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“Integrating an Islamic Perspective into Constitution-Making in Post-Conflict Countries”

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## Integrating an Islamic Perspective into Constitution-Making in Post-Conflict Countries

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*The constitutional process plays an important role in peaceful political transitions and is a central component of post-conflict peacebuilding. Both process and substance are critical for the success of a constitution. The drafting of a constitution encompasses a debate on important and sensitive issues, which leads to lasting consequences for the state and its citizens. Hence, the way a constitution is produced, not only its content, is highly significant for the country’s future. Although it must be nationally owned and led, international actors increasingly play a significant role in assisting such processes by providing normative and technical advice. As a generic model of peacebuilding based solely on Western values failed to address the conflicts arisen in the past decades, academics and practitioners are seeking to develop peacebuilding strategies tailored upon local methods of conflict resolution. More and more religious teachings have been shaping the peacebuilding on the ground. Therefore, there is a growing demand to study religion not as the cause of war but as a mechanism to build peace. Albeit still downplayed by the literature, some practitioners and scholars have signalized the need to include an Islamic perspective into conflict resolution within an Islamic context. Islam is abounding with teachings and practices of nonviolence and peacebuilding, thus more attention must be brought to the valuable potential of Islam to overcome social and political conflicts. Hence, against this backdrop, the paper aims to provide an overview of how Islam can support and guide a comprehensive constitutional design and should be embedded in the constitution-making process in Arab and Muslim post-conflict countries.*

Keywords: peacebuilding, constitution-making, international assistance, Islamic perspective

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## 1. Introduction

A major challenge faced by the international community is how to provide effective and meaningful assistance during the transition from war to peace. For the success of an initiative aiming to restore peace and security in a country, it is essential to put forward many steps to create an appropriate foundation for governance, including the writing or reform of a constitution.

The constitutional process plays an important role in peaceful political transitions and is a central component of post-conflict peacebuilding. Both process and substance are critical for the success of a constitution. The drafting of a constitution encompasses a debate on important and sensitive issues, which leads to lasting consequences for the state and its citizens. Hence, the way a constitution is produced, not only its content, is highly significant for the country’s future.

Although it must be nationally owned and led, international actors increasingly play a significant role in assisting such processes by providing normative and technical advice. As a generic model of peacebuilding based solely on Western values failed to address the conflicts arisen in the past decades, academics and practitioners are seeking to develop peacebuilding strategies tailored upon local methods of conflict resolution. More and more religious teachings have been shaping the peacebuilding on the ground. Therefore, there is a growing demand to study religion not as the cause of war but as a mechanism to build peace.

Albeit still downplayed by the literature, some practitioners and scholars have signaled the need to include an Islamic perspective into conflict resolution within an Islamic context. Islam is abounding with teachings and practices of nonviolence and peacebuilding, thus more attention must be brought to the valuable potential of Islam to overcome social and political conflicts.

The central claim this preliminary paper attempts to sustain is that the Islam is more than appropriate to support and guide a comprehensive constitutional design and should be embedded in the constitution-making process in Arab and Muslim post-conflict countries. With this in mind, through a literature review, firstly, the dilemmas of international

constitutional assistance will be assessed, whilst in a second part the integration of Islam into peacebuilding will be examined.

## 2. International Constitutional Assistance as a Core Element of Peacebuilding

The consolidation of peace in war-torn countries calls for cooperation from the international community. In an attempt to find mechanisms to foster conflict resolution, many international actors have provided assistance. The one analyzed here is the constitutional assistance, which has progressively held an essential role in the response of post-conflict political transition, democratization and statebuilding processes.

The enactment or reform of a constitution represents a crucial element of democracy-building. As defined by the UN, constitution-making “covers the process of drafting and substance of a new constitution, or reforms of an existing constitution”.<sup>1</sup>

Constitution-making process is a core element of peacebuilding. In post-conflict countries<sup>2</sup>, the constitutional process is as important as the content not only to give legitimacy to the new constitutional order, but also, and equally meaningful, to create the basis for peace consolidation. The process of creating a constitution enables discussions regarding the limits of political power, state’s organization, as well as citizens’ rights and duties. It is a unique moment with the potential to foster national reconciliation, as it requires negotiations between key actors and public participation.<sup>3</sup> Moreover, constitution-making may provide the foundation for long-term peace by reinforcing state institutions and ensuring that human rights are granted in the new constitution.<sup>4</sup>

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<sup>1</sup> UN, *Guidance note of the Secretary-General: United Nations Assistance to Constitution-making Processes* (April 2009), p. 2.

