

# The Strategy of Muslim States in Human Rights Discourse

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## *Abstract:*

The position of Muslim States in Human Rights debates is perplexed and to some extent confusing and contradictory. Even though some Islamic countries have always claimed that human rights enterprise is a Western agenda and, thus, does not conform to the Islamic culture, a large number of these countries have ratified the international covenants on human rights. This paper attempts to show the nature of that confusing stance and tries to illustrate the development that led to the adoption of different strategies in Human Rights matters.

The author believes that at the political atmosphere dominating the international relations was not well prepared for the participation of the Islamic countries in formulating and drafting the human rights framework and these countries were not in a position to adopt a unified and consolidates stance in human rights matters. However, after the adoption of the Universal Declaration of Human Rights many Islamic

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countries have succeeded in liberating themselves from the colonial yoke of the European countries and have, thus, joined the other Islamic countries in identifying their independent identity and adopting a strategy of replacement towards the discourse on human rights. While during the development of the International Human Rights Law, Muslim states tried to adopt a transformation strategy by ratifying International Human rights conventions with ruining reservations.

These ambitious strategies brought the Muslim states in confrontation with the International Human Rights Law and cracked the universality of the human rights regime. The eventual outcome of these confrontations and interactions was the adoption of a complementary strategy on the part of the Muslim states.

## ***1. Introduction***

With a total population of about 1.5 billion the Muslim world constitutes one-fourth of the world population that spreads from East Asia and the Pacific Ocean region to Western Africa and the Atlantic Ocean. The Muslim world<sup>1</sup> covers a large geographical area and if we were to discard their religious congruence there exist a lot of historical, cultural, economic and political differences and incongruities among them. At the time when the Universal Declaration of Human Rights<sup>2</sup> was being drafted and adopted the existing divergence among these countries as well as the political atmosphere that dominated the international

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1. The Muslim world is not a clear and unambiguous concept. In this paper what we refer to as the Muslim world is merely a civilizational identity and, thus, does not conform to such concepts as "Dar al-Islam" or "Islamic Ummah".

2. For the sake of brevity in this paper we shall refer to it as the "Universal Declaration".

community at the end of the World War II posed one major obstacle before the Muslim states<sup>1</sup> in arriving at a unified stance regarding the International Human Rights Law.

What binds this large section of the human society is common cultural and religious identity of the Muslims. Since the year 1969 C.E. the Islamic countries have also tried to safeguard their cultural and civilizational identity through the establishment of a regional organization that was manifested in the form of the Organization of the Islamic Conference. This organization enjoys a unique position among the regional political and economic organizations since whereas all other inter-governmental organizations have been established on the basis of common economic and political interests of their members the OIC has been established on the basis of religion. Nevertheless, the existing divergence among the Islamic states has put their religious convergence into jeopardy. Extensive differences exist among these countries from the viewpoint of their political stances in the international arena as well as the political systems of these countries. On one side of this spectrum stands a country like Turkey, which is a member of the NATO and based on its constitution is considered as one of the most secular political systems in the world and on the other side is Saudi Arabia that has no written constitution. Even countries like Iran, Pakistan and Mauritania that have adopted the prefix of “Islamic Republic” for their political systems are politically very different from one another. From the viewpoint of economy, too, there exists a large gap between these states. Countries like Qatar, Kuwait, Brunei Darussalam and the United Arab Emirates are among

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1. In this paper the term Muslim State refers to a country which is a member of the Organization of the Islamic Conference.

the countries that possess high rates of economic growth and per capita purchasing power while countries like Somalia, Niger and Afghanistan stand among the countries with the lowest rates of economic growth and per capita purchasing power. More or less, the same conditions apply to the indices of human resource development of these countries.

The aim of this paper is to examine whether the cultural and religious convergence among the OIC members has been effective enough to overcome the existing political and economic incongruity between these countries in the area of human rights such that they are in a position to adopt a unified strategy in dealing with the International Human Rights Law. The author is of the opinion that for several reasons the Islamic countries lacked a consolidated strategy when the International Human Rights Law was being formulated and adopted. Due to the dominant political conditions in the international community these countries were divided between the Eastern and Western camps and had, thus, adopted different policies towards the human rights discourse. While during the development of the International Law these states identified their common independent cultural identity and tried to adopt a consolidated strategy towards this discourse by forming an Islamic camp. Part one of this paper reviews the existing conditions during the period in which there was a lack of unified strategy among the Islamic states while part two deals with the formation of such a strategy among these countries and the changes and developments that have taken place in it. In the concluding part of the paper we shall look into the findings of the research.

## ***2. Absence of Strategy***

At the time of the formation of the International Human Rights Law

in the 1940's C.E. the political atmosphere dominating the international relations was not conducive for the participation of the Islamic countries in formulating and drafting the human rights norms. While many Islamic countries were ruled by colonial powers the Islamic countries that had retained their independence, like the other third world countries, were politically divided between the Eastern or Western blocs. As a result, these countries were not in a position to adopt a unified and consolidated stance in the form of a cultural or political camp regarding the discourse on human rights. Moreover, since the Western countries constituted majority of the members of both the Human Rights Commission and the United Nations General Assembly they were in a position to draft and adopt any plan that reflected their points of view. Even the socialist countries of the Eastern bloc who opposed certain articles of the Universal Declaration could not succeed in incorporating any changes in it. Therefore, the representatives of the Muslim countries were left perplexed between two options; to follow in the footsteps of the Western bloc and vote in favor of the Declaration or to join the policies of the socialist bloc.

