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# HUMAN RIGHTS CONFLICTS BETWEEN ISLAM AND THE WEST

Sami A. Aldeeb Abu-Sahlieh\*

## INTRODUCTION

Divergences between the Western world and the Arab and Islamic world in the field of human rights are unavoidable. The Koran, in the VII century, proposed a solution to such divergences:

And if God had so willed, He could surely have made you all one single community: but He willed it otherwise in order to test you by means of what He has vouchsafed unto you. Vie, then, with one another in doing good works! Unto God you all must return; and then He will make you truly understand all that on which you were wont to differ (5:48).

The debates on human rights have three purposes: polemical, political and, accidentally, philanthropic. This study will try to take into account these three aspects. At the end, some propositions aimed at increasing respect for human rights in the Arab and Islamic world will be advanced. The Koran will be quoted to prove that Muslims do not respect their own Holy Book, as much as they pretend, particularly in the field of human rights. We should here point out that the criticisms included in this article do not concern those who, in the Western and the Arab and Islamic worlds, struggle for the respect of human dignity, independently of race, religion, etc.

### I. Universalism and Particularism

Procrustes, in the Greek legend, was a robber. To punish his victims, he compelled them to lie on an iron bed, stretching or cutting off their legs to make them fit the bed's length. Today, the "bed of Procrustes" has become proverbial for inflexibility. Similarly, after the Second World War, the Western countries shaped the Universal Declaration of Human

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Rights. They wanted it “universal,” applicable to all human beings. These same Western countries were the first to depart from this conception of universalism. In Europe, they created the Convention for the Protection of Human Rights and Fundamental Freedoms, and in the Americas, they created the American Convention on Human Rights.

The preamble to the European Convention says that it is issued by: “Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law.” Two articles are quoted here:

Art. 1: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Art. 63, paragraph 1: Any state may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.

Art. 63, paragraph 3: The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.<sup>1</sup>

The formulation is subtle, but it means that the Convention allows the contracting states to not extend its application to territories outside the metropolis; declarations to the contrary are purely voluntary.<sup>2</sup> In other terms, these states can classify certain human beings as second class, depriving them of the protection of their human rights. In this, the European Convention violates article 2, paragraph 2 of the U.N.’s Universal Declaration of Human Rights which says:

[N]o distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.<sup>3</sup>

This discriminatory Western conception of human rights is corroborated by the West’s policy of international domination, during and after the era of colonization, by the presence today of military bases in the Third World and by the Western partiality reflected in the decision-making

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1. G.A. Res. 217 A (III), U.N. GAOR (1948).

2. GRARD COHEN-JONATHAN, *LA CONVENTION EUROPEENNE DES DROITS DE L’HOMME* 95 (1989).

3. G.A. Res. 217 A (III), U.N. GAOR (1948), in UNITED NATIONS, *HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS* 1 (1973) [hereinafter *HUMAN RIGHTS*].

of the Security Council and elsewhere. This analysis shows that it is hypocritical to accuse the Arab and Islamic countries of having created their own declarations of human rights. In this respect, Arabs and Muslims have the feeling that the Western countries have imposed the U.N. Universal Declaration upon them, as programmed by Western jurists.<sup>4</sup>

Many documents have been issued concerning Islamic and Arabic human rights. On the Islamic level, we can cite: Draft Human Rights Declaration and Fundamental Human Obligations in Islam, Muslim World League;<sup>5</sup> Universal Islamic Declaration, Islamic Council (London, 1980);<sup>6</sup> Universal Declaration of Human Rights, Islamic Council (London, 1981);<sup>7</sup> Draft Document on Human Rights in Islam, Summit of the Organization of the Islamic Conference (IOC) (Taef, 1981);<sup>8</sup> Draft Islamic Declaration on Human Rights. This draft was endorsed by the Fifth Conference on Human Rights in Islam, Tehran, 1989. It was approved, after modifications, by the OIC foreign ministers in their Cairo meeting, 1990.<sup>9</sup>

Three documents should be mentioned on the Arab level: Draft Arab Charter on Human Rights (Arab League, 1982);<sup>10</sup> Draft Charter on Human and People's Rights in the Arab World, adopted by Arab Jurists Colloquium (Syracuse, 1986);<sup>11</sup> The Great Green Charter of Human Rights (Libya, 1988).<sup>12</sup>

Not one of these documents has entered into force, except the Libyan document whose article 26, paragraph 3 gives to every person "the right

4. This uneasy feeling was expressed in 1982 by the representative of Iran to the 3rd Commission of the U.N. U.N. GAOR 3d Comm., at 17, U.N. Doc. A/C.3/37/SR.56 (1982).

5. French text concerning the Muslim World League, in 9 ISLAMOCHRISTIANA 92-96 (1983). Arabic text in RABITAT AL-'ALAM AL-ISLAMI (Mekka, muharram 1400/1979).

6. Arabic, English and French versions of this Declaration have been published by the Islamic Council.

7. The Arabic version, with French and English summaries, has been published by the Islamic Council. A complete translation in French and in English can be found in 9 ISLAMOCHRISTIANA 103-120 (English) & 121-140 (French) (1983).

8. French text in 9 ISLAMOCHRISTIANA 96-101 (1983).

9. The 1989 conference was attended by judicial experts from 25 member states of the OIC. The draft was published in English by Kaylan International, December 30, 1989. The approved text was published in 24 HUQUQ AL-INSAN AL-'ARABI 160-66 (Dec. 1990).

10. Text in 1 HUQUQ AL-INSAN 378-83 (1988).

11. This draft received the unanimous support of the 1500 members of the Arab Union of Lawyers at the 1987 annual meeting, in Kuwait. The Arabic text is in 1 HUQUQ AL-INSAN, *supra* note 9, at 387-97. It is followed by a memorandum, at 398-405.

12. Arabic text published in AL-GARIDAH AR-RASMIYYAH (special issue, Aug. 1, 1988). An English translation has been published by "Al-Markaz al-'alami li-dirasat wa-abhath al-kitab al-akhdar" in Tripoli.

to plead in justice to repair any infraction to the rights and freedoms it contains.”

## II. Conceptual Conflicts

The conceptual differences between Islam and the West emerge from a reading of the preambles to the U.N. Universal Declaration and of the Islamic Declarations. In the U.N.'s Universal Declaration, human rights are based on the will of the General Assembly, taking into consideration general interests. According to the preamble, the protection of human rights by “the rule of law” is considered an essential condition “if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.” It adds among the purposes of the General Assembly:

[to avoid] “barbarous acts which have outraged the conscience of mankind; [to realize] the highest aspiration of the common people, [which consists of] the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want; [and to] promote the development of friendly relations between nations.

These are then the pragmatic motivations to which we must add the idealistic motivation of the first article which says: “All human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This article was included to satisfy the romantic ideas of the adepts of Rousseau's *Social Contract*. It reflects a human rights conception based on the humanity of man, and not on his religious adherence. During the drafting discussions, the delegation of Brazil asked to include in the second part of this article a reference to God: “Created by God in his own image and resemblance, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>13</sup> The representative of China objected, and said that the conceptions of his country differ from the Christian conception. The representatives of Uruguay and Ecuador declared that no mention of God should be made in any document of the United Nations.<sup>14</sup>

The Islamic Declaration of 1981 states in its preamble the bases of human rights:

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13. U.N. Doc. A/C3/215. Quoted by VERDOODT, *infra* note 14, at 277.

14. A. VERDOODT, *NAISSANCE ET SIGNIFICATION DE LA DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME* 277-78 (1964).

[W]e, the community of Muslims . . . believe that God is the absolute ruler in this life . . . ; that it is He alone who is able to guide mankind to that wherein is their good and well-being . . . ,

. . . we assent that human reason is incapable of establishing the most correct plan for life, independently of God's guidance and revelation . . . .

