

Islamic Human Rights Instruments in the Wider Context of Human Rights Discourses

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Abstract

In the course of the 20th century, Islamic human rights Instruments and documents have been issued as a result of conferences of Muslim scholars, sometimes through exchange of opinions with European human rights experts, and initiated by different Muslim countries. On the whole, these instruments/documents have been mostly welcomed on the international level; partly they were the result of intercultural and interreligious dialogue. On the one hand, international experts on human rights became aware of the rich heritage of Islam in terms of collective and individual rights - on the other hand, the question arose if and to what extent the Islamic corpus of rights – enshrined in the Sharia's – can be in accordance with the International Declaration of Human Rights of 1948. Islamic scholars as well as western human rights experts, both from their perspective, have analysed which differences or communalities exist, what their roots are and how they may influence the legal status of people in an Islamic or Eastern or Western context. The aim of such scientific approach should be to ensure that human beings have access to guaranteed rights and can expect protection when exercising those rights. In this paper I will try to present an overview on relevant discussions and developments, based on literature.

Keywords: Human rights, Islamic human rights documents, Universality of human rights, Human rights and different cultures.

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1. Introduction

It is crystal clear that among humanity there has always existed a common and primordial basis of rights and duties of human beings in the framework of their immediate social environment and wider socio-political sphere: an idea of natural rights to be respected. Written accounts of certain (limited) human rights, or rights and duties of defined segments of a population, date back into antiquity, into Greek, Persian, Babylonian, Roman civilizations and those of the Far East. The contributions of e.g., African Islamic civilizations date back into the 13. Century CE; documents from Europe, from the Western hemisphere can also be traced back to the Middle Ages, resp. the late medieval era. Further developments occurred with the onset of the renaissance and the “age of enlightenment”. The legal and social design of those rights depended, and to a certain extent still depends, on many factors such as history, culture, religion, and the perception of the status of the individual within its social surrounding, e.g., family, society, all mankind, and the creation as a whole. Basic human values are solidarity and compassion; but it took a long historical development until out of those, the concrete understanding of human dignity, freedom, and equality evolved into defined rights with their corresponding reciprocity. These rights and values have still been abused at all times and places, and the implementation of human rights remains one of the biggest challenges of the present time and the future. The modern concept of human rights is supposed and expected to create political solidarity on the basis of universal respect (Bielefeldt, 2022, p. 11). It was laid down in the 20th century and enshrined in international documents.

When in the year 1948, after two world wars, the Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations, there were five Muslim majority countries among the 48 states which voted with “yes”: Afghanistan, Egypt, Iran, Iraq and Pakistan; and also Lebanon with a sizeable Muslim population. Among the eight countries which abstained, Saudi Arabia was the only Muslim country. In the meantime, the political and overall situation in most of these countries has changed completely. States in North Africa and the Middle East have since gained their independence, and with their joining the United Nations, they have also acknowledged and accessed the UDHR. The International Bill of Human Rights¹ also contains UDHR and both covenants as the International Covenant on Economic, Social and Cultural Rights and the International

1. <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

Covenant on Civil and Political Rights (both approved in 1966). In greater detail, there exist nine international human rights instruments, some of which are supplemented by optional protocols, addressing specific concerns or containing further provisions.¹ Another important Universal Instrument is the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, which was adopted by the General Assembly of the United Nations in 1992 with resolution 47/135.²

An international human rights conference was held in Tehran in 1968, assessing the progress made in the application of the UDHR since 1948, mapping out a plan for a stronger internationalisation in the future, leading up to the World Conference on Human Rights convened in Vienna, Austria, in 1993. The latter gave rise to international and national initiatives and activity groups for the rights of women, based on CEDAW of 1979/1981, but also with a focus on the diversity of cultures, with strong female voices from the Global South, including Muslim women activists from different countries, also Iran.

The 5th Islamic Thought Conference held in Tehran in 1987 focused on human rights in Islam. A wide range of papers was presented by Muslim scholars from Iran and several other countries, outlining mainly the religious aspects and points of view vis-à-vis the UDHR, reflecting also the post-revolutionary setting of the time. As such, the proceedings were published by S. Kh. H. Naqavi (1987), obviously requiring further development of an Islamic approach to the human rights cause in the light of our times. Islam as a religion which encompasses all aspects of human life, also knows and defines a corpus of rights of the individual vis-à-vis his or her fellow human beings, the society as a whole, its administration and authorities. Islamic concepts of the rights of the individual vis-à-vis society and vice versa are based on or derived from religious texts and have different spiritual, philosophical and civilizational roots, as compared to modern human rights documents. Nevertheless, there exists a relationship in basic rights (Jafari, 1999, p. 41-47); there are many commonalities also differences, and this has led to misunderstandings, criticism and scrutiny of efforts to formulate “Islamic human rights declarations” – the more so, because the understanding of Islam is not static, but would allow for constructive interpretation. That said, I intend

1. <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>

2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic>

to look into important international reactions towards Islamic human rights documents, based on literary research.

