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The Contribution of van der Leeuw's Phenomenology to the Search for a Definition of Holy Places in International Law

Abstract:

Assuming that some holy places constitute flashpoints in international politics, this article asserts that those holy places that gained international dimension must be regulated by international law. To effectively regulate those places at the international level, a legal definition of holy places is needed. To acquire some insights for this defining project, I propose that van der Leeuw's extensive comment on holy places should be examined in order to see what lessons international lawyers can learn from van der Leeuw's treatise when defining holy places. I have found that, in terms of methodology, his emphatic stance and interpolation should be adopted. Also, a holy place should be perceived as a 'micro-order'. Finally, a discussion of the politics of pilgrimage is an inevitable corollary of holy places that gain international dimension, an aspect which needs to be handled with sensitivity.

Keywords: holy places, Gerardus van der Leeuw, power, phenomenology, order, international law

I. Introduction: Holy Places in the International Legal Order

Despite being both perceived and designed to bestow inner peace, holy places are too often the source of many intractable conflicts in the international community. Predominantly, these conflicts arise from municipal authorities' improper treatment of holy places, the claims of those who seek the right to access and worship at those places, and the competition in asserting control over a holy space by two or more communities that hold different sets of beliefs. Currently, there is still no sign that the battle over Jerusalem, which had its genesis even before the Crusades (1095-1291), is going to end in our lifetime.

To effectively cope with international conflicts that stem from holy places, the international legal system is in need of norms that address two basic issues: the protection of its structure and landscape, and the guarantee of the right of religious believers to worship at those places. In pursuit of these effective legal norms, holy places, which shall be the object of protection and constitute the very purpose of such a right, need to be carefully defined, since the proliferation of holy places would amount to an excessive burdening of the state concerned to develop sensitivity in providing protection of both the place and the right. To achieve this, existing definitions that have already been studied in other disciplines are needed. Van der Leeuw was recognized as among the phenomenological scholars whose studies on the concepts of holiness and holy places are highly noteworthy. In this article, I will begin by briefly exploring the idea of power, which is the fundamental concept of van der Leeuw's phenomenology. After that, his definitions for holy places and other conceptual elements shall be analysed. The fundamental question is: to what extent can his scholarship contribute to the project of defining holy places in international law?

II. Holy Places in van der Leeuw's Phenomenology

Gerardus van der Leeuw (1890-1950) was a Dutch historian of religion, a Christian theologian and phenomenologist¹, whose principal work, *Religion in Essence and Manifestation*, is also a subject of academic dispute in terms of which branch of the variety of spectrums within

¹ LaMothe, 2005, p. 101.

phenomenology it represents². In his treatise, van der Leeuw extensively discussed the concept of holy places. His perspectives on this matter, which are profound and perplexing, deserve attention from international lawyers.

Nonetheless, there are some fundamental differences in methodology between law and phenomenology which are worth mentioning. While phenomenology places an emphasis on suspending personal and academic judgment³, international law is a discipline in which appraisal is an intrinsic norm of its methodology, given that international law contains a set of criteria for appraising the validity of states' behaviours within the international legal system⁴, while the study of international law basically concerns the appraisal of said criteria⁵. With this caveat, the academic gap that indeed exists should not however obstruct the efforts of international lawyers to gain meaningful insights from van der Leeuw's work.

III. "Power" as the Basis of van der Leeuw's Concept of Holy Place

Van der Leeuw dedicated an entire chapter of *Religion in Essence and Manifestation* to a discussion of what constitutes "sacred space"⁶. This discussion takes place in the context of his commentary on "power", which the author put forward as the core concept of the phenomenology of religion.

To comprehensively understand how van der Leeuw viewed holy places, we first need to acquire a general understanding of his views on power, which he saw as a central phenomenon of religion⁷. Although

² While Ninian Smart claimed that the treatise is a model of one kind of "phenomenology of religion," Jonathan Tuckett believed that this categorization was the result of confusing the *Epilegomena* of this work with its *Prolegomena*, and argued that van der Leeuw indeed belongs to philosophical phenomenology; see Ninian Smart, 1986, p. x; see Tuckett, 2016a, pp. 227-228; see also Tuckett, 2016b, p. 93.

³ Tuckett, 2016b, p. 93.

⁴ Cf. Reisman, 1984, pp. 10, 13.

⁵ Basically, "appraisal" concerns the reflection on the potential and limits of reason in regard to a normative doctrine or principle. A recent trend of appraisal also includes methodology which is employed to ascertain whether a currently applicable rule of international law is justice-oriented; see Altwicker & Diggelmann, 2014, pp. 71-72.

