

**DEFINING 'UNIVERSAL HUMAN RIGHTS' DEPENDS ON WHO YOU TALK TO:
ISLAM, THE WEST AND CULTURAL RELATIVISM**

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Abstract

This analysis will endeavour to enquire how far human rights are considered wholly 'universal', and how influential the opposing argument is, which claims they are defined within specific cultural contexts. Throughout the debate, possibilities and potentials for any compromise or accommodation between the two approaches presented by 'universal' human rights in the West and 'universal' human rights in Islam are considered and assessed.

The philosophy behind each regional document on human rights, as understood in Islam, and how they compare with the U.N. Universal Declaration of Human Rights (1948), is the main foundation of this paper. As will be seen, the U.N. Declaration is not the only 'universal' Declaration pertaining to human rights; as also discussed are the Arab regional arrangements of implementing the U.N.'s documents, in their own culturally specific context.

Information is provided to present the emergence of the concept of human rights from its earliest formulations to the contemporary conception. This paper essentially charts the evolution of the concept from a Western, liberal, individualistic perspective, but as a counter to this, it also offers evidence of some historical documents on human rights from other cultures, to prove the concept was, by no means, solely a Western 'invention.' The paper also discusses the cultural abstentions from the U.N. vote in 1948, to ratify the U.N.'s 'universal' Declaration. The implications of these abstentions have a very heavy bearing on the debate being concerned here.

It is also possible to present the essentially contesting approaches, comparing and contrasting their arguments. 'Universalism' and 'Cultural Relativism' are analysed in some detail, to expose the level of complexities that are involved in trying to resolve this debate – concerning which of the two perspectives, if any, has the greater legitimacy as an approach towards the protection of human rights.

The last section presents an overall picture of how these two approaches actually work together in reality, on a more international position, with specific reference to 'freedom of expression.'

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MUHATABINA GÖRE “EVRENSEL İNSAN HAKLARINI” TANIMLAMAK: İSLAM, BATI VE KÜLTÜREL GÖRECELİLİK

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Özet

Bu araştırma insan haklarının ne kadar evrensel olduğunu ve özel kültürel bağlamda tanımlanan karşı argümanın ne kadar etkili olduğunu sorgulamaya çalışacaktır. Tartışma boyunca, Batıdaki evrensel insan hakları ile İslamiyet’teki evrensel insan hakları tarafından temsil edilen iki yaklaşım arasındaki uzlaşma olasılığı değerlendirilecektir. İnsan hakları üzerine hazırlanmış her bir bölgesel belgenin arkasındaki felsefe (İslam anlayışı gibi) ve bunların Birleşmiş Milletler Evrensel İnsan Hakları Beyannamesi (1948) ile mukayese edilmesi bu yazının temel amacıdır. Görüleceği gibi Birleşmiş Milletler beyannamesi insan hakları ile ilgili tek evrensel beyanname değildir. Ayrıca bu tebliğde, Birleşmiş Milletlerin belgelerinin Arap bölgesel düzenlemeleri tarafından uygulanmaları ve onların kendine özgü kültürel bağlamı içinde tartışılacaktır.

DEFINING 'UNIVERSAL HUMAN RIGHTS' DEPENDS ON WHO YOU TALK TO: ISLAM, THE WEST AND CULTURAL RELATIVISM

Introduction

Human rights is an issue that is never far from the media headlines, thus, it needs to be comprehended from the different cultural perspectives, together with their separate approaches towards protecting those rights. For this reason, the assessment of this paper maintains an analysis purely on the level of content of the relevant documents discussed and also entertains an assessment of the actual material behaviour of specific human rights abuses. It is manifestly clear that obscene human rights abuses occur within every continent – including, for example, widespread cases of genocide – but the material used here constitutes a whole different area of research to cover both the theoretical arguments and compares them with the practical implementation of the documents, declarations and international agreements presented by the United Nations and, specifically, the Middle East.

It is also possible to present the essentially contesting approaches, comparing and contrasting their arguments. Universalism and Cultural Relativism are analysed in some detail, to expose the level of complexities that are involved in trying to resolve this debate – concerning which of the two perspectives, if any, has the greater legitimacy as an approach towards the protection of human rights.

The two differing approaches, as provided from Islam and from the West are compared, to gain some idea of their similarities with each other, their inherent differences and their relationship with the U.N. Universal Declaration of Human Rights.

Assessing the Arab Commission of Human Rights constitutes the comparison case-study of the debate and it offers a detailed analysis of Islam, with specific reference to its approach towards human rights protection. The 'Universal Islamic Declaration of Human Rights' (1981) is discussed as an alternative 'standard' for the global protection of these rights, and this is countered and contrasted with the common Western attacks on Islam.

The last section presents an overall picture of how these two approaches actually work together in reality, on a more international position. It describes, in detail, the common tenets of human rights protection that exist between all the disparate cultural perspectives – including Islam – and argues that certain minimum rights are upheld and respected by all cultures. However, beyond that compromise, it reiterates the vastly different approaches of implementation for the majority of rights, a situation which is heavily influenced by each subjective cultural setting. This section debates the apparently irresolvable nature of the paradigm clash, but offers some hope of rapprochement in its conclusion.

Cultural Abstentions on the U.N. 'Universal' Declaration of Human Rights; 1948

This Declaration, when initially created in 1948, was perceived as a very clear expression of the present day concept of what human rights involved and how far the area had evolved. The very element of the differing cultures, which were also represented on the Committee, made their own contribution or, indeed, their lack of contribution in accepting the initial draft, become equally apparent. The differing priorities within different cultures became very manifested with certain abstentions on specific Articles of the 'Universal' Declaration document.

However, although there was an overwhelming degree of acceptance by the member states of the United Nations at the time, with 48 'Yes' votes and no outright dissentient votes – there were some very significant abstentions.¹ They were very notable and of telling statements by the

¹ Robertson, A., *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, 1982, Manchester University Press, England, p27. Also see Huber, Wolfgang, 'Human Rights – A Concept and its History,' in Muller, A., and Greinacher, N., [Eds.] *Concilium*, Vol.124, No.4, 1979, Seabury Press, New York, USA, p1. Also see O'Sullivan, Declan, 'The History of Human Rights across the Regions : Universalism vs Cultural Relativism,' in *The International Journal of Human Rights*, Vol. 2, No.3. Autumn 1998, Frank Cass Publishers, London, p28.

countries involved, as they suggested – even at that early stage – that obviously the Declaration was not as fully acceptable or definitively ‘Universal’ as it was – and is – promoted to be.

The abstentions from the vote of acceptance were from South Africa, Saudi Arabia and six members of the Communist bloc, which were Poland, Czechoslovakia, Yugoslavia, Byelorussian S.S.R., Ukrainian S.S.R. and the Soviet Union.² The main reasons for these abstentions were that the countries concerned felt that the ‘universal’ Declaration was not, either in part, or at all, compatible with the internal affairs of their own States. South Africa would have had great difficulty accommodating the principles of the text within its active policy of Apartheid, while Saudi Arabia considered the Declaration’s emphasis, which they claimed was based on a Western, liberal, individualistic perspective, that this openly clashed with the Muslim way of life within their country.³ This point is elaborated later, in the section Assessment of the Saudi Arabian Abstention on the U.N. Vote in 1948, where the Islamic perspective on human rights protection is considered and compared against the Declaration. Finally, obviously the Communist bloc would have had difficulty resolving the Declaration’s approach with their Marxist perspective and perception on human rights.

These abstentions are extremely important factors, which highlight the debate today concerning the specific values and legitimate concerns of those who believe that human rights are universal and – conversely – those who believe that human rights are culturally determined. Different cultures have decidedly different priority systems in terms of their lists of rights and what they consider to be important.

However, despite the differing of opinions, the U.N. worked on consistently for eighteen years to formulate it into legally binding instruments, finally producing the Covenants which completed the major human rights documents of Western belief. These are commonly referred to, collectively, as ‘The International Bill of Rights.’⁴ The Covenants which were produced are the ‘International Covenant on Economic, Social and Cultural Rights’, ‘The International Covenant on Civil and Political Rights’ and the ‘Optional Protocol to the International Covenant on Civil and Political Rights.’

It is interesting to note, in the light of this debate, that these extra Covenants did not actually receive enough signatures of U.N. member states to allow them to become fully into effect, until ten years after they had been formulated.⁵ The Western liberal perspective is basically concerned with protecting the individual’s rights against other individuals, groups or the state. It emphasises each person as an entity having a personal list of inherent rights, by virtue of the fact that they are human. Other cultures, as mentioned above and will be elaborated on below, have greater emphasis on duties and certain commitments to the communities they are a part of.⁶

These ideas clash, quite obviously, against each other’s values and what is considered a priority right, needing protection. Each culture has a specific tradition which emphasises importance in

² Sieghart, P., *International Law of Human Rights*, 1984, Clarendon Press, Oxford, England., p24. Also see Artz, Donna, ‘The Application of International Human Rights Law in Islamic States’, *Human Rights Quarterly*, Johns Hopkins University Press, Baltimore, USA, 1990, Vol.12, No. 2, p216. Also see O’Sullivan, Declan, ‘The History of Human Rights across the Regions’, *op.cit.*, p28

³ O’Sullivan, ‘The History of Human Rights across the Regions’, *ibid.*, p28.

⁴ O’Sullivan, *ibid.*, p29. Also see Weston, B., ‘Human Rights’ in *Human Rights Quarterly*, Vol.6, No.3, August 1984, The Johns Hopkins University Press, Baltimore, USA, p273 and also see Huber, W., *op.cit.*, p1.

⁵ Huber, W., *ibid.*, p1 also see Swindler, L., ‘Historical Retrospect’, *Concilium*, SCM Press, London, No.2, 1990 p20 and Artz, Donna, ‘The Application of International Human Rights Law in Islamic States’, *op.cit.*, p217 : - (Artz states in footnote 57) “International Covenant on Civil and Political Rights, adopted on 16 December, 1966, entered into force on 23 March, 1976” and (in footnote 58) “International Covenant on Economic, Social and Cultural Rights, adopted on 16 December, 1966, entered into force on 3 January, 1976.”

