

Humanitarian Intervention in International and Islamic Law

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Abstract

In this paper, I look into the moral foundation of humanitarian intervention in international law and its Islamic counterpart. My objective is to identify the traits shared by both sets of laws, and to see if the same or similar justification can be used across cultures to reach the same goal. In other words, one goal is to assess the claims that the basis upon which humanitarian intervention is justified has a universal appeal.

Both international and Islamic law justify humanitarian intervention on moral grounds. International law bases its justification upon the human rights discourse. Islamic law provides enough bases for legitimizing humanitarian intervention, and Qur'anic verses, scholarly opinions, and Islamic principles provide a sound background for it. Paramount in this task is the concept of human dignity (*karamah al-insan*). We found no disagreement on this fundamental issue between the Universal Declaration of Human Rights (UDHR) and Islamic law. Human dignity, as understood in international human rights and its Islamic counterpart, thus could form the *jus cogens* of international law, a common human heritage upon which everybody can agree.

Introduction

It has become fashionable to advocate or denounce the use of humanitarian intervention by employing different readings of prominent documents in

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international law. This type of discussion often obscures the main objective toward which humanitarian intervention is geared: protecting the human rights and dignity of those individuals against whom blatant violations of these principles have been committed.

Thus, the main characteristic of reading international law in this way is the absence of any reference to morality. That is to say, if we can turn our heads and forget about the crimes and persecution committed against a certain group of people and use law – any kind of law – to justify our stance, we deny to the law the very foundation of its existence: morality. By reading the preambles to the UN Charter or the Universal Declaration of Human Rights (UDHR), one gets a clear impression of the underlying principles of these internationally accepted documents. I contend that law and morality go hand in hand, and that, in any given time period, law represents a set of rules derived from some universal concept of morality as understood at that particular period. The same applies to international law. As Tesón puts it, “there is no doubt that the principles of international law involved in the debate on humanitarian intervention have a fundamental moral dimension.”¹

Justification for Humanitarian Intervention in International Law

I do not intend to enter into a lengthy and convoluted debate on the legitimacy and mechanisms of humanitarian intervention, problems of sovereignty, self-determination, and related issues, for there is a substantial amount of literature covering such aspects of the issue. What I plan to do, however, is to survey the justifications offered to substantiate humanitarian intervention as a valid norm in international law, and to discuss some potentially contested issues.

Ellery Stowell wrote that humanitarian intervention

[might] be defined as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice.²

This definition implies that a state cannot do whatever it pleases with its citizens, but must conform to some standards of “reason and justice.” Failing to do so would call for humanitarian intervention by other members of international society. This is so, because

it is a basic principle of every human society and the law which governs it that no member may persist in conduct which is considered to violate the universally recognized principles of decency and humanity.³

Two important parts of this statement have to be qualified: What is meant by decency and humanity, as well as the concept of these norms' universality? Stowell refers to the Hague Convention Respecting the Laws and Customs of War on Land, which mentions that "populations and belligerents remain under the protection ... of the principles of international law, as they result ... from the laws of humanity."⁴ The author then proceeds to say that "international law includes certain universally recognized rules of decent conduct in the treatment of human beings, and guarantees to them a minimum of rights."⁵ He cites another author, who stated that "when these 'human' rights are habitually violated, one or more states may intervene in the name of the society of nations ..."⁶ Human rights are put in inverted commas simply because the discourse of human rights, while recognized in principle by many people even before that, is considered to have been given a wide usage after the adoption and proclamation of the United Nations Universal Declaration of Human Rights in 1948.

Stowell then discusses at some length seven circumstances in which humanitarian intervention may be invoked: persecution, oppression, uncivilized warfare, injustice, suppression of the slave trade, humanitarian asylum, and foreign commerce.⁷ While some of these may be narrowly, defined such as the slave trade, others (e.g., persecution, oppression, and injustice) sound too broad and could possibly include a wide range of abominable practices. The above-mentioned issues then represent basic elements of what Stowell means by "decency and humanity." I will not dwell much more on his arguments here, since they are not directly related to our discussion.⁸ The important thing to note is that even in the early twentieth century, some scholars justified humanitarian intervention on the grounds of human rights. These efforts have intensified in contemporary times, particularly due to the increased global awareness of human rights, genocide, ethnic cleansing, and similar issues.