⁶ Van der Leeuw, 1986, pp. 393-402.

⁷ Smart, 1986, p. xvi; see also van der Leeuw, 1986, p. 27, whereby van der Leeuw argued, "But even when power is not assigned a name the idea of Power often forms the basis of religion, . . .".

power is a ubiquitous phenomenon which numerous mythologies of both primitive beliefs and world religions attempt to exhort and give meaning to, it is nevertheless vaguely conceptualized. Van der Leeuw was among the scholars who have endeavoured to discern what it means, and to describe how it works⁸. In his view, power is a phenomenon that creates a sense of awe which, in turn, informs reactions ranging from amazement to fear when encountering human beings⁹. This quality shows that power is inherently ambivalent; the influence that it extends to a person can be either destructive or constructive. In other words, it can both attract and repel¹⁰. At the same time, this awe also indicates that power is more readily characterised as extraordinary rather than supernatural¹¹. Furthermore, power reveals itself as a potent force in unexpected manners. When this happens, the thing or person in which power manifests itself is distinguished from everything or everyone in their surroundings¹². In this regard, van der Leeuw claimed that:

“Power is thought of only when it manifests itself in some very striking way; with what confers efficiency on objects and persons in extraordinary circumstances, on the other hand, man does not concern himself”¹³.

Even though this characteristic seems to indicate the exception of power, van der Leeuw did indeed believe in its universality, arguing that power can be discovered within all actions and religious phenomena¹⁴. Notwithstanding power’s universal quality, van der Leeuw’s phenomenology is more concerned with how a religious person interacts with power. By means of orienting oneself to power, that person’s life is influenced by it. For van der Leeuw, sacredness is a form of power made manifest; in other words, it is rather an attribute of power¹⁵. When objects and persons subsume power as an essential nature of their own, they are regarded as “sacred”¹⁶. Typically, humans react to the awe and dread of the sacred

⁸ Olson, 1988, pp. 39-40.

⁹ Van der Leeuw, 1986, p. 28.

¹⁰ Olson, 1988, pp. 41-43.

¹¹ Van der Leeuw, 1986, p. 28.

¹² Olson, 1988, p. 42.

¹³ Van der Leeuw, 1986, p. 28.

¹⁴ Olson, 1988, p. 43; cf. van der Leeuw, 1986, p. 28, whereby van der Leeuw observed, “[I]t is quite true that the idea of Power, as soon as it becomes incorporated within other cultural conditions, expands and deepens into the concept of a Universal Power.”

¹⁵ This is contrary to Mircea Eliade’s conception of power. For Eliade, power is an essential dimension of the sacred, Olson, 1988, p. 43.

¹⁶ Van der Leeuw, 1986, p. 28.

through worship¹⁷ and rituals. In this regard, van der Leeuw argued that humans worship neither natural nor physical objects. Instead, their worship is directed toward the Power which has revealed itself therein¹⁸.

IV. Van der Leeuw's Conceptualization of Holy Places

Having briefly analysed the concept of power, which is fundamental to van der Leeuw's phenomenology, it is worth asking how holy places are perceived through this theoretical lens. In the same treatise, *Religion in Essence and Manifestation*, holy places are referred to as "sacred space," with the author proposing that:

"Sacred space may also be defined as that locality that becomes a position by the effects of power repeating themselves there, or being repeated by man"¹⁹.

In fact, the term "may" employed by this definition implies that this is not the only way to define a holy place²⁰. Since no alternative definition of holy places is offered in this principal work, the above must therefore be used as the topic of our discussion. To this end, I propose that any such discussion should begin with humans' role in the emergence of holy places. In other words, are holy places really not man-made entities? Or, is it really possible that, as can be seen from the definition above, some holy places do not need human input in their creation at all?

To begin with, the definition suggests that holy places can originate with, or without, human intervention. Without human intervention, power is able to repeatedly reveal itself at a locality. In addition, multiple assertions of power by man can also lead to the emergence of holy places in time²¹. That is to say, holy places are, according to the author, localities created by power.²² At this point, it is worth asking whether, in van der Leeuw's phenomenological framework, human agency itself can be a source of power that, in turn, can give rise to a holy place.

¹⁷ Olson, 1988, p. 42.

¹⁸ Van der Leeuw, 1986, p. 52; nevertheless, granted the admissibility of this argument, the way in which power merges into those objects, and unity between the power and the object would come into question. If the object is not worshipped, does it mean that it still retains some profane quality and remains separable from the power?

¹⁹ Van der Leeuw, 1986, p. 393.

²⁰ Cf. Van der Leeuw, 1986, p. 393.

²¹ Van der Leeuw, 1986, p. 393.