We, the Community of Muslims . . . proclaim in the name of Islam this Declaration of the Rights of Man, derived from the noble Koran and the pure Sunna of the Prophet. On this basis, they are eternal rights, not capable of being suppressed nor rectified, nor abrogated nor suspended. . . . These are rights laid down by the Creator, praised be He, and no single human being, whoever he be, has the right to suspend them nor to infringe upon them.

The purposes of this Islamic Declaration (*supra* note 6) are not different from those indicated by the U.N. Universal Declaration (*supra* note 1):

We sincerely desire to fulfill our responsibility towards human society, as members thereof. We wish to carry out the duty of proclamation which Islam has laid upon our shoulders, striving for the establishment of a more excellent life —

based upon virtue, purified of evil;

where cooperation and peace will replace hostility, and brotherhood will replace enmity;

where cooperation and peace will reign in place of conflict and wars; and

a life wherein humankind will breathe the qualities of freedom and equality, of brotherhood, nobility, dignity . . . instead of being stifled beneath the constraints of slavery, racial and social discrimination, oppression and humiliation.

These bases and purposes of the Islamic Declaration of 1981 can be found, differently formulated, in the Cairo Islamic Declaration of 1990. This Declaration announces "binding divine commands, which are contained in His revealed Book." "No one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or to ignore them." This Declaration aims to "contribute to the effort of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shariah."<sup>15</sup>

The differences are now clear. In a few words, the U.N.'s Universal Declaration, as an expression of the western conception of human rights,

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15. On the difference between the two concepts, see Sami A. Aldeeb Abu-Sahlieh, *La définition Internationale des droits de l'homme et l'Islam*, 3 REV. GN. DE DROIT INT'L PUBLIC 628-32 (July-Sept. 1985).

is a secular document of human origin, based on pragmatic experience and, as such, it can be changed; it aims to achieve material purposes. On the other hand, the Islamic Declarations are, according to their authors, religious documents of divine origin based on revelation which cannot be changed; they have the same purposes as the Universal Declaration, but with a religious background. These differences are irreconcilable, and it is unnecessary to reconcile them.

We have to mention here that the Islamic Declarations talk to the heart more than does the Universal Declaration. They engage the person at the level of faith and, for this reason, are, in principle, likely to have more of an effect than the U.N.'s Universal Declaration. Some may object, rightly, that religion, and in principle every religion, has been misused to encourage wars and to destroy opponents. They conclude that we should never base a human rights system on religion. But no one can neglect the extremely important role of caritative non-governmental organizations which help to reduce human suffering. It is the faith of their members, and not the U.N.'s Universal Declaration, which convinces them to sacrifice themselves for others. Nevertheless, one should be permanently attentive that religion be used for the respect of human dignity, and not against it. The Koran says: "Truly God is not iniquitous to the people, but people are iniquitous to themselves" (10:44). We must admit, however, that debates on human rights seldom take place on this ground. They tend to concentrate on the contents, and particularly on the practice of human rights. We can divide the arguments into two forms: those which are openly debated and those which are usually avoided.

### III. Explicit Criticisms of Arab and Islamic Conceptions

The West criticizes the Arab and the Islamic countries in the field of human rights on classically legal and on current political topics.

#### A. Criticisms Based on Legal Topics

The criticisms on legal topics concern questions governed by the classical Islamic law, as partially or totally integrated into the legislation of the Arab and Islamic states and in the different declarations on human rights. Some examples follow:<sup>16</sup>

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16. See COLLOQUES SUR LE DOOME MUSULMAN ET LES DROITS DE L'HOMME EN ISLAM ENTRE JURISTES DE L'ARABIE SAOUDITE ET MINENTS JURISTES ET INTELLECTUELS EUROPÉENS (1974). See also Sami A. Aldeeb Abu-Sahlieh, *supra* note 15, at 625; 3 REV. GN. DE DROIT INTERNATIONAL PUBLIC 625-716 (1985); Sebastian Poulter, *The Claim to a Separate Islamic System of Personal Law for British Muslims*, in ISLAMIC FAMILY LAW 147-66 (1990).

—Restrictions on religions freedom: Islam allows any person to leave his religion to become Muslim, but it does not allow any conversion of Muslims. The adherence to religions not recognized by Islam is punished, as in the case of the Bahai. These two restrictions have criminal, familial and professional implications. There are also restrictions on worship and the places of worship of non-Muslims.<sup>17</sup>

—Restrictions on marriage: A Muslim man can marry a non-Muslim woman who is monotheistic, but a Muslim woman cannot marry a non-Muslim. Apostates and adherents of other religions not recognized by Islam may not be married and if they were married before their apostasy, their marriage is dissolved. In relations between husband and wife, Islam gives privileges to the man in allowing him to have more than one wife and to divorce unilaterally by repudiation.<sup>18</sup>

—Restrictions on inheritance: Women, in many cases, receive half of what a man receives. No inheritance is allowed from Muslims in favor of non-Muslims, and vice versa. If a person changes his religion to Islam, his non-Muslim heirs are deprived of the inheritance. Apostasy constitutes an impediment to inheritance.<sup>19</sup>

—Restrictions on relations between parents and children: In case of a mixed marriage between a Muslim man and a non-Muslim woman, no freedom is given to the couple to choose the religion of their child. The woman is disadvantaged in obtaining the *Hadana* (guardianship): The child is taken from her when he or she reaches the age where he or she can understand religion. In case of apostasy, the apostate has no right to custody of the child.<sup>20</sup>

—Restrictions on access by non-Muslims to the exercise of the judicial power or the office of arbitrator; neither men and women nor Muslims and non-Muslims have equal status as witnesses.<sup>21</sup>

—Restrictions on the granting of nationality to non-Muslims, on their access to public office and on their political rights.<sup>22</sup>

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17. Concerning all aspects of apostasy, see Sami A. Aldeeb Abu-Sahlieh, *Libert religieuse et apostasie dans l'Islam*, PRAXIS JURIDIQUE ET RELIGION 43-75 (1986). See also Sami A. Aldeeb Abu-Sahlieh, *supra* note 15, at 635-648.

18. Sami A. Aldeeb Abu-Sahlieh, *supra* note 15, at 648-658 & 694-696.

19. *Id.* at 658-65 & 696-97.

20. *Id.* at 665-69.

21. *Id.* at 670-77 & 697-98.

22. *Id.* at 677-83. For example, Kuwait, Saudi Arabia, North Yemen (before the unification) and Oman made adherence to Islam a condition for the grant of nationality.



—Islamic penalties are harsh: stoning, ablation, death penalty, *lex talionis*, etc.<sup>23</sup>

—Slavery: From time to time, there are reports of slavery still being practiced in such Arab and Islamic countries as Saudi Arabia and Mauritania.<sup>24</sup>

These rules are principally the result of a division of society between Muslims and non-Muslims, believers and non-believers, to which is added another division: between men and women. The solutions given to adherent problems in the Arab and Islamic World are different from those adopted by the documents of the U.N. which reject, in principle at least, discrimination based on religion or sex.<sup>25</sup>

Even if the Islamic norms mentioned above had some justification in the past, some of them are dangerous for the solidity of the Arab and Islamic society today. We have just to think about the many conflicts between Shiites and Sunnites in Pakistan and in Iraq, between Muslims, Druze and Maronites in Lebanon, between Copts and Muslims in Egypt, etc. These conflicts generate blatant violations of human rights: attacks against human life and physical integrity, honor, property, etc. For this reason, one urgently needs to resolve conflicts through a mature discussion within the Arab and Islamic world. A necessary prerequisite to such a discussion, however, is a guarantee of freedom of thought and of expression — which is not the case today — in order to reach a correct understanding of the Koran, the Sunna and the Islamic jurisprudence. In such a discussion, sociological aspects should not be neglected. Any change should be the result of personal conviction and not of a reaction to critics. Non-Muslims in these countries should participate in such discussion. The gate of *ijtihad* (interpretative and creative effort) should be open for them too.<sup>26</sup> In any case, laws and jurisdictions should be unified across the Arab and Islamic world, to avoid the partition of society into confessional communities (Sunnite, Shiite, Druze, Christian, Jewish, etc.).<sup>27</sup> Every

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23. *Id.* at 683-90.