2. Historical Developments of Islamic and Regional Approaches to the Universal Declaration of Human Rights

In the later decades of the 20th century, critical considerations concerning the universalist claim of the UDHR were made not only in the wake of the geopolitical East-West rivalry, but increasingly also in the context of the North-South global dialectic. Not only did these considerations come from different sides – partly non-governmental agents, in some cases from governments, but also there were as a fruit of academic discourse among legal experts and researchers in various fields. The Norwegian political scientist and peace researcher Johan Galtung (1997, 40ff) pointed to the richness of cultures and religions in connection with individual and collective rights and duties. He ponders about the bestowing of rights in answer to human needs, but he also thinks that the excessive institutionalisation of legal norms in a modern welfare state might on the one hand lead to affluence and an increase in personal freedom, but on the other hand to a loss of identity (1997, p. 108). Among the rich cultural heritage of mankind, Galtung specifically mentions the legal/philosophical contributions of Islam (1997, p. 87f); he tries to show ways to the search for common human values.

2-1. Human Rights Documents Based on the Islamic Religion or Referring to Islamic Values

In the Muslim world, Islamic scholars, lawyers, intellectuals and human rights activists entered into discourses about human rights on various levels – religious as well as secular. At the religious level, research into sources of individual rights in Islam gained a certain momentum, last not least with the aim to establish commonalities, but also to define and explain differences with the UDHR. These efforts led to the publication of various declarations. Best known among these are

- ♦ The Universal Islamic Declaration of Human Rights (UIDHR), adopted in 1981 by the Islamic Council of Europe, a private non-governmental organization affiliated with the Muslim World League.

- ♦ The Cairo Declaration on Human Rights in Islam (CDHRI), issued in 1990. It was elaborated by the member states of the Organisation of Islamic Cooperation (OIC, formerly the Organisation of the Islamic Conference), intended as a "general guidance for member states (of the OIC) in the field of

human rights". Representatives of the OIC explained that it was not expected to become a substitute for the UDHR, rather a complementing document, representing an Islamic viewpoint on human rights. Notably, the Islamic Republic of Iran played an important part in the preparation of the Cairo Declaration.

♦ The CDHRI was revised to become the OIC Declaration on Human Rights (ODHR) in 2020, as I will discuss later.

The Organization of Islamic Cooperation (OIC) had already reformulated its charter which dated back to the Cold War. The new version was unanimously adopted in March 2008 by representatives of the 57 member states. Positive comments remarked that for the first time, the new charter refers explicitly to human rights, demanding that „Member States shall uphold and promote, at the national and international levels, good governance, democracy, human rights and fundamental freedoms, and the rule of law“.

The OIC also established an Independent Permanent Human Rights Commission (IPHRC) in 2011.

2-1-1. The UIDHR was a faith-based response to the growing international awareness of human rights standards. The delegates to the 1st International Seminar of Muslim Communities in the non-Muslim World (London 1978) had asked the Islamic Council of Europe to clearly define the stance of Islam concerning human rights in the modern world. Leading Islamic scholars and Muslim thinkers worked on this task, and on April 12, 1980, the secretary general of the Islamic Council, Salim Azzam, presented the UIDHR to the delegates of the International Islamic Hijra Conference. The conference was held in the Royal Albert Hall in London on the occasion of 1400 years commemoration of the Hijra of Prophet Muhammad (P). As a result, the UIDHR was announced by the former Sudanese prime minister, Sadeq al-Mahdi. The document summarizes those rights that emerge from the source texts of Islam: from the Qur'an and the Sunna, the tradition of Prophet Muhammad (P). A deeper exegetical search for a wider definition of human rights under the scope of Islam is not yet evident in this declaration. One hurdle may have been that juridical elaborations in Islamic history were focusing mostly on individual cases and identifiable problems. This is why specific rights and duties are better codified than general human rights in the classical books of Islamic law (Abid, 2004, p. 28). The Islamic Council of Europe considered this declaration as a first step to position Islam under emerging new circumstances towards the end of the 20th century. The declaration had been drafted due to the need to express and explain Islamic

ideas on human rights, a need felt by the Muslim diaspora communities in the west. One of the weaknesses of this document was that it would not be considered a binding text by Muslims and Islamic institutions worldwide, given the different stances and opinions on these sensitive issues. Soon it was clear that more details had to be worked out, more *ijtihad* to be done.

2-1-2. The OIC Declaration on Human Rights (ODHR) which followed or superseded the Cairo Declaration on Human Rights in Islam (CDHRI), has omitted a clear reference to Islam in its title. It was never clearly stated that the ODHR replaces the Cairo Declaration.