²² Olson, 1988, p. 44.

The answer to this question can be found in the same seminal treatise; however, it is not only ambiguous, but also self-contradictory. On the one hand, van der Leeuw argues, for holy places that accommodate a man-made structure or object of some sort, ranging from shrines, altars, to temples²³, “Nature” is no longer the sole actor that designates such a place; instead, it must first be designated by man. This implies that, before the object or structure is erected, the place that man selects must be ascertained to be suitable for power to reside in²⁴. Up to this point, it would appear that such a holy place might somehow be accepted as man-made, and, consequently, that human actions can be seen as a source of power underpinning a holy place. On the other hand, van der Leeuw opines that the previously discussed acts really mean that human beings can neither make, nor select, the location of holy places. He points out that man can never do more than “find” “the locations themselves, and called the art of their discovery “orientation”²⁵. In an attempt to reconcile the two parts of his theory, one may argue that, in the case of a holy landscape with man-made objects or structures, van der Leeuw regarded the contribution of humans to the origin of such places as limited to finding or discovering their locations²⁶. Nevertheless, an argument on the grounds of their “find” or “discovery” can hardly encompass the changes brought to such localities by man, by means of placing an object or a structure upon them. Once an altar, a shrine, or a temple, is erected and becomes an integral part of the sacred space, the human act must naturally be seen as having gone beyond merely locating such a space. Therefore, if we are to strictly follow van der Leeuw’s line of argument, namely that humans did little more than find or discover such locations²⁷, the important question of who, then, it was that built the shrine, altar, or temple will remain unanswered. In fact, van der Leeuw’s answer on this issue is itself far from straightforward. Instead of either accepting or denying that those formations are all man-made, he simply suggests that the building of temples was regulated by heavenly bodies²⁸. It would appear that the term “regulated” is deliberately used in this instance to circumvent the fact that the objects or structures at issue are themselves created by humans. His attribution of the creation of holy places to something beyond human capacity reflects a basic principle of his

²³ Van der Leeuw, 1986, p. 395.

²⁴ Van der Leeuw, 1986, p. 398.

²⁵ Van der Leeuw, 1986, p. 398.

²⁶ See van der Leeuw, 1986, p. 398.

²⁷ See van der Leeuw, 1986, p. 398.

²⁸ Van der Leeuw, 1986, p. 398.

phenomenology, which Ninian Smart believed as deriving from the author's Christian beliefs, highlighting that power, in its original form, is none other than God.²⁹

If human beings cannot do more than discover the locations of holy places in the process of their formation, then another, iterative question follows. How then does this argument support van der Leeuw's definition of a holy place, according to which repeated exertions of power by man at a site can, indeed, render that site holy? Does the repetition of power by man simply equate to "finding" or "discovering" such places?

In this respect, van der Leeuw maintained that, no matter what form – natural or man-made – the holy place might take, the holiness of a place is equivalent to its distinctiveness³⁰. By selecting a place, man makes that location distinct from the vast expanse of the world, in possession of specific, intrinsic and independent value. Van der Leeuw called such a selected space a "position". While the act of occupation or the presence of the occupier constitute typical forms of such selection processes³¹, van der Leeuw suggested that the place may also become a "position" by means of conquest³². The idea that holiness is predicated on setting things apart is also shared by one of his contemporaries, Émile Durkheim³³. Although we may accept that selection can lead to the prominence of a place vis-à-vis its surrounding environs³⁴, it is still unclear to us how such an act is related to power, or indeed to the repeated exertion thereof, which van der Leeuw believed to be the source of holiness itself. In this regard, I proposed that the clue to the answer might be found in his claim that:

"The supernatural space, the sacred, is ordered"³⁵

While the power itself is mysterious³⁶ (and here even van der Leeuw did not clearly explain the correlation between the choosing of a site and power iterating itself at the selected location), it can be seen that

²⁹ Smart, 1986, p. xvi.

³⁰ Van der Leeuw, 1986, p. 395.

³¹ Van der Leeuw, 1986, p. 393.

³² Van der Leeuw, 1986, p. 399.

³³ Cf. Durkheim, 1995, p. 322; Émile Durkheim (1858-1917) made his name from the sacred/profane dichotomy, in which he advocated that classification of the ideal and real things that humans conceive of into two classes which are the sacred and the profane is a common feature of religious beliefs; see Durkheim, 1995, p. 34; see also Durkheim (Fields), 1995, pp. xliii-xlix.

³⁴ Van der Leeuw, 1986, p. 397.

³⁵ Van der Leeuw, 1986, p. 398.