24. *Id.* at 703-705. In a draft law on the relations between Muslim and foreign states, Professor Ahmad Hamad Ahmad from the University of Qatar would allow Muslim countries to enslave foreign prisoners. AHMAD HAMAD AHMAD, *FIQH AL-GINSIYYAT, DAR AL-KUTUB AL-GAMI'IYYAH* 350 (1987).

25. See Article 2, paragraph 1 of the U.N. Universal Declaration, *supra* note 1.

26. I gave some suggestions in my article, *Unification des droits Arabes et ses contraintes*, in *CONFLITS ET HARMONISATION: MÉLANGES EN L'HONNEUR D'ALFRED E. VON OVERBECK* 177-204 (1990).

27. For example, Iraq officially recognizes seventeen non-Muslim groups: Chaldean, Assyrian, Old Assyrian, Syriac Orthodox, Syriac Catholic, Armenian Orthodox, Armenian Catholic, Greek Orthodox, Greek Catholic, Latin, National Evangelical Protestant, Adventist, Coptic Orthodox,

citizen, whatever be his religion, must be equal in rights and duties.<sup>28</sup>

Concerning harsh penalties, some remarks are made here in respect to the Arab and Islamic world and Western countries. In the Sudan, President Numeiri decreed in September 1983 the application of the Islamic laws. Saudi financing and the speculative economic activities of the Muslim Brethren contributed to this decision and took the most profit from it.<sup>29</sup> Saudi Arabia pressed for the implementation of the Islamic criminal law (amputation of hands and legs, etc.). It is chiefly responsible for the hanging of Mahmoud Mohamed Taha, on 18 January 1985, considered as apostate because of his religious opinions and his opposition to the implementation of the Islamic law.<sup>30</sup> As a result of this implementation, there are today in The Sudan many people handicapped for life. Punishments were inflicted in a country ravaged by natural disasters and civil war although, according to Islamic law, the implementation of some penalties for some crimes such as robbery should be suspended in periods of famine.<sup>31</sup> This same Numeiri, who vaunted the implementation of the Islamic law, collaborated with the Israelis and Americans to let the

Yazidi, Sabian and Jewish (Official Gazette, nr. 38, vol. 25, 1982, p. 7). This means that there are seventeen family codes and seventeen different courts to apply them. It is true that this system could be interpreted as showing tolerance towards religious communities. In modern reality, however, this system is a danger for the whole society. Inter-marriage among the communities would greatly strengthen social cohesion. Ibn-Khaldun (1332-1406) gave great importance to such links (called 'assabiyyah') in the society. IBN-KHALDUN, *AL-MUQADDIMAH* 225-66 (1982). On the other hand, justice is not guaranteed by the present partition. Ibn-al-Muqaffa' (721-757) pleaded for the creation of a unique codex of laws. SAMI A. ALDEEB ABU-SAHLEH, *L'IMPACT DE LA RELIGION SUR L'ORDRE JURIDIQUE, CAS DE L'EGYPTE, NON-MUSULMANS EN PAYS D'ISLAM* 90 (1979).

28. The Arab League began the unification of laws but, concerning the personal statute, it maintained the present partition between communities and discrimination between Muslims and non-Muslims. See my article, *Unification des droits Arabes et ses contraintes*, *supra* note 26.

29. The banking norms issued by Numeiri opened new fields of fruitful activities for the Muslim Brethren. Linked with the Saudi capital, which had been invested since 1979 by the Faysal Islamic Bank, they created other banks intended in great part to finance commercial speculation, particularly in the cereals market. While famine was spreading throughout The Sudan, they did not hesitate to hoard cereals in great quantities and to realize profits in selling them when the prices rose. The Faysal Islamic Bank, exempted of all tax liability on its profits, realized a 100% return during its first year of operation. MARC LAVERGNE, *LE SOUDAN CONTEMPORAIN* 369-70 (1989).

30. Mahmoud Mohamed Taha, hanged at the age of 76 years, was known as the "African Gandhi." He founded the circle called Republican Brethren. In 1974, the Council of the League of the Islamic World in Mecca demanded that he be killed. When Numeiri hanged him, he received congratulations from this Council, according to the Sudan News Agency, January 23, 1985. Sami A. Aldeeb Abu-Sahlieh, *Soudan: La mort d'un hérétique*, 304 *REVUE CHOISIR* 30-31 (Apr. 1985).

31. MUHAMMAD ABU-HASSAN, *AHKAM AL-GARIMAH WAL-'UQUBAH FI ASH-SHARI'AH AL-ISLAMIYYAH* 276 (1987).

Fallachah of Ethiopia go to Palestine via The Sudan. The implementation of the Islamic law did not prevent him from committing a crime against the Palestinians.<sup>32</sup> At the same time, rich dignitaries of Saudi Arabia and other countries continued to steal millions of dollars from their peoples without any fear for their hands and legs. Thus, the Islamic law was implemented only against poor people.

Western countries criticize ablation of legs and hands, stoning and the application of the *lex talionis*. Strangely, those same Western scholars do not object to the exportation of batons (in this case by Germany) to Israel, to be tested in mutilating and injuring the organs of Palestinians.<sup>33</sup> Switzerland is also sending weapons to be tested by Israel. These are aluminum bullets which cannot lawfully be tested in Switzerland in peacetime.<sup>34</sup>

### B. Criticisms of a Political Nature

Modern politics is full of instances in which the Arab and Islamic countries, and sometimes the Islamic religion, have been attacked for violation of human rights. Here, we can see that human rights are used for political ends.

#### 1. Satanic Verses

The *Satanic Verses* of Salman Rushdie gave rise to a stormy debate. Iran cut its diplomatic relations with Great Britain on March 7, 1989, because that country did not condemn the book when, on February 14, 1989, Imam Khomeiny issued a *fatwa* ordaining the death penalty for the author. In response, the Director General of UNESCO, Mr. Federico Mayor, issued a declaration calling for a guarantee of the freedom of expression and rejecting all appeals to violence, however much offence is caused in the exercise of the freedom of expression.<sup>35</sup> The Swiss National Commission for UNESCO expressed the opinion that the international diffusion of the *Satanic Verses* would be one of the most effective responses to the attack of Khomeiny on elementary human rights.<sup>36</sup> As a

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32. See the decision of the Sudanese Supreme Court on April 15, 1986, in HENRI RIAD, *Ashhar al-muhakamat as-siyasiyyah fi As-Sudan* 56-105 (1987).

33. LA PRESSE, Apr. 18, 1989, quoted in 47 JERUSALEM 29 (Tunis, Apr. 1989).

34. 24 BEOBACHTER 28 (Nov. 23, 1990). BEOBACHTER (Zurich) uses the expression: *Anlieferung fr Versuche*.

35. UNESCO Declaration made in Paris, Feb. 20, 1989. Office of Public Information, PRESS REVIEW, Feb. 21, 1989.

36. Press release of the Swiss National Commission for UNESCO, Feb. 25, 1989.

supporter of the abolition of the death penalty, I will not defend the *fatwa* of Imam Khomeiny. But we must recognize that in this case respect for the freedom of expression was given priority over respect for religious convictions. The fact that this book offends publicly the religious convictions of others has not been taken into consideration, although Swiss Criminal Code Article 261 makes this an offence.

