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**“Human Rights in Iran: A Challenge for the 21st Century”
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There are political regimes where Human Rights are an issue. The Islamic Republic of Iran is one of those regimes. Human Rights are one of the last barriers to Iran’s normalisation and the future of the country will depend on the way it solves the matter. Among other issues such as security and economy, it will be one of the main challenges Iran will encounter before it could say it successfully entered the 21st century.¹

The main Human Rights challenge Iran faces is to know how the country could solve the issue of “universality” of Human Rights. There are several Human Rights principles, one of them being the principle of universality: Human Rights apply to everyone everywhere. The jurisdiction’s scope of Human Rights is the entire world.² There is no “choix à la carte” among fundamental rights.

This principle appeared with the Universal Declaration of Human Rights that aimed at giving a globalized dimension to Human Rights, including all the nations and all the cultures. The goal in 1948 was to gather everybody around shared values after a bloody war, values that would transcend the differences whether political, economical, social or cultural. It was a message of peace and a

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¹ Hourcade Bernard, *Vingt-cinq ans Après la Révolution Islamique: Le réveil de l’Iran*, Le Monde Diplomatique, (Paris), février 2004.

² Rivero Jean, *Les Libertés Publiques*, Editions PUF (Paris), 1984, T1, pp 109.

security for the future to have a set of laws that everybody would agree on. Nowadays this principle is discussed and criticized. Some states offer a more regional or cultural reading of the UN documents laying down universal Human Rights. Those countries have a different approach, a cultural relativist approach:³ According to this theory, Human Rights should be interpreted in the light of culture, history, religion and other factors. Iran is one of the countries actively advocating such an approach. The Iranian ambassador to the United Nations declared in 1984:

The new political order was [...] in full accordance and harmony with the deepest moral and religious convictions of the people and therefore most representative of the traditional, cultural, moral and religious beliefs of Iranian society. It recognized no authority [...] apart from Islamic law [...] 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 of Human Rights, which represented secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran; his country would therefore not hesitate to violate its provisions.⁴

There have been many changes in Iran since the eighties and the cultural relativist movement, though it is the official Iranian policy, does not make the unanimity. There is a trend gathering Reformists, young politicians and the civil society that wish to take up the Human Rights challenge and have a full enforcement of fundamental values. Leaving the internal political struggle apart, how could this segment of the society and the government integrate Human Rights into Iranian law? When Islamic governments attempt to face the challenge of integrating universal Human Rights as laid down by the United Nations, they encounter many obstacles. In a globalized world where Human Rights are considered as universal values shared by all nations, how could an Islamic state such as Iran answer the issue of reconciliation between Human Rights and Islam? How could it address the modern trend of secularism and universality of Human Rights without losing its cultural and religious heritage? What could be the

³ The main cultural relativism movement's leaders are Cuba, Iran, China and the "Asian set of values" countries.

⁴ Said Rajaii Khorasani, Iranian ambassador to the United Nations, United Nations General Assembly, Thirty-ninth Sessions, Third Committee, 65th meeting, , New York, 7december 1984, A/C.3/39/SR.65.

solutions to avoid a reaction to globalization, such as cultural relativism? The main issue is to know how Iran could answer the modern Human Rights' call for universality and globalization without losing its soul.

In the first part of the paper, I will present the challenges Iran meet when it comes to Human rights and the principle of universality. In the second part, I will examine the theories established by main intellectuals such as A. An Naim and President M. Khatami in order to answer the Human Rights challenge. Eventually in the third part, I will present the solution Iran might be about to find take up the challenge of universal Human Rights and keep its identity at the same time.

I. What are the difficulties that arise with the enforcement of universal Human Rights in Iran?

A. Islamic Human Rights or Universal Human Rights?

The first challenge deals with the type of Human Rights that are pursued: international Human Rights as defined in international texts or Islamic Human Rights? There are on the one hand the texts laid down by the United Nations; there is on the other hand the Islamic interpretation of Human Rights according to which rights are granted by God, along with duties.

1- Islamic Human Rights: cultural relativism

After the 1979 revolution, the legal system was Iranized and Islamized. The same was done with Human Rights. At the time of the revolution and even before, Ayatollah R. Khomeyni refused to speak about the *Universal* Declaration of Human Rights and soon invoked an Islamic version of fundamental rights.⁵ For example, he declared in 1978: "all the pains we have endured, and we are still suffering from, and the ones that we will soon meet have their roots in the leaders

⁵ Ayotallah Khomeyni, *Islam and Revolution: writings and declaration of Imam Khomeyni*, translated and annotated by Hamid Algar, Berkeley, Mizan press, 1981.

of the countries who signed the Declaration of Human Rights [...] [Human Rights is] the masses' opium.⁶”

According to culturalists, Human Rights are a law created by men; consequently and according to Islamic standards, it is not perfect. There is an opposition between the Law based on God's words, a superior say, perfect and infallible and the laws created by men, imperfect creatures. The 1981 Universal Islamic Declaration on Human Rights opposes in the foreword divine rights and men's laws, the opposition between the Law and laws:⁷

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.⁸

The aim of the Iranian government is to protect the national and the Islamic identities from any cultural or religious Western invasion. The values of the Islamic Republic of Iran are said to be different from the values carried by universal Human Rights, denounced as being a Judeo-Christian philosophy. In 1993, during the Vienna Conference and the 1990 Cairo Declaration's presentation, Iran, Iraq and Saudi Arabia insisted on the necessity of reviewing universal standards.⁹ When the Islamic Conference met in Tehran in 1997, Iranian officials seized the opportunity to remind the world the necessity to change the 1948 Declaration.¹⁰

6 Ayatollah Khomeyni, Abstracts from the February 19, 1978 speech, , « In commemoration of the first martyrs of the revolution », in *Islam and Revolution: writings and declaration of Imam Khomeyni*, translated and annotated by Hamid Algar, Editions Mizar Press, Contemporary Islamic Thought, Persian Series, 1981, pp 213-215.

