

# Exploring the Contribution of Islam towards Global Governance Locating Ethics within the Discourse of Policy

**Mohammed Sinan Siyech**

*International Centre for Political Violence and Terrorism Research (ICPVTR)  
S. Rajaratnam School of International Studies (RSIS), Singapore  
[ismsiyech@ntu.edu.sg](mailto:ismsiyech@ntu.edu.sg)*

## **Abstrak**

*Makalah ini bertujuan untuk mengatasi masalah yang dihadapi oleh Global Governance: tidak adanya etika dalam kerangka pembuatan kebijakan. Tulisan ini berusaha untuk mengisi kesenjangan tersebut dengan membahas bagaimana pemikiran Islam dapat berkontribusi secara positif terhadap pembuatan etika etika dalam pemerintahan. Makalah ini akan dimulai dengan ikhtisar Global Governance dan tren intelektual historis dan terkini dalam bidang ini. Kemudian penulis akan memberikan gambaran tentang kesenjangan pengetahuan yang ada saat ini dalam pemerintahan global. Dari situ, makalah ini akan membahas peran etika dalam mengarahkan pemerintahan di seluruh dunia. Untuk melakukannya, ia akan mengeksplorasi literatur tentang Hubungan Internasional dan Agama yang mengkritik Tesis Sekularisasi Max Weber. Makalah ini kemudian membahas tentang Islam dalam hubungan internasional dengan memeriksa prinsip-prinsip etika yang mendukung disain hukum Islam. Ini dikenal sebagai 'Tujuan Hukum Islam' ('Maqasid ash Syariah'). Kemudian menggunakan prinsip-prinsip ini untuk memahami bagaimana Islam dapat berkontribusi pada dua aspek utama tata kelola global: (1) lingkungan dan (2) mobilitas manusia yang secara khusus berfokus pada pengungsi.*

**Kata Kunci:** *Global Governance, Etika, Islam, Krisis Lingkungan, Krisis Pengungsi*

## **Abstract**

This paper aims to tackle the problem that Global Governance is currently encountering: the absence of ethics within the framework of policy making. It seeks to fill this gap by discussing how Islamic thought can contribute positively towards the making the notion of ethics central in governance. The paper will begin with an overview of Global Governance and the historical and current intellectual trends within this field. It will then provide an overview of the knowledge gaps that currently exist in global governance. From there, the paper will discuss the role of ethics in directing governance across the world. To do so, it will explore the literature on International Relations and Religion that critiques Max Weber's 'Secularization Thesis'. The paper then takes forward the discussion of Islam in international relations by examining the ethical principles that underpin the design of Islamic law. This is known as 'Objectives of Islamic Law' ('Maqasid ash Shariah'). It then uses these principles to understand how Islam can contribute to two major aspects of global governance: (1) the environment and (2) human mobility specifically focused on refugees.

**Keywords:** *Global Governance, Ethics, Islam, Environmental Crisis, Refugee Crisis*

## INTRODUCTION

Global governance is a field that has become prominent over the past few decades due to the efforts of different entities across the world. There has been a surge in the literature that covers this particular field of policy across the world. Due to its relatively recent appearance, there have been many gaps and unexplored aspects, which make it a potent place to inject new ideas and infuse them with prevalent concepts.

One such combination that this paper will explore is the contributions that Islam as a religion can make towards better practises in the field of global governance. In this pursuit the paper is divided into two sections. The first section will seek to locate religion in global governance.

It will begin by giving an introduction to global governance, including its history and some major debates within the field. It will then illuminate the reader about gaps in global governance that exists today by charting out five gaps observed by Thomas G Weiss and underlying reasons for the existence of these gaps by Jim Whitman. From there on, the paper will discuss how ethics can play a strong role in directing governance across the world. To do so, it will explore the literature on International Relations and Religion, a field that is slowly gaining importance due to the post-modernist critiques of the 'Secularization Thesis' forwarded by Max Weber.

From here the paper goes into the second section where it furthers the case of religion in international relations with Islam in focus. Such a discussion warrants a historical examination as well which will be done with the help of some brief examples of good governance practices observed by historical caliphates. To bridge the gap between history and the present, the paper will look at the underlying principles of Islamic jurisprudence that fuelled these good practices.

These principles are best enshrined within the 'Objectives of Islamic Law' known as '*Maqasid ash Shariah*', a field within traditional Islamic scholarship that has been developed over the past few centuries. The principles that exist within these *Maqasid* will open the doors for understanding how Islam can be contribute to two major aspects of global governance, i.e. the environment and human mobility with a special focus on refugees.

The paper aims to tackle the problem that Global Governance is encountering in the present, that is the lack of ethics that exist within the framework of policy making. For this, it dwells on the main research puzzle which is; how can Islam as a religion contribute positively towards the discourse on aspects of ethics in governance? This is an especially important question to consider since religion in public and political space has not just survived the onslaught of criticisms from modernist thinkers such as Nietzsche and Weber, but has also picked up pace within the discourse of modern day politics.

It is pertinent to note that all religions have a mostly common underlying ethical framework within which they operate. Nonetheless, religious figures, scholarly interpretations and historical precedents cause differences in how ethics are perceived in each religion. In this backdrop, all religions have a lot to

contribute towards ethical directives in governance. However, due to the scope of the project, this paper is only going to cover the religion of Islam. I chose to do this because of the ferocity of criticisms as well as the absolute dismissal of any positive additions it can make towards a better world, that Islam has received.

It is also important to note that the paper does not discount the role that other religions play nor does it ignore the abuse of Islamic directives that have taken place over the centuries which is manifest in Muslim majority countries right now, issues that have been covered in other literature. This paper is meant to be a purely theoretical discussion which covers aspects of ideation, theology and governance. It will not try to prove the arguments through empirical means barring a few examples to illustrate the potency of the suggestions made.

## **UNDERSTANDING GLOBAL GOVERNANCE**

According to Thomas G. Weiss (a pioneer in the field), Global Governance refers to the "collective efforts to identify or address worldwide problems that go beyond the capacities of individual states".<sup>1</sup> Some of the issues that global governance would be concerned with include environmental problems, climate change, food security, financial regulation for world markets, the declining animal populations across the world and labour standards.