³⁶ Olson, 1988, p. 43; on the mystery of holy places, see van der Leeuw, 1986, p. 394.

the act of selection itself, usually followed by the development of the site, creates an order within it. That order, which is only established gradually, creates power, which (according to the author's idea of the universality of power³⁷) in turn has its presence there become even more organized and, eventually, dominant, over its surroundings³⁸. By nature, order helps power demonstrate its awe-inspiring quality, and thus commands respect.

Within the created order of a holy place, the degree of holiness varies. The centre of the order, which represents the totality of power, is seen by van der Leeuw as the most important point, or the "holiest of holies"³⁹. In his depiction of a typical Indonesian house of his time, van der Leeuw indicated that the main pillar of the house was seen as the most holy, and was usually erected with ceremony and sacrifice⁴⁰. This is also true of a synagogue, where the Aron Hakodesh, or the ark which contains the Torah scroll, is the most important place⁴¹. While the notion of varying degrees of holiness is obviously applicable to the Masjid al-Haram of Mecca, where the Kaaba, the holiest site in Islam, is located⁴², inside other mosques it is not clear whether there is any specific point in the prayer room that can be viewed as the most sacred spot.

As can be seen from the example of the Indonesian house⁴³, van der Leeuw's idea of holy places does not discriminate between religious places of worship and unconsecrated spaces⁴⁴. In his view, "some definite power" constitutes the essence of both house and temple⁴⁵. A house is seen as an established order, where power is distributed over its various parts⁴⁶. Similar to places serving religious purposes, it contains a location which can be regarded as the centre of power. Apart from the main pillar of the Indonesian house, he pointed out an ancient belief that was likely prevalent in Europe in years past, according to which the hook constitutes the most sacred location within the household, since it was traditionally seized by the bride to signify that she was taking possession of the house⁴⁷.

³⁷ Van der Leeuw, 1986, p. 28; cf. Olson, 1988, p. 43.

³⁸ Cf. Van der Leeuw, 1986, p. 399.

³⁹ See Van der Leeuw, 1986, p. 397.

⁴⁰ See Van der Leeuw, 1986, p. 396.

⁴¹ Cf. Nulman, 1999-2000/5760-5761, p. 1.

⁴² King, 1982, p. 17.

⁴³ Van der Leeuw, 1986, p. 396.

⁴⁴ Van der Leeuw, 1986, p. 398.

⁴⁵ Van der Leeuw, 1986, p. 398-399.

⁴⁶ Cf. van der Leeuw, 1986, p. 396.

⁴⁷ Van der Leeuw, 1986, p. 397.

In addition, he cited an old belief from Gelderland⁴⁸, which denounced the act of setting the hook swinging, when taking the pot off the fire, as profane. Accordingly, people believed such an action would give the divine being a headache⁴⁹. Thus, it is worth stating that, in van der Leeuw's concept of holy places, what matters most is the power residing within the space itself⁵⁰, and that both secular and religious forms of the sacred spaces can accommodate that power.

Finally, van der Leeuw saw pilgrimage to holy places as a direct effect of exerted power. He explained that places of greater holiness naturally served to attract religious people⁵¹. Citing the sanctuary of Minahasan as an example, where the sacred stones that delineated the space were believed to arouse homesickness and possess the power to call villagers back from foreign regions, van der Leeuw argued that, in attracting pilgrims, the place of pilgrimage also functions in the same way. In this respect, he viewed such places as a sort of second-tier power and as the home of the religious communities concerned, serving to bond members of the respective communities, travelling from different parts of the world, together⁵².

V. How Does van der Leeuw's Work Contribute to the Project of Defining Holy Places in the Domain of International Law?

After exploring the concept of holy places in van der Leeuw's phenomenology, we shall now begin by examining whether international law can adopt his definition of holy place in order to delimit the scope of places that it is intended to regulate. Even were the answer in the negative, this study argues, it would still be worth examining some essential dimensions of his concept from which this defining project for international law can learn from.

In constructing a legal definition, a lawyer must bear in mind that a legal discourse demands precision, objectivity, and certainty. To prevent prejudice to all parties that might be affected by relevant normative orders, a legal definition must strive to avoid emotive terms, and shuns ambiguous or subjective wording. Finally, in the field of international law,

⁴⁸ A province of his home country, the Netherlands.

⁴⁹ Van der Leeuw, 1986, p. 397.

⁵⁰ Van der Leeuw, 1986, p. 393.

⁵¹ Van der Leeuw, 1986, p. 401; nonetheless, he also elaborated that, in a broad sense, every entry into or appearance in a church or temple is actually a pilgrimage; see van der Leeuw, 1986, p. 402.