⁷ Iran is a party to the 1981 Universal Islamic Declaration on Human Rights.

⁸ Universal Islamic Declaration of Human Rights, September 1981, (available at <http://www.alhewar.com/ISLAMDECL.html>)

⁹ In June 1993, There was a world conference on Human Rights held in Vienna, Austria. Among other issues, the matter of cultural relativism was approached. It was said that Human Rights were universal and that no cultural relativist interpretation could or should be considered. At the end of the conference the representatives of 171 countries adopted a program of action that can be find at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)
The aim of the conference and of the Plan of Action is to strengthen Human Rights around the world. The Cairo Declaration on Human Rights and Islam was adopted by the states of the Organization of the Islamic Conference and is a typical cultural relativist declaration.

¹⁰ The Organization of the Islamic Conference met in Tehran in April 1997. During this eighth conference, a declaration was drafted, the Tehran Declaration. This Declaration is also an example of a cultural relativist approach.

Iran does not wish to put itself aside the world community but tries to send a message.

There is of course a problem of legitimacy on both sides: How could the States members of the United Nations grant legitimacy to a regional Human Rights text or an interpretation that relies on a religious credo? How could Muslim countries acknowledge the legitimacy of the UN Human Rights texts if they only consider themselves linked by Gods' words? How could we build a bridge between those two conceptions of rights?

A.E Mayer says we can learn a great deal about the universality challenge to Islamic countries with the example of Iran: "Perhaps the most vital lessons are about the consequences of attempting a so-called cultural revolution to purge a nation of alien influences and in the process rejecting "Western" human rights, replacing these by standards supposedly derived from authentic/indigenous cultural models".¹¹

2- The real issue: Iranian law caught between tradition and modernity

Whether one sympathizes or rejects cultural relativism leads nowhere. We have to look at the root of the problem, before even speaking about the conciliation between the Iranian and Islamic identity and universal Human Rights: the Iranian legal system. Iranian laws are caught between tradition and modernity.

When the Islamic Republic of Iran was established, Shi'i Islamic law became one of the legal sources. It is a legal corpus that has not evolved much and has to be enforced in a modern society. There is an inherent paradox as the Iranian society evolves fast, especially since the election of Muhamad Khatami in 1997, while the legal corpus is quite rigid. As a result, Iranian laws end up being torn apart between the laws as written, reflecting tradition, and the laws as applied, reflecting modernity. A good example concerns women's rights: women are now granted divorce. It is the fruit of a long social and legal evolution. At the time of

¹¹ Mayer Ann Elizabeth, *The Universality of Human Rights: Lessons from the Islamic Republic of Iran*, Social Research, Summer 2000, pages

the Shah, there were some attempts to modernize that area of private law. Under the Islamic Republic of Iran, a 1984 law granted the permission to a woman to ask for divorce if such a thing was mentioned in the wedding contract, if the husband agreed and if 12 conditions were fulfilled. Later, in June 2000, the Majles adopted a law establishing 9 conditions for the spouse to prove a deficiency in the union. Proving one of the 9 conditions was enough.¹² Eventually, under the women's and social pressure, the situation evolved. Women now can not only ask for divorce but obtain it at the husband's expenses.

However, Iranian laws on custody of the children and dowry have not evolved similarly, despite the efforts of the former reformist Majles. Indeed Article 1169 of the civil code gives the custody of the girls after 7 and the boy after 2 to the father. The mother loses her custody right if she remarries. As women have to remarry most of the times because they are put aside by the society or unable to work, they ultimately lose the custody of their children. An example of the power of the society is the changes that are taking place now with regard to custody: In 1998, the then conservative Majles had to amend the law after a sad story: a little girl was placed with his father who remarried. Both spouses were violent and hit the infant. The mother complained but the authorities paid no attention to her as she had lost the custody. Then the child died. The feminine press and civil society pressurized the government so much that the female MPs proposed an amendment so that the custody would not be given automatically to the father but the facts of the case would be studied carefully. This doesn't mean that women have won the children's custody but that children's interests are eventually taken into account by courts. Since December 2003, Iranian women can keep their sons until the age of seven.

So there is on the one hand the fact that divorce is accepted because women fought for it and on the other hand some parts of the divorce process are still engraved in Islamic law. Consequently one of the obstacles to the enforcement of universal Human Rights in Iran is not only cultural relativism but its root, the inherent paradox to Iranian law, product of the Islamic republic: on the one hand a law that is based on Islamic law and on the other hand a constrained society

¹² Kian-Thiébaud Azadeh, *Les Femmes Iraniennes entre Islam, Etat et Famille*, Editions Maisonneuve & Larose, Paris, 2002, p. 125.

engendered by the republic that wishes for more freedom and pressurizes the legal system to gain them.