From another point of view, we must note that the freedom of expression invoked by the Swiss Commission is applied selectively. In Switzerland, the book *The Protocols of the Elders of Zion* is forbidden.<sup>37</sup> It is in the Public Cantonal Library of the Canton of Vaud in a room called *Hill*.<sup>38</sup> We can mention also that the U.N. High Commission for Refugees destroyed the January 1988 issue of its periodical "Refugee" (30,000 copies in French and 90,000 copies in English) because it discussed the problem of refugees in West Germany. Its publication was judged inopportune when the president of this international organization was intending to visit Germany the following month.<sup>39</sup> This country is one of the principal suppliers of funding for the High Commission for Refugees. Many other examples could be given of freedom of expression being restricted in the West.<sup>40</sup>

The debate on Salman Rushdie's book cannot be understood if we neglect its political aspects.<sup>41</sup> Occult forces constantly seek to discredit the Arab and Islamic world for evident reasons. They used this book for their purposes. Whatever may be the intention behind its publication, no one could have failed to realize that it would provoke a stormy reaction. If such reactions were not foreseeable, the fact that they subsequently

37. This work of fiction was forbidden by a court in Bern on May 14, 1935. NORMAN COHN, *HISTOIRE D'UN MYTHE, LA CONSPIRATION JUIVE ET LES PROTOCOLES DES SAGES DE SION* 214-29 (Lon Poliakov trans., 1967).

38. See notices 162806 and 166597 in the system Sibil. The Geneva police intervened to prevent the sale of this book by Iranians at a book fair which took place in Geneva from May 11-15, 1988.

39. Telephone Interview with the Press Service, High Commission for Refugees in Geneva (Apr. 9, 1991).

40. See, e.g., *INDEX ON CENSORSHIP* (London).

41. The book of Salman Rushdie was published in Paris in 1989 in French translation by Christian Bourgois with the help of the Ministry of Culture and Communication of France. Mr. Jack Lang is in charge of this Ministry. Mr. Robert Maxwell, a press baron in Great Britain, publicly offered six million Pounds Sterling to he who "will civilize the Tiger of Tehran, the barbarous Beast." 24 *HEURES* (Lausanne), Feb. 20, 1989. The Swiss Ambassador to the UNESCO is Mr. Francois Nordmann. It would be very important to know the role of the religious convictions of these three personalities in determining their positions in this affair.

occurred should have been a sufficient reason to withdraw the book from the market.<sup>42</sup>

## 2. Hostages

Taking hostages is a violation of human rights. There should be no engagement in it. But who is a hostage? Western countries are very concerned by the Western hostages in the hands of Shiites in Lebanon. The press speaks about them constantly. No one worries about the fifteen thousand Palestinians in Israeli prisons. As it is Western money that finances Israeli prisons, these Palestinian prisoners have to be considered as hostages in the hands of the Western countries. This is a concrete case in which human rights are applied selectively in the Western conception. When Libya supports terrorists, Western countries say that Libya is a terrorist state. When Western countries finance terrorist acts against Palestinians, however, they refuse to consider it as terrorism.

## 3. Western Prisoners Shown on Iraqi Television

Early in the Gulf War, Iraq captured and showed on television Western pilots. Western countries denounced this as a violation of the Geneva Conventions. Delegates from the International Committee of the Red Cross were called to witness that violation. After the war, Western countries showed Iraqi prisoners in Kuwait on television. These prisoners voiced many complaints against their own government. No one in Western countries protested this as a violation of the Geneva Convention.

## 4. Crimes Against Humanity and War Crimes

Let us leave aside the responsibility of Western leaders for the daily Israeli abuses against Palestinians, which are, without any doubt, crimes against humanity and war crimes.<sup>43</sup> People in the West do not like to

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42. In the resulting disorders many people were killed and injured in India (see *JOURNAL DE GENÈVE*, Feb. 25-26, 1989) and in Pakistan (see *INT'L HERALD TRIB.*, Feb. 13, 1989).

43. Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide (G.A. Res. 260 A (III), U.N. GAOR, (1948), in *HUMAN RIGHTS*, *supra* note 3, at 41) says: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Article 2 gives a list of acts considered as genocide. Article 3 provides for the punishment of acts of genocide as well as complicity in genocide. Article 4 expressly states: "Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." Article 85 of the Additional Protocol I of 1977 to the Geneva Conventions considers as War Crimes many acts which violate the Geneva Conventions. Such violations by Israel have been attested many times by the Resolutions of the U.N. According to G.A. Res. 162, U.N. GAOR, Sess. 41 (1986), the strategic cooperation agreements between the United States and Israel and the delivery of weapons and modern materials to Israel encouraged Israel to pursue its policy and practices of aggression and expansion.

speak about this question. We will speak about Iraq. The European Community agreed, on April 15, 1991, to try Saddam Hussein for war crimes in application of the U.N. Convention of 1948 on Genocide. The proposition was presented by Hans-Dietrich Genscher, the German Minister for Foreign Affairs. According to the Belgian Minister Marc Eyskens, Saddam is personally responsible for what is happening to the Kurds, an attempt at genocide.<sup>44</sup>

This is a good way to put an end to the principle, *princeps legibus solutus*. It is important that political leaders be considered responsible for their deeds. In selecting the leaders to be tried, we must remember another principle: equality before the law. Never has the *winner* of a war been put on trial. Considered honestly, Western leaders are not less responsible for the Kurdish tragedy than Saddam himself. Genscher, for example, is a Minister of a country which exported chemical weapons to Iraq, even during the occupation of Kuwait. It hardly seems likely that these leaders will be tried for war crimes, or even for complicity.<sup>45</sup>

We should remember that the U.N. Human Rights Commission, applying its resolution 1991/67 of March 6, 1991, designated Professor Walter Klin, a Swiss national, as special rapporteur "with the mandate to examine human rights violations committed in occupied Kuwait by the invading and occupying forces of Iraq."<sup>46</sup> The demand that this rapporteur should consider also the actual violations of human rights committed in Kuwait after the end of the occupation was rejected. According to confidential sources, a possible extension of the mandate was discussed at the end of February in a closed meeting of the Western delegates to the Commission, which decided on its rejection. This attitude proves that a man has rights only if he belongs to a dominant political group.

#### IV. Questions Normally Avoided

Surely, the Western criticisms mentioned above are important. Muslim or Arab intellectuals would be wrong not to consider them. But they should not forget that there are more important violations in their region

44. LE MONDE, Apr. 17, 1991; INT'L HERALD TRIB. Apr. 16, 1991.

45. Ramsey Clark, former Attorney General of the United States under President Johnson, who later converted to pacifism, announced on March 28, 1991 the creation of an international commission to report on war crimes committed, according to him, by American and Allied forces in the Gulf War. They intentionally bombed civilians, killing more than 125,000 Iraqis. LE MONDE, Mar. 31, Apr. 1, 1991. This is an honorable attitude for Ramsey Clark to take, but what will be the result of his endeavors?

46. 24 HEURES (Lausanne), June 4, 1991.

which are ignored by Western scholars because the West is participating in them, and because they are afraid of the economic prejudice which could result from denouncing them. As we will see, these important violations are perpetrated by the leaders of the Arab and Islamic countries who are designated and kept in power by the West to serve its interests.<sup>47</sup> This attitude of the West is an extension of its discriminatory conception of human rights as explained above.

It does happen that Western authors criticize Arab leaders, as did Gilles Perrault in his book *Our Friend the King* (Gallimard, Paris 1990). No doubt, this author wanted to protest against human rights violations in Morocco. The huge publicity for his book proves that Western regimes wanted to use it to pressure the king of Morocco into collaborating in the Gulf War. But when this author began criticizing the war and calling for desertion, he was threatened with prosecution.<sup>48</sup>

We should here comment upon another case. On June 20, 1991, France expelled to Gabon the Moroccan opposition activist, Mr. Abdelmoumen Diouri, who was sentenced to death in 1964 for plotting against Hassan II. This expulsion occurred, according to the victim, after the French Secret Service failed to pressure him into not publishing his book, *To Whom Belongs Morocco* (Harmattan, Paris 1991), in which he gives a list of the personal properties of King Hassan II. According to the editorial of *Le Monde*, "The economic interests of France, the foremost trading partner of Morocco, where about 30,000 French citizens live, weigh heavily in the balance." All governments in Paris have felt obliged to treat Hassan II tactfully.<sup>49</sup> *Le Canard Enchan*, wrote on June 26, 1991: "To please 'our friend the king', Tonton forgot our friend the law."

