EDITORIAL

The civil war in Nepal has reached the birthplace of Buddha. Soldiers are patrolling Lumbini, and the ancient kingdom of Prince Gautama has become a scene of hostilities. Spoken 2,600 years ago, his words of wisdom on violence and suffering and the overcoming of these ills are still valid today, yet they are hardly heard in Nepal. In other holy places, such as Jerusalem, even the very symbols of faith engender violence.

Religion is a major factor in conflicts, but it is not the only one and probably not even the most important one. In the final analysis, greed and not grievances is the main cause of war, and armed conflicts are therefore more the outcome of a combination of economic greed and political ineptitude than of religious grievances. But religion is relevant and often a salient feature of all stages of a conflict. It is used to legitimize conflict and as a basis for recruitment, but also when calling for restraint, when resolving a conflict or in a reconciliation process.

Religion is thus ambivalent: it can be both constructive (overcoming hostility) and destructive (fuelling violence). It has brought nations together and has sundered them apart. It is absolute, unconditional and often authoritarian, and holy wars have been fought with shameless but pious cruelty. Monotheistic religions in particular have recently been reproached for potentially fostering the temptation to resort to violence. Fundamentalist movements lay claim to a single absolutist religious interpretation and link their interpretation to political goals. Religious differences can easily be harnessed for purposes of domination.

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Like the earlier German sociologist Max Weber, many people thought forty years ago that religion and modern times are incompatible and mutually exclusive. The view was that the process of secularism and alienation from religious institutions was speeding up and would eventually lead to the disappearance of religion. In ancient India, inter-State relations were already based on principles of secularism regardless of religion, race or ethnicity. The question of secularism was also irrelevant in China, where Taoism and Confucianism are probably more a way of life and a gathering of philosophical teachings about human beings, their values and their institutions than a religion. Other parts of the world likewise do not have an indigenous religion.

A well-defined separation between the institutions of political and religious power developed during centuries of conflict between popes and emperors, and is specific to the history of Western Europe and North America. In

monotheistic religions such as Judaism, Christianity and Islam, the interrelation between religion and politics has always been somewhat problematic. The distinction between the universal, eternally valid aspects of religion and their temporal and specific expression in daily life is not new. The tension between absolute belief in the divine and the historical nature of human existence is only natural, though it obviously becomes particularly critical if religious bodies have political aspirations.

A secular system does not presuppose a non-religious society. Even in secular societies, religion is still a basic source of well-proved and in many ways simple answers to complex modern problems. In Islamic communities especially, it is customary to turn to religion for an answer to the problems of today, and a common identity has been built up on religion, which plays a predominant part. Many Muslims see the maintenance of the religious heritage and religious values as the hallmark of Islamic modernity. This view is largely perceived as a reaction to secularism and secular nations where barbarism, ignorance and ungodliness supposedly prevail. The rejection of secular views influences the acceptance of both international law, including humanitarian law, and humanitarian action.

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To the big question "Do you believe in God?" in Goethe's literary masterpiece, Faust replied enigmatically: "It is said everywhere (by), All hearts under the heavenly day, Each in its own language: Why not I in mine?" Efforts to find an authoritative definition of religion have failed in international law, despite references to it in several worldwide treaties. A comprehensive definition might establish an orthodoxy that would be anathema to religious freedom and risk encouraging intolerance by including too little or too much. The diversity of religious beliefs and the controversy surrounding them have further complicated the search for a universal definition.

International law is crafted universally and designed to regulate relations between diverse peoples with differing religions, histories, cultures, laws and languages. In drawing attention to a religious law, there is a risk of diminishing the universal character and the secularism of international law. Many international lawyers, aware that Western values are not necessarily shared by other cultures, are unwilling to discuss religion for fear of excluding those whose beliefs may be very different from their own. They feel that a scientific approach to law means keeping religion out of it, and that only when law is entirely divorced from religious beliefs can it be considered distinctively "modern" and "rational".

The laws of nations in ancient times have been dismissed because of their allegedly religious character. Religion did admittedly play an all-encompassing part in international relations. An oath in antiquity was the most religious of compulsions, entailing the intervention of the guarantor god or gods against the party that broke faith. Divine punishment by the Almighty or angry gods was feared. Rules of State conduct were, however, never entirely religious and were conditioned by pragmatism and feasibility: social sanctions and penalties were enforced through rituals and institutions and there was rational sanction

through legal argumentation and rhetoric. Religion, custom and legal reasoning each weighed more or less heavily in various periods of legal history.

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The importance of religious law or even its primacy over international law is especially emphasized in the Muslim tradition and therefore merits special attention. Islamic law is one of the large legal systems of the world; it was and is one of the pillars of Muslim civilization and Islamic legal literature is abundant. The status of the religious law of Islam (*Shari'a*) and Muslim jurisprudence (*fiqh*) is at the heart of the debate between Islamist ideologists and their adversaries. As that law regulates every aspect of life of each individual Muslim, wherever he or she may be, personal competence takes precedence over territorial competence, both within and outside Islamic territory. On the basis of the Qu'ranic verses and the relevant Hadith (revered traditions and sayings of the Prophet Mohammed), rules governing the conduct of hostilities during the extension of the Islamic empire were formulated by theological lawyers as early as the Prophet's emigration from Mecca. In the compilations of the different doctrinal schools of Islamic law, these rules are found under the headings *jihad* and *siyar*. The latter governs the relations of Islamic States with other States, especially in wartime and even in armed conflicts within the Islamic world. These rules are part of the internal legislation and are mandatory for the Islamic States.