**Fig No. 1**

Conditional Acceptance Policy: Afghanistan, Pakistan, Egypt, Syria and Iraq

The Policy of following the West: Iran, Lebanon and Turkey

The Policy of Rejecting Human Rights: Saudi Arabia and Yemen

Having said that, it was not surprising that the Islamic states quite often came up with different, and at times even contradictory, stances in different UN bodies. Although in the course of the preliminary discussions most Islamic countries expressed their concern over the impact

of the Universal Declaration on their national cultures, only the two countries of Yemen and Saudi Arabia acted upon their concerns. Therefore, the political dependence of most of the Muslim countries on Western policies compelled them to overlook their religious and cultural reservations and vote in favor of the Universal Declaration.

The Stance Adopted by the UN Members Regarding the Universal Declaration.

**Fig. No. 2**

Total Number of Members 58  
Absent Members 2  
Abstention Votes 8  
Favorable Votes 48

The most prominent characteristic of this period was that since Islamic countries were unaware of their common identity that differed with that of other nations they could not form a group in order to adopt a specific and consolidated strategy in dealing with the issue of human rights. A glance at the official UN records as well as other sources would clearly indicate that the Muslim nations did not have any role in drafting and/or adopting the Universal Declaration since this Declaration was adopted shortly after the end of the World War II. Therefore, as far as the Muslim world is concerned the presence of a few representatives in the United Nations and their favorable to the Universal Declaration lacks any legal value and credibility.

***3. Muslim States and Human Rights Discourse during the Cold War***

Since the Islamic states did not practically have any share in drafting

the Universal Declaration, which was in fact the very foundation of the Human Rights Law, they had almost lost all hopes in participating and impacting this Law; more so since the political conditions dominating the international community had not changed much and the atmosphere of the Cold War continued to dominate the world. Nevertheless, certain developments in the international arena changed the conditions slightly in favor of the Muslim States. The most important contributing factor was the increase in the number of independent Islamic countries that was the outcome of decolonialization movements during the 1950's and 1960's. As a result, the number of the Islamic members of the United Nations increased from 10 members at the time of the adoption of the Universal Declaration to 21 members at the time when international covenants on Human Rights were being adopted.

Here it seems appropriate to mention a few points regarding the extent of the influence of the Western world over the International Human Rights Law in the years that followed the adoption of the Universal Declaration. Firstly, it had gradually lost its absolute dominance in determining the criteria for human rights. Secondly, it appears that the West did not continue to be as united as before over the issues concerning human rights. And, thirdly, a much larger number of developing countries began to show serious interest in taking part in this discourse.

Since the Western countries that had drafted the declaration were in majority in the UN General Assembly and shared congruent views to some extent and supported the traditional Western approach towards human rights, the adoption of the Universal Declaration did not face any serious opposition in spite of certain differences that existed among the Western democracies and socialist states of the Eastern Europe.

The other contributing factor was the very nature of the international covenants of human rights. Since the covenants were considered to be international treaties, they were to be ratified by those governments that wished to be a member to these covenants. As a result, the Islamic countries became determined to compensate for their earlier failures.

The discussions that took place during the process of drafting the Universal Declaration made it evident that the Islamic countries were not yet in a position to adopt a unified and consolidated strategy towards the human rights discourse. In other words, these could not yet take part in the United Nations under a common religious, cultural and political identity that distinguished them from other existing factions in this organization. Rather each Islamic country had taken part in the United Nations as a member of the international community and, thus, exclusively expressed the viewpoints of their own countries on different issues. As a result, apart from Saudi Arabia and Yemen, which had announced their disapproval of the Universal Declaration in the form of casting a vote of abstention and not participating in the process of adoption, the votes of other Islamic countries were practically presented to the Western states.

The human rights covenants were adopted in the atmosphere of the cold war and the Islamic countries continued to be divided between the two Eastern and Western blocs. As regards the issues concerning human rights the Western states succeeded in tearing apart and separating them into two different covenants (International Covenant on "Civil and Political Rights" and International Covenant on "Economic, Social and Cultural Rights") in order to put greater emphasis on the former. Even though many developing countries including the Muslim states



as well as the countries of the Eastern bloc opposed the idea of dividing the International Bill of Rights into two separate segments, no attention was paid to their views and on the insistence of a number of Western countries two different covenants were drafted for human rights. Keeping in view the nature of these two covenants that were in fact two international treaties, some Islamic countries, by insisting on their stance towards the Universal Declaration, managed to exert some limited changes in the text of certain articles of the "International Covenant on Civil and Political Rights", which according to them contradicted the Islamic *Shai'ah*.

By the end of the 1960's there was a substantial increase in the number of the Islamic members of the United Nations as a result of which the Muslim states managed to form an Islamic group over the issue of human rights. This group gradually turned into an influential force in discussions that took place over the issue of human rights. For instance, the representatives of the Western countries could pave the path for the adoption of the "Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief" after making compromises with this Islamic group as a result of which the group was in a position to make certain substantial changes in the contents of this Declaration. These changes then served as a model in drafting subsequent regional human rights instruments.