⁵² Van der Leeuw, 1986, p. 401.

any definition constructed by international lawyers must later be either tacitly or explicitly agreed upon by the main subject of this legal system, which is the “state”⁵³.

As the debate on the holy status of a place that gains international dimension is also a debate on “holiness” itself, which is, similarly to “justice” and “beauty”,⁵⁴ a value that is both highly subjective and diversely perceived, it is difficult to enumerate common characters that can simultaneously cover all such places and distinguish them from other kinds. Even thus, the quest for definition is always urgent. Defining holy places helps us delineate them and effectuate proper protection. The lack of a proper universal definition to confer equal protection to all places of this kind enables states to subjectively determine and grant holy status only to places seen as serving, fitting, or not going against the state’s values⁵⁵, whereas places that represent other values are marginalized or placed in danger.

After discussing the need for a definition, as well as some basic rules for defining a legal concept, the question remains whether van der Leeuw’s definition of “holy place” can be adopted as definition in international law. Basically, lawyers define an as-yet undefined term by using wording which is well, or at least better, understood⁵⁶. In this regard, it would be insurmountably difficult to fit the idea that holy places are created by power⁵⁷ into this approach. The term “power”, in this sense, is as vague as the terms “holy” and “sacred”, and all are elements of the object we intended to define. In addition, perceiving power as a phenomenon that, according to van der Leeuw, creates a sense of awe⁵⁸ does not make the Church of the Holy Sepulchre⁵⁹ or the Western Wall in Jerusalem⁶⁰ distinguishable from the Hall of Mirrors in Versailles which, for many visitors, is also awe-inspiring. In fact, the term “awe” itself also lies within the same range as the terms like “justice”, “beauty” and “God”, which are value-oriented and do not possess any higher genus (*Gattung*).

⁵³ Cf. Saul, 2006, pp. 4-5.

⁵⁴ For the explanation as to why justice and beauty are indefinable, see Pakeerut, 2004, pp. 372-373.

⁵⁵ Cf. Saul, 2006, p. 5.

⁵⁶ Cf. Schnapp, 2016, p. 43.

⁵⁷ Olson, 1988, p. 44.

⁵⁸ Olson, 1988, p. 42; van der Leeuw, 1986, p. 28.

⁵⁹ The Church of the Holy Sepulchre in Jerusalem is regarded as the mother of the church; see Bowman, 2016, p. 199.

⁶⁰ The Western Wall has been among the holiest sites for Jews for generations, see Cohen-Hattab & Kohn, 2017, p. 71.

Therefore, it is intrinsically undefinable⁶¹ and, consequently, the definition of holy places proposed by van der Leeuw remains inadmissible in the discipline of international law.

Notwithstanding its inadmissibility, however, a further question arises. Are there any merits in van der Leeuw's perspectives on holy places that international lawyers should ponder before constructing a definition for those sacred grounds?

To begin with, van der Leeuw's perspectives on what constitutes a holy place were shaped by his knowledge of and first-hand experience in observing various religious traditions, from those ancient⁶² and primitive⁶³ to the ones contemporary to his time⁶⁴. Presumably, the Dutch colonisation of the modern Indonesia also exposed him to some local beliefs in those territories⁶⁵. Notwithstanding his own Christian beliefs⁶⁶, van der Leeuw's phenomenology, as well as his perspectives on holy places, demonstrates his determination to observe holy places situated beyond the Judeo-Christian worldview⁶⁷. The particular characteristics of holy places that van der Leeuw depicted reflect his phenomenological methodology, more simply called "interpolation." This term defines an attempt to understand the meaning of a phenomenon as it exists for other people. Notwithstanding the differences between observer and the observed, van der Leeuw justified that interpolation works because "the essentially human always remains essentially human and is as such comprehensible"⁶⁸. On the basis of certain shared characteristics of other human beings, he believed, one could always understand an event as if it happened to oneself⁶⁹. Van der Leeuw also advocated that, after all objective data has been gathered, the researcher ought to make another effort by diving deep into the object under review⁷⁰.

⁶¹ Schnapp, 2016, p. 44.

⁶² For example, his comment on the Roman household gods "penates"; see van der Leeuw, 1986, p. 399.

⁶³ For example, his comment on "churinga"; a form of the most primitive shrines found in Australia; see van der Leeuw, 1986, p. 395.

⁶⁴ For example, his comment on a Scandinavian style of family-dwelling place; see van der Leeuw; 1986, p. 397.

⁶⁵ For his comment on some holy places in present-day Indonesia; see van der Leeuw, 1986, p. 396, 401.

⁶⁶ Smart, 1986, p. xvii.

⁶⁷ However, Smart views van der Leeuw's phenomenology as Christian-centric; see Smart, 1986, pp. xvii-xviii.