Of the well-nigh fifty States of the world with a Muslim majority population, fifteen have proclaimed Islam as the State religion and five are specifically designated as Islamic Republics. Islamic culture and civilization transcend geographical boundaries and create a strong shared heritage for the Muslim countries, the *Shari'a* being the common ground between them. Today, the States of the Islamic world are party to the modern instruments of international humanitarian law, and the principle *pacta sunt servanda* is firmly anchored in Islamic law. All Muslim States emphasize their commitment to Islamic law and often refer to the "principles" and "values" of Islam to emphasize the convergence with international humanitarian law. For Islamic movements, be they moderate or radical, the *Shari'a* is an indivisible and coherent ensemble of rules; no foreign influence should alter the divine character of the Islamic law. Even moderates agree only to be inspired by other juridical systems, but without departing from Islamic law and jurisprudence. In this edition of the *Review*, we publish an article giving an authoritative view of *fiqh* or Islamic jurisprudence on Islam and international law. According to an Islamic scholar, it demonstrates that international humanitarian law is "1,400 years old". It shows the important contribution of Islamic law to present-day international humanitarian law and provides a road map for the dialogue between different civilizations.

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Rules governing inter-State relations pertaining to diplomacy, peace and war were contained in all sources of the different religions and civilizations. In this issue of the *Review*, selected articles on Islam, Judaism and Hinduism and their

relations with international law and the law of war show that values laid down in contemporary international humanitarian law are shared by each religion. The core ideas of the Confucian minimum order, for instance, contain many "human preferences" or values and rules that would today be described as rules of humanitarian law. In Christianity, much the same indications are doubtless given in the Sermon on the Mount. Both religion and international humanitarian law speak of the distinction to be made between combatants and civilians, about the need for proportionality and the obligation to assist victims, though in different terms and with different *modi operandi*.

But differences do exist. In particular, a clear separation between the rules governing the legality or legitimacy of war and the rules governing the conduct of warfare, i.e. the distinction between *jus ad bellum* and *jus in bello*, does not exist in ancient religious or religiously inspired law. However, despite the fact that religion played a central role in ancient India in setting rules for personal conduct, it is worth noting that those rules were universal in their application irrespective of the religion or civilization of the parties concerned, whether they were believers or unbelievers or whether a war was considered just or unjust. Conclusions as to "just" or "unjust" are informed by values that can rarely be proved by scientific means. Sensitivity to the importance of the different religions, also in legal decision-making, will help the international community to keep its balance on the tightrope between bigotry and indifference.

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Religion largely remains taboo in humanitarian action, too. Much of international humanitarian action consists of intercultural work, in which the religious dimension is an important factor. Religion is a powerful socio-cultural force in terms of motivation, inclusiveness, participation and sustainability in the humanitarian field. Charitable endowment is a deep-rooted principle of all major religions and acts of humanitarism are an essential part of religious practice. Even secular youth groups engaged in humanitarian aid follow genuine religious values without experiencing them as being religiously motivated. The ICRC, which launched modern secular humanitarian assistance, was intended to be non-confessional from the outset, but was nevertheless influenced by the Protestant Calvinism of its founders. Moreover confessional-based NGOs – those formally belonging to a particular religious group – and faith-based NGOs which have a looser commitment to particular religious ethics and values are major players in the humanitarian field.

International humanitarian law does not define humanitarian assistance as secular. According to the *Nicaragua judgment* of the International Court of Justice, humanitarian assistance has only to fulfil the criteria of impartiality and non-discrimination to avoid being deemed an undue intervention. Traditional interpretations of the Qu'ranic rules governing the distribution of *zakat* confined it to Muslim beneficiaries, but several Islamic humanitarian organizations have adopted a more liberal interpretation which emphasises the two said criteria.

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The most important issue facing faith-based organizations in their mission is the controversy about the possible inducement, either through their work or by direct proselytizing, to convert to their respective faith. Sub-Saharan Africa is largely becoming an area of competition between Christian and Muslim proselytism through aid, this being the main continent where religious conversions on a large scale are likely to be feasible. In conflict areas such as Afghanistan and the former Yugoslavia, Islamic relief agencies have vied for influence with Western agencies — but also with one another on the basis of divergent interpretations of Islam and opposing national interests.

The growing and intensified manifestation of religion in politics and vice versa is part of the environment of ICRC operations and even the different emblems of the Red Cross and Red Crescent Movement are given a religious interpretation, especially in cross-cultural operations. Both humanitarian organizations and governmental donor agencies have to learn how to deal with the ambivalence of the religious factor. The increasing combination of politics, religion and welfare work has even helped to bring violent movements into being, and some humanitarian organizations have been suspected of supporting terrorism. The doctrine of *jihad* has been invoked both for self-defence and to promote a good cause, including the humanitarian one. Muslims have long perceived the Western aid system as having a hidden agenda, and Christian fundamentalist religious organizations do often have humanitarian sections.

The codes of conduct of international non-governmental organizations ban the linkage between humanitarian aid and religious proselytism. Humanitarian aid should be given according to the need of individuals, families and communities. Notwithstanding the right of NGOs to espouse a particular religious belief, assistance should never be dependent on the recipients' adherence to those beliefs, and the promise, delivery or distribution of assistance should not be tied to the embracing or acceptance of a particular religious creed. These norms do not exclude the principle of "cultural proximity" or communal aid. Socio-cultural competence has become one of the key qualifications required for all humanitarian action. But that action is centred on human dignity and the welfare of all human beings, which are also the main objectives of all religions.

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