The Cairo Declaration, inspired by Islamic revivalist movements, referred to the Islamic Sharia as its source and stipulated that all rights mentioned therein are subject to limits set by the Sharia. It had been widely criticised on an international level, but also intensely discussed within Muslim communities. Points of debate were that it did not clearly mention many civil rights and that it tacitly limited women's rights and rights of non-Muslim minorities. – The ODHR addresses some of these shortcomings; details can be found in a Policy Briefing by Kayaoglu (2020, p. 1)¹ of the Brookings Institution (The Brookings Doha Center is now the Middle East Council on Global Affairs, a separate public policy institution based in Qatar.² The author writes: “Although the ODHR better reflects principles rooted in international human rights law, it falls short on issues related to family values, freedom of speech, and political participation. The evolution of the Cairo Declaration is encouraging, however, as it demonstrates the OIC's willingness to draw closer to the basic human rights standards of the UDHR.”

Generally, it can be said that the ODHR mentions Islamic values in a more general way, not specifically invoking the Sharia. This “drawing closer” to international human rights standards while retaining an Islamic value system is, however, a matter widely discussed by Islamic scholars throughout the 20th century and beyond (e.g., Jafari, 1999). The developments within the OIC which led to the 2020 version of the ODHR demonstrate this ongoing process. Mohammad Hossein Mozaffari from the Center for Peace and Dialogue at the University of Religions and Denominations in Qom, analysed the changes made in the ODHR as compared to the CDHRI in his paper “From Separation

1. Kayaoglu, Turan (2020): *The Organization of Islamic Cooperation's Declaration on Human Rights: Promises and Pitfalls*. <https://www.brookings.edu/articles/the-organization-of-islamic-cooperations-declaration-on-human-rights-promises-and-pitfalls/>

2. <https://mecouncil.org>

to Re-Engagement: The OIC Revised Declaration on Human Rights” (2021/22). His comprehensive analysis reveals a number of inconsistencies and even contradictions, including differences between the English and the original Arabic text. Nevertheless, he notes an important development: “The OIC, consequently, abandoned the parallel arrangement to the UN human rights system and defined a complementary function for the OIC human rights arrangement which might lead to the coexistence of regional and international systems” p. 113).

2-2. Regional Human Rights Documents

Efforts reflecting the idea of regionalization of human rights became concrete already in the 1950ies, however with a more administrative approach based on geopolitical structures and unionizing processes, while reflecting cultural and underlying philosophical considerations only to a minor degree. Today, the International Bill of Human Rights serves an umbrella for international human rights instruments. It includes documents with a regional focus, such as:

2-2-1. European Convention on Human Rights (ECHR) of 1953, to which all members of the Council of Europe are partners;

2-2-2. American Convention on Human Rights (ACHR) of 1969/1978, which was drafted by Latin American countries, in some points reflecting Roman Catholic religious aspects. The ACHR has been subject to criticism and revocation of ratification by some of its member states. The USA signed it in 1977, but did not ratify it; likewise, Canada has not ratified the treaty.

2-2-3. The African Charter on Human and Peoples' Rights (1981, also known as the Banjul Charter) was drafted by the Organisation of African Unity (now African Union) and was adopted by its general assembly in Nairobi, Kenya, in 1981. Its aim is to promote and protect human rights and basic freedoms in the African continent.

2-2-4. The Arab Charter on Human Rights (ACHR)¹ of 1994/2004 reaffirms the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The Arab League had been working to create a regional human rights charter since the late 1960s, in the wake of tendencies towards the

1. <https://digitallibrary.un.org/record/551368?ln=en&v=pdf#files>

regionalization of human rights. The Arab League's Human Rights Committee presented various drafts to member states in the 1970s, but the work of this committee came to a standstill in the early 1980s. Finally, in 1994, the Council of the Arab League adopted the "Arab Charter on Human Rights", a document on a secular basis, the preamble of which contains a normative reference to the UN Charter and the Universal Declaration of Human Rights. The Arab charter also draws on the Cairo Declaration of Human Rights of 1990. It also refers to the principles of Islam and the "civilizational achievements of the Arab culture" (Würth, 2003, p. 35). However, this version was not ratified by any member state; it was further revised and finally adopted by the Arab League in 2004. The new version includes the revealed religions by referring to the values of the "heavenly religions" (Windsperger, 2008, p. 13). After ratification by seven member states, the Arab Charter on Human Rights came into force on March 15, 2008. An additional treaty, the Statute of the Arab Court of Human Rights¹, was agreed upon by the Arab League states in 2014. This statute is not yet in force as the required number of 7 ratifications has not been reached so far.

2-3. Other regional human rights declarations or policy declarations with reference to and/or contents of universal human rights were drawn up by non-governmental organizations, such as those of the Arab Jurists and various North African NGOs (for different motivations, see Würth 2003, 10). These declarations are based on the basic UN human rights conventions and are considered founding documents for local and regional human rights groups (Würth, 2003, p. 36).