This compromise disappointed the Western group of countries to a large extent, since by succumbing to the changes proposed by the Islamic countries not only did some cracks appeared in pristine image of the International Bill of Rights but also there appeared a serious change in the future course of negotiations on the International Human Rights Law. Notwithstanding the mentioned changes and amendments in the text of the documents related to the issue of human rights, this move

served as a turning point in the process of the participation of the Islamic group of countries in the United Nations. Since the 1980's and following the formation of an Islamic group in the United Nations the paths were paved for a closer convergence among the Islamic states as regards their stance towards the issue of human rights and the formation of a unified strategy on their part. Further in our discussion we shall look into the changes and developments that led to the formation and development of a common strategy among the Islamic states on human rights debates.

#### ***4. The Replacement Strategy***

As a result of a number of developments in the political systems of some Islamic countries as well as the increasing trend in the membership of these states in the United Nations the Muslims came to form an Islamic group - at least regarding the issue of human rights - and became an influential force in this area. Thus, when the "Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief" was presented before the UN General Assembly in the year 1981 the representatives of the Western states could go ahead with its adoption only after arriving at certain compromises with the Islamic group of countries. As mentioned earlier this provided the group with the opportunity to make certain important changes and amendments in this Declaration that served as a model in the formulation of future instruments.

Since the Islamic countries were not initially in a position to have a say in formulating its framework and contents, the Universal Declaration was drafted without their consultation and adopted despite the opposition raised by some Muslim States. Nevertheless, the objections raised by some Islamic countries individually led to the formation of the group of Islamic countries in the United Nations and this group

could make some changes in certain subsequent instruments in the decades that followed. Eventually, by joining other developing countries this alliance turned into a powerful movement that challenged the universality of human rights norms.

Even though some Islamic countries have always claimed that the present criteria concerning human rights is purely Western and, thus, does not conform to the Islamic culture, a large number of these countries have ratified the international covenants on human rights<sup>1</sup>. A few Islamic countries, too, have adopted the Optional Protocol to the International Covenant on Civil and Political Rights. Saudi Arabia was the only Muslim state that had not ratified any human rights convention until the end of the Cold War.<sup>2</sup> It is to be mentioned in the 1990's Saudi Arabia changed its policy and ratified some of the international human rights conventions.<sup>3</sup> However, there are a number of different evidences that prove the official ratification of these documents lacks any real credibility. Adamantia Pollis explains this reality in the following words:

"For many states their acceptance is a symbolic gesture to their membership in the world community but devoid of substance"<sup>4</sup>.

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1. Status of Ratification of the Principal International Human Rights Treaties, Office of the United Nations High Commissioner for Human Rights. <http://www.unhchr.ch/pdf/report.pdf>.

2. Monshipour, Mahmood; The Muslim World Half a Century After the Universal Declaration of Human Rights: Progress and Obstacles, Vol. 16, No. 3, Netherlands Quarterly of Human Rights, 1998, p. 306.

3. In the 1990's Saudi Arabia ratified with reservation the following conventions: Convention on the Rights of the Child (25 February 1996), Convention on the Elimination of All Forms of Racial Discrimination (23 October 1997), Convention on the Elimination of All Forms of Discrimination against Women (7 October 2000). Also see: Status of Ratification of the Principal International Human Rights Treaties as of 09 June 2004, Office of the United Nations High Commissioner for Human Rights.

4. Pollis, Amantia; Towards a New Universality: Reconstruction and Dialogue, Vol. 16, No. 1, Netherlands Quarterly of Human Rights, 1998, p. 9.

Therefore, those Islamic states that reject international criteria on human rights have come up with alternative declarations under the name of "Islamic Human Rights" in order to arrive at such solutions that would conform to their religious teachings and cultural values. The fact of the matter is that the Islamic human rights schemes are the inventions of contemporary times that have emerged after the adoption of human rights principles incorporated in international documents like the Universal Declaration. The existing literature on the Islamic human rights claim that right from the early days of its advent in the 7<sup>th</sup> Century C.E. Islam had put forward its own unique criteria regarding human rights.

The earliest signs of the interest and inclination of the Islamic societies in the drafting of a declaration on the "Islamic Human Rights" began emerging in the 1980's.<sup>1</sup> This declaration was drafted by the Islamic Council of Europe in 1981 and was presented to the United Nations Educational, Scientific and Cultural Organization (UNESCO) at a function held in the headquarters of this organization in Paris in which a number of officials from Muslim states like Ahmad Bin Billa of Algeria, Mokhtar Ould Daddah of Mauritania, the Saudi Prince Muhammad Al-Faisal and the advisor to President Zia-ul-Haq of Pakistan had participated. It is said that the Islamic Council of Europe is affiliated to the "Muslim World League", which is an international and non-government organization.<sup>2</sup> The Universal Islamic Declaration of Human Rights merely reflects upon the views of Islam on human rights concepts and has no legal status, since no Islamic country or international organization

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1. Universal Islamic Declaration of Human Rights, 21 Dhul Qaidah 1401, 19 September, 1981.