Stanley Hoffmann wrote that intervention on behalf of human rights transcends sovereignty. This could form a very persuasive argument in favor of intervention, for the government draws legitimacy from its citizens.⁹ This argument rests on the assumption that states and governments are created to ensure the protection of human rights.¹⁰ If the state infringes upon their rights, how could it be perceived as a legitimate government by

the international system's other actors? Given such a situation, it could be argued that humanitarian intervention is justified in order to protect human rights, and that this action, in fact, restores legitimacy to the government in question. If understood in this fashion, humanitarian intervention could benefit both the persecuted and the persecutor. After all, did not Yugoslavia return to the international community's fold after humanitarian intervention in Kosovo and the subsequent defeat of Milosevic in the presidential elections during October 2000?¹¹

To return to Hoffmann, he perceives a problem with the promotion of human rights in this manner. Since major powers sometimes justify humanitarian intervention on the basis of human rights to protect their own allies or other interests, the problem lies in power relations.¹² Influenced by the cold war discourse, which was still ongoing at the time of this writing, the essay raises a still-valid objection: Why it is important to develop a mechanism of humanitarian intervention, which would be implemented under the umbrella of an international institution, that enjoys wide acceptance and has a good reputation?

The debate on humanitarian intervention intensified during the 1990s, for various crises (e.g., Somalia, Bosnia-Herzegovina, Rwanda, and especially Kosovo) added fuel to the debate. The strongest point in legitimizing such intervention is still human rights, for those who favor humanitarian intervention used it to justify their actions in the above-mentioned crises. While much of what constitutes the human rights discourse can be debated, and there may be questions as to what rights should be included and whether they are universal or not,¹³ many authors agree that some basic human rights can be recognized and accepted across cultures.¹⁴ Tesón, for one, allows for humanitarian intervention only due to "the violation of basic civil and political rights ..."¹⁵

A leading international law journal, the *American Journal of International Law*, dedicated its October 1999 editorial to the question of Kosovo and humanitarian intervention. While noting that NATO may have acted unilaterally, and therefore technically violated international law and the Security Council's mechanisms because the latter body did not authorize the use of force, all of the authors agree that international law should be updated or amended to allow humanitarian intervention, and that the mechanisms of such intervention have to be clearly delineated.¹⁶ For instance, Falk recognizes the problem of "double condemnation," which he defines as "to regard 'ethnic cleansing' as intolerable ... and to condemn the form and substance of the NATO interventionary response designed to

prevent it.”¹⁷ He contends that international law should be amended to accommodate:

the essential normative challenge for the future: *genocidal behavior cannot be shielded by claims of sovereignty, but neither can these claims be overridden by unauthorized uses of force delivered in an excessive and inappropriate manner.*¹⁸ [italics in original]

According to Falk, the future of international law lies in standing up to these challenges, not in acrobatic textual analyses that stretch the original text in different directions. To limit international law to legalistic analysis and forgo the intentions behind existing treaties, norms, and charters is to consign the vocational fate of international lawyers to “the demeaning roles of ‘apologist’ or ‘utopian.’”¹⁹ Vaclav Havel, the Czech president, summed up the justification for humanitarian intervention on the basis of human rights in a characteristically idealistic fashion:

This is probably the first war that has not been waged in the name of “national interests,” but rather in the name of principles and values. If one can say of any war that it is ethical ... then it is true of this war. [The NATO alliance] is fighting because no decent person can stand by and watch the systematic, state-directed murder of other people. It cannot tolerate such a thing. It cannot fail to provide assistance if it is within its power to do so.²⁰

In sum, one can say that humanitarian intervention has become one of the most prominent issues in international law. The increasing number of scholarly works and public debates at the highest governmental levels is clear evidence of this fact.²¹ The legitimacy issue boils down to the human rights discourse. For example, if there are gross violations of “basic civil and political” rights, there is a *prima facie* case for humanitarian intervention. However, there are some problems associated with this issue.

As indicated earlier, an objection can be raised against humanitarian intervention because it often involves power politics. Major powers can abuse this issue to further their own interests under the pretext of humanitarian intervention. However, this does not invalidate its legitimacy. The international community should answer this challenge and develop a mechanism that would allow it to help people in distress while, at the same time, prevent any abuse of power by the major players. Of course, such a difficult and challenging task is beyond the scope of this paper. Another stumbling block is the claim that human rights are universal, particularly as expressed in the UDHR. I will return to this issue later when discussing the Islamic perspective.

There is yet another potent criticism of humanitarian intervention. Michael Akehurst, while dealing with this issue, cites the nineteenth-century precedent, whereby

European states used force against Latin American states which broke the rules of international law governing the treatment of foreigners, and the excessive means used to enforce those rules discredited the rules themselves in the eyes of Latin American states, which have refused ever since to accept the rules advocated by European states.²²

He goes on to say that many African and Asian countries today refuse to accept the minimum standards for treating foreigners because that would entitle other states to enforce the said standards.²³ This is a major reason why some countries hesitate to adopt legal obligations with regard to human rights. The hypocrisy and double standards that are often practiced by those who seemingly champion human rights cause many countries to turn away from this noble cause. Many underdeveloped nations are attracted by western rhetoric on human rights, only to be repulsed by the major powers' *real politik*-motivated behavior.

