which the actual and potential impact of Islam on international law has or can be examined: They include (1) a historical or genealogical lens, (2) a lens focusing on secondary rules as legal “ports-of-entry”, and (3) a lens focusing on the primary rules relating to global order. After that, the contribution identifies the existence and nature of Islamic views of global order, singling out those that seem potentially relevant. Finally, by pointing to several exemplary international relations approaches, the contribution proposes how international law—understood both as a “rules-based” system and a “process of decision-making”—has and could be affected by such views.

Definitions

**Islam**

“Islam” is used here to designate the sets of beliefs, views, ideologies, practices, or doctrines that various individual Muslims or groups of Muslims would characterize as of religious origin. It is to be kept in mind that in the case of Islam, this may extend to views on all aspects of private and social life, and includes Islamic law in particular. The internal pluralism among individual Muslims and groups of Muslims is a defining feature of

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