3- Universality of Human Rights as a threat

Universality and globalization have always been considered as a threat by Islamists: it carries the risk of blurring the Iranian culture and the Islamic heritage. According to A.E Mayer, the idea behind cultural relativism is the maintenance of the regime: “The pseudo-traditional scheme of placing the country under the rule of the leading Islamic jurist was advertised as the way to guarantee adherence to Islamic law. This, in turn, was identified with upholding Iran's own values and culture.¹³”

Does that mean that in the name of the preservation of culture and religion, Islamic exceptionalism should prevail over international Human Rights? How could a world divided by cultural interpretations of Human Rights effectively enforce fundamental freedoms? What we are talking about is more than a mere clash of civilizations. It would be a clash of civilizations if the Iranian and the Islamic systems were rejecting Human Rights as non-existent, as some Iranian clerics do. However the majority of the clerics, the civil society and the population do not believe Human Rights and identity do exclude each other. As M.Khatami said, the two identities, the Iranian and the universal ones, should find a way to dialogue. The survival of two systems is at stake. This debate is essential as the very nature and impact of Human Rights relies on the principle of universality.

One of the explanations of why universality is rejected by clerics in Iran is given by Professor A. An Naim: religion is excluded from the Human Rights world. He thinks the Human Rights discourse will have its whole impact only if it includes religion and respects it: he explains that there is interdependence between religion and Human Rights. For universality of Human Rights to be widely accepted, the Human Rights discourse should integrate religion:

¹³ Mayer Ann Elizabeth, *The Universality of Human Rights: Lessons from the Islamic Republic of Iran*, Social Research, Summer 2000, pages

The apparent avoidance of religious perspectives in the language of the UDHR can diminish the moral force of the purported universality of human rights. But the obvious reason for this avoidance is the exclusive nature of religious traditions. Since religion divides rather than unite human beings, the argument goes, it is better to avoid it altogether in order to find common ground for the protection of human rights among all religious believers and non-believers alike[...] The more one is a "true believer" the less likely will he/she accept non-believers as moral equals. Conversely, the more religious perspectives are excluded from human rights discourse, the less likely are believers to accept the universality of human rights.¹⁴

But he doesn't advocate in favor of religion as a stiff material to be integrated into the Human Rights discourse. He speaks of a religion that has been going through internal transformation. The transformation should be done as to render religion more tolerant.

B. The challenges of secularism and democracy

The Islamic Republic of Iran has to reconcile a law based on religion with secular Human Rights. This principle has been established since the century of Enlightenment: Human beings have rights because they are human beings and those rights come from their very nature and not from God. International Human Rights standards are separated from religious concerns. Does this mean that Human Rights can only be enforced in a secular environment?

A part of the Iranian civil society thinks secularism might be the answer and that reforms could only take place in a regime that dissociates religion from politics:

Secularism and democracy are like two sides of a brain. In order to have a fully functional body, both sides of the brain with their specific responsibilities are needed in order to achieve the desired being. Therefore, those who comically advocate baseless concepts such as the Islamic Democracy can never deliver the true freedom our people are fighting for when divine rules and restrictions would oversee every aspects of their daily life.¹⁵

¹⁴ An Naim Abdullahi, *The Synergy and Inter-dependence of Human Rights, Religion and Secularism*, Forum for inter-cultural philosophy (3), 2001, 1-43, (available at <http://them.polylog.org/3/faa-en.htm>)

¹⁵ Bahrami Ardavan, *Secularism and Iran*, Persian Journal, July 6, 2004, (available at http://www.iranian.ws/iran_news/publish/article_2845.shtml)

Conservatives are worried about this secular trend in the society. The episode of Taheri resignation demonstrates it: On July 8, 2002, the Ispahan prayer leader, Ayatollah Jalululdin Taheri resigned. He published his resignation letter in the reformist newspaper *Nowrooz* in which he criticized the regime.¹⁶ The Guide Khomeyni answered him on the radio

[Taheri] complained about several conditions of the country [...] These topics are true, and I have often publicly and privately warned ... about them [...] Each of us in our speeches must exercise more care and be more precise and not threaten the unity and inspiration of this big and brave nation [...] All that America lacks to carry out its threats against Iran is the existence of a secular popular base.¹⁷

According to the Guide, Iran faces problems; but it should not be exposed in a broad public light as dissent among the rulers might give rise to a secular popular movement that would undermine the republic and the nation. It is rare to hear such a direct address about secularism.

A solution could be a secularism “achieved via reinterpretations of Islam without renouncing the ties between state and religion.”¹⁸ This is the wish of many Iranians: religion should step aside and clerics should get back to the ruler advisor’s role or to the population’s guardian angels. Islam should be expelled from the public sphere as it belongs to the private sphere. It wouldn’t be secularism as such as the clerics would still have a role to play in politics, like they used to do before the revolution.