2. Mayer, Ann Elizabeth; Islam and Human Rights, Tradition and Politics, Boulder, Colorado, Westview Press, Printer Publisher, London, 1991, p. 27.

has ratified it. The aim of this declaration is to relate concepts like responsibility, which have been neglected by the Universal Declaration, to human rights norms and standards.<sup>1</sup> On the other hand the formulators of this declaration have never claimed that their aim is to replace the Universal Declaration with this declaration. The Universal Islamic Declaration of Human Rights is the manifestation of a traditional and apologetic approach towards new human rights concepts and tries to impose the concepts incorporated in the Universal Declaration on Islamic teachings.

Following the victory of the Islamic Revolution of Iran and in the early 1980's there appeared some signs of determination on the part of the Islamic states to oppose the International Human Rights Law. Perhaps the earliest official statements in opposition to the dominant approach to and criteria for human rights came from Saeed Rajaie Khorasani, the permanent representative of the Islamic Republic of Iran to the United Nations, who in 1983 declared the official stance of the Islamic Republic in these words:

"Conventions, declarations and resolutions or decisions of international organizations, which were contrary to Islam, had no validity in the Islamic Republic of Iran... The Universal Declaration, which represented secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims..."<sup>2</sup>.

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1. The overemphasis on human rights and negligence towards such concepts as responsibility and duty by the Universal Declaration has been criticized by some Western scholars as a result of which a group of former heads of states issued a statement asking the United Nations to draft and ratify the "Universal Declaration of Human Duties". For more information on this proposal see Netherlands Quarterly of Human Rights, Vol. 4, 1997.

2. UN Doc. A/C.3/39/SR.56, 95 (1984), found in: Mayer Ann Elizabeth, Universal Versus Islamic Human Rights: A Clash of Cultures with a Construct? Vol. 15, Michigan Journal of International Law, 1993-1994, p. 316.

Perhaps the initial impression of the Western countries was that it was a spontaneous statement and should not be taken as the official stance of the Islamic Republic of Iran towards the International Human Rights Law. However, to their utmost surprise, by making reference to the above statement, Rajaie Khorasani once again emphasized on the formal stance of his country in the Third Committee of the UN General Assembly on 7 December 1984 in the following words:

"In this delegation's view, the concept of human rights was not limited to the Universal Declaration. Man is of divine origin and human dignity could not be reduced to a series of secular norms... Certain concepts contained in the Universal Declaration needed to be revised. Iran recognizes no authority or power but that of Almighty God and no legal tradition apart from Islamic law. As this delegation had already stated at the thirty-sixth session of the General Assembly, conventions, declarations and resolutions or decisions of international organizations, which were contrary to Islam had no validity in the Islamic Republic of Iran... The Universal Declaration, which represented a secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims"<sup>1</sup>.

These statements and stances should be studied by taking into consideration their historical background. The importance of this approach towards the International Human Rights Law on the part of the Islamic Republic of Iran would become clear once it is realized that it was not an exceptional stance taken by an Islamic country. These statements should be evaluated within the framework of a general

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1. UN Doc. A/C.3/39/SR.56, paragraphs. 91-95.

strategy adopted by the Islamic countries; the strategy that was manifested in the form of reservations expressed at the time of the adoption and ratification of human rights treaties. It was on the basis of this strategy that the Islamic countries revealed their intentions and adopted the Declaration of Human Rights in Islam in 1991 C.E.<sup>1</sup>

This Declaration was adopted in the 19<sup>th</sup> Islamic Conference of Foreign Ministers of the Organization of the Islamic Conference (Session of Peace, Interdependence and Development) in Cairo on 5 August 1990. This summit had followed a meeting of the Committee of Legal Experts held in Tehran from 26 to 28 December 1989. The Declaration of Human Rights in Islam was finally presented to the Summit of the Heads of the Member States of the OIC in Dakar (Senegal) on 9 December 1991.

The next step was taken in the 1993 Human Rights Conference held in Vienna in which the Islamic countries responded to an initiative taken by the Islamic Republic of Iran and tried hard to put forward the Declaration of Human Rights in Islam as the approach of the Muslim world to the universality of human rights norms. There are a number of evidences that indicate the various bodies of the United Nations including the UN Commission on Human Rights and the High Commissioner for Human Rights were convinced that it would not be possible to resist this trend anymore and preserve the human rights norms within the earlier framework of thoughts. Therefore, the various UN authorities and bodies, along with developing countries, acknowledged the lack of legitimacy and absence of universality of the international

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1. See: <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm>.

human rights norms. They found the solution in accepting different interpretations and various approaches towards these norms in order to protect the credibility of the existing human rights regime. With the adoption of the Declaration of Human Rights in Islam the Islamic countries resorted to its norms as the main criterion and guiding principle in dealing with human rights matters. For instance, on 30 October 1992 Sirous Naseri, the Ambassador of the Islamic Republic of Iran in Geneva, responded to the questions raised by the Human Rights Committee in these words:

"It should be borne in mind that certain Islamic countries - and by no means the least important - had not subscribed to the Universal Declaration. An even larger number had not yet acceded to the Covenant. There were reasons for that. It was easy to reject the argument that the representatives of Islamic countries had participated in the discussions that had led to the elaboration of the Universal Declaration and the Covenant, for it was clear that at that time the Islamic countries had not carried the political weight they deserved - which was still true at the present time. The Islamic countries had therefore elaborated an Islamic Declaration of Human Rights"<sup>1</sup>.