One of the tools to understand this system, according to Weiss, is to think of being able to provide infrastructure and services without the presence of a world government. According to him, it has been understood by various political scientists that the central point of analysis in understanding global politics and governance is the concept of state sovereignty and their hard (military and economic) and soft (cultural) power tools. He goes on to observe that a lot of analysts have ignored the amount of 'power' that is held by non-state actors across the world too and these have to be accounted for in the present discourse of actors who can influence global politics. In such a scenario, global governance can shift from the realm of the sovereign entity to that of the people.<sup>2</sup>

Within this backdrop he asserts that three major reasons explain why Global Governance has proliferated across the world. These are; 1) the growing interdependence of the world through trade and communication which has softened the boundaries of state sovereignty, 2) The increase in the number of Non-State Actors (NSA) who are capable of setting and enforcing new global regulations and 3) The loss of confidence in the idea of supra nationality which, in broad terms, also mean a global government.<sup>3</sup>

Global governance has made some headway in the past few years. There have been many collective steps that the governments across the world have been able to set and implement. Some of these include for instance, the Right to Protect (R2P), which has been argued as an imperative mechanism in the world of wars and genocide by some, the Paris accords on environmental norms, the

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<sup>1</sup> Weiss, Thomas G. 2013. *Global Governance: Why? What? Whither?* Cambridge: Polity.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

partial achievement of the Millennium Development Goals and other such important steps.

## **GAPS IN GLOBAL GOVERNANCE**

These steps however are dwarfed by the problems that the world is coping with. For every solution that is formulated, there are multiple new problems that crop up. The efforts of the global community have not been enough to address the various problems that are erupting from the modern day globalized world. According to Jim Whitman, a professor of Global Governance in the United Kingdom, the limits of global governance are mainly three. They are as follows:

1. The current system of global governance isn't neutral but rather an expression of power and interests. This has already cast doubts on the global system of addressing challenges. The inability of the global community to actively find a feasible solution to implement in the case of Syria due to the interests of the UN P5 members is just one proof of this.
2. Globally, the number of relations that are being formed across the world is increasing exponentially with the advent of technology and communication. This increase brings greater demands in our system leading to less comprehensive solutions for problems that affect people transnationally.
3. Humans are taking many steps that have many counterproductive side effects. As the distance covered and numbers increase, so too does the negative impact of the steps being taken up right now. This, as the professor notes, makes it much more difficult to tackle the problems by an already inadequate system.<sup>4</sup>

Thomas Weiss gives another framework for analysing the gaps that are present in the current governance system which is broader in nature than that of Jim Whitman's. He observes that the limits of the present system of global governance can come under any of the five gaps which are knowledge gaps, normative gaps, institutional gaps and compliance gaps.<sup>5</sup> These gaps according to him are filled by implementing various other steps that are not normally taken.

In the author's assessment, any framework for tackling global governance challenges has to be accompanied by a more fundamental change in attitude and approach. This change in attitude can only be achieved if the outlook adopted be ethical in nature. The importance of ethics in cannot be overstated in the present day discussion on global governance. As argued by Jordan and Gray, ethics and morality do not form the backbone of government and is in dire need of rescue from fading away.<sup>6</sup> The next section will examine in depth the nature of ethics within governance.

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<sup>4</sup> Whitman, Jim. 2005. *Limits of Global Governance*. London: Routledge.

<sup>5</sup> Weiss, Thomas G. 2013. *Global Governance: Why? What? Whither?* Cambridge: Polity.

<sup>6</sup> Gray, Sara R. Jordan and Philip W. 2011. *The Ethical of Public Administration: The Challenges of Global Government*. Texas: Baylor University Press.

## GLOBAL GOVERNANCE AND ETHICS

Ethics is a well debated topic within issues of global governance and encompasses the subject of moralism in international relations. Much like many other concepts dealt with on a global scale, such as terrorism and culture, the concept of ethics also has no definition that has been universally adopted.<sup>7</sup> According to some theorists, ethics grapples with the character of human beings which includes behaviour that can be considered good or bad/right or wrong. It assesses behaviour in comparison to set standards and puts values on it which are either negative or positive (Hanekom 1984).<sup>8</sup> These criteria can be written (through means of legislating actions, giving orders etc.) or just a person's understanding of what is approved and what isn't.

The prevailing view of ethics in present day international relations is that of the invalidity of moralism. According to realists like Hans Morgantheu, moral claims are dismissed as mere moralism or the rationalization of self-interest. Yet as some scholars note, moral foundation underlying the dealings of the public administration is an important ideal to strive towards (Garofalo 2008).<sup>9</sup>

Moralism in the international arena is best represented by international law according to the 19<sup>th</sup> century political scientist John Austin. He observed that because international law wasn't exactly enforceable, it was a declaration of acceptable and unacceptable norms that states should conform to rather than legal laws (Austin 1832).<sup>10</sup> Over the years, this assertion has not been disproved completely. Many a times, states have a tendency to follow international law when it suits their objectives and goals and do not conform to it when it doesn't. The best example of this is when the United States of America sent ground troops to Iraq before it had gained the approval of the United Nations (Klabbers 2013).<sup>11</sup>

In the analysis of this author, the lack of moral guidance within the administrations can have a trickledown effect on the public that a government is trying to govern. Take for example, the case of South Korea which displays a very high suicide rate of almost one person every 34 minutes. This, according to analysts, is caused by the large amount of social pressures and demands of the society around them (News 2016).<sup>12</sup>

Although the Korean government and various non-governmental organizations do their best to stop the large amount of deaths by suicide, these actions are mainly in reaction to the economic costs of deaths and therefore reactionary in nature. This is in addition to South Korea having the highest rate of alcohol consumption in the world which is measured to be twice the amount of its next ranked country, Russia. Alcohol consumption is spurred by many factors

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<sup>7</sup> Aye, Joseph. 1998. "Ethics in the Public Service." A paper delivered at the Second Pan - African Conference of the Ministers , Rabat .

<sup>8</sup> A, Hanekom J. 1984. *Technological Ethics, Social Ethic*.

<sup>9</sup> C, Garofalo and D, Geuras. Ethics in the Public Service the Moral Mind at Work. *Viešoji Politika Ir Administravimas*. 2008

<sup>10</sup> Austin, John. 1832. *The Province of Jurisprudence Determined*. London: Nabu Press

<sup>11</sup> Klabbers, Jan. 2013. "Law, Ethics and Global Governance : Accountability in Perspective." *New Zealand Journal of Public and International Law* 309-321.

