



UNITED NATIONS



Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa
 مركز القاهرة الاقليمي للتدريب على تسوية المنازعات وحفظ السلام في افريقيا



Islamic Law, The Rule of Law, and International Peace Operations

The Arab spring is giving rise to multi-faceted transformation processes in North Africa and the Middle East. It is likely that these developments will lead to more international assistance in support of democratic aspirations and the rule of law in the region. The transformation might also intensify existing conflicts or lead to new violent conflicts that might require the establishment of international peacekeeping mechanisms in the future. While calls for local ownership and context sensitivity of international activity increase, the international community has only limited experience with and knowledge of how to resolve conflicts and build institutions in a Muslim majority or Islamic context. Misconceptions abound in both the West and the Muslim world about each other's values, objectives and approaches. In particular, following the attacks on the World Trade Center on 11 September 2001, some people erroneously equate Islam and Islamic law to religious extremism and terrorism. At the same time, scepticism prevails in the Arab world towards Western interpretations of international law and human rights standards.

Fostering intercultural dialogue and mutual understanding between Muslim and international jurists and other relevant professions was the objective of a three-day expert conference on "Islamic Law, the Rule of Law, and International Peace Operations" that took place in Cairo from 27 to 29 June 2011. Approximately fifty international experts on Islamic law, international law and/or international peacekeeping, including a number of Egyptian scholars and experts, met 300 metres away from the Arab revolutions' epicentre - Tahrir Square - to discuss the relationship between Islamic law and international strategies to promote the rule of law in post-conflict societies. The high-level conference drew together diplomats, scholars, independent experts, field practitioners including representa-

tives from the United Nations, European Union, African Union, the World Bank and other institutions who debated whether and to what extent Islamic law and practices should be incorporated into international strategies to resolve conflicts and to strengthen the rule of law in Muslim post-conflict societies.

Expert conference jointly organized

by the Center for International Peace Operations (ZIF), the Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa (CCCPA), and the Criminal Law and Judicial Advisory Service (CLJAS) of the United Nations Department of Peacekeeping Operations
 Cairo, 27 - 29 June 2011

1. Keynote Speech

In his keynote speech on “Islamic Law and Post-Conflict Justice”, Prof. Cherif Bassiouni¹ addressed Samuel P. Huntington’s proclaimed “clash of civilizations”. He argued that Huntington’s discourse was inaccurate in light of the many thousands of deaths in conflict-torn Muslim countries like Iraq, Bangladesh and Palestine. If at all, a clash of civilizations would take place within the Muslim Umma, the religious community comprising all Muslims. One explanation for the conflicts within the Muslim world might be the relativity of time in the different Muslim societies. According to Prof. Bassiouni, many Muslims still refer to the practices of the seventh century and are thus forced to reason by analogy, one of the Shari’a’s key principles. He also argued that there was no “inevitability of conflict” but what might render conflicts inevitable is the will of the leaders of the countries involved.

Prof. Bassiouni recalled over fourteen centuries history of Muslim traditions, culture(s), and values as well as the enormous accumulation of jurisprudence and scholarly knowledge on the Shari’a. He emphasized the incessant quest for preserving the unity of the Umma while spreading Islamic civilization from Saudi Arabia to a territory stretching from India to Spain. Power was maintained by decentralized governance allowing the conquered non-Arabic societies to keep their internal economic and social structures. At the same time, an Arab-centric approach was applied in interpreting the Quran to ensure unity in matters of religious beliefs and leadership of an Arab-speaking ruling elite. With time, different methods of analysis developed into four Sunni and three Shia schools of thought with a wide range of scholarly interpretation on different issues within each of them. Yet, irrespective of these developments, according to him, the preservation of the Umma reigned supreme.

Prof. Bassiouni critically assessed the role and position of Islamic law and the Shari’a vis-à-vis the violent conflicts in the Muslim world. He asserted that extremists often abuse both for political purposes, whereas the voice of Muslim scholars remains widely unheard and unarticulated. If any statements are delivered at all, this would be done by politicians while theologians remain silent. He pointed at a justice gap resulting from double standards applied in the West towards the Muslim world. On the other hand, the lack of a discourse on war within the Umma would be unjustifiable, leaving Non-Muslims puzzled and Muslims torn and “intellectually schizophrenic”. Prof. Bassiouni concluded his speech by calling for a truly universal approach to all human values: “Before we are Muslims, Christians and Jews, we are human beings. We may differ in appearance but fundamental human values have not been different and cannot be interpreted differently.”

