

The Position of Islamic States Regarding the Universal Declaration of Human Rights

Introduction

This brief examination of the position of Islamic States, as defined below, regarding the Universal Declaration of Human Rights (UDHR) is not intended to be systematic, comprehensive or exhaustive, neither of all these States, nor of their full or detailed human rights record since 1948.¹ Rather, it will be based on a discussion of some relevant issues and significant examples of what this relationship was at the beginning, and how it has evolved over time. But since the so-called Islamic States share much of the characteristic features of all States and their Governments, as emphasized below, the question is whether it is possible to identify and isolate aspects of their position that are associated with their alleged Islamic identity, as distinguished from what may be attributed to their being States in the general sense of the term. Moreover, any supposedly 'Islamic dimension' in the position of these States regarding the UDHR would in practice be conditioned by contextual factors, such as domestic conditions under which it was formulated or has changed over time, and the role of international actors and factors in this regard. This contextual understanding is important for efforts to establish and maintain a positive relationship between each Islamic State and the UDHR.

The whole discussion, however, is strongly informed by a commitment to the universality of human rights that is premised on a *shared consciousness of vulnerability*. That is, all human beings should endeavour to achieve the universal acceptance and practical implementation of international standards of human rights simply because we all need their protection as potential, if not actual, victims of the violation of our rights. In my view, this understanding of the universality of human rights affirms the belief that they are matters of immediate relevance to our own personal situations, wherever we happen to live, instead of assuming that human rights are secure in our societies and threatened in other places. Once we can dispel this false sense of security, we will be able to see problems with the principle of universality of human rights in our own societies. A shared consciousness of vulnerability would also strengthen our resolve to combat violations of human rights wherever they may occur and under whatever alleged justification or rationalization. It enables us to overcome indifference to the suffering of others, as well as helplessness regarding actual or potential violation of our rights, because we would know that we are acting in our own self-interest when we resist the violation of the rights of others. The more we are consciously aware of our own vulnerability, the more we will be able to transcend such apparent differences of race,

¹ For a systematic and comprehensive discussion of the position of these States regarding human rights in general see, Ann E. Mayer, *Islam and Human Rights: Tradition and Politics*, 2nd ed., Boulder: Westview Press, 1995. See also Donna E. Artz, 'The Application of International Law of Human Rights in Islamic States', *Human Rights Quarterly*, Vol. 12, No. 2, 1990, p. 202-230.

gender, religion and culture, whether as causes or rationalizations of violation, or obstacles to their effective remedy or redress.

The thesis underlying the following analysis has two main elements: on the one hand, Islamic States, as defined below, should not be treated differently from any other State in this regard because their nature and behaviour are conditioned by the same type of concerns that apply to any other State in the world today. In other words, since all Islamic and non-Islamic societies today live under similar State structures and institutions (despite apparent differences in types of government and ideological orientation of regimes), the Governments of Islamic States are motivated by the same type of considerations that influence the conduct of Governments everywhere.

On the other hand, at the same time, since it is important to consider cultural or religious as well as political and other factors affecting the nature and behaviour of any State regarding the UDHR, the Islamic dimension should be taken into account in relation to those States associated with an Islamic cultural or religious identification. However, because the Islamic dimension does not mean the same thing for all countries commonly identified as Islamic States, the position of each State should be understood in terms of its own context.

In other words, I will argue that the Islamic dimension in the position of States identified as Islamic should neither be taken as definitive, nor be completely ignored, nor taken to have the same consequences or implications regarding their position on the UDHR. It is in this light that I will conclude this article with some suggestions for enhancing stronger commitment to the promotion and protection of human rights in Islamic countries. But I will begin with a clarification of what constitutes an 'Islamic State' not only as a matter of definition of those States with whose position we are concerned here, but also because it is important for developing strategies for enhancing stronger commitment to human rights in Islamic countries. Moreover, I believe that this clarification will benefit current human rights discourse around the world, as briefly explained at the end of the following section in relation to the *construction* of the universality of human rights as a project which cannot succeed without the contributions of all religious and cultural traditions of the world.

Can a State Be Islamic?

In my view, the term 'Islamic State' is a misnomer from a general point of view, as well as from a strictly Islamic perspective. While this term may serve as a shorthand way of referring to States where Muslims constitute a clear majority of the population, as I will use it in this article, the adjective 'Islamic' logically applies to a people, rather than to a State as a political institution.² Moreover, from a strictly Islamic perspective,

² Scholars tend to define this term differently, depending on their purpose at the time. For example, Donna E. Artz used the term 'Islamic State' to refer to those countries which have officially proclaimed Islam to be the State religion, or where Islamic law is a formal source of legislation. See her chapter, 'The Treatment of Religious Dissidents under Classical and Contemporary Islamic Law', in: J. Witte and J.D. van der Vyver (eds), *Religious Human Rights in Global Perspectives: Religious Perspectives*, The Hague: Martinus Nijhoff Publishers, 1996, p. 392-393. However, since I find such

I maintain that an Islamic State as a political institution is neither conceptually possible, historically accurate, nor practically viable today. Let me briefly explain what I mean by this triple assertion.