<sup>12</sup> News, Vice. 2016. "On Patrol with South Korea's Suicide Rescue Team." *YouTube*. 02 May. Accessed 21 January, 2017. <https://www.youtube.com/watch?v=5jYBWBIE0U>.

including the complacency of the government, social culture and dealing with stress. While alcohol consumption isn't perceived as morally wrong, the excessive consumption causes many problems to Koreans including liver damage, financial loss and breakdown of the family structure (Gooch 2016).<sup>13</sup>

At the risk of over-simplifying a solution, if the government had moral underpinnings that kept in mind the mental, emotional and psychological wellbeing of its citizens apart from just economic advancement, the outcome could have been slightly different from what it was at present. For instance, if it were to stress on reducing the lobbying influence of alcohol companies in the country on purely moral grounds it could have avoided the problems the society faces. These preventive measures are in contrast to economic reasoning for stopping these problems, which are more reactionary in nature.

In trying to broach this topic of ethics and governance, there are many sources that one can look towards. Historically, philosophers and political theorists have grappled for long with the moral boundaries of the government. However, religion, which has been an entity central to the lives of billions of humans throughout history, also offers its own version of ethics. While it has been at odds with the secular governments of Europe through the past few centuries, there are commonalities between its objectives and those of governing bodies (Kirkpatrick 2013).<sup>14</sup>

In fact, many international modern laws trace their roots to religious ethics. According to Mark Janis, in the past century or so, religious roots have been separated from modern international law.<sup>15</sup> He states two reasons for this; firstly, because legal positivists have tried to turn the discipline of international law into a science and secondly, because many academics are cognizant of the mainly Christian roots of modern law and don't want to offend adherents of other religion whose religions may propound different ethics.

A case in point would be the Just War Theory, a principle that discusses the reasons for going to war and the amount of force that should be in war. This theory was developed by St. Augustine, a Christian philosopher in the 4<sup>th</sup> century CE, and was revised and expanded by Thomas Aquinas, a Christian Catholic priest in the 13<sup>th</sup> century.<sup>16</sup> Thus it would be useful to examine ethics propounded by religions other than Christianity to bring about a change in attitude given religion's influential reach across so many spectrums. This can be best done if we can disentangle and identify the most useful parts of ethics within religion.

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<sup>13</sup> Chao, Steve and Gooch, Liz. 2016. "The country with the world's worst drink problem". *Al Jazeera*. 07 February. Accessed 20 September 2017. <http://www.aljazeera.com/indepth/features/2016/02/country-world-worst-drink-problem-160202120308308.html>

<sup>14</sup> Kirkpatrick, Frank G. 2013. "The Role of Religious Ethics in Public Policy." *Huffington Post* . 08 September. Accessed 19 January , 2017. [http://www.huffingtonpost.com/frank-g-kirkpatrick/the-role-of-religious-eth\\_b\\_3718357.html](http://www.huffingtonpost.com/frank-g-kirkpatrick/the-role-of-religious-eth_b_3718357.html).

<sup>15</sup> Janis, Mark Weston. 1988. *Religion and International Law* . This was a speech given on 21 April, 1988 in the American Society of International Law.

<sup>16</sup> Brown, Gary D. 2011. "Proportionality and Just War." *Journal of Military Ethics* 171-185. Also see the following for more on Just War Theory : Oregon State University . 2002. "Augustine: Just War." *Great Philosophers*. Accessed 23 January , 2017. [http://oregonstate.edu/instruct/phl201/modules/Philosophers/Augustine/augustine\\_justwar.html](http://oregonstate.edu/instruct/phl201/modules/Philosophers/Augustine/augustine_justwar.html).

## RELIGION IN INTERNATIONAL RELATIONS

To understand how much of a role religion can play in advancing ethics within governance it is important to work out the place of Religion within International Relations. For this the paper directs the attention of the reader towards the literature that exists on the role of religion and growing secular nature of governance over the past few centuries.

One of the most popular theories that gained popularity in the debate on secularization and the receding role of religion was the 'Secularization Thesis' which was propounded by Max Weber, the 19<sup>th</sup> century philosopher and political theorist. This theory stated that as humanity evolved and rationality became the corner stone of society, humans were inevitably going to discard religion from the space of politics and eventually social life itself.<sup>17</sup> This theory has evolved over time and taken different shapes and forms with many implications. Theorists have propounded some global implications of this secularization theory which are as follows:

1. The number of believers will reduce as the world grows more peaceful
2. The different wars that take place will not be between followers of different religions
3. There would a large decline in the number of wars fought for religious reasons.<sup>18</sup>

On all three counts, various observers have disproved these causalities which in turn disprove the larger thesis on secularization. Assef (Moghadam 2003) had proved how followers of different religion with a few exceptions such as Buddhism (1.04%) and Judaism (.81%) had grown over the world average growth rate of humans (2.2%). On the other hand, the records indicate that Atheists and Agnostics had grown at a far smaller rate than the global average (an average of 0.8%) (Goodstein 2012) (Desch 2012).<sup>19</sup>

The second implication was also disproved by academics such as Michael C. Desch who observed that ever since 1823 the general trend has been toward more wars involving different religious actors on either side.<sup>20</sup> Finally, while Michael also clarified that reasons for going to war cannot be completely

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<sup>17</sup> William H. Swatos, Jr. and Kevin J. Christiano. 1999. "Secularization Theory: The Course of a Concept." *Sociology of Religion* 209-228.

<sup>18</sup> Desch, Micahel C. 2012. *The Coming Reformation of Religion in International Affairs? The Demise of the Secularization Thesis and the Rise of New Thinking about Religion*. Religion and International Relations: A Primer for Research, Paris: University of Notre Dame.

<sup>19</sup> Moghadam, Assaf. 2003. *A Global Resurgence of Religion?* Unpublished paper, Weatherhead Initiative Project on "Religion and Global Politics."

Also see Goodstein, Laurie. 2012. "Study Finds One in 6 Follows No Religion." *New York Times*. 18 December. Accessed 19 January, 2017. [http://www.nytimes.com/2012/12/18/world/pew-study-finds-one-in-6-follows-no-religion.html?\\_r=0](http://www.nytimes.com/2012/12/18/world/pew-study-finds-one-in-6-follows-no-religion.html?_r=0).

The previous publication by Desch also has a discussion on the same: Desch, Micahel C. 2012. *The Coming Reformation of Religion in International Affairs? The Demise of the Secularization Thesis and the Rise of New Thinking about Religion*. Religion and International Relations: A Primer for Research, Paris: University of Notre Dame.