Economic rights are a part of human rights.<sup>50</sup> When Arab or Islamic wealth is stolen by the leaders of the Arab and Islamic countries, and

47. The bloody events of Mecca in 1979 involved an intervention by Western forces to keep the Saudi regime in power. Their intervention in the Gulf crisis was necessary to keep in power the regimes of the Gulf Arab States.

48. *LE MONDE*, Jan. 26 & 27-28, 1991.

49. *LE MONDE*, June 23-24, 1991.

50. In the Preamble to the Declaration on Social Progress and Development, adopted by the General Assembly of the U.N. on December 11, 1969, we read: "Recognizing that the primary responsibility for the development of the developing countries rests on those countries themselves and acknowledging the pressing need to narrow and eventually close the gap in the standards of living between economically more advanced and developing countries . . ." G.A. Res. 2542 (XXIV), U.N. GAOR, 24 Sess., Supp. 30, U.N. Doc. A/7630 (1969), in *HUMAN RIGHTS*, *supra* note 3, at 97.

Article 7, paragraph 1 adds: "The rapid expansion of national income and wealth and their equitable distribution among all members of society are fundamental to all social progress, and they should therefore be in the forefront of the preoccupations of every State and Government." *Id.* at 98.

placed at the disposal of Western countries instead of being invested locally, the rich countries become richer and the poor countries poorer, violating the human rights of the Arab and Islamic populations.<sup>51</sup> Let us consider also the billions of dollars which have been donated to the West in the course of the Gulf War.<sup>52</sup> These leaders spend million in places of amusement, like European casinos. In 1974, one of the current leaders, then Interior Minister, lost in the Casino of Monte Carlo more than \$6 million in one single night, playing the roulette wheel and drinking whiskey,<sup>53</sup> although these acts are forbidden by the Koran (2:219-220) and punishable in his own country. He has, in Europe and elsewhere, palaces which cost hundreds of millions of dollars, in which he sojourns for only a few days in the year.<sup>54</sup> Where does the money come from? Let us remember those Egyptian families who live in cemeteries for lack of housing. Why does the West not criticize these violations of human rights?

The right to have access to work and to form and join trade unions for the protection of workers' interests are human rights.<sup>55</sup> When Saudi scholars were asked why Saudi Arabia denies workers the right to form unions, they answered that Islam guarantees all of their rights without unions.<sup>56</sup> This policy of Saudi Arabia against trade unions is reflected by

51. Experts estimate Arab investments in the West at 1984 at about 333 billion dollars: 57% in the United States and Great Britain, and the remainder in France, Germany, Italy and Japan. Investments in the Arab countries themselves did not exceed 15 million dollars. Higazi Idriss, a Sudanese expert, described this situation as "the greatest shame brought by Arabs upon themselves." According to these experts, Arab countries cannot remove these investments freely. At any time, the West can freeze them, as happened with Libyan and Iranian capital. 75 *ATH-THAWRAH AL-ISLAMIYYAH* 37 (June 1986). This prediction was realized in the case of Iraq after the invasion of Kuwait on August 2, 1990; all of its capital was frozen by Western banks.

52. According to the June 12, 1991 International Herald Tribune (IHT), the United States received \$11.08 billion from Kuwait, \$8.19 billion from Saudi Arabia and \$3.87 billion from the United Arab Emirates. Saudi Arabia promised about \$3.56 billion to be paid by the end of June 1991. Added to these payments are others made in kind: oil, food, gasoline and other supplies. Al-Jazeera Al-Arabia, a journal published in London, wrote in its issue of September 1991 (p. 48) that the United States received \$37 billion from Saudi Arabia, and half of this amount again in kind. About the same amount has been paid by Kuwait to the same country. Are these figures accurate? How much have the other allied countries received?

53. Reported in *TIME*, Oct. 19, 1974; quoted in 1 *ABD-AR-RAHMAN NASIR ASH-SHAMRANI, MAMLAKAT AL-FADHA'IH, ASRAR AL-QUSUR AL-MALAKIYYAH AS-SU'UDIYYAH* 193-95 (1988). This leader attributed to himself the honorary title of "Guardian of the two noble Mosques" by a decree of October 12, 1986. 79 *ATH-THAWRAH AL-ISLAMIYYAH* 64 (Oct. 1986).

54. *ABD-AR-RAHMAN NASIR ASH-SHAMRANI, MAMLAKAT AL-FADA'IH, supra* note 52, at 273.

55. See, e.g., Article 23 of the U.N. Universal Declaration, *supra* note 1.

56. *COLLOQUES SUR LE DOGME MUSULMAN ET LES DROITS DE L'HOMME EN ISLAM, supra* note 15, at 10, 32.



the absence of any mention of them in the different Islamic Declarations, which are mostly of its inspiration!<sup>57</sup> In fact, this denial of rights is linked with the policy of Aramco. Already in 1953, the workers' movement was brought to heel. American armed forces were sent to Arabia to support the internal security forces. A worker who died at a demonstration was taken to each worker's house on the instructions of Aramco to frighten them. A royal decree was then issued to forbid unions and any political activity in the country.<sup>58</sup>

The right to medical care is a human right.<sup>59</sup> In the Arab and Islamic countries this right is not correctly respected. Nevertheless, Arab leaders pay for hospital pavilions and medical research centers in Western countries. Some open accounts to heal sick children from the United States while there are a great many sick children who lack medical care in the Arab and Islamic world.<sup>60</sup>

Arab and Islamic countries speak of mutual solidarity. Their practical policies are senseless. The Ministry of Industry of Saudi Arabia bought palm trees at \$2,000 each from the United States, to decorate the grounds of the *Markaz abhath al-joudah* (Institute of Research for Quality) in Dammam,<sup>61</sup> although the Arab World has countless palm trees which cost much less. Products from North African Arab countries are exported to France in priority before being sold in the neighboring countries. Morocco buys oil from Saudi Arabia, although its neighbor, Algeria, has a lot to sell. Arab and Islamic thinkers and politicians criticize Western colonialism for having divided their countries with artificial borders. They forget that their governments accept the results of these borders. Many Arab and Islamic countries facilitate the entry of foreigners into their territories; on the other hand, they submit the Arab and Muslim citizens to investigations and humiliations before giving them the permission to enter their own countries. For many years, an Egyptian worker who wanted to work in

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57. We find a mention of this right in the Seminar of Kuwait, December 1980. This Seminar, in its recommendations, "calls upon Islamic states to guarantee to employers and employees alike the right to form their own organizations and unions and become voluntarily affiliated to them." 9 ISLAMOCRISTIANA 87 (1983). Article 23 littera b of the Draft Islamic Declaration of 1989 says: "Every one shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil. In the exercise of this right he may associate with persons or groups of persons but all this must be in keeping with the Islamic Shari'ah. The State and society shall provide him with whatever assistance and protection is necessary." This paragraph was omitted in article 22 of the approved Declaration in 1990.

58. BAKOVLEV, AS-SU'UDIYYAH WAL-GHARB 43 (1979).

59. See Article 25 of the U.N. Universal Declaration.

60. FAHD AL-QAHTANI, AL-YAMANI WA-AL-SU'UD 115 (London 1988).

61. 79 ATH-THAWRAH AL-ISLAMIIYAH 18 (Oct. 1986).

Libya had first to land in Malta before he could enter Libya!<sup>62</sup>

We should here mention the great difference in the standard of living between Arab countries as a result of maintaining the borders imposed by colonialism. According to a confidential report of the Arab-French Banks Union, the six Arab States of the Gulf with ten million inhabitants have a surplus of \$462 billion, while the remaining Arab countries with 190 million inhabitants are indebted for more than \$200 billion.<sup>63</sup> How can we speak of solidarity in this situation? Why should we accept the violation of the economic rights of the Arab citizen because of the maintaining of the colonial borders?

