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Author: Kevin Hugh Govern+

+ Kevin H. Govern, J.D., LL.M., is an Associate Professor of Law at the Ave Maria School of Law, an Affiliated Faculty and Advisory Board Member for the Center for Ethics and the Rule of Law, University of Pennsylvania Law School, and an Instructor of Legal Studies at the California University of Pennsylvania. He has also served as an Assistant Professor of Law at the United States Military Academy. This Article was presented as a conference paper at the Catholic Contributions to the Foundation of Human Rights, Ave Maria University, Ave Maria, Florida, on March 4, 2011. Under rights reserved by the author to use all or part of this writing in collective works and/or subsequent works of authorship created by the author and/or the author's institution, and the author's reserved right to create and reproduce derivative works, certain materials and subjects covered in this Article have appeared as Kevin Govern, A Survey of Islamic Attitudes Towards the Legitimacy of International Law and International Agreements, 2 Ind. Y.B. Int'l L. & Pol. 53 (2010), and Kevin Govern, Cultural and Legal Influences and Impediments to Cultivating Peace and Human Rights in Islamic States, 2 Impunity Watch Ann. Rev. 54 (2012). Any errors or omissions are solely the responsibility of the author.

Highlight

Abstract

Islamic law (Shari"ah) permeates every aspect of a devout Muslim's existence, and a Muslim nation's practices. ¹ Islamic attitudes vary toward the legitimacy of international law and international agreements according to clerical and secular, official and unofficial, state-actor and non-state actor laws, policies, and practices. In Islam, laws are generally to be obeyed and agreements kept - with few exceptions - the most notable being those aspects that are contrary to Islam. Shari"ah law promotes respect for human rights and history is replete with instances where this Islamic doctrine has been demonstrated by the commitment of states with a Shari"ah influence in favor of peace: the Pact of the League of Arab States ²; the Arab Charter of Human Rights ³; the Charter of the Organization of the

¹ Shari"ah is sometimes Anglicized into Shari"ah in English translations. See, e.g., Saudi Arabia Const. Mar. 1992, art. 8, available at <http://www.servat.unibe.ch/law/icl/sa00000.html>.

² See Pact of the League of Arab States, Mar. 22, 1945, 70 U.N.T.S. 248.

³ See Susan M. Akram, Arab Charter on Human Rights 2004, *24 B.U. Int'l L.J.* 147, 149-64 (2006) (providing an English translation by Dr. Mohammed Amin Al-Midani, President of Arab Center for International Humanitarian Law and Human Rights Education).

Islamic Conference ⁴; and the Shari'a-compliant Cairo Declaration of Human Rights in Islam (CDHR) charter, ⁵ to name just a few conventions.

The challenge of promoting peace and human rights under Shari'a and international law will lie in three main realms. First, there is no single "Islamic attitude" towards the legitimacy of international law and international agreements among the fifty-six nations that have adopted Islam as their official state religion, adopted Shari'a as their legal system, or those that have Muslims as the majority or sizeable minority of their populations. ⁶ Second, as identified by the many nations who were signatories to the Cairo Declaration on Human Rights in Islam (CDHR), ⁷ the United Nation's Universal Declaration of Human Rights (UDHR) ⁸ is perceived by some in Islamic nations as failing to take into account the cultural and religious context of non-Western, Islamic nations. Finally, where there is apparent or perceived differences in approaches to advancing peace and human rights, there is a fundamental requirement to understand what practices and policies in Shari'a are of tribal or ethnic origin and culturally significant but not Islamic, what is Islam and incapable of change, and which practices or policies are theoretical or aspirational but not enforced or enforceable.

This Article will survey the symbiosis of faith and law, clerical and secular, official and unofficial, state-actor and non-state actor in Islamic nations from the perspective of advancing (or impeding) peace and human rights - both from a Western and non-Western perspective. This appreciation is vital to maintaining and advancing peace as well as waging war, and the preservation and promotion of the integrity and dignity of all human beings accounting for and regardless of their race, color, language, belief, sex, religion, political affiliation, social status, or other considerations.

Text

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I. Introduction and Heritage of Islam: The Path Between War and Peace

The so-called "Global War on Terror(ism)," or GWOT, now restyled as "Overseas Contingency Operations," or OCOs, predominantly focused on the clash between Western democracy and al-Qa'eda terrorist network, without necessarily creating or fostering the conditions for peace, stability, or promotion of human rights.

Dozens of countries have passed new counterterrorism legislation or strengthened pre-existing laws that provide their law enforcement and judicial authorities with new tools to bring terrorists to justice, with the United States expanding coalition efforts with allies and foreign partners around the world. ⁹ Such coalitional efforts still operate

⁴ See OIC Charter, Mar. 14, 2008 [hereinafter OIC Charter], available at <http://www.oic-oci.org/english/charter/OIC%20Charter-new-en.pdf> (the original charter was signed in 1969).

⁵ See World Conference on Human Rights, Apr. 19-May 7, 1993, Cairo Declaration on Human Rights in Islam, U.N. Doc. A/CONF.157/PC/62/Add.18 (June 9, 1993) [hereinafter Cairo Declaration on Human Rights in Islam].

⁶ Member States, Org. Islamic Cooperation, http://www.oic-oci.org/member_states.asp (last visited Aug. 8, 2012) (listing nations meeting this description as Muslim, Islamic, or Islamically-influenced).

⁷ See Cairo Declaration on Human Rights in Islam, *supra* note 5.