<sup>2</sup> It is important to note that there is no accurate distinction between conflict and post-conflict situations. For the purpose of this research, I will use the definition posited by Junne and Verkoren, according to which post-conflict is a “conflict situation in which open warfare has come to an end. Such situations remain tense for years or decades and can easily relapse into large-scale violence” - Junne, G., and W. Verokren (eds.), “Post-conflict Development: Meeting New Challenges”, Boulder, CO: Westview Press, 2005, p. 1.

<sup>3</sup> J. Benomar, *Constitution-Making and Peace Building: Lessons Learned from the Constitution-making processes of Post-Conflict Countries* (UNDP, August 2003), p. 3.

<sup>4</sup> *Ibid.*, p.3.

Kirsti Samuels, regarding post-conflict peacebuilding and constitution-making, highlights that the process of constitutional elaboration can “provide a forum for the negotiation of solutions to the divisive or contested issues that led to violence”.<sup>5</sup> Furthermore, the process can foster democratic education, social reconciliation through dialogue and be an arena for building up a consensus regarding the future of the country.<sup>6</sup> Likewise, Vivien Hart proposes that constitution-making is an integral element of the process of conflict transformation. Hence, constitutional process is an instrument to foster peace, not an end in itself. Moreover, in this perspective, the adoption of a constitution represents a landmark in the peacebuilding process, rather than a settled map of conflict resolution. However, according to the author, if peace is to be achieved, constitution-making needs to be an open forum of negotiation, permitting a continuing conversation between all the societal segments, leading to the elimination of the majority of the conflict’s root causes.<sup>7</sup> Parting from the understanding of constitutional process as a meeting place, involving dialogue and governance, culminating in the foundation of shared aspirations among all concerned, one can properly recognize the value of constitution-making for conflict resolution and consolidation of peace.

Moreover, one cannot ignore that, although it must be nationally owned and led, international actors<sup>8</sup> increasingly play a significant role in assisting such processes by providing normative and technical advice. International constitutional assistance encompasses the external involvement in the constitution-making process through funding, the provision of expertise, as well as promotion of capacity-building and civic education, among other activities.

As pointed out by Brandt et.al., there has been a shift from the international

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<sup>5</sup> K.Samuels, *Post-conflict Peace-Building and Constitution-Making*, in Chicago Journal of International Law, 62, (2006), p. 667.

<sup>6</sup> *Ibid.*, p. 667.

<sup>7</sup> V. Hart, *Constitution-making and the Transformation of Conflict*, in Peace & Change, Vol. 26, No. 2, April (2001), p. 167.

<sup>8</sup> According to the Interpeace Handbook, international actors engaged in constitutional assistance may be divided in six main categories, namely, i) international, regional, and multilateral organization; ii) international agencies; iii) individual countries; iv) international non-governmental organizations (NGOs); v) domestic organizations from one country; and, vi) individual advisors.

constitutional assistance focused in the provision of assistance on the content, towards a greater attention to the constitutional process. This change is closely related to the acknowledgement that the way a constitution is created can be a key component to rebuild or strengthen governmental foundations, as well as to foster a long-lasting peace.<sup>9</sup> It should be highlighted, that the role and level of international assistance should be congruent to the conflict’s impact on the national system and the society.

The constitutional assistance provided by international actors, as pointed out by Rhodri, “is by no means a zerosum equation in the sense that international actors are allowed to overrule the decisions of national decision-makers”.<sup>10</sup> Nevertheless, international actors are progressively acquiring legitimacy to participate as facilitators of constitutional processes, by providing expertise and advocating for the adoption of texts that comply with international obligations and standards.<sup>11</sup> Hence, international constitutional assistance has paved the way to further constitutionalization of international rules, particularly international human rights norms.

Despite the positive impacts of international constitutional assistance during constitution-making processes in post-conflict, one should not overlook the dilemmas and controversies that such assistance may present. In light of this, the following lines attempt to analyze the challenges and limits related to constitutional assistance.