The active membership of Arab states in the African Union (formerly the Organisation of African Unity – OAU) also leads to overlaps with the African Charter on Human and Peoples' Rights (1981/1986) – partly a result of efforts to regionalise the human rights concept. After the bipolar system of the Cold War had come to an end, countries of the Global South endeavoured to make their voice heard more distinctly in the international arena: “In 1992, members of the Non-Aligned Movement formulated the Jakarta Message; and in 1993, Asian states and NGOs issued the Bangkok Declaration. All these statements, while affirming the universality of human rights, elevated non-interference, economic rights, and respect for cultural differences. They asked for a balanced view between rights and duties, individual and community rights, and between a desire for progress and respect for traditional values.”

1. Non-official English translation: https://aci.hl.org/texts.htm?article_id=44&lang=ar-SA

(Kayaoglu, 2020, p. 2). Though not a regional document but a Universal Instrument, the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992) deserves special mentioning, because it specifically affirms the right to religious and cultural identities on a national and trans-national level.

3. Some International Reactions to Islamic References in Human Rights Documents

While additional regional human rights conventions are viewed generally positive in order to strengthen and stabilise human rights principles in different regions, Islamic human rights documents – and similar faith-based initiatives – are viewed by some critics rather as an effort or a method of culturalistic appropriation or an apologetic reaction against wide-spread criticism of human rights deficits in the Muslim world. Western observers have discussed whether the 1981 Islamic declaration (UIDHR) was issued partly with the intention of counteracting [western] insinuations such as [Muslims’ supposed] critical attitude to human rights, and partly with the aim of giving the human rights idea a stronger rooting in the Islamic world, based on Islamic sources (Strobl, 1996, p. 198) or whether - as some have suspected - Islamic ideologues might intend to come up with a faith-based alternative to the Universal Declaration of Human Rights.

The Cairo declaration was positively appreciated by international bodies, such as laid out in a memorandum of the European Commission, Committee of Ministers, dated Jan. 16, 1991¹, which was obviously in the course of preparations for the World Conference on Human Rights to take place in Vienna in 1993. The critical comments are formulated in diplomatic language:

“However, the text contains frequent references to the Sharia’s and a number of rights are set out ‘within the limits of Sharia. The last two articles of the text, two very broadly worded general clauses, probably destroy whatever positive impression may have been produced by the reading of the preceding provisions. According to Article 24 ‘all the rights and freedoms stipulated in this Declaration are subject to the Islamic Sharia’ and Article 25 stipulates: ‘The Islamic Sharia is the only source of reference to the explanation or clarification of any of the articles of this Declaration.’ [...]”

1. <https://rm.coe.int/0900001680912cb2>

The memorandum of the European Commission goes on to clarify:

“It seems appropriate to recall in this context that the acceptance of human rights has not been easy for other religions. For example, for a long time the Catholic Church rejected human rights as they had been promoted by the French Revolution and, historically speaking, only recently ‘reconciled’ itself with them.”

The Parliamentary Assembly of the European Union held discussions on the Cairo Declaration; one of the questions addressed to the Committee of Ministers reads as follows:

“Written Question No. 651 [...]: ‘Compatibility of the European Convention on Human Rights and the Cairo Declaration’ [Doc. 13412 – 30 January 2014]

The European Court on Human Rights held that ‘sharia is incompatible with the fundamental principles of democracy’ (paragraph 72 of the court ruling and paragraph 123 of the Grand Chamber Judgment of *Refah partisi and others vs. Turkey*) and that ‘It is difficult to declare one’s respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts’ (same judgment). At the same time the Cairo declaration on Human Rights in Islam explicitly states that ‘All the rights and freedoms stipulated in this Declaration are subject to the Islamic Sharia’ (article 24) and ‘There shall be no crime or punishment except as provided for in the Sharia’ (article 19) and furthermore men and women are not given equal rights, and freedom of religion (including Apostasy) is limited.

A number of countries have signed both the European Convention on Human Rights and the Cairo declaration.”

3-1. Main Differences and Divergencies Between the UDHR and HR Documents with a Reference to Islam.

In the **Arab Charter on Human Rights** – which is not explicitly Islamic – International human rights organizations see significant deficits. In the view of the then UN High Commissioner for Human Rights, Louise Arbour, the Arab Charter was incompatible with the UN’s concept of universal human rights. Main reasons for her criticism voiced on 24 January 2008 were a neglect of women’s rights and insufficient protection of the rights of minors in criminal

proceedings¹, as well as other deficits such as concerning freedom of religion.

Art. 3.3 of the Charter reads: “Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments.” Obviously, this reference to the ‘Islamic Sharia’ gave rise to apprehensions: while the Charter mentions “positive discrimination in favour of women”, women’s rights activists consider this as a contradiction to what they conceive as limitations on women’s rights and freedoms.

