Is Islamic Shaira Law Incompatible With International Laws of Human Rights for Freedom of Thought, Conscience, Religion and Expression?

Randall A. Terry

May 23, 2010

John Locke is commonly acclaimed as the political philosopher who insisted that the rights of individuals are immovably anchored in a "state of nature," and that this "law of nature" or "natural law" safeguards their rights. He stated:

> The state of nature has a law of nature to govern it, which obliges everyone, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure. (*Concerning the True Original Extent and End of Civil Government*, 26)

He further asserted that the rights of individuals come *before government* in the natural order of things, and therefore on certain points supersede the prerogatives or rights of government. (*International Law, Cases and Commentary*, 368) He rhetorically asks why man in such a state of nature – the "absolute Lord of his own person and possessions" – would surrender any portion of his freedom to a political society; the answer is lies in mankind's common interest: "…the mutual preservation of their Lives, Liberties and Estates…." (*European Human Rights Law: Text and Materials*, 5) His argument that natural law precedes and undergirds positive law is central to many scholastic and legal definitions of human rights.

In *Leviathan*, Thomas Hobbes also discusses this need for mutual protection - especially in time of war or aggression from criminals - in perhaps what is his most famous prose:

> Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same is consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them…and the life of man, solitary, poor, nasty, brutish, and short. (*Book 1*, *Of Man*, XIII)

The question before us philosophically and legally is this: In this state of agreed upon mutual security, does the individual give up his right to decide his thoughts, his conscience, his religion, and what he expresses on those matters? Hobbes answers in the affirmative, stating that the civil sovereign must decide what is religious truth in every "man's own breast":

> Who that one chief pastor is, according to the law of nature, has been already shown; namely, that is the civil sovereign... so none but the sovereign [King]…can take notice what is or what is not the word of God… and therefore also, they then have the place of Abraham in a Commonwealth are the only interpreters of what God has spoken. (*Of a Christian Commonwealth*, 199)

By contrast, Locke strenuously asserted that the natural law right to freedom of thought, conscience and religion could not be abridged, nor surrendered to earthly sovereigns, *even by majority consent*:

> …the care of souls is not committed to the civil magistrate, anymore than to other men. It is not committed onto him, I say, by God; because it appears not that God has ever given any such authority to one man over another as to compel anyone to his religion. Nor can any such power be vested in the magistrate by the consent of the people, because no man can so far be in the care of his own salvation as blindly to leave to the choice of any other, whether Prince or subject, too prescribe to him what faith or worship he shall embrace. (*A Letter Concerning Toleration*, 3)

Space does not permit the exploration as to *why* Locke is *right*, and Hobbes is *wrong*; suffice to say: A tree is known by its fruit. The freedom of thought, conscience, religion, and expression are so intertwined with the human rights of political and economic freedom, that a nation cannot be shown that has the latter without the former. If one is a slave in his creeds, he invariably is a slave in his deeds, his property, his politics, and his life. The government that (as Hobbes said) "puts men in awe" also puts them in chains.

Fortunately, the axiom that man has certain unalienable rights has prevailed in word and deed in the leading powers of the earth. However, human rights did not enjoy a place in international law: "Throughout the 19th and early 20th centuries, the prevalent conception of state sovereignty proved a stumbling block to efforts to impose international legal obligations on states to protect individuals." (*International Law, Cases and Commentary*, 369 – 370)

This was the logical fruit of the Treaty of Westphalia:

> ...one of the cornerstones of the Westphalian system of international relations was the principal that sovereign states should be free of outside interference in regulating their own citizens in their own territories. (*International Law, Cases and Commentary*, 367)

It took the horror of WWII to drive human rights to the foreground in international law: "In light of the atrocities of Nazi Germany, it would have been reprehensible to leave victims without legal rights and perpetrators without legal obligations. The lesson of Nuremberg is that there are individual international rights and obligations that transcend state boundaries." (*International Law, Cases and Commentary*, 366) Thus it was “the Nuremberg trial, which helped inaugurate modern international human rights law in the 1940s.” (*International Law, Cases and Commentary*, 368)

Both the jurists and prosecutors of the war crimes acknowledged that the source of their authority in law was not novel or new, but was rooted in part in the non-consensual norms of natural law: “The Nuremberg War Crimes Tribunal used the principles of natural law in the prosecution of Nazi war criminals.” (Norwich Lecture, Week 3) This “revival” of natural law in the international law schema was foundational to the subsequent delineation of Human Rights in this field:

> …one cannot but admit that many of the ideas and principles of modern international law are rooted in the notion of natural law and the relevance of ethical standards in the legal order, e.g. human rights, slavery, racial discrimination, torture, genocide, and so on…its influence is undeniable…In the case of human rights, international custom and natural law (peremptory norms) are intertwined. (*Norwich Lecture*, Week 3)

The rush towards defining and defending human rights brought a significant number of treaties and norms; The UN Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Genocide Convention, the Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights, American Declaration on the Rights and Duties of Man, and the Helsinki Accords, to name a few. (*International Law, Cases and Commentary*, 378)

The point of this thesis is to examine the human rights of thought, conscience, religion, and expression.

The Universal Declaration of Human Rights states:

> Article 18.
>
> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
>
> Article 19.
>
> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The International Covenant on Civil and Political Rights states:

> Article 18
>
> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Sadly, the ICCPR waters down this liberty with these qualifying words:

> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

As we shall see, this "loophole" is perhaps being used to undermine or deny the very rights in question in Islamic countries functioning under Sharia Law.

Concerning the right of expression, the ICCPR echoes the Universal Declaration, but again inserts qualifiers:

> Article 19
>
> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Before addressing the violations of these rights in certain nations, we must consider what degree of legal weight the human right to freedom of thought, conscience, religion, and expression actually bear in international law. Are these notions merely idealistic goals? Are they a part of treaty law, that requires the consent of a contracting party? Are they customary law? Are they peremptory norms that hold the place of *jus cogens*? Are they non-consensual, superseding the municipal laws of nations that ignore, deny, or abuse these rights? "The *concept* of universal human rights, or rights that belong to all individuals everywhere simply because they are human, is widely accepted today

by states and citizens alike. Yet the *practice* of universal rights continues to be subject to uneven government application and contentious scholarly debate." (*International Law Today*, 101) The answer is difficult and the debate fierce, in part because scholars do not agree on the definitions of terms regarding human rights, *jus cogens, erga omnes*, and international law. (*Law and Contemporary Problems,* 66, 67)

That said, the core debate is twofold; first, which human rights are paramount, non-consensual, and permitting no derogation. Second, what are the responsibilities of nations or the international community to individuals or minorities that are suffering human rights violations in sovereign nations at the hand or with the complicity of their governments?

The above difficulties notwithstanding, the first question has substantial unanimity on basic human rights: these are prohibitions against genocide, crimes against humanity, slavery, and torture; crimes against "…human rights [that] have resulted in barbarous acts which have outraged the conscience of mankind…" (*Universal Declaration of Human Rights*, preamble) Mark Janis and John Noyes argue: "The Universal declaration... is generally said to enumerate human rights norms at the level of international law." (*International Law, Cases and Commentary*, 377) The *Filartiga* case states: "Indeed, several commentators have concluded that the Universal declaration has become, *in toto*, a part of binding, customary international law." (*International Law, Cases and Commentary*, 22)

It is critical for this thesis to emphasize that the Universal declaration includes and enumerates the rights of thought, conscience, religion, and expression – which some

of the above jurists and scholars contend are "human rights norms" – at the level of international law. The U.N. Human Rights Committee contends that the ICCPR contains "peremptory norms" of human rights including "freedom of thought, conscience and religion," and the right of people to "profess their own religion." (*UN Human Rights Committee, General Comment* 24, 8.) There can be no reservations from these norms.

The second question is far more problematic. What are the rights and duties of civilized nations to protect human rights, or to stop or punish human rights violations that occur under the color of municipal law in another sovereign nation? And which of those rights require some level of action? I.e., wholesale genocide is not happening in Saudi Arabia, but the people there are denied the rights of Article 25 in the ICCPR – the right to elect their own government; genocide is far graver than a lack of democracy. A comprehensive answer is beyond the scope of this paper; but this writer concurs with the view delineated in *The Nuremburg Judgment*: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced…" (*International Law, Cases and Commentary*, 376) The spirit of the law expressed at Nuremburg is vital to the protection of human rights:

> The Nuremberg judgment has come to stand not only for the moral and political imperative that individuals be made legally responsible for violations of international law but also for the proposition that individual human rights ought to be protected at the level of international law. (*International Law, Cases and Commentary*, 377)

If this principle is to grow, it will of necessity undermine and replace certain norms of the Westphalian system. Janis and Noyes outline the shift of legal priority:

> Are individual rights at international law a challenge to the sovereignty of states?... Individual rights and international law, of course, permeates state sovereignty, permitting

> outsiders to evaluate how well a state does protecting the rights of individuals, citizens as well as aliens, in its own territory." (*International Law, Cases and Commentary*, 367)

Distinguished lawyer and international law expert, Mahmoud Cherif Bassiouni, juxtaposes the rising tension between the norm of sovereignty and non-intervention with the rising right or duty to interfere (in any number of ways) in the internal affairs of a sovereign nation when that nation becomes destructive of human rights:

> Obviously, a jus cogens norm rises to that level when the principle it embodies has been universally accepted, through consistent practice accompanied by the necessary opinio juris, by most states…Thus, the principle of territorial sovereignty has risen to the level of a "peremptory norm" because all states have consented to the right of states to exercise exclusive territorial jurisdiction. Erga omnes, as stated above, however, is a consequence of a given international crime having risen to the level of jus cogens. (*Law and Contemporary Problems,* 73)

Acknowledging that unanswered questions exist, and that philosophical and legal tensions are rising with the emergence of international human rights law – which John Humphrey called the most "radical development in the whole history of International Law…" (*International Law, Cases and Commentary*, 377), the movement is toward more, not less, human rights in international law. And a the key element of human rights regarding the freedom of thought, conscience, religion, and expression promises to be one of the moral, political, and legal battlefields on which human rights are defended and extended. Let us now turn to the tension between human rights norms as defined above, and Islamic Sharia Law.

Islamic Sharia Law

What is Islamic Sharia law? It is a comprehensive code of ethics that regulates all aspects of life; both private and public, for the sake and advancement of Islam, the Muslim community, and the whole world. Muslim scholar, Dr. Fathi Osman tells us:

> The Islamic "Sharia" is merely a part of the religion which supports the moral values through law…"*Sharia*" is not restricted to penal law whether its origin is divine or human, since it covers branches of law, public - as constitutional, administrative and or criminal, or private as civil, commercial, and labor, in addition to socio-economic laws which may stand between the two categories and probably may combine the characteristics of both…Islam is a religion whose essence is the faith and the moral values, while "Sharia" is merely a legal support for the moral behavior of the individual and the society...the goal of the message of Islam and "*Sharia*" is to secure the human rights and dignity, and to ensure justice in all its dimensions: individual and collective, political and administrative and socio-economic…(*Facts about the Islamic Law* "Sharia" 1-3)

Sharia law is inseparable from the Islamic religion and its socio/political agenda: "It is obligatory on every Muslim to respect and follow the Islamic Shariah in every aspect of their life. It is also obligatory on Muslim nations to implement the Islamic Shariah, and make it the source of all law and legislation." (*What is Sharia Law*? Al-Islami)

Sharia law is the source for criminal and civil law in a Muslim Society. Given this sweeping dictate, we must ask: What is the source of Sharia Law?

S.A. Rahman, former head of the Pakistani Supreme Court, explains that Sharia law is the aggregate composition of four key elements of Islam: 1) The Koran, i.e., the Word of God according to Islam; 2) the *Sunnah* and *Hadith* – i.e., the "Traditions of the Prophet Mohammed" from Mohammed's extra-Koranic example and words; 3) the *Ijma*, i.e., the consensus of [ancient] Islamic scholars; 4) *Qiyas*, i.e. analogical deduction by Islamic jurists (*Punishment of Apostasy in Islam*, Page 120).

Those four elements – the Koran, Mohammed's example and words (outside the Koran), the consensus of ancient scholars, and deduction from modern jurists – together are the fountain of Islamic Sharia law, with the first two being the most important. (*What is Sharia law*? Al-Islami)

Islamic Sharia Law Today

Lest we be tempted to think that the demand that Sharia law be the foundation of civil law is an unobserved legal relic of medieval times, let us examine the constitutions of Egypt, Pakistan, and Saudi Arabia. These examples are the norm – not the exception – to modern Islamic nations.

The *Constitution of the Arab Republic of Egypt* opens thus:

> Article 2
>
> Islam is the religion of the state and Arabic its official language.
> Principles of Islamic law (Shari'a) are the principal source of legislation.