⁶ Robertson, A., *Human Rights in the World*, *op.cit.*, p8-9. Also see O’Sullivan, Declan, ‘The History of Human Rights across the Regions’, *op.cit.*, p29

different areas. Thus, the issues to be resolved here are whether one culture is better than another in its formulation of protection of human rights controls; whether one culture has a moral right to impose its views on another and whether there is any possibility for a rapprochement between the idea of universal human rights and the cultural relativist approach towards them.

Assessment of the Saudi Arabian Abstention on the U.N. Vote in 1948

With this understanding, it is easier to follow the arguments put forward by Saudi Arabia when defending its abstention on the vote in 1948, whether to accept the U.N. Universal Declaration on Human Rights or not. Defending its Islamic perspective, Saudi Arabia's abstention reflected its dual position regarding the Declaration. It believed that it went too far in some regards and not far enough in others. Artz suggests that al-Barudi, the Saudi Ambassador to the U.N. at the time, strenuously objected to Article 18 in particular.⁷ The objection was based on the contention that the Qur'an forbids apostasy (when a Muslim decides to change their faith). Non-Muslims may certainly join Islam if it is their desire, but apostasy for Muslims was – and is – never tolerable.⁸

Thus, in the perspective that Islam is the final and ideal religion, it is inconceivable that anyone should legitimately have, or desire, another religion. An-Na'im maintains that this principle of the shari'a is offensive to a Western conception of human rights, as it violates freedom of belief and the freedom expression for Muslims and also the freedom to choose any religion a person wishes to join – because apostasy can be liable to receive the punishment of the death sentence.⁹ However, al-Barudi argued that the right to change religion would offend Muslims and also invite missionaries into the Arabian peninsula and in doing so would violate the U.N. Charter's prohibition on interference in domestic affairs. Artz points out that, notably, other Islamic states – Afghanistan, Iraq, Pakistan and Syria – initially joined the Saudi protest to delete Article 18, while criticising Lebanon who had voted in favour of the clause, as they declared that this was seen to be overtly insensitive to Lebanon's own Muslim population. Despite this complaint though, all of these countries eventually approved the Declaration. Saudi Arabia brought up an issue with one further point, by claiming that the U.N. Declaration's other Articles were consistent with Islam but were either incomplete or lacked a unifying framework, such as the belief in God/Allah. Marina Lazeg postulates that on this issue the Saudis

took the Declaration to be a competing document, claiming universality when, in fact, its contents were limited to the particularistic goal of applying a Western mode of social, political and economic practice onto a culturally and philosophically different world. Implicit in the Saudi position is the reasoning that the Islamic conception of Man and the legal system elaborated upon it, is just as good, if not better, than the abstract principles enunciated in the Declaration and subsequent Covenants and Conventions.¹⁰

⁷ Article 18 reads as “Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief in teaching, practice, worship and observance.” UN Universal Declaration of Human Rights, 1948,

found on: <http://www.unhchr.ch/udhr/lang/eng.htm>

⁸ For a detailed analysis of this topic, on the exegesis of the Qur'an, the shari'ah ruling on apostasy and blasphemy in Islam, see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' in the Journal of Qur'anic Studies, Vol. III, Issue 2, 2001, Edinburgh University Press, p63-93

⁹ An'-Na'im, Abdullahi Ahmed, 'Qur'an, Shari'a and Human Rights : Foundations, Deficiencies and Prospects,' in Kung, H., and Moltman, J., [Eds.] Concilium, No.2, 1990, SCM Press, London, p64. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' in the Journal of Qur'anic Studies, Vol. III, Issue 2, 2001, Edinburgh University Press, p63-93

¹⁰ Artz, Donna, 'The Application of Human Rights Law in Islamic States', op. cit., p217. Also see O'Sullivan, Declan, 'Al-Islam: An Alternative approach to the Universal Protection of Human Rights,' in

These later U.N. initiated documents, the International Covenant on Civil and Political Rights and the International Covenant on Economic and Cultural Rights, were designed to elaborate on the standards set in the U.N. Universal Declaration and provide some mechanisms of enforcement.

Article 18 of the former document corresponds with Article 18 of the Declaration, providing further that “no-one shall be subject to coercion which would impair his freedom to have, or attempt to have, a religion or beliefs of his choice.” However, while debating the Covenants in 1954 and 1960, Artz argues that al-Barudi repeated Saudi’s objection to this provision on the grounds that “it would raise doubts in the minds of ordinary people, to whom their religion is a way of life.”¹¹ A further objection was against the provision of Article 19 of the Covenant on Economic, Social and Cultural Rights, which guarantees “the right of everyone to social security, including social insurance.” The main argument was that the shari’a already provides the duty to assist the needy, through zakat¹² and the Saudi Ambassador refused to commit his country to obligate what they perceived as a Western and inferior concept.¹³

Historical Development of a Cultural Dimension

Robertson states that merely because the established mainstream of these human rights documents are all steeped in the tradition of Western European parliamentary democracy, it still – in no way – follows that they have or have had a complete monopoly on the subject. This situation is primarily the case, he argues, as this tradition is believed to have produced the most familiar formulations and dominant documents on human rights, while simultaneously instituting wide ranging and mainly effective systems to implement the preservation of each right listed – on both national and international levels.¹⁴

He expands this argument further, to prove that other cultures were just as interested in human rights as the liberal West and that their own sophisticated thought had produced documents to, at least, rival those produced by Western philosophy. More interesting a note, is that these documents also pre-dated the Western documents by several centuries. At the International Conference on Human Rights in Tehran, during the ‘Human Rights Year’ in 1968, the then Shah of Iran claimed that the true ancestor and thus, an inspiration for the documents which recognise the rights of humans was Cyrus the Great, of Iran. Cyrus had promulgated human rights documents over two thousand years ago.¹⁵ Robertson then enhances this argument by referring to the work of Christian Daubie, who has studied Cyrus and his attitudes towards his subjects and particularly marked out was his respect for their different religious beliefs. Daubie maintains that the ‘Charter of Cyrus’ established the recognition and protection of what is now

The Islamic Quarterly, Second Quarter of 1417/1997, Vol. XLI, Number 2, The Islamic Cultural Centre, London, p135.

¹¹ Artz, *Ibid.*, p217 and see O’Sullivan, , ‘Al-Islam,’ *ibid.*, p136.

¹² The Qur’an and Sunnah organise the re-distribution of wealth. zakat is not voluntary charity, but an obligatory levy – not on income but on wealth. It is primarily considered as a form of ibada (worship). The Qur’an expressly provides for this payment in 51:19 - “And in their wealth there is an acknowledged right for the needy and the destitute.” The Sunnah generally, fixes the rate at 2.5% for the non-invested money. See Garaudy, R., ‘Human Rights in Islam : Foundation, Tradition and Violation’ in Kung H., and Moltman, J., [Eds.] *Concilium*, No.2, 1990, SCM Press, London, p53, and Mawdudi, Mawlana Abul A’la, in Khurshid, A., and Khurram, M., (eds.), 1992, *The Islamic Way of Life*, The Islamic Foundation, Leicester, England, p48-52. Also see O’Sullivan, ‘Al-Islam’, *ibid.*, p136, and in footnote No.28 on p151

¹³ Artz, *op. cit.*, p218 and also see O’Sullivan, *ibid.*, p136

¹⁴ Robertson, A., *Human Rights in the World*, *op. cit.*, p9. Also see O’Sullivan, ‘The History of Human Rights across the Regions’, *ibid.*, p30, and see Swindler, L., ‘Historical Retrospect,’ *op. cit.*, p12

¹⁵ Robertson, *Ibid.*, p8. Also O’Sullivan, ‘The History of Human Rights across the Regions’, *ibid.*, p30

referred to as the rights to liberty, security, freedom of movement, the right to own property and certain economic and social rights.¹⁶

Added to Cyrus, the Middle East also has had other rulers who acknowledged the rights of peoples, in both documents and charters. In the work of Polys Madinas, there is detailed research on one Pharaoh in ancient Egypt who gave instructions to his Viziers which stated that:

when a petitioner arrives from Upper or Lower Egypt.....make sure that all is done according to the law, that custom is observed and the right of each man respected.”¹⁷

Madinas offers another example of such an ancient charter, in the form of the ‘Code of Hammourabi.’ Within this code, the King of Babylon stated – in a reputed two thousand years before the life of Jesus – that his mission and vision was “to make justice reign in the kingdom, to destroy the wicked and the violent, to prevent the strong from oppressing the weak,.....to enlighten the country and promote the good of the people.”¹⁸

It is manifestly clear then, that human rights has been a global concern since the earliest records in history. Added to this, it has been a concern in different cultural contexts and each document reflects the cultural context it serves. The ensuing arguments here will endeavour to determine how far it is correct, or acceptable, for the Western liberal tradition of individual rights for everyone to over-ride the regional human rights declarations that are in existence now. They will also assess how far these regional priority systems can claim to have a legitimate right to exist as autonomous declarations and a credible regional alternative to the U.N. Declaration.

Now, however, for an understanding of the relevant issues in the debate over these areas, it is essential to elaborate on and compare the arguments held by those who feel that human rights are unquestionably ‘universal’ against those who feel that human rights are evolved from the cultural context of localised areas and regions. Whether any compromise between these two opposing views can be achieved will be the object of the discussion – in the hope of establishing an agreeable position between them for constructive interaction and thus progress on this issue.

It is of interest and some importance to note that this issue of cultural relativism, with differing perspectives of implementing the U.N. Declaration of Human rights has been pragmatically confronted upon, with the establishment of four Human Rights Commissions. The Commissions deal with the protection of human rights within the context of their own cultural priority systems and the differing prominence in their lists of rights that need absolute protection. These four Commissions cover the Arab, European, Inter-American and African cultural differences.¹⁹

Regionalism as a Possible Threat to Universalism

There exists the European, Inter-American, African and Arab Commissions on Human Rights for the protection and promotion of human rights in their own arrangements. This offers immediate and inevitable speculation as to whether they are likely to, at least, diminish the value of the human rights work of the U.N., perhaps even undermining its effectiveness.

