

Islam & human rights

Defending Universality at the United Nations



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ISLAM AND HUMAN RIGHTS

DEFENDING UNIVERSALITY AT THE UNITED NATIONS

Executive Summary

The year 2008 marks the 60th anniversary of the Universal Declaration of Human Rights (UDHR). Yet its fundamental assumption—that human rights apply equally to all people, regardless of culture or religion—is challenged now more than ever. For decades, the Organization of the Islamic Conference (OIC) has appropriated the traditions of Islam and Islamic law to contend that special, culturally specific rights apply to their citizens. This effort has penetrated even the Human Rights Council (HRC), the United Nations body charged with defending universal rights.

RIGHTS RELATIVE TO RELIGION

In place of the UDHR, members of the OIC have adopted rival declarations, including the 1981 *Universal Islamic Declaration of Human Rights*, and the 1990 *Cairo Declaration on Human Rights in Islam*. Despite official claims that they are “complementary,” both undermine equality of persons and freedom of expression and religion by imposing restrictions on nearly every human right.

SUPPRESSION OF DISSENT

In the HRC, a March 2008 resolution assigned the Special Rapporteur for Freedom of Expression with the task of reporting *abuses* of free speech that offend religious belief. Non-governmental organizations have been silenced. Meanwhile, the General Assembly has passed yearly resolutions combating “the defamation of religions” and “Islamophobia.” However, believers are already protected from dangerous incitement by existing human rights instruments. The new proposals seek nothing less than a blasphemy prohibition to protect belief itself.

A MOVEMENT TOWARD A RIVAL SYSTEM OF HUMAN RIGHTS

The OIC and its political allies seek to create a new charter of Islamic human rights with legal force. Some UN agencies are considering the integration of “defamation of religions” into international human rights law. Such an outcome would be legally indefensible, morally objectionable, and politically disastrous.

RECOMMENDATIONS

- **Permit free discussion of religion at the HRC.** When states use religion or culture as a justification for either human rights resolutions or transgressions, they must not be granted immunity from criticism, regardless of the sensitivities or cultural particularities involved.
- **Restore the original mandate of the Special Rapporteur for Freedom of Expression.** The proper limits to free expression and threats to religious liberty are addressed by existing instruments. An official who protects free speech cannot simultaneously limit it.
- **Reject the concept of “the defamation of religions.”** Believers deserve protection. Beliefs do not. Member states must move to stop these resolutions by the General Assembly and prevent the legal entrenchment of the concept of “defamation of religions.”
- **Clarify the status of Islamic human rights.** HRC members and UN member states generally must voice their concerns about the “Islamization” of rights discourse, and its consistency with universal standards.

The Center for Inquiry joins with civil society organizations around the world (including many within OIC states) that value the preservation of human rights for all people, regardless of race, religion, gender, or culture. While ruling elites in Islamic nations use the banner of cultural respect to

deflect attention away from their human rights failures, countless individuals within those cultures demand the rights that so many others enjoy.

INTRODUCTION

An alarming, but seldom reported movement in the international community is undermining the foundations of universal human rights and free expression. Several Islamic states, working together under the Organization of the Islamic Conference (OIC), an umbrella organization with 57 member states, have challenged the Universal Declaration of Human Rights (UDHR) for decades, and have penned “Islamic human rights” documents in its place. They have passed yearly resolutions in the United Nations Human Rights Council and General Assembly urging action against the “defamation of religion,” calling for laws which would prevent criticism of certain ideas, ideologies, and religious traditions.

These developments necessitate a strong response from rights-respecting nations and NGOs, but even the discussion of these matters has been compromised. Efforts by concerned officials and NGO representatives to call attention to Islamic states’ expanding subversion of human rights norms have been continually disrupted at the Human Rights Council, and recently, all discussion of religion as it pertains to rights was effectively banned by the Council President.

In place of the UDHR, OIC member states created an explicitly Islamic declaration (*The Cairo Declaration on Human Rights in Islam*) in 1990, arguing that the “Western” human rights language in the UN document did not adequately accommodate the Muslim worldview. But as Adama Dieng, then Secretary General of the International Commission of Jurists, argued in a 1991 statement to the Human Rights Commission, this rival declaration not only threatens the inter-cultural consensus on which international human rights instruments are based, it introduces intolerable discrimination against non-Muslims and women, imposes restrictions on fundamental rights, references only Islamic law (or the *shari’ah*) as its source, and legitimizes unacceptable practices such as corporal punishment (Dieng 1991).

In light of the creation of rival Islamic conceptions of human rights and the widespread suppression of dissent within Islamic states and throughout the international community, the Center for Inquiry calls for immediate action. The universal human rights agreed to by all United Nations members need philosophical and political defense, and the mechanisms established to maintain those rights (i.e., the Human Rights Council and related offices) need re-examination.

In this position paper, we outline the development of the Islamic human rights (IHR) movement as well as the historical context in which the “Islamist” ideology that fuels it rose to prominence as a significant global political force. We then present a critique of the movement on legal, ethical, and political grounds. Further, we argue that the best way to respect Muslim believers and to ensure a vibrant future for Islam is to defend a secular state that guarantees robust freedom of conscience. Finally, we propose a set of recommendations, including the reinvigoration of debate in the Human Rights Council and the cooperation of civil society organizations in all parts of the world in demanding a high standard of human rights for *all* people, regardless of religion.

1. HISTORICAL BACKGROUND

The creation of the United Nations (UN) in 1945 and adoption of the Universal Declaration of Human Rights (UDHR) in 1948 crystallized a powerful political and moral response to the horrors of oppression, war, and genocide. These were manifestations of a cosmopolitan dream—a victory for those interested in global justice and the implementation of safeguards against future conflict.

The UDHR was adopted by the United Nations General Assembly in Paris, France, on December 10, 1948—passing with 48 votes for, none against, and 8 abstentions. The Declaration, while not legally binding, was nevertheless a groundbreaking achievement. It represented the first global affirmation of human rights in history, and influenced countless other human rights documents, including the enforceable International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has become the most translated document in the world (United Nations 2000).

As we have seen, however, neither the conceptual foundations underlying the UDHR nor the institutions put in place to preserve and protect it have stood uncontested. Voices not limited to the Islamic world have challenged the spirit of this effort toward what Eleanor Roosevelt called “a common standard of achievement for all peoples of all nations.”

1.1 Contemporary challenges to human rights

As this paper is being written, sixty years after the issuance of the world’s first and greatest statement in favor of universal human rights, both the document and the institution put in place to protect its ideals (what has, since 2006, been called the UN Human Rights Council)

are threatened more than ever. There is now an alternative human rights system, infused with religious language and layered with exceptions, omissions and caveats. The movement toward “Islamic human rights” (IHR) has been successfully presented to the Human Rights Council (HRC) as merely “complementary” to the UDHR.¹ The meager opposition to this subversion is suppressed, as “religious matters” are increasingly forbidden from discussion in UN chambers. Western powers have either failed to stand up for the UDHR or withdrawn from the human rights discussion altogether. In what follows, we will trace the development of these worrying trends, and look briefly into the leading historical explanations of political Islam’s emergence into the arena of international relations.