Akehurst concludes that a "more effective international machinery for the protection of human rights" is needed,²⁴ and that humanitarian intervention is an inappropriate replacement for such a machinery and "may even delay or discourage its establishment."²⁵ While this argument sounds persuasive, however, a distinction could be made between enforcing and protecting human rights. Enforcement would be deemed arrogant by many countries, particularly given the existing support for cultural or relativist arguments. But I do not think that many people would object to the idea of protecting human rights in cases of blatant violations of basic political and civil rights, ethnic cleansing, or genocide. One cannot help but recall Havel's statement on a zero-tolerance policy for such violations. Therefore, if a distinction is made between a militant promotion of human rights and a genuine concern for and protection thereof, especially if done collectively and under the auspice of widely accepted bodies and norms of international law, this last concern would be largely diminished.

Human Rights in Islamic Law

Universalism vs. Relativism and Cross-cultural Dialogue

This section presents a brief consideration of human rights in Islamic law and the legitimacy of humanitarian intervention therein. Human rights in Islam also will be considered, for many western scholars of Islam perceive

some major differences between the UDHR and Islamic law. Therefore, the question is to what an extent could humanitarian intervention be justified under Islamic law if the latter does not acknowledge some of the fundamental human rights as outlined in the UDHR? In other words, is Islam an obstacle to the adoption of an international human rights discourse, or can it be interpreted in a way that accepts such norms? This section also will assess the claims about the universality of human rights, cultural relativism, and other related issues.

There are two contending paradigms in western thought concerning cultural relativism and universalism. They are aptly described by Daniel Patrick Moynihan, who said: "The central conservative truth is that it is culture, not politics, that determines the success of a society. The central liberal truth is that politics can change a culture and save it from itself."²⁶ Conservative thought is best exemplified by Huntington's thesis on the clash of civilizations, which supports isolationism and non-involvement abroad. Liberal thought is personified in Fukuyama's book *The End of History*, in which he proclaimed liberal democracy to be the final (and perfect) political and social order for humanity. If this is true, as liberals believe, this good news should be shared with other people. Thus, the cornerstone of liberal thought is that the respect for individual human rights, the rule of law, democracy, and market economy should be propagated abroad.

This is where people from other civilizations and cultures begin to feel uneasy about human rights. They feel that adopting human rights would bring about increased westernization, because many of these are defined in western terms. In fact, both perspectives are based upon a claim of superiority, for both conservatives and liberals claim that the social order of liberal democracy and market economy, as practiced in most western countries, is the best one. However, they disagree on how other civilizations should be treated. Conservatives believe such people cannot accept these standards as long as they adhere to their indigenous value systems. On the other hand, liberals, who believe in a person's innate goodness, are convinced that people, if exposed to the values and practices of liberal democracy, human rights, and market economy, would realize their superiority and adopt them.

Some Muslim scholars see certain problems with this. For instance, Louay Safi maintains that two main positions can be distinguished with respect to the universality of human rights: absolute universalism and absolute relativism.²⁷ He states that "[b]oth positions fail to capture the full scope of the intercourse between culture and universal values, and both

have been used to advance self-serving interests.”²⁸ Absolute relativism cannot be sustained, because one can hardly find homogenous societies and authoritarian regimes often use it to shut down any opposition. On the other hand, absolute universalism “is oblivious of the fact that moral values and legal systems are the outcome of the rationalization of a specific charismatic vision or worldview.”²⁹ The danger associated with moral universalism is that it can be turned into a tool for promoting a hegemonic culture or imposing one culture’s morality over another.

One should remember that when the UDHR was adopted in 1948, many countries were still colonized. Thus a real cross-cultural dialogue, which would try to reach a consensus on the universality of human rights, never took place.³⁰ That is why Safi proposes a “true cross-cultural dialogue,” which would be two-sided.³¹ In other words, each involved party would both speak and listen. Based on the Habermasian category of the communicative speech act, Safi proposes a transition from hegemonic discourse to a true cross-cultural dialogue.

However, three preconditions must be met before such a transition can take place: the universalism of human rights must be established objectively, the moral autonomy of the world community’s various national and cultural communities and groups must be recognized and respected, and any cultural group’s self-righteous claim to moral superiority must be rejected.³² Such a cross-cultural dialogue would seek to reduce apprehension and enrich internal debate in a particular culture by “communicating different experiences, and the critical insights of outsiders.”³³

Human Rights in Islam

Muslims are not oblivious of the human rights debate. In fact, it has become one of the more prominent issues among Muslim scholars, who have produced a vast literature on the subject during the last 2 decades. “The very existence of this literature,” says Ann Elizabeth Mayer, “demonstrates that Muslims believe that such comparisons [between Islamic and international human rights] are both timely and legitimate.”³⁴ She notes that Muslim tradition is rich and diverse, and that several Muslim scholars endorse international human rights as being in full agreement with Muslim culture and religion.³⁵

