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“International Human Rights”

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Course Examination

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I. Preface

Human rights violations such as genocide, torture and arbitrary arrests unmistakably violate acclaimed fundamental human rights, such as the right to life and security of person. In the following I will give my view on whether violations of human rights involving religion (such as freedom of thought, conscience and religion) should constitute equal violations and thus necessitate or at least justify equivalent measures from e.g. the international community. For clarity and efficiency reasons I will concentrate my comments on the issue of religion. The question of appropriate measures to end such asserted violations will be considered separately.

II. Differences among human rights

One of the most important obstacles that the international human rights movement seems to face, is the question of whether human rights are in fact universal, and thus apply to every person regardless of his or her political or cultural surrounding. Even the most basic human rights that attach to the very existence of the human being, such as the right to life and security as expressed e.g. in Article 3 of the Universal Declaration of Human Rights, encounter difficulties while trying to establish themselves in various societies. I strongly believe this to be a consequence of the fact that human rights often are being interpreted as to contradict the (religious) values of a certain society (an opinion also put forward by Abdullah Ahmed An-Na`Im, p. 141 of the course materials). When it comes to human rights linked to the issue of religion, this problem of cultural legitimacy is being intensified. Whereas the preservation of life in my mind constitutes a substantial and inherent element of every

healthy and viable society, religion and the rights combined herewith are created from within the different societies. Throughout history, religion (and this equally applies to issues of gender) has therefore always been an important factor in the construction of society. This can for example be seen in the different forms of church-state separation that appear in the world today. While for instance in some Muslim countries the distinction between religious and political activities may be artificial, most European countries uphold some kind of separation of politics and religion. The perception of religious matters, including appropriate human rights, is therefore still today deeply connected and can only be understood in conjunction with local cultural traditions and values. This is less the case with the human right and desire for personal inviolacy, which I believe can partially be seen as something that is shared by virtually any state or government, regardless the cultural or historical background.

Due to the mentioned cultural, economic and political diversity of the international community, the issue of human rights related to religion causes special difficulties in finding a true global consensus. This is, I believe, being aggravated by the fact that the human rights movement has been, and still is being, pushed forward almost solely by so-called developed states. Apparently because only these states are in a realistic position to address the issue of human rights. Even though this reality should not make us regard the achievements reached so far less valuable, it might delay these rights' assimilation within the international community and at the same time make deviation and diversity in interpretation a necessity. The effects can i.a. be seen in the international human rights movement itself. A separate legal document on the issue of protection for religious freedom wasn't adopted until 1981 when the UN

General Assembly adopted a declaration on the elimination of all forms of intolerance based on religion. The long delay, as well as the fact that this step wasn't taken by a multilateral convention, must be seen as an indication of 'the potential for controversy inherent in the subject itself' (Donna Sullivan, p. 208 course material).

Regardless of the diverse cultural and political systems of the world, which of course constitute the reality one cannot avoid to address when confronted with issues of religion, the significance that these variations should have for the appropriate human rights norm should not be overstated. According to my opinion on the nature of international human rights, certain human rights, such as freedom of thought and conscience, ought to be appreciated as (individual) *human* rights (this view is also being put forward by Rosalyn Higgins, p. 149). In no case should they be interpreted as to violate or infringe the political or cultural distinctiveness of societies. As a consequence however, the opposite should not be the case either. A tolerable balance therefore has to be found between the image of the individual being and his rights on the one hand, and the society and its rules on the other. At the very least, both views have to be respected.

III. Appropriate measures to end asserted violations

Whether the use of force would under any hypothetical circumstances be an appropriate measure to end asserted violations against human rights norms involving the issue of religion, must in my mind be assessed regarding the general role of the use of force within international public law. Since the use of force is in principle prohibited under the Charter of the UN, and knows of exceptions only in the case of self-defence, authorisation by the Security Council or, exceptionally, to avert

overwhelming humanitarian catastrophe, the use of force would have to rely on a broad consensus within the international community. Since the interpretation of issues involving religion, as mentioned above, tend to vary between states, I doubt that the necessary consensus can be reached on such issues. How can one perception on any religious issue claim universality or superiority over another and hence create a basis for the use of force, if the argumentation supporting it is inevitably based on autonomous and highly subjective cultural or political traditions? It is therefore my belief that the use of force, in cases where religiously influenced human rights are being violated, is inappropriate and at the very least holds a high potential for deeper conflict between states and even societies. It furthermore seems to me that the outcome of any such intervention by force, would not be a very constructive one, since it is very doubtful that religious values which accordingly have been accentuated by force, would be able to establish themselves. They would probably be perceived as foreign and incompatible with local traditions and therefore ultimately be rejected (see on this my remarks on *cultural legitimacy* above).

In conclusion however, it has to be kept in mind that reasoning using religious expressions must not be used as a shield to hinder intervention and the use of force, when in reality gross human rights violations such as genocide or massacres (which no longer form part of a *domain réservé* of states), are at hand. Yet as long as the underlying cultural differences remain, I believe the utilization of force to meet discrimination on the basis of religion, believe or conscience, that is not linked to other human rights violations, holds a potential for weakening the international human rights movement rather than promoting it.