⁸ See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁹ Dep't of State, Country Reps. on Terrorism 2007, at 10 (Apr. 2008), available at <http://www.state.gov/documents/organization/105904.pdf>. For the role of the Organisation of Islamic Cooperation with regard to

with inherent challenges of understanding the religion of Islam and the cultural expressions and institutions that may be influenced by Islam, but not controlled or even prescribed by that faith.¹⁰ It is important to note that not all individual acts of terrorism can be associated with fanatical political or religious ideologues,¹¹ nor should terrorism or even Islamic extremism be imputed to the vast majority of those in the world who peaceably practice the religion of Islam.

Countries in the Middle East and North Africa have experienced protests against political repression and economic hardship - unprecedented in scope and duration since their independence from imperial domination - which have resulted in rulers in Tunisia, Libya, Egypt, and Yemen being ousted, while those of Bahrain, Jordan, Oman, Tunisia, and Iran are being challenged.¹² Harkening [*106] back some fifteen years ago, to a different time which nonetheless created the circumstances of past being prologue, the American political scientist Samuel Huntington warned of an upcoming international "clash of civilizations."¹³

II. The Essence of Islamic Law and Binding Obligations: Words and Deeds Matter

Islamic law is ordinarily understood as a collection of scholarly law handed down from medieval times and assembled in written form around the thirteenth century (or later amongst Shi'a scholars).¹⁴ It originated in the seventh century divine revelations of the Qur'an (variously also Koran in English, but meaning the word of God) and the Sunnah (the record of the Prophet's life).¹⁵ Islamic law is not found in the Qur'an or Sunnah, literally, but rather through interpretation of those sources by fallible human means.¹⁶

International law - based upon treaties concluded between and among sovereign states and customary law through legal norms of exchanges between states - has been founded essentially in the exercise of free will and conclusively in the elements of contract or covenant (offer, acceptance, and consideration). In Islam, humankind has the freedom to make contracts and covenants with others and - as a collective representation of Muslims - states may observe and conclude agreements in accord with the law and custom of the land and treaty obligations. Islamic law encourages Muslims to honor such obligations, consistent with this charge: "O ye who believe, fulfil your compacts."¹⁷ In other words, there is exhortation to be true to your contracts, covenants, and commitments. For

these measures, see About OIC, Organisation Islamic Cooperation, http://www.oic-oci.org/page_detail.asp?p_id=52 (last visited Oct. 17, 2012). According to its site, "the [predecessor to the present] Organization was established upon a decision of the historical summit which took place in Rabat, Kingdom of Morocco on 12th Rajab 1389 Hijra (25 September 1969) as a result of criminal arson of Al-Aqsa Mosque in occupied Jerusalem" during the so-called Six-Day War. *Id.*

¹⁰ See Jeffrey F. Addicott, *Terrorism Law* 8-15 (4th ed. 2007).

¹¹ *Id.* at 9.

¹² See Kevin H. Govern, 21st Century Africa as an "Arc of (In)stability": U.S. and African Economic, Security, and Development Policies Advanced Through U.S. Africa Command Initiatives, *26 Conn. J. Int'l L.* 281, 286 (2010); Curtis Doebbler, The Rule of Law and the Extrajudicial Killing of Muammar Gaddafi, *Jurist* (Oct. 24, 2011), <http://jurist.org/forum/2011/10/curtis-doebbler-gaddafi-killing.php>. Ousted Yemeni Leader Saleh to Seek Exile in Ethiopia, *Independent* (Feb. 28, 2012), <http://www.independent.co.uk/news/world/middle-east/ousted-yemeni-leader-saleh-to-seek-exile-in-ethiopia-7447321.html> [hereinafter Ousted Yemeni Leader].

¹³ Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* 213 (First Touchstone ed. 1997).

¹⁴ Frank Vogel, Presentation at the Third Rule of Law Workshop: The Islamic Legal Tradition § 1, at 4 (Oct 16-20, 2006) [hereinafter Vogel Presentation] (on file with author).

¹⁵ *Id.* Unless otherwise stated, dates in this Article are Common Era (CE) (a/k/a Anno Domini or Year of Our Lord, abbreviated A.D.).

¹⁶ *Id.* § 1, at 5.

Muslims, an oath must be expressed only in one specific manner, that is, in the name of **[*107]** Allah alone. So we read: "There shall be no compulsion in religion, for guidance and error have been clearly distinguished" ¹⁸

Please note that a number of ahadith (traditions of sayings of the Prophet Muhammad) suggest that swearing by anything but God is not allowed, especially with regards to contract and covenant. ¹⁹ For instance, we find in Bukhari:

[The Prophet] said, "What do you think of men who impose stipulations [shurut] which are not in the Writ [or Book] of God Most High? Any stipulation not in the Writ of God is void [batil]. Were it one hundred conditions, the judgment of God is more just, and the stipulation of God more reliable" ²⁰

The consequences of infidelity to one's word - beyond the human consequences of conflict, strife, or legal action - will be much more severe for Islam. ²¹

Despite these consequences, obligations concluded by Muhammad with infidels and pagans were subject to expiation. ²² Muhammad dissolved one of his first "international law" obligations when breaking the formal treaty with the pagans at Mecca: "Allah is free of all obligation to the idolaters, and so is His Messenger. So now, having witnessed this Sign, if you will repent and make peace, it will be the better for you; but if you turn away, then know that you cannot frustrate Allah's design." ²³ Some might claim that Islam recognizes that oaths may be disregarded, but the Surah, sometimes quoted towards that end, must be taken in the context in which it is offered: "Allah has sanctioned the dissolution of your vows; and He is your **[*108]** Patron." ²⁴ Oaths are limited to the intentions of the heart, to that end: "Allah will not call you to account for such of your oaths as are vain, but will call you to account for the evil you have deliberately assented to. Allah is Most Forgiving, Forbearing." ²⁵

Islam recognizes that impossibility and impracticability may prevent one from keeping oaths and therefore establishes the means by which one may be absolved of the consequences of breaking an oath. To atone for breaking one's oath, Muslims are told to do acts of charity:

¹⁷ Surah 5:2. All references to the Qur'an in this Article are taken from The Qur'an (Muhammad Zafrulla Khan trans., 2003). See also Muhammad ibn al-Hasan al-Shaybani, The Shorter Book on Muslim International Law, at x (Mahmood Ahmad Ghazi ed. & trans., 1998).