Art. 25 might be considered as too vague with regards to minority rights. It reads as follows:

“Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practise their own religion. The exercise of these rights shall be governed by law.”

Critical remarks point specifically to clauses such as “except if stipulated by law”, which could be used arbitrarily to impose restrictions or punishment for actions outside narrowly defined frameworks under non-democratic circumstances.

Despite such criticism of weaknesses or omissions, the Arab Charter is seen as progress by some human rights experts, not least because as a regional instrument, it could facilitate the work of local human rights representatives.

4. Muslim and Western Thinkers’ Approaches

For Muslim thinkers the question arises if it is appropriate to use “Western” terms in the context of human rights, in order to attain to an internationally acceptable “Islamic” human rights concept – terms which by necessity and automatically carry socio-cultural implications. However, for the sake of exact definition, international standards are needed; therefore, using internationally recognized technical and legal terms does not mean to fully subscribe to social and cultural globalization. A huge range of books and articles were published on topics such as “Islam and human rights” which I will not list here in detail. Basically, Islamic human rights ideas are based on spiritual concepts which have God in their centre; thus, Islamic human rights focus on rights given by God. This thinking has been explicated e.g., by the philosopher Muhammad

1. <https://humanists.international/2008/03/arab-charter-human-rights-incompatible-international-standards-louise-arbour/>

(Gary Carl) Legenhausen (2003, 42-50) who discussed on which basis human rights should be granted and protected, comparing Islamic and Western concepts.

Conversely, and as mentioned before, modern human rights have a secular basis. They do not exclude belief in God, and they provide for the protection and guarantee of the freedom of religion. Yet, a different understanding exists with regard to religious freedom, as Mohammad Pezeshki (2011) points out in an article, stating that Art. 18 of the UDHR was formulated by the understanding of Western civilization and “was debated by other civilizations from the beginning. Political attempts to come to a universal solution have so far been futile because governments have been after their own interest. Thus, civilizational negotiations is the only solution remained” (sic!). Therefore, a cultural and rather spiritual or philosophical approach is suggested in order to achieve a rapprochement of diverse systems of rights.

Konrad Hilpert, Professor of Practical Theology and Social Ethics in Germany, discusses in his book *Die Menschenrechte. Geschichte, Theologie, Aktualität* (1991) whether and how possible theological foundations of human rights can be traced in Christianity, and how theological reasoning may influence the importance of human rights in the framework of the Christian ethos. As a Catholic theologian, he does not attempt to show possible Christian contributions to the development of modern human rights, but he asks which theological reasons can be found for the validity of human rights in the view of Christianity. He points to the universalization of human rights through their de facto inclusion into International Law by the Charta of the United Nations, already in 1945, leading to the 1948 Universal Declaration of Human Rights (p. 24-28). Based on historical research, he shows that the demand for religious freedom and freedom of belief was one of the earliest incentives for the development of human rights, also in their secular shape. According to the sources quoted by him, modern human rights cannot be traced back solely to the ideas and ideals of the French revolution (p. 113-121). The diversity of cultures, not only in different geographical regions of the world, but in close neighbourhood, as existing today not only as a result of globalization, migration and economic and cultural exchange, is a challenge for the UDHR’s claim to universal validity. Hilpert suggests:

“Because of the close relationship between religion and the respective moral system, inter-religious understanding can contribute meaningfully to the worldwide acknowledgement of the ethos of human rights, and to consenting to this ethos from the perspective of own cultural and

religious traditions. [...] (Enhancing the) mutual understanding between religions is important, because many reservations against human rights and some of the basic differences in their interpretation have their roots in religious convictions and views” (p. 229¹).

The Christian theologian and philosopher Heiner Bielefeldt affirms – as many other, mostly western, human rights theoreticians – that modern human rights have a genuinely secular basis rooted in the era of enlightenment and its spiritual, scientific and technological aftermath, but also in view of the emergence of violence in hitherto unknown dimensions.

It can be said that in Europe, it had been not so much spiritual, legal or philosophical considerations, but rather and specifically the experiences of devastating wars – like the Thirty Years’ War in the 17th century, which began as an interreligious war between Catholicism and Protestantism and dragged on as a struggle for hegemonial power – and later the wars between the historical empires of Europe and against the Ottomans - experiences which partly repeated itself in World War I and II.

Heiner Bielefeldt, Senior Professor of Human Rights at the Friedrich Alexander University in Erlangen, identifies roots of human rights in different cultures; he specifically mentions the Christian and Islamic religion. The author clearly refuses the idea that human rights in their contemporary structure represent “western values” or be linked to a certain civilization, culture or religion. About Christian approaches to the human rights idea, he wrote (1995, p. 9):

“After a long period of resistance against the emancipatory claims of the modern concept of rights generally, the churches today often consider human rights to be an expression of “Christian values.” The problem with this is not the assumption that human rights have some Christian roots and make sense in a Christian ethic. This is certainly true. What seems problematic is the widespread presumption – be it explicit or implicit – that human rights belong *exclusively* to the Christian tradition.”