This is a well-taken point. Different schools of Islamic law, as well as the cultural environment in which Muslim legal scholars operated, produced many opinions on a given issue. However, this should not serve to

fulfill apologetic objectives, for the fact that some Muslim scholars say that Islamic law does not clash with universal human rights cannot be taken at face value without returning to and examining the Islamic sources. The goal, then, is not to achieve an agreement between Islamic law and international human rights at any cost, but to develop a methodology grounded in Islamic sources and based upon Muslim culture – one that would produce an authentically Islamic human rights stance. Such a position would serve as a starting point for a cross-cultural dialogue that could produce a fruitful consensus on universally accepted human rights across religious and cultural boundaries.

After this somewhat lengthy discussion on universalism, relativism, and the nature of human rights in Islam, I will now concentrate on human rights in Islamic law. Islam, like Judaism and Christianity, is essentially an ethical system. One reason why God sent His messengers to humanity was to teach people how to live morally, on both the individual and social levels, and how to establish ethical and moral behavior among themselves. According to the Islamic worldview, God honored the sons of Adam (humanity) above most of the Creation,³⁶ meaning that human beings have a special place with relation to God. Based upon 17:70, many Muslim scholars devised the concept of “the dignity of humanity” (*karamah al-insan*) as a cornerstone of the Islamic worldview.

Among other things, the Qur’an states that God elevated and dignified humanity above other creatures, made its members Earth’s vicegerents, taught them “all names,”³⁷ told the angels to prostrate to Adam, created humanity in “the best of molds” (95:4), and subjected the ships, the rivers, the sun, the moon, the night, and the day to humanity.³⁸ Given that Islam firmly upholds human dignity and that the UDHR’s preamble mentions “the inherent dignity ... of all members of the human family”³⁹ as the rationale for proclaiming the UDHR, some Muslim scholars consider this a starting point for a dialogue on the compatibility between the UDHR and human rights in Islam, as well as a common ground upon which the human rights discourse should be developed further.⁴⁰

One very important consequence of human dignity is the concept of equality. This is probably why the UDHR emphasizes that “[a]ll human beings are born free and equal in dignity and rights” at its very beginning.⁴¹ Islam also acknowledges human equality, since all people are created by the same Creator. The text of the Universal Islamic Declaration of Human Rights (UIDHR), adopted by the Islamic Council of Europe on September 19, 1981, states that “all persons are equal before the Law and are entitled

to equal opportunities and protection of the Law.”⁴² The Cairo Declaration of Human Rights in Islam, produced by the member states of the Organization of the Islamic Conference (OIC), stipulates that

All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations.⁴³

However, the UIDHR explains that “law” denotes the Shari‘ah (Islamic law).⁴⁴ Therefore, given that equality is neither unconditional nor absolute according to classical interpretations of the Shari‘ah, it follows that some discrimination could still be practiced, even though the declaration itself formally proclaims the said equality. The same point is noted by Mayer, who, while acknowledging that some sources of Islamic law attest to a fundamentally egalitarian concept of people, also spoke about other sources that “distinguish in a number of areas between the rights of Muslims and non-Muslims, men and women, and free persons and slaves.”⁴⁵ She rightly observes that the Saudi Basic Law, UIDHR, and the Cairo Declaration all fail to mention the equality of rights.⁴⁶ Thus, all three documents could be interpreted in ways that allow discrimination between the three categories mentioned by Mayer.⁴⁷

Here, one also should stress the idea that human rights are not a solely legal argument. As ‘Abdolkarim Soroush, a leading Iranian dissident thinker, correctly emphasizes, a “[d]iscussion of human rights belongs to the domain of philosophical theology [kalam] and philosophy in general ... and it takes place in the extrareligious area of discourse.”⁴⁸ This does not mean, however, that religion cannot contribute to the human rights debate. Soroush opines that since religion puts more emphasis on duties than on rights, it could provide “a valuable addition to the debate ... and a challenge to liberalism’s putative monopoly of this issue.”⁴⁹

Humanitarian Intervention in Islamic Law

According to classical Muslim jurists, the world is divided into two realms or spheres: the abode of Islam (dar al-Islam) and the abode of war (dar al-harb).⁵⁰ The first sphere denotes a territory in which Muslims have established their sovereignty and in which they feel safe and secure. The second sphere refers to territories ruled by non-Muslims and that are hostile to Muslims’ freedom and security.⁵¹ However, this division is purely a product of juristic thinking and is not sanctioned by the Qur’an or the Prophetic tra-

ditions. There are a number of possible reasons why early Muslim jurists perceived the world in this manner. AbuSulayman maintains that the psychological effect of the early Muslim experience had a profound impact upon later Muslim generations. Similar to the early Christians, the first Muslim generations were in the minority and suffered persecution, torture, humiliation, boycott, and other forms of physical and psychological suffering. This cumulative experience caused later generations to see most non-Muslims as persecutors and enemies.⁵²