¹⁸ Surah 2:257.

¹⁹ See, e.g., Vogel Presentation, supra note 14, § 2.

²⁰ Frank E. Vogel & Samuel L. Hayes, III, Islamic Law and Finance 67 (1998) (quoting the Sahih al-Bukhari collection of hadith).

²¹ In the words of the Qur'an:

Every one is pledged in respect of that which he practised; except those of the right hand. They will be in Gardens and will ask the guilty ones: What has brought you to the fires of hell? They will answer: We were not of those who offered Prayers, nor did we feed the poor. We indulged in vain discourse along with those who indulged in it, and we denied the Day of Judgment until death overtook us. So no intercession will avail them.

Surah 74:38-39 (emphasis added).

²² Surah 5:90.

²³ Surah 9:3-4. This should be read in conjunction with the exhortation that follows: "Carry out the obligations you have assumed towards them till the end of their terms." Surah 9:5.

²⁴ Surah 66:2 (relating to pleasure of wives - not other matters).

²⁵ Surah 2:225 (relating to "vain" oaths made as an excuse from doing good and working righteousness and promoting public welfare).

Allah will not call you to account for your meaningless oaths but will call you to account for breaking your oaths by which you bind yourselves; the expiation of such breach is the feeding of ten poor persons with such average food as you eat yourselves, or providing clothing for them, or procuring the freedom of one held in bondage... . Do observe your oaths. Thus does Allah expound to you His commandments that you may be grateful.²⁶

Specific to an understanding of international law and international agreements, we must consider that pre-Islamic Arabian tribes concluded various alliances and treaties as a means to regulate their economic, social, and public life.²⁷ The Islamic scholar Hilmi M. Zawati has noted that "Islamic law imposes the respect of treaties [among and between nations,] even above the respect of religious solidarity."²⁸ The Qur'an states, to this end:

Allah enjoins equity and benevolence and graciousness as between kindred, and forbids evil designs, ill-behaviour and transgression. He admonishes you that you may take heed. Fulfil the covenant of Allah when you have made one; and break not your pledges after making them firm, having made Allah your surety; Allah knows that which you do.²⁹

[*109] Further it dictates: "Nevertheless, if they [who have believed and have not migrated] seek your help in the matter of religion it is incumbent on you to help them except against a people between whom and yourselves there is a pact. Allah sees what you do."³⁰ It is both a sacred and human obligation, then, in which one must live the hadith that requires Muslims to "fulfill the trust towards the one who trusted you, and do not betray the one who betrayed you."³¹

III. The Present-Day Pronouncements On, and Challenges to, Adhering to International Law and International Agreements

To fully understand Islamic attitudes towards an aspirational goal of peace and human dignity, we must return to the essence of what constitutes Islam and what it means to be a Muslim. Islam dates to the seventh century and the life of its founder, the Prophet Muhammad of Mecca, Arabia.³² Muhammad's life included the beginning of his Prophethood, the spread of Islam as Muslim preachers reached China, and the emigration of Muslims in Madina, prior to his death in 632.³³ In the formative era of Islam from the sixth through the seventh centuries, issues of succession and leadership arose among the community of the faithful.³⁴ Under the four "rightly guided" caliphs - Muhammad's companions: Abu Bakr, Umar, Uthman, "Ali"³⁵ - and their successors, came a rapid spread of Islam.

The origins of Shi'ite and Sunni Islam began as a political movement upon Muhammad's death, where the preference of his son-in-law Ali - the fourth caliph - over Abu Bakr, resulted in long-term bitterness regarding the challenged Umayyad caliphs.³⁶ The struggles between Umayyads (Syria) and Shi'ites (Iraq) led to persecution by

²⁶ Surah 5:90.

²⁷ Hilmi M. Zawati, *Is Jihad a Just War?* 55 n.269 (2001). *Hilf al-Mutayyibin* and *Hilf al Fudul* are just two examples of the alliances entered into by these tribes. *Id.*

²⁸ *Id.* at 55.

²⁹ Surah 16:91.

³⁰ Surah 8:74.

³¹ Zawati, *supra* note 27, at 55 n.272 (citation omitted).

³² See Sami Zubaida, *Law and Power in the Islamic World* 6 (2003).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* Throughout this Article, certain Anglicized terms will appear, to include variations that may have American or Indian/British-English spelling conventions applied. In this instance, the Anglicized caliph - from the Arabic *khalifat rasul Allah* - means representative of the Messenger of Allah.

the Sunni majority of those to be known as Shi'a, and **[*110]** the ensuing parallel - but separate - development of Islamic jurisprudence (fiqh) amongst Sunni and Shi'a schools of thought. ³⁷

At the outset of this Article, I had noted that amongst other agreements, the following were expressions of commitment to peace and human rights between and among Islamic states, namely: the Pact of the League of Arab States ³⁸; the Arab Charter of Human Rights ³⁹; the Charter of the Organization of the Islamic Conference ⁴⁰; and the Shari'a-compliant Cairo Declaration of Human Rights in Islam (CDHRI) charter. ⁴¹ At the risk of overlooking the entire range of current events impacting upon, and being impacted by, these agreements, I shall discuss the most emergent matters with regards to regional stability and security.