An Islamic State is conceptually impossible because for a political authority to claim to implement the totality of the precepts of Islam (commonly known as *Shari'a*) in the everyday life of a society is a *contradictio in terminis*: enforcement through the will of the State is the negation of the religious nature of those precepts which is supposed to be the rationale of their binding force in the first place. This conceptual impossibility is also related to the jurisprudential nature of *Shari'a* as a product of the interpretation of the *Qur'an* and *Sunna* (traditions of the Prophet), supplemented by other 'sources' developed by early Muslim scholars.³

To think of *Shari'a* as 'Islamic Law' is seriously misleading because it is different from positive law in the usual sense of the term in two fundamental ways. First, it is believed to be the divinely ordained total way of life for all Muslims, from matters of purely religious articles of faith and worship practices, social relations and personal hygiene, to notions of piety and fairness regulating personal behaviour in vocational activities, to broader political principles of participation in the public affairs of the community and organization of its economic and social concerns. Second, *Shari'a* is different from positive law, because its binding force is derived from the convictions of believers rather than the coercive power of the State. Enforcement by the State is also inconsistent with the jurisprudential nature of *Shari'a*. As the product of scholarly interpretation of religious texts, *Shari'a* is characterized by extensive diversity and disagreement among the founding scholars of the various schools of thought (*madhahib*, plural of *madhhab*). Since enforcement by the State today requires formal enactment as the law of the land or adoption of clear policies specifying certain action by organs of the State, the legislature and government of the day will have to choose among equally authoritative but different interpretations of the various *madhahib*, as well as of individual scholars within each one. Yet, all *madhahib* and leading individual scholars insist that such choices are to be made by the believers according to their own conscience.⁴ In other words, *Shari'a* ceases to be what it is supposed to be once it is formally enacted and enforced by the State.

As a matter of historical fact accepted even by Islamic political activists today, there has never been an Islamic State that has consistently and systematically enforced *Shari'a* since the Prophet's State of Medina (622-632 AD), or at most that of the first four Caliphs of Medina according to Sunni Muslims.⁵ However, there is no basis for

features problematic in that they do not accurately reflect an 'Islamic' quality of the State, I prefer to rely on the simple criterion of population.

³ On the sources and development of *Shari'a*, see Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*, Syracuse: Syracuse University Press, 1990, Chapter 2.

⁴ N.J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence*, Chicago: University of Chicago Press, 1969, p. 35-36.

⁵ The majority of Sunni Muslims accept the legitimacy of the first four Caliphs, Abu Bakr, Ummar, Uthman and Ali, and take the whole period of the Medina State (622 to 661) as an ideal Islamic State. According to Shi'a Muslims, however, the first three Caliphs were illegitimate usurpers of the

comparison between that early city State and subsequent Muslim imperial States (like the Amawy and Abbasy dynasties of the 7th to 10th centuries, or the more recent Ottoman Empire), let alone with present-day complex States with their diverse populations, even those who identify as Muslims. The Medina State ruled over a very small population who lived in direct inter-personal contact under the immediate guidance of the Prophet and his closest followers, it had no institutionalized organs, system of public administration, or security forces to enforce the will of the State within its own territory. That form of political organization, if it can be called a State at all, is nowhere to be found in the world today.

Assuming some degree of conceptual possibility or historical experience with States that claimed to be Islamic, I would still maintain that such a State is not practically viable at the present time. Even if it were able to enforce some general principles of Shari'a regarding public affairs and governance, a State would find it extremely difficult to fulfil its essential domestic and international function. Problems that will arise from this prospect include: the basic structure and political order of the State would be impossible to operate even for a small population of a few million people; economic activities would be crippled by the prohibition of a fixed rate of interest on loans (*riba*), and of insurance as based on speculative contracts (*qharar*); enforcement of corporal punishments for *hudud* offenses (the few crimes for which the Qur'an specify the punishment) face serious unresolved procedural and evidentiary objections, let alone human rights concerns about cruel, inhuman or degrading treatment or punishment; the denial of basic citizenship rights for women and non-Muslims will face serious challenge by these groups internally, and by the international community at large.⁶

In any case, it is clear that none of the States that have ruled Muslim-majority populations since the founding of the United Nations in 1945, has a valid claim to being an Islamic State by criteria that are generally accepted by Muslims today. This is obviously true of the vast majority of these States which do not even identify as 'Islamic', except for the fact that the constitutions of some of them (such as Egypt, Malaysia, Sudan and Syria) say that Islam is the official religion of the State. It is also true of those who do identify as Islamic States, like Saudi Arabia whose system of government as a hereditary monarchy contradicts basic notions of Islamic legitimacy,⁷

position which should have exclusively been held by Ali and his descendants from Fatima, the Prophet's daughter. Throughout most of Muslim history, the Shi'a were a minority, though they occasionally succeeded in establishing their own States in North Africa and southern Arabia, and more recently Iran. But since none of the divinely ordained Imams of the two main Shi'a groups now, the Twelvers (Ja'faris) and the Seventhers (Ismailis), was the actual Caliph at any point of their respective histories, those States would not qualify as the ideal Islamic State according to dominant Shi'a thought.

⁶ On public and international law aspects of these problems, see, generally, An-Na'im, *op.cit.* (note 3), Chapters 4 to 7.