⁶⁸ Van der Leeuw, 1986, p. 387.

⁶⁹ Tuckett, 2016a, p. 97.

⁷⁰ Daniels, 1995, p. 45.

Unlike phenomenology, which emphasises the suspension of academic and personal judgment⁷¹, international law is by nature a judgmental discipline⁷². Nevertheless, I would argue that these two fundamental differences may not obstruct international lawyers to do their best in making empathetic entries into understanding the perspectives of all stakeholders, especially the religious communities concerned, when constructing a definition for a holy place. Besides, even though international adjudicators tend to refrain from staying too close to the facts⁷³, those who are tasked with formulating a definition of holy places should, in fact, do the opposite, so that the definition reached would not be too far detached from reality⁷⁴. Since it is crucial to take into account as diverse forms of holy places as possible, neither personal nor academic judgment should be made⁷⁵ when exploring a variety of beliefs, traditions, and cultures that revolve around them. In my view, these two approaches imported from van der Leeuw's study on holy places would provide an empirical as well as an authentic foundation for the definitional product⁷⁶. In this regard, van der Leeuw has shown us that every attempt made to understand holiness from the perspective of divergent sets of beliefs, including those seen as indigenous or primitive, renders the final outcome more culturally inclusive.

Secondly, van der Leeuw's phenomenology invites international law academics to think about holy places in terms of order⁷⁷. In his conceptualization, selecting a position for power to reside, followed by cultivation of that place, gives rise to the holiness of that locality⁷⁸. On the other hand, van der Leeuw also held that the holy place is ordered. In this sense, 'order' can be conceived as a micro set of organised systems that brings about commonly accepted rules which define the limits of permissible behaviours⁷⁹. This order can also be regarded as opposite to

⁷¹ Tuckett, 2016a, p. 93.

⁷² International law concerns itself with appraising both the lawfulness of states' and other subjects' acts, and the criteria of lawfulness itself, cf. Reisman, 1984, p. 84.

⁷³ Take the 1986 Nicaragua Case (Nicaragua v. United States), for example. Notwithstanding the factual issues warranting, the court decided to confine all its judicial activities to its bench and refrain from undertaking an on-the-spot investigation, which Article 51 of the ICJ Statute allows for, see Franck, 1987, p. 116.

⁷⁴ John Daniels, 1995, p. 51-52.

⁷⁵ Cf. Tuckett, 2016a, p. 93.

⁷⁶ Daniels, 1995, pp. 51-52.

⁷⁷ Van der Leeuw, 1986, p. 398.

⁷⁸ See van der Leeuw, 1986, p. 399.

⁷⁹ Cf. Kissinger, 2014, p. 9.

the state of chaos or anarchy⁸⁰. In brief, the act of selection is seen as setting the space projected to be holy apart from its profane surroundings⁸¹, whereas the holiness of a place is unveiled when order is established at the locality⁸². Within a holy place, there is one centre of power⁸³, although the same power is distributed over its various parts⁸⁴. How do we know that order really exists within a holy place? Perhaps Durkheim's theorised dichotomy between the sacred and the profane⁸⁵ can lend itself to answering this question. According to Durkheim, ritual is a basic form of controlled act undertaken at a holy place, which demonstrates to all the order in that locality. To perform ritual, one needs a purified body, a special gesture, and a pattern of behaviours which are markedly different from those allowed outside the place in question. Moreover, certain earthly behaviours such as immodest dressing, mingling between different genders, or selfies are forbidden when entering a holy compound⁸⁶. Apart from this, an order contains the centre which comprises the values that defines the purpose of its existence. For some holy places, as previously mentioned in the cases of the Masjid al-Haram in Mecca or a typical synagogue, the idea of the centre may be represented by a physical part of the holy place. Moreover, the above-mentioned order also defines its relations to its outside surroundings which represent the state of anarchy, or the profane. Perceiving a holy place as a place of order can help international lawyers understand how the place relates to the religious communities concerned as well as to its surroundings. In some holy places that contain a complex internal structure, viewing them as a given order can help us comprehend how their various parts function together, how the hierarchy within the structure is established and how it might be challenged. In orthodox synagogues, gender separation during prayer services is apparent. In many places, women's seats are located on the second floor, whereas men are allowed to be seated closer to the Aron Hakodesh, or the Holy Ark, and perform a minyan. For the Western Wall in Jerusalem, the order governing prayers at this site is still dominated by orthodox traditions⁸⁷. Nonetheless, we are witnessing the challenge that

⁸⁰ Herdegen, 2019, p. 33.