The Universal *Islamic* Declaration of Human Rights (UIDHR) provides a useful starting point. While opposition to the UDHR under the banner of conservative Islam was widespread even during its inception in 1948, this 1981 document was the first official political statement of Islamic exceptionalism in the realm of human rights. The UIDHR was written by representatives from Egypt, Pakistan, Saudi Arabia, and various other Muslim states under the auspices of the London-based Islamic Council, a private organization affiliated with the conservative Muslim World League (Mayer 2007, 30). This declaration drew little criticism, as it was rife with ambiguous, equivocal language and had an English translation that masked many of its overt religious references. In its original Arabic, the UIDHR often requires Islamic considerations that limit rather than enshrine human rights as outlined by international norms. For example, compare the English and Arabic versions of Article 12, which outlines the “Right to Freedom of Belief, Thought and Speech”:

English: Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports that may outrage public decency, or to indulge in slander, innuendo, or to cast defamatory aspersions on other persons.

Arabic: Everyone may think, believe and express his ideas and beliefs without interference or opposition from anyone as long as he obeys the limits [*hudud*] set by the *shari’ah*. It is not

permitted to spread falsehood [*al-bati*] or disseminate that which involves encouraging abomination [*al-fahisha*] or forsaking the Islamic community [*takhdhil li'l-umma*].

The English version reads as an innocuous restatement of well-established norms, embracing rights to speech and generally accepted limits involving slander and libel. In its original Arabic, however, this article demonstrates a clear religious test for speech: one may not express oneself where limits are set by Islamic law, and one must not "encourage abomination" or "forsake" the Islamic community. The concepts of "falsehood," "encouraging abomination," and "forsaking" are unclear and dangerously open to potential abuse by religious courts. It is apparent that it is not citizens which are protected, but the *umma* (Muslim community). The rubric of judgment is not public law, not universal standards of justice, but *shari'ah* (Islamic law).

In 1984, the UN representative of the Islamic Republic of Iran, Said Raja'i Khorasani, said the following amid allegations of human rights violations by the regime:

"[Iran] recognized no authority ... apart from Islamic law ... conventions, declarations and resolutions or decisions of international organizations, which were contrary to Islam, had no validity in the Islamic Republic of Iran ...The Universal Declaration of Human Rights, which represented secular understanding of the Judaeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran; [t]his country would therefore not hesitate to violate its provisions" (United Nations 1984).

We will later critique the argument, expressed by Khorasani, that human rights do not apply beyond the borders of Judeo-Christian societies. At this point it suffices to say that by the mid-1980's, a strong current of Islamic exceptionalism had established staunch opposition to the UDHR and the UN human rights agenda.

1.2 The Organization of the Islamic Conference at the UN Human Rights Council

The Organization of the Islamic Conference (OIC), created in 1969, would take up the mantle of Islamic solidarity established by the Islamic Council and Muslim World League; it is now the pre-eminent Islamic institution, with 57 member states and a powerful presence in global politics. Even with such a large membership, the OIC has a clear political posture; tasked with "liberating Jerusalem and Al-Aqsa from Zionist occupation," strengthening "Islamic solidarity among Member States," coordinating action to "safeguard the Holy Places," and supporting "the struggle of all Muslim people to safeguard their dignity, independence and national rights," this organization is built for conflict with the non-Muslim world.

The OIC's most significant entrance onto the field of human rights came in 1990, with the adoption of the Cairo Declaration on Human Rights in Islam. This document, affirmed by all 57 member states and considered canon to this day, used much of the language from the 1981 UDHR, this time making it clear (even in English) that "All the rights and freedoms stipulated in this Declaration are subject to the Islamic *shari'ah*", and "The Islamic *shari'ah* is the only source of reference for the explanation or clarification of any of the articles of this Declaration" (Articles 24 and 25). In place of religious freedom, its authors issue what is in effect a prohibition against conversion from Islam: "Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism." Article 22, the Cairo Declaration's "free speech" provision, clearly suggests that it is Islam, not the individual, that deserves protection:

- (a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the *shari'ah*.
- (b) Everyone shall have the right to advocate *what is right*, and propagate *what is*

good, and warn against what is wrong and evil according to the norms of Islamic shari'ah.

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way *as may violate sanctities and the dignity of Prophets*, undermine moral and ethical values or disintegrate, corrupt or harm society *or weaken its faith*. (emphasis added)

Surprisingly, the Cairo Declaration has received little attention from the international community. One reason for this lack of coverage is the continued suppression of criticism by members of the OIC, in conjunction with the so-called non-aligned states and powerful allies in the cause of weakening the UN's human rights apparatus: Russia, China, and Cuba. Every year since 1999, a member of the OIC has proposed a resolution in the Human Rights Council (formerly the Human Rights Commission) called "Combating the Defamation of Religions," which decries the outbreak of "Islamophobia" across the globe and calls for greater efforts to curb defamation, discrimination, or hate speech against Muslims or the Islamic faith (U.N. Doc. E/CN.4/1999/L.40). This resolution has passed each year with nearly unanimous support. From 2005 to 2008, similar resolutions were adopted by the UN General Assembly (U.N. Doc. A/Res/60/150, A/Res/61/164, A/Res/62/154).

On June 16th, 2008, the OIC lobby showed its power when representatives from Egypt and Pakistan silenced David Littman, then representing the World Union for Progressive Judaism, during a statement to the Human Rights Council about women's rights and *shari'ah* law. Within 22 seconds, Littman was interrupted by a point of order from the Egyptian representative—the first of 16 such interruptions. The representative and his Pakistani ally insisted that "Islam will not be crucified in this Council," and argued that any discussion of Islamic *shari'ah* was irrelevant and inappropriate. After a 40-minute break, the presiding Council president, Doru Romulus Costea of Romania, announced that "The Council is not prepared to discuss religious questions and we don't have to do so. Declarations must avoid judgments or evaluation about religion" ("Discussion of Religious Questions" 2008). Such a statement institutes nothing less than a blasphemy taboo in the Human Rights Council. Members and speakers are effectively prohibited from speaking about the issuance of fatwas, the stoning of women for adultery, or the execution of apostates as it relates to Islam.

A month later, at a U.S. congressional panel on religious freedom, former U.S. State Department human rights expert Susan Bunn Livingstone suggested that proponents of such limitations on criticism "are trying to internationalize the concept of blasphemy . . . They are using this discourse of 'defamation' to carve out any attention we would bring to a country. Abstractions like states and ideologies are seen as more important than individuals. This is a moral failure" (Savage 2008). In September 2008, the president of the Ninth Session of the HRC, Martin Ihoeghian Uhomoibhi, claimed that there would "no taboos" at the Council ("A very diplomatic new president" 2008).

What has the Human Rights Council done about this? On March 28th, 2008, the Council actually undermined its own ability to protect free speech. An amendment to a resolution on freedom of expression (passed 27-15, 3 abstentions) now requires the UN Special Rapporteur on Freedom of Expression to "report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination" (U.N. Doc. A/HRC/7/L.24). Instead of traveling the world in search of instances in which free speech is unjustly limited, the Rapporteur will now do just the opposite, in an effort to police "abusive" speech. The protector has become the oppressor. The Council failed to note that Muslims (and all citizens) are already protected against discrimination and defamatory speech by Article 19 of the International Covenant on Civil and Political Rights, and reasonable limits to free speech were already referred to in the preamble to the March 28 resolution. Further, concerns for freedom of religion are already reported by the Special Rapporteur for Freedom of Religion. With such protections already in place, this amendment's only effect is

the undermining of what little ability the HRC has to safeguard free expression around the world.