The Organisation of Islamic Cooperation (OIC) (formerly the Organisation of the Islamic Conference) with its fifty-seven members is the second largest inter-governmental organization after the United Nations, ⁴² and its origin was decades in the making. After the official abolition of the Ottoman Empire in 1924, the Ministers of Foreign Affairs of Islamic countries held a conference, where the OIC charter was adopted based upon the bedrock principle of Islamic solidarity. ⁴³ The OIC is "the collective voice of the Muslim world and ensuring to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world." ⁴⁴

The Preamble to the Charter of the OIC is inclined towards the commitment to religious values - as well as international obligations - in stating the organization's determined goals:

to respect, safeguard and defend the national sovereignty, independence and territorial integrity of all Member States;

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to contribute to international peace and security, understanding and dialogue among civilizations, cultures and religions and promote and encourage friendly relations and good neighbourliness, mutual respect and cooperation;

to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States in accordance with their constitutional and legal systems;

to promote confidence and encourage friendly relations, mutual respect and cooperation between Member States and other States;

to foster noble Islamic values concerning moderation, tolerance, respect for diversity, preservation of Islamic symbols and common heritage and to defend the universality of Islamic religion;

³⁶ Id. at 7. This struggle reached a head in the massacre of Kerbala in 680 CE of Ali's son Husayn's forces. Supporters of Ali and sons Hasan and Husayn were forerunners of Shi'ism. Supporters of Abu Bakr and later of the Umayyad caliphs were the forerunners of Sunnism.

³⁷ Id. at 16, 21.

³⁸ See Pact of the League of Arab States, *supra* note 2.

³⁹ See Akram, *supra* note 3.

⁴⁰ See OIC Charter, *supra* note 4.

⁴¹ See Cairo Declaration on Human Rights in Islam, *supra* note 5.

⁴² About OIC, *supra* note 9.

⁴³ NGO Law Monitor: Organization of Islamic Cooperation, Int'l Center for Not-For-Profit L., <http://www.icnl.org/research/monitor/oic.pdf> (last updated Oct. 4, 2012). The OIC's original name was the "Organisation of the Islamic Conference," but it was changed in June, 2011. Id.

⁴⁴ About OIC, *supra* note 9.

to advance the acquisition and popularization of knowledge in consonance with the lofty ideals of Islam to achieve intellectual excellence;

to promote cooperation among Member States to achieve sustained socioeconomic development for effective integration in the global economy, in conformity with the principles of partnership and equality;

to preserve and promote all aspects related to environment for present and future generations;

to respect the right of self-determination and non-interference in the domestic affairs and to respect sovereignty, independence and territorial integrity of each Member State;

to support the struggle of the Palestinian people, who are presently under foreign occupation, and to empower them to attain their inalienable rights, including the right to self-determination, and to establish their sovereign state with Al-Quds Al-Sharif as its capital, while safeguarding its historic and Islamic character, and the holy places therein;

to safeguard and promote the rights of women and their participation in all spheres of life, in accordance with the laws and legislation of Member States;

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to create conducive conditions for sound upbringing of Muslim children and youth, and to inculcate in them Islamic values through education for strengthening their cultural, social, moral and ethical ideals;

to assist Muslim minorities and communities outside the Member States to preserve their dignity, cultural and religious identity;

to uphold the objectives and principles of the present Charter, the Charter of the United Nations and international law as well as international humanitarian law while strictly adhering to the principle of non-interference in matters which are essentially within the domestic jurisdiction of any State;

to strive to achieve good governance at the international level and the democratization of the international relations based on the principles of equality and mutual respect among States and non-interference in matters which are within their domestic jurisdiction;

Have resolved to cooperate in achieving these goals and agreed to the present amended Charter. ⁴⁵

With respect to the intersection of law and religion, the OIC created the Shari" compliant Cairo Declaration of Human Rights in Islam (CDHR). ⁴⁶ The CDHR states, with respect to the equal dignity of all humans:

All human beings form one family whose members are united by submission to God and descent from Adam. 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 **[*113]** status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection. ⁴⁷

⁴⁵ OIC Charter, supra note 4, pmb. The twenty-five original members of the OIC included: Islamic Republic of Afghanistan, People's Democratic Republic of Algeria, Republic of Chad, Arab Republic of Egypt, Republic of Guinea, Republic of Indonesia, Islamic Republic of Iran, Hashemite Kingdom of Jordan, State of Kuwait, Republic of Lebanon, Libya, Malaysia, Republic of Mali, Islamic Republic of Mauritania, Kingdom of Morocco, Republic of Niger, Islamic Republic of Pakistan, Kingdom of Saudi Arabia, Republic of Senegal, Republic of Somalia, Republic of the Sudan, Republic of Tunisia, Republic of Turkey, and Republic of Yemen. Member States, supra note 6.

⁴⁶ See Cairo Declaration on Human Rights in Islam, supra note 5.