Classical Muslim jurists also disagreed about the nature of the relations between the two realms. Some said that Muslims should fight non-Islamic states until they are defeated, while others maintained that peace treaties and covenants could be established with non-Muslim territories so that the two entities could live in peace.⁵³ It seems that different jurists made different rulings based upon the surrounding environment as well as on their own interpretations of Islamic sources and Muslim history. Be that as it may, this classical system of thought and practice eventually collapsed due to both internal and external pressures. Muslim lands have gone through long and painful transformations, from being ruled by their co-religionists to being occupied by foreign powers (colonialism). Eventually, they became full-fledged members of the post-Wilsonian international system of nation-states.⁵⁴

The present international system is (formally) based upon the principle of cooperation. Whereas in the past states could legitimately use force to achieve their desired goals, such aggression and threats to peace now are considered antithetical to its *raison d'être*.⁵⁵ The very fact that Muslim nations now operate and cooperate – among themselves and with other members – within the present system tells us that the view of “nonhostility,” which says that Muslim and non-Muslim nations should pursue peace and cooperation with each other, has gained primacy in the Muslim world. This agrees with the Qur’anic injunction to deal kindly and justly with those who neither fight Muslims on account of religion nor drive them from their homes (60:8). The OIC, which consists of nation-states with a Muslim majority, was established on September 25, 1969, and today has 56 member-states, all of which are members of the UN as well.⁵⁶

Based on the above account, and bearing in mind that humanitarian intervention is a hotly debated issue in international law, Muslim nations also should engage in that debate. The fact of the matter is, however, that humanitarian intervention has not stirred, by and large, any interest among Muslim scholars and intellectuals. The reasons why this topic is seldom dis-

cussed in contemporary Islamic literature are manifold. One major reason is that most Muslim countries are ruled by dictatorial, despotic, or authoritarian regimes that oppose any external interference in their domestic matters. Thus, if humanitarian intervention could be justified to protect blatant violations of human rights, these regimes would be at the very top of the list for intervention. Also, as these countries are mainly marginal players in international power politics, meaning that their voice does not count for much, they do not feel any need to debate the issue.

But the issue must be debated, for these countries belong to the UN and therefore must follow the Security Council's decisions and resolutions. If these decisions are seen as illegitimate by many Muslim countries, it could cause a crisis of legitimacy for the UN among one-third of its membership. In addition, by supporting human rights issues based upon their religion and culture, Muslims could prove to the world that these questions really matter. Needless to say, it is difficult to believe that they would accept the legitimacy of humanitarian intervention and cooperate in its implementation if it proved to be incompatible with Islamic teachings.

Humanitarian intervention could be legitimized in Islamic terms in a variety of ways. For example, in the past some Muslim scholars legitimized a Muslim state's interventionary discretion when there was a need to protect its subjects abroad or rescue them from the enemy. International law also recognizes this principle. This is not humanitarian intervention, of course, but it is worth mentioning for it provides an important precedent. When Ibn Taymiyah, a fourteenth-century Muslim reformist thinker, sent a letter to Mongol invaders requesting the release of all Jewish and Christian prisoners who were subjects⁵⁷ of the Muslim state, as well as all Muslim prisoners, he emphasized the state's protective obligations to religio-cultural groups. As a matter of fact, he vowed that Muslims would liberate as many Christian prisoners from the Mongols as they could.⁵⁸ This was a clear case where a Muslim jurist found it appropriate for a Muslim state to protect its subjects through intervention, even though it does not really amount to humanitarian intervention *per se*.

There is a Qur'anic verse that could be interpreted in a way that legitimizes humanitarian intervention in a broader sense. Its background is as follows. Prophet Muhammad started his mission in Makkah (his hometown). After 13 years of preaching Islam and countless instances of suffering endured by him and his followers, he migrated to Madinah to establish a Muslim community. Even though he and many of his followers migrated, a considerable number of Muslims stayed in Makkah and continued to live

under physical threat and psychological abuse. In modern terminology, they were denied the right of religious freedom. After a while, a verse allowing the Muslims to fight on behalf of persecuted people was revealed:

And why should you not fight in the cause of God and of those who, being weak, are ill-treated (and oppressed)? – Men, women, and children, whose cry is: “Our Lord! Rescue us from this town whose people are oppressors, and raise for us from You one who will protect, and raise for us from You one who will help!” (4:75)