The German human rights expert finds similar tendencies also in the Muslim world: “... strikingly similar tendencies towards a unilateral embracing of human rights can be found in many contemporary Islamic statements as well.”

1. my approximate translation from the German original. In case of any discrepancies the meaning in original language shall prevail.

In another article, "Western" versus "Islamic" Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights", the theologian, philosopher and historian Heiner Bielefeldt (2000, p. 114), draws the following conclusion:

“Both in Western and in Islamic countries, human rights have become a matter of debate and controversy. The multiplicity of positions voiced in this debate range from liberalism to conservatism, from libertarianism to socialism, and from theocratic claims to outspoken secular ideas. Hence there is no such thing as the Western or the Islamic conception of human rights. Historic analysis indeed shows that human rights always have been a political issue, not the natural result of any "organic" development based on the genes of a particular culture. [...] The rejection of cultural essentialism, however, does not imply that cultural aspects become altogether meaningless. On the contrary, culture and religion can be, and indeed often are, powerful motives of practical commitment on behalf of human rights, motives that deserve to be recognized historically and to be cherished politically. Hence, the question of how we can maintain the connection between human rights and religious or cultural tradition without getting trapped in the culturalist fallacy.”

The author suggests: “... that we understand human rights as the center of a cross-cultural ‘overlapping consensus’ on basic normative standards in our increasingly multicultural societies.”

He goes on to clarify (p. 115): “What is at stake is not a factual consensus but rather a *normative consensus* in the sense that people holding different convictions should nevertheless be enabled to agree on some basic principles of justice so as to shape their coexistence and cooperation on the basis of equality and freedom.”

5. Recent Developments

5-1. Document on Human Fraternity for World Peace and Living Together

An outcome of interreligious dialogue and communication is a more recent document on global human fraternity, also referred to as Abu Dhabi Accord, indicating the place of the signature ceremony. It is the result of a series of meetings and conferences since the 1970ies which took place in several countries between high-ranking representatives of the Vatican and Islamic

scholars. The document was signed by Pope Francis, head of the Roman Catholic Church, and Sheikh Ahmed el-Tayyeb, Grand Mufti and Imam of the Al-Azhar Mosque and University in Cairo, facilitated mainly by the United Arab Emirates and Egypt. The document does not directly address human rights issues, but is considered an important step towards mutual respect and tolerance between religions, as a basis for peace and justice. It prompted the UN General Assembly to establish the International Day of Human Fraternity on December 21, 2020 with resolution 75/200. This day was marked for the first time on Feb.4, 2021.

The introduction to the document concentrates on three main topics (Fitzgerald, 2024, p. 6):

- ✦ The belief in God as creator means that all human beings are to be considered as brothers and sisters; this brings about a common responsibility for the creation and all creatures, especially people in need.
- ✦ In all consultations between the signatories should reflect the readiness to share the bounties, but also sorrows, challenges and tasks in today's world, considering the progress in science and technology, medicine and global communication.
- ✦ Due attention must be paid to poverty, injustice, conflicts and extremism.

The document invites to united action, in order to inspire future generations to live in a culture of mutual respect and cooperation, conscious of God's grace Who created humans as sisters and brothers.

Michael Louis Fitzgerald, Cardinal and expert for Muslim-Christian relations, was president of the Papal committee for interreligious dialogue between 2002 and 2006, and thereafter became the Vatican's Nuntius (ambassador) to Egypt. In his analysis of the document, he raises the question of representation of the signatories, because while Pope Francis formally represents all Catholics of the world, but not all Christians. Likewise, Ahmad el-Tayyeb as Grand Imam of the Al-Azhar institution does not represent all Muslims – the document does not contain any reference to the two great Islamic denominations, the Sunnis and Shi'is, and even among Sunni Muslims the authority of Al-Azhar can be a matter of debate.

Main contents and points of concern of the document are:

- ✦ Values of *peace*, ...mutual understanding, *human fraternity* and harmonious coexistence ...

♦ *Freedom* is a right of every person: each individual enjoys the freedom of belief, thought, expression and action. The pluralism and the diversity of religions, colour, sex, race and language are willed by God in His wisdom, through which He created human beings. This divine wisdom is the source from which the right to freedom of belief and the freedom to be different derives. The fact that people are forced to adhere to a certain religion or culture must be rejected, as too the imposition of a cultural way of life that others do not accept.

♦ *Justice* on the basis of mercy and clemency ...