Robertson muses that this very issue formed an interesting debate at the International Colloquy concerning the European Convention, organised by the University of Vienna and the Council of Europe in 1965. There was intense discourse from both perspectives, with delegates promoting both the establishment of regional arrangements as the best solution towards protecting human rights. This view was forwarded by Jean-Flavien Lalive while, simultaneously, a wholly

¹⁶ Robertson, *Ibid.*, p8. Also O’Sullivan, *ibid.*, p30

¹⁷ ¹⁷ Robertson, A., *Human Rights in the World*, op. cit., p8. Also see O’Sullivan, ‘The History of Human Rights across the Regions’, *ibid.*, p30

¹⁸ Robertson, *Ibid.*, p8. Also O’Sullivan, *ibid.*, p30

¹⁹ O’Sullivan, Declan, ‘The History of Human Rights across the Regions’, *ibid.*, p31

centralised 'universal' approach was argued by advocates promoting that perspective, including Egon Schwelb of the United Nations Commission.²⁰

It is now necessary to outline the Arab Commission of Human Rights to offer an example of the regional mechanisms and strategies, before any analysis can begin to assess the differing preferences or any greater validity of either the universal approach or the cultural relativism of regional diversity in protecting human rights. Therefore, it will be useful to discuss the approach that has been provided by the Arab Regional Commission, to assess the concept of 'human rights' as it is understood in Islam.

The Arab Regional Documents, Their Position and Approach to Human Rights

It is necessary to examine and compare the Islamic perspective on internal priorities and principles and how these compare and simultaneously differ with the United Nations Declaration on Human Rights. Although Islam is stated to have an approach based on the Qur'an and shari'a legal system, further enquiry is necessary in order to establish the extent to which a common moral code is adhered to by Islamic countries. On a broader level, it is necessary to discuss how prevalent the indigenous cultural perspective is, in formulating regional human rights approaches.

The Arab Commission of Human Rights²¹, founded by the Council of the League of Arab States in September 1968,²² has more an emphasis on promoting greater international interest in the Arab cause, than protection of the rights and problems of particular members of the League.²³ Boutros Boutros-Ghali describes the main themes it initially pursued as

the rights of combatants in the event of war or armed conflict in accordance with the provisions of the Geneva Conventions of 1949; the legitimacy of the struggle waged by the Palestinian Resistance and the protection of holy and archaeological sites, in accordance with the principles established by international law.²⁴

Despite this endeavour however, the Commission has produced several important regional documents in the area of human rights, including the 'Draft Declaration for an Arab Charter of Human Rights' in 1971, the 'Declaration of the Rights of Arab Citizens' and the 'Draft Charter on Human and Peoples' Rights in the Arab World,' approved in 1986. There has also been established a regional 'Commission on the Status of Arab Women.'²⁵

The Arab League also acknowledges and accepts a certain universal function of human rights. Reporting to the U.N. Commission on Human Rights in 1967, concerning the value of establishing regional commissions, the League stated that :

²⁰ Robertson, A., Human Rights in the World, op. cit., p173. Also O'Sullivan, ibid., p31

²¹ The Arab Commission of Human Rights is comprised of the members of the League of Arab States, which are Jordan, Syria, Iraq, Saudi Arabia, Lebanon, Egypt, Yemen and Palestine is represented by a Palestinian Liberation Organisation (PLO) delegate; see Boutros-Ghali, B., 'The League of Arab States' in Vasak, K. [Ed.], The International Dimensions of Human Rights, 1982, Green Wood Press Ltd., Westport, Connecticut, USA, p575 and p577. Also see Robertson, A., ibid., p161 and O'Sullivan, Declan, 'The History of Human Rights across the Regions', op.cit., p32

²² Boutros-Ghali, B., 'The League of Arab States', ibid., p577 and Weston, B., 'Human Rights', op.cit., p277.

²³ Boutros-Ghali, ibid., p578

²⁴ Boutros-Ghali, ibid., p579. Also see Robertson, A., Human Rights in the World, op. cit., p164-165 and O'Sullivan, Declan, 'The History of Human Rights across the Regions', op.cit., p32.

²⁵ Boutros-Ghali, ibid., p579-580. Also see Weston, B., 'Human Rights', op. cit., p277, and Robertson, A., ibid., p164 Espiell, H., 'The Organisation of American States (OAS)' in Vasak, K. [Ed.], The International Dimensions of Human Rights, op.cit., p454

1; The field of human rights is a vital one for strengthening links among countries which belong to a regional area.

2; As for the procedure of establishing regional commissions on human rights and specifying their functions, the League of Arab States believes that the proper foundations for setting up such regional commissions are the foundations on which a regional inter-governmental organisation is based. Thus, the regional commissions should be established within the framework of international or regional inter-governmental organisations.²⁶

This acceptance of some universalism in their approach to human rights is a point which Boutros-Ghali also observes. He argues that on comparing the U.N. Universal Declaration of Human Rights with the Draft Arab Charter, it is seen that the latter contains all the rights and freedoms proclaimed by the international community as essential.

However, despite this, it is a document undeniably grounded in regional concerns, created by a Commission that is intent on raising the world's consciousness on Arab issues. Boutros-Ghali declares that "the few specific features presented by the Arab Draft consist in the more precise terms in which certain Articles are set forth, dictated by regional arrangements."²⁷ It is also widely documented that the main ethos of the Commission is, essentially, to use human rights as a platform for challenging Israel, specifically concerning the treatment of Arab citizens living in Arab territories – which have been usurped by the Israelis.²⁸

A greater claim to the regional ethos – even cultural relativism – of the Arab perspective on human rights, can be made with reference to the Baghdad Symposium, in May 1979. Organised by the Union of Arab Jurists, it demanded the conclusion of an Arab Commission on Human Rights which would guarantee fundamental rights as they are understood in a specifically Islamic context. The Symposium also recommended the establishment of a non-governmental Permanent Committee for the Defense of Human Rights and Fundamental Freedoms in the Arab Homeland.²⁹

This committee would have the competence to receive complaints from individuals and groups of individuals regarding violations of rights and freedoms. They would send fact-finding missions to investigate the alleged violations and prepare reports on their findings, which would be presented to Arab public opinion, Arab governments and international bodies of relevant interest.

Summing up the nature of the Draft Arab Charter on Human Rights, Boutros-Ghali succinctly captures its essence when stating that:

as a whole, the Draft reflects at once a concern for continuity with the past, a desire to achieve Arab unity and lastly, a call for justice in respect of the Arab populations living in the occupied territories. This threefold objective gives the Draft a specifically Arab regional character without, however, departing from the spirit of the Universal Declaration.³⁰

Added to this, in 1981, the Islamic Council publicly provided the Universal Islamic Declaration of Human Rights, which presents the entire new boundary to engage in discussion of Islam within the debate between cultural relativism and universalism.

²⁶ Robertson, A., *Human Rights in the World*, *ibid.*, p163. Also see O'Sullivan, Declan, 'The History of Human Rights across the Regions', *op.cit.*, p32-33

²⁷ Boutros-Ghali, B., 'The League of Arab States', *op. cit.*, p579 and also O'Sullivan, *ibid.*, p33.

²⁸ Boutros-Ghali, *ibid.*, p577 and p579. Also see Weston, B., 'Human Rights', *op. cit.*, p277, and Robertson, A., *op. cit.*, p163 and also O'Sullivan, *ibid.*, p33.

²⁹ Boutros-Ghali, *ibid.*, p580. Also see Robertson, A., *ibid.*, p165 and O'Sullivan, *ibid.*, p33

³⁰ Boutros-Ghali, B., *ibid.*, p579. Also see O'Sullivan, Declan, 'The History of Human Rights across the Regions', *ibid.*, p33-34

Islam in the Debate between Cultural Relativism and Universalism

“In the view of most Muslims, both traditionalist and modernist, Islam itself, is the single strongest guarantee for the protection of human rights available.”³¹ Hollenbach continues, claiming that the shari’a preceded the United Nations by 1400 years in setting forth the true rights of the human person. This is a strong buttress for Muslims – and they would argue for everyone else – against accepting the U.N. Universal Declaration of Human Rights, of 1948, and is a clear reason for the Islamic intellectuals to have now produced their own set of ‘universal’ standards for global protection of human rights within the Universal Islamic Declaration of Human Rights.

Within the ‘Forward’ section of the Declaration, Salem Azzam, then Secretary General of the Islamic Council, reiterates the point that :

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice. Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way, the human rights conferred by God, nor can they be surrendered.³²

Salem Azzam also highlights the matter of human rights violations that occur in all countries, including those stated as being ‘Islamic States’:

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people around the world. [.....] The Universal Islamic Declaration of Human Rights is based on the Qur’an and Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought.³³

Beyond the official perspective taken by Islam – and from that, Islamic states – with regard to the U.N. Declaration and the West generally, the reactions to the U.N. promotion of human rights is a fascinating one. Cherif Bassiouni has declared that the concepts of the inherent dignity of the individual and of fundamental rights is presented in international human rights conventions – are actually acceptable to the majority of Muslims. Artz quotes him on this point, where he claims that

to the extent that international conventions protect the same rights protected by shari’a, nothing impares [sic] an Islamic or Muslim state from becoming signatory to any international convention on the protection of fundamental human rights.³⁴

However, an extremely important caveat is included, which reinforces the Islamic identity in the area of human rights, ensuring that:

Nothing in Islamic international law precludes the applicability of these international obligations to the domestic legal system of an Islamic state, provided these obligations

³¹ Hollenbach, D., ‘Human Rights and Religious Faith in the Middle East: Reflections of a Christian Theologian’ in Human Rights Quarterly, Vol. 4, No.1, Spring 1982, The Johns Hopkins University Press, Baltimore, USA, p104. Also see O’Sullivan, *ibid.*,p34.