There is another issue linked to the one of secular Human Rights: According to the liberal school, Human Rights, democracy and liberalism should always be intertwined. This combination exists in countries that are already democratic. Iran is confronted to the dilemma of coupling democracy and Human Rights against a non-democratic background: Since his election in 1997, President Khatami tries to democratize the

¹⁶ Nowrooz, Tehran, 8 July 2002, (available at www.nowrooz.net)

¹⁷ Ayatollah Khomeini, Answer to Ayatollah Taheri, Speech on the radio, July 2002, (transcript available at news.bbc.co.uk/hi/english/world/middle_east)

¹⁸ Keddie Nikkie, *Secularism and its Discontentment*, *Deadelus journal*, volume 132, issue 3, pp 14-30.

regime. He wishes to reform the system within the boundaries of the *velayat-e faqiq*: he wants to enforce Human Rights in the framework of the Islamic republic.

This effort takes diverse aspects, including the use of Human Rights to democratize the country. Instead of having a democratic constitution and a democratic regime able to enforce Human Rights, the reformist movement led by Khatami and the civil society are attempting to use Human Rights to establish a democracy. This process of democratization could lead to two different outcomes: Iran could either become a secular and democratic regime or Iran could become an Islamic democracy.

According to Muhamad Khatami, there is a way to implement Human Rights in concert with the survival of the Islamic Republic of Iran. He proved it by assuring the coexistence of freedom of speech and the republic: Before the election of President Khatami, the Islamic republic successfully limited freedom of speech, fearing that such a freedom endangered the regime.¹⁹ Under President Khatami, freedom of speech flourished.²⁰ Conservatives were afraid it could diminish their power and shatter their privileges. Consequently, the judiciary power retaliated by closing down newspapers and imprisoning journalists because both were considered a threat to the Islamic republic.

II. Solutions offered by Intellectuals: a Dialogue on Human Rights

According to S. Huntington the wish of the Islamic tradition to justify different legal practices by referring to the argument of diversity sets up the background for a clash of civilizations.²¹ He thinks that the Islamic world is a deviation from the Western world that has created its own rules and that those rules cannot be compatible with democracy.²² Beyond the endless debates about the compatibility

¹⁹ Menashri David, *Revolution at the Crossroads: Iran's domestic politics and regional ambitions*, The Washington Institute for Near East Policy, Policy Paper 43, (1997), 64.

²⁰ Samii A.W., *Sisyphus' Newsstand: The Iranian Press Under Khatami*, Middle East Review for International Affairs, volume 5, No 3, (September 2003).

²¹ Kian-Thiébaud Azadeh, *Les Femmes Iraniennes entre Islam, Etat et Famille*, Editions Maisonneuve-Larose, 2002, pp 7.

²² Huntington Samuel, *The clash of civilizations and the remaking of world order*, Touchstone edition, 1997.

or incompatibility between Islam and Human Rights, there are theories transcending the matter and giving some solutions: the Dialogue among Civilizations presented by President M. Khatami and the cross-cultural approach of Human Rights conceptualized by A.An Na'im are two examples. Those theories are respectful of the Iranian identity and universality of Human Rights. It creates a hope, a possibility for a dialogue and perhaps a solution to the so-called opposition between Islam and Human rights: Iran might be able to address the Human Rights challenge without risking losing its soul because of the principle of universality. Iran would therefore be ready to face a modern globalized world and enter the 21st century, reconciled with the world.

A. President Khatami's theory of the Dialogue among Civilizations and the enforcement of this theory in Iran

1- What is the dialogue of civilizations?

In 1998, President Khatami presented to the United Nations the concept of Dialogue among Civilizations.²³ According to him, there are indeed several different civilizations. However he disagrees with the notion of clash and thinks instead that civilizations should establish a dialogue on the values they share and they are committed to. This global dialogue would rest only on the shared values, the rest of the local culture being unshattered by international requirements. President Khatami considers as international requirements only the values that all the civilizations have agreed on. He wishes to promote:

a global culture [that] cannot and ought not to overlook characteristics and requirements of native local cultures with the aim

²³ President Khatami, Round Table: Dialogue among Civilizations United Nations, New York, 5 September 2000, Provisional verbatim transcription, Address by H.E. Mr Mohammed Khatami, President of the Islamic Republic of Iran, <http://www.unesco.org/dialogue2001/en/khatami.htm>. All the following quotations are excerpts of this speech

of imposing itself upon them. Cultures and civilizations that have naturally evolved among various nations in the course of history are constituted from elements that have gradually adapted to collective souls and to historical and traditional characteristics [...] In spite of all constitutive plurality and diversity, a unique and harmonious form can be abstracted from the collection.

The program of Khatami is very clear: he wishes to transcend all the differences and go from intolerance to a tolerant world where countries dialogue on what links them, not on what separates them. He then goes further and details the enforcement of the Dialogue among Civilizations: The first way is to motivate interaction and interpenetration of cultures and civilizations with each other. The second way is to encourage meetings among intellectuals from different civilizations.

According to Khatami, the initiative is rooted in Islamic teachings: Islam is a religion of peace, able to answer the dilemmas of modern international relations and Human Rights where the Western World only offered the Huntington's "Clashes of Civilizations" or the Fukuyama's "End of the World". President Khatami agrees that his theory might create doubts but he wants to offer another solution than the clashes of civilizations and the never-ending debates about the conciliation or reconciliation of Human Rights and Islam:

I want to stress that in formulating this proposal the Government of Iran has attempted to present an alternative paradigm for international relationships.