After the keynote speech, conference participants discussed in various sessions the relationship between Islamic law and the rule of law with special focus on the international peace operations in Afghanistan, Somalia and Sudan.

2. Sources and Jurisprudence of Islamic Law

Traditional Islamic jurisprudence, Fiqh, makes use of various sources of Islamic law to elucidate the Shari’a, the body of Islamic law. Shari’a defines the way to live on earth as well as the relationship with God. Islam’s holy scripture, the Quran and the Sunnah (defined as “the traditions and customs of Mohamed”) are the primary sources of Islamic law. Ijma (consensus) and Qiyas (analogy) as secondary justice principles as well as additional sources: Istislah or maslaha (literally "Human Good"), Istihsan (choosing for the better), Urf (Custom) are applied in case the primary sources are silent on a particular issue. According to many schools of thought,

¹ *Prof. Cherif Bassiouni is Distinguished Research Professor of Law Emeritus at DePaul University and President Emeritus of the International Human Rights Law Institute. He is one of the world’s leading experts in international criminal law and international human rights law.*



these secondary and additional sources open the door for continuous change in Shari'a, rendering Islamic law a viable and flexible system of legal and moral principles. The two main denominations, the Sunni and the Shia, differ in their approach to the interpretation of these sources. Conference participants discussed the complexities in interpreting Islamic legal sources resulting from the fact that the four main Sunni schools of thought had developed their own methodology on the Figh out of a particular historical and political context. Among the main issues is who has the right (and the knowledge) to interpret the Shari'a.

Besides structural complexities and uncertainties, ignorance and illiteracy were cited as major challenges and deficiencies in determining Islamic law. With a view on post-conflict peacebuilding activities in Muslim countries, participants highlighted the importance and need to train Muslim judges in international rule of law standards. It was emphasized that a proper and thorough knowledge of the Shari'a as well as a comprehensive understanding of the different sources of Islamic law would prevent religious or political leaders from applying or promoting harmful practices in the belief that they are compatible with the Shari'a.

3. The Rule of Law in Islamic Legal Systems

Reference to the Shari'a and to Islamic law more generally serve as a common denominator in many conflict and post-conflict countries with Muslim majority populations. In the light of this finding, conference participants discussed how Islamic legal and moral principles interact with international law in general and with the rule of law in particular. Several experts indicated that the rule of law principles have strong roots also in Islamic legal traditions, including the following:

- *Supremacy of law*
- *Equality before the law*

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- *No discrimination on the basis of lineage, race, colour, nation, language or any other category*
- *No immunity from mandatory legal principles*
- *Prohibition of illegal use of force*
- *Responsibility to ensure equitable and fair settlement of disputes*

It was maintained that Islamic law is compatible with international law including the principles of the rule of law. Some participants highlighted the importance of justice as one of Islamic law's core principles. According to them, Islamic law requires that victims of mass crimes are entitled to truth, accountability and compensation, and the option of choosing reconciliation which are also central elements of international notions of transitional justice. Some participants stress that despite this general congruence of Islamic jurisprudence and current transitional justice programmes, Islamic legal principles have so far been insufficiently incorporated in post-conflict justice mechanisms. Ultimately, the path of the country concerned will determine the path to be followed in each individual setting.

One major challenge in international rule of law assistance is to match international standards to the local context and to achieve local ownership in respective assistance programmes. This challenge applies to all main sectors relevant to the rule of law, i. e. the judiciary (including judicial administration), the police and the prison system. Many participants proposed to make use of Islamic legal principles in post-conflict settings with a Muslim majority population. Yet, it was also argued that challenges such as police violence, corruption, and abuse of power, would have to be met by using global and cross-cultural approaches also in a Muslim or Islamic context. According to this view, no single legal tradition – including Islamic law – would be adequate to resolve current problems relating to promoting and maintaining the rule of law worldwide.

4. Working Groups Discussions on Afghanistan, Somalia, and Sudan

In the course of the conference, participants were divided into three working groups that focussed on the international peace operations in Afghanistan, Somalia and Sudan. Each group sought to analyze the major challenges in strengthening and maintaining the rule of law, to outline the key Islamic law issues and actors relevant in these countries, and to reflect on possible international strategies to cope with these challenges.

