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Alternative Islamic Human Rights

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Abstract

Human Rights and Islam is a subject which has been of great interest in many circles. The debate on whether Islam and the UN definition on Human Rights are compatible has raised many voices and concerns, the debate has mainly focused on the unsuitability of Sharia and it's undermining of minorities. The purpose of this essay is to look at the relationship between Islam and Human Rights, mainly through three alternative Islamic Human Rights declarations. This essay will also illustrate the religious debate of Human Rights in Islam, the creating, status and possible difficulties of the alternative declarations and present attitudes of various organizations, scholars and experts on the subject.

Keywords; Islam, Human Rights, declarations, alternatives

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List of Abbreviations

UN	United Nations
OIC	Organization of the Islamic Conference
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
NGO	Non-governmental organization
UDHR	Universal declaration of Human Rights
UIDHR	Universal Islamic declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization

1. Introduction

Theocracy, secular, post-secular, what kind of society are we living in? This is a question not many people ever feel the need to ask or need an answer to, nor something that they think concerns their day to day life. To some, religion is not even an issue that needs to be debated, and for others, the only question important enough to ask and answer. What role does religion play today? What role does religion have when it comes to Human Rights? In the field of Human Rights many religious groups have raised concerns about the UN declaration, among them some Muslim organisations such as the OIC and the Arab league. These concerns have manifested themselves in different alternative declarations, and this essay will present three alternative Islamic Human Rights declarations and Charters. The UN declaration can be called universal for many reasons, that the declarations are applicable for every human being, in every part of the world. However, questions are raised on whether the UN declarations are meant for secular democracies and foremost in the west, hence not they are not universal and only meant for some people in some states.

There is a preconception among many Muslims that the UN declaration of Human Rights is not as universal as it claims to be, and that it is a liberal, western-Christian concept and not compatible with the whole world and all belief systems. One contested topic in the debate of Human Rights and Islam is that of Sharia. Some argue that there are aspects in Sharia which are in conflict to the ideas in the UDHR. In many Islamic states, no individual or group of people can have any rights that do not conform to the doctrine of the Sharia.¹ Hence, in a clash in what would be the highest regulation, Sharia would be the primary.

Some say that Islam and Human Rights can never be part of the same field because of Sharia, and thus one of the tasks in this essay will be to look at the compatibility and significance of the alternative declarations in relation to the UN declaration on Human rights.

¹ Jumana 2007 p.73

1.1 Purpose and research questions

My main research question is: what function and significance do the alternative Islamic declarations have?

The sub-questions to follow the main question are;

What are the difficulties, if any, with the declarations?

Are the alternative declarations equivalent to the UN declaration on Human Rights?

Naturally, other questions have come to pass during the work, which can be seen throughout the essay. My hypothesis is that religion can not be excluded in the matter of Human Rights, the fact that there are numerous alternative declarations is a testament of that need. My intention is to analyse some of the alternative declarations to gain an understanding for why they were written and how they work. I have chosen three alternative declarations and I will look at commonality and differences between them and the UN declaration. The declarations being The UIDHR (Universal Islamic Declaration of Human Rights), The Cairo declaration on Human Rights and the Arab Charter on Human Rights. I have also chosen to look at different approaches to Human Rights among Muslim intellectuals. I will furthermore give a short introduction of Islam and some of its key points to get a better idea of its history and structure.

1.2 Delimitations

Discussing Islam and Human Rights almost postulates a debate of women's rights and, over all, family law. This however is not my goal; it will be mentioned but not the focal point of this essay.

1.3 Theory and Methodology

The primary materials for this essay are three alternative Islamic declarations on Human Rights. I have also used Ann Elisabeth Mayer's book as a base of information. Her book has been described as a groundbreaking study and has been used by many to learn more about the compatibility of Human Rights and Islam. Another well known author in this field is Prof. Abdullahi Ahmed An-Na'im; he is an internationally recognized scholar of 'Islam and Human Rights', and 'Human Rights in cross-cultural perspectives'. An-Na'im's field further consist of such as comparative law, criminal law, Human Rights, Islamic law, and can be seen as one of the primary voices of liberal interpretation of Islam. He has written a large number of books and

articles, I have used some of them in my research seeing as he is one of the leading authors in this field. An-Na'im's engagements in the field of Human Rights are generally recognized and have been internationally rewarded.² An-Na'im's discussions on Islam, Islamic law and Human Rights are placed within the framework of universality, cultural relativism and cultural legitimacy. An-Na'im stresses the importance of cultural legitimacy and emphasizes the point that culture is a primary source of normative systems. There is quite a lot of material on the subject of Human Rights and Islam, and there seems to be two major positions, either Human Rights, by the definition of the UN and Islam is compatible, or they are not, and then there is a small scale of in-betweens. A large amount of those who think that Islam and Human Rights is compatible refer to Abu-l A'la Mawdudi's work, agreeing that Human Rights have been in Islam for as long as the religion itself has existed. A'la Mawdudi (1903-1979) is possibly the most criticizing of the UN definition of Human Rights among the authors I have come across in the research for this essay. Mawdudi has been a central figure for the revival of Islam; he viewed Islam as a holistic ideology similar to western ideologies.³ Mawdudi argued that once Muslims learned the true teaching of Islam they would strive for an Islamic state and it should be run by a modern machinery of government.⁴

Legal studies scholar Ann Mayer is one of the most referred to author in the fields of Human Rights and Islam, especially in Women's rights. In works as *Islam and Human Rights* she makes a critical study of 'Islamic' Human Rights schemes as alternatives to the international Human Rights schemes.⁵ Riffat Hassan, another female author who has made an impact in this field, foremost has she been engaged in the religious dialog and later in discussions on global ethics. Hassan supports the UN definition on Human Rights, the criticism she levels at the UDHR is not the content which she considers religious in essence although secular in terminology, the criticism is the lack of respect for them in practice.⁶ Hassan proclaims that in order for Human Rights to be respected and conceived of as valuable around the world is to place the discussion within a religious framework. She often states that the Qur'an contains several fundamental Human Rights and that many Muslims consider the Qur'an to be the 'Magna Charta of Human Rights'.⁷

The research about this subject had its beginning and high point in the 1990's but still remains

² Svensson 2000 p.163

³ Rahnema 1994 p.105

⁴ Rahnema 1994 p.106

⁵ Svensson 2000 p. 30

⁶ Svensson 2000 p.70

⁷ Svensson 2000 p.71

somewhat popular in certain circles. One of the reasons I chose this subject, is that I think that there is a need to take religion into an account in today's society, and today's society includes Human Rights, now more than ever.

I have looked at the three declarations in relation to Sharia and the international Human Rights scheme to get a better understanding of the relationship between these factors. The goal is to see if there is a commonality between the alternative declarations and to see what differs.

I believe that Islam is no different than any other beliefsystem; that all are equal no matter what 'truth' or 'science' it derives from. It is of my opinion that the standards of the UN Human Rights can be achieved, only, that there might be slight differences in the implementation of them for a long time to come since even some western states that should be able to, have problems in implementing a number of declarations in full. It is difficult to say what status Human Rights should have when even today there is a debate on whether water is a human Right or not. I do not know whether there ever can ever be a true consistency; however I think that most humans would like to have equal rights no matter what country they live in and no matter what belief system they might have. I try in my work to look at the trend of Human Rights and its importance, value and the attitude towards them. The different authors presented in this essay portray these various attitudes, whether they comply with the UN definition of Human Rights or not, they each have strong arguments deriving from their different area of expertise.