While the HRC has been preoccupied with the fight against "Islamophobia," OIC member states have avoided confrontation by touting the compatibility of the Cairo Declaration and the UDHR, explaining that it simply adapts the letter and intent of the UDHR to the unique cultural context of Islam. In 2002, Mary Robinson, then the High Commissioner for Human Rights, agreed with the OIC: "No one can deny that at its core Islam is entirely consonant with the principles of fundamental human rights, including human dignity, tolerance, solidarity and equality . . . And no one can deny the acceptance of the universality of human rights by Islamic States" (Littman 2008). Unfortunately, an effort to point out the differences between Islamic and universal human rights by Roy Brown of the International Humanist and Ethical Union was silenced in predictable fashion ("IHEU Ambused" 2008). Even as the OIC states continually tout the special place of Islam in their conceptions of human rights, they successfully sell their commitment to universality and muffle the cries of critics all over the world.

The United States, which has held only observer status in the HRC, quietly withdrew from the Council entirely on June 6th, 2008. A State Department spokesman complained that the Council "has really turned into a forum that seems to be almost solely focused on bashing Israel" and announced that the U.S. would only engage with the Council on matters of national security or compelling national interest (McCormack 2008). While we share the administration's concern about the notable politicization of the HRC, their complete disengagement from the world's most influential human rights body is worrying.

1.3 The impact of Islamic human rights

The movement is not limited to the chambers of the United Nations in Geneva and New York. The yearly resolutions "Combating the Defamation of Religion" and the wider movement toward a formal Islamic charter on both international law and human rights may have a wider impact than many expect. International covenants and agreements are intended to be introduced into the municipal law of the states that endorse them. The UDHR, for example, has been a positive force primarily by virtue of its influence on the human rights norms of countless states since its inception. The new norms governing the discussion and defamation of religion, as well as the unraveling of the universality of rights, could very well have the same effect.

Afghanistan's constitution (Article 34) states that "Freedom of expression shall be inviolable" and that "Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means." Article 7 commits the state to the United Nations charter and the Universal Declaration of Human Rights. However, the document is also tied heavily to Islam, written "In the name of God, the Merciful, the Compassionate . . . With firm faith in God Almighty and relying on His lawful mercy, and Believing in the Sacred religion of Islam." Article 3 states that "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam."

Iraq's new constitution shares these same characteristics – the clear influence of Western political ideals alongside Islamic stipulations. Beginning with similar religious rhetoric, the Iraqi Constitution goes on to establish that "Islam is the official religion of the State and it is a fundamental source of legislation," that "No law that contradicts the established provisions of Islam may be established," and that "This Constitution guarantees the Islamic identity of the majority of the Iraqi people."

In April 2009, the UN will host a world conference on racism, the Durban II meeting. Under the guise of protecting racial minorities, this event is likely to produce additional resolutions limiting free speech where it treads on cultural or religious sensitivities. A draft declaration

written in Abuja, Nigeria in preparation for the 2009 conference calls upon states to avoid “inflexibly clinging to free speech in defiance of the sensitivities existing in a society and with absolute disregard for religious feelings.” Like many of the HRC “racism” and “religious freedom” resolutions passed in recent years, this declaration focuses primarily on “Islamophobia,” seeking to paint all critical discussion of Islam, Islamic states or Islamic organizations as racist and potentially violent (UN Watch 2008). The trend of enshrining special protection for Islam (or more accurately, protection for rulers of Islamic states and their particular interpretations of Islam) is now pervasive.

1.4 Islamism in historical context

Those familiar with the numerous objections to international human rights law originating from Islamic nations over the last three decades will be surprised to learn that almost all of these nations were not only signatories to the UDHR and later agreements such as the ICCPR and ICESCR, but also active contributors in their formulation. Studies by Susan Waltz, professor of public policy and international relations at the University of Michigan, indicate that the major powers generally played less significant roles in the later stages of drafting the UDHR than did their smaller, Eastern (and often Islamic) counterparts (Waltz 2004). While particular representatives from Muslim states expressed discomfort with various articles involving marriage, family law, and freedom of religion, such opposition was no more pronounced than the resistance from some non-Islamic nations. Further, the universality of human rights was not an object of great concern for Muslim states during the drafting process; most showed general support for the motivations and prescriptions therein, and none cast a vote against the resulting document (Saudi Arabia was alone among Muslim states in abstaining, joining South Africa and various Eastern Bloc states) (Mayer 2007, 15). Contemporary leaders who would denounce the UDHR as an exclusively “Western project” therefore fail to acknowledge the important contributions of Islamic states to its creation. In their ignorance of history, they reveal the harmful political dimension of their cause—the appropriation, rigidification, and politicization of Islam as an obstacle to international human rights law.

What happened between 1948 and 2008? Why are many of the original supporters of the UDHR (such as Egypt, Iran, Iraq, Lebanon and Syria) now contesting its universality and core principles? One critical factor has been the rise of Islamist thought and politics.² The Islamist ideology prevalent in Arab and Muslim societies today is not an intractable relic that has survived through modernity (as many in the West mistakenly believe), but in an important sense it is a *reaction* to modernity, forged in the fires of political and economic strife and fueled by a painful struggle for identity.

In 1950, as Nasser unified Egypt and promised a secular, modern pan-Arab future for the Middle East, no one could have predicted what would happen within 40 short years. In Egypt, as Fareed Zakaria observes, “the promise of Nasserism has turned into a quiet nightmare. The government is efficient in only one area: squashing dissent and strangling civil society.” Zakaria argues that “for all their energy Arab regimes chose bad ideas and implemented them in worse ways,” leaving a 21st century political landscape that is “stuck in a time warp.” The promises of the past—modernization, free trade, rights for women and minorities, a free press—have slipped away from the region: “In an almost unthinkable reversal of a global pattern, almost every Arab country today is less free than it was forty years ago” (Zakaria 2004, 131-136).

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When the modern nation-state (imported by the West) failed to win legitimacy, many intellectuals, social activists, and political elites turned to the messages of Hasan al-Banna, Sayyid Qutb, Sayyid Abul A'la Maududi, and Ayotallah Seyyed Ruhollah Musavi Khomeini. These figures and their contemporaries offered radical change, in the guise of a pure Islamic state governed not by Western structures infused with materialism, imperialism, and immorality, but by Islamic law. A new culture of opposition against the West and Enlightenment ideals fed on the corruption of American-supported administrations and replaced a respect for international cooperation with a disregard for such universalistic concerns as the UDHR, political rights and constitutionalism. While the 1979 Iranian Revolution symbolizes for many the birth of Islamism, most scholars suggest that the crushing defeat of Arab forces in the 1967 Six-Day-War was the turning point, signifying the transformation of Islamic communities into what international relations professor Bassam Tibi calls a "defensive culture" (Tibi 2005).

2. ANALYSIS

Islamist ideology and Muslim solidarity more generally, are appropriated by groups such as the Organization of the Islamic Conference in their efforts to retain power and escape criticism by the international community. As we will now argue, the strategy of "Islamizing" international human rights standards is legally indefensible, morally objectionable, and politically disastrous.

2.1 Discussion of religion in the public sphere

The first challenge to be overcome is the IHR movement's claim that it is improper to speak critically about Islam, or any other religion, in the international public sphere. The freedom to openly discuss matters of faith, particularly where they intersect with public policy and concern, is often taken for granted. If the recent ruling by the President of the UN Human Rights Council is any indication, however, our ability to draw attention to any crimes committed in the name of religion is wavering. Three different lines of argument are typically used in order to stifle such discussion.

First, it is argued that the layperson's (or UN representative's) understanding of religious matters is likely to be severely lacking, and therefore all "religious matters" should be left to experts, theologians, or clergy. This argument must be incorrect because if it stood, no governmental body could discuss anything. One need not be an expert to cite the potential of IHR documents to limit gender equality, gay rights, or the free press; nor does one need be a medical expert to discuss which health care policy best serves the public good. It is true that most political problems involve complex sets of data, variables, and historical context, and that the input of experts is invaluable in clearing up an often muddy, politicized picture. But banning an entire set of issues from the agenda and disqualifying them from public discourse is grossly imprudent. As long as notions of Islamic law have real world consequences, they are part of the same social reality that we all share, and thus must be part of public discussion.