⁸¹ Cf. van der Leeuw, 1986, p. 399, in which he portrayed the surroundings as "the 'uncanny' realm of demonic powers."

⁸² Cf. van der Leeuw, 1986, p. 398.

⁸³ Cf. van der Leeuw, 1986, p. 397.

⁸⁴ Cf. van der Leeuw, 1986, p. 396.

⁸⁵ For an in-depth analysis of this dichotomy, see Durkheim (Fields), 1995, pp. xliii-xlix.

⁸⁶ Cf. Durkheim, 1995, pp. 321-322.

⁸⁷ Sapir, 2021, pp. 143-144.

this order is facing when the “Women of the Wall” movement is advocating for their equal right to pray and read from the Torah at the Western Wall⁸⁸. Apart from gender, order within a holy place also engenders social hierarchy inside and outside that place. In Theravada Buddhism, monks traditionally have a monopoly of presiding over rituals within temples, and also hold high social status in Buddhist communities outside the temples themselves. Understanding this micro-order is fundamental to designing proper legal norms to accommodate or regulate it. In this respect, the current authority within those orders, as well as religious communities that benefit from them, would expect that the rules designed within the international legal system at least sustain and support the awe-inspiring aspect of the place, and to not challenge the status quo.

In regard to the relationship between the holy space and its surroundings, I argue that a useful point of departure in attempting to understand this relation is van der Leeuw’s observation that even selecting a position for sacred ground can be seen as a conquest. The act of conquest is usually followed by a new order being established on the conquered territories. Once established, the new order coexists with other orders, including the national legal order and those of other belief communities⁸⁹. However, the coexistence between two or more orders is not always defined by peace⁹⁰; this is especially the case when the basic values that govern the order of the place are seen as a threat by the municipal authorities or by any dominant local community that adheres to opposing set of beliefs. In this case, the municipal state or competing communities, seen as opponent orders, will seek to weaken, replace, or annihilate the order organized within a holy place. The attack on the Sri Hamandir Sahib (or the Golden Temple), one of the holiest places in Sikhism, by the Indian Government in 1984, during Operation Bluestar was a tragic example of such a clash between two opposing orders. At the time, the order within this holy edifice was perceived as aiding a separatist movement which was qualified as a national threat to the unity of the national order⁹¹. Many attempts by religious Zionist Jews to pray on the Temple Mount in Jerusalem, the site of the Al-Aqsa Mosque⁹², can also be seen as the pursuit

⁸⁸ Sapir, 2021, p. 124.

⁸⁹ Cf. Wengler, 1977, pp. 16-17.

⁹⁰ Cf. Kissinger, 2014, p. 9, in which Kissinger maintains that order does not rule out competition and confrontation.

⁹¹ Cf. Sooklal & Pillay, 1991, pp. 51-52, which indicates that, once the authority of the Golden Temple permitted the separatists to take refuge, the shrine became a *de facto* state within a state.

⁹² Cohen, 2017, p. 8.

of a competing order to replace the status quo. In this regard, I would argue that viewing a holy place as a consolidated order which is set to become a contested ground is inevitable when seeking a legal definition for the purpose of regulating such places.

Finally, van der Leeuw's phenomenology also helps international lawyers understand pilgrimage as a common phenomenon that organically emerges from holy places. His work shows us that pilgrimage to places recognized as holy has been undertaken by humans since time immemorial. Van der Leeuw used the term 'homesickness' as a metaphor to represent the yearning for salvation and spiritual empowerment that drive a large number of pilgrims to travel far from their physical home to perform rituals, worship, pray, or even pass away at places sacred to their belief systems⁹³. For such people, holy places are believed to be the source of sacred power that gives them strength⁹⁴. In this respect, van der Leeuw compared this aspect of holy places to the sense of homecoming in which native spaces or villages provide the diaspora with a relaxing energy⁹⁵. In reality, humans' yearning for pilgrimage at places holy to them can be deep and intense, especially when they perceive that their holy places are governed by regimes of disbelievers that bar them from rightfully accessing them. A large number of the confrontations between religious Zionist groups, asserting the right of Jews to pray on the Temple Mount, and Israel's security forces, and sometimes Palestinian Arabs, actors that view such events as provocative, are so many frequent examples of the intensity that the desire for pilgrimage can lead to⁹⁶. On a more global scale, similar sentiments can also easily spark regional or global conflicts. In fact, liberating Jerusalem and granting Muslim communities full access to the third holiest site in Islam, the Al-Aqsa Mosque, is the stated principal objective of the Quds-Force of the Iranian Revolutionary Guard Corps⁹⁷, which is currently operating both covertly and overtly to destabilize Israel in the Middle East. Even in times of peace, the admission of international pilgrims is used by the territorial states that govern the places considered some of the holiest to world religions as leverage over other countries. Take Saudi Arabia as an example: whenever the Saudi government is experiencing a row with any other country, they usually resort to a Hajj policy that restricts or refuses outright the admission of

⁹³ Van der Leeuw, 1986, p. 401.