³² Salem Azzam, Universal Islamic Declaration of Human Rights, 1981, The Islamic Council, p1; found on: <http://www.alhewar.com/ISLAMDECL.html> Also see O’Sullivan, ‘The History of Human Rights across the Regions’, *ibid.*,p34

³³ Salem Azzam, *ibid.*, p1 and also see O’Sullivan, *ibid.*,p34

³⁴ Artz, ‘The Application of Human Rights Law in Islamic States’ *op.cit.*, p214. Also see O’Sullivan, Declan, ‘Is The Declaration of Human Rights Universal?’, in The International Journal of Human Rights, Vol. 4, No. 1. Spring 2000, Frank Cass Publishers, London, p41.

are not contrary to shari'a.....[International human rights] are subject to the purposes and objectives of a given society, subject to the due process of law.³⁵

The Islamic position concerning the U.N. Declaration on Human Rights offers similar respect and acceptance of its aims. Khadduri argues that while it is not as binding as domestic legislation – which is an obvious reference to the shari'a and other indigenous cultural arrangements – it:

is perhaps the most important standard of human rights accepted by an international organisation, comprising the norms and values of civilised nations that might be regarded as morally binding, not only on the members of the United Nations, but on the community of nations as a whole.³⁶

Artz argues further, that Lebanon represented the Arab states on the commission of eight U.N. member states which drafted the U.N. Declaration. Charles Malik, an Arab Christian, was the Lebanese delegate and was also appointed rapporteur of the commission – which worked together with research assistance from Islamic muftis (eminent interpreters of Islamic jurisprudence or fiqh) and intellectual specialists on Islam. Malik advocated the Declaration as a document of the first order of importance. While history alone can determine the historical significance of an event, it is safe to say the Declaration, before us, can be destined to occupy an honourable place in the procession of positive landmarks in human history.³⁷

Although a Christian, Malik made this comment after extensive work was undertaken in preparing the Declaration with Islamic representatives at each stage. In fact, in terms of Islamic ratification of the U.N. Declaration or, at least, credibility given to it by Islamic states, Egypt's representative on the 'Third Committee' considered the Declaration 'an authoritative interpretation of the (U.N.) Charter' and declared that Egypt believed:

the competence of the United Nations in the question of human rights was positive and the provisions of Article 2, paragraph 7 of the Charter (guaranteeing non-interference in the internal affairs of member states) could not be invoked against such competence when, by adoption of the declaration, the question of human rights was a matter no longer of domestic, but of international concern.³⁸

Together with this point, Syria's representation on the same committee declared, fairly unequivocally, that "there would be no point in committing [the Declaration's] principles to paper if they were not to be respected in international behaviour."³⁹

The respect for, if not commitment to, a 'universalist' approach to human rights in an Islamic context is reinforced by the work of Abdullahi Ahmed An-Na'im. He argues that, despite the Islamic arguments of law being based on shari'a and the Qur'an, the reality is that shari'a has been displaced by secular – and mostly Western – law in most parts of the Muslim world for several generations now. An-Na'im argues that :

even countries such as Saudi Arabia, which purport to implement shari'a as the sole law of the land, now have significant non-shari'a elements in their legal system. Moreover, most Muslim countries have introduced guarantees of equality between men and women, freedom of religion, et cetera, in their domestic laws and constitutions. These countries have also endorsed the

³⁵ Artz, 'The Application of Human Rights Law in Islamic States', *ibid.*, p214-215. Also see O'Sullivan, Declan, 'Is The Declaration of Human Rights Universal?', *ibid.*, p41.

³⁶ Artz, *ibid.*, p215 and see O'Sullivan, *ibid.*, p41

³⁷ Artz, *ibid.*, p215-216 and see O'Sullivan, *ibid.*, p41

³⁸ Artz, *ibid.*, p215 and see O'Sullivan, 'Is The Declaration of Human Rights Universal?', *ibid.*, p42

³⁹ Artz, *ibid.*, p215-216 and see O'Sullivan, *ibid.*, p42

Universal Declaration of Human Rights and ratified some of the international human rights treaties.⁴⁰

However, while accepting the common threads which exist between the different cultural perspectives and a universal approach towards human rights, the inevitable counter-argument is omnipresent, to balance the debate. An'-Na'im admonishes that it would be an extremely serious mistake to underestimate the impact of shari'a and the hold it still maintains in the Islamic world – thus, its effect on human rights protection there. He claims that:

shari'a rules continue to apply in matters of family law and inheritance throughout the Muslim world. Consequently, all the provisions of shari'a which violate the human rights of women in these fields are applied today in all Muslim countries. Further more, the so-called Islamic resurgence movements are demanding the immediate reinstatement of shari'a as the sole law of the land in many Muslim countries. These movements have succeeded in Iran and are likely to succeed in other parts of the Muslim world.⁴¹

It is very obvious to observe that Islam may well share common threads on basic issues – issues which could not be denied in any belief system genuinely seeking recognition and claiming inherent legitimacy – but the form of interpretation it takes to implement these guarantees is so vastly different from a Western perspective on human rights protection, that even simple comparison of the two systems presents difficulties in how the two actually correlate.

Nasr captures the Islamic aims and the foundations they are based in, when proclaiming that:

every manifestation of human existence should be organically related to the shahadah, "la ilaha ill'Allah" [There is no god, but Allah], which is the most universal way of expressing unity.....The political ideal of a single Muslim government, with all the ups and downs it has experienced over the centuries, is based on the central metaphysical doctrine of unity.⁴²

This issue offers very firm strength for the defensive arguments supporting cultural relativism. The belief in Divine Will, seems non-approachable with opposing documents developed and implemented by 'non-believers' from a different culture, with very different priorities and preferences in their own protection of human rights.

A further attack by Universalism over Cultural Relativism in regard to regional Human Rights Commissions is the defence of universalism in what they see as "the blow struck by regionalism in the matter of human rights against that necessary universalism which springs from the intrinsically identical nature of all human beings."⁴³ This is the language of strong, if not extreme universalism, with little flexibility for compromise and accommodation with the views and values held by those who they would claim are diametrically opposed to their aims.

Universalists have a very strict and rigid idea of how the regional procedures should exist and believe that this regional protection of human rights, if it is to be acceptable at all

must come within the framework of regional organisation in accordance with the Charter of the United Nations and become one aspect of the policy of integration. If, however, regional protection were but a form of inter-governmental co-operation, the

⁴⁰ Abdullahi Ahmed An'-Na'im, 'Qur'an, Shari'a and Human Rights : Foundations, Deficiencies and Prospects,' op.cit., p64-65. Also see O'Sullivan, *ibid.*, p42

⁴¹ Abdullahi Ahmed An'-Na'im, *ibid.*, p65. Also see O'Sullivan, 'Is The Declaration of Human Rights Universal?,' *ibid.*, p42-43.

⁴² Nasr, S., *Ideals and Realities of Islam*, 1966, George Allen and Unwin Press, London, p29-30. Also see O'Sullivan, *ibid.*, p43.

⁴³ Espiell, H., 'The Organisation of American States (OAS)' in Vasak, K. [Ed.], *The International Dimensions of Human Rights*, op.cit., p454 and O'Sullivan, 'The History of Human Rights across the Regions', op.cit., p44.

parochial and perhaps even selfish attitudes of which it would also be an expression, would by no means justify the danger of such a serious blow to universalism.”⁴⁴

However, both doctrines clearly have been considered in the drafting of the salient documents, but with differing emphasis within the different regions. The arguments for the presence of each are – in their context – equally defensible and valid. Thus, the constant exchange of these strong words, promoting each approach, offers some idea of how difficult any compromise – let alone rapprochement – is to achieve in the continual battle for a dominant paradigm in human rights: – be it either Cultural Relativism or Universalism.

This information adequately presents the differing approaches and simultaneous similarities between the regional Commissions which exist with their documents, mechanisms and the extent to which they adhere to either the doctrine of cultural relativism and/or universalism. Clearly, both doctrines have been considered in the drafting of salient documents, but with differing emphasis within the different regions. The arguments for the presence of each are, in context, equally defensible and valid.

Islam’s Position to the U.N. Universal Declaration on Human Rights (1948)

Mansour Farhang states that all the major political upheavals and ideological conflicts in the Middle East, since the turn of the century have been variously influenced by the Western challenge to the native culture patterns in that region. Hence, “emulation and fascination, as well as resentment and resistance, characterise the attitudes of Middle Easterners toward this historical encounter.”⁴⁵

Islamic intellectuals believe that, like nationalism, liberalism, socialism and Marxism, the contemporary idea of civil rights is essentially a Western idea, imported and imposed on their belief system.

It is an explicit and implicit assumption and pre-condition of the U.N. Universal Declaration on Human Rights that, in spite of the diversity in cultures and differences in existential conditions of the world, a common standard of rights can be established for all peoples and nations.

Farhang cites the Declaration’s claim of its universal nature – that “all human beings are born free and equal in dignity and rights.”⁴⁶ However, it is here that Islam feels that its own interpretation of human rights differs fundamentally from this Western philosophy and perspective.

Within Islam, as also in African culture, the community – and in this case the religious community of Muslims – comes before the individual. Islam is a self-contained, self-supportive entity and Khadduri describes the community as “a compact wall, whose bricks support each other.”⁴⁷ It is an inherent Muslim belief that the part of the individual within the community is not simply to ensure its preservation, but beyond that, to recognise that the community provides for the integration of human personality. This is perceived to be achieved through self-abnegation and actions which promote solely the good of the collective community.⁴⁸

⁴⁴ Espiell, in Vasak, K. [Ed.], *ibid.*, p455 and also see O’Sullivan, Declan, ‘The History of Human Rights across the Regions’, *ibid.*, p44.

⁴⁵ Farhang, Mansour, 1988, ‘Fundamentalism and Civil Rights in Contemporary Middle Eastern Politics’ in Rouner, Leroy S., (ed.) *Human Rights and the World’s Religion’s*, University of Notre Dame Press, Indiana, USA, p66. Also see O’Sullivan, Declan, ‘Al-Islam: An Alternative approach to the Universal Protection of Human Rights,’ *op.cit.*, p130.

⁴⁶ Farhang, Mansour, *ibid.*, p63-64. Also see the U.N. Universal Declaration on Human Rights, 1948, Article 1, and also O’Sullivan, ‘Al-Islam,’ *ibid.*, p131

⁴⁷ Khadduri, Majid, 1955, *War and Peace in the Law of Islam*, Johns Hopkins University Press, Baltimore, USA, p3. Also see O’Sullivan, ‘Al-Islam,’ *ibid.*, p131.

⁴⁸ Said, Abdul Aziz, ‘Precept and Practice of Human Rights in Islam,’ *Universal Human Rights*, Vol.1 No.1, January 1979, p64-65. Also see O’Sullivan, ‘Al-Islam,’ *ibid.*, p131.