Decades of violent conflict largely destroyed the legal and justice systems in all three countries and a “patchwork” of legal norms prevails. The legal systems of all three countries are characterized by legal and systemic pluralism that consists of co-existing traditional, Islamic and modern state laws. Participants pointed out that, in particular in rural areas, the state laws are largely unknown. At the same time, state officials including representatives of the formal justice systems may encounter difficulties in understanding traditional justice systems with their limited jurisdiction differing from village to village and from tribe to tribe.

Overlapping and sometimes unclear legislation and norms challenge the justice systems in all three countries. While formal justice systems are relatively well functioning at the national level, participants analyzed major justice gaps at the provincial or district level. A lack of communication and understanding between relevant state and district authorities, partly due to ideological differences, often leads to delayed legislative reform processes in the justice sector.

The following challenges to the rule of law were identified in all three countries:

- *Weak state institutions and governance*
- *No separation of powers*
- *Limited court presence at district level*

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- *Lack of qualified judges and lawyers*
- *Lack of awareness concerning justice system and rights*
- *High rates of illiteracy*
- *Corruption in, and political manipulation of, the justice system*
- *Security concerns*
- *Language barriers and translation problems*
- *Limited access to justice for women*
- *Lack of coordination and coherence in international assistance*

Somalia faces an additional challenge in its effort to establish the rule of law: piracy. It was noted, however, that piracy off the Somali shore was mainly an issue of international and not local concern. Although Somali law strictly prohibits and criminalizes piracy, law enforcement hardly takes place, and approximately twenty per cent of the piracy-generated “revenues” are allocated to Somali communities.

As regards Islamic law, the following issues were identified as additional challenges to the rule of law in all three countries:

- *Increased Islamization process influencing constitution-making and law reforms*
- *Existence of the death penalty, also for minors*
- *Lesser value of women’s testimonies than those of men*
- *Discrimination against non-Muslims concerning legal protection and redress*
- *Harmful traditional or discriminatory practices labelled as Islamic law by local elites*

All working groups came to the conclusion that perceived problems with Islamic law result less from legal deficiencies than from cultural or





Participants of the Conference on “Islamic Law, the Rule of Law, and International Peace Operations”, Cairo, 27 – 29 June 2011.

political challenges. For many Muslims, referring to Islamic law and culture is an important identity matter. Therefore, international rule of law assistance in a Muslim majority context requires cultural brokers who are able to facilitate a debate about the role of Shari’a and its compatibility with international standards on the rule of law and human rights.

In order to foster local ownership, it was suggested to make more use of the knowledge and experience of scholars of Islamic law and to respect long-standing Muslim traditions in international assistance programmes. Participants stated that more intercultural dialogue and exchange of knowledge was needed to reduce prevailing prejudices and to enhance respect for Islamic law and culture. International actors would also have to provide training on Islamic law and practices for their legal and judicial personnel working in Islamic contexts. At the same time, training and

legal education programmes are needed to mend the dearth of qualified Islamic legal personnel and to raise awareness of existing rights and judicial procedures.

Islamic scholars were called upon to play a more active role in clarifying disputed legal issues and to support efforts to strengthen their legal systems. They should also raise their voice when local leaders or functionaries engage in extremist or harmful practices, often at the expense of women or of minority groups, often justifying their actions through an inaccurate portrayal of Shari’a. It was noted that more research would be useful on the interface between Islamic law and traditional norms and practices. Institutionalized coordination mechanisms at the local level might provide a fruitful ground to improve relations among relevant state, religious and traditional actors and to promote their complementary cooperation and to improve oversight.

5. Conclusion and Policy Recommendations

The large number of violent conflicts and transformation processes within the Muslim world as well as the centrality of Islamic law for the lives and identity of many Muslims worldwide require the international community to address the relationship between Islamic law and post-conflict peacebuilding. A basic understanding of Islamic law and issues should be a prerequisite for international actors working to promote the rule of law and to resolve conflicts in Muslim majority societies. At the same time, national and religious actors should take measures to raise awareness of existing rights and law among their populace and to avoid that poor governance and human rights violations are committed and carried out in the name of Islam and the Shari'a.