Second, representatives of Islamic states have argued that "religious matters" are in fact irrelevant to many political discussions, including HRC sessions on women's rights, the rights of children, freedom of expression and torture. This argument is self-evidently false. Clearly IHR documents in particular are relevant to discussions of human rights, since IHR documents are discussions of human rights. More generally, if certain actions, such as the stoning of women for committing adultery, genital mutilation, or the oppression of religious minorities are defended through the use of Islamist rhetoric, it involves no stretch of logic to infer a relationship between these beliefs and their effects. Islam, like every other religion, is a living, breathing tradition that evolves through the interpretations and behaviors of its adherents.

To distance the religion from its empirical manifestations is to render understanding impossible, and thus to eliminate the possibility of reform.

Some thinkers, such as Reza Aslan, have suggested that linking Islam too directly to the actions of its more aggressive followers is a mistake; more often, it is political alienation and economic strife that mobilizes violence in the Islamic world. Religion is simply a surrogate for deeper concerns, or a political tool used by the state to justify secular desires for control and order (Aslan 2005). Even where this is true, it does not make sense to remove the religion from public discourse. False consciousness is no less consequential than true consciousness. When Islamic belief is used as a justificatory schema for political and social policy, we can and must examine its implications for human rights.

And third, Muslim diplomats have argued that "religious matters" are of a highly sensitive nature, comprising the very core of believers and their culture, and therefore that discussing them openly in a political forum risks insulting or offending large numbers of people. As we will see in what follows, this approach has had widespread influence, prompting a worldwide debate on the limits of speech.

2.2 Combating "the defamation of religions"

The liberal understanding of free speech allows for humor, insult, lying, criticism, and even hateful speech insofar as it does not harm others. Limitations on speech, such as libel and slander, exist to protect individuals from harm. For example, a libelous or slanderous statement that results in the loss of a person's job a person causes material harm, such that the speaker ought to be held responsible. Do religions generally or Islam in particular deserve the same protection? In the aftermath of 9/11 and amidst public controversies over the Danish cartoons of Muhammad and the Dutch film *Fitna*, an international discourse on "Islamophobia" and "the defamation of religions" has arisen. As the Pakistani diplomat Asma Fatima told a panel at July 2008 hearing in Washington, D.C., anti-Islamic expressions "really, really hurt Muslims around the world" (Savage 2008).

**Rights belong to
individuals, not ideas.**

The UN resolutions combating the defamation of religions encourage member states to restrict the freedom of expression out of respect for religions and belief. In a 2008 report, the Special Rapporteur on racism Mr Doudou Diene broadly endorses the concept of the "defamation of religions" and calls for the transformation of this sociological concept into a legally binding one (U.N. Doc. A/HRC/9/12, para. 45, 65). In our judgment, and in light of statements by the relevant UN Special Rapporteurs and High Commissioners for Human Rights, this would be a grave mistake. While the protection of believers (and doubters) cannot be compromised, the protection of belief itself is unnecessary, lacking a legal basis, dangerous to human rights, and harmful to religion.

Believers are protected by existing human rights instruments

In its 2008 resolution Combating Defamation of Religions, the General Assembly expressed alarm at "the serious instances of intolerance, discrimination and acts of violence based on religion or belief, intimidation and "deep concern about the negative stereotyping of religions and manifestations of intolerance and discrimination in matters of religion or belief" (U.N. Doc. A/Res/62/154, preamble). However, resolutions on defamations of religions are unnecessary to address this concern.

Two central freedoms guaranteed by the International Bill of Rights are freedom of religion and freedom of expression. It balances these freedoms by protecting individual believers

against expression that constitutes incitement to religious discrimination, hostility or violence. UDHR Article 18 stipulates "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." The ICCPR provides that "Everyone shall have the right to hold opinions without interference," and "the right to freedom of expression." This freedom is not absolute, but is subject to certain restrictions "such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."

Further, recognizing the dangers of hateful speech, Article 20 of the ICCPR imposes a reasonable restriction on freedom of expression by prohibiting "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." Reporting on the defamation of religions, the High Commissioner for Human Rights has commented that the existing human rights instruments represent a broad legal consensus and constitute a good basis for "legal and policy responses to the problem of intolerance more generally, and the incitement of hatred and violence in particular" (U.N. Doc. A/HRC/2/6, para. 80). If resolutions on the defamation of religions are aimed at combating incitement to discrimination, hostility, or violence, then they are redundant and unnecessary.

Protection of belief is without a basis in international law

If, on the other hand, "defamation of religions" resolutions aim to protect beliefs or ideologies, then they are without basis in international law. Curiously, the UN resolutions make no attempt to define precisely what they seek to combat, instead mentioning everything from violence against believers to "prejudice" and "social disharmony" (U.N. Doc. A/HRC/2/6). The 2008 General Assembly resolution refers several times to respect for religions, asserting that freedom of expression should be subject to restrictions that are necessary for "respect for religions and beliefs," and asking the Human Rights Council to promote "universal respect for all religions and cultural values" (U.N. Doc. A/RES/62/154).

To implement this resolution would be to undermine the foundational assumption of international human rights standards: Rights belong to individuals, not ideas. Freedom of religion protects the person who believes (or disbelieves), not the contents of the belief. As the Special Rapporteur on freedom of opinion and expression, Mr. Ambeyi Ligabo, has noted, the legal concept of defamation of persons cannot be extended to belief systems: "the provisions on protection of reputation contained in international human rights law are designed to protect individuals, not abstract values or institutions" (U.N. A/HRC/7/14, para. 40).

For precisely this reason, the European Union has stated that the "defamation of religions" is not a valid concept in human rights law. As the representative of Portugal, speaking for the EU, put it: "From a human rights perspective, members of religious or belief communities should not be viewed as parts of homogenous entities. International human rights law protects primarily individuals in the exercise of their freedom of religion or belief, rather than the religions as such" (A/HRC/2/3, para. 27).

The feelings of individual believers can be affected when their beliefs are attacked. These feelings are real and important. However, feelings of offense do not generate a human right not to be offended. From a moral point of view, we owe respect to other persons. Respect for persons does not require that we never hurt their feelings, but rather that we treat them as possessing dignity equal to our own, and therefore hold them to the same fundamental intellectual, ethical, and legal standards to which we hold ourselves. Therefore, respect for a person is not only consistent with criticism of a person's beliefs; respect for a person sometimes requires criticism of his or her beliefs.

Resolutions on defamation of religions are dangerous to human rights

Defamation of religions resolutions invite abuses of power and suppression of dissident opinion through blasphemy prohibitions and similar means employed by member states and other self-appointed guardians of orthodoxy. Who will decide when religion has been defamed? And who will determine which version of a faith deserves protection (for example, Sunni, Shi'a, Ahmadi, Baha'i)? Since there is no principled, objective legal basis for such decisions, they will fall to the subjective sentiments and opinions of those with the power to control opinion and expression.

In her report to the General Assembly in 2007, the Special Rapporteur on freedom of religion or belief Ms. Asma Jahangir expressed concerned that "criminalizing 'defamation of religions' can be counterproductive, since it may create an atmosphere of intolerance and fear and may even increase the chances of a backlash." Accusations of defamation "might stifle

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legitimate criticism or even research on practices and laws appearing to be in violation of human rights but that are, or are at least perceived to be, sanctioned by religion" (U.N. Doc. A/62/280). Ms. Jahangir has also noted worrying trends in which the defamation prohibitions are being applied "in a discriminatory manner" that will "disproportionately punish members of religious minorities, dissenting believers and non-theists or atheists" (U.N. Doc. A/62/280, para. 76).