It is clear that here too, along with the African perspective – and to some extent within the American Convention – the emphasis is on ‘duty’, more than ‘rights’ and this is undeniably been culturally determined. Within Islam specifically, an individual’s obligation is consolidated by its being owed to Allah.⁴⁹

The rules of conduct for all Muslims were laid down by Allah in the Qur’an, having been communicated through the Prophet Muhammad and Muslims do service to Allah by obeying these rules. This foundation of the idea of obedience to Allah within Islam shapes the discussion of Islam and human rights so deeply that the emphasis on ‘rights’ is virtually always superseded by that of ‘duties.’ This leads to the assertion that the “essential characteristic of human rights in Islam is that they constitute obligations connected with the Divine and derive their force from this connection.”⁵⁰ From this evolves the position that there can be no stronger claim for the protection of human rights, beyond that they are the privilege of Allah, within whom all authority ultimately resides.

Concerning ‘rights’ when considered as fundamental freedoms, Nasr argues that Islam favours ‘freedom to’ over ‘freedom against’ – thus, freedom to be, or become, over freedom from external constraint.⁵¹ True freedom consists in surrendering to the Divine Will, rather than in some artificial separation from the community of Allah.

A Truly ‘Universal’ U.N. Declaration of Human Rights?

From this point of view, the U.N. Declaration is an essential document to protect the individual in any given society; and an elaboration of this will now be presented. Simultaneously with this, will be presented the contrasting interpretation, from a cultural relativistic perspective, and together, these highlight the continued presence of contention in the essential interpretation of the rights within the Declaration and their undeniable contestable – as argued above.

From a universalist perspective, the Declaration’s stress on equality and non-discrimination, particularly in Articles 1, 2, and 7 reflects an essentially individualistic modern view of man, state and society, where autonomous individuals are easily viewed as basically equal.⁵² This basic equality however, is likely to be an incoherent, or even an incomprehensible notion where people are defined – as they usually are in traditional societies – by ascribed characteristics, such as birth, age, or sex. Donnelly argues that much the same is true of the guarantees in Articles 4 and 6 for an individual’s fundamental status as a person and full member of the community by outlawing slavery and assuring to all recognition as a person before the law.⁵³

Articles 3 and 5 list guarantees of life, liberty and security of the person, prohibiting torture, cruel, inhuman or degrading treatment or punishment, and essentially reflect basic, widely held values which represent a minimal modern consensus on virtually universal guarantees against the state.

Donnelly makes the point that

⁴⁹ Artz, ‘The Application of Human Rights Law in Islamic States’, op. cit., p205. Also see O’Sullivan, ‘Al-Islam’, *ibid.*, p131

⁵⁰ Said, Abdul Aziz, ‘Precept and Practice of Human Rights in Islam,’ op. cit., p63. Also see Farhang, Mansour, ‘Fundamentalism and Civil Rights in Contemporary Middle Eastern Politics’ op. cit., p64 and O’Sullivan, ‘Al-Islam’, *ibid.*, p131

⁵¹ Nasr, Seyyed Hossein, 1980, ‘The Concept and Reality of Freedom in Islam and Islamic Civilisation’ in Rosenbaum, Alan S. A., (ed.) *The Philosophy of Human Rights : International Perspectives*, Aldwych Press, London, p95-97. Also see O’Sullivan, ‘Al-Islam’, *ibid.*, p132.

⁵² O’Sullivan, Declan, ‘Is The Declaration of Human Rights Universal?’, op.cit., p45.

⁵³ Donnelly, J., ‘Cultural Relativism and Universal Human Rights’, *Human Rights Quarterly*, Johns Hopkins University Press, Baltimore, USA, Vol.6, No.4, 1984, p415. Also see O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, *ibid.*, p45.

it is hard to imagine cultural arguments against recognition of the basic rights of Articles 3 through to 11.....(They) are so clearly connected to basic requirements of human dignity and are stated in sufficiently general terms, that any morally defensible contemporary form of social organisation must recognise them (although perhaps not inalienable rights).⁵⁴

A Cultural Relativist Response

Having accepted such a group of fundamentally valid rights, there are very obvious cultural objections, or at least problems, with many others. For example, Article 12, which recognises a limited right to privacy, is peculiarly modern. As Donnelly relates

privacy is of great value to the relatively autonomous individual; it helps to protect his individuality. It is, however, fundamentally foreign to traditional, communitarian societies, as we can see in English, in the etymological connection between privacy and privation.⁵⁵

Articles 13, 14 and 15, which recognise rights to freedom of movement, asylum and nationality, are likewise basic in the relatively fluid, individualistic modern world, but would not be a priority, at least as basic rights, in most traditional societies. Article 16, which deals with the right to marry and found a family is, in part, of universal applicability, but the requirement of 'free and full consent of the intending spouses' reflects a very definite western view of marriage as more a union of individuals than a linking of lineages. Donnelly argues that not only is this a culturally specific interpretation of marriage, but an interpretation that is of relatively recent origin and by no means universal today – even in the West.⁵⁶

This issue, Garaudy argues, is the epitome of hypocrisy, for it to be included in a Western document, when "legitimate protests against polygamy would be more credible if they did not come from a western world where the law stipulates monogamy and polygamy is practised."⁵⁷ Problems of interpretation also arise in Article 17, which guarantees the right to private property. This has some universal validity, as virtually all societies permit individual ownership of at least some goods, "although in the modern sense of a right to individual ownership of the means of production, it is clearly appropriate only in economies with a large capitalist sector."⁵⁸ A major issue which fuels the Universalism-vs-Cultural Relativism debate, is the contents of Articles 18 to 21, which cover the rights to freedom of thought, conscience and religion, opinion and expression, assembly and association and participation in government – all of which are manifestly based on modern conceptions of an individualistic society.

The controversy these cause – especially with regard to Article 18, from an Islamic perspective – is documented above, concerning Saudi Arabia's refusal to ratify it. Beyond that case, Donnelly postulates that "traditional societies often do not distinguish clearly between the religious and the political, require conformity of thought and belief, enforce deference, restrict association and deny popular political participation, all of which are incompatible with such rights."⁵⁹ The universalist's defense of them is that they are minimum guarantees in the modern framework of basic personal dignity and protect individual autonomy.

Further differentiation of priorities and form of interpretation, occurs over Articles 22 to 27. These guarantee economic and social rights for individuals, which are basic protections which in a traditional society are provided by the family or the community as a whole:– namely social

⁵⁴ Donnelly, *ibid*, p417 Also see O'Sullivan, 'Is The Declaration of Human Rights Universal?', *ibid.*, p45.

⁵⁵ Donnelly, *ibid*, p416. Also see O'Sullivan, *ibid*, p45

⁵⁶ Donnelly, *ibid*, p418. Some traditional customs, such as 'bride-price', provide alternative protections for women and offer a form of conditionality to marriage.

⁵⁷ Garaudy, Roger, 'Human Rights in Islam: Foundation, Tradition and Violation' *op.cit.*, p55.

Also see O'Sullivan, 'Is The Declaration of Human Rights Universal?', *op.cit.*, p46.

⁵⁸ Donnelly, J. 'Cultural Relativism and Universal Human Rights', *op. cit.*, p416. Also see O'Sullivan, 'Is The Declaration of Human Rights Universal?', *ibid.*, p46.

⁵⁹ Donnelly, *ibid*, p416. Also see O'Sullivan, *ibid.*, p46.

security, work, rest and leisure, subsistence, education and participation in the cultural life of the community. Also, Article 28, which guarantees a social and international order in which the list of rights can be realised, clearly reflects, in Donnelly's estimation, a very modern notion of international responsibility for the protection and provision of basic rights.⁶⁰

Thus, it is clear that the opposing views of how to interpret the priorities of human rights differs greatly within each cultural perspective, and differs too, with how implementation of the U.N. 'Universal' Declaration is approached. This difference is merely the continuance of the age-old debate between the competing paradigms, over which is the more important – the individual or the community.

The issue was present in the earliest formulations, with individualism, rationalism and radicalism being considered the distinguishing marks of the theory of natural rights, which produced the French and American Revolutions. Vincent argues that "the theory was individualistic both in its assumption that individuals came before communities in the imagined history of the state of nature and the origin of civil society, and in its assertion of the priority of the moral claim that individuals had over groups."⁶¹ The issue is also very clearly present today, with cultural relativists demanding self-determination and recognition, together with acceptance and legitimacy to be given to their culturally determined priority systems.

However, this being so, an interesting dilemma within the debate is introduced, forcing again, the two opposing approaches to conflict head-on. Vincent argues that, certainly it may be true that the emancipation of a 'developing country' requires the uncovering of authentic indigenous conceptions of 'human rights', with which to challenge the notions of the erstwhile imperialists. However, in this very demand, lies the issue that seems to be contradictory itself. Vincent continues, claiming that the emergence from western dominance is not best advanced by the assertion of the cultural relativity of all values, but by appealing to certain universal principles, such as state sovereignty, to assert autonomy. Beyond this, if the 'right to be asserted' is the 'right to be different', it is one protected by a doctrine which has long been familiar to the western world – that being the emphasis of 'self-determination'.

Added to that dilemma, Vincent states that "if the countries and peoples of the Third World want something positive from the First and Second Worlds (such as the claims made under the heading of the New International Economic Order), in addition to the right to be left alone, there is even more reason to underline the existence of a common moral world in which the weak can make demands on the strong to some point."⁶² However, this in no way lessens the force of cultural relativism or weakens its legitimacy; it simply requires taking western principles and using them against their authors, in order to gain cultural relativist aims.

The Genuine Validity of Cultural Relativism

Indeed, one of the greatest derogatory slights upon the western perspective of individualism, is the cultural relativist's attack, that even from the earliest documents, the words and ideas in them far exceeded the actual deeds and aims they hoped to institute. Garaudy succinctly covers this issue, in stating that

the American Declaration of Independence and the French Revolution's Declaration of the Rights of Man and the Citizen proclaimed 'All men are born free with equal rights.'
The former was to retain the slavery of blacks for a century. The latter was to deprive

⁶⁰ Donnelly, *ibid*, p416 Also see O'Sullivan, *ibid.*, p47.

⁶¹ Vincent, R. J., *Human Rights in International Relations*, Cambridge University Press, 1986, p25. Also see O'Sullivan, 'Is The Declaration of Human Rights Universal?', *ibid.*, p47.