♦ *Dialogue for peace and tolerance*, avoiding “unproductive discussions”

♦ *Protection of religious sites* - synagogues, churches and mosques (and religious sites of other faiths)- dedicated to the service of God

♦ The necessity to *stop terrorism*, especially by stopping the financing and curbing the availability of weapons, and by preventing the use of media for justifying terrorism

♦ The concept of *citizenship* is based on the equality of rights and duties, under which all enjoy justice.

♦ Good relations between East and West are a necessity

♦ ... recognize the *right of women* to education and employment, and to recognize their freedom to exercise their own political rights. Moreover, efforts must be made to free women from historical and social conditioning that runs contrary to the principles of their faith and dignity. It is also necessary to protect women from sexual exploitation and from being treated as merchandise or objects of pleasure or financial gain. Accordingly, an end must be brought to all those inhuman and vulgar practices that denigrate the dignity of women ...

♦ ... protection of the fundamental *rights of children* to grow up in a *family environment*, to receive nutrition, education and support, are duties of the family and society ...

♦ Protecting the *rights of elderly, disabled, weak and oppressed people* is a religious and social obligation ...

♦ (accepting) *pluralism and diversity* in respect to religion, colour of skin, sex, ethnicity and language, all of which are expressions of the Will of God, by which the Almighty created humankind.

♦ It is important to pay attention to religious, cultural and historical differences that are a vital component in shaping the character, culture and civilization of the East. It is likewise important to reinforce the bond of

fundamental human rights in order to help ensure a dignified life for all the men and women of East and West, avoiding the politics of double standards

The document was greeted with positive appreciation by the UN and a wide spectrum of interreligious dialogue and civil society organizations; however, it was also met with substantial criticism, and so far, no broader reception in theological, political and scientific/educational circles has been observed. Michaela Quast-Neulinger (2024, p. 19), Asst. Prof. and Head of the Institute for Systematic Theology and the Catholic Theological Faculty of the University of Innsbruck, Austria, writes that conservative Catholic circles reject the document, because it considers religious pluralism as an expression of the Will of God, thereby questioning the unique character of Christ. On the other hand, groups of believers and experts are deeply impressed by this courageous and inspiring document.

5-2. Counteracting Islamophobia

While the term “Islamophobia” itself has become a subject of political, scientific and populist debates, its expressions are widespread and manifold. On March 15, 2022, Pakistan as then representative of the OIC at the United Nations, proposed a resolution for an International Day to Combat Islamophobia (Doc. A76/L.41)¹, stating that Islamophobia emerged as a new form of racism which also has a gender-specific aspect, because Muslim women and girls might be attacked on account of their Muslim dress or due to the presumption that they are oppressed.

With this move, March 15 should also be marked as a day to remember the attacks on two mosques in Christchurch, New Zealand, in 2019, during which 51 Muslim worshippers were killed by a gunman.

There were different reactions by UN member states which voted on the Resolution: France stated that there is no recognized definition for Islamophobia in International Law and that France supports the protection of all religions and world views. However, the proclamation of an “International Day” would not serve to counteract all forms of discrimination. In spite of its reservations, the French delegation did not reject the Resolution. The European Union, represented by Belgium, expressed its stance against all forms of violence and hatred; however, it voiced concern over singling out one special religion. The right to discuss or criticise religions should be

1. <https://press.un.org/en/2024/ga12587.doc.htm>

recognized. Abstentions from vote by Argentina, Belgium, Brazil, India, Switzerland and the United Kingdom were explained by their reservations against establishing priorities in fighting discrimination: *all* discrimination should be rejected equally and universally.

6. Conclusion

One of the main principles of Islam and a basic tenet of Islamic law is justice. Since justice has a legal bearing, I shall not dwell here on other pillars of Islam but briefly refer to justice in the context of human rights. Ayatollah Morteza Motahhari (Murtada Mutahhari) explicated his ideas on justice and equality in many of his works; a summary of his definitions of the meanings of justice as Divine Justice and justice in the different spheres of human life can be found in his book '*Adl-e Ilāhī*'. He focuses on four main requirements of justice:

- ✦ Balance (within a social [and global?] system),
- ✦ Equality and Non-discrimination (equal treatment of individuals and groups (?),
- ✦ Rights – Giving to Each Thing its Due (*qist*): protection of the rights of individuals and conferring to each one his or her due rights,
- ✦ Emanation or Bestowal of Being on Merits: Conscience about the Godly gift of rights and the opportunity to exercise and use them in the framework of a dignified human existence as a member of humanity.

The book is highly philosophical and it appears to leave legal considerations to the jurists. The scholar deals in a more concrete way with social justice. Above, I have put some practical thoughts with regard to human rights into brackets and added some question marks for further deliberations.