2. Islam

Islam is one of the abrahamic religions, which means it is a monotheistic religion, faith in one God. The word Islam is Arabic and is often translated into “submission to God”, even if there are some differences in the translation of the word, the consensus is the same, submission or deliverance to the one God, Allah. The two main aspects of Islam is on one hand the faith, which refers to the faith in God and the prophet, the other Sharia. Sharia is then basically divided into two sets; the affairs man to man, mu`amalat, and man’s affairs with God, 'ibadat. The last is what concerns such as how to perform religious rituals and some parts that from a Christian or other perspective might not seem to be the concern of God such as parts of the criminal law since in Islam some acts are seen as a crimes against God.⁸

The last prophet of Islam was Muhammad, given to mankind as a messenger of God. Through the stories of his life, believers of Islam can learn how to live life as good and righteous Muslims and how to act in Gods favour. The revelation of the Qur'an was given to Muhammad through the angel Jibrīl (Gabriel), it was up to Muhammad to convey the Qur'an to the people.

The Qur'an

The title is an Arabic word, meaning “recitation”, which reflects both on the structure and function of the text. The Qur'an is considered to be sacred, a historical artifact and some consider it to be a discursive text to be interpreted and understood.⁹ Many, if not all Muslims, believe that the Qur'an is an exact, word for word recitation of God’s final revelation. The history of the Qur'an tells us it was given to Muhammed in Arabic sometime around the year 610 AD, and has been translated into numerous other languages. The Qur'an contains the most important basic doctrines within Islam; it determines the obligations, morals and religious characteristics for an Islamic life.¹⁰

Hadith and Sunna

Along side with the guiding from the Qur'an there is also Hadiths and Sunna of the prophet Muhammad. The Hadiths are stories and sayings about what Muhammad said, did and what he liked, or by his companion. Sunna means tradition and practice, the Sunna of the prophet refers to his way of life, how Muhammad lived and what he did. The stories of Muhammad’s life

⁸ Vikør 2005 p.3

⁹ Brown 2004, p. 54

¹⁰ Religionslexikonet p.273

teach how he acted and from these stories one can learn how to practise the Islamic faith and how to be a good Muslim.

Ummah

The concept of Ummah has four different meanings, it can either mean space of time, a sort of leader, a path or teaching, or can it mean community.¹¹ According to one Islamic webpage, when referring to the community it basically means the Muslim community, in the more modern Arabic language it has also been known to be used as a concept of “nation”. It is not limited to a geographical area or organization but to a group of people, a religious community. Hence the term can be associated to either the great Ummah including all Muslims or a State or nation. There is an idea that all Muslims around the world form a unit, an Ummah, and this has led to a great deal of supranational cooperation's.¹² The first Ummah was the one of Muhammad's, containing him and his followers.

Sharia

The word Sharia is used in a variation of ways, some, such as younger Muslim scholars tend to refer to it as, the divine will as only God knows it. It is however more common to use Sharia as the name for Islamic legal rules actually applied in the human existence.¹³ If a person conforms to and practices Sharia it will lead to salvation and a place in paradise. Traditionally Sharia is considered to be an all-embracing system of rules for the social life as well as the ritual life; it also contains rules of ethics and diet.

Sharia derives both from the Qur'an and the Sunna, and with these sources the justice system has been able through time to deduce special rules, which is considered to be in compliance with Gods will. However as humans have not been given an irrefutable law code by God, there is a need for it to be interpreted and clarified in an intelligible terminology for it to be used.¹⁴ Furthermore Sharia is not based on any decisions from any parliament or council, but the result of individual efforts by the scholars working with the God's revelation.¹⁵ Which areas in life that Sharia should involve is a much-disputed question in the Muslim community, especially in modern times. The sources of Sharia, the Qur'an and the Sunna are not text of science or economics.

¹¹ http://www.hikma.se/?p=p_47

¹² Religionslexikonet 1990 p.548

¹³ Vikør 2005 p.2

¹⁴ Vikør 2005 p.7

¹⁵ Vikør 2005 p.3

It is very difficult to talk about Sharia as a distinct or cohesive body of law since it changes in practice from country to country. Sharia is not like a national law, international law or the universal rights set by the UN, it does not fit into any of the categories and criteria's. Not only does Sharia differentiate distinction between Muslims and non-Muslims, there is also a divergence between different schools of law, these predicaments are great problems when attempting to fit Sharia into the 'modern state systems' that dominate the world.¹⁶In implementing Sharia in a state there is also the question of whether the law is to be considered a universal law for all Muslims or a national law for all the inhabitants of the country or even a private moral choice that is up to every individual to decide for them self.¹⁷ Some say that Sharia is incompatible with the modern state with the overall goal for democracy, and that Sharia and democracy are incompatible. One example is Duhaime's legal dictionary which states that:

One of the features of Sharia is that, in theory, it is invariable and stable. Democratic principles such as political pluralism and the continuous pull towards increasing individual freedom are incompatible with Sharia.¹⁸

This is an example of jurists' ineptitude to understand religion and of their understanding for Sharia as a positive modern legal system. To look at Sharia as a legal system such as the national law, international law or universal rights is to diminish the content and complexity of the system. One can only look at the countries practicing Sharia to see that it is rarely invariable and seldom stable. For example, Saudi Arabia which claims always have had Sharia as their sole legal system have ratified numerous "regulations" based on European law and practice in the commercial and public administration fields.¹⁹

The jurisprudence in Islam is called Fiqh, which basically means Islamic law or translated into "to know" or "to comprehend"; there are some who use the term Fiqh as a synonym to Sharia. Fiqh is the human science by which you can understand and interpret the commandments of God in Sharia. Fiqh is said to be the science of giving a specific ruling on a particular case by studying the relevant text in the Qur'an and the Sunna, and investigating specific circumstances of the case. Wherever the authenticity of the text is not absolutely certain or it's meaning not

¹⁶ Vikør 2005 p.224

¹⁷ Vikør 2005 p.225

¹⁸ <http://www.duhaime.org/LegalDictionary/S/ShariaLaw.aspx>

¹⁹ Hayden 2001 p.321

absolutely clear, there is room for a new interpretations, this uncertainty can only be raised about Hadiths since the Qur'an is considered authentic per definition. The wide range of human judgement in Fiqh led to various schools of Fiqh flourishing in Islam; still there are no formal classes of clergy in Islam. Anyone who is well versed in Islamic sciences is eligible to make his own ruling on a specific problem. However, the public usually goes for the ruling of a scholar whom they trust for his piety and knowledge.²⁰ Today many states have established either a grand mufti or Ulama Council as the highest authority.

Often when we hear about Islamic law, Sharia, in today's media, they mostly refer to all the problems in compatibility with the 'modern way of life', especially regarding family law, inheritance rights, the punishments in the criminal law and discrimination against women. However the media appear to forget that there is more than misery and harsh punishments in this legal system, there are far too many positive things to name them all, nevertheless there is cause to believe that this is of no concern in the media aspect. Sharia bounds Muslims to Gods words and will, Muslims are held accountable in this religious system, not only by punishment but by its morals, ethics and various regulations.

²⁰ Mitri 1995 p. 21

3. Religious debate of Human Rights

The religious debate of Human Rights is as old, if not older, as the UN declaration of human rights. Human Rights can be defined by religious values but also by natural law, meaning that every human has rights by simply being human. Author Willy Strzelewicz argues in his work 'The history of Human Rights', that the declaration of Human Rights rises above and beyond a definite time limit; it invokes a higher right for its tangible demands. In the time of its origin it demanded a change of state and society; it was a new demand of what was considered the natural right of man, to invoke what had always been the rights of the free man, only, in writing.²¹

The declaration is by many considered to be universal and that Human Rights can only be held by individual persons, in other words that Human Rights entail a universal, individualistic and somewhat anthropocentric moral, with the sole focus on the individual.²²

There are more than one problem with this claim, firstly it does not say anything about rights in relation to obligations among humans and secondly it seem to diminish the rights of humans in groups either in a family, community or nation, this claim seems to avoid the idea that humans should uphold rights for their fellow humans.