## 2.1. Dilemmas and Controversies Surrounding Constitutional Assistance

At the heart of constitutional assistance lies the dilemma of how to reconcile the role of international engagement with the need for extensive local ownership. Although the principle of national ownership has guided the international engagement in constitution-making process, such involvement is delicate and may prove to be controversial. As pointed out by Rhodri, international constitutional assistance can raise political sensitivities, due to

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<sup>9</sup> Brandt *et al.*, *Constitution-making and Reform: Options for the Process*, Interpeace, (2011), p. i.

<sup>10</sup> R. Williams, *Constitutional Assistance and the Rule of Law in Post-Conflict Transitions: an Overview of Key Trends and Actors: Research Report*, Folke Bernadotte Academy, (2013), p. 29.

<sup>11</sup> *Ibid.*, p. 29.

the fact that the international support during constitutional process may be perceived as a supply-driven assistance, through the propagation of their own national models, depriving national actors to give inputs on what their local needs are.<sup>12</sup> The potential misuse of constitutional assistance, being an instrument to promote an outside agenda should not be ignored.

Moreover, there is a latent tension between the international advocacy to the incorporation of international standards and the local practices. With this in mind, it is useful to turn to Williams’ assessment on the international community’s assistance, highlighting that international actors’ support, by “advocating peremptory limits on the acceptable outcome of democratic processes”, will prove to be controversial where such limits do not echo local mores.<sup>13</sup>

It should be stressed that democratization standards should not be passively absorbed, on the contrary, it must be critically analyzed. The goal to consolidate democracy through Western standards as the optimal form of social organization should be carefully addressed. This has proven to be flawed. Countries that have an intense democratization process through the lens of what the international actors regard as ideal are evidence that outside impositions of democratization standards do not succeed. For instance, Afghanistan was the scenario of strong democratization process, having the US a leading role as the democratizing agent. However, in a society where during elections – a major symbol of democracy – citizens held signs saying “no democracy, we just want Islam”, the goal of consolidating democracy through Western standards as the optimal form of social organization should be cautiously analyzed. As Monsutti points out, “perhaps nowhere else are the moral and political virtue of human rights and democracy more vehemently contested than in Afghanistan”.<sup>14</sup>

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<sup>12</sup> R. Williams, *Constitutional Assistance and the Rule of Law in Post-Conflict Transitions: an Overview of Key Trends and Actors: Research Report*, Folke Bernadotte Academy, (2013),, p. 46.

<sup>13</sup> *Ibid.*, p. 37.

<sup>14</sup> A. Monsutti, *Anthropologizing Afghanistan: “Colonial and Postcolonial Encounters*, *Annual Review of Anthropology* 42, (2013), p. 270.

Therefore, one can infer that reforms imposed from outside would not lead to a successful and lasting peace. As acknowledged by Chetail, despite the fact that some circumstances call for the international intervention, local actors, especially civil society, should be recognized as the primary players of peacebuilding, once they are the best equipped to resolve the conflict.<sup>15</sup>

Trends of standardization, along with the end of assistance after adoption, have led to constitutions with minimum enforcement. As pointed out by Brandt, “many constitutions remain merely on paper and are never implemented”.<sup>16</sup> The contemporary setting is marked by states that, in seeking international recognition and cooperation, make writing a constitution a priority.<sup>17</sup> Which is closely related to the fact that, more than describing internal conflicts, the international discourse assumes a prescriptive dimension that leads to the justification of certain “solution”, encompassing steps such as the adoption of a constitution and democratic elections. Post-conflict countries are, therefore, seeking democratic credentials. On the other hand, such states are not prepared, sometimes not even willing, to set up proper mechanisms for enforcing what was agreed in the constitution. Furthermore, a constitution that tend to mimic a sort of Western ready-made constitutional model, disconnected from the local context or legal traditions are probably condemned to fail to be an instrument for the promotion of human rights. A constitution permeated by fundamental human rights, but not implemented could turn to be just dead letter without conditions for fostering local improvements.