The Iranian foreign minister spokesman, Hamid Reza Asefi, declared the Dialogue among Civilizations aimed at "cementing the global fragmentation [...] and create a feasible paradigm for the new world order."²⁴ The Dialogue among Civilizations also creates a network of nations that celebrate what they have in common. It set "a unique precedent for the "re-enchanting" of the United Nations, which had previously ejected religion

²⁴ *Asefi: President Khatami to attend UN General Assembly on Dialogue of Civilizations*, Payvand News, (November 11, 2001), (available at <http://www.payvand.com/news/01/nov/1006.html>)

and spirituality outside its policy domains, a trend somewhat reversed by the recent religious summit at the UN.²⁵”

2- The enforcement of this theory

- The national field and the Dialogue of Civilizations

The goal of the President Muhammad Khatami was to change the system within the constitutional framework and the *velayat-e faqiq*, including a Human Rights reform.²⁶ Human Rights were at the core of Muhammad Khatami three-month political campaign. Without Human Rights, no changes and no democratization were possible. Human rights were the crutches of democratization and President Khatami intended to rely heavily on the Iranian civil society (*jame-ye madani*) to implement these rights. M. Khatami wanted to reconcile the Islamic republic with Human Rights, as well as Islam and democracy through the medium of Human Rights. His theories would have led to the establishment of an Islamic democracy. To reach his goal, he glorified Iranian values without falling into the cultural relativism trap, as he also recognized the necessity of enforcing Human Rights, without talking about their universality.

The main problem with this idea of democratizing Iran through Human Rights within the framework of the Islamic constitution is which type of Human Rights was to be referred to. The Dialogue among Civilizations plays its role on the local scene: Under this theory, the enforcement of Human Rights in an Islamic republic is possible. Human rights should be considered as the values the world shares and the cultural differences should be left to each country to navigate and respect while advancing Human Rights. This theory encourages the enforcement of Human Rights and preserves Iranian culture while leaving the revolutionary

²⁵ Afrasiabi Kaveh, *Khatami and the Emancipatory Project of Dialogue of Civilization: A Motivational Analysis*, Payvand News, (December 1, 2000), (available at <http://www.payvand.com/news/00/dec/1003.html>)

²⁶ The *Velayat-e faqiq* is the key of the Islamic Republic system: the power lies in the hands of the jurisconsults, the Ulemas who have the knowledge of Islamic Law.

heritage intact.

However this idea seems to have failed at the national level: the promised reforms were never implemented, or few of them were. Conservatives constantly challenged President Khatami's commitment to Human Rights. There were no crisis-free week and the "Gorbachev of Iran" soon faced the limits of his theory.²⁷ Instead of supporting Khatami's vision of Human Rights that would have ensure the survival of the Islamic republic as well as tolerance and respect for the Iranian heritage, hardliners maintained the cultural relativism's political line. Consequently, the dreams and hope the Dialogue among Civilizations might have stirred among the Iranian population and civil society took an end. The quest for enforcement of Human Rights from the top to the bottom was over.

- The international impact

The Dialogue among Civilizations was well perceived. The United Nations General Assembly designated 2001 as the Year of Dialogue among Civilization on President Khatami's initiative. There was a UN General Assembly meeting in November 2001 to approve the plan of action for the Dialogue of Civilizations. The Foreign Minister spokesman, Asefi told a press conference: "Since President Khatami put forward the initiative of civilizational dialogue at the General Assembly, the international community has taken major steps toward understanding among diverse civilizations and realized the point that the world is in dire need of dialogue to help solve the international crises."²⁸

After that, there were several initiatives for a dialogue. An example is a seminar entitled "Enriching the universality of Human Rights: Islamic perspectives on the

²⁷ Scholars and journalists to compare Khatami's efforts of reform to Gorbachev's Perestroika have used this expression.

Maloney Suzanne, *Ayatollah Gorbachev: The Politics of Change in Khatami's Iran*, The Brookings Institution, 2003.

Sicherman H., *The Iranian Gorbachev: Khatami's "New Thinking"*, Cornell online library, (January 13, 1998), (at www.library.cornell.edu/colldev/mideast)

²⁸ *Asefi: President Khatami to attend UN General Assembly on Dialogue of Civilizations*, Payvand News, (November 11, 2001), (available at <http://www.payvand.com/news/01/nov/1006.html>)

Universal Declaration of Human Rights” was organized by the United Nations High Commissioner for Human Rights, in cooperation with the Organization of the Islamic Conference (OIC), and took place on 9 and 10 November 1998 at the Palais des Nations in Geneva. It took place right after the New York General Assembly Meeting. This seminar, which forms part of a process for providing Islamic perspectives on the Universal Declaration, was organized during the 50th Anniversary Year of the Universal Declaration of Human Rights. It was designed to promote respect among peoples and a better understanding of the significance of cultural and religious backgrounds to the Universal Declaration. Twenty experts in Islamic Law and human rights were selected by the High Commissioner, in consultation with the OIC.²⁹ Mary Robinson then declared:

In organizing this seminar I wanted to show that the United Nations was open for dialogue and ready to listen to those who seek better protection for human rights. This seminar has been part of a process which has opened a channel of communication. That channel should stay open and I believe we should now reflect on how best to carry it forward.³⁰

During that seminar, essential questions were asked which shows a change of tone: the international community seems to be ready to speak about such difficult issues as the universality of Human Rights:

Our attention has been called to the way in which human rights are actually lived. [...] Islamic concern with human dignity is old; it goes back to the very beginning. It is also dynamic, as it confronts the challenges of today [...] Our discussions have not only referred to Islam. They have also brought out a central challenge to the human community as a whole and to those interested in respect for human rights in particular; how big have we made the Arc of the Universal Declaration? Is it wide enough to encompass all humanity, or is it reserved for a privileged few?³¹

²⁹ Enriching the Universality of Human Rights: Islamic perspectives on the Universal Declaration of Human Rights, Palais des Nations, Geneva, November 1998 (More at : <http://www.unhchr.ch/html/50th/islamp1.htm>)

³⁰ Mary Robinson, Personal Impressions of the Seminar on “Enriching the universality of Human Rights: Islamic perspectives on the Universal Declaration of Human Rights”, by Mary Robinson, High Commissioner for Human Rights, seminar organized by the United Nations High Commissioner for Human Rights, in cooperation with the Organization of the Islamic Conference (OIC), (9 and 10 November 1998), Palais des Nations in Geneva, (text available at [http://www.unhchr.ch/hurricane/hurricane.nsf/\(Symbol\)/OHCHR.981129.A.En?OpenDocument](http://www.unhchr.ch/hurricane/hurricane.nsf/(Symbol)/OHCHR.981129.A.En?OpenDocument))

³¹ Mary Robinson, Personal Impressions of the Seminar on “Enriching the universality of Human Rights: Islamic perspectives on the Universal Declaration of Human Rights”, by Mary Robinson, High

There is still in Tehran an International Center for Dialogue among Civilizations.³²

B. The cross-cultural Human Rights approach: Professor An Naim

A. An Naim has a cross-cultural approach of Human Rights. Before explaining his point of view on universality, it is necessary to understand An Naim's approach of Human Rights: Human Rights, religion and secularism are interdependent.³³ He begins with refuting any culturalist approach and says universal recognition of Human Rights is necessary:

As universal standards that are necessary for the protection of fundamental rights against the contingencies of national politics, human rights norms are supposed to be the product of international agreement. Moreover, the claim of the international community to act as arbiter in safeguarding certain minimum standards is not plausible without the corresponding commitment of its members to encourage and support each other in the process [...].The distinguishing features of human rights are *universal recognition* of the same rights and *international cooperation* in their implementation.

When A. An Naim introduces his theory, he says that Human Rights should be indeed recognized as long as it does not affect the differences between the cultures. He agrees with President Khatami: they are shared values but also differences when it comes to Human Rights; those differences should be respected. That is why it is sometimes difficult for nations to deal with the principle of universality of Human Rights: they have to confront the common values and differences.

However, the present apparent consensus on international human rights standards often obscures serious cultural or ideological differences, with significant practical consequences. While problems of non-western cultures

Commissioner for Human Rights, (text available at [http://www.unhcr.ch/hurricane/hurricane.nsf/\(Symbol\)/OHCHR.981129.A.En?OpenDocument](http://www.unhcr.ch/hurricane/hurricane.nsf/(Symbol)/OHCHR.981129.A.En?OpenDocument))

³² More information: <http://www.dialoguecentre.org/>

³³ An Naim Abdullahi, *The Synergy and inter-dependence of human rights, religion and secularism*, forum for inter-cultural philosophy (3), 2001, 1-43, <http://them.polylog.org/3/faa-en.htm>

regarding the rights of women, for example, are well known, there is little awareness of western cultural or ideological problems with the true universality of human rights. From a normative point of view, economic, social and cultural rights, like the right to housing and education, are as fundamental as civil and political rights of freedom of belief or expression. To take a positivist view of human rights, widely ratified treaties provide for both sets of rights. Yet, western governments and public opinion alike have found it difficult to accept that economic, social and cultural rights are human rights in the current sense of the term. In this light, it is clear that both western and non-western societies face the challenge of accepting the universality of some human rights within their own cultures.

This is when he advocates in favor of the respect of diversity, like President Khatami does, and avoids the cultural relativism approach by advancing a cross cultural approach: Human Rights are a set of universal norms but it is the role of the state to enforce them while respecting the national backdrop and the local values:

Given prevalent understandings of national sovereignty and international relations, it was imperative for the Charter of the United Nations and the UDHR to strike a balance between the international protection of human rights, on the one hand, and respect for the domestic jurisdiction of nation states, on the other. Thus, by universalizing certain notions of fundamental rights, the international human rights system seeks to make these rights binding under international law, while leaving application on the ground to the agency of the nation state. The mitigation of this paradox of state self-regulation of its own human rights performance requires a clear understanding of local, national and international actors and processes which influence the actual conduct of states in this regard.

Consequently there should be a Human Rights cross-cultural dialogue:

By their very nature, the modern human rights paradigm is unlikely to be overcome without solidarity and cooperation among different religious communities. Since this is not readily available within currently prevalent exclusive understandings of religion, human rights and secularism are needed the internal transformation of religious doctrine.