Nevertheless, a number of Islamic countries were not yet satisfied with this achievement and were prepared to take the next step in order to exert changes the Universal Declaration as the most fundamental instrument of the International Human Rights Law. As a matter of fact, these states were of the opinion that notwithstanding the fact that it was

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1. Official Records of the Human Rights Committee 1992-93, ICCPR/12 (International Covenant on Civil and Political Rights), New York/Geneva: UN (ICCPR), 1996, Vol. 1, 46<sup>th</sup> session, 1196<sup>th</sup> meeting, paras. 55-59.



possible to present different interpretations of the human rights norm and view the International Human Rights Law differently, it was imperative to reconsider the fundamental instrument of this Law in order to strengthen its legitimacy. Thus, on the occasion of the golden jubilee celebrations marking the 50<sup>th</sup> anniversary of the Universal Declaration held on 17 March 1998 the former Iranian Foreign Minister, Kamal Kharrazi, demand that the Universal Declaration should be revised<sup>1</sup>.

## ***5. The Transformation Strategy***

A few points should be taken into consideration regarding the Islamic Human Rights schemes before we proceed any further. Like a number of other regions of the world it would be possible for the Muslim world to adopt certain regional arrangements in human rights matters. The contemporary Islamic thought can come up with a new system based on different philosophical and ethical principles in order to produce different results and outcomes. The drafters of Islamic declarations have criticized the Universal Declaration as being a positive law and have stated that unlike the human rights projected in the Declaration of Human Rights in Islam which are rooted in certain clear and real foundations the Universal Declaration is an instrument that lacks philosophical foundations.

It appears that while criticizing the process of the formulation of the International Human Rights Law the authors of Islamic declarations are of the opinion that the Universal Declaration has broken away

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1. UN Summary record E/CN.4/1998/SR.2, para. 9

from the philosophical and theoretical principles of natural rights put forward by the philosophers of the enlightenment era. They argue that as a result, the status of this important instrument has been reduced to the level of a positive law. They conclude that the Universal Declaration adopted by the UN General Assembly has broken away from its foundations and has, therefore, lost its credibility; unlike the Islamic human rights, which are based on real fundamentals. For instance, Muhammad Al-Ghazali states:

"Human rights in Islam are not like an award conferred by a king or a ruler or like a statement issued by a regional power or an international organization. Rather, originating from a divine source they are binding and obligatory and no one is permitted to abolish, violate or ignore them"<sup>1</sup>.

Rashid al-Ghannouchi believes there is no substantial controversy over human rights concepts or terms, the controversy is over their philosophical foundations and the objectives of these two regimes. The Universal Declaration lacks any specific theoretical principles as a result of which human rights are deprived of the required depth and impetus to make them binding. Contrary to this human rights in Islam are rooted in basic Islamic beliefs according to which man is bestowed with divine dignity and is the vicegerent of God in the universe and this entitles him to certain rights that cannot be overlooked by anyone<sup>2</sup>.

Islam stressed on human rights more than 1400 years ago and pointed out to man's dignity irrespective of his/her gender, religion or nationality.<sup>3</sup> What is considered as rights by the Western intellectuals

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1. Al-Ghazali, Nuhammad, *Huquq al-Insan Bayn Ta'alim al-Islam wa I'lan al-Umam al-Muttahidah*, Third Reprint, Dar al-Kutub al-Islamiyah, Cairo, 1984, p. 23.

2. Al- Ghannouchi, Rashid, *Al-Hurriyat al-'Ammah fi al-Dawlah al-Islamiyah*, Beirut, 1996, p. 230.

3. Al-Qarzawi, Yusuf, *The Rights of Non-Muslim Minorities*, Al-Tawhid (Arabic), No. 84, p. 13.

is considered as obligation in Islam and it goes without saying that the latter is more reliable and dependable. This is because one can forego his own rights but it is incumbent upon him to abide by what has been made obligatory on him by God Almighty and adhere to them steadfastly<sup>1</sup>. Muhammad Amarah, too, is of the opinion that as far as man and his sanctity are concerned Islam has gone beyond the concept of "rights" and has made the observance of these rights obligatory."<sup>2</sup>

As may be observed these writers consider the obligatory foundation of human rights an advantage; and it is this viewpoint that has been manifested in the Declaration of Human Rights in Islam, which has incorporated concepts like responsibility, spirituality, family and *Shri'ah* in human rights. Besides, this Declaration has tried to liberate the human rights from such burdens as individuality and Western liberalism and yet more importantly it has avoided making any reference to the Universal Declaration. Article 1 (a) of the Declaration of Human Rights in Islam speaks about man's dignity and responsibility towards others in the following words:

"All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations"<sup>3</sup>.

This Declaration refers to the Islamic *Shari'ah* as the only

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1. Al-Qarzawi, Yusuf, The Speeches of al-Sheikh Al-Qarzawi, Vol. 2, Cairo, 1998, p. 186.