The Constitution of the Islamic Republic of Pakistan boldly puts its commitment to the Sunnah -- the tradition of Mohammed's deeds and sayings, which is foundational to Islamic Sharia – as well as the Sharia itself, at the core of its legal system:

> **Preamble**
>
> Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah…
>
> 203C The Federal Shariat Court.
> (1) There shall be constituted for the purposes of this Chapter a court to be called the Federal Shariat Court.
>
> 203D Powers, Jurisdiction and Functions of the Court.
> (1) The Court may, [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.
> (2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:
>
> PART IX
> Islamic Provisions
>
> 227. Provisions relating to the Holy Qur'an and Sunnah.
> (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.

The *Saudi Arabia Constitution* contains even more explicit requirements regarding the role of Sharia law in civil and penal law. Special notice should be given to laws and rights related to religion and expression:

> **Article 1**
> The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution…
>
> **Article 8 [Government Principles]**
> Government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation, and equality in accordance with the Islamic Shari'ah.
>
> **Article 23 [Islam]**
> The state protects Islam; it implements its Shari'ah; it orders people to do right and shun evil; it fulfills the duty regarding God's call.
>
> **Article 26 [Human Rights]**
> The state protects human rights in accordance with the Islamic Shari'ah.
>
> **Article 39 [Expression]**
> Information, publication, and all other media shall employ courteous language and the state's regulations, and they shall contribute to the education of the nation and the bolstering of its unity. All acts that foster sedition or division or harm the state's security and its public relations or detract from man's dignity and rights shall be prohibited. The statutes shall define all that.
>
> **Article 48**
> The courts will apply the rules of the Islamic Shari'ah in the cases that are brought before them, in accordance with what is indicated in the Book and the Sunnah, and statutes decreed by the Ruler which do not contradict the Book or the Sunnah.

Freedom of Thought, Conscience, Religion, and Expression Under Sharia Law

There are four ancient Islamic judicial schools of thought building a consensus for the Shari'a: The Hanafites, the Malikites, the Hanbalites, and the Shafi´ites. (*Freedom of Religion, Apostasy and Islam*, 51-52) A key element with Sharia legal theory is that Allah would not allow his people and their leaders to reach a consensus in which there was unanimity unless it was true; i.e., if all four schools of Sharia scholars agree on something, then it is considered Islamic dogma. (*What is Sharia Law*? Al-Islami)

The question before us is: *Is Islamic Shaira Law incompatible with international laws of human rights for freedom of thought, conscience, religion and expression*? Does a Muslim have the "freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching…" (*Universal Declaration*, Article 18) Can a non-Muslim freely practice his religion in a nation whose legal structure is self-consciously based on Sharia law?

Let us first look at the crime of *apostasy* under Sharia law; i.e., when a Muslim leaves Islam, and embraces another religion.

The penalty for a male exercising this basic human right is death. "In pre-modern Islamic law, there is general agreement among the jurists that the punishment for apostasy is death (*qatl*), and that the implementation of this penalty is obligatory on Muslims. This is largely based on the hadith [the words of Mohammed], 'whoever changes his religion, kill him.'" (*Freedom of Religion, Apostasy and Islam*, 52) His conversion is considered a crime against God, as well as treason against Him and the Muslim community.

Following are judgments from two of the four ancient Islamic Jurists:

> The Hanafites: If he needs time to reconsider, it is desirable that the judge allow him a three-day extension, during which he is to remain in custody. If he accepts Islam thereafter, it is good; if not, he is to be killed, for Allah says to "kill those who believe in many gods" (Sura al-Tawba 9:5), without fixing a deadline. The Prophet also said, "Kill him who changes his religion," without mentioning a delay, because the apostate is surely a hostile unbeliever.
>
> The Malikites: If he repents after three days, he is to be released; but if he does not, he is to be killed on the third day, at sunset. His corpse is to be neither washed nor embalmed. He is to be buried neither in the cemeteries of the Muslims nor of the unbelievers (kuffar), for he is not one of them, having once been a Muslim. In fact, his body is to be thrown upon the ground as a public example. ('Abdurrahmani'l-Djaziri's Kitabul'l-fiqh 'ala'l-madhahibi'l-'arba'a Vol. 5, 422-440)

Clearly this is in total opposition to International Law regarding human rights.