This verse makes it very clear that Muslims should not only fight to rescue the oppressed, but should hasten to do so. The rhetorical question at this verse’s beginning needs an emphatic answer of commitment to help oppressed people. Even though this verse was revealed with regard to the Muslims in Makkah, it is interesting to note its lack of reference to the oppressed people’s religious adherence. In other words, the verse has a universal application irrespective of the religion professed and practiced by those who are enduring injustice and oppression. This is based on a principle in Islamic legal methodology: A verse has universal application even though it was revealed on a specific occasion (*al-‘ibrah bi ‘umum al-lafz la bi khusus al-sabab*).⁵⁹

Sayyid Qutb, a well-known twentieth-century Qur’anic commentator, stressed that being exposed to hardships on account of religious belief is the worst type of suffering, far more dreadful than any other kind of physical or psychological abuse, since it touches the innermost core of human existence.⁶⁰ He also mentioned that, based upon a feeling of human compassion in general, one should not sit idle while people are enduring ongoing abuse.⁶¹ Abdullah Yusuf Ali, a prominent translator of the Qur’an’s meaning into English, explained that the cause of God mentioned in this verse is “the cause of justice, the cause of the oppressed.”⁶² It is important to note here that the Prophet had established an Islamic state in Madinah before this verse was revealed. Although Makkah was beyond the Islamic state’s borders, this did not annul the Muslims’ obligation to fight on behalf of the weak and oppressed.⁶³ One also should recall the issue of human dignity as an important part of the Islamic conception of humanity. This dignity would not be worth very much if there were no mechanisms designed to protect and establish it.

Another very important Islamic concept should perhaps be mentioned in this respect: commanding good and forbidding evil (*al-amr bi al-ma‘ruf wa al-nahy ‘an al-munkar*). The concept is derived from a well-known prophetic saying that whosoever sees an evil deed should correct it with his

or her hand, and if this is not possible then with his or her tongue (by condemning it), and even if this is not possible then by at least despising it in his or her heart.⁶⁴ Expounding upon the Qur'anic verses related to this important Islamic teaching and reflecting upon the above-mentioned tradition's meaning, Muddathir Abdel-Rahim says:

At the core of the politically significant teachings of the Qur'an is the notion that man – if he is to fulfil himself on earth and hope for salvation in heaven – must do all that is in his power in order to promote good and combat evil: not only within his own heart and mind as an individual, but also in society with all its facets and, indeed, throughout the world at large.⁶⁵

Putting this into the context of human dignity and fighting for the oppressed, it becomes clear that Muslims cannot be inactive if there is a widespread abuse of human rights, a condition that tarnishes the dignity that God intended for humanity, regardless of where such violations occur: in their homes, societies, countries, or anywhere else in the world.

Conclusion

Both modern international and Islamic law justify humanitarian intervention on moral grounds. International law bases its justification upon the human rights discourse, argues that some fundamental principles of decency and humanity have to be upheld, and claim that no member of an international system has a right to violate these principles at will. Some scholars point to the need for humanitarian intervention when “basic civil and political rights” are being dishonored. Several crises during the 1990s pushed the issue of humanitarian intervention into the spotlight.

Protecting human rights is usually cited as the rationale for humanitarian intervention. One should recall Havel's speech, quoted above, and his resolute words that any manifest abuse of human rights cannot be tolerated. What needs to be contemplated is how to make humanitarian intervention a legitimate tool in international politics, and yet prevent its abuse. Some scholars also emphasize that sovereignty should not be a shield behind which human rights abusers can hide.

Similarly, Islamic law provides enough bases for legitimizing humanitarian intervention on similar grounds. While there is some disagreement between the UDHR and classical juristic understandings of human rights in Islam (e.g., discrimination between men and women, Muslims and non-Muslims, and free men and slaves), these differences are not relevant to

humanitarian intervention because they have no bearing on that issue. In fact, several Qur'anic verses, juristic opinions, and Islamic principles provide a sound background for making the case for humanitarian intervention in Islamic law. Paramount in this task is the notion of human dignity (karamah al-insan), and we found no disagreement on this fundamental issue between the UDHR and Islamic law.

In the words of Stowell, "universally recognized principles of decency and humanity" have, in my opinion, the same meaning in international as well as in Islamic law. Given this, mutual understanding and cooperation should be important principles of international relations and international law, and the dialogue between different cultures and civilizations should be a tool for creating a common platform for action. Human dignity, as understood in international human rights and its Islamic counterpart, could form a *jus cogens* of international law, a common human heritage upon which everyone can agree.