⁷ Even in the most traditional sense, since an the notion of an Islamic State is supposed to mean that it should be ruled by those who know Shari'a and can implement it, it follows that a hereditary monarch defeats the purpose since kings are selected from among the ruling family, even though there would probably be those who are more competent by Islamic criteria. A hereditary monarchy also denies the Muslim population *Shura*, which is believed to provide for the right of all Muslims to participate in the conduct of the public affairs of the State as required by verse 42 of chapter 38 of

Pakistan which is still debating the meaning of the 'Islamic' rationale of its founding,⁸ Iran which is ruled under the notion of the guardianship of a hierarchy of jurists over the institutions of the State (*Wilayat al-Faqih*) as a totally new innovation introduced for the first time into Twelvers Shi'i thought by Khomeini in the 1970s to justify an 'Islamic Government' before the re-appearance of the Absent Imam,⁹ and the Sudan where the National Islamic Front came to power by military *coup d'état* in 1989 against a Government elected by the Muslim majority of the country, and remains in power through intimidation and oppression of any dissent among its Muslim citizens, let alone non-Muslim 'subjects'.¹⁰ It is also important to emphasize that all these and other States which identify as 'Islamic', in fact only certain aspects of Shari'a in a highly selective fashion that is more consistent with short term political expediency than an alleged rationale of being Islamic States.¹¹

As indicated above, I will use the term 'Islamic State' in this article as a shorthand way of referring to States where Muslims constitute a clear majority (more than 70 percent) of the population. Nevertheless, it is important to emphasize the preceding remarks not only as a matter of definition and for their relevance to the strategies to be suggested later, but also to make a point about the present human rights discourse in general with regard to the alleged unity of Islam and the State. My concern as a Muslim advocate of the universality of human rights is that scholars and activists in the field tend to take claims of relativism at face value, and then respond by either simply insisting on the universality of human rights as a product of formal international law obligations or making unwarranted concessions to relativist claims. In my view, the first type of response is likely to breed resentment and resistance, while the second may encourage even stronger relativist demands. Moreover, I suggest that these features of the current human rights discourse derive from a profound ignorance of, and unwillingness to learn about, non-Western cultural and religious traditions as if they have nothing to offer in support of the universality of human rights.

For example, claims of the unity of Islam and the State are taken at face value by social scientists and human rights advocates with assumptions about unavoidable negative consequences for the universality of human rights. While appreciating the possibility of an underlying sensitivity about telling Muslims what they should believe,

the Qur'an. For a discussion of the problems of implementing of Shura in this sense, see An-Na'im, *op.cit.* (note 3), p. 78-86. But the point here is that the monarchy of Saudi Arabia is inconsistent with the traditional nature of an Islamic State, as envisaged by the Hanbali school of Islamic jurisprudence which the Saudi regime itself claim to follow.

⁸ On aspects of this debate see, generally, Manzooruddin Ahmed, *Iqbal, Jinnah, and Pakistan: The Vision and the Reality*, Syracuse: Syracuse University Press, 1979; I. Ahmed, *The Concept of an Islamic State: An Analysis of the Ideological Controversy in Pakistan*, New York: St. Martin's Press, 1987; and R. Mehdi, *The Islamization of the Law in Pakistan*, Richmond, Surrey, England: Curzon Press, 1995.

⁹ Ruhollah Khomeini, *Islamic Government*, translated by Joint Publications Research, New York: Manor Books, 1979.

¹⁰ See, for example, Human Rights Watch/Africa, *Behind the Red Line: Political Repression in Sudan*, New York: Human Rights Watch, 1996.

¹¹ For evidence of this regarding Iran, for example, see Mayer, *op.cit.* (note 1), p. 72.

I question the lack of scholarly interest in Islamic history and philosophy. For example, in my view, the strong rationalist thinking of the *Mu'tazilah* during the Abbasy period (eighth and ninth centuries) and the philosophy of Ibn Rushd (Averroes) in Southern Spain and West North Africa of the twelfth century, would indicate early and original Islamic bases for what has eventually evolved into universal human rights in the modern context. Those and other aspects of Islamic political thought and historical experience would also provide useful insights in the comparative study of the relationship between religion and the State in different societies at various stages of their history. In particular, I suggest that this question should be framed in terms of different points along a continuum for each society at any given point in time, rather than as a sharp dichotomy between total unity or categorical separation of religion and the State. Once this formulation is accepted, the issue becomes one of understanding the basis and dynamics of the relationship between religion and the State in each society as a *historical* process that is capable of change and transformation, rather than as a permanent or inescapable fact.

In conclusion of this section, I wish to highlight the relevance of the preceding remarks to what I call the construction of the universality of human rights. It is clear that the universality of human rights is inherent to the basic idea of rights which are due to all human beings by virtue of their humanity and without any distinction on such grounds as race, gender, religion, language, or national origin. In other words, human rights must either be accepted as universal, or rejected altogether, since the notion of relative human rights is logically incoherent. But a commitment to the universality of human rights should not mean denial of its obvious conceptual difficulty and lack of appreciation of the practical problems of realizing these rights around the world. Briefly stated, the conceptual difficulty is due to the organic relationship between normative systems, like the one articulated in internationally-recognized human rights standards on the one hand, and the religious or cultural worldview, values and institutions of any people who are expected to accept and implement such a system on the other. In other words, the question is how can people of different religious or cultural traditions agree to accept the same normative system? Practical problems of implementation include contextual factors like differentials in levels of social and economic development, political stability, and the related competing claims of national security and international relations. The methodology I recommend for mediating the conceptual difficulty, is an internal discourse within religious or cultural traditions, and cross-cultural dialogue in order to promote an overlapping consensus for the legitimacy of universal standards, and thereby improve the level of political will and mobilization to address practical problems of implementation.¹² While that is in itself conducive to better implementation, those

¹² For an explanation and substantiation of this characterization of difficulties and problems, and possibilities of mediation through this approach, as illustrated in many situations from different parts of the world, see generally, Abdullahi Ahmed An-Na'im and Francis M. Deng (eds), *Human Rights in Africa: Cross-Cultural Perspectives*, Washington D.C.: Brookings Institution, 1990; and Abdullahi Ahmed An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives: Quest for Consensus*, Philadelphia: University of Pennsylvania Press, 1992.

types of problems also require different approaches and strategies, as will be emphasized in the last section of this article.