One of the most frequently asked questions when it comes to the UN declaration of Human Rights is, how universal are they really, are they compatible with the whole world or are they simply a manifestation of Liberal ,Western, Christian ideas. Many advocates of the UN definition on Human Rights state that Human Rights can exist only within a secular context and not within the framework of religion.²³This statement in it self could be considered a perfect example that the UN Human Rights are not universal, that they are only meant for secular democracies. The entire religious debate of Human Rights is somewhat ambivalent, depending on the wide ranges of theories, orientations, historical backgrounds etc. Ambivalence aside, it is not difficult to connect religion to the Human rights, they all base on morals, values, philosophies, on faith, either in God or humankind. The ties between Human rights and religion are closer then they are far apart.

If it is set that Human Rights are supposed to be secular and universal, then why is it that the question about religion never fades, but remains a powerful source of debate? There have been many occasions when religion has been used to justify violations of Human Rights from all

²¹ Strzelewicz 2004 p.63

²² Sundman 2005, p 267

²³ <http://www.religiousconsultation.org/hassan2.htm>

parts of the world. However, representatives of the world religions have been constant voices of critique against other Human Rights violations, demanding equality and universal compassion.²⁴In today's international arena, Human Rights have even been used as a tool, not for the good of humankind but for destruction and war. It has been called humanitarian interventions, all in order to fight just wars. The USA accused Iraq of having WMD, and after some legal debates launched an attack in the name of protecting human lives. This off course as all such incidents, have to sides to the story, and in some cases more sides than one could be considered plausible.

As to most things in life, there is always a positive to a negative, and vice versa, if we put the two pieces of religion and Human Rights apart we might break a bound that is crucial for compassion for humanity that both parts claim to uphold and care for. Is it impossible to combine the two, can we live in a secular society with both our rights and religions intact? The German philosopher Jürgen Habermas has said that:

As long as religious traditions and organizations remain vital forces in society, the separation of church and state in the context of a liberal constitution cannot result in a complete elimination of the influence that religious communities may have upon democratic politics.²⁵

If Habermas is right, is there such a thing as a secular state, or is it a mere political slogan to conciliate the citizens, to not scare half the population away by giving religion the superior status? His theories also includes that all sides of society should undergo a learning process to reach a better understanding for each other even if it might be painful as it has been for the Protestant and Catholic churches and their believers. It is not only religious believers who need learning, but also the secular societies, who need to learn that others are also born free with equal rights and are to be taken seriously.²⁶ Habermas says that it is important that secular citizens remain open to the possibility that even religious utterances, when translated into a secular context, can have meaning to them as well.

Abdullahi A.An-Na'im advocates for a synergy and interdependence between human rights, religion and secularism, instead of a dichotomy, incompatibility and a choice between them.

²⁴ Runzo 2003 p. 1

²⁵ Habermas interview by SSRC;

²⁶

<http://static.mnw.nl/migratie/www.radionetherlands.nl/currentaffairs/region/netherlands/090221-habermas-wilders-redirected>

Hence, that each of the three needs the other components to sustain its relevance and validity.²⁷ Secularism in this aspect means a secular state and not a secularised society as a state can not have a belief system as a person can, the state should in this sense be neutral in religion. As far as Human Rights An-Na'im refers to the UN definition, and gives strong critique at the implementation of the economic, social and cultural rights, and enquires more efficiency from the global arena.²⁸ An-Na'im states that the avoidance of religious perspectives since the adoption of the UDHR can diminish the moral authority of the alleged universality of Human Rights. An-Na'im proclaims that it is of great importance that the understanding for Human Rights is made equally valid and legitimate for believers as well as non believers; however An-Na'im says that in order to reach interdependence and mutual support there needs to be a transformation to reach this global understanding.²⁹ Are we to believe, that understanding is all that is needed for the entire world to find consensus regarding Human Rights in relation to religion? Abdullahi An-Na'im, presses that this is desirable however, not as easy. Islam like any religious tradition can be used to support human rights, democracy, and respect but on the other hand, used to support oppression, authoritarianism, and violence, depending on different choices and actions. How individual Muslims and Muslim communities choose will depend on how well human rights values are portrayed by local actors and authorities within the community, as well as by how well other religious and cultural traditions model these values.³⁰ This is not only for Muslim communities; it is for all, Christian, Hindu, Buddhists, Jewish and so on, all of us, believer as non-believer. If the need for Human Rights appears to be of credibility to the state representatives and other authorities, the people can not stand idly by; the people will need to form an opinion, whether it is for or against. It is possible that forming an opinion in this matter precedes some sort of dilemma in which defining Human Rights is necessary. There are of course those who insist that religion and Human Rights are not compatible at all and do not have remotely the same base of morals and ethics. The question asked is maybe rather if religion is compatible with politics and not ethics. This question has never been answered in a pleasing way, and possibly never will be, if religion had gone away and no believers were left, it would not be relevant anymore. However, religion is still here, and so is the expansion of Human Rights.

²⁷ Abdullahi A. An-Na'im 2003 p.27

²⁸ Abdullahi A. An-Na'im 2003 p.29

²⁹ Abdullahi A. An-Na'im 2003 p.34

³⁰ Abdullahi An-Na'im, Islam and Human Rights 2003 Tikkun Magazine

4. Relationship between Islam and Human Rights

As discussed above there is an immense strain between different scholars about the relationship between religion and Human Rights. Islam has been one of the most discussed issues on this part. Mostly the issue has been about women's rights and family law, since Sharia is the main source of family law in Islamic countries there has been a lot of controversy. As earlier stated in delimitations, the Islamic woman's role in Human Rights will not be the main issue in this thesis.

Riffat Hassan expresses the fact in 'Are Human Rights Compatible with Islam', that it has been said on more than one occasion, especially by those who question the universality of the UN declaration that it is not meaningful to talk about Human Rights in Islam because as a religious tradition, Islam has supported values and structures, which are incompatible with the UN Declaration of Human Rights.³¹

The Muslim world is constantly being subjected to negative stereotyping, and the meaning of Islam can get quite confusing. Maybe one of the reasons for this is that the media keep talking about the Muslim community as one. The Muslim community is one as much as the Christian, Buddhist, Jewish etc. not one, but spread all over the world, in this post secular society it is rather easily said that the religious community is somewhat shattered and that we all live in a global mesh of traditions, religions and cultures. Islam like other great religions does not consist of, or derive from, one single source; most Muslims if questioned about its sources are likely to refer to more than one of the following: the Qur'an, Hadith, and Sharia and various religious authorities. These sources have contributed to what is referred to as "the Islamic Tradition"; however, the most important is the Qur'an which is regarded by Muslims in general, as the primary, and most authoritative, source of normative Islam.³²

According to the liberal Islamic scholar Riffat Hassan the Qur'an is for many Muslims the epitome of Human Rights and a vast part of it concerns the freedom of human beings, freedom from bondage of traditionalism, authoritarianism, either religious, political or other, racism, sexism, slavery and other issues which restrains human beings from actualizing the Qur'anic vision of human life and destiny.³³ Some say that over time, the more the Muslim community clashed with external enemies and faced internal civil strife, the more conservative and literalistic they became in their interpretations and applications of these sacred texts.³⁴