To take one case: Sayed Pervez Kambaksh, a 23-year-old journalism student in Afghanistan was convicted of blasphemy in 2008 by a local

religious court in Mazar-e-Sharif and now awaits the carrying out of a death sentence made on the basis of the presiding judge's understanding of Islamic law. Kambaksh was accused of circulating among his classmates a piece of literature that allegedly discussed the status of women in Islam. The concept of religious defamation serves to legitimize the violation of Kambaksh's freedom of expression, guaranteed under the International Bill of Rights. According to one member of the Islamic ulema council, "Kambaksh has deviated from religion, and Islam orders that he must be executed" (Leithead 2008). Islam does not need protection from Pervez Kambaksh. Pervez Kambaksh needs protection from those who speak in its name.

Attempts to protect religion by law are self-defeating

Ultimately, attempts to protect religion by law are self-defeating. At the same time it decries the defamation of religion, the General Assembly commends the "dialogue among civilizations" and the UN program on Alliance of Civilizations as efforts to cross-cultural understanding and tolerance. The Alliance of Civilizations is advanced as a corrective to the "clash of civilizations" theory, which has been accused of divisiveness. And yet the Alliance of Civilizations, by speaking of "the Islamic world," perpetuates the questionable division of the world by religion, and elevates religious authorities to the position of cultural spokespersons. This neglects religious and secular diversity *within* cultures on which genuine dialogue depends. Genuine dialogue takes place among people, not civilizations.

All religions make claims to truth, even when they disavow the use of coercion or force to bring others to those truths. Truth claims by their nature necessitate disagreement. Even the claim that no religions essentially disagree is a claim about which some believers disagree.

So, the identity of religions depends on the possibility of disagreement. As Maher Hathout, Abdullahi An-Na'im, and others argue, Islam cannot truly flourish without openness to discussion and revision.³

The Human Rights Council sits in Geneva, which witnessed the execution of Miguel Servetus for what was once a Christian heresy, denying the Trinity of God and infant baptism. On 27 October 1553, on orders from Jean Calvin, Servetus was burned alive near Geneva, some say with the last copy of his book chained to his leg. Calvin explained,

Whoever shall maintain that wrong is done to heretics and blasphemers in punishing them makes himself an accomplice in their crime and guilty as they are. There is no question here of man's authority; it is God who speaks, and . . . we spare not kin, nor blood of any, and forget all humanity when the matter is to combat for His glory (Calvin 1554, 46-47).

Had he been introduced to the terminology used by the OIC, Calvin might have said that Servetus defamed Christianity. Yet every religious innovation begins with a prophet or teacher who speaks the truth as his or her conscience dictates it, no matter who may disagree. The advance of religious truth, then, hangs, in the end, on the right to dissent and those precious open spaces of public life in which doubt, dissent and thus dialogue and discovery can flicker and take light. To combat the so-called defamation of religions is, then, in the end, to combat religion.

Is Europe guilty of a double-standard?

In the international debate over Islamophobia and freedom of expression, European advocates of free speech are often accused of holding a "double-standard," a reference to the fact that in many Western European societies, anti-Semitic expression and Holocaust denial are widely condemned and in many cases legally prohibited. Until such protections are removed, some argue, Europeans will be guilty of hypocrisy when they plead for free expression about Islam and Muslims. One way to address this concern is to agree that European-style hate speech legislation is illegitimate. The American approach to free speech permits all speech—including racist or hate speech—that does not present a risk of harm. This approach represents a principled solution that applies a single standard to anti-Semitic and anti-Muslim speech.

It could also be argued that there is a principled means for European-style restrictions to avoid a double standard. Some of the existing laws are careful to distinguish public expressions of hatred from religiously offensive speech. For example, the United Kingdom's public order legislation, which incorporates the Racial and Religious Hatred Act of 2006, explicitly states that it should not be interpreted to in any way prohibit or restrict "discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practicing their religion or belief system" (Waldron, 2008).

By contrast, the discourse of Islamophobia and defamation of religion fails to distinguish between speech that constitutes real risk of harm to individuals, and speech that merely subjects ideas to "discussion, criticism, or expression of antipathy, dislike, ridicule, insult or abuse." In the hands of certain political elites, the terms have become rhetorical weapons carried into political battle rather than legal instruments that could constructively address any social problems.

2.3 Who speaks for Muslims?

The OIC positions itself as representative of the content of "Islam," the views of "Muslims," or the *umma*. Yet the IHR movement represents only one possible perspective on Islam and human rights. In fact, this perspective is highly controversial, even among Muslims.

Political activists agitating for greater freedom within OIC countries often appeal to universal human rights discourse when claiming and defending their rights against oppressive regimes. In the Casablanca Declaration (1999) and the Beirut Declaration (2003), numerous non-governmental organizations from Arab OIC countries forcefully rejected the idea of IHR and declared that the only "source of reference in this respect is international human rights law and the United Nations instruments and declarations":

Civilization or religious particularities should not be used as a pretext to cast doubt and to question the universality of human rights. The "particularities" that deserve celebration are those which make a citizen have a sense of dignity, equality and enrich his/her culture and life, and promote his/her participation in their own country's public affairs. Assuring the tolerant principles of Islam and religions in general should not be put in a false contradiction to human rights principles. The conference [warns against adherence to] aged interpretations of Islam that distort Islam and insult Muslims and lead to violations of human rights, particularly when excluding women and not allowing freedom of thought, belief, creative art, literature and scientific research (Mayer 2007, 8, 18-19).

The principle instruments of international human rights law; namely, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, were all created and adopted through a process of deliberation and voting among UN member nations, many of them democratically accountable to their peoples. For instance, the Universal Declaration was passed, after extensive debate, by a vote of 48 to 0 with eight abstentions (Damrosch 2001, 593). By contrast, IHR documents and statements have been crafted in relatively non-transparent forums by elites and officials of nondemocratic regimes (Mayer 2007, 2).

It also must be remembered that significant numbers of the citizens of OIC nations and supporters of IHR documents are members of non-Muslim faith communities. These citizens do not endorse the religious and moral authority of Islamic law as part of their religious practice.

According to an influential theme of liberal democratic political theory, the moral legitimacy of a public policy can be evaluated by the degree of "public justification" that the policy enjoys; that is, the extent to which the policy could be justified to each reasonable citizen (Rawls 1996). By this measure, the instruments of the IRH movement fail the test of legitimacy. There are many reasonable citizens of OIC countries to whom the supremacy of Islamic law over universal human rights could not be justified; among them, the authors of the Beirut and Casablanca statements, and the significant numbers of non-Muslim citizens.

2.4 Who speaks for Islam?

Just as they cannot claim to legitimately represent the true diversity of opinion among the people of their nations or of the *umma*, neither can the advocates of IRH claim to possess the only reasonable understanding of Islamic law. Untold numbers of Muslim believers either do not affirm or explicitly reject the aims of the IHR movement. Those committed to traditional Islamic jurisprudence might object to the way in which the IDHR and the Cairo Declaration borrow concepts from international law and graft them together with principles

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of *shari'ah* without any attempt at systematic integration. The result, as traditionalists might see it, is an awkward and incoherent mixture, even a perversion of classical *shari'ah* (Mayer 2007, 194). The subjects of *shari'ah* are individual persons, whereas the subjects of international law are nation-states; *shari'ah* expresses religious duties, while international law expresses non-religious obligations.