⁶² Vincent, *ibid*, p52. Also see O'Sullivan, *ibid.*, p47-48.

more than half the French nation of the rights to vote as ‘passive citizens’, because they had no property. According to Diderot’s axiom, ‘No-one is a citizen without property.’⁶³

Concerning the much later, more contemporary view of human rights, enshrined within the U.N. Universal Declaration, cultural relativists attack this document for its singularly western approach and obvious lack of true ‘universalism’. They argue that today, in the post-colonial world, there are over 160 autonomous countries – which is more than triple the number that voted for the Universal Declaration. Beyond that, M’Baye and Ndiaye claim that, of the nations that were involved in the preparation of the Universal Declaration, the African countries played but a minute part. In fact, “Only two black African countries were members of the international community at that time.”⁶⁴ Added to that, for a long time afterwards, it was not applicable to the nationals of those countries because:

Neither civil and political rights, economic, social and cultural rights were able to be applied to them without restrictions. And these restrictions were not necessitated either by respect for the rights of others or by the safeguarding of public order, security or morals.⁶⁵

Having stated that, it is still undeniably true that today there is near universal international agreement, at least in theory – although often not in practice, that certain things simply cannot legitimately be done to human beings. As Donnelly maintains, that regardless of the difficulties in specifying those things:

failure to act or even speak out against the grossest affronts to human dignity overseas, on the grounds of cultural relativism would be widely – and.....correctly – perceived as moral cowardice.⁶⁶

He also postulates that there is a striking cross-cultural consensus on a few particular practices that cannot be justified by even “the hoariest of traditions” and certainly not by any new custom. As mentioned above, the rights, such as the prohibition of torture and the requirement of procedural due-process in imposing and executing legal punishments are mainly accepted as binding by virtually all cultures, despite the disparate interpretations of specifying the practical and substantive meanings of these notions. However, while accepting the common threads which exist between the different cultural perspectives and a universal approach towards human rights, the inevitable counter-argument is omnipresent, to balance the debate.

Adding strength to the argument for acceptance of cultural relativism, is the African approach. It too respects certain universal rights, and actually acknowledges the U.N. Universal Declaration in the preamble of the African Charter of Human Rights. However, the essential philosophy behind that Charter, again, challenges the Western perspective. M’Baye and Ndiaye argue that :

the European conception of human rights, that is to say a set of principles whose essential purpose is to be invoked by the individual against the group with which he is in conflict, is not met with in traditional Africa: In Africa, the individual, completely taken over by the archetype of the totem, the common ancestor or the protective genius, merges into the group.....In traditional Africa, rights are inseparable from the idea of duty.⁶⁷

⁶³ Garaudy, ‘Human Rights in Islam’, op.cit., p55. Also see Huber, Wolfgang, ‘Human Rights – A Concept and its History,’ op.cit., p5. Also see O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, *ibid.*, p48.

⁶⁴ M’Baye, K., and Ndiaye, B., ‘The Organisation of African Unity (OAU)’, in K. Vasak (Ed.), *The International Dimensions of Human Rights*, op.cit., p614, in footnote 7. Also see O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, *ibid.*, p48.

⁶⁵ M’Baye, K., and Ndiaye, B., *ibid.*, p586. Also see O’Sullivan, *ibid.*, p48-49.

⁶⁶ Donnelly, J. ‘Cultural Relativism and Universal Human Rights’, op. cit., p404. Also see O’Sullivan, *ibid.*, p49.

⁶⁷ M’Baye, K. and Ndiaye, B. ‘The Organisation of African Unity (OAU)’, op.cit., p588-589. Also see O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, op.cit., p43.

Finally however, some form of balance and accommodation must be reached, to assess the validity of each approach posed. Weston postulates that, actually, none of the international human rights instruments currently in force or proposed, say anything specifically, concerning the legitimacy or ranking-order of the rights they aim to protect – with the exception of those rights that by international covenant are stipulated to be non-contestable and thus more fundamental than the others. These are those rights over which the phrase ‘common threads’ can be spread, and each culturally specific perspective has agreed to uphold.

The rights are those such as freedom from arbitrary or unlawful deprivation of life, freedom from torture or inhuman and degrading treatment et cetera, as discussed above. Weston suggests that disagreement does exist, especially when concerning the areas of implementation, but only between lawyers, moralists and political scientists, about the legitimacy and hierarchy of claimed rights. He asserts that the arguments occur where some insist first on civil and political guarantees, whereas others would initially promote conditions of material and corporeal well-being.

These disagreements, he asserts, actually only occur within and between political agendas, thus having no conceptual utility. The real issue is the inherent validity and universality of all human rights; as the U.N. General Assembly has repeatedly confirmed, “all human rights form an indivisible whole.”⁶⁸ Thus, Weston concludes that:

the legitimacy of different human rights and the priorities claimed among them are necessarily a function of context. Because different people located in different parts of the world both assert and honour different human rights demands according to many different procedures and practices, these issues ultimately depend on time, place, institutional setting, level of crisis and other circumstances.⁶⁹

Clearly then, the differing cultural perspectives on the interpretation and implementation of human rights and duties, have unquestionable common ‘threads’ but, simultaneously, they are undeniably cut in very different ‘cloth’.

Room for Compromise of Opposing Views?

To finalise the argument, a brief summing-up of the points raised and the issues discussed within, will now be presented, together with some conclusion of the questions that were initially posed at the beginning of the piece. It is clear that there is no Either/Or answer to the question of which paradigm of human rights protection should have greater validity or overall emphasis. Both approaches have equal legitimacy – with cultural relativism, although demanding respect for specific cultural contexts, actually itself acknowledging the need for certain universal rights. The need to be aware of this mutual existence and interaction of the two approaches is imperative when trying to understand contemporary human rights conceptions. This situation was highlighted in a communication presented by the World Veterans Federation during a United Nations seminar, held in Dakar, from the 8th. to the 22nd. of February, 1966.⁷⁰

The observation made, articulated the question “how can a peasant from the bush appreciate freedom of expression, when the possibility of having modern fertilisers at his disposal would be more valuable to him?”⁷¹ This is an extremely salient point for human rights activists to be aware of, especially those in the west. Human rights may well be ideally inalienable and wholly universal – but their interpretation and implementation has to be considered in the indigenous context to which they apply. It is not for one culture to assume superiority over the others and

⁶⁸ Weston, B., ‘Human Rights’ in *Human Rights Quarterly*, op.cit., p269. Also see O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, op.cit., p50.

⁶⁹ Weston, *ibid*, p268-269. Also see O’Sullivan, *ibid*, p50.

⁷⁰ O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, *ibid*., p49.

⁷¹ M’Baye, K. and Ndiaye, B., ‘The Organisation of African Unity (OAU)’, op.cit., p588. Also see O’Sullivan, *ibid*, p50.

impose its moral value system and priorities on a global level – no matter how well internally justified and intrinsically fair they can be argued to be.

Thus, it has been adequately presented in this debate that the ‘universal’ documents – especially the U.N. Declaration (1948) – are respected as having unifying, universal aims, but on the level of implementation, cultural perspectives are obviously very influential. Thus, priority systems differ in the different cultural contexts. The alternative document of the ‘Universal Islamic Declaration of Human Rights’ (1981), is a clear manifestation that other, equally valid, belief systems exist in the world, and promote their own ideals for the global protection of human rights.⁷²

One final dilemma to discuss briefly, is that which concerns the choice of approach by individuals. Donnelly argues that even the strongest cultural relativist faces a serious problem where cultures clash or are undergoing substantial transformation, which is the case in much of the ‘developing countries.’ When evaluating customary practices that involve otherwise justifiable deviations from, or interpretations of, established universal human rights, there is today, the dilemma created by the element of ‘modern’, progressive individuals, or groups, who reject traditional practices. This inherent dilemma that Donnelly postulates, is whether it is better to give priority to the idea of community self-determination and permit the enforcement of customary practices, against the modern ‘deviants’ – even if this involves violations of ‘universal’ human rights; or whether individual self-determination should prevail, thereby sanctioning claims of universal human rights against the traditional society.⁷³

Beyond that obvious observation, other circumstances would ensure the conflicting practices remain irreconcilable. One example would be the right to private ownership of the means of production, which is entirely incompatible with the maintenance of a village society in which families hold rights only for use of communally owned land.

Allowing individuals to opt out of this arrangement and to fully own their land would simply destroy the traditional system.

Beyond that, and as has been described above, full freedom of religion, including the right to apostasy, is completely incompatible with certain well established traditional Islamic views. This debate, then, has documented the constant battle between the diametrically opposing ideological, philosophical and theological positions:– those of the west, advocating individualistic, with each individual having their personal rights which they hold against others and the state; whereas cultural relativists, particularly in Africa and within Islam, advocate a strong cultural identity, with attachment to the greater community – together with having duties towards it.

Finally then, in summing up the issues which have been addressed – of how far the concept of human rights is affected by the arguments of ‘Universalism’ and ‘Cultural Relativism’ and the influence of these approaches on it, it can be concluded, justifiably, that a form of weak cultural relativism exists. Conversely, this means the fundamental universality of human rights exist, although tempered by a recognition of the essential need for limited cultural variations. As Donnelly so sufficiently concludes: “basic human rights are, to use an appropriately paradoxical phrase, relatively universal.”⁷⁴

Concluding Remarks – ‘Freedom of Expression’

Article 19 of the Universal Declaration of Human Rights

⁷² O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, *ibid.*, p50

⁷³ Donnelly, J. ‘Cultural Relativism and Universal Human Rights’, *op. cit.*, p418. Also see O’Sullivan, *ibid.*, p50.

⁷⁴ Donnelly, *ibid.*, p418-419. Also see O’Sullivan, Also see O’Sullivan, ‘Is The Declaration of Human Rights Universal?’, *ibid.*, p50.

⁷⁵ Article 19, Universal Declaration of Human Rights, <http://www.unhcr.ch/udhr/lang/eng.htm>

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁷⁵

Clearly, the extreme nature of one person or a group of people's belief has to be limited within the acceptance of 'those who deliver' and 'those who receive'.

The argument that demands respect for some tolerance of cultural relativism is based on the undeniable variability and diversity of 'human nature' within different cultural settings. The acceptance of this fact not only permits, but actually requires allowance and considered acceptance of cross-cultural variations in human rights approaches. The acceptance necessarily has to be a considered one as, obviously, not all cultural variations are – or can be – morally justifiable on a variety of moral and practical grounds.⁷⁶

In reference to the weight of 'Universalism' and 'Cultural Relativism,' then it is vital to filter through any political leaders' or party member's background. This is essential in order to analyse the legitimacy of the arguments presented and the philosophy they wish to implement, based on what can be determined as an individual 'relatively universal' approach to maintaining genuine human rights: .