According to An Naim only the interdependence between Human Rights, Religion and Secularism and the respect of each notion for the other can create a

reconciliation between them. It is the way to achieve international respect and enforcement of Human Rights.

The approach I propose for achieving this reconciliation is premised on a belief in the ability of *human agency* to promote understandings and practice of each of the three that are conducive to meaningful interdependence with the other two, as discussed in the next section. One challenge is to prevent the purported moral superiority of one religious community from diminishing the human dignity and rights of those who do not subscribe to that faith [...] In my view, the human rights paradigm has to effectively respond to the following continuing challenges if it is to achieve and maintain its legitimacy for most people around the world.

An Naim concludes by saying:

the point is that human rights need to be "owned" by different peoples around the world, instead of being perceived as simply another facet of Western hegemony. This would clearly suggest that legitimating human rights in local cultures and religious traditions is a matter of vital importance for the survival and future development of the human rights paradigm itself. Given the internal transformation [...], religion can also provide the moral underpinnings of dynamic development of the idea to address emerging issues in different settings.³⁴

These two theories are limited: even though it encourages dialogue, it is a dialogue from culture to culture and not a dialogue based on a shared set of values. So the principle of universality of Human Rights is not strictly respected. Instead of one world it leads to a fragmented world, talking different Human Rights language. It does promote respect and tolerance and diversity but at the expenses of a unique universal Human Rights theory. However as Mary Robinson said, how can be certain that the 1948 Universal declaration of Human Rights is large enough to include all civilizations?³⁵ President Khatami and Professor An Naim solutions are perhaps not respectful of universality as such but it is a step forward in the discussion.

³⁴ An Naim Abdullahi, *The Synergy and inter-dependence of human rights, religion and secularism*, forum for inter-cultural philosophy (3), 2001, 1-43, <http://them.polylog.org/3/faa-en.htm>

³⁵ Mary Robinson, Personal Impressions of the Seminar on "Enriching the universality of Human Rights: Islamic perspectives on the Universal Declaration of Human Rights", by Mary Robinson, High Commissioner for Human Rights, (text available at [http://www.unhcr.ch/hurricane/hurricane.nsf/\(Symbol\)/OHCHR.981129.A.En?OpenDocument](http://www.unhcr.ch/hurricane/hurricane.nsf/(Symbol)/OHCHR.981129.A.En?OpenDocument))

III. The Iranian's model ready to take up the Human Rights challenge

Until now, we have seen the different theories elaborated to answer the challenge of the enforcement of Human Rights in Iran. What happens in practice? It seems that the Dialogue among Civilizations failed on the national scene because of Conservatives' refusal to compromise. Is the cross-cultural approach most fruitful? The An Naim theory is a bit too blunt as it links Human Rights, secularism and religion.

A. The reform from the bottom to the top

As Khatami failed and almost retired from the public scene, it seems that civil society has taken over the challenge to make Iran's entrance in the 21st century successful. Even if the civil society is divided between advocates of the maintenance of the republic, advocates of secularism, advocates of a reconciliation between Islam and Human rights, and advocates of a full enforcement of universal Human Rights, civil society activists have the same method: a Human Rights reform from the bottom to the top, that answers the people's needs and refuses to bend to the Conservatives' threats. They all speak the same language: the Human Rights language.

Shirin Ebadi, the Nobel Prize winner, and the lawyer Mehrangiz Kar openly fight for Human Rights. Academics and intellectuals, like Abdolkarim Soroush or Mohsen Kadivar, clearly take position on the matter. Students and the youth, on the other hand, are more focused on issues such as the rejection of control and morality, the freedom to choose and the role of the individual in the society.³⁶ Consequently they do not explicitly refer to Human Rights instruments and do not use that terminology. Human rights are now taught in the universities. There are some institutes flourishing, even though they are still under governmental control.

³⁶ Khosrokhavar Farhad & Roy Olivier, Iran : Comment sortir d'une Révolution Religieuse ?, Paris, Seuil, 1999, pp.144-45

Non governmental organizations are countless. All these actors have in mind democracy, whether in an Islamic or in a secular context.

Civil society activists take the challenge for reconciliation between human rights and Islam very seriously. Shirin Ebadi declared in her Nobel lecture:

The people of Iran have been battling against consecutive conflicts between tradition and modernity for over 100 years. By resorting to ancient traditions, some have tried and are trying to see the world through the eyes of their predecessors and to deal with the problems and difficulties of the existing world by virtue of the values of the ancients. But, many others, while respecting their historical and cultural past and their religion and faith, seek to go forth in step with world developments and not lag behind the caravan of civilization, development and progress. The people of Iran, particularly in the recent years, have shown that they deem participation in public affairs to be their right, and that they want to be masters of their own destiny. This conflict is observed not merely in Iran, but also in many Muslim states. 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. In fact, it is not so easy to rule over a people who are aware of their rights, using traditional, patriarchal and paternalistic methods.³⁷