Notes

1. Fernando R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Dobbs Ferry, NY: Transnational Publishers, 1988), 6.
2. Ellery C. Stowell, *Intervention in International Law* (Washington, DC: John Byrne & Co., 1921), 53.
3. *Ibid.*, 51-52.
4. *Ibid.*, 52, n. 8.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*, 63-277.
8. The issue of human rights' universality will be discussed in some detail in the article's second part.
9. Stanley Hoffmann, "The Problem of Intervention," in *Intervention in World Politics*, ed. Hedley Bull (Oxford: Clarendon Press, 1984), 26.
10. Tesón, *Humanitarian Intervention*, 111-14.
11. To what an extent the Kosovo intervention contributed to Milosevic's fall is, of course, debatable. However, it is difficult to conceive that it had no impact at all.
12. Hoffmann, "The Problem of Intervention," 27. The same argument was repeated in idem, "Sovereignty and the Ethics of Intervention," in *The Ethics and Politics of Humanitarian Intervention*, ed. Stanley Hoffmann (Notre Dame: University of Notre Dame Press, 1996): 19-20.
13. Oliver Ramsbotham and Tom Woodhouse, eds., *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Oxford, UK and Cambridge, MA: Polity Press, 1996), 22-29.

14. Ibid., 29; Tesón, *Humanitarian Intervention*, 115-19; Stowell, *Intervention in International Law*, 51-52.
15. Tesón, *Humanitarian Intervention*, 117.
16. Louis Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" *American Journal of International Law* [henceforth *AJIL*] 93, no. 4 (Oct. 1999): 824-28; Ruth Wedgwood, "NATO's Campaign in Yugoslavia," *AJIL* 93, no. 4 (Oct. 1999): 828-34; Jonathan I. Charney, "Anticipatory Humanitarian Intervention in Kosovo," *AJIL* 93, no. 4 (Oct. 1999): 834-41; Richard A. Falk, "Kosovo, World Order, and the Future of International Law," *AJIL* 93, no. 4 (Oct., 1999): 847-57.
17. Falk, "Kosovo," 848.
18. Ibid.
19. Ibid., 852-53.
20. Quoted in *ibid.*, 848.
21. See, for instance, "Humanitarian Intervention: A Review of Theory and Practice," *Hearing before the Select Committee on Hunger, House of Representatives, One Hundred Second Congress, Second Session, Hearing Held in Washington, DC, September 25, 1992* (Washington, DC: U.S. Government Printing Office, 1993).
22. Michael Akehurst, "Humanitarian Intervention," in *Intervention in World Politics*, ed. Hedley Bull, 111.
23. Ibid.
24. Ibid., 111-12.
25. Ibid., 112.
26. Cited in Lawrence F. Harrison and Samuel P. Huntington, eds., *Culture Matters: How Values Shape Human Progress* (New York: Basic Books, 2000), xiv.
27. Louay M. Safi, "Human Rights and Cultural Reform in Contemporary Muslim Society: From Hegemonic Discourse to Cross-Cultural Dialogue," 10. Online at: www.iiu.edu.my/deed/articles/human2.pdf.
28. Ibid.
29. Ibid.
30. One could argue here that these countries adopted and ratified many norms, documents, treaties, and conventions related to human rights after acquiring independence, hence agreeing (although *post-factum*) with the said mechanisms of international law. However, we should be aware of the dynamics of independence. Any newly independent country would rush to become a member of internationally recognized bodies, such as the UN, and in so doing commit itself to a number of international treaties and covenants in order to claim its domestic and international legitimacy, without giving due consideration to what that particular membership or treaty entails. Therefore, we cannot claim that the newly independent colonies or postcommunist countries of the Eastern Bloc consciously and in reality accepted these norms and treaties simply by signing them.

31. Ibid., 12-13.
32. Ibid., 14.
33. Ibid.
34. Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, 3d ed. (Boulder, CO: Westview Press, 1999), 9.
35. Ibid.
36. See, for instance, 17:70. All translations are taken from Abdullah Yusuf Ali, trans., *The Holy Qur'an: Translation and Commentary*, 2d ed. (Indianapolis: American Trust Publications, 1977).
37. Allusion here is made to the Qur'anic verse that God taught Adam all names (the nature of all things) and that even the angels do not possess this special knowledge. See 2:31.
38. Dhiyab 'Ayyush, "Karamah al-Insan fi al-Islam," in *Huquq al-Insan fi al-Islam*, ed. Ghassan 'Abdallah (Jerusalem: Center for Applied Research in Education, 1996): 31-35. See also C. G. Weeramantry, "Islam and Human Rights," in *Human Rights in Islamic Law*, ed. Tahir Mahmood (New Delhi: Genuine Publications, 1993), 15-16, where this former judge of the International Court of Justice in the Hague discusses the issue of individual dignity in Islam.
39. The Universal Declaration of Human Rights, Preamble. Online at: www.un.org/Overview/rights.html.
40. Louay M. Safi, "Toward an Islamic Tradition of Human Rights," *American Journal of Islamic Social Sciences* 18, no. 1 (winter 2001): 21.
41. UDHR, Article 1.
42. Universal Islamic Declaration of Human Rights (UIDHR). Adopted by the Islamic Council of Europe, Article III. Reproduced in Mahmood, ed., *Human Rights in Islamic Law*, 161-74.
43. The Cairo Declaration of Human Rights, Article 1, reproduced in Mayer, *Islam and Human Rights*, Appendix 13, 203-8.
44. UIDHR, Explanatory Notes, I (b), 174.
45. Mayer, *Islam and Human Rights*, 83.
46. Ibid., 85-86.
47. I mention these issues here, for even though they are directly related to the topic of humanitarian intervention and do not affect it, even if accepted under the classical interpretation, they nevertheless indicate some problems in Islamic legal thought and point to possible directions in which the human right discourse in Islam will develop. For an attempt to reinterpret Islamic sources in a way that would allow for equal rights for the three mentioned categories see, among others, Safi, "Toward an Islamic Tradition of Human Rights," 24-38.
48. *Reason, Freedom & Democracy in Islam: Essential Writings of 'Abdolkarim Soroush*, translated, edited, and with a critical introduction by Mahmoud Sadri and Ahmad Sadri (Oxford: Oxford University Press, 2000), 128.