To conclude this section, it is crucial to note that by bringing up critiques, this section seeks to underline the need to deviate from a blind reproduction of the ongoing practices of constitutional assistance in post-conflict countries. Therefore, a reform of the existing

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<sup>15</sup> V. Chetail, *Post-Conflict Peacebuilding: Ambiguity and Identity: Introduction*, in *Post-Conflict Peacebuilding: A Lexicon*, Oxford: Oxford University Press, (2009), p. 10.

<sup>16</sup> M. Brandt, *Constitutional Assistance in Post-Conflict Countries. The UN Experience: Cambodia, East Timor & Afghanistan*, UNDP, June (2005), p. 34.

<sup>17</sup> V. Hart, *Democratic Constitution Making*, Washington, D.C., USIP Special Report No. 107, July 2003, p. 2.

approaches should be developed.<sup>18</sup> Some improvements could be offered by integrating an Islamic framework for peacebuilding.

### 3. Peacebuilding and Islam

Islam plays a crucial role in law and politics in many countries that have recently undertaken a constitution-making process, like Tunisia and Sudan. However, as pointed out by Mohamed ‘Arafa, a plethora of research on conflict restoration have ignored the matter within the Sharie’a context.<sup>19</sup> Hence, this section, building upon Abu-Nimer’s studies, will bring up the value of integrating Islam in peacebuilding’s approaches, which encompass the constitutional design.

Empowered by Islamic values and principles of peace, Muslim communities, since its formative years, have been able to resolve their conflicts peacefully and to found fair social, political and economic systems.<sup>20</sup> As defended by Abu-Nimer, Islamic religion and tradition have a plurality of resources useful for peacebuilding activities. In his words, “Islamic scripture and religious teachings are rich sources of values, beliefs, and strategies that promote the peaceful and nonviolent resolution of conflicts”.<sup>21</sup> Likewise, Marc Gopin draws upon a wide range of secular and religious methods of peacebuilding in order to construct an effective model of conflict resolution. The author proposes special techniques designed to weaken religious radicalism through the incorporation of divine norms into the peacebuilding efforts.<sup>22</sup>

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<sup>18</sup> In a critical analysis of the crisis of liberal peacebuilding, Roland Paris defends that even though peacebuilding missions have flaws, it is way too significant “to be lose or abandon” - Roland Paris, “Saving liberal Peacebuilding”, *Review of International Studies* 36: (2010), p. 365.

<sup>19</sup> A. Mohamed, *Transitional Justice, the Seeds of Change: Secular Law or Divine (Islamic) Law, Quo Vadis?* (June 2, 2018). *Creighton Law Review*, Vol. 9, No. 2, 2018.

<sup>20</sup> S.A Kadayifci-Orellana, M. Abu-Nimer & A. Mohamed-Saleem, *Understanding an Islamic Framework for Peacebuilding*, Islamic Relief Worldwide, working paper series no. 2013-02 (2013), p. 3.

<sup>21</sup> M. Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*. *Journal of Law and Religion* 15(1/2)(2000-2001): 217-65, p. 219.

<sup>22</sup> M. Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*, Oxford University Press (2003).

As proposed by Abu-Nimer, the current studies of peace and nonviolence in Islam can be divided into three main categories: (i) studies of war and jihad, focused on the use of Islam to justify war and violence as the primary means of settlement of conflicts; (ii) studies of war and peace, defending that Islamic religion only allows the use of violence in well-defined contexts; and (iii) studies of nonviolence and peacebuilding, underlining the potential for nonviolence as a philosophy in Islam.<sup>23</sup>

Scholars in the last group aim to reinterpret historical symbols, stories and other events in Islamic tradition to transform Muslims’ attitudes to conflict. These researches focus on Islamic teachings that condemn violence and war, particularly Qur’anic versus such as: “Whenever they kindle the fire of war, God extinguishes it. They strive to create disorder on earth and God loves not those who create disorder.” (5:64); “God commands you to treat (everyone) justly, generously and with kindness. (16:90)”; “if they incline to peace, you should also incline to it and trust in God. (8:39).”<sup>24</sup> It should be said that elements of peacebuilding are present not only in the Qur’an, but also in the Hadith and in cultural practices.