Arab and Islamic countries insist on each country having the right to self-determination,<sup>64</sup> and on the principle of non-alignment. But in fact they offer military bases to Western countries. These are used by Western countries for their own interests. The most dangerous situation is created now by the presence of American and British military bases<sup>65</sup> in the Arab Gulf countries, particularly Saudi Arabia, which is the place of origin of Arabs and Islam. A treaty signed in 1962 between King Faysal and President Kennedy put this country under the direct military protection of the United States.<sup>66</sup> It seems also that Saudi Arabia is used by the United States to deposit nuclear waste.<sup>67</sup> When Saudi Arabia, during the Gulf Crisis, indicated its willingness to negotiate with Iraq on borders, the United States exercised pressure and the Saudi proposition was dropped.<sup>68</sup> The result is very well known: The United States with its allies attacked Iraq and destroyed it; thousands were killed and injured, and many fled and became refugees. In this way, Saudi Arabia and other Arab countries in the region lost their independence and participated in violations of human rights by the West in this region.

62. This is what I saw in February of 1983.

63. AT-TAYYIB AL-BAKKOUSH, AL-KHALIG BAY AL-HAYMANAH WAL-IRTIZAG 212-213 (1991).

64. This right is in Article 1 of the International Covenant on Economic, Social and Cultural Rights and in Article 1 of the International Covenant on Civil and Political Rights, both adopted on December 16, 1966 at the insistence of Third World countries, including the Arab and Islamic countries.

65. Let us here mention, in Oman: Masirah (American), Khasb (American), Gazirat Um Al-Ghanam (American), Salalah (British), Thamarit (British), Bayt Al-Falag (British); in Bahrein: Al-Gufayr (American); in Saudi Arabia: Dhahran (American), Safaniyyah (American), Hafr Al-Batin (American), Tabouk (American). 84 ATH-THAWRAH AL-ISLAMIYYAH 20-22 (Mar. 1987). Treaties between the Gulf States and the United States are published in HUSSAYN MOUSSA, AL-ITTIFAQIYYAT AL-MA'QUDAH BAYN AL-WILAYAT AL-MUTTAHIDAH WA-DUWAL MAGLIS AT-TA'AWUN (1987).

66. ABD-AR-RAHMAN NASIR ASH-SHAMRANI, FAYSAL AL-QATIL WAL-MAQTUL 267 (1988).

67. 80 ATH-THAWRAH AL-ISLAMIYYAH 63 (1986).

68. INT'L HERALD TRIB., Oct. 23, 24 & 27-28, 1990.

Arab countries revel in big speeches about their solidarity with poor countries. In the U.N. General Assembly, it was an Israeli, Benyamin Natanyahou, who revealed on November 7, 1986 that Kuwait and Saudi Arabia were selling oil to South Africa for \$1.5 billion annually.<sup>69</sup> It would be interesting to know whether the selling of oil to South Africa was a decision freely taken by these two Arab countries, or whether they were obliged to do so under the pressure of the United States. It is well known that Saudi Arabia, instead of the United States, paid \$15 million to the Contras in Nicaragua when the U.S. Congress opposed such funding.<sup>70</sup>

Regarding the Gulf War, we should mention that the President of the U.N. High Commission for Refugees complained about lack of funds, attesting that the expenditure of any one day on the Gulf War would be sufficient for a one-year program in favor of the refugees of the world, many of whom are Arabs and Muslims. Consider the victims of wars and natural disasters in the Arab and Islamic countries: Bangladesh, Somalia, the Sudan, etc. The money necessary to provide relief for these victims is available, but the Arab countries of the Gulf preferred to give it to the West to produce more victims and to destroy two Arab countries, for the purpose of revitalizing the military and civil industries of the West. The Gulf War's consumption of the money of Arabs and Muslims ruined the Third World countries, including Arab and Islamic countries.

The right to equality before the law is one of the recognized human rights. This principle is unknown in the Arab and Islamic countries. Everything is permitted their leaders.<sup>71</sup> Most recently, the nephew of one of these leaders was arrested in Egypt, on allegations of possessing nearly two pounds of heroin and trafficking in the drug. Under Egyptian law, these offenses are punishable by the death sentence. A *New York Times* reporter in Cairo added that "such infractions in the past by Gulf dignitaries were generally overlooked or quietly settled through diplomatic channels." What will be the sentence in this case?<sup>72</sup> If the accused is released, will the Western countries consider this as a violation of human rights and protest against it?

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69. 81 ATH-THAWRAH AL-ISLAMIYYAH 53 (Dec. 1968).

70. INT'L HERALD TRIB., Feb. 5, 1987, quoted in 83 ATH-THAWRAH AL-ISLAMIYYAH 34-35 (Feb. 1987).

71. Many books have been written in Arabic on the scandalous behavior of the rich Arab leaders. See those cited *supra* notes 53, 60, and 66.

72. INT'L HERALD TRIB., Apr. 15, 1991.

## V. The U.N. and the Violation of Human Rights

### A. *The Finger Pointed at the U.N.*

Military conflicts are the principal source of violations of human rights in the Middle East. In any debate on human rights, Arab and Muslim intellectuals point their fingers accusingly at the U.N., as an organization concerned with these conflicts. They wonder what its role in the world and the motivation of its policies really are.

The United Nations, according to the Preamble of the Charter, has been created:

- to save succeeding generations from the scourge of war;
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small; and
- to practice tolerance so that we may live together in peace with one another as good neighbors.

To obtain this result, the U.N. has charged the Security Council with international peace-keeping. This Council is composed of five permanent members and other non-permanent members. The five permanent members have two privileges: permanence and the right to veto. For any effective action, their unanimity (or the abstention from opposition of those not in agreement) is necessary. These permanent members are the most important exporters of weapons in the world. Thus, those who are in charge of peace are in fact those who succor war!<sup>73</sup>

These permanent members represent a small part of the world population. Without counting the Muslims of the former Soviet Union (about 50 million) and those living in India (about 80 million), the forty-six Muslim State-Members of the Islamic Conference Organization, with about 850 million inhabitants, have in all less power in the Security Council than France with its 55 million inhabitants. These Muslim countries are subject to decisions in the making of which they do not participate and against which they cannot effectively object. This structure of the Security Council generates partial policies in the U.N. which are very much criticized in the Arab and Islamic World. The U.N. by a resolution of the General Assembly in 1947 decided upon the creation of Israel in violation of the national rights of the Palestinians. Since 1967, Israel has

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73. Ninety percent of the weapons sold in the last ten years (about \$200 billion worth) came from the five permanent members of the Security Council. Agence France Presse, quoted in 24 HEURES (Lausanne), May 30, 1991, at 7.

occupied the West Bank, the Gaza Strip and the Golan Heights. It violates the human rights of Palestinians every day. Because of the favorable attitude of the United States toward Israel, the U.N. does nothing to end these violations or to oblige Israel to retreat from the occupied lands. This inefficiency is in contrast to the speed with which the U.N. reacted against the occupation of Kuwait by Iraq.

The war between Iraq and Iran lasted eight years. The U.N. washed its hands of this tragedy although it had the means to stop it. Why did it not? John P. Conrad answers:

Not because the apparatus for ending the war is not on hand in the United Nations Charter and its organized political agencies. We have to account for the lack of will. For some nations, this war of mutual extermination may be politically convenient. For others, there is good business in the sale of arms to both sides. For still others, it's a matter of indifference.<sup>74</sup>

It is obvious that the permanent members of the Security Council preferred their own interests to the performance of their duty as peace-keepers.

After the occupation of Kuwait by Iraq, the U.N. gave priority to the recourse to war instead of the peaceful means of dispute settlement provided in its Charter. This decision was made due to the position of the United States. The U.N. Universal Declaration speaks of the right to life and physical integrity. The U.N., in declaring war in the Gulf region, instead of sustaining peace, produced a huge number of killed and injured persons. Thus, the U.N. failed in its mission.