On the other hand, liberal Islamic political theorists could argue that *shari'ah* is in principle compatible with secular constitutional democracy, but only when clearly differentiated from the particular body of law developed by the schools of interpretation during the classical period (Hathout 2006). Still other legal scholars contend that *shari'ah* is inadequate as a political instrument for ensuring the freedom and equality of citizens; universal human rights norms are required (An-Na'im 2008, Tibi 1998). Finally, noted apostates and critics of Islam such as Ibn Warraq contend that the provisions of *shari'ah* are both inseparable from Islam and also inherently illiberal, and therefore provide grounds for the rejection of Islam as a morally repugnant ideology (Warraq 2003).

It would be difficult for the defenders of IHC to respond by maintaining that they speak for the only justifiable or authoritative understanding of Islamic law. Traditionally, Islamic jurisprudence recognized several sources of legal reasons: the Quran, the method of reasoning by analogy, and the consensus of legal scholars (Schacht 1964, 114-115). The consensus of legal scholars had decisive force because it determined proper interpretation of the Quran and proper application of the methods of reasoning. Islamic law is, to a great extent, a "jurists' law": "it was created and developed by private specialists; legal science and not the state plays the part of a legislator, and scholarly handbooks have the force of law" (Schacht 1964, 5, Schacht 1979, 400-401). As such, at least on a traditional view, the nature and scope of Islamic law cannot properly be determined by the decree or consensus of public officials. So, the IHR documents depend on a presupposition of legal expertise and authority to decisively interpret the law, a presupposition that is indefensible by the lights of traditional Islamic jurisprudence.

2.5 Religion as a limit on international human rights

As recently as December 2007, the Pakistani Ambassador at the United Nations Human Rights Council claimed that the Declaration was "not an alternative," but "complementary to" the Universal Declaration of Human Rights (UDHR). Interestingly, the Cairo Declaration makes no mention of the UDHR, but states that "[a]ll the rights and freedoms stipulated in this Declaration are subject to the Islamic *shari'ah*" and that "Islamic *shari'ah* is the only source of reference for the explanation or clarification to any of the articles of this Declaration."

Even a casual inspection of the Cairo Declaration, the IDHR, and other IHR literature shows that in general, IHR schemes "have consistently used distinctive Islamic criteria to cut back on the rights and freedoms guaranteed by international law, as if the latter were excessive" (Mayer 2007, 3). For instance, Article 22 of the Cairo Declaration states "Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the *shari'ah*." This Article permits limitations on freedom of expression that clearly are not permitted by the UDHR, whose Article 19 simply states, "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." The Cairo Declaration mentions *shari'ah* fifteen times, mostly in order to qualify various rights by stipulating that they must be exercised within the limits of *shari'ah*.

All well-developed legal systems of rights provide for limitations of certain of those rights under specified circumstances; for example, to protect national security or public order. The question arises whether the limitations placed on international human rights by IHR are defensible under the standards of international law. The ICCPR permits derogations from guarantees to certain rights in case of public emergency:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin (Paragraph 2, Article 4).

The framers of the ICCPR attempted to delineate the permissible derogations in a manner that is precise, principled, and transparent. The derogations permitted do not include limitations imposed by any system of religious duties. For example, the ICCPR states that freedom of movement "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedom of others, and consistent with the other rights recognized" (Article 12.3). Furthermore, attempts to limit rights on the basis of religious law arguably could be held to constitute religious discrimination of the kind prohibited in Paragraph 2, Article 4 above. Finally, the Covenant states that certain rights are absolute and may not be limited in any event. These include the right to equality in dignity and rights. Insofar as the *shari'ah* law denies equal treatment to women and non-Muslims (as we argue below), then limitations based on *shari'ah* will run afoul of this absolute, non-derogable right (Mayer 2007, 78).

The derogations allowed under the system of international human rights law are not arbitrary, but rather are guided by established law: "such limitations are governed by law, not by the whim of the state. Whether a particular limitation on a right is permissible under the Covenant is a question of international law, and the state's action can be scrutinized and challenged as a violation of the Covenant" (Henkin 1981, 21-22). Here, IHR instruments are particularly problematic, because of the vague manner in which they invoke *shari'ah*. This vagueness invites arbitrariness and abuse of power because there is no clear, generally accepted legal system governing qualifications on rights; just the claim that a certain rule or interpretation is legitimate because it is "Islamic." There has been no serious effort, comparable to the effort by the framers of the ICCPR and other international human rights instruments, to present permissible limitations in a precise, principled, and transparent way.

2.6 The incompatibility of IHR and the International Bill of Rights

A central tenet of international human rights law is that persons are equal in dignity and rights. By citing *shari'ah* as the source of law and a constraint on individual freedom and rights, the IHR literature makes a presumption of inequality in rights, for under classical *shari'ah*, there is no equality in rights for women, non-Muslims, and apostates. The IHR literature does nothing to remove this presumption. As a result, the only plausible way to understand the IHR movement, despite public statements regarding its compatibility with international standards, is that it seeks to use the instrument of Islamic law to curtail the equality in rights accorded to women and non-Muslims by those standards.

In the classical interpretation of *shari'ah*, when a woman commits apostasy she may be coerced through imprisonment and beatings to return to the fold, unlike male apostates, for whom the punishment is death (Schacht 1964, 126). With regard to courtroom testimony and inheritance, she is counted as half a man. Christian and Jewish subjects under Muslim rule occupy a separate legal class in classical *shari'ah*: the *dhimmis*. *Dhimmis* are understood as a "covenanted people" or "protected people." The term dates back to the Treaty of Khaybar in 628 C.E., in which the Jewish inhabitants of Khaybar surrendered to Muhammad's forces. In return for the right to live peacefully in a Muslim state, *dhimmis* were obliged to pay special taxes and to accept various forms of social subordination to Muslims (Schacht 1964, 130).

The Cairo Declaration contains no endorsement of equality of rights, and instead says in Article 1 that all human beings "are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, social status, or other considerations." As Ann Elizabeth Mayer observes, equality in "dignity" and "obligations" does not necessarily signify equality in rights (Mayer 2007, 102). In Article 19, the Declaration states that "All individuals are equal before the law, without distinction between the ruler and the ruled." According to Mayer, "this might seem to be an affirmation of equal rights, but in the context of a document that carefully avoids guaranteeing equal rights or equal protection of the law for women and non-Muslims, it should be read as meaning only that the law applies equally to rulers and ruled—that is, that rulers are not above the law."

The pattern of evading the question of equality of rights is even more blatant in the UIDHR. In Article 3.c, the English version of the "Right to Equality and Prohibition Against Impermissible Discrimination" reads: "No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, color, race, origin, sex or language."

In the Arabic version under the rubric "Right of Equality," the corresponding section, Article 3.b, says that all people are equal in terms of their human values (*al-qaima al-insaniya*), that they are distinguished in merit (in the afterlife by God) according to their works (*bi hasab 'amali him*), that no one is to be exposed to greater danger or harm than others are, and that any thought, law or rule (*wad'*) that permits discrimination between people on the basis of *jins* (which can mean nation, race, or sex), *'irq* (race or descent), color, language, or religion is in direct violation of this general Islamic principle (*hadha 'l-mabda al-islami al-'amm*) (Mayer 2007, 107).

It is clear from other provisions of the IHR documents that they were not intended to challenge the basic inequality in rights accorded to women under classical *shari'ah*. For example, the UIDHR contains a section on the "Rights of Married Women." There is no corresponding treatment of the rights of unmarried women, or the rights of married (or unmarried) men.