The point I wish to make here, is that a shared understanding of the nature and role of the State in different societies around the world is essential for advancing the construction of genuine and sustainable universality of human rights. For this process to work, we all have to take each other's religious and cultural traditions seriously, whereby Western advocates know about the intellectual and political history of Islamic societies, while Muslim advocates are also required to know about the intellectual and political history of Western societies. It is the lack of such mutual knowledge and understanding, I believe, that leads to the sort of distorted perception of the so-called Islamic State indicated earlier, as a political institution that defies definition and understanding in terms that apply to non-Islamic States. In reality, the nature and behaviour of all States are conditioned by the same type of concerns that apply in all parts of the world today. Since all Islamic and non-Islamic societies today live under similar political, economic and other circumstances, the Governments of countries with clear Muslim majorities are motivated by the same sorts of considerations that influence the conduct of Governments everywhere. It is only by abandoning the notion that the so-called Islamic States are somehow unique that we can begin to realize the possibility of acceptance and implementation of universal human rights norms that are equally binding on all States, whatever religious, cultural or ideological characterization they may claim for themselves, or be attributed to them.

Ambivalence of Islamic States Regarding the Universal Declaration of Human Rights

Turning now to the position of Islamic States (that is, States where Muslims constitute a clear majority of the population), I wish to recall the two aspects of the premise of this article: the basic similarity in the nature and behaviour of all States, Islamic and non-Islamic alike, on the one hand, and the need to take into account the Islamic dimension in the case of Islamic States, on the other. I would also emphasize that all States have problems with one aspect or another of the principle of the universality of all human rights as proclaimed in the UDHR – whether it is economic, social and cultural rights in the case of the United States and most European countries, civil and political rights for authoritarian Governments in Africa, Asia and Latin America, or the rights of women and religious minorities for Islamic and some other countries. In accordance with my premise here, however, I still maintain that it would be useful to discuss the position of a group of countries, identified here as Islamic by virtue of their population, regarding the UDHR with a view of improving the level of respect for human rights in those particular countries.

My focus on Islamic States is subject to the caveat that it is extremely difficult to link the position of Islamic States to their Islamic identity, as opposed to what they have in common with all other States. In other words, while we can agree that the position of a State can be identified through its official statements, record of ratifications of human rights treaties and actual practice, it is not easy to find direct evidence about whether such positions were or are explicitly or implicitly justified or rationalized as

'Islamic'. There is also the problem of the nature and purpose of any official statements one may find. Questions which arise at this level include: What relative weight or authority should be accorded to different types of statements and documents, such as formal constitutional and legislative enactments, government policy statements, positions declared at the UN or other international fora? To which internal or external audience are such statements or documents addressed, and for what purpose? Do they indicate original causation or independent motivation, in contrast to subsequent justification or rationalization, whether genuine and voluntary or in response to some form of coercion? How do these factors affect the evidentiary value of such statements and documents? For example, it is true that the alleged motivation or 'true intentions' of a State do not affect its human rights obligations as a matter of international law. But is it possible to avoid the strong influence of those factors in the interpretation and implementation of those obligations?

However one may wish to respond to these and related questions, I suggest that the position of any State, whether identified as Islamic or not, can best be understood and evaluated in light of its domestic, regional and international context at the time. For example, to what extent did the population of a State have a real say in the position taken by their Governments at the international level, whether in 1948, 1998 or at any point in-between? To what degree and how are Governments sensitive to international pressure, whether from other Governments, non-governmental organizations, or external public opinion at large? By taking into account these contextual factors, we can better understand whether the position of the State regarding the UDHR was simply the choice made by ruling elites, or reflective of widely held religious and cultural views of the society at large. We can also better understand to what extent that position is likely to change and in which direction, and due to which internal and external factors it is likely to change.

As noted earlier, the following discussion is not intended to be systematic, comprehensive or exhaustive of either the position of all Islamic States, or of the full and detailed human rights record of any of them. In presenting the following brief review, moreover, I wish to emphasize two factors. First, there was *never a consistently 'Islamic' position* regarding the UDHR, whether at its adoption in 1948, or since that time. Second, an Islamic rationale was also presented at that time in support of positive, though sometimes different, views of the nature and scope of human rights. Many delegates of Islamic States have expressed support for various human rights norms as consistent, if not required, by Islam. Even the delegation of Saudi Arabia, which opposed certain draft formulations in 1948 as contrary to the dictates of Islam, has also argued that the Islamic system of social solidarity and support is better expressed through the term 'social justice', rather 'social security' as stated in the draft of what came to be Article 22 of the UDHR.¹³

To begin this review with commonly known 'Islamic' issues during the drafting of the UDHR, namely the right to marry and found a family and the freedom of religion or belief, one can immediately appreciate the wide variety and complexity of the position