³¹ <http://www.religiousconsultation.org/hassan2.htm> section Two

³² <http://www.religiousconsultation.org/hassan2.htm> section Four

³³ <http://www.religiousconsultation.org/hassan2.htm#sources> section Four

³⁴ Chowdhury 2008 p.350

4.1 For of or against Human Rights

Are Muslims for or against the UN declaration on Human Rights? This is another question based on preconceptions, that all Muslims have the same scheme and grounds to form a unanimous position; this would not be the case. Like previously declared, there is not one Muslim community but several, and that goes for the position of the Human Rights as well. One of the opinions in Islam is that the Human Rights are given by God and not by any king or legislative assembly. These Rights can never be altered or revoked nor compared to the UN declaration on Human Rights.³⁵ Many scholars have given their opinion on Human Rights and Islam, as well as many politicians and religious authorities; many concerns regarding the UN and their definitions have been expressed. For example Ayatollah Moussave-Khomenehi stated that:

When we want to find out what is right and what is wrong we do not go the United Nations; we go to the Holy Koran . . .³⁶

Abu-I A'la Mawdudi a Muslim writer, a religious and political leader in the Indian sub-continent has on many occasions given his opinion on the matter.³⁷ One of his works was "Human Rights in Islam". In this he criticizes the people in the west for having;

The habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance and completely unaware of all these benefits.³⁸

As mentioned previously Mawdudi is one of the early thinkers of Islam and Human Rights, as he argues for Human Rights he undoubtedly sets them aside from the UN definition which he deems are a mere expression of a pious hope and have no sanctions behind them, moral or physical.³⁹ He continues by writing that the west did not have a sense of Human Rights before the seventeenth century, while Islam incorporated them hundreds of years earlier. The Human Rights in Islam are, unlike the UN declaration, binding. He also refers to the United Nations as the Divided Nations and that no declarations or regulations can be enforced. A'la Mawdudi has

³⁵ Islamisk Broschyrserie NR:10 p.3

³⁶ <http://www.ntpi.org/html/humanrights1.html>

³⁷ <http://www.famousmuslims.com/Maududi.htm>

³⁸ Mawdudi 1976 p.11

in his article documented one attitude, commenting on the Human Rights from his point of view. His opinion should not be seen as the official viewpoint of Islamic Human Rights, but can be interpreted as a guideline for many Muslims.

There is however, according to Elisabeth Mayer, a great deal of support among a large group of Muslims for international Human Rights.⁴⁰ Several Muslim countries were among the founding members of United Nations and participated in deciding on the terms of the UN Charter, and a number of them also worked on drafting of the Universal declaration of Human Rights of 1948. There is a critique towards some Muslim countries for having poor or uneven record of ratifying the major UN Human Rights conventions, some countries have ratified most while others very few, which could be an indication of the various opinions of the Human Rights compatibility with Islam.⁴¹

4.2 Differences in opinion on Human Rights between Islamic countries

Because of the differences in opinion regarding the Human Rights not all Islamic countries share the same attitude against the UN, the charters and the declarations. The reason for this could be because of differences in culture, religion, history, legal systems, and political strategies and so on.

In the debate on whether Muslim countries could approve the Universal declaration on Human Rights, one issue was pressed, would it mean that in endorsing the Human Rights, Muslims were betraying the Ummah, Islamic law and accepting domination by western culture. Saudi Arabia was alone among the Muslim countries in abstaining on ratifying the UN declaration of Human Rights.⁴² The reasons for Saudi Arabia abstaining can briefly be said, according to Mayer, to be that they had concerns regarding some of the articles in the UN declaration, mainly about freedom of speech and freedom to change ones religion.⁴³ If or when a Muslim country ratified the UN declaration, being bound by those norms, it also meant being judged under them. Since Muslim countries have joined the international system and committed themselves in various ways to the observance of international Human Rights, some say it is astonishing how some governmental spokespersons have used Islam and “eastern culture” to justify Human Rights violations.⁴⁴

³⁹ Mawdudi 1976 p.12

⁴⁰ Mayer 1995, p.44

⁴¹ Mayer 1995 p.11

⁴² Mayer 1995 p.11

⁴³ Waltz 2004, p.814

⁴⁴ Mayer 1995 p.12

The differences in opinion about the Human Rights can also be according to the level of democratization of a state, whether it is a one-party state, multi-party regimes or even traditional Islamic states like Saudi Arabia. The ideal of Human Rights being for all alike is not easy, especially in the one-party state, like Iraq had serious problems with Saddam, who's ruling was far from compatible with Human Rights, making the people of Iraq suffer from all sides both within the state and outside. Iran has annually been condemned by the UN commission for its numerous Human Rights violations. Some of the violations made by Iran have been about the freedom of speech, ethnic and religious minorities have been poorly treated and political opponents of the Iranian government have been killed.

There is a unanimous consensus among Muslim scholars concerning the equality of human beings irrespective of race, ethnicity or class. This is however, where the agreement among the Muslim scholars and government officials ends. Non-believers, meaning non Muslims and women are not considered to hold status equal to that of male believers, according to the traditionalist interpretations of the sacred texts.⁴⁵ If this argument is strong enough to circumvent the UN Human Rights standard is difficult to say, although, this is one of the strongest arguments of critique.

It is sometimes argued that there are some countries that endorse or ratify human rights standards because they wish to uphold national culture or because they wish to impress outsiders. There have been polls, showing that those with greatest incentives to endorse universal human rights standards are political elites in newly democratized countries, who seek to lock-in democratic gains.⁴⁶ For example, many of the states that have ratified CEDAW have also done that with reservation in such crucial parts that it tends to undermine the entire convention.⁴⁷ This is, to be fair not only a problem in the Arab states. Other states, the US for example, have made reservations in several conventions.

The National Islamic Front in Sudan is one example of an Islamic movement whose main ideologue rejects human rights, considering them a product of positivistic and materialistic Western jurisprudence.

⁴⁵ Chowdhury 2008 p. 345-350

⁴⁶ Waltz 2004. P 841

⁴⁷ <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>

4.3 Alternative Human Rights declarations

There are several alternative Human Rights declarations out there in the world; Chinese, African, Asian, and then there are some that are explicit Islamic versions of Human Rights declarations. One frequently asked question is whether they are direct alternatives or mere complements to the UDHR, some have answered with the notion that they are complements, like the Cairo declaration. The Cairo Declaration on Human Rights in Islam and the Arab Charter of Human Rights are governmental based documents. Besides those two there is also The Universal Islamic Declaration of Human Right, a product of a non-governmental organization, the Islamic Council. They are mostly known to represent the interest of conservative Muslims, and since the document often is referred to in the debate on human rights, it will also be included in the Human Rights scheme analysis.

In 1981, Iranian representatives stated that UDHR represented a secular interpretation of the Judeo-Christian tradition, which could not be implemented by Muslims; if a choice had to be made, between its stipulations and "the divine law of the country," Iran would always choose Islamic law. Since then, Iran has made an effort to modify the UDHR.⁴⁸Iran is not alone in having considerations about de UDHR, which is most likely why there has been a need for all these alternative declarations.

One who must be mentioned in the field of alternative declarations is Abu al-'A'la Mawdudi, who was referred to earlier. He has written several documents on the issues of Islam and contemporary problems, and has been widely translated. There are not that many Islamic theorists who have actually put their opinions about Human Rights and Islam into writing in the same quantity. Many articles or web-pages connected to Human Rights and Islam quotes 'A'la Mawdudi, or conveys ideas very similar to his.