<sup>20</sup> Desch, Micahel C. 2012. *The Coming Reformation of Religion in International Affairs? The Demise of the Secularization Thesis and the Rise of New Thinking about Religion*. Religion and International Relations: A Primer for Research, Paris: University of Notre Dame.

compartmentalized, the role of religions could definitely be found in the intra state wars that have taken place over the past few decades.<sup>21</sup>

Other discontents of the secularization thesis are quite post-modern in nature. While the secularization thesis forwarded by Weber gained a lot of support within the western and particularly European nations, its application outside these states post the renaissance of the 18<sup>th</sup> century, was not so consistent.<sup>22</sup> This assertion has been made by other scholars such as Wilson (1998) who noted that secularization occurs at different paces in different regions and it is problematic to categorize the western model as the gold standard that the rest of the world will adopt.<sup>23</sup>

This mismatch in application of the secularization theory was because it was conceived in a time when the European nations were more centric to the discourse of international politics. This in itself is testimony to ignorance of other regions such as the Middle East or even the Indian sub-continent where religion was playing a rather large role all the way into the 20<sup>th</sup> century. For example, as had been noted by Eva Belling: "the tendency to ignore religion can be traced to the ... theoretical inspiration drawn from the works of Weber, Durkheim, and Marx. All three theorists believed that religion was a pre-modern relic, destined to fade with the advance of industrialization, urbanization, bureaucratization, and rationalization."<sup>24</sup>

It is quite pertinent to note that all these three philosophers were mainly debated their arguments in the western world and would, presumably, be ill-informed about the relationship between religion and politics within the non-western world. Such a dismissal of non-western sources of knowledge is also present in general international theory with western literature forming the bulk of core IR theory (Buzan 2010).<sup>25</sup>

Academic literature on, the contribution of religion to politics and its presence has largely focussed on Christianity due to its dominant political presence in the past millennium. Lesser attention has been given to the role of other religions such as Buddhism, Jainism, Zoroastrianism etc. One such religion that can and has been relevant in this discussion is Islam, which has a long history of being present within political centres of influence in the Middle East and the African regions. As argued by Crone, Islam has portrayed a fervour in governmental advice that is matched by very few other traditions particularly due to its understanding of salvation, which lies in the moral leadership of the

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<sup>21</sup> Ibid

<sup>22</sup> Hurd, Elizabeth Shakman. 2007. *The Politics of Secularism in International Relations*. New Jersey: Princeton University Press.

<sup>23</sup> Wilson, Bryan. 1998. "The Secularization Thesis: Criticisms and Rebuttals." In *Secularization and Social Integration: Papers in Honor of Karel Dobbelaere*, by Karel Dobbelaere, 45-67. Leuven: Leuven University Press.

<sup>24</sup> Bellin, Eva. 2008. "Faith in Politics. New Trends in the Study of Religion and Politics." *World Politics* 315-347.

<sup>25</sup> Buzan, Amitav Acharya and Barry. 2010. "Why is there no non-Western international relations theory? An introduction." In *Non-Western International Relations Theory: Perspectives on and beyond Asia*, by Amitav Acharya and Barry Buzan, 1-26. New York: Routledge.



caliph (ruler).<sup>26</sup> The paper now directs the attention of the reader to Islamic governance and its basis.

## ISLAMIC GOVERNANCE THROUGHOUT HISTORY

The conceptualization of God in the field of governance in Islam was physically manifested in the system of the caliphate. The 'Caliph' is an Arabic term which means a successor. The validity of the caliphate was recorded in the authentic statements of the Prophet Mohammed. Throughout history the Abbasid, the Umayyad, the Fatimid, the Saffavid and the Ottoman Empires upheld this tradition of Islam.<sup>27</sup> While they could not be called a caliphate in the strictest interpretation of the word, they still purported to conform to divine ordinances outlined in the Quran and the statements of the Prophet.

With the fall of the Ottoman Empire in 1924, a process that was well in the works for over a few decades, there came about the rise of many pro caliphate movements such as the Khilafat movement in British India and the Cairo meetings.<sup>28</sup> While these groups did gain some traction initially, the support for the groups soon died down especially with the advent of the Second World War, the creation of Israel in 1948 and the different Arab- Israeli wars.

In the present world, there are negligible chances of restoring such a caliphate to the forefront of international politics. According to Olivier Roy, all the movements that did try to resurrect the caliphate have failed spectacularly and the idea of any form of political Islam is bound to be met with criticism and failure.<sup>29</sup>

Despite the low chances of reviving such a global form of governance once again, the Islamic caliphate has witnessed many examples of governance guided by ethical considerations. For example, Islamic civilization led by the caliphates were known for their spirit of tolerance. This was reflected in the observation of leading scholars on Islam like Gibb who marvelled at how Islamic civilisation united various races of humanity according to equal opportunity.<sup>30</sup> This view was also shared by another scholar Thomas Arnold (1913) who noted that due to Qur'anic principles, forced conversion was strictly forbidden in Islamic regions leading to the peaceful existence of minorities under Islamic rule.<sup>31</sup>

Currently the persecution of minorities like Ahmadiyahs in Muslim majority Pakistan bear witness to the abuse of Islamic principles.<sup>32</sup> Yet it is important to

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<sup>26</sup> Crone, Patricia. 2005. *God's Rule - Government and Islam: Six Centuries of Medieval Islamic Political Thought*. Columbia: Columbia University Press.

<sup>27</sup> Nanji, Malise Ruthven and Azim. 2004. *Historical Atlas of Islam*. Massachusetts: Harvard University Press.

<sup>28</sup> 1924. "The Abolition of the Caliphate." *The Economist*. 08 March. Accessed 18 January, 2017. <http://www.economist.com/node/11829711>.

<sup>29</sup> Roy, Olivier. 1998. *The Failure of Political Islam*. Cambridge: Harvard University Press.

<sup>30</sup> Gibb, Hamilton Alexander Rosskeen. 1932. *Whither Islam? A Survey of Modern Movements in the Moslem World*. New York: AMS Press.

<sup>31</sup> Arnold, Thomas Walker. 1913. *The Preaching of Islam: A History of the Propagation of the Muslim Faith*. London: Constable and City.

<sup>32</sup> Khan, Nida Kirmani and Ajaz Ahmed. 2008. "Does Faith Matter: An Examination of Islamic Relief's work with Refugees and Internally Displaced persons." *Refugee Survey Quarterly* 41-50.

locate the source of Islamic laws as well as its spirit to pick out plausible contributions it could make towards governance.