The expert conference provided a fruitful ground for an intensive dialogue and exchange of rule of law-related knowledge between scholars and practitioners as well as between the spheres of Islamic and international law. The following policy recommendations for national and international actors were developed in the course of the event:

- *Establishment of a community of practice of Islamic and Non-Islamic legal experts*

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- *Development of a specialized training course on Islamic law for personnel deployed to international peace operations in Muslim dominated countries*
- *Development of best practices of how Islamic legal principles can be used for international rule of law assistance programmes*
- *Widespread dissemination of knowledge on Islamic law and on rule of law-based rights and principles in remote areas and among marginalized groups*
- *Increased capacity-building of national justice and security systems*
- *Fostering national dialogue including with academic institutions, civil society groups and traditional actors on the interpretation of and guidance by Islamic law in post-conflict governance*

These issues will be further explored in follow-up conferences aimed at promoting mutual understanding between the Islamic and the Western world and to search for synergies and best practices in strengthening the rule of law in post-conflict societies.

Report by
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in cooperation with **CCCPA** and **CLJAS**



ZIF Rule of Law Training Program | AT A GLANCE

→ What is our aim?

The Program's key objective is to organize training courses and expert workshops in order to enhance the capacity of the Judicial Affairs Officers in United Nations peacekeeping operations that assist post-conflict societies re-build and strengthen their judicial and legal systems. The training program is delivered jointly by ZIF and the United Nations Department of Peacekeeping Operations (DPKO). It is the first comprehensive training program specifically designed for United Nations personnel working in the justice sector. The Program is funded by the German Federal Foreign Office since October 2009 and was extended until December 2013.

→ What is the context?

As the United Nations Secretary-General stated in his 2004 report on the rule of law and transitional justice in conflict and post-conflict societies, strengthening the rule of law is a key element of post-conflict peacebuilding. There are currently sixteen United Nations peacekeeping operations with over 200 judicial affairs officers mandated to assist national actors in re-establishing and/or strengthening their local legal and judicial systems. In order to carry out such mandates, DPKO Judicial Affairs Officers must possess highly specialized technical knowledge and excellent diplomatic skills to be able to work in challenging contexts and promote international norms and standards effectively and sustainably.

→ What do we do?

ZIF and DPKO jointly organize six-day rule of law training courses two times per year in the proximity of existing peacekeeping operations. The courses are based on a comprehensive instructor's manual which was developed by DPKO with the support of the Government of Canada. Expert workshops on rule of law issues of relevance to post-conflict societies bring together training facilities, trainers and rule of law experts and provide opportunities to exchange best practices and build synergies between various international rule of law assistance efforts.

→ What is our contribution to rule of law promotion?

Besides strengthening the professional competencies of United Nations Judicial Affairs Officers, the Program also helps to foster the analytical and operational capacities of the training facilities in developing countries where the courses and workshops are held. In addition, a limited number of lawyers and other relevant professionals from developing and conflict countries participate in the training courses as possible future providers of international rule of law assistance. With practice-oriented expert workshops and analysis products, the Program also contributes to a better understanding and more sustainable implementation of international rule of law assistance efforts.

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CCCPA

The Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa (CCCPA) was established in 1994 to promote peace and stability in Africa. It was originally part of the Institute for Diplomatic Studies but is now an independent institution affiliated with the Egyptian Ministry of Foreign Affairs. The Center aims to support peacekeeping operations in the African continent through a capacity-building approach, providing training for all those involved in peacekeeping, peace-building and conflict resolution. Its primary focus is on building African capacity, so that peacekeepers from Africa may assume a more active role in dealing with crises and conflicts on the continent.

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CLJAS

The Criminal Law and Judicial Advisory Service (CLJAS) was established at United Nations Headquarters in 2003 to support the implementation of rule of law, justice and corrections mandates of United Nations peace operations managed by the Department of Peacekeeping Operations (DPKO). In 2007 CLJAS became part of DPKO's Office of Rule of Law and Security Institutions (OROLSI). The Service is structured into a Justice Team, a Corrections Team and a Policy Cell who coordinate and oversee efforts by United Nations field missions to strengthen justice and corrections institutions.

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ZIF

The Center for International Peace Operations (ZIF) was founded in 2002 by the German government and parliament to strengthen civilian capacities for international peace operations. Its core mandate is to train and recruit civilian personnel and to prepare analysis and concepts for peacebuilding and peacekeeping. ZIF works closely together with the Foreign Ministry and is responsible in particular for Germany's UN, EU, and OSCE operations. The Center's integrated approach, bringing together training, human resources, and analysis under one roof, has gained worldwide recognition as an example to follow. Through joint projects with international partners, ZIF works to expand peacekeeping capacities and advance the theory and practice of peace operations.

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