⁹⁴ Frank, 2008, p. 827.

⁹⁵ Cf. van der Leeuw, 1986, pp. 401-402.

⁹⁶ See Elon & Barak, 1996, p. 870; See also Persico, 2017, pp. 112-113.

⁹⁷ Toameh, 2021.

Muslims from that country to do pilgrimage at the two holiest mosques of Islam. Recently, when relations with India had severely deteriorated, Pakistan also began playing pilgrimage politics (though in the opposite direction) by opening the Kartarpur Corridor, which allows Sikh pilgrims from India to worship at the Gurdwara Darbar Sahib Kartarpur, a former residence of Guru Nanak, the prophet of Sikhism. In doing so, the Pakistani government aimed to show their audience, the international community, they were extending a hand of peace to India. In these two circumstances, the believers' desire for cross-border pilgrimages was quite effectively exploited by the local authorities that controlled the holy places.

Van der Leeuw's work reminds international lawyers that, were the issue of regulating holy places that gained international dimension to be brought to their attention, they should take such an aspiration for pilgrimage to holy places very seriously. At an individual level, failing to conceive and facilitate the need for pilgrimage to a foreign land, while simultaneously allowing territorial states to invoke territorial sovereignty in order to arbitrarily close their borders to non-national pilgrims is equal to tacitly recognizing the unequal opportunity in the pursuit of a lofty form of religious life. On the other hand, neither should the needs of non-national pilgrims be satisfied at the expense of internal security, public health, and the financial burden of the sovereign territorial state. As a first step, I propose that border-crossing pilgrimages at places extraordinarily holy to one's religious beliefs need to be recognized by the international community as a fundamental right by means of progressive development processes⁹⁸. At the very least, this right should function in such a way as to urge states not to deny pilgrims entry to their territory unless on firm, objective, and legitimate grounds, which should not include the pilgrim's nation of origin. When the right to worship at holy places that includes international pilgrimages is guaranteed at the international level, and such a guarantee is objectively implemented by capable administrations, transnational violence or intercommunal conflicts provoked by perceived grievances over the separation from holy places will find no fertile ground to take root. In order to implement such a legal mechanism, however, lawmakers at the international level must not entirely take a secular perspective on the matter either. At some point, they will need to adopt an empathetic approach in an attempt to explore and understand the mindset of religious

⁹⁸ In the domain of international law, the term "progressive development" refers to the introduction of a new concept into a lexicon of international law-making, especially by means of works undertaken by the International Law Commission; see Pronto, 2019, pp. 1103-1104.

believers without prejudice and thereupon devise proper international legal measures that can realistically help religious believers realize their spiritual achievement.

Some Concluding Remarks

In "Religion in Essence and Manifestation," van der Leeuw shows us his attempt to understand the mindsets of religious believers hailing from diverse backgrounds, and to observe how their spiritual lives and holy places interact with each other. From this observation, van der Leeuw also went further to explain what he understood to be the divine element behind the holiness of the place in question. Unfortunately, his definition of holy places, which is predicated on an interpretation of power, is too mysterious to be explained by legal logic and, therefore, cannot be accepted as an international legal definition.

Nevertheless, there are three notable merits of his work that deserve close attention from international legal scholars in their search for a definition for holy places. Firstly, regarding methodology, the phenomenological approach that advocates for interpolation and an empathetic stance can lead to a more comprehensive record on how diverse sets of beliefs perceive and treat their holy places. Also, every attempt made by international lawmakers to adopt these two approaches would make any legal definition for holy places more culturally inclusive, and importantly less divorced from people's held beliefs.

Secondly, order itself leads to the holiness of a place, and in this sense a holy place can be perceived as an order. Perceiving a holy place this way can well help international lawyers devise a definition that acknowledges the proper autonomy of the place, and which covers its inherently complex relations with the local government and other religious community within the state in question. Thirdly, van der Leeuw's treatise reminds international lawyers that pilgrimage and holy places are inseparable. Moreover, the desire of religious followers to undertake pilgrimages to the holiest places of their religion can lead to international disputes and violence. Therefore, a definition of holy places that does not encourage the development of the rights afforded non-national pilgrims to worship at their holy places is equivalent to a failure in promoting peace and stability. In this secularist age, this seminal work by van der Leeuw reminds us all that "belief", indeed, "matters".

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