### **MAQASID ASH SHARIAH: THE PHILOSOPHY OF ISLAMIC LAW**

Traditional law making in Islam has five major sources depending on the school of jurisprudence that is being followed. The sources of law and legislation in Islam is the a) Quran, b) the Hadith (saying /actions of the prophet), c) the consensus of scholars, d) the independent reasoning of scholars and e) logical analogy.<sup>33</sup> Some scholars also add other sources of legislations such as local customs and the liturgical actions of the inhabitants of the Prophet's city (Philips 1983).<sup>34</sup>

The jurisprudence that is legislated through the works of Islamic scholars of the past were done keeping in mind certain underlying principles called the 'Objectives of Islamic Law' termed as *Maqasid ash Sharia*. It was a discipline that slowly evolved over many years and its main goal was to find answers to the reasoning behind legislations given by God and his prophet. The *Maqasid ash Sharia* includes wisdoms of laws, achieving good ends for a society of believers and other such functions. Thus, these *Maqasids* would explain the commandments of charity as a means of promoting social economic welfare and reducing inequality.<sup>35</sup>

Traditional Classifications of the *Maqasid* have divided them into the following levels.

1. Necessities
2. Needs
3. Luxuries

These classifications have been made famous by the 10<sup>th</sup> Century Muslim Imam Abu Hamid al Ghazali who outlined that the Sharia came to preserve five things viz; religion, life, intellect, wealth and progeny. Some scholars also add honour to this list due to the strong focus on maintaining the honour of a tribe/person in the Arab culture. While examples of reasoning the purposes of these rules have been found in the practises of the companions of the prophet all the way to the 7<sup>th</sup> century, the field never stayed static.<sup>36</sup>

According to Jasser Auda, this discipline went through three major phases which are early centuries of Islam (first to fifth Islamic centuries coinciding with the seventh to twelfth century AD<sup>37</sup>), the fifth to the eighth Islamic century (coinciding with the twelfth to fifteenth century AD) and the contemporary stage

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<sup>33</sup> Kamali, Mohammad Hashim. 2008. *Shari'ah Law: An Introduction*. Oxford: Oneworldbooks.

<sup>34</sup> Philips, Bilal. 1983. *The Evolution of Fiqh (Islamic Law & The Madh-habs)*. Saudi Arabia: International Islamic Publishing House.

<sup>35</sup> Auda, Jasser. 2007. *Maqasid Ash Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought.

<sup>36</sup> Ibid

<sup>37</sup> Muslims use an alternate calendar known as the Hijri calendar which begins with the year 622 AD. For more information, see: <http://www.ibtimes.co.uk/islamic-new-year-2014-history-behind-hijri-calendar-year-1436-ah-1471593>

where new age Islamic scholars have crafted contemporary versions of the *Maqasid* which include concepts like human dignity, social welfare and so on.<sup>38</sup>

The classification of divine objectives by the Islamic Scholars is very similar to the 'Hierarchy of Needs' proposed by the twentieth century psychologist Abraham Maslow.<sup>39</sup> According to Maslow, Human needs range from basic physiological requirements and safety, to love and esteem, and to 'self-actualisation. Interestingly, just like the *Maqasid ash Shariah*, this hierarchy of needs also went through an evolution going from a five tiered range in 1943 to a seven tiered range in 1970 (Auda 2007).<sup>40</sup>

Despite the similarity of these two models, Maslow's hierarchy has been used primarily in management and psychology while the *Maqasid ash Shariah* has been used for jurisprudential and governance purposes. In the present context of global governance, it is quite appropriate to use the tools provided by the *Maqasid* (objectives) to formulate and guide any policy. This is one way of bridging the gap between ethics and governance in the international arena. To do so, the paper will take two major issues that concern the global community and provide directives of how Islamic fundamental laws would be dealing with these issues. The first issue is that of the Environment/ Ecology and the second is that of human migration across the world. With this pursuit it is also important to recognize that there are many other fields that the paper could explore such as labour laws, animal rights, financial regulations and the likes. However, since the paper is not meant to be exhaustive in nature, it will only look at these two fields.

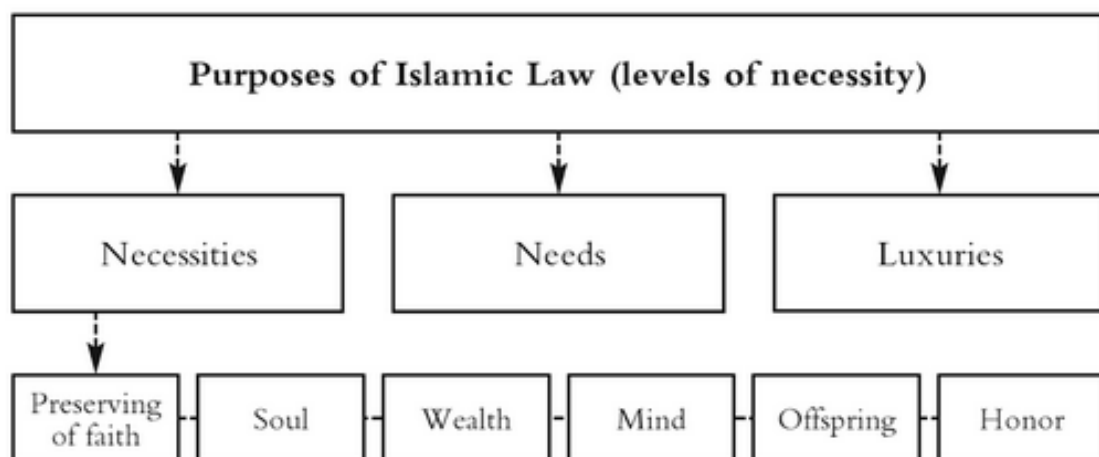


Chart 1. Hierarchy of the purposes of the Islamic law (dimension of levels of necessity)<sup>41</sup>

<sup>38</sup> Auda, Jasser. 2007. *Maqasid Ash Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought.

<sup>39</sup> Jr., Paul Hayashi. 2015. "Tattvabodha and the hierarchical necessity of Abraham Maslow." *Journal of Management, Spirituality & Religion* 82-93.

<sup>40</sup> Auda, Jasser. 2007. *Maqasid Ash Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought.