¹³ *Official Records of the Third Session of the General Assembly, Part I. Third Committee. Summary Records of Meetings, 21 September - 8 December 1948*, New York: United Nations, 1949, p. 890-892.

of Islamic States which were members of the United Nations in 1946-1948. The main point to emphasize here is that Saudi Arabia was the only Islamic State which abstained in the vote on the final draft of the UDHR as a whole in 1948, but it did not vote against it either. Although several other Islamic States supported the Saudi position in debates over some formulations, they did not maintain that position at the time of the final vote.¹⁴ The difficulty of identifying or maintaining a so-called uniform Islamic position is also illustrated by the fact that even Saudi Arabia has subsequently claimed commitment to the implementation of human rights,¹⁵ while Iran came to repudiate during the early years of its 1979 Revolution its earlier unqualified support of the UDHR at the time of its adoption in 1948, only to at least partially re-affirm it a few years later.¹⁶

For one thing, it is interesting to note that Saudi Arabia was represented at the UN by Jamil Baroody, a Lebanese Christian, rather than a Muslim diplomat. Assuming that the country did not have qualified personnel among its own nationals at the time, one would have expected it to select a Muslim representative, though a national of another country, if Islamic credentials as such were significant for the position of Saudi Arabia at the time. Speaking for King Abdel Aziz Al Saud, who claimed the title of the guardian of the holiest sites of Islam in Mecca and Medina, Baroody took a strong position regarding two proposed articles in the Declaration, namely what became Article 16 in the final version regarding the family, and Article 18 on freedom of religion or belief.

As to what is now Article 16, Baroody proposed that the laws of each country should govern marriage rights, rather than a uniform standard, and suggested replacing the term 'equal rights' with 'full rights as defined in the marriage laws of their country.'¹⁷ He also criticized the draft for having apparently, 'for the most part, taken into consideration only the standards recognized by western civilization and had ignored those of more ancient civilizations (...) It was not for the Committee to proclaim the superiority of one civilization over all others or to establish uniform standards for all the countries of the world.'¹⁸ While some Islamic States supported the Saudi amendment, Egypt suggested a more general formulation which made no reference to equality.¹⁹ Shaista Ikramullah, a woman representative of Pakistan, insisted that 'equal rights' did not mean 'identical rights', and stated that difference in religion could be a legal bar to marriage (as required

¹⁴ The Islamic States (that is, where Muslims were the majority of the population at the time) which voted in favour of the UDHR were Afghanistan, Egypt, Iran, Iraq, Lebanon, Pakistan, Syria, Turkey and Yemen.

¹⁵ For example, Prince Nayef bin Abdel Aziz, then Interior Minister, claimed that the Kingdom of Saudi Arabia 'respects and implements human rights more than do the European and Western regimes that criticize us. (...) We by virtue of our commitment to the Islamic Shari'a most certainly respect human rights.' Interview with *Al-Hayat*, Arabic newspaper based in London, as quoted in: Nissim Rejwan, 'Now Saudis Face the Fundamentalist Music', *The Jerusalem Post*, 4 July 1993.

¹⁶ Nissim Rejwan, 'Boundaries of Islamic Militancy', *The Jerusalem Post*, 17 February 1993.

¹⁷ *Official Records, op.cit.* (note 13), p. 370. Quotation marks indicate statement as reported because *verbatim* records were not kept at the time.

¹⁸ *Official Records, op.cit.* (note 13), p. 370.

¹⁹ A/C.3/264, *Third Committee Annexes*, p. 26.

by Shari'a).²⁰ Though none of the proposed amendments was passed, all Islamic States except Saudi Arabia voted for the final draft of the Declaration despite its inconsistency with Shari'a principles regarding marriage rights.²¹

As to Article 18, Baroody presented the position of Saudi Arabia as upholding freedom of religion and conscience, opposing to the explicit inclusion of the right to *change* one's religion because that might be seen as condoning proselytization which has caused much bloodshed and warfare throughout history. It is interesting to note that Baroody appealed to the universal value of tolerance in his first statement. But when pressed by other delegations on the point, he argued that the sensibilities of Muslim peoples would be offended by a provision that contradicted the prohibition of conversion from Islam.²² Again, when the draft which included the right to change one's religion was, at the request of Saudi Arabia, separately voted on, Afghanistan, Pakistan, Iraq and Syria opposed the draft, India, Turkey and Lebanon voted in favour of the draft, and Iran abstained. Yet, the final draft of Article 18 which included explicit mention of the right to change one's religion was accepted by all Islamic States except for Saudi Arabia.²³

The somewhat unpredictable role of personnel and their motivation in representing their States in the drafting of international instruments is reflected in the position of Pakistan, as a State with a supposedly strong Islamic rationale which initially opposed the draft of what came to be Article 18. Subsequently in the debates, however, the Foreign Minister of Pakistan, Mohammed Zafrullah Khan, announced support for the whole draft of the UDHR, including Article 18, and encouraged other Islamic States to do the same. In explaining his position before the General Assembly, he cited the Qur'an in rejecting the notion that Islam prohibited apostasy; insisting instead that Islam condemned hypocrisy, rather than lack of faith as such.²⁴ While Zafrullah Khan, who belonged to the Ahmadiyyah (a persecuted Islamic minority group in Pakistan), was able to express that view as Foreign Minister of his country in 1948, it is unlikely that the present Government of Pakistan would uphold the same principle in 1998, or indeed allow a member of the Ahmadiyyah to hold such a high ranking position.