An uncritical, unconsidered acceptance of any perspective could – and would – legitimate the philosophy of a fascist, such as that in Hitler's *Mein Kampf*.⁷⁷

'Subjective Cultural Interpretation'

Examples of 'cultural interpretation' and 'subjective belief' are rather common, even in the supposed belief or understanding of a 'cosmopolitan world', the 'globalisation of all nations' and the 'multi-cultural communities' in virtually all cities throughout the 'modern world.'

Examples of 'mis-conception' and 'misunderstanding' can be due to either ignorance or blatant misguidance by the observer, but it is still very apparent that misconception can lead to misunderstanding the image portrayed, which can then lead to counter the very genuine meaning of the image's origin.

The obvious example of culturally subjective interpretation of 'to accept' or 'to reject' is the image of the 'Swastika.' It had been taken, or 'stolen,' by Hitler, even if he had known fully well that it was a Hindu, Jain and Buddhist sacred religious symbol, its meaning and representation was mis-used by a European fascist political party and the source it derives from was mutilated and distorted for Europeans to deny its use after 1940s. However, throughout Asia, it is still interpreted by its positive religious meaning – and not by the Western political distorted interpretation:

The word "swastika" comes from the Sanskrit svastika – "su" meaning "good," "asti" meaning "to be," and "ka" as a suffix.⁷⁸

Essentially, in the 'Far East,' the swastika is the religious symbol as an equilateral cross with the arms bent at right angles, which face either in clockwise form (right-facing arms) or in an anti-clockwise direction (left-facing arms). It is traditionally positioned where the main base-line is horizontal, so it looks 'square-shaped.' However, it is occasionally rotated at forty-five degrees, so the base would be the end-point of one arm (therefore shaped in a 'diagonal form'). This latter form, with 'right-facing' arms, was the sole use by Hitler's Nazi political fascist party, whereas the religious symbol has more often a horizontal base, and can have either the

⁷⁶ Donnelly, *ibid.*, in footnote 3 on p403. Also see O'Sullivan, 'Is The Declaration of Human Rights Universal?', p29.

⁷⁷ O'Sullivan, 'Is The Declaration of Human Rights Universal?', *ibid.*, p29. Also see Sieghart, P., *International Law of Human Rights*, *op.cit.*, p14. Also see Robertson, A., *Human Rights in the World*, *op. cit.*, p80 and Weston, B., 'Human Rights' in *Human Rights Quarterly*, *op.cit.*, p261.

⁷⁸ <http://history1900s.about.com/cs/swastika/a/swastikahistory.htm>

left or right facing arms. The Hindu version is often ‘right-facing’ – as opposed to the Buddhist left-facing – arms, and is often decorated with an extra dot in each quadrant.⁷⁹



In Japan, the swastika is called manji. On Japanese maps, a swastika (left-facing and horizontal) is used to mark the location of a Buddhist temple. The right-facing manji is often referred to as the gyaku manji (literally “reverse manji”), and can also be called kagi jūji, literally “hook cross.”⁸⁰

One example of its religious significance is the ‘left-facing’ Buddhist swastika, used as the façade for a Buddhist temple in Gyeongju, in South Korea.⁸¹



The “left-facing” Buddhist swastika also appears on the emblem of Falun Gong. In this example, the symbols for ‘yin and yang’ are also depicted.⁸²

⁷⁹ <http://www.answers.com/topic/swastika>

⁸⁰ <http://www.answers.com/topic/swastika>

⁸¹ <http://en.wikipedia.org/wiki/Image:Buddhistswastika.jpg>

⁸² <http://www.answers.com/topic/swastika> op.cit.



This specific symbol “has generated considerable controversy, particularly in Germany, where the police have reportedly confiscated several banners featuring the emblem. A court ruling subsequently allowed Falun Gong followers in Germany to continue the use of the emblem.”⁸³

However, the important point to note here is that the controversy was raised in Germany, a European country, which has a horrific history of severe misuse of that symbol for purely political reasons by the far right-wing political group of Hitler’s Nazi regime. Obviously, depending on who is viewing the symbol, this will determine if it is perceived as a sacred part of their religious belief (in particular, a view taken by a religious perspective from Asia), or indeed, if it is a deliberate political statement promoting fascism, genocide and the Holocaust (in particular, a view from a European, North American, Western cultural perspective, post World War II). This issue raises the subjective interpretation of a symbol, which leads to an opinion which will have derived from different cultural experiences relating to that symbol, and therefore it induces different interpretations. However, for one cultural group, the meaning of the symbol has only changed to become negative in recent decades:

Even in the early twentieth century, the swastika was still a symbol with positive connotations. For instance, the swastika was a common decoration that often adorned cigarette cases, postcards, coins, and buildings. During World War I, the swastika could even be found on the shoulder patches of the American 45th Division and on the Finnish air force until after World War II.⁸⁴



The original insignia of the 45th Infantry Division of the American army during World War One, derived from a Native American Indian tribal symbol.⁸⁵ It was formed as a yellow ‘right-facing’ swastika on a red background as a unit symbol until the 1930s, when the image was then changed to a thunderbird.⁸⁶

⁸³ Ibid.

⁸⁴ <http://history1900s.about.com/cs/swastika/a/swastikahistory.htm> op.cit.

⁸⁵ http://en.wikipedia.org/wiki/Image:45th_Infantry_insignia_%28swastika%29.png

⁸⁶ Ibid.

'Universal' Law is Legitimate to Those Who Agree

As an extension to the subjective interpretation of a religious symbol, through its use and misuse and abuse, this leads on to assess how 'universal' are the limits of a person's 'freedom of expression.' Eleven countries have laws against anyone who speaks or publishes information or statements denying that the Holocaust in Hitler's regime ever occurred. The eleven countries with such law are: Austria, Belgium, Czech Republic, France, Germany, Israel, Lithuania, Poland, Romania, Slovakia, Switzerland.⁸⁷

Recently, on 20 February 2006, a court in Austria sentenced a British historian, David Irving, to three years in prison,⁸⁸ as his research over several decades has repeatedly concluded that "he had claimed that Adolf Hitler knew little, if anything, about the Holocaust, and that the gas chambers were a hoax."⁸⁹

The case was seemed to be raised by the author himself, as in 2000 he personally took a libel action case against the American academic Deborah Lipstadt who, in her book, *Denying the Holocaust: The Growing Assault on Truth and Memory*, branded Mr Irving 'one of the most prominent and dangerous Holocaust deniers.'⁹⁰

However, he lost the case and became bankrupt in order to cover the financial court costs and legal fees. The judge of that case, Mr. Justice Charles Grey, also declared Irving as a "falsifier of history" an "associate of right-wing extremists" and "an active Holocaust denier."⁹¹

However, Christian Fleck, a sociologist at the University of Graz in Austria, states a rather logical approach of how to deal with such a person's outrageous opinion. The method is simple: "you use argument not the law against Holocaust deniers."⁹²

Fleck also raises a useful – and very mature – question which addresses the concept that 'knowledge' and education have far more power than living in 'fear.' For a society to advance information of what is 'correct,' this will overwhelm the peripheral side-line groups whose aim is to gain power through confronting what has been established as 'truth' in each community:

Are we really afraid of someone whose views on the past are palpable nonsense, at a time when every schoolchild knows of the horrors of the Holocaust? Are we saying his ideas are so powerful we can't argue with him?⁹³

A far more simple explanation is also more emphatic than a philosophical approach or an intellectual debate. The conclusion is simple: "Irving is a fool. And the best way of dealing with fools is to ignore them."⁹⁴

Fleck also contends that, the more attention such a polemic and controversial character is provided, then the 'new' ideas could gain certain credibility, and attract interest to the more vulnerable, less educated people in a community. For example, using the law offers any given topic some 'legitimacy,' by banning it in the first place:

⁸⁷ BBC News Report – Holocaust denier Irving is jailed – 20 February 2006

<http://news.bbc.co.uk/2/hi/europe/4733820.stm>

⁸⁸ BBC News Report – Historian's sentence is condemned – 21 February 2006

<http://news.bbc.co.uk/2/hi/europe/jersey/4737146.stm>

⁸⁹ BBC News Report – Irving expands on Holocaust views – 28 February 2006,
<http://news.bbc.co.uk/2/hi/europe/4757506.stm>

⁹⁰ BBC News Report – Irving tests Europe's free speech – 20 February 2006
<http://news.bbc.co.uk/2/hi/europe/4710508.stm>

⁹¹ BBC News Report – How 'Holocaust denier' fought and lost – 18 November 2005

<http://news.bbc.co.uk/1/hi/world/europe/4449212.stm>

⁹² BBC News Report – Irving tests Europe's free speech – 20 February 2006
<http://news.bbc.co.uk/2/hi/europe/4710508.stm>

⁹³ Ibid.

⁹⁴ Ibid

By outlawing such opinions, inevitably we give them the frisson of the banned. We run the risk of turning them into an attractive proposition.⁹⁵

Human Rights Watch also reiterates this point, indicating the unnecessary need for drawing attention to such controversial opinions, which are cited by those who insist on resisting to acknowledge and accept existing information:

Prohibiting denial of the Holocaust may be popular politically, but Human Rights Watch is also concerned that over the long run, such measures are not effective to counter bigotry, and may even be counterproductive. Draconian bans may turn bigots into victims, driving them underground and creating a more attractive home for those who are drawn to such groups.⁹⁶

To further this line of allowing knowledge to gain power over ignorance, Richard Evans is a professor of German history at Cambridge University and was also a witness against Irving at the libel trial in 2000. He states a similar fair and balanced view as that of Fleck. In reference to David Irving:

He [David Irving] was, I think, arrogant enough to believe that he wouldn't be arrested. But having said that, I think the Austrian action is ill-advised. I don't think that law which bans Holocaust denial is really necessary any longer and I think it's really regrettable the vast media circus that's surrounding Mr Irving now [is] just simply giving prominence to his absurd views.⁹⁷

Human Rights Watch reported on the Irving case, as to why it was, perhaps, inappropriate for sentencing to prison such an advocate of far right-wing political view points:

Irving has long been a hero to the neo-Nazi cause, but this recent legal battle has given new publicity to his views and re-energized his supporters. As discussed above, the Holocaust denial laws under which Irving was prosecuted undermine the right to free expression, and the judgment should therefore be overturned. They may have also functioned to make him a martyr for neo-fascist and neo-Nazi groups and are likely to be counterproductive in discrediting his views. What is more, in the current controversy over the publication of the cartoons, they have highlighted the differential treatment often legally accorded anti-Semitic speech versus anti-Islamic speech.⁹⁸

This perspective has also been raised by Roger Cohen, and he suggests the reasons why such laws exist in certain countries, making it a crime to deny the Holocaust:

Another form of fear — that of a neo-Nazi revival — lies behind the Austrian and German laws against Holocaust denial. Those fears, too, should not provoke legal curbs on free expression. Irving is a fool deserving of contempt but not of a prison sentence. His views are abhorrent, but by what standards are they criminal?⁹⁹

The issue of 'how "universal" are human rights?' certainly concerns just 'who one is talking to'. Clearly, the issue of someone's accusation – which can easily be simply dismissed as being

⁹⁵ Ibid.