2 Amarah Muhammad, Islam and Human Rights, Cairo-Beirut, 1989, pp. 13-17.

3. See the Cairo Declaration of Human Rights in Islam.

acceptable source to the Islamic countries in the area of human rights and, therefore, pronounces the absolute superiority of the Declaration over the Universal Declaration.

The preamble of the Declaration of Human Rights in Islam states that this Declaration will serve as a guide for member states of the Organization of the Islamic Conference in the area of human rights and that the OIC reaffirms the civilizing and historical role of the Islamic Ummah which Allah made as the best community and which has given humanity a universal and well-balanced civilization.

Many reformist thinkers and Western writers have criticized the instruments of Human Rights in Islam and have claimed that it falls short of international human rights standards. Elizabeth Mayer is a Western legal scholar who has extensively criticized the approach of the Islamic Human Rights in her works. She is of the view that in order to understand the contemporary problems of human rights within the Islamic framework it is essential to review the development of international human rights concepts, since the principles used in the International Law had come from the West and are rooted in the ancient Greek thoughts. She reiterates that the development of the intellectual foundations of human rights was given an impetus by the renaissance in Europe and by the associated growth of rationalist and humanistic thoughts, which led to an important turning point in Western intellectual history. According to her this was the abandonment of the pre modern doctrine of man's duties towards God and the adoption of the view that the rights of man should be central to political theory. Therefore, the idea of human rights is based on these intellectual foundations and it is impossible to separate it from these philosophical and theoretical foundations<sup>1</sup>.

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1. Mayer, Ann Elizabeth; *Islam and Human Rights, Tradition and Politics*, op. cit. p. 43.

Mayer further elaborates that the 18<sup>th</sup> Century British and French thinkers were the first people to put forward the idea of human rights in the Western world and had a profound impact on the Virginia Declaration of Rights, United States Declaration of Independence (1776 C.E.) and the United States Bill of Rights (1791 C.E.). According to her what was common to these thinkers and philosophers is that they contributed to the production of rights doctrine and the idea that the rights of individual should be of utmost importance in the political system. She also goes on to state that reflecting the fear that state's intrusion would harm individual's rights, constitutionalist statements of rights frequently formulated them as negative rights so as to protect individual's rights vis-à-vis the government interference<sup>1</sup>. She is of the opinion that those Islamist authors who took the trouble of establishing specific human rights schemes were reluctant to acknowledge that adhering to Islamic criteria entails departing from the norms of the International Law<sup>2</sup>.

These were the points that prompted Adama Dieng, the Muslim Secretary General of the International Commission of Jurists, to point out and enumerate the dangers of the CDHRI in February 1992 and emphasize that this Declaration would be a threat to the cultural consensus that form the fundamentals of instruments of international human rights.<sup>3</sup> Bassam Tibi, too, believes that there is no difference between the Muslims who reject human rights on the ground that it is a Western product and those who are the proponents of Islamic human rights, since both groups have not acknowledged the very essence of

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1. Ibid.

2. Ibid., p. 198.

3. Press Release (Geneva, 5 December 1991), E.CN.4/1992/SR.20, paras. 17-20.

human rights.<sup>1</sup> He continues that both parties are not favorable to the substantiate human rights. The Hostility of the political Islam vis-à-vis human rights indicates the politicization of the addressed cultural fragmentation of humanity<sup>2</sup>.

Referring to the 1981 Islamic Declaration of Human Rights, Muhammad Arkoun states that this Declaration has been for most part copied from the Declaration of the Rights of Man and of the Citizen of France. He further states that the preamble and the general framework of this Declaration reflect upon the present conditions of the Muslim world and its dispute with the West. He believes that the formulators of this Declaration interpret the Qur'an and apply it in a manner that would suit the needs of the Islamic societies in formulating Islamic Human Rights. He goes on to state that keeping in view the present challenging conditions of the contemporary world, it would not be hard to understand such inclinations towards proving one's identity<sup>3</sup>.

He further elaborates that the writers of this Declaration claim that human rights, in its present and prevalent sense and in a perfect form, had existed in Islam for hundreds of years. One thousand four hundred years ago Islam came out with a unique and comprehensive law about human rights and these rights are rooted in the firm belief that only God Almighty can bestow any kind of rights on human beings. As a result, they impose a large number of modern concepts and values on the Qur'an and instead of getting closer to religious

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1. Tibi, Bassam: *Islamic Law/Shari'ah, Human Rights, Universal Morality and International Relations*, Vol. 16, *Human Rights Quarterly*, 1994, p. 287.

2. *Ibid.*, p. 289.

3. Arkoun, Muhammad, *Al-Fikr al-Islami*, Beirut, 1998, pp. 309-335.

aspect of man's life, which constitutes the very essence of the Qur'anic mission, they come closer to the 1789 Declaration of the Rights of Man and of the Citizen of France and the 1948 Universal Declaration<sup>1</sup>.

Arkoun also emphasizes that it is very unlikely that the formulators of the Islamic declarations on human rights were unaware of the existing differences between the principles and concepts included in them with those of the Universal Declaration. It appears that the countries that initially rejected the human rights and thought of replacing them with Islamic models eventually conceded to the human rights, but they changed their strategy and decided to transform its concepts<sup>2</sup>.