The ambivalence and complexity of the positions of Islamic States can also be illustrated by the fact that despite the unqualified support almost all of them expressed

²⁰ *Official Records, op.cit.* (note 13), p. 374.

²¹ For a discussion of contradictions between Shari'a and international human right norms regarding the formation of marriage, rights during marriage, divorce and related matters, see A.A. An-Na'im, 'The Rights of Women and International Law in the Muslim Context', *Wittier Law Review*, Vol. 9, No. 3, 1987, p. 491-516.

²² *Official Records, op.cit.* (note 13), p. 403-404. On the Shari'a prohibition of apostasy from Islam and possibilities of reform in this regard, see A.A. An-Na'im, 'The Islamic Law of Apostasy and its Modern Applicability: A Case from The Sudan', *Religion*, Vol. 16, 1987, p. 197-223.

²³ On the position of Islamic States during the adoption of the UDHR, see D. Little, J. Kelsy and A. Sachedina, *Human Rights and Conflict of Cultures: Western and Islamic Perspectives on Religious Liberty*, Columbia: University of South Carolina Press, 1988, p. 33-52.

²⁴ *Official Records of the Third Session of the General Assembly, Part I, Plenary Meetings of the General Assembly, Summary of Meetings 21 September - 12 December 1948*, Paris: Palais de Chaillot, p. 890-892.

for the UDHR in 1948, or subsequently for those who became independent since then, most of them have clearly failed to live up to that commitment most of the time. This is as true of those which can be characterized as 'secular' like Algeria, Indonesia, Iran, Tunisia and Turkey, as it is for those who assert a stronger Islamic identity like Pakistan since 1975 and the Sudan since 1983, and those who are ambivalent about the relationship between Islam and the State like Egypt and Morocco. Other States who identify as Islamic, like Malaysia, have vacillated between rhetorical support for and objection to the universality of human rights as embodied in the UDHR, while maintaining a relatively good record of compliance. In contrast, some clearly Islamic States in the sense of Muslims constituting the clear majority of their populations, like Senegal, have consistently matched a high level of declared acceptance of the UDHR with a good record of compliance. These ambivalent positions continue to be expressed in UN fora, as illustrated by contradictory statements made by the delegates of different Governments at a seminar organized by the Office of the United Nations High Commissioner for Human Rights²⁵ in Geneva, in November 1998.²⁶

The main conclusions of the preceding brief analysis of the position of Islamic States regarding the UDHR can be summarized in two main points. First, there has never been a uniform position among these States, whether the very few who were members of the UN at the time of the drafting and adoption of the UDHR, or those who became members of the UN since then. Second, while very few Islamic States have maintained a consistent position regarding the UDHR, it is clear from the wide variety among the vast majority of States which failed to do so that the matter has much more to do with national ideology and politics, in broader regional and international context, than with Islam in any coherent and systematic sense. In this light, I suggest that the wide diversity of the positions of Islamic States, the complexity of the motivation, justification and process by which those positions are formed and changed over time, emphasize the need to examine the local and global factors and dynamics that shape or influence this relationship for all States, Islamic and non-Islamic alike.

Toward Stronger Support for Universal Human Rights in Islamic Countries

The position of a group of States regarding the UDHR can be understood in terms of some ideological, cultural, geographical, political or other type of criteria of analysis that applies to all States in that particular group. Given the difficulty of applying the designation 'Islamic' to any State, as briefly explained above, I have used this term in this article to simply indicate States where Muslims constitute the majority of the population. However, since these States are identified as Islamic for the purposes of

²⁵ Seminar entitled 'Enriching the universality of human rights: Islamic Perspectives on the Universal Declaration of Human Rights', organized by the United Nations High Commissioner for Human Rights, in co-operation with the Organization of the Islamic Conference (OIC), Geneva, 9-10 November 1998.

²⁶ Bruno Franceschi, 'Islam is religion of human rights, say Moslem experts', *Agence France Presse*, 9 November 1998.

analysis here, I have focused on aspects of their position regarding the UDHR that can be associated with an alleged Islamic identity of the State.

In this final section of the article, I wish to reflect on the implications of the preceding discussion for the promotion and protection of human in Islamic countries. First, there is the point I made earlier that all aspects of the position of Islamic States, both positive and negative, regarding the UDHR in particular and the protection of human rights in general, should be understood in light of the domestic, regional and international context of those States. But the various factors, forces and dynamics that shape context at different levels are neither fixed or static, nor independent from each other or from other influences. In other words, the internal and external factors and forces that influence a State's position regarding the UDHR are themselves subject to change, which will in turn affect their role in the shaping of the State's position. It is in light of such contextualized understanding of a dynamic process of constant social and political transformation and change, both from within as well as in response to external stimuli, that we should seek to promote stronger and more sustainable protection of human rights.