Other leaders advocate secularism and democracy, sometimes in an aggressive manner: Professor H. Aghajari declared in a speech before a small group of students at the Bu Ali-Sina University in Hamadan “Marx said that religion is the opiate of the masses. But he didn’t go far enough. It’s also the opiate of governments”. He also called for a “religious reformation” of Shia Islam and criticized Shias readiness to emulate top ayatollahs like “monkeys”.³⁸ When he was sentenced to death, students began protesting.³⁹ Newspapers supported the students and 250 university teachers and writers wrote a statement supporting the students. Thanks to the support from other segments of the civil society, the

³⁷ Shirin Ebadi, Nobel Prize lecture, Oslo, 10 December 2003, (available at <http://www.nobel.se/peace/laureates/2003/ebadi-lecture-e.html>)

³⁸ Transcript available at www.hrw.org/press/2002/11/iranacademic.htm

³⁹ The head of Iran’s state news agency, IRNA, was charged in court on September 2003 in connection with the publication of a poll. According to the poll, 74% Iranians were in favor of the resumption of the dialogue with the United States. The pollsters were arrested and are now behind the bars. The results of the poll are presented in: Dinmore Guy, *Human Rights under the Spotlight*, Iran Reporter, January 1, 2002, (transcript available at www.iranreporter.com); Saeed Razavi-Faqih and Ian Urbina, *The Fight for Iran’s democratic ideals*, The New York Times, December 10, 2002.

students' demonstrations had more effect. Eventually the death sentence of Professor Aghajari was first commuted then the charges against him were dropped. Eventually, he ended up with a three-year jail sentence a five-year deprivation of social rights.

In the struggle for the enforcement of Human Rights, the civil society is now fighting for its soul, the future of the entire society and the future of Iran. The biggest obstacle on the path to democracy through Human Rights remains the Conservatives. Reformists seem to stand by and watch.

B. The Human Rights universality challenge, the Iranian identity and the entrance of Iran in the globalization and the 21st century.

It seems like the Iranian civil society has found the way to build bridges between cultures and the two Human Rights system, the universal one and the Iranian-Islamic one, to would ensure respect for Human Rights and Iranian heritage. The people's frustration and motivation gave them the strength to defy one of the biggest challenges Iran faces.

There are still some unsolved matters: the civil society speaks the Human Rights language but which one? The Islamic one or the universal one? Civil society leaders are not unanimous. Civil society has taken the first step already: it struggles for Human Rights. The aim is to awake Iran to the necessity of Human Rights. The second step is to face the hardliners and defeat them by forcing them to enforce Human Rights in the fields they control such as the judiciary power and the medias. Eventually, the solution will come by itself. As the civil society will force changes upon the regime and as the nature of the regime will either evolve or change, Human Rights will find their place and their legal references, as much as Iranian law will evolve.

Iran wouldn't be there without the help of President Khatami. It is possible in Iran today to speak about Human Rights and to fight for the enforcement of the

universal fundamental values because he made it a priority.⁴⁰ The conditions for a change of attitude of Iran towards Human Right seem to be there.

There is still the risk that Iranian culture might be shattered by the enforcement of Human Rights values and it is still legitimate to wonder if the so-called universal values are really universal values. However Iranian people have made a step forward and it is perhaps time for the UN and the world to offer to everyone to gather and speak about the universality of Human Rights.

Another issue is secularism: would the acceptance and full enforcement of universal values are they are now, need a secular state? There is in Iran the wish to see a free and democratic republic with a renewed Islam that would have another place in the city. Islam has played a role in Iranian politics, especially since 1501 when Shi'ism was declared state religion. It is one of the constituent and alive forces of the country.⁴¹ Perhaps there could be a new regime like an Islamic democracy where clerics would still have a role. However people today are asking for religion to leave the public sphere. It is not a rejection of Islam and religion, but Iranians believed it should belong to the private life. Any new regime will have to rethink the role of Islam in the society.

Conclusion

Iran is not the only country facing the universality problem: how can a country apply one model applicable to all and protect its own identity. That is how universality of Human Rights and globalization of values are often perceived. However as long as the international community does not show any sign or willingness to renegotiate the Human Rights basis, Iran has to deal with what are the universal rules.

⁴⁰ Bernard Hourcade, *Vingt-cinq ans après la révolution islamique: Le réveil de l'Iran*, le Monde Diplomatique, Février 2004.

⁴¹ Bernard Hourcade, *Vingt-cinq ans après la révolution islamique: Le réveil de l'Iran*, le Monde Diplomatique, Février 2004.

Human rights are a powerful tool to change Iran, democratize it and perhaps secularize it to make the country enter the 21st century. One could wonder why President Khatami and civil society ultimately chose Human Rights as an instrument to change the Islamic Republic of Iran? Human Rights have an authority and legitimacy: they are enshrined in every culture. Instead of a blunt change of regime or amending the constitution, President Khatami tried to change Iran within the framework of the constitution of the Islamic Republic. He failed. Now, civil society tries to tend either towards a secular democracy or towards an Islamic democracy with the help of Human Rights. This process is original since the reform is taking place from the bottom to the top of the society.

Eventually Iran is an example for other countries in the region. It has always been a dynamic country, going from revolution to revolution, and creating new political ideas along the way. Iranian civil society might be about to succeed in conciliating universal Human Rights values and Islam and that would have an impact throughout the Islamic world.