⁴⁷ Id. art. 1(a). The CDHR's preamble also reaffirmed, "the civilizing and historical role of the Islamic Ummah [community of faithful] which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith." Id. pmb. Notwithstanding the human rights declared as protected, the CDHR subjects all of its protections to prescriptions, ethical values, and principles of Islamic

The CDHR was intended to compliment - rather than supplant - the Universal Declaration of Human Rights.⁴⁸ While these lofty, and largely admirable principles, have been agreed to, the United Nations' Human Rights Council has encountered "opposition to the CDHR and the problems it may present to universal human rights."⁴⁹ At a conference held by the U.N. Human Rights Council, criticism was leveled at the OIC's attempt to "validate the crimes that have led to trauma and dysfunctional societies across the Muslim world."⁵⁰ The Council noted that was the "first time the OIC's proposal has received such an outspoken response, especially among Muslim groups," while acknowledging that the OIC "maintains that the CDHR is a valid declaration of human rights and is still supported by members of the OIC."⁵¹ Human Rights Watch has also leveled criticism at the OIC regarding a lack of even-handedness in examination and correction of all abuses by state and non-state actors, such that it has sought to shield member states from criticism, except (purportedly) when it comes to criticism of Israel.⁵²

IV. The Present-Day Challenges of Islamic Nations⁵³ Adhering to International Law and International Agreements

Without delving deeply into the pre-nineteenth century histories of most Muslim nations, what is crucial to a present-day [*114] understanding of Islamic attitudes towards international law and international agreements stems from transformations which took place during the colonial and post-colonial eras. In most emerging states, there was a rapid dismantling of the religious-based legal systems in Muslim nations. In the so-called Dar al-Islam (literally house/abode of Islam) four types of states have emerged with politico-theological approaches to maintaining or establishing Islamic law: 1) Semi-secular nations with a domain for the Shari'a, but where most of the laws are derived from the West (e.g., Turkey as the most dramatic case, but also Guyana, Suriname, and others with sizeable majority or minority Muslim populations); 2) Traditionalist states (e.g., Saudi Arabia, Afghanistan); 3) "Radical" Islamizing states (e.g., Iran post-Khomeini, Sudan); and 4) "Pluralist" or "Non-Denominational" States (e.g., Lebanon, Turkey, Indonesia, Malaysia, Nigeria, and many other African States).⁵⁴

Whether certain nations choose to abide by international laws or agreements is more often than not a political determination with little influence on or from the development of Islamic attitudes towards this legislation. Rather, Islamic attitudes towards international law and agreements are more likely influenced by the legitimization of certain regimes and the power structures that are recognized, reinforced, or - at the very least - discussed. When conflicts arise between and within secular and religious, Muslim and non-Muslim factions, perhaps the best approach with respect to dispute resolution would be this: sometimes you have to talk to people who really offend you to find commonality and resolve essential differences.

Nations with a domain for the Shari'a have governments that recognize or even protect freedom of religion for their Muslim citizens and their clerics, but this does not mean that Shari'a dominates or even necessarily controls affairs of states domestically or in the international arena. In those nations, it is likely that the Shari'a - or clerical efforts towards its implementation - will have some influence on concluding or abiding by international law and international agreements. For instance, the Constitution of Afghanistan provides basic human rights for the Afghanistan citizens

law. For example, Article 22 (a) states: "Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah." Id. art. 22(a).

⁴⁸ United Nations Update, Hum. Rts. Brief, Fall 2008, at 53.

⁴⁹ Id. at 54.

⁵⁰ Tarek Fatah, The OIC Does Not Speak for Muslims, Int'l Humanist & Ethical Union (Sept. 18, 2008, 11:09 AM), http://oic-info.org/sites/default/files/the_oic_does_not_speak_for_muslims.pdf.

⁵¹ United Nations Update, supra note 48, at 54.

⁵² Peggy Hicks, How to Put U.N. Rights Council Back on Track, Hum. Rts. Watch (Nov. 3, 2006), <http://www.hrw.org/en/news/2006/11/03/how-put-un-rights-council-back-track>.

⁵³ See Member States, supra note 6; see generally Sean Foley, *The Arab Gulf States* (2010).

⁵⁴ Vogel Presentation, supra note 14, § 1, at 10-11.

and states that Afghanistan will abide by signed international conventions.⁵⁵ Yet Afghanistan's Civil Code - enacted more than [*115] twenty years before the Convention on the Rights of the Child (CRC) - was influenced by Islamic law and does not treat children as rights-holders.⁵⁶ Although Afghanistan signed the CRC, Yale Law School's Representing Children Worldwide (RCW) program aptly notes Afghanistan has not submitted an initial report.⁵⁷ The RCW suggests there is a possibility this signifies that the convention does not apply in practice in the state and came to the "reasonable conclusion ... that children are not guaranteed their rights according to Article 12 of the Convention."⁵⁸

For radical Islamizing states, Islam is more than an ideology; it advocates for states to rule solely by the Shari'a and consequently for the Ulama to be the arbiters of what agreements should be concluded or honored, or whether peace should be promoted or violence escalated.⁵⁹ Such states have political spectra ranging from gradualist to revolutionary adherence to rule under Shari'a; the former is characterized by an approach which may have existed for hundreds of years and the latter by one which may appear virtually overnight!⁶⁰ In the majority of countries, particularly pluralist or non-denominational states like Turkey or Indonesia, Ulama and the government currently coexist such that the Ulama support existing rulers and their current and preexisting obligations to other nations under international law, but still exhort the states and their peoples to follow the Shari'a without really expecting too much in implementation within their legal systems.⁶¹

This still begs the question of what constitutes "international law," or an "international agreement" and how Muslim nations interpret the same. Western and non-Western nations, whether they have Muslim populations or Islamic legal influences or not, may have [*116] governments that exist yet struggle mightily - and potentially fail - to construct or reconstruct functioning legal systems and adhere effectively to international laws and agreements in the wake of revolution, civil war, unrest, or occupation. To this end we might look to what the majority of Muslim nations (or those with substantial Muslim populations) have at a minimum signed - but in many cases also ratified or acceded to - with respect to the content and applicability of international law.⁶² Thirty-one of the world's fifty-six Muslim nations (or those with substantial Muslim populations) have at a minimum signed to the 1969 Vienna Convention on the Law of Treaties (VCLT).⁶³ This is significant with respect to Islamic attitudes toward international law and international agreements, inasmuch as they have publicly and openly committed to the notion of binding international law via treaty and agreement. Part III, Observance, Application and Interpretation of Treaties

⁵⁵ Afghanistan, Representing Child. Worldwide, available at <http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/afghanistan/frontpage.htm> (last updated Sept. 2005) (citing Const. of Afghanistan Jan. 26, 2004, ch. 1, art. 7, available at <http://www.afghanembassy.com.pl/cms/uploads/images/Constitution/The%20Constitution.pdf>).