At one level of analysis, the position of any State regarding the UDHR can be seen as the product of a balancing process between internal and external forces, some in favour and others against the UDHR and its values and principles. This is not to suggest that the State, or any other political and social force within society, is constantly engaged in a conscious assessment of its position regarding the Universal Declaration, or calculations about the relative position of other actors. On the contrary, it is precisely because there is little awareness of the nature and dynamics of this process that I wish to emphasize it here as a means for improving the commitment of Islamic States to the UDHR. It is true that raising awareness about this process in favour of the Declaration will probably induce its opponents to do the same from their perspective. But this should be welcomed not only because it is integral to making the case for supporting the UDHR, but also as a practical application of its values and principles. That is to say, that on the one hand, the open articulation of objections to the Declaration in a given society is necessary for their rebuttal. On the other hand, the Declaration itself mandates that its opponents have the same freedoms of expression, association and other *human rights* as its supporters. After all, if human rights are truly universal, supporters of the UDHR should welcome the opportunity to demonstrate the validity of their proposition, rather than rely on its imposition by ruling elites or external powers.

It is interesting to note here that this balancing process can raise some dilemmas from a human rights point of view. For example, the position of Saudi Arabia can be seen as that of a Government trying to balance its need for international legitimacy through commitment to human rights standards in the face of the demands of more conservative forces within the country which are undermining the existence of the regime itself in the name of its failure to strictly apply Shari'a.²⁷ Similarly, the violent confrontation between Islamic activists and the Government of Algeria since 1992 can be seen in similar terms, despite apparent differences in the nature of the Government and its

²⁷ See, for example, Rejwan, *loc.cit.* (note 15).

opponents.²⁸ The dilemma raised by such situations can be explained as follows: on the one hand, if the Saudi or Algerian Governments allow their more conservative opponents the full protection of human rights, those opposition groups will use those freedoms to overthrow the regime and install regimes that purport to implement Shari'a more strictly in Saudi Arabia, or for the first time in Algeria. This relative shift in the ideological orientation and practical policies of the two regimes will probably be to the greater detriment of human rights in those countries. On the other hand, if those Governments are given some discretion in restricting the human rights of the political opposition to avoid the coming into power of regimes that are even more hostile to the UDHR, that would compromise the integrity of the principles of the Declaration itself in the name of saving them from a 'worse fate'.

In my view, this balancing process can be influenced in favour of the UDHR, rather through the deployment of deliberate strategies for the transformation of public attitudes regarding the UDHR in each country, than simply to focus on the official position of the State as such. The stronger the support for the UDHR within the culture and public opinion of a given country, the more likely will the State in question formulate and maintain a position that is consistently and systematically supportive of the Declaration. Conversely, the weaker the support for the Declaration is in a given country, the less likely will the State be able to formulate and maintain a supportive position, even if the ruling elites wished that on their own, without popular demand. The alternative to such deliberate strategies for the transformation of public opinion in this way is to either accept the present position of Islamic States as permanent and unchangeable, or seek to change it through some coercive measures which will be both politically offensive, if not illegal under international law, as violations of the right of self-determination, as well as difficult to sustain in practice. As envisaged by the Charter of the UN, the UDHR and other relevant international and regional instruments, the promotion and protection of human rights are to be achieved through international co-operation, not through forceful intervention in the internal affairs of other States. The question is therefore how can this international co-operation be 'guided' by a clear understanding of the dynamic relationship between internal and external forces that shape the position of States regarding the UDHR?

Of course I am not suggesting here that this is a new approach, since a wide variety of processes have already been operating at the intergovernmental as well as the domestic and international non-governmental level since the adoption of the UDHR. Rather, my purpose is to use the occasion of the 50th Anniversary of the Universal Declaration as an opportunity for reflection on the dynamics and efficacy of these processes with a view to adjusting or modifying some of them, abandoning others and devising new ones, all in relation to their utility for the promotion of the universality of human rights in the present context. Since it is not possible to attempt a comprehensive review of these processes here, I will simply highlight certain issues in the nature and current practice of aspects of these processes to illustrate some of my concerns about the

²⁸ On Algeria's continuing crisis see, for example, W.B. Quandt, *Between Ballots and Bullets: Algeria's Transition from Authoritarianism*, Washington D.C.: Brookings Institution Press, 1998.

terms and context of above-mentioned methodology of internal discourse and cross-cultural dialogue in this field.²⁹

The key to understanding and evaluating the utility of all these processes at all levels, it seems to be, is in the nature and dynamics of their foundation in the political will and institutional capacity at the domestic or national as well as international level, including the nature and role of power relations among all parties to the processes. Without the political will to act, and to organize and mobilize for action, whether directly or through others, nothing will happen. Moreover, institutional capacity is necessary for the efficacy and sustainability of action in support of any cause or objective. But action is unlikely to achieve its desired outcome without critical reflection on the relationship between the ends and means of the enterprise. Let me attempt to explain and illustrate these somewhat abstract notions with reference to aspects of intergovernmental and non-governmental co-operation in the field of human rights.

To begin with stating the obvious, Governments cannot be expected to take the initiative for action in support of human rights which are primarily intended to limit and regulate their powers. It is necessary for the public opinion of each country to press their own Government for action in this regard. In developed and stable societies, it is local civil society, acting through its own organizations and institutions, that monitors violations of human rights at home, and seeks redress through judicial remedies, administrative policies and other means. Since these mechanisms are necessarily lacking or inadequate in developing or unstable countries, there is need for external initiatives for the protection of human rights in those settings. But as frequently illustrated by drastic human rights and humanitarian crises – from genocide in Rwanda and the Sudan to ethnic cleansing in the former Yugoslavia – other Governments are unlikely to act in support of the human rights of citizens of other countries without considerable political pressure from their own public opinion.