In fairness to three of the Islamic authors being quoted – S.A. Rahman, Hassan Saeed, and Abdullah Saeed – while they are giving a historically and judicially accurate rendition of Sharia law and the penalty for apostasy, they are attempting to mitigate the death penalty by suggesting – for example – that only in the case of a Muslim becoming a hostile combatant who joins forces with foreign infidels in battle against Muslims should he be killed. (*Punishment of Apostasy in Islam*, 113) However, they admit that they are out of the mainstream of Orthodox Muslim legal theorists; it is a strong tide to swim against.

In the case of a woman who leaves Islam for another faith, we see this: "…all jurists believe that both men and women can become apostates. As to punishment, the Hanafis argue that an apostate woman should not be put to death but instead forced to accept Islam. If she refuses, she should be beaten and imprisoned until she returns to Islam or dies." (*Freedom of Religion, Apostasy and Islam,* 52)

One reason modern and moderate Muslim jurists are facing such difficulties is due to the closed system of Islamic thought on certain issues. Once the revered ancient scholars reached a consensus, the matter was final; i.e., if something is true, it is true for all time, and cannot be changed. (*Punishment of Apostasy in Islam*, 113) Another reason is because the historical record is clear and extensive regarding what Mohammed said regarding those who professed faith in his mission, and then apostatized:

> Allah's Apostle said, "The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His Apostle, cannot be shed except in three cases: In Qisas for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims." (*Translation of Sahih Bukhari,* Book 83: Volume 9, Book 83, Number 17)

To try to change or subvert Islamic orthodoxy in key points of law or theology (such as the execution of apostates) is to question and quarrel with the founding messenger himself, or even God himself. This is also considered a crime, and has resulted in moderate Muslim scholars being threatened or killed throughout Europe and the Middle East. (*Who murdered Prof. Ali-Mohammadi?* PBS)

Current Abuses of Human Rights under Sharia Law

Violations of the human rights in discussion in these three nations – as well as most other Islamic nations – are well documented, widespread, and systemic. The United States Commission on International Religious Freedom (USCIRF) places all three nations in the top eight of its CPCs – Countries of Particular Concern. The USCIRF is "the only independent government body in the world tasked with focusing solely on religious freedom." Crimes they document against individuals include arrest, detention, disappearance, murder, and the state crime of "impunity;" the "…state failure to prevent and punish religious freedom violations…" They document how "…the absence of accountability breeds lawlessness and the breakdown of justice. This is impunity and it encourages individuals to attack and even kill those who dissent from or fail to embrace others' religious views." (*United States Commission on International Religious Freedom 2010 Annual Report*)

The basis for ignoring human rights abuses, or using government authority to curtail human rights, is done in the name of Sharia law; Nobel laureate Shirin Ebadi – a Muslim woman – bemoans this practice and its reasoning:

> …international human rights laws are breached... under the pretext of cultural relativity… Some Muslims, under the pretext that democracy and human rights are not compatible with Islamic teachings and the traditional structure of Islamic societies, have justified despotic governments, and continue to do so. (*International Law Today*, 108)

Islamic ideology demands that the safety of the *Ummah* (i.e., the community as a whole) from corruption in religion and morals; this "requires" that those in authority suppress individuals' free practice of religion.

The logic is simple: inherent in a Muslim's "apostasy," - or for example, a Catholic's or Coptic's assertion that Jesus Christ is the Son of God, the Savoir of the World - is the contention that Mohammed is not the "true prophet." Such as declaration is the crime of blasphemy under Sharia law, for which non-Muslims are often arrested and brutalized in Saudi Arabia, Pakistan and Egypt. But it is this very expression of Christian belief and conscience that must be protected as a fundamental human right. As the European Court of Human Rights ruled in *The Sunday Times Case*: "... freedom of expression...is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population." (*International Law, Cases and Commentary*, 398)

Oscar Schachter comments on the conflict between "individual and collective rights," and the sham it produces when the collective prevails:

> …we find a strong tendency in official declarations to accept both collective and individual rights… it is not entirely unfair to note that the advocacy of collective rights may carry with it an implied subordination of individual rights… in short, collective rights may turn human rights upside down in that the collectivity is recognized as having claims on the individual, and the individual as owing obligations to the state or other collective entity. Those made uneasy by this reversal of concepts considered dubious and even dangerous to accord the accolade of human rights to the collective rights that impose duties on individuals and may restrict their individual rights. (*International Law in Theory and Practice* 333)

On one hand, the Saudi Constitution claims to protect human rights, albeit "…in accordance with the Islamic Shari'ah." But in practice, it brazenly rejects human rights laws. SAMIRAD, the "Saudi Arabian Market Information Resource," explains Saudi Arabia's position on human rights under Sharia law:

> It is the fundamental assumption of the polity of Saudi Arabia that the Holy Quran is more suitable for Saudi Muslims than any secular constitution. This assumption must be viewed in the context of a nation which is completely Islamic. Hence, no churches, synagogues, temples or shrines of other religions exist. No proselytizing by other faiths is allowed.