⁵⁶ See *id.*; see also Convention on the Rights of the Child art. 12, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), available at <http://www.unhcr.org/refworld/docid/3ae6b38f0.html> (providing children the right to express their views and an opportunity to be heard in a legal proceeding that would affect them).

⁵⁷ Afghanistan, *supra* note 55.

⁵⁸ *Id.*

⁵⁹ Randal K. James, *The Islamist Challenge in the Middle East and North Africa* 7-8, 17-19 (Air Univ., Working Paper No. 118/96-04, 1996), http://www.au.af.mil/au/awc/awcgate/awc/james_rk.pdf.

⁶⁰ Vogel Presentation, *supra* note 14, § 1, at 12-14.

⁶¹ *Id.* § 1, at 10-12.

⁶² See, e.g., Rome Statute of the International Criminal Court, U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9 (1998) (entered into force July 1, 2002).

⁶³ See Member States, *supra* note 6; Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter Vienna Convention].

in the VCLT, is particularly significant with respect to observing prior commitments, covenants, and obligations. That segment restates, at Article 26, the Latin maxim: "'Pacta sunt servanda.' Every treaty in force is binding upon the parties to it and must be performed by them in good faith." ⁶⁴

The challenges of anticipating whether those we come in contact with (or against whom nations engage to contact with force) will abide by international law and international agreements must particularly arise when dealing with local, tribal, regional, or non-state actors, and whether information regarding legal accountability by a government comes first-hand or through second or third-hand sources like the media. These individuals, not acting in concert with or on behalf of their government, may care little or not at all about the government's commitment to such international treaties and agreements, and their immediate concerns may be far more pragmatic and less esoteric. ⁶⁵ For nation-to-nation contacts at the strategic level [*117] and politico-military purposes, it is important to consider a nation's policies toward international law and international agreements (at least at the tactical and operational levels). This consideration should take into account past and present actions, rather than categories of particular groups and their adherence or non-adherence to international law and international agreements. ⁶⁶

So, whether "failed," "failing," "at risk," or even "stable" by any estimation, how might the United States, or any other secular or non-Muslim nation approach systems with Islamic legal influences, or Muslim majorities or minorities, to foster stability and cooperation? The answer requires understanding the history and culture of nations influenced by the United States, using what has previously been considered "legitimate" by these nations as a guide from which to work. Harvard Law School Professor Frank Vogel has cited examples in Afghanistan and Iraq for post-intervention/occupation legal systems, where there is a fundamental requirement to understand what is of tribal origin and culturally significant, but not Islamic, what is Islam and incapable of change, and what is "what's on the books" as theoretical or aspirational aspects, but not enforced or enforceable. ⁶⁷ Find points of agreement where there can be an advancement of interests for security, rather than, for instance, focusing first and foremost on human rights agendas (e.g., inheritances of women under the Shari'a). ⁶⁸

Some time ago, Representative Thomas P. "Tip" O'Neill said "all politics is local." ⁶⁹ So, too, are the notions of Islamic attitudes [*118] towards international law and international agreements. To return to one of the previously surveyed legal systems and nations, that of Afghanistan, there is a fundamental reconciliation of religion and culture

⁶⁴ Vienna Convention, *supra* note 63, at 339.

⁶⁵ See generally Ben Connable, Presentation at the Citadel: Culture and Insurgency (Mar. 15, 2007) [hereinafter Connable Presentation], available at http://www.citadel.edu/sml/con_nableculturebrief.ppt; see also Unclassified Memorandum from Ben Connable, Major, First Marine Division G-2, Marines are from Mars, Iraqis are from Venus (May 30, 2004) (on file with author). On the role of culture in Islamic and other states, Tarek Bin Ammar, the French-Tunisian tycoon recently quoted the departed Shaikh Zayed, ruler of Abu Dhabi and first president of the UAE:

"Material objects are vital for people and their well-being is vital for a nation, but the spiritual and intellectual and the creation of dreams and the vision of society they and their children want to live in is as important. And the only way to reach that dream is through culture. A nation without culture is just a big supermarket."

Rahma Rachdi, "A Nation Without Culture is Just a Big Supermarket," Weekend Rev. (Aug. 23, 2012, 8:00 PM), <http://gulfnews.com/about-gulf-news/al-nisr-portfolio/weekend-review/a-nation-without-culture-is-just-a-big-supermarket-1.1062529>.

⁶⁶ See generally Connable Presentation, *supra* note 65.

⁶⁷ See Vogel Presentation, *supra* note 14, § 5, at 12-13, 15-16.

⁶⁸ With respect to inheritance, amongst other issues, see Toni Johnson, Islam: Governing Under Sharia, Backgrounder, <http://www.cfr.org/publication/8034/islam.html> (last updated Oct. 24, 2011).