2.7 Can Islamic law be re-interpreted to accommodate human rights?

One way to avoid the conclusion we reached above is to deny that Islamic law is committed to inequality in rights for women and non-Muslims. This claim about equality in Islamic law could be regarded as a historical claim about the *fiqh*, the body of legal opinion and rulings that constitute a particular tradition of Islamic jurisprudence, such as the four major Sunni schools. Understood as a historical observation about the actual body of orthodox or classical Islamic law, the claim is insupportable empirically. Here we take as paradigmatic the Hanafi school, as exemplified by the *Multaka l-Abhur* of Ibrahim al-Halabi, a highly regarded statement of fully developed law in the sixteenth century.

Another, more promising way to understand the claim about equality and the *shari'ah* is as a substantive claim about how best to interpret the tradition of Islamic law. This strategy is defended by Maher Hathout, an advisor to the Muslim Public Affairs Council.

Traditional supporters of an "Islamic state" desire mostly to resurrect and install this ancient legal system. In contrast, we present a definition of *shari'ah* as an evolving body of ethical norms and legal rulings, which is open to interpretation in keeping with social and historical changes. Our definition de-emphasizes the binding power of previous . . . narrow interpretations of the Quran in favor of a more inclusive, tolerant perspective that stresses key universal, Quranic principles (such as freedom, justice, and equality), and supplements them through other religious sources. (Hathout 2006, 43-44)

In keeping with this strategy, it could be argued that Islamic law, when properly conceived, will not conflict with but provide support for international norms of freedom, justice, and equality. We believe there is much merit in liberalizing Islamic law in the fashion sketched above. However, whatever the merits of this approach to understanding Islamic law, it cannot be used to vindicate the project of the IHR movement. If the IHR documents intend *shari'ah* to be interpreted in a liberal manner, then they would be obligated to make this clear. The purpose of such instruments is to guarantee certain rights. However, as they stand, the IHR documents are entirely unclear about how *shari'ah* is to be interpreted. Therefore, they do not guarantee that a liberal strategy will be employed, and so cannot guarantee the protection of equality in dignity and rights to women and non-Muslims. It may be that a liberal interpretation of Islamic law makes the most sense, but it does not follow that the IHR movement is employing that interpretation. Indeed, all the evidence suggests otherwise.

2.8 Are human rights relative to culture?

Turning from the attempt to reconcile Islamic law with universal human rights, some would instead claim that IHR are distinct from but no less valid than universal human rights. This is one way to construe the Pakistani Ambassador's claim that the Cairo Declaration is "complementary" to the UDHR. Human rights are relative to cultures. As such, they may be appropriate to "Western" cultures while Islamic human rights are appropriate to "Islamic" cultures. As the American Anthropological Association put it in 1947, commenting on the proposed UDHR, "How can the proposed Declaration be applicable to all human beings and not be a statement of rights conceived only in terms of values prevalent in the countries of Western Europe and America?" ("Statement on Human Rights" 1947, 539-543)

The failure of relativism as a legal doctrine

From a legal standpoint, this argument from cultural relativism fails. The subjects of international treaties and covenants are nation-states. Virtually all of the OIC states involved in the IHR movement have in fact endorsed the UDHR and the covenants, together referred to as an "International Bill of Rights." In doing so, these states have undertaken obligations to guarantee to their citizens the rights stipulated in the International Bill of Rights. The permissible derogations from these obligations are governed by international law, which presently provides for no general limitations on the basis of religious legal systems. Legally speaking, countries backing the IHR movement must either withdraw entirely from the International Bill of Rights, or be prepared to acknowledge the universality of those rights.

The failure of relativism as a moral doctrine

The argument from cultural relativism also fails from a moral standpoint. Most experts on international law and ethics would agree that international standards of human rights are ultimately justified by moral standards explicated in terms of right action, justice, or the good of individual persons. Most observers would concede that genocide is a moral abomination not just because it is illegal, but rather that genocide is illegal because it is a moral abomination.

What would it mean to say that such moral standards are relative? Broadly speaking, there are two families of theories about relativism in moral philosophy: 1) subjectivist or "anti-realist" theories; 2) objectivist or "realist" theories. A subjectivist or anti-realist theory holds that moral assertions do not express objective facts, but rather are expressions of attitudes or imperatives, which are neither true nor false and which may vary across different moral agents or communities. An objectivist or realist theory of relativism holds that there exist some objective moral truths, but that the same claim can be "true for" one agent or community but "false for" another. Which of these understandings of relativism would be most congenial to the philosophy of IHR? Presumably, subjectivist relativism would be unattractive insofar as it implies that none of the moral claims of Islam or Islamic law are true.

Objective relativism, on the other hand, would lead to other consequences that should be unacceptable from the perspective of the IHR movement.

We must distinguish between the universal observance of a standard and the universal scope of a standard.

First, we suspect that many advocates of IHR would be uncomfortable with the idea that the moral claims of Islam are non-universal. Since its origins, Islam has been a universalistic faith in that it seeks to transcend tribal distinctions and address itself to humanity as such. Not only those born to a Muslim household have a reason to accept the revelation of Muhammad, but any right-thinking person. But suppose that a non-universalistic Islam were satisfactory. In what sense would its moral claims be relative (objectively)? Specifically, by which community or group would the application of Islamic law be delimited? The group cannot be just the populations of 'Muslim countries' since Muslim and non-Muslim populations are commingled within majority Muslim and other societies. Consider the populations of India, China, France, or the United States, for example.

Could Islamic law instead be limited in its application only to practicing Muslim individuals, wherever they may reside? Such a theory would fail to account for the many rules of the *shari'ah* dealing with non-Muslims and dhimmis. The remaining alternative is to apply the norms of Islamic law to all persons, which is just to reject relativism. To insist on the relativity of human rights, the philosophy of IHR would first have to renounce its own moral core. We imagine that for many advocates of IHR, the religious cost of adopting relativism will be too high. Few will wish to save "Islamic" values from the grip of "Western" values by amputating their own aspirations to universal wisdom and justice.

There is also a heavy moral cost exacted by relativism, which explains why it is rejected by so many ethicists and political theorists. The moral cost of relativism is this: If relativism were correct, then we must somehow accept the fact that no matter how abhorrent we judge a practice to be, our fellow human beings in other communities may have no reason to avoid it. In this worldview, genocide is evil, but not if you are one of the perpetrators. This flies in the face of moral common sense.

Universal scope versus universal observance

In sum, the relativist defense of Islamic human rights is defeated by legal and moral considerations. Legally, the International Bill of Rights properly applies to all of the citizens of the states endorsing it, which include virtually all of the states pursuing IHR. Morally, recourse to relativism would vitiate Islam's central claim to be a universal faith.

The appeal of relativism comes from the obvious fact that values and ethical standards vary across time and between communities. But we must distinguish between the practice of a standard and the scope or proper domain of application of a standard. That the observance of certain standards is associated disproportionately with a particular culture does nothing whatever to show that they cannot properly be applied to others. By analogy, let us suppose that a Mediterranean diet is the best diet for human beings for reasons of health and nutrition. While the Mediterranean diet is relatively unpopular with people in other regions, and thus not universally practiced, the judgment about the excellence of the diet is nonetheless universally applied to people in other regions. For advocates of human rights, like advocates of a diet, the lack of universal observance does not undermine the universal scope of the judgment, but instead motivates and highlights it.

