Islam & International Criminal Law:
a Brief (In)compatibility Study

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1 INTRODUCTION

The dissonance between international criminal law, as it is currently developing, and the Islamic world is great. Likewise, the gulf between the criminal law of Western societies and that of Islamic societies is a wide one. Indeed, Westerners often only have tragic and brutal stories of stoning and honor killing on which to base their perspectives of the Muslim world. Treatment of women often lies

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along the deepest recess of this chasm. But that is slowly beginning to change in countries where Shari’a (traditional Islamic law) is not prevalent enough to block it.¹

Honor killings have a long tradition in some parts of the Muslim world, although they are neither mandated nor sanctioned by Islam. Their basis, instead, lies in local tribal or clan custom. Nevertheless, in highly conservative Islamic societies, these barbaric acts can continue under the guise of hierarchical rigid societal order that often accompanies a theocratic state. From that staid perspective, the post-modern, highly secularized thinking in Western society equalizing women on the legal plane is simply beyond the pale. That is but one example. Anything that is misunderstood or challenges state order can be condemned on religious grounds. That is why Imams have been known to issue fatwas against Pokémon—a child’s cartoon character in the Japanese anime style.²

It is a truism that there are multiple levels of incongruency between Islamic societies and Western societies.³ Some of these differences are obvious, like those concerning treatment of women, recognition of civil liberties, degree of societal religious adherence/tolerance, and the seriousness with which pluralistic liberal representative democratic institutions are supported. Others are less so. Many differences are based on values, tradition, and the continued existence of a vibrant tribal life, especially in Arab and African societies, that pre-date Islam but that continue to exist overlaid by Islam.⁴ Do these incongruencies rise to the level of incompatibility?

Some argue that they do. Women’s rights advocate, Ayaan Hirsi Ali, for instance, a former Muslim Somali woman and Dutch parliamentarian, reinforces this message of incompatibility frequently: “The 21st century began with a battle of ideas, and this battle is about the values of the West versus those of Islam… Islam and liberal democracy are incompatible… Islam unreformed, as a set of beliefs, is hostile to everything Western.”⁵

In the wake of 9/11, many were moved to give renewed credence to Harvard political scientist Samuel Huntington’s dire prediction of civilizational warfare⁶ in the context of pitting Islamic society against Western society. Huntington first floated his thesis to the general public in a 1993 Foreign Affairs article, in which he asserted:

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¹ Katherine Zoepf, A Dishonorable Affair, N.Y. TIMES MAGAZINE, Sept. 23, 2007.
⁴ Graham E. Fuller, A World Without Islam, 164 FOREIGN POLICY 46, 47 (Jan./Feb. 2008): “Without Islam, the face of the Middle East still remains complex and conflicted. Struggles over power, territory, influence, and trade existed long before Islam arrived.”