4.4 OIC; Organization of the Islamic Conference

In spite of the different opinions about Human Rights in Muslim countries, there are some organizations in the Arab world that encourages the ties and collaboration between the Muslim countries, by promoting close cooperation and mutual assistance in the economic, scientific, cultural and spiritual fields, inspired by the teachings of Islam. The Organization of the Islamic Conference (OIC) was established on 25 September 1969 on the occasion of the first Conference of the Muslim World.⁴⁹The OIC was formed after the burning of al-Aqsa Mosque

⁴⁸ Littman 2003

⁴⁹ <http://www.arab.de/arabinfo/oic.htm>

in Jerusalem. Foreign ministers of OIC member countries meet annually, while summit conferences occur every three years. The OIC has 57 member states, 30 of them are the founding states.⁵⁰The Organization has consultative and cooperative relations with the UN and other inter-governmental organizations to protect the essential interests of the Muslims and to work for the settlement of conflicts and disputes involving Member States. The OIC pledges, among other things, to eliminate racial segregation and discrimination, promoting tolerance and moderation, modernization, extensive reforms in all spheres of activities including science and technology, education, trade enhancement, and emphasizes good governance and promotion of human rights in the Muslim world, especially with regard to rights of children, women and elderly and the family values enshrined by Islam.⁵¹The base of the OIC seems undoubtedly well in its prospects, however, it is not to be forgotten that the OIC has member states that constantly breaks the standards of Human Rights set by the UN. In its 40-year history, the OIC has worked with the UN and others to settle conflicts and disputes, particularly among its member states. The preamble of the OIC charter declares that the member states are;

to uphold the objectives and principles of the present Charter, the Charter of the United Nations and international law as well as international humanitarian law while strictly adhering to the principle of non-interference in matters which are essentially within the domestic jurisdiction of any State⁵²

The OIC Charter calls for, promotion of confidence and encourages friendly relations, mutual respect and cooperation between Member States and other States⁵³. Still; conflicts continue to rage in many parts of the Muslim world even amongst ‘member states’. This particular passage further entails that it is not legitimate to interfere or critique other countries for breaking the Human Rights declarations. This passage basically says that every country should handle their matters on their own.

⁵⁰ http://www.oic-oci.org/page_detail.asp?p_id=52

⁵¹ http://www.oic-oci.org/page_detail.asp?p_id=52

⁵² Charter of the Organization of the Islamic conference; preamble

⁵³ Charter of the Organization of the Islamic conference; preamble

4.5 The Arab League or the League of Arab States

The Arab League was founded in Cairo in 1945 by Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan (Jordan, as of 1950), and Yemen; it has a total of 22 members. It is involved in political, economic, cultural, and social programs designed to promote the interests of member states.⁵⁴ The Egyptian government first proposed the Arab League in 1943. Egypt and some of the other Arab states wanted closer cooperation without the loss of self-rule that would result from a total union. The original charter of the Arab League created a regional organization of sovereign states that was neither a union nor a federation. The Arab League has served as a forum for member states to coordinate their policy, positions and deliberate on matters of common concern, settling some Arab disputes and limiting conflicts such as the Lebanese civil wars of 1958.⁵⁵ The association takes credit for serving as a platform for the drafting and conclusion of almost all landmark documents promoting economic integration among member states, such as the creation of the Joint Arab Economic Action Charter, which set out the principles for economic activities of the league. It has, according to the many pages on the internet, home page as well as the many others of who refers to them, played an important role in shaping school curricula, and preserving manuscripts and Arab cultural heritage.

The Arab League has launched literacy campaigns, reproduced intellectual works, and translated modern technical terminology for the use of member states. It encourages measures against crime and drug abuse and deals with labor issues (particularly among the emigrant Arab workforce). The Arab League has also fostered cultural exchanges between member states, encouraged youth and sports programs, helped to advance the role of women in Arab societies, and promoted child welfare activities.⁵⁶ The latter being according to themselves, however finding legitimacy in this is scarcely done. On the other hand there is probably a grander meaning for them to underline this, might it be that it is a desire to all they claim or simply an attempt to please the UN?

The member states of the Arab League are very diverse, and the Charter of the Arab League does not define what an "Arab state" is. The decision of who's allowed to join is simply made by the pre-existing members. Some members, such as Somalia and Djibouti, do not have an Arabic speaking population and does hardly belong to the sphere of Arabic culture. Islam is seen as a major factor of unity between them, but the way it is understood and practiced, and also the degrees of secularization, vary. The problems that arise around the

⁵⁴ <http://www.arabji.com/ArabGovt/ArabLeague.htm>

⁵⁵ <http://www.arabji.com/ArabGovt/ArabLeague.htm>

⁵⁶ <http://www.arabji.com/ArabGovt/ArabLeague.htm>

implementation and coercion between Islam and the international Human Rights are basically the same in most of the member states. The degree of development may of course vary from state to state, and also from time to time depending on what political branch is in power at the time.

5. Universal Islamic declaration on Human Rights

The UIDHR was revealed in 1981 at the UNESCO headquarters in Paris. The document was prepared by representatives from Pakistan, Egypt, Saudi-Arabia, and other countries with the support of the Islamic Council, a London based organization affiliated with the Muslim World League, an international NGO with its headquarters in Saudi-Arabia that tends to represent the interest and views of conservative Muslims.⁵⁷ The declaration is of a more religious nature than the UDHR, starting with the following phrase;

This is a declaration for mankind, a guidance and instruction to those who fear God.
(Al Qur'an, Al-Imran 3:138)

The declaration exists in two versions, one in English and one in Arabic. There is a significant difference between the two versions. According to Mayer the English version appears to be more in compliance with the UDHR while the one in Arabic deviates and is relying much more on Sharia.⁵⁸ It is furthermore stated that by the Law, the text refers to the Sharia, derived from the Qur'an and Sunna, and any other laws that are deduced from these two sources by methods are considered valid in Islamic jurisprudence.⁵⁹ This is of course from a western point of view strongly limiting of the human rights such as they are described in the UDHR. The definition of what Sharia is could be considered, left relatively open; it leaves the possibility for different interpretations and applications. Consequently it is almost impossible to predict what restrictions that might occur. As mentioned, a clearly theocratic approach is taken already in the foreword of the declaration, where it is stated that;

All Human Rights are given by God and God only, and 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 surrendered⁶⁰

⁵⁷ Mayer 1995 p.22

⁵⁸ Mayer 1995 p.22

⁵⁹ Universal Islamic Declaration Of Human Rights 1981, foreword

⁶⁰ Universal Islamic Declaration Of Human Rights 1981, foreword

However this can also be interpreted such as, because the Rights are given by God, in consequence making them inviolable and in this way assuring that they are above the violation right of man. All the articles in the declaration have an explicit reference to certain verses of the Qur'an or specific parts of the Hadith. Another difference from UDHR is the existence of a corresponding duty to many of the rights in the declaration. In Article IV, one of the paragraphs on Right to Justice contains the duties to defend rights of other persons and the community, protest against injustice and refuse to obey any command which is contrary to the Law. More duties are proclaimed in the declaration; another example is article XII, where it is stated that;

It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law against oppression even if it involves challenging the highest authority in the state.⁶¹

There are grounds to speculate whether these additions about duties on defending others rights are reactions to the fact that many of the countries have been for a long time, or currently are at war, and feel the need to insure some sort of written protection, of their own and each other's rights?

There are further rights included in the UIDHR that are not directed against the state, but has another individual as opponent, indirectly creating a duty for that said individual. For example, in article XIX; Right to Found a Family and Related Matters, it states that the every husband is obligated to maintain his wife and children according to his means.⁶² Motherhood is, according to the declaration, entitled to special respect, care and assistance on the part of the family and the public organs of the community.⁶³ The second last part of article XIX could be considered debatable when it comes to gender issues; it says that within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives. This particular entry has been criticized for being vague and at risk for diminishing of women's rights. These duties might seem a bit odd from a Western point of view on Human Rights, since most westerners define human rights as rights we have in relation to the state or other authorities. However, overall the declaration remains, at least in the English

⁶¹ Universal Islamic Declaration of Human Rights 1981, XII; c

⁶² Universal Islamic Declaration of Human Rights 1981 XIX; c

⁶³ Universal Islamic Declaration of Human Rights 1981 XIX; g

version, relatively neutral in “sensitive” questions such as women’s rights, the rights of minorities and freedom of belief.⁶⁴ None of these issues are openly confronted, even though somewhat vague.