<sup>41</sup> Taken from Auda, Jasser. 2007. *Maqasid Ash Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought.

## Islam and the Environment

The Earth today has been facing the worst environmental problems in its history of existence. According to the World Economic Forum, issues like food security and unsustainable growth are a major concern for the world at the moment. This is coupled with other problems such as air pollution, species extinction, climate change, overpopulation and soil degradation. The extent of the problems faced by the earth is massive.

The Millennium Development Goals developed in the year 2000 were some environmental goals that were to be reached by the 2015.<sup>42</sup> The results were mixed at best and despite the development of the next set of goals termed the Sustainable Development goals, there are still many problems that the international community is facing at this point. It still remains to be seen if these goals will be reached in by the year 2030.

Commentators have provided five major reasons why Muslims would have to adhere to environmental concerns in their daily behaviour. These are as follows; firstly, the environment is God's creation. Secondly, the adherence to environmental concerns helps develop awareness of the creator of the environment, a recommended practise to attain piety in Islam. Thirdly, all of creation is under the protection of human beings which is a religious responsibility. Fourthly, the protection of the environment comes into the general practise of anything that is good (khair) which is a legislated matter, and lastly because Muslims are instructed to deal with their surroundings with justice rather than with greed.<sup>43</sup>

One of the chief contributors to the rise of environmental problems has been capitalism which has ploughed through ecological boundaries without concerns, in search for profits.<sup>44</sup> (Juniper 2014) Furthermore this has only encouraged mass consumerism which nudges the average middle class humans to consume materials wastefully (Shah 2005).<sup>45</sup> All of these excesses that the humans engage in, point out to behavioural issues and negligence of concern for the earth that result in these mass disparities.

This is where one can use the above mentioned objectives forwarded by Islam to tackle the problems of the environment.<sup>46</sup> As put forward by Llewellyn

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<sup>42</sup> Sheehy, Achilleas Galatsidas and Finbarr. 2015. "What have the millennium development goals achieved?" *The Guardian*. 06 July. Accessed 12 January, 2017. <https://www.theguardian.com/global-development/datablog/2015/jul/06/what-millennium-development-goals-achieved-mdgs>.

<sup>43</sup> Dien, Mawil Izz. 2003. "Islam and the Environment: Theory and Practise." In *Islam and Ecology: A Bestowed Trust*, by Frederick M. Denny and Azizan Baharuddin Richard C. Foltz, 109-120. Massachusetts: Harvard University Press.

<sup>44</sup> Juniper, Tony. 2014. "Capitalism v Environment: Can Greed Ever Be Green?" *The Guardian*. 26 November. Accessed 01 January, 2017. <https://www.theguardian.com/sustainable-business/2014/nov/26/capitalism-environment-green-greed-slow-life-symposium-tony-juniper>.

<sup>45</sup> Llewellyn, Othman Abd-ar Rahman. 2003. "The Basis for a Discipline of Islamic Environmental Law." In *Islam and Ecology: A Bestowed Trust*, by Frederick M. Denny and Azizan Baharuddin Richard C. Foltz, 185 - 215. Massachusetts: Harvard University Press.

<sup>46</sup> As previously mentioned, other religions have their own framework to advance ethics into the discourse on environment. For more information on this, one can refer to the books "Christianity and Ecology" edited by Dieter T. Hessel and Rosemary Radford Ruether and "Hinduism and Ecology" edited by Christopher Key Chapple and Mary Evelyn Tucker.

(Llewellyn 2003) the reason for the preservation of the five necessities is to fulfil the objective of maintaining the welfare of all creation (Masalih al Khalq).<sup>47</sup> The creation, according to him, encompasses non-sentient beings including all animals and plants. Thus according to him, if one were to apply these principles, it would help to efficiently reduce the amount of wastage that is done in this world.

Thus, the welfare of creation is what prompted the Prophet Mohammed to stop his followers from using excess water from a river for religious purposes. The fact that no water would get wasted if it were to be used from a flowing river was to emphasize on the responsibilities of the consumer regardless of the supply from the producer.<sup>48</sup> This attitude of abstaining from what is not needed regardless of how much exists is enshrined in the concept of asceticism termed as Zuhd in Arabic.

As some commentators are propounding, the concept of Zuhd (asceticism) is an antidote to the culture of consumerism that has proliferated across the world.<sup>49</sup> Zuhd means to abstain from taking all things that are unnecessary to for human beings. Many reports state that this was a highly recommended attitude that the Prophet Mohammed encouraged among his companions. If translated on a national and subsequently global level, this concept of Zuhd can have the potential to benefit millions of people across the world and put an end to the wasteful culture of consumerism. The problem is recognized as one of attitude that can help mitigate larger environmental crises if applied well.

## Islam and Mobility

In the present day, some of the most defining political events of the year 2016 have centered on migration or have discussed it quite extensively. In Britain, immigration was a key causes of concern and fear among the people leading to the exit of Britain from the European Union (Travis 2016).<sup>50</sup> Similarly, in the United States of America, One of President Trump's greatest campaign promises was to keep out illegal immigrants, one that he evidently made good on with the signing of the executive order to build a wall bordering Mexico and banning citizens from seven Muslim countries.<sup>51</sup>

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<sup>47</sup> Shah, Anup. 2005. "Effects of Consumerism." *Global Issues*. 10 August. Accessed 12 January, 2017. <http://www.globalissues.org/article/238/effects-of-consumerism>.

<sup>48</sup> The narration on the prophet's instructions regarding not wasting water is from Sunan ibn Majah in the chapter: 'Book of Purity'. Guidelines on Environmental work is from the book: Ozdemir, Ibrahim. 2003. "Towards an Understanding of Environmental Ethics from a Qur'anic perspective." In *Islam and Ecology: A Bestowed Trust*, by Frederick M. Denny and Azizan Baharuddin Richard C. Foltz, 3-29. Massachusetts: Harvard University Press.

<sup>49</sup> Faris, Mohammed. 2010. "Zuhd: An Anti-dote to Consumerism Culture." *Productive Muslim*. 28 December. Accessed 17 January, 2017. <http://productivemuslim.com/zuhd-an-anti-dote-to-consumerism-culture/>.

<sup>50</sup> Travis, Alan. 2016. "Fear of immigration drove the leave victory – not immigration itself." *The Guardian*. 24 July. Accessed 29 January, 2017. <https://www.theguardian.com/politics/2016/jun/24/voting-details-show-immigration-fears-were-paradoxical-but-decisive>.