⁶⁹ Mario M. Cuomo, The Last Liberal, N.Y. Times (Mar. 11, 2001), <http://www.nytimes.com/books/01/03/11/reviews/010311.11cuomot.html>. It is commonly accepted that Rep. O'Neill meant that local problems and concerns shape the politics and policies implemented and advocated by Congress.

in the Afghan constitutional framework, of Shari'a, customary law of court-decided laws, and positive law of civil law. The return to a democratization of laws in Afghanistan post-2001 has been furthered by the advancement of stability and security throughout the nation, and by the recognition that all segments of society must be actively involved in supporting local and national Afghan institutions.⁷⁰ Individuals with a background in non-Islamic value systems, hoping to promote the appreciation and support of international law and international agreements in any nation with a Muslim population or legal or political systems influenced or guided by Shari'a, must become a student of Muslim and local culture and Islamic law. The temptation to advance culturally-laden and uniquely nationalistic values or beliefs must be avoided, and an attitude that finds common ground supportable under both national and international law should be fostered.

V. Social Networking and a Modern-Day Manifesto to (Re)Establish Peace, Human Rights, and Political Legitimacy in Islamic States

In recent commentaries, I have chronicled how United States allies and adversaries in North Africa and the Middle East have experienced public unrest due to the challenges regarding the legitimacy of unelected and elected leaders and their role in making and enforcing the laws that rule their nations.⁷¹ In the Fall of 2010, the once-preternaturally prescient Malcolm Gladwell cast doubt on the potential contribution of web-based "social networking" to social movements and social change.⁷² Gladwell concluded in his October 4, 2010 New Yorker article *Small Change: Why the Revolution Will not be Tweeted*, that social networking websites with weak ties and **[*119]** unstructured equality were the opposite of the United States civil rights movement's strength to change powerful social forces through strong ties among participants and hierarchical organizations.⁷³

Days later, the newly-prescient Jeremy Brecher and Brendan Smith countered Gladwell with an October 8, 2010 piece entitled *Is Social Networking Useless for Social Change?* on the blog The Huffington Post.⁷⁴ Considering Malcolm Gladwell out of touch with true changes in political organizing and communication, Brecher and Smith with some significant understatement (and slight misstatement) cited to a "once-influential study published in 1847 [that] observed that workers were beginning to form "combinations" via the use of electronic (telegraph) and print (newspaper) means of communication."⁷⁵ In a profound understatement, the authors commented that "maybe the role of telegraph and newspapers a century and two-thirds ago is irrelevant to the role of social networking media today. But maybe not."⁷⁶

That commentary went on to note that in fact that "study" was the 1848 Manifesto of the Communist Party by Karl Marx and Friedrich Engels, one of the most significantly observed - and violently opposed - documents in human history!⁷⁷ Marx and Engels observed that workers were beginning to form "combinations" and that this

⁷⁰ Quadir A. Amiryar, Presentation at the Third Rule of Law Workshop: The Islamic Legal Tradition (Oct. 16-20, 2006).

⁷¹ See Kevin Govern, *The Twitter Revolutions: Social Media in the Arab Spring*, *Jurist* (Oct. 22, 2011), <http://jurist.org/forum/2011/10/kevin-govern-twitter-revolutions.php> [hereinafter *Twitter Revolutions*]; Kevin Govern, *Beyond Peer Pressure to Political Revolution - Tunisia's "Jasmine Revolution" and the Use of Social Networking to (Re)establish Political Legitimacy*, *Naples Daily News* (Feb. 27, 2011), <http://www.naplesnews.com/news/2011/feb/27/guest-commentary-beyond-peer-pressure-political-re>.

⁷² *Twitter Revolutions*, supra note 71.

⁷³ See Malcolm Gladwell, *Small Change: Why the Revolution Will Not be Tweeted*, *New Yorker* (Oct. 4, 2010), http://www.newyorker.com/reporting/2010/10/04/101004fa_fact_gladwell.

⁷⁴ See Brendan Smith & Jeremy Brecher, *Is Social Networking Useless for Social Change?*, *Huffington Post* (Oct. 7, 2010), http://www.huffingtonpost.com/brendan-smith/social-networking-is-malc_b_753274.html.

⁷⁵ *Id.*

⁷⁶ *Id.*

union [was] helped on by the improved means of communication that are created by Modern Industry, and that place the workers of different localities in contact with one another. It was just this contact that was needed to centralize the numerous local struggles, all of the same character, into one national struggle between classes.⁷⁸

The commentary offers some provocative questions; namely: are "improved means of communications" now creating a "contact ... needed to centralize the numerous local struggles ... into one national struggle" between governments and their people? Put **[*120]** another way, modern-day Internet revolutionaries may be unconsciously - or consciously - following those tenets set forth in the Manifesto.⁷⁹

This commentary points out the irony of what may prove in time to be one of America's most infamous security breaches may also be looked back upon as the impetus for some recently emergent Internet-based movements for freedom of speech and civil liberties. Specifically, the Wikileaks Internet website founder Julian Assange told reporters recently that leaked United States diplomatic cables in December 2010 showed former Tunisian president Ben Ali to be corrupt and would not have United States support if revolution came to his nation.⁸⁰ The commentary highlights how that news became known to thousands of technologically savvy, young Tunisians who were weary of the persistent political illegitimacy of the Ali government, and what mobilized them to act to bring the Ali government down.⁸¹ Months after those commentaries, the world has watched recent history repeating itself in Egypt, with thirty-year strongman Hosni Mubarak having stepped down, appearing supine (literally) from ill-health before an Egyptian tribunal for a variety of crimes against his people.⁸² The 42-year dictator of Libya, Muammar Gaddafi, was also captured and then killed after his convoy was attacked by NATO planes, including aircraft from the United States and France.⁸³ Likely not the last to depart, ousted Yemeni leader Saleh fled to Ethiopia in the Winter of 2012.⁸⁴