This is particularly true when action abroad is seen as detrimental to the Government's perception of its own economic, security or other interests. It is therefore necessary for civil society to include concern for human rights abroad as a foreign policy objective of its own Government, and to do so with due regard to all the priorities and considerations that a Government is bound to have in its relations with other Governments. That is to say, civil society actors need to be realistic and pragmatic in pressing their own Government to act in protection of human rights in other countries. Otherwise, their advocacy for incorporation of human rights in the foreign policy of their countries will either meet with strong political resistance at home, or result in empty tokenism abroad. It is also particularly important for civil society actors to co-ordinate the advocacy efforts addressed at their own Government with the actual human rights concerns and priorities of the actual or potential victims of human rights in the intended target countries. In other words, human rights advocates in one country must avoid even the appearance of dictating what should be the human rights concerns and priorities of people in other countries, because that is likely to lead to resentment and resistance by even the intended beneficiaries of such advocacy.

²⁹ See note 12 above, and accompanying text in this article.

The delicacy and difficulty of generating sufficient political support for human rights action abroad without appearing to impose one's own concerns and priorities on others, can be illustrated with reference to current campaigns on what some African Islamic societies call female circumcision, but is known to Western feminist activists as female genital mutilation (FGM). Though this practice is often associated with Islam, it is in fact unknown to the vast majority of Muslims around the world, though it is strongly observed among certain African communities, Islamic and non-Islamic alike. To avoid distorting the terms of this intense and extensive debate, I will not attempt to summarize it here. The point I wish to make is simply that human rights advocates in developed countries who champion the cause of combating FGM in certain African societies, should seek to work in partnership with their counterparts in those societies. Although this may seem obviously desirable, such partnership has not been realized in practice, due to the temptation to present the issue in compelling terms in the developed countries in order to attract the strongest possible support, and the realities of power relations between human rights activists in developed and developing countries. While the first factor tends to lead activists in developing countries to present the issue in simplistic terms in order to be able to reach and mobilize their own constituencies, the second factor inhibits the ability of activists in developing countries to present their own perspective or challenge the way the issue is presented in developing countries. As a result, and perhaps with the best of intentions, activists in developed countries appear to be telling their counterpart in developing countries: we know what is best for your situation, and will do it the way we deem fit or expedient.

Shifting to another level of international co-operation, an example of what should *not* be done at the intergovernmental level is the above-mentioned seminar organized by the UN High Commissioner for Human Rights in November 1998.³⁰ My main objection here is that organizing such a special forum for 'Islamic States' to debate the universality of human rights is to concede that a group of Governments (who cannot be identified by some coherent definition, as explained above, and should not be treated differently from all other Governments around to world) has the right to set the criteria of universality, or to claim that they can grant or withhold it, from their respective cultural or religious perspective. That initiative was particularly problematic because this group of Governments and their intergovernmental organization, the Organization of the Islamic Conference, were allowed to determine who should be permitted to participate in the seminar. As can be expected under such conditions, independent scholars of Islam and human rights were not invited, while non-governmental organizations were allowed to attend only as observers, with no possibility of participating in discussions.

Recalling my earlier discussion about problems with the current international human rights discourse, I would raise the following questions: is it conceivable that a group of so-called Christian, Buddhist or other States identified by some alleged religious affiliation, would be invited by the Office of the UN High Commissioner for Human Rights to debate the universality of human rights from their own particular perspective? Is the Office not already compromising the principle of universality by treating these States as somehow different from any other State or Governments? Is the Office not

³⁰ See note 25.

already conceding claims of the unity of Islam and the State which would undermine even the conceptual possibility of universality of human rights, as explained above? In particular, I object to the fact that convening the seminar on those terms allowed the so-called Islamic States to make contradictory claims to different constituencies. To their own supporters at home, these Governments are able to claim that their relativist position regarding the UDHR has been recognized by the highest UN human rights authorities. At the same time, these Governments are able to claim full commitment to universal standards. Moreover, the Governments of Islamic States will be able to get away with these contradictory claims precisely because they were able to exclude independent participants who know enough to challenge their unfounded assertions of commitment to and implementation of internationally-recognized standards of human rights.

Conclusion

In conclusion, I wish to emphasize that the position of Islamic States (as defined above) regarding the UDHR should be approached in the same way that we would approach the position of any other State. In other words, we should attempt to understand and respond to the position of each State, Islamic or non-Islamic, in terms of its own context. In light of that contextualized understanding, we should then attempt to engage the process by which the position of the State regarding the UDHR is formed and transformed over time. It is at this latter level of analysis that the Islamic dimension of the position of the State will be relevant, but in the relation of the particular State in its own context, and not as a supposedly uniform 'Islamic' position. Accordingly, the first main conclusion of my discussion is that the Islamic dimension in the position of any State should be taken neither as definitive, nor be completely ignored, nor be taken to have the same consequences or implications regarding their position on the UDHR.

The second main conclusion is that since the position of all States is in fact open to change and transformation either in favour or against the UDHR, the question should be how to influence that change in favour of greater protection of human rights in Islamic societies. While I did not elaborate much on the proposed methodology of internal discourse and cross-cultural dialogue to be used in transforming public opinion in Islamic societies in favour of stronger support for the UDHR, I attempted to highlight some of the main concerns and problems that may arise in this regard. For, in the final analysis, the best way to celebrate the 50th anniversary of the UDHR is to reflect critically on scholarship and advocacy in support of the universality of human rights in all human societies, regardless of apparent religious, cultural or other differences.