<sup>51</sup> Waldman, Paul. 2017. "Trump's secret plan to make Mexico pay for a border wall, revealed." *The Washington Post*. 27 January. Accessed 28 January, 2017. <https://www.washingtonpost.com/blogs/plum-line/wp/2017/01/27/trumps-secret-plan-to-make->

This trend of anti-immigrations fear was also one reflected in the expressions of the Europeans, a sentiment that was expressed most vehemently during the refugee crisis of 2016.<sup>52</sup> Many countries tried to close borders and bar refugees from coming in in for fear of dilution of the European identity and perpetration of terrorist attacks.<sup>53</sup>

This fear arises from the misunderstood concept of 'rootedness' that has been understood as the norm of human civilization. According to Stephen Greenblatt, Sociological literature has a tendency to assume that subjects of study, in its most pristine form, are stable.<sup>54</sup> He argued that, this understanding is flawed and that mobility was the norm among human beings rather than the exception.

Yet despite this mobility being a constant habit of human beings, contemporary mobility has its own distinct features that require some amount of examination. As observed by Pritchard modern mobility is more intense than traditional mobility.<sup>55</sup> A large amount of migration is undertaken by people from developing regions to developed countries such as the Gulf States, The United States, Europe, Canada, and Australia and so on.

Furthermore, modern mobility is also largely driven by economic needs. More workers travel to other countries in search of better financial opportunities. These migrants include both skilled and unskilled labour. Another distinct factor that fuels modern migration is safety. The amount of asylum seekers and refugees have increased to the point where some reports observe that there may be more refugees than voluntary migrants in a few years (Pritchard 2008).<sup>56</sup> This flow of refugees is also amplified due to the presence of better communication means. For instance, the instant messaging application, WhatsApp has been termed as the lifeline and the strongest supporting factor for Syrian refugees travelling to Europe due to its image sharing service and mass connectivity.<sup>57</sup>

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mexico-pay-for-a-border-wall-revealed/?utm\_term=.0b6a158512b1. For more on the Muslim ban refer to the following article: Krol, James Roth and Charlotte. 2017. "Everything you need to know about Donald Trump's 'Muslim ban'." *The Telegraph*. 30 January. Accessed 30 January, 2017. <http://www.telegraph.co.uk/news/2017/01/29/everything-need-know-donald-trumps-muslim-ban/>.

<sup>52</sup> Dearden, Lizzie. 2016. "Refugee crisis: European leaders blamed for record high deaths in the Mediterranean." *The Independent*. 16 November. Accessed 29 January, 2017. <http://www.independent.co.uk/news/uk/home-news/refugee-crisis-closing-borders-people-smugglers-human-trafficking-mediterranean-deaths-record-a7391736.html>.

<sup>53</sup> Arosaei, Aida. 2015. "Muslim Refugees in Europe: An Existential Threat?" *RSIS Commentaries*. 28 September. Accessed 16 January, 2016. <https://www.rsis.edu.sg/rsis-publication/icpvtr/co15203-muslim-refugees-in-europe-an-existential-threat/#.WItDRdJ94dU>.

<sup>54</sup> Stephen Greenblatt, Ines Županov, Reinhard Meyer-Kalkus, Heike Paul, Pál Nyíri, Frederike Pannewick. 2012. "Cultural Mobility: An Introduction." In *Cultural Mobility: A Manifesto*, by Stephen Greenblatt, 1-24. Cambridge: Cambridge University Press.

<sup>55</sup> Pritchard, Elizabeth. 2008. "Religion, Mobility and Conflict." In *The Ethics of Mobilities: Rethinking Place, Exclusion, Freedom and Environment*, by Tore Grieco and Professor Margaret Sigurd Bergmann, 195-220. Singapore: Taylor and Francis.

<sup>56</sup> Ibid

<sup>57</sup> Manjo, Farhad. 2016. "For Millions of Immigrants, a Common Language: WhatsApp." *The New York Times*. 21 December. Accessed 23 January, 2017. [https://www.nytimes.com/2016/12/21/technology/for-millions-of-immigrants-a-common-language-whatsapp.html?\\_r=0](https://www.nytimes.com/2016/12/21/technology/for-millions-of-immigrants-a-common-language-whatsapp.html?_r=0).

Moral claims to opening borders for these refugees who, in many cases, are escaping inevitable death in their countries is quite valid. Although such considerations should be the primary focus of any debate on this topic, they are generally put on the back burner for economic and security reasons.<sup>58</sup> In fact, the opposition of refugees, as the European and American responses have shown, has only grown stronger with the protraction of the Syrian war.

This behaviour is in direct contradiction to the ethical directives provided by the *Maqasid ash Shariah* on the preservation of life (as well as human dignity). The Quran constantly describes the Earth as wide and expansive and implicitly suggests in a few places how humans should travel and settle in regions other than their own homelands.<sup>59</sup> This is best conceptualized as Hijrah which roughly translates to migration.<sup>60</sup> While this concept is more about migration for the sake of practising religion, it does not forbid migration for the other purposes. In fact Muslim societies have also witnessed a trend of scholars travelling for knowledge and education as well as for trade purposes.<sup>61</sup>

Furthermore, Qur'anic directives that encourage migration also contain an important message to the rulers of lands that people migrate to; mobility is a right that humans can avail as a species and the ruler is to ensure that these migrants are accorded what is due for them (Isotalo 2014).<sup>62</sup>

Such contradictions that exist in the conventional treatment of refugees and the stated guidelines in embracing refugees arise from a very fundamental flaw in understanding. In the current systems refugees or forced migrants are understood as symbols of universal suffering' or 'shared humanity'. This narrative is counterproductive since this reduces refugees to passive and powerless groups with no real tradition or history. The Qur'anic directives on the other hand, view refugees differently.<sup>63</sup> The Qur'an explicitly states that God has honoured the son of Adam and this honour is bestowed regardless of race, gender, religion or caste. In this understanding a refugee who has fled the country of his origin is not a helpless victim of circumstance but rather a person who has taken an assertive choice to protect his life (and that of his families).<sup>64</sup>

Within this framework of understanding the *Maqasid ash Shariah* then directs the entities being asked asylum (example: The European nations) to have certain principles while dealing with refugees. These are (1). The right to

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<sup>58</sup> Werbach, Kevin. 2015. "The Ethics of the Syrian Refugee Crisis." *Penn Wharton University of Pennsylvania : Public Policy Initiative*. 07 December. Accessed 25 January, 2017.