Article 1 of the Universal Declaration of Human Rights says: "All human beings are born free and equal in dignity and rights." The developments outlined suggest that, for the U.N., there are inferior and superior categories of human beings.

### *B. Change the U.N. or Leave It*

The U.N. was created to encourage peace and respect for human rights. Its structure and its partial attitude prove that it in fact serves as an instrument to maintain the hegemony of the great powers, in violation of the most elementary human rights. How to put an end to this situation? There are two possibilities: Change the structure of the Security Council or abandon the U.N.

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74. ERNEST VAN DEN HAAG, *THE UN: IN OR OUT? A DEBATE BETWEEN ERNEST VAN DEN HAAG AND JOHN P. CONRAD* 229 (1987).

Changing the structure of the Security Council would involve increasing the number of permanent members who must represent the different regions of the world in proportion to their populations. This goal has in fact proved impossible to reach. All attempts in the past to modify the structure of the Security Council have proceeded under Article 108 of the Charter, which requires the agreement of all permanent members for such modifications.<sup>75</sup> As it is not possible to change the structure of the Security Council, abandoning the U.N. is the only choice remaining.<sup>76</sup>

We should take into account here that the adherence of the Arab and Islamic countries to the U.N. was decided without any consultation of their populations, by leaders who were not elected. This is a violation of human rights. Article 21 paragraph 1 of the Universal Declaration of Human Rights says: "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." It is also a violation of the Koran which prescribes the consultation of the people in decisions concerning them (42:38 and 3:159). For this reason, the question of withdrawal from the U.N. should be submitted to a popular vote. In case the proposal is rejected, the people should vote on the conditions under which adherence to the U.N. is to be maintained, particularly concerning a modification of the structure of the Security Council.

In order to arrive at a true expression of popular opinion, the Arab and Islamic governments will have to allow free expression to the opponents and the proponents of adherence. In this way, a decision can be taken with full knowledge of the consequences and with the consent of the populations. In any case, an adherence should never be considered as irreversible; every state should retain the possibility of leaving the U.N. if the majority of the population so demands.

In favor of leaving the U.N., there is, first, the argument of the impossibility of changing the structure of the Security Council. But five other arguments for leaving can be made:

1. Each institution and each rule of law must be considered from the point of view of its efficacy. All that is superfluous is wrong. The U.N. is not only superfluous, it is harmful. If you go to a physician and

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75. All attempts to redistribute the power between the Security Council and the General Assembly have also failed, for the same reason. ABDELFAH ALAMI, *LA RESTRUCTURATION DU SYSTÈME DES NATIONS-UNIES ET LE NOUVEL ORDRE INTERNATIONAL* 207-14 (1982).

76. The U.N. Charter contains no express provisions on withdrawal from membership. Great Britain has said that, in its opinion, withdrawal is not possible.

find that he is actually a butcher (think of the Gulf War), then you have the duty to leave him immediately to avoid a catastrophe.

2. The only role that Arab and Islamic countries have in the U.N. is in the General Assembly, which is an organ for useless chattering. Putting the point in a sarcastic way, clearly, the Arab and Islamic countries would profit more from sending their personnel posted to the U.N. to plant potatoes than to participate in General Assembly meetings.

3. Leaving the U.N. is important to prevent Arab and Islamic countries using the U.N. as an excuse for doing nothing to resolve their own problems.

4. The U.N. serves as a platform for the legitimization of dictatorial governments in the Arab and Islamic countries. In leaving the U.N., these governments will be obliged to establish their legitimacy among their own peoples.

5. Leaving the U.N. is a non-violent weapon, a form of civil resistance against repression. If other states leave the U.N., the great powers will no longer be able to legitimize their foreign interventions. It will remove the formally legal character of the wars they wage against other countries, solely for the sake of their own interests.

### 3. The Case of Switzerland

In Western countries, there exist a number of studies which criticize the U.N. and contemplate even its dismantling. Arab and Muslim authors seem to accept the U.N. as an inevitability, as permanent as God. They bow down before the U.N. without balking. Let us consider the case of Switzerland.

Switzerland is not a member of the U.N., although the European seat of the U.N. is in Geneva. Membership in the U.N. was submitted to popular vote on March 16, 1986 and was rejected, by all Cantons without exception and by 1,591,150 votes against adherence and 511,713 voices in favor.<sup>77</sup> The arguments for the opponents of adherence can be summarized as follows.

States Members of the U.N. are obliged to accept the decisions of the Security Council. This is incompatible with the provisions of the Swiss Constitution which consider that the prime objective of the Confederation is to secure the independence of the fatherland against foreign interference.

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77. II FEUILLE FÉDÉRALE 101-102 (1986).

Switzerland would have to pay twenty to thirty million Swiss francs yearly and engage thirty new federal employees.

The U.N. has about 160 member states. The decisive role is in the hands of the great powers who have the right of veto in the Security Council.

The U.N., whose purpose was to serve peace, became the world center for demagoguery. Far from serving peace, it poisoned international relations. Switzerland has nothing to do with it.

To this last objection, the Federal Council answered: The most different political conceptions confront each other in the U.N., but the member states try always to find an area of agreement. If they fight, it is with words and not with weapons. If a war explodes, the U.N. serves as an intermediary between the parties and puts at their disposal special contingents (blue berets) charged with control of the cease-fire. It is because of its help that many conflicts were avoided.

The Swiss people were right and the Federal Council was wrong.<sup>78</sup> The Gulf War and the Iraq-Iran War prove it. It is certain that if Switzerland had adhered to the U.N. and had suffered the humiliations which the Arab and Islamic World has suffered from this organization, the Swiss peasants would long ago have shaken their pitchforks at it and demanded that their membership end. If the Arab and Islamic peoples do not react as the Swiss, it is because they were not consulted by their governments before adherence to the U.N.. They do not have the right to speak.

## **VI. A Plan to Increase Respect for Human Rights**

The West bears great responsibility for the violation of human rights in Arab and Islamic countries, because of its policy of domination. However, as personal interest motivates almost all individual or collective opinions, it is too much to ask the West to behave differently. For this reason, the principal responsibility falls on the political leaders and the intellectuals of the Arab and Muslim world. The West could never do what it is doing if it did not find collaborating leaders, servile intellectuals and resigned peoples. To put an end to this situation, the Arab and Islamic World should attack the illness gnawing into it. The Koran says:

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78. This information is taken from the official information paper distributed to the Swiss people for the referendum of March 16, 1986.



“Surely God does not change what is in a people unless they change what is in themselves” (13:11).

### *A. The Duty of Intellectuals*

Today, the intellectuals in the Arab and Islamic countries behave like pupils in a class who copy answers from their neighbors instead of giving their own. Many documents from the Arab and Islamic World describe the special character of the Islamic juridical system. Almost all the theses compare positive law with Islamic law. Some authors would like to see Islamic law applied again. Although this appeal for a return to the Islamic system usually refers to criminal and civil law, there are some books which treat public international law. Muhammad Tal'at Al-Gunaymi wrote a pioneering work, *The Law of Peace in Islam*, in which he criticizes mimicry by the Arab and Islamic countries.<sup>79</sup> Unfortunately, this author does not say how to get out of this situation. He is not only a professor of international law at Alexandria University; he is also an adviser to the U.N.!

If the intellectuals of the Arab and Islamic World would like to make their own contribution to respect for human rights and for civilization, they should begin to forge a political, economic and juridical system which fits the concrete needs of their countries. This does not mean that there should be no relations between the Arab and Islamic World and the remaining countries of the Earth, but that such relations should be based on mutual respect and particularly on respect for the human rights of the citizens of the Arab and Islamic countries. This is not at all the case today.