## ***6. The Complementary Strategy***

The truth of the matter is that at the time when cultural and political differences among the UN member countries are on the increase, to speak of revising and amending the Universal Declaration would be a radical and impractical move. It needs to be acknowledged that the Muslim world is not yet prepared to participate in such an important issue. Therefore, it would be more appropriate for the Islamic countries to formulate and implement certain regional arrangements in order to gain the required experience for participating in the formulation of the new international human rights regime at the right time.

Realizing this important point, many Muslim States have come up with a another strategy vis-à-vis the replacement strategy. According to this strategy the Islamic declarations on human rights are complementary

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1. Ibid., p. 315.

2. Ibid., pp. 319-320.

to the International Human Rights Law. Based on this new strategy certain steps have been taken so as to make the earlier approaches of the Islamic countries towards the Universal Declaration be regarded as their understanding and interpretation of these of human rights. This important objective came to be materialized in December 1997 when despite the apparent differences between the Islamic Declaration and the Universal Declaration the Office of the High Commissioner for Human Rights published the Islamic Declaration and recognized its credibility in the second volume of a compilation of instruments on human rights. The first volume comprises international instruments on human rights while the second volume contains regional instruments<sup>1</sup>.

During the golden jubilee celebrations marking the 50<sup>th</sup> anniversary of the Universal Declaration the Islamic countries tried to find certain ways and means of granting legitimacy to this Declaration on the basis of the Islamic teachings. The UN bodies took this move to be a positive one that would pave the path for the recognition of the Universal Declaration in the Muslim world and that the Islamic countries would eventually stop opposing the International Human Rights Law. Therefore, in the pursuit of this objective a seminar was held under the auspices of the Office of the High Commissioner for Human Rights in Geneva in November 1998 under the title of "Enriching the Universality of Human Rights: Islamic Perspectives on the Universal Declaration of Human Rights.

In her letter of invitation sent to all members of the UN treaty bodies, working groups of the sub-commission and special rapporteurs

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1. Human Rights: A Compilation of International Instruments, Vol. II: Regional Instruments, New York/Geneva: UN, Office of the High Commissioner for Human Rights, December 1997, pp. 478-484.



Mary Robinson, the High Commissioner for Human Rights, on 29 October 1998, beside the objectives of this important event, had stated that this seminar was being held during the 50<sup>th</sup> anniversary of the Universal Declaration and as part of the process of providing Islamic perspectives on the Universal Declaration.

Following this event the Final Communiqué of the Third Extraordinary Session of the Islamic Summit Conference that was held in Mecca on 7-8 December 2005 asked for certain regional arrangements to be made by the member states. It also called for the formation of an independent and permanent body for the promotion of human rights in the member countries. In the words of the Communiqué:

"The Conference called for considering the possibility of establishing an independent permanent body to promote human rights in member states as well as the possibility in preparing an Islamic Charter on Human Rights in accordance with the provisions of the Cairo Declaration on Human Rights in Islam and interact with the United Nations and other relevant international bodies"<sup>1</sup>.

A profound study of these historical evidences makes one arrive at the conclusion that like the other members of the United Nations the Islamic countries, too, can have their own unique interpretation of international instruments on human rights and announce their understanding and interpretation in the form of reservations on human rights conventions as done by the other regions of the world. Therefore, based on this perspective the Islamic Declaration could be regarded as a complementary instrument to the Universal Declaration. It was for

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1. "Meeting the Challenges of the 21th Century, Solidarity in Action" 5-6 Dhul Qa'adah 1426 H (7-8 December 2005).

reason that at a function held on the occasion of the Human Rights Day in December 2007 Pakistan's representative to the Human Rights Council announced that the 1990 Cairo Declaration on Human Rights in Islam that has been approved by all the 56 member states of the OIC is not regarded as an alternative to the Universal Declaration and is rather a complementary declaration. Speaking on behalf of the OIC in this important event and referring to the participation of some Islamic countries in drafting the Universal Declaration and Human Rights Covenants he reiterated that the Islamic Declaration was merely a complementary instrument that has been prepared on the basis of cultural and religious characteristics of the Islamic countries<sup>1</sup>.

There is no denying the fact that the existing contradiction between some concepts in these two declarations has prompted some scholars to conclude that the Islamic countries have approved of the Islamic Declaration of Human Rights as an alternative to the Universal Declaration. Commenting on this issue Ann Elizabeth Mayer states:

"In a casual reading, the English version of the UIDHR seems to be closely modeled after the UHDR but upon closer examination many of the similarities turn out to be misleading. In addition, the English version diverges from the Arabic version at many points"<sup>2</sup>.

If we were to adopt a philosophical approach to the fundamentals of the Universal and Islamic Declarations we are bound to admit that there exist some fundamental contradictions between the two. It would not be inappropriate to admit that the philosophical principles and the theoretical

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1. See Primacy of the Universal Declaration of Human Rights, available at <http://www.iheu.org>.