In article XII; Right to Freedom of belief, Thought and Speech; it says that,

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 which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons⁶⁵

This part could be considered a recommendation of common decency, not to slander another human being, thus making that persons life agonizing and so forth. There is also the possibility of the state insuring that none slanders the state to diminish the risk of riots and mutiny. Keeping in mind, that the Law is defined as the Sharia, in the UIDHR the rights of women aren’t specifically treated, possibly even avoided because of the ambivalence towards the subject, and not being able to exclude the issue. The position of the women still turns up in the articles XIX Right to Found a Family and Related Matters, and XX Rights of Married Women. The right to get married is an unqualified right in the UDHR, meaning that a person is free to marry anyone he or she finds suitable, that men and women of full age, without any limitations due to race, nationality or religion, have the right to marry and found a family.⁶⁶ In the UIDHR, the corresponding article XIX has a slightly different wording:

Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture⁶⁷

The phrase ”in conformity with his religion”, supposedly read as according to Sharia, will on contrary to the international rules, which has other restrictions, impose on the right to marry whomever one pleases to. When it comes to the rights of women, the conclusion could be that, even if the issue at a first glance might seem to be carefully avoided in the UIDHR, the situation of women’s rights is supposed to be regulated mainly, just as other family matters, according to

⁶⁴ Mayer 1995 p.106-113 this is according to Mayer since I lack knowledge in Arabic

⁶⁵ Universal Islamic Declaration of Human Rights 1981 XII; a

⁶⁶ Universal Declaration of Human Rights art 16

principles of Sharia. Further in article XIX, states, that no person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.⁶⁸ This is a common argument to insure Islam superiority to other belief systems, that the woman get to keep her maiden name after she gets married, as opposed to for example within Christianity where the bride is led down the aisle in the church by her father or other male representative and then is given to the man whose name she then will take. This is one of the few articles that might be seen as an exception to the rule that all articles are strictly Sharia based. A marriage without the consent of the woman is still an existing problem in many Muslim societies. There are two principles in Sharia which are in conflict in this matter, of what should happen if the woman does not give her consent. One, which is stated in all schools, is that both bride and groom are both to agree on the selection of partner. On the other hand, that the daughter should accept her fathers choice in the matter.⁶⁹ The diffuse character of section in the declaration is possibly what makes it possible for many countries to reach an agreement, since there is opportunity for interpretations. It is therefore promising to see this issue addressed in a declaration produced by an organization considered conservative. The UIDHR is an excellent example of a Human Rights declaration based on a theocentric foundation of values. The preamble made it very clear that the declaration and the rights in it have a religious foundation, and although it does make an effort to measure up to the international standards, it will not work in the same manner as a secular human rights document, and maybe it shouldn't, maybe it should just be what it is, a complementary document to the UDHR.

5.1 Cairo Declaration on Human Rights in Islam

The Cairo Declaration on Human Rights in Islam, in both English and an Arabic version, was presented at 1993 World Conference on Human Rights in Vienna by the Saudi foreign minister.⁷⁰The declaration had in fact already been adopted in 1990 by 45 of the OIC member states.⁷¹ The declaration came to have a special roll of importance because it continued the trends already set in the previous Islamic Human Rights schemes and because it was endorsed by the foreign minister of the Organization of the Islamic Conference (OIC).⁷²

The central concern of the World conference, from Islamic point of view, was the matter of

⁶⁷ Universal Islamic Declaration of Human Rights 1981 XIX; a

⁶⁸ Universal Islamic Declaration of Human Rights 1981 XIX; i

⁶⁹ Vikør 2005 p.304

⁷⁰ Mayer 1995 p.23

⁷¹ <http://www.iheu.org/node/3162>

⁷² Mayer 1995 p.24

whether Human Rights are linked to Western culture and values, or if they should and could be universal. Strong voices were raised for more consideration of cultural differences, especially from non-western countries, this according to a humanist umbrella organization that participated in the conference.⁷³ At one point Iran, Saudi-Arabia and Iraq joined together in pressing the UN Commission on Human Rights to accept the Cairo Declaration as an alternative for the Muslim countries. This was a surprise since Iraq, at the time was led by Saddam Hussein and for him to support a Human Rights declaration raised a lot of questions. On the other hand, not a surprise, that there was an interest in particular from Saddam that he possibly wanted an alternative to the UN declaration on Human Rights; however this is only a speculation. Both Iran and Iraq had a common practice of denying rights and freedoms of their people, and had been known to resort to drastic measures to repress and eliminate their opponents and critics.⁷⁴ Their effort was however rejected by the UN, where it was insisted on the universality of Human Rights and not replacing it with the Cairo declaration.

The Cairo declaration is important for two reasons, even though the UN did not accept it. It is one of the more recent documents of its kind, but it clearly continues the trend earlier established in previous Islamic Human Right schemes. It was also endorsed by the foreign ministers of the OIC in August 1990. The OIC is for of all countries considering themselves Islamic and the document can therefore be seen as some form of political consensus on Human Rights from the perspective of the Muslims states, even though they don't exactly have a common stand on the status and implementation of Sharia. Since this declaration is more of an official governmental document, compared to the conservative UIDHR, it plays down the references to Sharia. There is however no doubt that the Cairo declaration also has an immense religious foundation. The declaration could be considered as a combination of political and socioeconomic rights, and similar to the UIDHR it includes rights that have corresponding duties addressed to other individuals, the Ummah and not the state. In the preamble the member states are; keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth and recognizing the importance of issuing a document on Human Rights in Islam that will serve as a guide for Member states in all aspects of life.⁷⁵ The first article of the Cairo declaration declares that; "all men are equal in the terms of basic human dignity, obligations and responsibilities." The second part of the first article establishes that;

⁷³ <http://www.iheu.org/node/3162>

⁷⁴ Mayer 1995 p. 179

⁷⁵ Cairo Declaration on Human Rights 1990; preamble

All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.⁷⁶

This part speaks of superiority, but it has an ambiguous quality to it; are there those who are superior or not, if good deeds make one superior to another is it possible that this could have some legal consequences or is it purely on a moral level. Could a moral superiority save you in a court of law?

The second, third and fourth article treats the respect of life, safety from bodily harm and respect for nature but also prohibitions and requirements in case of armed conflicts. In article five and six we find the matters of family and women's rights.

The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.⁷⁷

The article also declares that the state shall; remove all obstacles to marriage, facilitate it, protect the family and safeguard its welfare.⁷⁸ In article six, about women's rights it declares that a woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage. And just as the UIDHR it says that the husband is responsible for the maintenance and welfare of the family.⁷⁹ This is yet another indication that a woman keeping her name after marriage, and that she is entitled to her own fortune and that she needs not to contribute to the family's economy makes the role of a Muslim woman favorable. The point being that Islamic rules gives men and women different set of rules however they are complementary to each other in rights as well as obligations, creating a perfect justice. This article can be interpreted as ambiguous as the one in UIDHR. It clearly says that men and women are equal in human dignity, and not human rights. I say ambivalent given that it derives from the standards of Sharia, hence, there is room for interpretations, and that can be highly diminishing of women's rights. At the same time one cannot escape the actuality that women's

⁷⁶ Cairo Declaration on Human Rights 1990 article 1;b

⁷⁷ Cairo Declaration on Human Rights 1990 article 5-6

⁷⁸ Cairo Declaration on Human Rights 1990 article 5;b

rights are in fact included and this is some sort of protection of their rights even if said rights are set within the religious frame of Sharia.