This is clearly a violation of human rights norms and International Law, including the UN Charter, to which Saudi Arabia is a signatory. Both Egypt and Pakistan declare they have "freedom of religion;" however, the open contradiction between such declarations and the Sharia law enshrined in their respective constitutions is glaring, with often-bloody results.

Pakistan, upon ratification of the ICCPR, entered the following reservation: "Pakistan, with a view to achieving progressively the full realization of the rights recognized in the present Covenant, shall use all appropriate means to the maximum of its available resources."

Egypt couched the terms of a Declaration in relation to the ICCPR that maintained the supremacy of Sharia law: "...Taking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratifiy it..."

Ann Elizabeth Mayer attacks the false legal logic and practice of these abridgments in human rights in her treatise, *Islam and Human rights: Tradition and Politics*:

> A review of Islamic human rights schemes uncovers a pattern of borrowing substantive rights from international human rights documents while reducing the protections that they actually afford. This is accomplished by restricting the rights so that they can only be enjoyed within the limits of the Sharia…International law does not accept that fundamental human rights may be restricted -- much less permanently curtailed -- by reference to the requirements of any particular religion. International law does not provide any warrant for depriving Muslims of human rights by according primacy to Islamic criteria. (*International Law Today,* 115)

In 1994, the ICCPR Human Rights Committee dealt with reservations regarding the treaty that went against the object and purpose of the ICCPR. In General Comment 24, they addressed freedom of thought, conscience, and religion, maintaining that any derogation in word *or practice* was contrary to the object and purpose of the covenant:

> 8. Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant…Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion…11. The Covenant consists not just of the specified rights, but of important supportive guarantees…Reservations designed to remove these guarantees are thus not acceptable.

Why does this situation persist? Why do international news stories continually emerge of individuals, families, and religious minorities suffering brutal abuses with the tacit approval, or open involvement of these governments? Two reasons will here be proffered.

First, we see a lack of outrage and action because of the lack of significant impact on the domestic populations of nations that can and should "do something." Dr. Ryan Goodman notes:

> Human rights treaties do not involve the kind of reciprocal duties between states that directly affect one another's domestic interests. Admittedly, some states, especially leading military powers, may consider grave human rights violations in other countries a threat to their own security interests, and some states may perceive the promotion of universal human rights standards as a constitutive part of their country's political identity. Still, neither of these interests is as direct, or affects domestic constituencies has immediately, as the reciprocal duties imposed in other multilateral contexts such as trade and arms control. A State may find in other states reservations objectionable, or even violative of a basic understanding of the treaty, but unless the former's own domestic interests are directly implicated, monitoring, scrutinizing, and reacting to other states' reservations are simply not priorities. (*International Law Today*, 56 – 57)

Next, and in this author's opinion, a far more compelling reason that great powers maintain a *hands off policy* – nations who allegedly cherish human rights – is because of the *end game* of intervention in the internal affairs of a sovereign nation. Oscar Schachter brings the point to crystal clarity:

> Some people fear that the "internationalization of human rights is itself a contributory cause of hostility between states and a convenient pretext for *forcible intervention*. We are reminded that powerful states of *justified armed incursions* in the past on grounds of "ls mission civilisatrice" (or as "the White man's burden") and the human rights offers a not entirely dissimilar basis…Human rights, as it has been said, "by definition breeds confrontation raising the issue touches on the very foundation of regime, and its sources and exercise of power, on its links to its citizens or subjects. It is a dangerous issue… (*International Law in Theory and Practice,* note 3, chapter 15, italics added.)

Schachter allows no escape from the logical result of defending and enforcing human rights: *war*.

> Whether or not one is ready to justify such sanctions, it is clear enough that the enforcement of human rights might not be compatible with the maintenance of peace. The antinomy is evident: on the one hand, respect for human rights is a condition conducive to peace; on the other hand, *its implementation may well be a cause of war*. (*International Law in Theory and Practice,* 332, italics added)

The question posed in this thesis is: Is Islamic Shaira Law incompatible with international laws of human rights for freedom of thought, conscience, religion and expression? The answer, beyond doubt for this author, is yes.