2.9 Islam and the secular state

The debate between universal and culturally-specific human rights schemes is not merely an intellectual hobby of academics and diplomats—it has real consequences for statecraft and the lives of individual citizens. Just as members of the OIC have pushed through legal loopholes in order to escape international human rights standards, many Islamic states (and the Western multiculturalists who support their cultural sovereignty) have used relativist rhetoric to marry religion and politics in the Islamic world. While it may be well-motivated by a desire to show respect for others, this concession to culturally specific rights does not well serve the citizens of Islamic states.

Some Western observers have welcomed the political use of Islamic law on the grounds that it represents a positive step on the path to liberal democracy. The American professor of law Noah Feldman has written: "For many Muslims today, living in corrupt autocracies, the call for *shari'ah* is not a call for sexism, obscurantism or savage punishment but for an Islamic version of what the West considers its most prized principle of political justice: the rule of law" (Feldman 2008). Feldman suggests, for example, that one virtue of *shari'ah* is its high standard of proof for capital crimes:

In fact, for most of its history, Islamic law offered the most liberal and humane legal principles available anywhere in the world. Today, when we invoke the harsh punishments prescribed by Shariah for a handful of offenses, we rarely acknowledge the high standards of proof necessary for their implementation. Before an adultery conviction can typically be obtained, for example, the accused must confess four times or four adult male witnesses of good character must testify that they directly observed the sex act (Feldman 2008).

Feldman somehow overlooks the egregious gender inequality of this policy, which makes rape convictions nearly impossible, and limits evidentiary authority to men. By suggesting that a different standard for the rule of law should apply to majority Muslim societies, Western commentators like Feldman actually lend credibility to the efforts by the OIC to justify their human rights violations.

Reza Afshari has documented how the Islamic Republic of Iran has used cultural and religious relativism to circumvent the UN Human Rights Council's attempts to inspect and report on human rights abuses by the regime, such as harassment, imprisonment, and torture of journalists and activists; repression of religious minorities, sexual minorities, and women. Iran has regularly denied and countered the accusations by United Nations human rights monitors by defending its acts as authentic "cultural practices" (Afshari 2001).

The desire of some Western liberals to accommodate the cultural sensitivity of Islamic nations runs contrary to the wishes of those within those states who desperately need the protection of human rights. As Afshari has shown, when Westerners concede the argument over universality to Islamist activists, they are not "respecting difference." They are in fact enabling autocracies to stifle internal dissent, resist criticism, and violate the rights of their citizens. "Many Iranians," he explains, "rely on the Universal Declaration of Human Rights for moral and legal support . . . international human rights law serves as a prestigious platform for dissident views that demand changes in all cultural practices that sustain and legitimize human rights violations" (Afshari 2001, 289).

The rule of law in OIC countries must be circumscribed by the international rule of law. Abdullahi An-Na'im and Bassam Tibi argue for the removal of Islam from the political arena and the establishment of secularism, civil society and individual human rights (An-Na'im 2008; Tibi 2005). For An-Na'im and Tibi, the ideal place for Islam is not within the ideology of

Islamism, which co-opts the tradition for political purposes, but within the lives of people under conditions of secular government that guarantees universal equality and freedom.

3. RECOMMENDATIONS

In light of the failure of the United Nations Human Rights Council to uphold the ideals of universal human rights (and in particular, the right to free expression), many observers are inclined to abandon the institution altogether. The Center for Inquiry believes that the mission and role of the HRC is worth saving. For better or for worse, the UN possesses a unique moral authority; its decisions have a real impact on the lives of individuals across the globe. The moral influence of the HRC is further evidenced by the fact that 21 NGOs from Islamic states felt compelled to respond to the March 28 resolution (tasking the Special Rapporteur for Freedom of Expression with limiting that very freedom). They did so out of concern that the resolution would have an adverse effect on their local struggles for human rights.

Short of abandoning the HRC, it might be suggested that radical structural reform is needed such that no state would gain admission to the HRC without first demonstrating its commitment to the letter and spirit of universal human rights. We believe that this is an ideal long-term objective, but for various practical and political reasons, its attainment is distant and uncertain. There are, however, immediate steps that can be taken in order to respond to the IHR movement and restore integrity to the Council.

However, given the current division of the Council into voting blocks, member states that wish to resist the OIC-led actions may also need to pursue matters at the level of the General Assembly.

The Center for Inquiry recommends that the following steps be taken:

Permit free discussion of religious matters at the HRC. As a first step, the HRC must lift its procedural prohibition on the open discussion of religion in connection with human rights. Let there be "no taboos," as the president of the Ninth Session has put it.

Restore the original mandate of the Special Rapporteur for Freedom of Expression. The 28 March 2008 amendment revising the role of the Special Rapporteur for Freedom of Expression was a mistake. The original mandate was unobjectionable, and concerns about religious discrimination are already addressed by existing instruments. Member states should move immediately to nullify this change, in the GA if necessary.

Reject the concept of "defamation of religions." Believers are already adequately protected, while dissenters' rights to free expression are already threatened by blasphemy prohibitions. Member states must rally in the General Assembly to remove votes from these resolutions and to prevent "defamation of religions" from becoming an accepted concept in international human rights law.

Clarify the status of Islamic human rights. The question of the relationship between universal human rights and Islamic human rights could be clarified by a special report by The High Commissioner for Human Rights.

As important as United Nations deliberations are, the battle for human rights is fought by non-governmental organizations in civil societies around the world. The Center for Inquiry applauds the efforts of NGOs such as the Cairo Institute for Human Rights Studies and the statements issued at the Beirut and Casablanca conventions. On this 60th anniversary of the Universal Declaration of Human Rights, we encourage all non-governmental organizations concerned with human rights to work together in defense of the universality of equality and freedom.

4. CONCLUSION

It is clear that if the ideals of the Universal Declaration are to be realized, nations and peoples committed to human rights must take it upon themselves to reverse the present trends toward the compartmentalization of rights and censorship of free speech. Therefore, we join with many civil society organizations around the world in opposing the Islamic human rights movement and denouncing the unnecessary, unwise, and immoral developments at the United Nations Human Rights Council and the restrictions on freedom of expression being entertained by the General Assembly.

The noble purpose of the International Bill of Rights and the United Nations is not to close any one matter off from discussion within society, but to open all societies to free, public discussion of every matter. Liberal rights are not guaranteed; we must constantly defend them against those who would trade our liberties for security, order, control, or conformity. A common standard of achievement, and not special cultural or religion rights, is the best guarantor of equal freedom and mutual respect.

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ENDNOTES

¹ On Human Rights Day, 10 December 2007, the Ambassador of Pakistan, addressing the Human Rights Council on behalf of the OIC, spoke glowingly of the Universal Declaration of Human Rights, noting the contribution made to its creation and to the two international covenants by many Muslim countries. He then went on to claim that the Cairo Declaration of Human Rights in Islam: "is not an alternative, competing worldview on human rights. It complements the Universal Declaration as it addresses religious and cultural specificity of the Muslim countries" *Taken from the International Humanist and Ethical Union*, <http://www.iheu.org/node/3162>.

² We use the term "Islamist" (rather than "fundamentalist," "extremist," or "radical") to represent broadly that ideology which views Islam as the only valid source of law and seeks complete, exclusive control over state and society.

³ Hathout, a senior advisor to the Muslim Public Affairs Council, and An-Na'im, a leading Muslim legal scholar, argue that Islam and its followers fare best in a liberal, free society in which belief is voluntary and subject to revision. See Hathout's *In Pursuit of Justice: The Jurisprudence of Human Rights in Islam*. Los Angeles: Muslim Public Affairs Council, 2006 and An-Na'im's *Islam and the Secular State*. Harvard University Press, 2008.