Further in the declaration, in article eleven the duties begin to take place.

Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and control over their wealth and natural resources.⁸⁰

Like the duties of UIDHR, this specific article raises some questions; however this article does not seem as subtle as the one in UIDHR. Colonialism and war has been a large scale problem for many centuries in many of the Muslim countries, and perhaps this is one way to shed some light on the problem and the costs of the history, and to strengthen the bonds of Muslim communities, making sure that all join in and work against this form of violation. The duties of a person are more substantial in the UIDHR than the Cairo declaration, it almost seems like the Cairo declaration is focusing more on things that are prohibited or undesirable.

Many of the articles at the end of the declaration describe numerous things that are prohibited, such as; without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him.⁸¹ There is only one sentence under article 21, and that is; Taking hostages under any form or for any purpose is expressly forbidden. This could be interpreted as a restriction of the government and state to protect citizens; this is practically equivalent with basic civil liberties. Article 22 is a bit more questionable, it starts by stating that everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Sharia, and continuous with that 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. Those parts are easy enough to understand and in some way relate to no matter what religion you belong to. Could it also be that the idea of a united people under one religion holds the society together and to question the religion is to question the state and could lead to a

⁷⁹ Cairo Declaration on Human Rights 1990 article 6;a-b

⁸⁰ Cairo Declaration on Human Rights 1990 article 11;b

⁸¹ Cairo Declaration on Human Rights 1990 article 20

destabilization of the society? However the last entry in article 22 states that; it is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.⁸²

No matter how you turn it, and that racial discrimination is wrong, this article is clearly ambiguous in the way that it seems to be undermining the freedom of expression. The very last two articles in the Cairo declaration really clarify its standing point, by stating that; all the rights and freedoms stipulated in this declaration are subject to the Islamic Sharia, and that the Islamic Sharia is the only source of reference for the explanation or clarification of any of the articles of this Declaration.⁸³ This is basically an open window for interpretation since it states that Sharia is the source to explain or clarify the articles, which suggests that there could be circumstances in which the articles are not irrefutable and it depends on who does the clarification. Again, the diffuse character of Sharia in some way undermines what has been set in the declaration. The question whether the Cairo declaration was an alternative or a complement to the UDHR has been asked since it first was revealed at the world conference. In the beginning at the 1993 World Conference on Human Rights in Vienna, Iran, supported by several other Islamic States, pressed for the acceptance of the Cairo Declaration as an alternative to the Universal Declaration of Human Rights. This goal was partly achieved in 1997 when the Cairo Declaration was included by the Office of the High Commissioner for Human Rights as the last document in; Human Rights: A Compilation of International Instruments: Volume II: Regional Instruments.⁸⁴ Besides the partial success for Iran and others in 1997, 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.⁸⁵

Some say that the Cairo declaration can by no means be understood as a complement to the

⁸² Cairo Declaration on Human Rights 1990 article 22;d

⁸³ Cairo Declaration on Human Rights 1990 article 24-25

⁸⁴ <http://www.iheu.org/node/3162>

UDHR, that it clearly states that the declaration derives from Sharia, that in need of clarifications or explanations they should seek answers from Sharia and nothing else. It is true that it makes no reference to either the UN or the UDHR; nevertheless, it is still a legal document regarding Human Rights, Human dignity and Human values.

5.2 The Arab Charter on Human Rights

The Arab Charter of Human Rights is a document produced by the Arab League. The Arab League was founded in 1945. The Charter was adopted 1994, one year after the Cairo declaration was presented at the World conference.⁸⁶ The first draft was however prepared already in 1970, by a committee of experts established by the permanent Arab Commission. Due to many reservations from those who cared to answer to the draft, it was discarded. The Arab Charter did not come into force until 2008 because of some concerns regarding the incompatibility with international standards of women's, children's and non-citizens rights.⁸⁷ This is possibly the most criticized charter or declaration of Human Rights, one of the most problematic parts of the charter is in the preamble stating that members are;

Rejecting racism and Zionism, which constitute a violation of human rights and pose a threat to world peace⁸⁸

The problem being that it equates Zionism with racism, the International Humanist and Ethical Union, a head organization of humanists and critical of religion, stated that the Arab Charter is not in conformity with General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination. The Arab Charter is very different from both the Cairo declaration and the UIDHR; the most evident difference is that no reference to Sharia is made in any of the articles. The first statement in the preamble is;

Given the Arab nation's belief in human dignity since God honored it by making the Arab World the cradle of religions and the birthplace of civilizations which confirmed its right to a life of dignity based on freedom, justice and peace⁸⁹

⁸⁵ <http://www.iheu.org/node/3162>

⁸⁶ Arab Charter on Human Rights 1997

⁸⁷ <http://www.un.org/apps/news/story.asp?NewsID=25447&Cr=human&Cr1=rights>

⁸⁸ Arab Charter on Human Rights 1997; preamble

This statement makes clear that the charter is of a religious nature, as are many other declarations of independence and other charters. The preamble continues with the following sentence; pursuant to the eternal principles of brotherhood and equality among all human beings which were firmly established by the Islamic Sharia and the other divinely-revealed religions, and there ends the reference to Sharia, not mentioned again throughout the entire charter. The Charter begins with affirming the universality and indivisibility of human rights, and by that making a clear statement about the universality of Human Rights in the opinion by the members who ratified the charter. It recognizes the right to health, education, fair trial, and freedom from torture and ill-treatment, the independence of the judiciary, the right to liberty and security of person, and many other rights.⁹⁰ However the charter does not expressly prohibit cruel, inhuman, or degrading punishments and it does not extend rights to non-citizens in a number of areas.⁹¹ One problem is that the charter leaves many things to national legislation, which in some cases means Sharia, and as we know Sharia is open to interpretation and the outcome depends on many variables. The charter prohibits death penalty against children under the age of 18, what ruling will succeed if a child is to be sentenced; there is a grave risk in this particular article, being overruled by national legislation, that a child could be sentenced to death. Not that long ago USA legislated for minors not to be executed which has been legal in many states.⁹²

Nearly half of the members of the Arab League have not ratified the charter. Concerns has been raised by several countries, one of them was Lebanon. They feared that the charter gave less protection than their own laws. If this is because of fear to not reach the minimum standard set by the UN or lobbying for a united Arab legislation I do not know but speculation is just about required. Tunisia was another country with concerns; primarily there were some woman's rights organizations that raised their concerns urging the government not to ratify the charter. Many Arab, regional, and international organizations take the position that they will not lobby actively for the ratification of the Charter because it conflicts with international law in many fundamental areas. States that ratify the Charter undertake to change their laws and policies in accordance with its provisions, but none has actually done so thus far.⁹³ It seems rather odd, that the one Islamic charter that does clearly take the UDHR into consideration and legislation has so many problems, that so many of the countries have problems with it, not because of the

⁸⁹ Arab Charter on Human Rights 1997; preamble

⁹⁰ <http://www.carnegieendowment.org/arb/?fa=show&article=23951>

⁹¹ <http://www.carnegieendowment.org/arb/?fa=show&article=23951>

⁹² <http://www.abc.net.au/news/newsitems/200503/s1314003.htm>

reference to UDHR, but because of the articles within the charter. For the Charter to succeed in furthering human rights, Arab governments would have to be willing to re-open the debate on some provisions that clearly contradict international standards.