I have previously noted how this paradigm of progress challenges what I call "antiquated agents of change," those nineteenth and twentieth century notions are ways in which peoples and nations might (re)establish political legitimacy around the globe.⁸⁵ The nineteenth century German political scientist von Gneist considered the "free legal profession" as an "Archimedean lever for accomplishing the liberal project of personal rights and the rule of **[*121]** law"; that profession may still be significant, but interpersonal communications have become an increasingly important lever to move ideas and regimes.⁸⁶

All those who dream and talk of freedom (by all means direct and indirect) in North Africa, the Middle East, and elsewhere throughout the Islamic world and beyond, striving to advance human rights and peace, should (re-)read T.E. Lawrence to find that past is prologue in that:

⁷⁷ Twitter Revolutions, supra note 71 (citing Karl Marx & Friedrich Engels, 1 Manifesto of the Communist Party 98-137 (Progress Publishers 1969)).

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id. See US Embassy Cables: The Documents, Guardian (Dec. 7, 2010), <http://www.guardian.co.uk/world/us-embassy-cables-documents/217138>.

⁸¹ Twitter Revolutions, supra note 71.

⁸² Edmund Blair, Egypt's Mubarak Faces Next Trial Hearing on December 28, Reuters (Oct. 30, 2011, 6:50 AM), <http://www.reuters.com/article/2011/10/30/us-egypt-mubarak-idUSTRE79T0ZB20111030>.

⁸³ Doebbler, supra note 12.

⁸⁴ Ousted Yemeni Leader, supra note 12.

⁸⁵ Twitter Revolutions, supra note 71.

⁸⁶ Id. (citing Rudolf von Gneist, *Der Rechtsstaat* (1872)).

All men dream: but not equally. Those who dream by night in the dusty recesses of their minds wake in the day to find that it was vanity: but the dreamers of the day are dangerous men, for they may act their dreams with open eyes, to make it possible.⁸⁷

Conclusion

This Article has been the briefest of analysis of historical, present-day, and future challenges to defining and assessing a notion of a right to peace and human rights, rather than as an either/or proposition in Islamic states. My proposals draw mightily, if not entirely, upon the ideas and efforts of others, yet I hope this collection, analysis, and commentary might cause readers to rethink past policies and relations between and among peoples of the Muslim and non-Muslim world, and plan for cooperation and healthy competition rather than conflict.

In closing this study, let me offer two quotes on advancing "rule of law" considering the limits upon the state. The first reflects the wisdom of the Roman Catholic Church's teaching on the role of natural law and states:

In one passage of *Rerum novarum* [Pope Leo XIII] presents the organization of society according to the three powers - legislative, executive and judicial - , something which at the time represented a novelty in Church teaching. Such an ordering reflects a realistic vision of man's social nature, which calls for legislation capable of protecting the freedom of all. To that end, it is preferable that each power be balanced by other powers and by other spheres of [*122] responsibility which keep it within proper bounds. This is the principle of the "rule of law," in which the law is sovereign, and not the arbitrary will of individuals.⁸⁸

Finally, the other from the present U.N. Secretary-General at his Oath of Office Ceremony:

Development, security and human rights must go hand in hand; and that there can be no security without development and no development without security, and neither can be sustained in the longer term without being rooted in the rule of law and respect for human rights.⁸⁹

⁸⁷ T. E. Lawrence, *Seven Pillars of Wisdom* 23 (Wordsworth Editions Ltd. 1997) (1935). In his 1926 subscribers' edition of *Seven Pillars of Wisdom*, Lawrence placed dates in page headings rather than the body of the text, and omitted this Introductory Chapter purportedly at the recommendation of George Bernard Shaw. Modern reprints of *Seven Pillars of Wisdom* include this now-famous Chapter.

⁸⁸ Pope John Paul II, *Centesimus Annus* [Encyclical Letter on the Hundredth Anniversary of *Rerum Novarum*] P 44 (1991), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html. For the significance of natural law in Islam, see Anver M. Emon, *Natural Law and Natural Rights in Islamic Law*, 20 *J.L. & Religion* 351-95 (2004-2005). The history between the Roman Catholic Church and Islam has been complicated to say the least, but of most recent significance, please note the postsynodal apostolic exhortation that Benedict XVI presented after Mass in Beirut. See Pope Benedict XVI, *Ecclesia in Medio Oriente* [Apostolic Exhortation on the Church in Middle East] (2012), available at http://www.vatican.va/holy_father/benedict_xvi/apost_exhortations/documents/hf_ben-xvi_exh_20120914_ecclesia-in-medio-oriente_en.html. The document, *Ecclesia in Medio Oriente*, takes up the conclusions from the October 2010 synod of bishops on the Middle East. Id. As summarized by ZENIT, the non-profit international Catholic news agency:

The Exhortation invites the Catholic Church in the Middle East to revive communion within the Church, looking to the "native faithful" who belong to the Eastern Catholic Churches "sui iuris[.]" and opening up to dialogue with Jews and Muslims. This is a communion, a unity to be reached within the context of geographical, religious, cultural and socio-political diversity in the Middle East.

Vatican Summary of "Ecclesia in Medio Oriente," Zenit (Sep. 16, 2012), <http://www.zenit.org/article-35546>.

⁸⁹ Ban Ki-moon, Sec'y-Gen., United Nations, Remarks at General Assembly Tribute to Secretary-General and Oath of Office Ceremony of Secretary-General Designate (Dec. 14, 2006) (transcript available at <http://www.un.org/apps/sq/sqstats.asp?nid=2365>).

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