⁹⁶ Human Rights Watch, Questions and Answers on the Danish Cartoons and Freedom of Expression: When Speech Offends, found on: <http://www.hrw.org/english/docs/2006/02/15/denmar12676.htm>

⁹⁷ BBC News Report – Irving expands on Holocaust views – 28 February 2006 <http://news.bbc.co.uk/2/hi/europe/4757506.stm> op.cit.

⁹⁸ Human Rights Watch, Questions and Answers on the Danish Cartoons and Freedom of Expression: When Speech Offends, op.cit.

⁹⁹ Roger Cohen, 'From Islam to Irving: A perfect moral storm', International Herald Tribune,

22 February, 2006 – http://www.worldsecuritynetwork.com/showArticle3.cfm?article_id=12600

Also published in the Khaleej Times On-line 23 February, 2006, found on:

http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/opinion/2006/February/opinion_February70.xml§ion=opinion&col=

‘absurd,’ or based on ‘foolish ignorance’ needs to be addressed because, to deny an act that occurred a mere sixty years ago, does not relate to the fact that many, many people are still alive now who would have witnessed such atrocities in World War Two and can provide opposing views and information to support their perspective. However, as stated earlier, the law against the act of denying the Holocaust only exists in eleven countries. Most of the said countries are in mainland Europe and Eastern Europe, which were countries that were heavily involved in the Nazi regime dominance. Israel is included in the list, but became a state in 1948, in direct response to the genocide activities of Hitler’s regime. There are no African nations or Asian nations or Middle Eastern Islamic states included in the list of such a law because – it could be argued – that the cultural issues involved are very subjective, therefore culturally relative. However, beyond the cultural issues, many other European and North American or Latin American countries are also not listed with such a law.

Concerning the concept of ‘freedom of expression,’ there seems to be a level of difference based on cultural interpretation as to what is ‘acceptable’ and what is ‘offensive’ or ‘illegal.’

Another very recent controversial case concerns the issue of the publication of several cartoons portraying the Prophet Muhammad in the Danish newspaper Jyllands-Posten on September 30, 2005. The Prophet was drawn in various character roles or positions which, within Islam, are considered blasphemous and a deliberate insult to the faith, the religion and the Prophet. Within Islam, it is prohibited to show any depictions, and especially facial pictures, of the Prophet even as a serious religious-icon, as is done within Christianity. Therefore cartoons of satire are even more of an insult.

Following the Danish newspaper publications, and the Muslim communities response of anger, a few, and in some cases all of the cartoons were re-printed in other newspapers in more than several other countries. This led to violent protests and, in particular, within the Islamic world several people were killed during the demonstrations.

Publishing the cartoons has been criticized as being culturally insulting, Islamophobic, blasphemous, and based on a deliberate intention of humiliating the marginalized Danish Muslim minority. Counter to those views, the supporters of the cartoons claim they illustrate an important issue and their publication exercises the right of free speech. They also claim that there are similar cartoons about other religions, arguing that Islam and its followers have not been targeted in a discriminatory way.¹⁰⁰

Surely there appears to be an utter contradiction in terms of the legal status of what is perceived to be ‘freedom of expression’? Based on these two cases alone, which occurred within six months of each other (from the publication of the cartoons on September 30, 2005 to the conviction and imprisonment of David Irving on February 20, 2006), it appears that ‘Article 19’ of the Universal Declaration of Human Rights comes into question. It states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹⁰¹

However, although that is the theoretical approach of implementing human rights of each person’s individual ‘freedom of expression’ – on a practical level there appears to be either no legal weight, or a vastly limited weight, when compared to localised law systems.

One case, that of Irving’s denial of the Holocaust, could be argued to be a ‘political act’ of his denial of a specific political leader’s strategy when controlling the fascist Nazi state. Irving also denied any evidence that proves that Hitler, as being that state leader, had deliberately initiated and continued a planned act of genocide. However, rather than claiming the Holocaust was a deliberate blasphemous act against Judaism, one of the three monotheistic religions (i.e. Judaism, Islam and Christianity), Irving emphasises that the Holocaust was more of a ‘political tool’ for eliminating any opposition to the Nazi regime. In contrary to that, it seems far more

¹⁰⁰ http://en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons

¹⁰¹ Article 19, Universal Declaration of Human Rights, <http://www.unhcr.ch/udhr/lang/eng.htm>

obvious that in printing the cartoons has no other interpretation of it being an anti-religious act of blasphemy against the Prophet of Islam and the devout followers; so the cartoons are an insult to one of the monotheistic religions.

Therefore, the contradiction seems to lie here: 'freedom of expression' appears to be limited enough, for all citizens to accept and never question, or re-write an act in history that was undertaken by a political leader – as doing this will lead to a prison sentence in certain countries. However, 'freedom of expression' also appears to allow people to either insinuate 'religious hate' or deliberately act in that direction by publishing cartoons which portray the Prophet and the followers of a monotheistic religion as being active 'terrorists.' This image is not just contrary to the message of the Qur'an and ahadith (Traditions in Islam), but 'terrorism' refers to an act of 'politics' (i.e. sedition, treason or a revolution) and nothing 'religious.' Therefore, if denying that Hitler undertook genocide to the believers of Judaism – one of the three monotheist religions – can lead to the perpetrator going to jail, then the dilemma is this: why is it acceptable to be openly blasphemous to the followers of another monotheist religion, and determine that act as being a legitimate manifestation of the 'freedom of expression'? As Human Rights Watch declare:

[.....] prohibiting speech, such as Holocaust denial, that is offensive or distressing to some religions or minorities, while tolerating speech that is offensive or distressing to others, is a clearly discriminatory practice and raises legitimate questions about double standards.¹⁰²

As stated by Roger Cohen, in his article From Islam to Irving: A Perfect Moral Storm, Islam is completely misrepresented by those using violence and those using terror in the name of Islam – and this also implies that one abuses the name of any religion when connecting it to 'terrorism':

Many moderate Muslims protest that the perpetrators of these crimes have hijacked a peaceful religion and do not represent it.¹⁰³

Concerning the law on blasphemy, Human Rights Watch declared their position on how governments implement this form of legal protection:

Many European nations still have blasphemy laws, although they are seldom enforced. Some of these laws prohibit blasphemy against only certain religions, such as Christianity. Such laws are clearly discriminatory and may reflect broader societal discrimination.¹⁰⁴

The issue of concern of a potential contradiction in law regarding the 'freedom of expression,' has been stated by Clare Murphy in a BBC News Report: Irving Tests Europe's Free Speech', following Irving's conviction and a three year prison sentence:

The risk remains that Mr Irving will seem a martyr to free speech and that his trial will further fuel the anger of those who accuse Europe of double standards – apparently ready to cite freedom of expression when it comes to printing cartoons offensive to Muslims, while incarcerating those who insult Jews.¹⁰⁵

The topic has raised many voices in determining what is a 'crime' and what is an individual's right to express their opinion? Clearly, Irving's opinion is considered incorrect, with a great misunderstanding of what Hitler's regime stood for, but in expressing his view in retrospect of history, he is sent to prison for re-writing history. However, all religions also have a significant history record which runs for thousands of years, as opposed to the event of World War Two,

¹⁰² Human Rights Watch, Questions and Answers on the Danish Cartoons and Freedom of Expression: When Speech Offends, op.cit

¹⁰³ Roger Cohen, From Islam to Irving: A perfect moral storm, op.cit.

¹⁰⁴ Human Rights Watch, Questions and Answers on the Danish Cartoons and Freedom of Expression: When Speech Offends, op.cit.

¹⁰⁵ BBC News Report – Irving tests Europe's free speech, 20 February 2006 <http://news.bbc.co.uk/2/hi/europe/4710508.stm>

which is a far more recent history, from the mid-1940s. Imran Khan stated this point in his article in the Morocco Times:

David Irving may be wrong to deny the holocaust, but according to Europe's standards of fundamental free press, why has he been pleading guilty for expressing his opinion? Some people say that this issue has nothing do with freedom of speech, but it is associated with history. If someone is trying to change history, then it is a crime and must be punished as Irving. Well if we try to compare the holocaust case to the cartoon crisis, we can say that Prophet Mohammed (PBUH) is a historical figure and a messenger of God.

Prophet Mohammed (PBUH) was not a cruel person and he never ordered the killing of innocents. If someone tries to depict him in a wrong way, isn't it an attempt to change history or realities?

Islam is a religion which dates back to more than 1,400 years. So if the holocaust is a historical event, then every prophet is also part of history and even made history. If denial of history is a crime, it must be associated with all historical events and figures.¹⁰⁶

In final analysis, Human Rights Watch raise again the contemporary question that needs to be addressed, in order to determine, what are 'Universal' human rights?:

Holocaust denial laws under which Irving was prosecuted undermine the right to free expression, and the judgment should therefore be overturned. They [the Austrian court] may have also functioned to make him a martyr for neo-fascist and neo-Nazi groups and are likely to be counter-productive in discrediting his views.

What is more, in the current controversy over the publication of the cartoons, they have highlighted the differential treatment often legally accorded anti-Semitic speech versus anti-Islamic speech.¹⁰⁷

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¹⁰⁶ Imran Khan, Holocaust-Cartoons crisis –Europe's double standards, Morocco Times, 27 February, 2006, found on: <http://www.moroccotimes.com/Paper/article.asp?idr=22&id=13156>

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