Comparing the UIDHR, the Cairo declaration and the Arab charter, it seems that the charter is more adjusted to the international Human Rights standards and to the UDHR itself. No direct references are made to the Sharia. Unlike the UIDHR and the Cairo Declaration, the Arab Charter contains no article specifically regulating the rights of women and there is nothing in the articles indicating that theocratic values are the foundation of the declaration. The articles almost seem to be distant from preamble. Nevertheless, the Arab Charter, though trying, still lacks a great deal of components that would make it an entirely equal alternative to the UN declaration of Human Rights.

⁹³ <http://www.carnegieendowment.org/arb/?fa=show&article=23951>

6. Conclusion

The main question I had, starting this essay was; what function and significance do the alternative Islamic declarations have? To get to this question I had to start by looking at the religious debate of Human Rights, the debate is vast and ongoing, and one of the religions that have been on the center stage of this debate is Islam. Although, Muslim countries were not the only ones with issues on the UN declaration, there were also concerns raised by the catholic and protestant communities mainly about the lack of acknowledgment that all rights derive from God⁹⁴. Nevertheless Islamic communities are the ones still raising a lot of concerns. Why is it, that Islam has been such an issue when it comes to Human Rights, why is it even discussed when religion is not supposed to be a part of Human Rights, at least not in the way it has turned out to be. Media has a great role in this as well, portraying Islamic terrorists and abused women on the front pages, declaring that Islam breeds terrorism and misery. This horrifying side of Islam is what many people are seeing today, but what about reality beyond what media is portraying. Does anyone think about the fact that many Islamic countries was there in the beginning when the UDHR was written, and that many of these countries has made great efforts in furthering Human Rights and changing the laws of their countries to complement international law schemes? Not to forget that changes are hard to come by, when so many of the Muslim countries are still at war. Many of the countries in the Middle East have signed both the UDHR and one or the other of the alternative Islamic Human Rights declarations; still this doesn't seem to matter when it comes to real-life implementation. It is difficult to deny that there are many Muslim countries making enormous Human Rights violations. The alternative declarations, which are supposed to further Human Rights, are said to derive from the book of God, the Qur'an and when violating Human Rights is it not the same as violating Gods word? It is not to be forgotten that the Qur'an is one of the sources for Sharia and one of the major issues is that Sharia is not univocal, it is open to interpretation and it is done so all over the world. The problem is this; if one can't agree on the status and structure of "basic" law, how can you make a supplement to it. I wonder if the pressure of taking a stand regarding the UN declaration can result in some form of agreement on Sharia as well.

I found at least three Islamic Human Rights documents that were of greater credence and furthermore, in my opinion were the most interesting, some of them fervently appreciated and with many countries ratifications.

The three alternative declarations presented in this essay have many things in common, but

⁹⁴ <http://www.religion-online.org/showarticle.asp?title=956>

some that differ. The first two documents, the UIDHR and the Cairo declaration, are those more similar to each other. They are both openly stating that the Sharia is above all, no matter of other legislations, the foremost source of law. Sharia is considered the total collection of theoretical laws that applies in an ideal Muslim community which has surrendered to the will of God. It is, according to this view, based on divine authority, and must be accepted without criticism. Would this mean that Sharia is closed from criticism from others? In fact, people do criticize it, or at least contested interpretations of it. I would argue that it is of great importance that there is acknowledgement and respect of other cultures and religions, just like we are obliged to do by the UDHR.

I further argue that in some cases there might be a benefit in leaving countries to find their own way of formulating Human Rights and to do so in a suitable scheme, to implement with their own legislation, although I think a great support and endorsement from the UN is needed. It is important to remember the force religion still has in many countries, while at the same time not underestimating the problems that seem to arise when implementing universal human rights, since religious values as we have seen examples of in Islam, does not always meet the terms of international human Rights values. The alternative Islamic Human Rights documents are examples of how some are trying, and some failing, to meet the standards set by the UN. There are off course the issues of freedom of speech and woman's rights, which I don't believe will be solved in this decade, the rights set by Sharia are in such defiance with the UN standards on these points. But even though the documents, setting Sharia as the main reference point, make them inadequate in protecting human rights, it is significant to recognize that at least the Cairo Declaration and the Arab Charter are making efforts on intergovernmental levels to adjust to UN-standards. Even if they have a long way to go until the west and the international oppositions are satisfied one must bear in mind that the mere existence of a discourse is a progress in some of the Islamic countries.

It is however a sort of paradox that Sharia seems to be the reason that Islamic countries created their own Human Rights documents and Sharia is also the reason that they are being rejected and criticized. The leading arguments for Sharia not being compatible with the international Human Rights standard is often that about women's rights. When it comes to Islamic law, women are inferior to men, for example, a woman's testimony in the court of law is worth half of a man. When it comes to marriage, a Muslim woman cannot marry a non-Muslim man, and in case of a divorce the rights are not equal. Non-Muslims are more or less on the same level as women in the Islamic court. This particular issue is often very difficult for a non-Muslim to

grasp, and that this sort of thinking is considered obsolete and by today's measures unacceptable.

There are many people who think that the world has heard enough of Islamic values tainting the Human Rights arena, to this I say that it might be better to include than to exclude. These Islamic Human Rights documents have been with the ambition to implement Human Rights standards even within Islamic theocratic communities and their laws. Maybe these documents are mere efforts to join the Human Rights arena without losing the religious identity of the nation, without giving up the values of Sharia and the history that is enfolded in it. One of the authors referred to in this essay, Ann Elisabeth Mayer, writes that since the 1990's, the support for the proposition that Islam mandates a distinctive approach to Human Rights could be said to have grown after the issuance of the Cairo declaration. She also writes that many Muslim states are beginning to come to terms with the high degree of authority and normative force that international Human Rights have won. Despite governmental attempts to crush independent Muslim Human Rights advocacy, the impact of Human Rights standards is proving so strong that governments are increasingly trying to draft in Human Rights, offering compromises, although only cosmetic ones.⁹⁵ Countries like Sudan, Pakistan, Iran, and Saudi Arabia, frequently criticized the Universal Declaration of Human Rights for its perceived failure to take into account the cultural and religious context of non-Western countries, thus the creation of the Cairo declaration. Adama Dieng, a member of the International Commission of Jurists, criticized the Cairo declaration. He argued that the declaration gravely threatens the inter-cultural consensus, on which the international Human Rights instruments are based; that it introduces intolerable discrimination against non-Muslims and women.⁹⁶ Again we have a paradox, Islamic countries wanting the UN to take the cultural and religious aspects into account, and then themselves getting criticized for not doing so.

Another question I considered was that there are all these declarations and charters trying to be alternatives or complements of the UN declaration, why is there a need for so many of them. Wouldn't it be better with just one document, one that unites, rather than many different that scatters and divides in different ways? The three documents I have presented above, have all of them have been criticized, and mostly about the same things, which is women's and non-Muslims rights, and that Sharia can override any other law. However, the Cairo declaration has been getting more positive critique than the others.

⁹⁵ Mayer 1995 p.183

⁹⁶ <http://europenews.dk/en/node/3847>

The Islamic parts of the world, the Ummah, can barely be called a unity, there are different levels of theocracies, secular or post-secular societies, and there are different interpretations of Sharia and scholars teaching different opinions. All these factors make it difficult to have the same views on Human Rights. Although I can't help to think that there is some commonality, otherwise we wouldn't see the so many of the Muslim countries ratifying the same documents. If the diversity in the interpretation of Sharia is such a vast problem, then there wouldn't be so many things in common in the different alternative declarations. In my opinion it would be better to join together, and put their differences in the interpretation of Sharia aside, and write an Islamic Human Rights document that would unite the Muslim communities and further their support for Human Rights and participation on the international arena.

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