For a better mutual understanding and comprehensive development of human rights concepts, discussions between international legal experts and scholars of different religions should take place more frequently, and on various international levels. Examples were the Iranian-Austrian conferences which were held over several years alternately in Iran and Austria. I would like to quote from an article written by Richard Potz, Professor emeritus of the Department of Philosophy of Law (Institut für Rechtsphilosophie) of the University of Vienna, in an article about "Globalisation, Pluralisation and Criminal/Penal Justice" (2018). It is based on a contribution by Prof. Potz and Prof. Gerhard Luff to the Third Iranian-Austrian Conference held in Tehran, Feb. 22-26, 2003. It was published by Andreas Bsteh in the proceedings of the conference under the title *Peace, Justice and Threats against them in Today's*

World (2005). Richard Potz writes:

“It can be considered as a remarkable progress, that the UDHR of the United Nations has become an integral part of the international order – especially the ostracising of crimes against humanity and wars of aggression – and that these acts are now in the centre of worldwide public consciousness. Of course, this does not prevent human rights abuses which are committed on a daily basis, but at least it led to an increased sensibility against those, and it increased the awareness for deficiencies in the institutionalized enforcement of those rights.”¹

Richard Potz pointed out that Art. 28 of the UDHR declares: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

Of course, the transnational validity of human rights touches on a sensitive issue, writes Potz (p. 10):

“The rejection of a universal normative principle of human rights – especially by states of the [so-called] Third World – a human rights principle which transcends the sovereignty of states, is in many cases conflicting with the interests of the peoples concerned; such [rejection] serves mostly the interests of Western industrialized nations, multinational corporations, and the egotistic interests of their own political elites.”

The legal expert continues (p. 11f): “This entitlement of individual human beings to an international order in which human rights are being realized, requires that this [provision] will also be enforced through the penal law, the strongest of all legal instruments. This implies also the task to establish the global validity of human rights, if necessary, by means of penal justice which transcends national borders. In fulfilling the responsibilities of International Law, serious human rights violations which cannot or are not prosecuted in the national framework can be punished [on a global or transnational level]. In other words, this means the globalisation of the prosecution of fundamental human rights violations.”

Note that for this purpose, the International Court of Justice was established in Den Haag, The Netherlands.

1. The approximate translation from German into English of this and the following excerpts as well as the title of the Proceedings were made by me. In case of any discrepancies the meaning in original language shall prevail.

These aspects appear to be of crucial importance in the present international situation and in view of wars of destruction and genocide.

In conclusion it can be said that the underlying tension between the UDHR and Islamic approaches to standardized human rights is mainly seen in the UDHR's claim to universality. Universal human rights documents, such as the UDHR, are primarily secular and legalistic, emphasizing individual rights. In contrast, Islamic human rights documents connect legal norms to religious principles. This can lead to a more holistic but sometimes contested interpretation of rights.

One of the most debated areas is gender rights. While Islamic human rights documents advocate for the dignity and rights of women, critics argue that certain interpretations of Sharia can lead to practices that are seen as discriminatory by universal human rights standards. Clearly, the topic of women's rights deserves an active approach and further attention in more extensive studies.

Islamic scholars, when pondering about the rights of humans, unanimously stress the spiritual dimension of human rights from an Islamic point of view. In this view, human rights and their basic tenets originate from God have boundaries set by God – in contrast, secular human rights experts argue that human rights, as expressed through the UDHR, are an answer to human needs for protection of their natural rights and dignity, and as such, they must transcend cultural or religious considerations, because a global system of human rights should be independent of specific cultural properties. This does not exclude that individuals and communities refer their human rights to their own moral and spiritual values.

Wendelin Ettmayer, former ambassador of Austria to the Council of Europe, analysed in an article "The significance of religion and culture in international relations".¹ Based on various examples, he underscores the increasing weight of religion in global developments. He questions whether "western values" could be disseminated on a global scale, and whether human rights – in the shape desired by the West – can be implemented worldwide (e.g., through "humanitarian interventions"). Ettmayer pointed to cultural peculiarities, such as states of South-east Asia taking pride in "Asian values" which – in their view – contributed to their economic achievements. He stressed on an important point, asking whether the West would set an example

1. My rendering of the German original (see under Literary Sources). For any questions, the German original must prevail.

by acting according to its self-established standards, or not. No value system can be convincing if “double standards” are applied, guided by political interests. Therefore, Europe should revive the goals of its original “peace project”.

For the UDHR – which, as part of International Law, acts protecting in a sense as an “umbrella” for all human rights – it is important to be acceptable for all peoples, to be implemented on a global scale. However, as e.g., Johan Galtung (op. cit.) has argued, the rich cultural heritage of different civilizations should be seen as an enrichment and wherever appropriate, be incorporated into a global system of human rights. Such efforts should not outrightly be rejected as “cultural relativism”. On the other hand, Islamic scholars who link their concept of human rights to revealed texts should through advanced *ijtihad*, endeavour to place these individual and collective rights in the broader context of Islamic values – religious and moral values which lie at the root of other religions’ spiritual foundations and value systems as well.

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