It is true that these intellectuals participated in forging many declarations of human rights on the Islamic and Arab level. Unfortunately, these declarations have no juridical value. It is now important to adopt a human rights convention which deals with the Arab and Islamic World's problems. It is not sufficient here to copy the U.N. Universal Declaration dusted with religious formulations, as do many of the present Islamic declarations. Such a Convention should be integrated into the national law and contain measures of implementation. Commissions protected by immunities from acts of retribution should be created to control the respect of these rights by simple citizens and authorities alike, in con-

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79. MUHAMMAD TAL'AT AL-GUNAYMI, QANUN AS-SALAM FI AL-ISLAM, DIRASAH MUQARANAH 25 (1989).

formity with the Koran: "There might grow out of you a community of people who invite unto all that is good, and enjoin the doing of what is right and forbid the doing of what is wrong" (3:104).

### *B. Five Principles Which Should Rule the Arab and Islamic World*

We spoke about a series of problems concerning the classical Islamic law. Any Islamic convention of human rights should try to find a "straight" solution to these problems.<sup>80</sup> But these problems, in the present situation, are not the most important. The most important problems are those which are usually avoided; they require an intensive therapy. We suggest here five principles which can help to remedy the situation, principles to be included absolutely and in clear terms without any ambiguity in the projected Islamic Convention of Human Rights. In fact, these principles are either absent from the actual Islamic and Arabic Declarations, or formulated in an evasive way.

#### 1. Election of Leaders and Equality Before the Law

In almost all of the Arab and Islamic countries, power is in the hands of persons without any popular legitimacy. Their acts escape all control, and are not subjected to the laws which govern their citizens. The projected convention should assert the principle of the election of leaders by the people, and the principle that any person can be a candidate for office.<sup>81</sup> These leaders must be considered exactly as responsible for their acts as any other citizen. The leader who does not comply with this criterion should be considered as illegitimate and boycotted. On the other hand, the people should be consulted in all important decisions, such as the decision to adhere to the U.N., according to the Koran: "But that which is with God is better and more enduring for those who. . .run their affairs by council among them" (42:36-38) and "consult with them on the conduct of affairs" (3:159).

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80. The Islamic Declarations often refer back to the Islamic law instead of developing the right recognized. These are implicit restrictions. See, for example, Articles 1, 2, 12 and 19 of the Islamic Declaration of 1981. The formulations employed here can be easily misused through interpretation.

81. Speaking about the Saudi monarchy, Ahmad Ben Bella, the former President of Algeria, asserts that the monarchical system is in opposition to Islam. He quotes the Koran: "Indeed, when kings enter a town, they corrupt it and make the noblest of its inhabitants abased. And so they shall do." (27:34) 10 AL-BADIL (Paris), Apr. 1985, quoted in 62 ATH-THAWRAH AL-ISLAMIIYAH 13 (May 1985).

At the level of the structure of the state, the principle of equality before the law implies the unification of the laws and the jurisdictions, putting an end to the present partition of the juridical order between many religious communities. At the same time, every citizen should be guaranteed equality in rights and duties, regardless of religion.

## 2. Prohibition of Recourse to Armed Force in Relations Between Arab and Islamic Countries

War between Arab and Muslim countries has in fact been the principal source of violations of human rights, sacrificing the right to life and the right to physical integrity of individuals, and many economic and social rights. Consider the Lebanese Civil War, the Iran-Iraq War or the recent Gulf War. To educate groups and individuals in this principle, it is important to invoke here not the rules of the U.N. but the famous *hadith* of the prophet:

Abu Bakra said I have heard Allah's Apostle saying: "When two Muslims fight (meet) each other with their swords, both the murderer as well as the murdered will go to the Hell-fire." I said, "O Allah's Apostle. It is all right for the murderer but what about the murdered one? Allah's Apostle replied: "He surely had the intention to kill his companion."<sup>82</sup>

Conflicts, such as those concerning the borders inherited from colonialism, should be settled by flexible agreements negotiated exclusively between these countries, recourse to any foreign instances (International Court of Justice or others) being prohibited. The Koran says: "Is it, therefore, the rule of the age of ignorance that they desire? But who is better for judgment than God for a people of firm faith?" (5:50). They should learn a lesson from the Gulf War and consent to a modification of their borders based on the principle of equity, to avoid other wars and crises. These countries should exclude any recourse to foreign forces to resolve their problems. They must form their own peace-keeping forces in their region according to the Koran:

If two parties of the believers fight one another, reconcile between them. But if one of them becomes aggressive against the other, then fight the one that is aggressive till it reverts to God's behest. Then, if it reverts, reconcile between them with equity and be just, for truly

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82. 1 AL-BUKHARI, THE TRANSLATION OF THE MEANINGS OF SAHIH AL-BUKHARI 30 (Muhammad Muhsin Khan trans., 1980).

God loves the just. Surely the believers are brethren; so reconcile between your brethren (49:9-10).

### 3. Prohibition of All Foreign Military Bases or Alliances

These bases and alliances guarantee the hegemony of foreign countries against the interests of the Arab and Islamic countries. They protect and maintain the leaders installed by these foreign countries, preventing in this way any participation of the people in political decisions. This violates the Koran which says that people should be consulted in affairs which concern them (42:38 and 3:159, quoted above). In the Gulf War, these bases were used to kill and to destroy, violating the elementary right to life. Any regime which accepts such bases should be considered as illegitimate and boycotted. As a further consequence of this prohibition, no foreign military ship should be allowed to pass through the maritime straits or national waters of the Arab and Islamic states (according to Articles 19 and 25 of the Law of the Sea Convention of 1982). The same rule should apply, *mutatis mutandis*, to foreign military aircraft.

### 4. The Wealth of the Arab and Islamic World to be Used for Its Peoples

The wealth of the Arab and Islamic countries should not be deposited in foreign banks, but used for the economic development of these countries. The Koran says:

Those who hoard gold and silver and do not expend them in the cause of God, announce to them the tidings of painful torments, a day when they shall be heated in the fire of Hell, and therewith their foreheads and their sides and their backs shall be seared: "This is what you have hoarded for yourselves; hence taste what you were hoarding" (9:34-35).

In any case, the present feudal system, where emirs and kings spend the wealth of their populations as they like, should be ended. This feudal system is the principal source of the bankruptcy of the Arab and Islamic World. The Koran says:

If we desire to annihilate a town, we give the power to those who are given to luxury in it, so that they become dissolute in it and thus, the word is come to pass, and we annihilate it with utter annihilation (17:16).<sup>83</sup>

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83. In this quotation, we preferred the version *ammarna* (to give the power) instead of *amarna* (to ordain), since God cannot order evil.

### 5. Priority for Regional Organizations

The U.N. today violates the human rights of Arab and Muslim citizens, since it leaves their realization to the regimes of some infamous countries. As the Arab and Islamic populations were not consulted on the adherence of their countries to this organization, they should now be consulted as to whether to stay in the U.N. or to leave it. If they decide to stay, they should also be consulted on the conditions under which the adherence should be maintained, particularly concerning the modification of the structure of the Security Council.

Whatever be the result of a popular vote, the Arab and Islamic countries should develop their own regional organizations, submitting the existing ones to the test of utility, for the purpose of putting an end to the present partitions. Priority in economic exchanges should be given to Arab and Islamic countries, the goal being to eventually create a common market with a single currency and a program of equal distribution of wealth at the regional level. The purpose is to attain political and economic independence, which alone can guarantee respect for human rights.

### CONCLUSION

The West carries a great responsibility for the violations of human rights in the Arab and Islamic countries, because of its policy of domination and because it sustains the Arab and Islamic leaders who are now in power. But is the West interested in ensuring that Arab and Islamic countries are governed by regimes issuing from the people? For this reason, Arab and Islamic peoples and intellectuals are the ones primarily responsible for their own fate.

These people should revolt against their regimes who sell for a song the wealth and the sovereignty of their countries to foreign powers. On the other hand, the intellectuals should forge a political, economic and juridical system to assure respect for human rights, taking into consideration the needs and the specific conditions of their countries.





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