49. Ibid., 130.
50. Majid Khadduri, "Translator's Introduction," in *The Islamic Law of Nations: Shaybani's Siyar*, trans. Majid Khadduri (Baltimore, MD: The John Hopkins Press, 1966), 11. Some scholars spoke about a third realm: the abode of covenant/peace treaty (dar a1-sulh). In this abode, the Muslim state and the non-Muslim political entity have reached an agreement that results in a peaceful coexistence. See *ibid.*
51. 'AbdulHamid AbuSulayman, *Toward an Islamic Theory of International Relations: New Directions for Methodology and Thought*, 2d rev. ed. (Herndon, VA: The International Institute of Islamic Thought, 1993), 19-20. He also discusses what he calls a "certain amount of confusion" created by Khadduri with respect to these two concepts. *Ibid.*, 20-24.
52. *Ibid.*, 39-44.
53. *Ibid.*, 24-26. See also Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: The John Hopkins Press, 1955), 144-46. Baderin discusses these two views, namely, as he puts it, the "hostility" view and the "nonhostility" view. Mashood A. Baderin, "The Evolution of Islamic Law of Nations and the Modern International Order: Universal Peace through Mutuality and Cooperation," *American Journal Islamic Social Sciences* 17, no. 2 (spring 200): 57-80, especially 65-70.
54. Interestingly, some Muslim scholars still operate within the traditional paradigm even though there is no unified, unitary Islamic state that exemplifies the classical "abode of Islam." See, for instance, Al-Sayyid Muhammad 'Ali al-Shahrastani, "Huquq al-Insan wa al-'Alaqat al-Dawliyah fi Daw' al-Shari'ah al-Islamiyah" (*Human Rights and International Relations in the Light of Islamic Law*) in *Huquq al-Insan fi al-Islam bayn al-Khususiyah wa al-'Alamiyah* (Morocco: Mu'assasah Al Bayt and ISESCO, 1997), 363-411, especially 395-98. What is flattering is the author's formulation that "Islam," not Islamic law, divides the world into the mentioned spheres. Equating Islamic law as interpreted by classical scholars with Islam is a hallmark of traditionalist thinking.
55. Charter of the United Nations, Article 1. Online at: www.un.org/aboutun/charter/index.html.
56. OIC website. Online at :www.oic-un.org/about/over.htm and www.oic-un.org/about/members.htm.
57. I use *subjects* instead of *citizens* because the latter is a modern concept.
58. Quoted in Ahmet Davutoglu, *Alternative Paradigms: The Impact of Islamic and Western Weltanschauungs on Political Theory* (Lanham, MA: University Press of America, 1994), 160-61, note 11.
59. For more on this important principle, see Abu Hamid al-Ghazali, Al-Mustasfa min 'Ilm al-Usul (Beirut: Dar Ihya' al-Turath al-'Arabi, 1418/1997), part II, 36-38.
60. Sayyid Qutb, *Fi Zilal al-Qur'an*, 6 vols., 11th ed. (Cairo: Dar al-Shuruq, 1985), 2:708.

61. Ibid.
62. Abdullah Yusuf Ali, *The Holy Qur'an: Translation and Commentary*, 202, note 593.
63. I am, of course, aware that the idea of territoriality is a hallmark of the post-Westphalian order. However, I present this fact as a would-be answer to possible objections.
64. This prophetic saying has been transmitted, among other sources, in al-Nawawi's famous compilation of 40 hadith, tradition no. 34. See its extensive commentary in Ibn Rajab al-Hanbal, *Jami' al-'Ulum wa al-Hikam*, 2d ed., ed. Yusuf al-Biga'i (Beirut: al-Maktabah al-'Asriyah, 1416/1996), 346-52.
65. Muddathir Abdel-Rahim, "The Roots of Revolution in the Qur'an," *Dirasat Ifriqiyah* 3 (Rajab 1407/April 1987): 10.