Those who stand for the interpretation of Islamic teachings through peacebuilding lenses, sustain that peaceful approaches are not a peculiar notion but a fundamental concept in Islamic tradition. For instance, Khalid Kishtainy ascertains numerous principles and tools in Islam that encourage nonviolence and if properly applied will lead to justice, like tolerance, persuasion, diplomacy and patience.<sup>25</sup>

As argued by Abu-Nimer, even if justice rather than nonviolence and peace were the final purpose of Islamic religious teaching, “pursuing peace through nonviolent strategies is a viable and effective method to achieving that justice, particularly when such methods are used to empower the victims of injustice.”<sup>26</sup> Thus, in Islam, justice and peace are

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<sup>23</sup> M. Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*, Journal of Law and Religion 15(1/2)(2000-2001): 217-65, p. 221.

<sup>24</sup> *Ibid.*, p. 230- 231.

<sup>25</sup> K. Kishtainy, *Violent and Nonviolent Struggle*, in Arab History in Arab Nonviolent Political Struggle in the Middle East, Lynne Rienner Publishers (1990).

<sup>26</sup> M. Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*, Journal of Law and Religion 15(1/2)(2000-2001): 217-65, p. 230.

interconnected. The idea that justice is an essential element towards peace reverberates concepts adopted by peacebuilding scholars and Islamic teachings.

One analyzing Islam face a constant obstacle which derives from the diverse interpretations and perspectives on Islamic teachings. However, there are some core principles that goes hand in hand with a peacebuilding framework, namely, pursuit of justice (*adl*); social empowerment through doing good (*khayr and ihsan*); compassion (*rahmah*); wisdom (*hikmah*); mediation (*wasata*); reconciliation (*sulha*); dialogue (*hewar*); universality and human dignity (*fitrah*); and, patience (*sabr*).<sup>27</sup>

The set of values and principles aforementioned should be integrated into peacebuilding processes, as the success of conflict resolution strategies has proven to be higher when local and indigenous traditions are taken into account. As defended by Anu-Nimer, Muslim communities are not an exception to such rule, thus the use of such principles will increase the likelihood of peaceful and meaningful change within the communities.<sup>28</sup>

#### 4. Conclusion

In conclusion, the purpose of this paper was to highlight the potential of integrating an Islamic perspective into peacebuilding as a way to overcome some dilemmas of constitutional assistance in post-conflict countries.

The analysis reveals that international constitutional assistance should not be solely based on mechanisms developed mainly from a Western perspective, rather, build upon existing tools, theories and traditions from other sources, like the one defended in the paper, Islamic principles of nonviolence. Hence, peacebuilding approaches should be contextualized to the situation where it is deployed, without ignoring religious and social traditions already present in the community.

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<sup>27</sup> See M. Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*, Journal of Law and Religion 15(1/2)(2000-2001): 217-65; and, S.A Kadayifci-Orellana, M. Abu-Nimer & A. Mohamed-Saleem, *Understanding an Islamic Framework for Peacebuilding*, Islamic Relief Worldwide, working paper series no. 2013-02 (2013)

<sup>28</sup> M. Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*, Journal of Law and Religion 15(1/2)(2000-2001): 217-65, p. 264.

It should be noted that the constitutional process and the constitution adopted will not alone resolve the conflict and consolidate peace. Nonetheless, from all the above arguments, one should recognize that constitution-making, if inclusive and transparent, can be an extremely relevant component of peacebuilding, being crucial for the stabilization of post-conflict settings.

Moreover, the integration of Islam into constitution-making and peacebuilding overall can play an important role in diminishing the negative imagine of Islam perpetrated in the mainstream media and some academic papers, by reverting the ill-founded idea of Islam as violence booster, to a religion grounded on nonviolently and peacefully principles.

All in all, it should be stressed that measures to consolidate peace cannot be deployed without a deeper understanding of the local reality, not only with regards to the political and economic aspects, but also considering the cultural and social conditions. Efforts within the academia and international organizations as well as governments should constantly be driven towards a more humane approach of peacebuilding mechanisms, focusing on the civilians, rather than states’ interests. Lastly, one should bear in mind that, perhaps, if prevention mechanisms gained the spotlight of security policies, the international community wouldn’t have to deal with so many cases of mass atrocities, and, here, as the previous analysis reveals, constitution-making can play a highly significant role.

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