The ironic question is this: Could it be that the core of the Westphalian treaty – that nations will not intervene in the sovereign territory of nations to compel individuals in matters of religion – is now being abused by rogue nations that violate basic human rights in matters of religion?

We must also ask: how long will nations which practice Islamic Shaira law use the Westphalian system to violate the norms of international human rights laws, and subject their citizens to systemic fear, abuse, cruelty, slavery, and death?

Works Cited:

Locke, John: *Concerning the True Original Extent and End of Civil Government*, Great Books of the Western, Encyclopedia Britannica, 1952

Janis, Mark; Noyes, John; *International Law, Cases and Commentary*, Thomson/West, St. Paul MN, 2006.

D'Amato, Anthony; Abbissi Jennifer; *International Law Today,* Thomson/West, St. Paul MN, 2006.

Janis, Mark W., Kay, Richard S., Bradley, Anthony W.; *European Human Rights Law: Text and Materials* Oxford University Press, New York, 2008 http://books.google.com/books?id=N_ldEs_rc8oC&pg=PR61&lpg=PR61&dq=john+locke+%22human+rights+not+governments%22+came+first&source=bl&ots=TxoMBNFQ9M&sig=kejxjdgxZebrM9zJKdbzyAc9Hug&hl=en&ei=dhn3S7y5OIKClAf6sLjWCg&sa=X&oi=book_result&ct=result&resnum=1&ved=0CBcQ6AEwAA#v=onepage&q=john%20locke%20%22human%20rights%20not%20governments%22%20came%20first&f=false

The Treaty of Westphalia. October 24, 1648 http://avalon.law.yale.edu/17th_century/westphal.asp

Declaration of Independence, Jefferson, Thomas; 1776. http://www.ushistory.org/declaration/document/index.htm

Leviathan. Hobbes, Thomas. Reprinted in *Great Books Series*, Encyclopedia Brittanica, Inc. Chicago, London. Copyright, 1952

Human Rights Committee, General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994).1 http://www.unhchr.ch/tbs/doc.nsf/0/69c55b086f72957ec12563ed004ecf7a?Opendocument

BASSIOUNI , M. CHERIF; *INTERNATIONAL CRIMES: JUS COGENS AND OBLIGATIO ERGA OMNES*. LAW AND CONTEMPORARY PROBLEMS [Vol. 59: No. 4 Autumn 1996]

Osman, Dr. Fathi, *Facts about the Islamic Law "Sharia"* September 2006 Found at: http://www.usc.edu/schools/college/crcc/private/cmje/issues/Dr.Fathi_Osman_Facts_About_Sharia.pdf

Rahman, S.A., *Punishment of Apostasy in Islam*. The Other Press Sdn Bhd, Malaysia, 2004

What is Islamic Sharia?; Al-Islami. http://www.al-islami.com/islam/shariah.php

Constitution of the Arab Republic of Egypt; http://constitution.sis.gov.eg/en/2.htm

The Constitution of the Islamic Republic of Pakistan; http://www.pakistani.org/pakistan/constitution/

Saudi Arabia Constitution; http://www.servat.unibe.ch/icl/sa00000_.html

Saeed, Abdullah; Saeed, Hassan; *Freedom of Religion, Apostasy and Islam.* Ashgate Publishing Company, Burlington Vermont, 2004

Abdurrahmani'l-Djaziri's Kitabul'l-fiqh 'ala'l-madhahibi'l-'arba'a; cited from http://www.light-of-life.com/eng/ilaw/)

Translation of Sahih Bukhari http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/bukhari/083.sbt.html#009.083.017

SAHIMI, MUHAMMAD; *Who murdered Prof. Ali-Mohammadi?* Tehran Bureau, PBS http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2010/01/who-murdered-prof-ali-mohammadi.html

Schachter, Oscar; *International Law in Theory and Practice* http://books.google.com/books?id=2g7MxyhX5gIC&pg=PA342&dq=human+rights+jus+cogens&ei=5eTyS_WZG4TYyASrqJHODA&cd=1#v=onepage&q=human%20rights%20jus%20cogens&f=false

Saudi Arabian Market Information Resource; http://www.saudinf.com/main/c4.htm

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (USCIRF) 2010 ANNUAL REPORT http://www.uscirf.gov/images/0503uscirf-annualreport.pdf