2. Mayer, Ann Elizabeth; *Islam and Human Rights, Tradition and Politics*, Boulder, Colorado, Westview Press, Printer Publisher, London, 1991, p. 27.

foundations of the Universal Declaration do not conform to Islam's approach towards human rights. We also know that the Islamic Declaration of Human Rights has not made any reference to the Universal Declaration and has categorically stated in articles 24 and 25 that all the rights and freedoms stipulated in this Declaration are subject to the Islamic *Shari'ah* and the Islamic *Shari'ah* is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

It is, however, quite evident that this approach will not be of any help in granting legitimacy to the International Human Rights Law and will confront the world with further disputes. It would, thus, be imperative to look at the entire issue in a pragmatic way in order to come up with a practical solution. Based on a realistic approach it would be possible to acknowledge that until the formation of new and real universal human rights norms it would be appropriate that each region in the world, including the Muslim world, have their own regional arrangements. Because as revealed by this research paper these disputes are rooted in the fact that the Western countries and the formulators of the Human Rights Law took advantage of their majority in the UN General Assembly and did not, thus, bother to have the consensus of other members of the United Nations. Furthermore, being sure of getting it approved by a majority vote they tried to impose their understanding of human rights concepts on the other countries rather than making any efforts to win the agreement of its critics and opponents. Thus, not only did the socialist countries fail to incorporate any changes and amendments in the text of the Universal Declaration they were instead ridiculed by the representatives of the Western Countries<sup>1</sup>.

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1. Official Records of the General Assembly, Plenary Meeting, 183<sup>rd</sup> (Part I), 10 December 1948, pp. 923-933.

In addition, the formalist approach in the UN bodies has served as an obstacle to the universality of the International Human Rights Law. It would be wise and logical to view these two realities, i.e. the existing contradictions between the philosophical foundations of the two declarations as well as the domineering approach of the West towards the traditional discourse on human rights in order to pave the path for a positive intercultural dialogue and the formulation of an ultimate international human rights law.

On the other hand, it should also be taken into consideration that the European countries were the first ones to go for regional arrangements and weakened the International Human Rights Law by making a distinction between civil and political rights and other types of human rights norms. It should not be forgotten that it was on the insistence of the European countries and the US delegation that the human rights mentioned in the Universal Declaration were broken into two separate covenants. If we are to accept the European, American and African interpretations and understandings of human rights there is no reason why an Islamic understanding and interpretation should come as a surprise; and be regarded as an alternative to the International Human Rights Law. The steps taken by the Islamic countries, in respect of human rights and within the OIC framework have entered a new phase. In his message on December 2007 on the occasion of the Human Rights Day Ekmeleddin Ihsanoglu, the OIC Secretary General, announced the formation of regional arrangements of the Islamic countries to be launched on the occasion of the 60<sup>th</sup> anniversary of the Universal Declaration. A part of his message reads as under:

"Respect of Human Rights through effective protection and promotion of equality, civil liberties and social justice is a milestone in the OIC Ten Year Plan of Action. In this regard, the OIC General Secretariat is considering the establishment of independent permanent body to promote Human Rights in the Member States in accordance with the provisions of the OIC Cairo Declaration on Human Rights in Islam and to elaborate an OIC Charter on Human Rights"<sup>1</sup>.

## ***7. Conclusion:***

Keeping in view the above discussions it may be concluded that even though the Muslim states had not identified their independent and different cultural identity at the time of the formation of the International Human Rights Law and were not in a position to adopt an independent and consolidated strategy for themselves because of the political atmosphere that dominated the international community, the same does not apply to them at a time when the International Human Rights Law is expected to be developed further and undergo changes. Since the adoption of the Universal Declaration of Human Rights many Islamic countries have succeeded in liberating themselves from the colonial yoke of the European countries and have, thus, joined the other Islamic countries in identifying their independent identity and adopting a specific strategy towards the discourse on human rights.

As a result, the Islamic countries that could not have any specific strategy during the formation and development of the human rights

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1. Message of the Secretary General on the occasion of the Human Rights day, Organization of the Islamic Conference on 10 December 2007, available at: [http://www.oic-oci.org/topic\\_detail.asp?t\\_id=708](http://www.oic-oci.org/topic_detail.asp?t_id=708).

regime and were left perplexed between accepting or rejecting it, have now put their earlier policy behind and some of them have even gone to the extent of adopting a replacement strategy by adopting Islamic human rights schemes. A group of OIC members that rejected the international human rights norms adopted the Islamic Declaration of Human Rights with the intention of replacing the Universal Declaration. A number of other Islamic states that had adopted a conservative policy and become signatory to international human rights treaties came up with certain reservations, which are considered incompatible with the object and purpose of human rights conventions. The aim of this group was to transform human rights norms through adopting a ratify and ruin strategy.

The outcome of these two ambitious strategies had significant implications with the Organization of the Islamic Conference. On the one hand it brought the Muslim states in clear confrontation with the International Human Rights Law and on the other hand it jeopardized the universality of the human rights regime. Preparing for the golden jubilee celebrations of the Universal Declaration of Human Rights the UN High Commissioner for Human Rights took note of these challenges and, thus, announced that her office was prepared to interact with the Muslim World. The eventual outcome of these confrontations and interactions was the adoption of a complementary strategy on the part of the Islamic states.