<https://publicpolicy.wharton.upenn.edu/live/news/1088-the-ethics-of-the-syrian-refugee-crisis>.

<sup>59</sup> See Chapter 4, Verse 97 in the translation of the Quran. For more information: Refer to Tafseer ibn Katheer (Exegesis of the Quran)

<sup>60</sup> Although Hijrah has been historically meant to exhort Muslims to move away from Non-Muslim lands, the understanding in the contemporary era is to move towards places with moral righteousness. For more information on the concept of Hijrah Refer to: <http://www.dar-alifta.org/Foreign/ViewArticle.aspx?ID=1798&CategoryID=5>

<sup>61</sup> Isotalo, Anita H. Fábos and Riina. 2014. "Introduction: Managing Muslim Mobilities—A Conceptual Framework." In *Managing Muslim Mobilities: Between Spiritual Geographies and the Global Security Regime*, by Anita H. Fábos and Riina Isotalo, 1-20. New York: Palgrave Macmillan .

<sup>62</sup> Ibid

<sup>63</sup> Khan, Nida Kirmani and Ajaz Ahmed. 2008. "Does Faith Matter: An Examination of Islamic Relief's work with Refugees and Internally Displaced persons." *Refugee Survey Quarterly* 41-50.

<sup>64</sup> Kidwai, Sadia Najma. 2014. *The Rights of Forced Migrants in Islam*. Research Paper, Birmingham: Islamic Relief Worldwide.

protection (2) The right to non-refoulement (forced return to persecutor) (3) The right to dignity (4) The right to non-discrimination (5) The right to freedom of religion (6) The right to have their physical needs met (food, shelter, clothing and economic provision) (7) The right to have property and funds protected (8) The right to non-separation from family and finally (9) The rights of vulnerable groups.<sup>65</sup> All of this stems from the above mentioned principle of *Maqasid ash Shariah* which calls for the prevention of human life and dignity.

There is some historic manifestation of such principles being practised previously by Islamic nations. For example centuries of Jewish – Muslim history have witnessed Jews fleeing to Muslim lands to escape persecution from their original homelands.<sup>66</sup> As John Locke, the father of modern liberal thought, observed in his letter concerning toleration, Muslim countries unlike European nations had a strong history of accommodating and treating immigrants and believers of other religions in his period (Locke 2011).<sup>67</sup> Although this practise still does not resonate as strongly as in the past, there are still remnants of the attitude present in some of the Muslim countries of the present day (Lewis 2001).<sup>68</sup>

While it would be fallacious to point out that no non-Muslim country takes in refugees, the majority of refugees are housed in three Muslim majority countries viz Lebanon, Turkey and Pakistan. The total refugees in these three countries amount to almost 6 million which is roughly about one third of the global refugee population.<sup>69</sup>

The reasons for taking these refugees range from compassionate to political to geographical. More importantly, even though the Muslim countries have barred refugees such as Pakistan, they have done so on purely logistical grounds as opposed to the European nations who have done this in fear of losing their identity. In a way, this acceptance of refugees presents an image of the society that the objectives of the Shariah espouse; a society that embraces immigrants and those seeking safety, as a moral imperative.

This would be the ethical basis that would take precedence over the biases that many nations presently operate under. To be sure many regulations do exist within the European conventions regarding the treatment of refugees, but there is a certain gap in application of laws as well as the lack of a moral

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<sup>65</sup> Ibid

<sup>66</sup> Gilbert, Martin. 2011. *In Ishmael's House: A History of Jews in Muslim Lands*. Connecticut: Yale University Press.

<sup>67</sup> Taken from 'A Letter Concerning Toleration' written by John Locke and Translated by Merchant Books.

<sup>68</sup> Lewis, Bernard. 2001. *The Multiple Identities of the Middle East*. Tel Aviv: Schocken Publishers.

<sup>69</sup> See the following for more data on from the UNHCR:

- NHCR. 2016. "Lebanon." *Syrian Refugee Response*. 30 September. Accessed 13 January, 2017. <http://data.unhcr.org/syrianrefugees/country.php?id=122>.
- UNHCR. 2017. "Syria." *Syrian Regional Refugee Response*. 12 January. Accessed 23 January, 2017. <http://data.unhcr.org/syrianrefugees/country.php?id=224>.
- —. 2016. "UNHCR in Pakistan: An enduring partnership." *UNHCR: The UN Refugee Agency (Pakistan)*. Accessed 23 January, 2017. <http://unhcrpk.org/>.



compass within some of the laws provided.<sup>70</sup> If one were to examine the above nine principles and compare them to the present treatment of refugees (both in Muslim and non-Muslim lands), there is a clear institutional problem of perception that underlies and ultimately affects the treatment of refugees.

## CONCLUSION

Global Governance faces many challenges especially in the field of formulating and applying policy. This paper tried to chart out all of this by first laying the conceptual base for understanding, global governance, and its gaps which the paper identified as ethical concerns. The paper then tried to give the reader an understanding of ethics in governance and how religions have their own ethical directives.

Moving the spotlight towards the religion of Islam, the paper tried to engage in two issues that global governance has to deal with viz environmental concerns and mobility of humans, specifically singling out refugees. The paper stressed on the importance of a better approach and attitude that Islamic principles bring about through the *Maqasid ash Shariah* and showed how there are many lessons that can be derived from this religion to inject ethical consideration in dealing with both environment and migration (specifically refugees).

Currently, problems such as capitalism, open racism and discrimination resulting in closed borders, lack of financial regulation leading to economic crises, are very prevalent across the world. These can be better addressed if ethics play a larger role in formulating policy. Achieving such ventures can be done by using any religion due to the commonly stated objectives of peace, goodwill and stability propounded by them. In this regard, Islam is one of the tools that we have used to address this gap that lies in global governance although it isn't the only one.

It is important to note that on account of the secular nature of most governing countries, the adoption of a religious framework towards a solution for global governance is not entirely possible. Yet the characteristics and attitudes mentioned above permeate across different spectrums. Developing these attitudes is more of a behavioural ambition rather than a religious one.

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<sup>70</sup> Lax, Elspeth Guild and Violeta Moreno. 2013. *Current Challenges for International Refugee Law, with a Focus on EU Policies and EU Co-Operation with the UNHCR*. Briefing Paper, Brussels: Directorate-General for the External Policies of the Union.

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