CHAPTER FOUR
RELIGION AS A SOURCE OF INTERNATIONAL LAW

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I. introduction

For many centuries, prior to the Peace Treaty of Westphalia, State-like entities invoked rules and entitlements under the laws of God, even though this corpus of rights and obligations was incoherent, inconsistent and most frequently flouted. Some obligations, having a basis also in morality were stronger and found their way into positive law in later centuries, at a time when the unity of a single Christian faith had dissolved. Post-Westphalian international law was euro-centric, and while it was infused with biblical policy dictates as evinced in the works of the early international lawyers, it is doubtful whether in its present expression any such elements survive with the same potency.

The fundamental starting point for this work is to what degree religion constitutes a source of obligation for any particular State or group of States. The situation is compounded by the fact that international law is no more a euro-centric exercise, with Muslim and other nations exerting significant influence in international relations. In addressing the question regarding the existence of obligations through religion we examine the possibility of a historical continuity of norms borne out of religious tradition and thereafter tracing their journey into the realm of natural and positive international law. In this regard, we examine a proposition supported by some contemporary Muslim scholars that Islamic law constitutes a unique international legal framework that is different from the euro-centric model. Is there a single international law or in fact multiple legal regimes that are not subject to a single hierarchical structure? This matter is also closely connected to the debate on human rights recognised under international treaties and customary law but prohibited under particular Islamic schemes, fuelling the cultural relativist agenda. In order to address the question of

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whether a religious norm has found its way into contemporary positive international law, and whether such norm/s is independent from its parallel treaty or customary prescription, we evaluate two norms under their respective religious and international law perspective: the *jus ad bellum* and that of diplomatic protection. In this regard we examine what is the role of obligation and *estoppel* in the case of religious inferences. Moreover, we take a look into the significance of religious constitutions and their capacity in acknowledging a particular State's obligations on the basis of religious texts and traditions. Finally, of significant concern is the role of organised religious institutions in dictating or lobbying the foreign policy of like-minded States, expressed most typically through voting in international organisations and policy positions during treaty negotiations.

II. IS INTERNATIONAL LAW A SECULAR DISCIPLINE?

To address the question of whether international law is secular, one must first determine the following:

a) the secularity or not of the totality of sovereign States;

b) the divorce of religious norms from legal norms and international relations, and;

c) the existence of a unifying international legal order to which all States subscribe, irrespective of religious or cultural differences.

To be certain, the world is divided into secular and non-secular countries. Nonetheless, the extent to which religion informs the domestic and external relations of non-secular countries varies significantly. Pakistan, for example, whose domestic legal system is predominantly based on the *Sharia* (Islamic law), adheres to secular standards in its international relations with other States. The same is true of other Muslim-majority countries, including Egypt and Turkey – although the latter has resisted the application of *sharia* at the domestic level, as have the newly emergent Central Asian republics, preferring instead secular constitutions. Yet, other more traditional Muslim-majority countries, such as Saudi Arabia, while implementing Islamic law internally and generally voicing a secular external policy, do not hesitate to oppose the universality of secular concepts, particularly in the field of human rights and democratic governance. Similarly, in the United States and Europe, while Christianity is the dominant religion among their citi-