

UNIVERSALITY OF RIGHTS TESTED BY CULTURES: ISLAMIC AND ARAB DECLARATIONS ON HUMAN RIGHTS

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Human rights are an important political value, which no one dares disagree with. Nowadays, it is in the name of human rights that wars are justified and power-holders legitimated. Formulated originally in the West, they have become the subject of political, ideological and religious struggles involving every civilization, thus making it impossible, for any of them, not to elaborate its own vision of human rights. This need lay behind the attempts carried out in the Arab-Muslim world to create a separate system of human rights. This paper first tackles the Islamic foundations of human rights. An accurate analysis of the most important Arab-Muslim documents namely: the *Cairo Declaration on Human Rights in Islam*, adopted by the Islamic Conference and the *Arab Charter on Human Rights*, adopted by League of Arab States, follows, from which we see that two opposing views emerge. They clearly express the opposition between modernists and traditionalists. The former attempts to *modernize* Islam, whilst the latter attempts to *Islamise* modernity. This controversy also involves Western society, which plays a fundamental role in the definition of Arab and Muslim identities.

In The West, there has always been a tendency to assume the copyright of the notion on human rights, eliminating the constructions elaborated by other civilisations. This attitude, which comes about as the result of the forces of expansion and the technical ability of the West, has been questioned. On the one hand, relativistic theories have shown the particularity of what western culture considered universal, and on the other, we must consider the new found dignity of the other civilisations. The western tendency to take over the copyright of matters concerning human rights even if such a tendency could be partially justified by the universalising force that undertook the formulation of the western philosophy of the enlightenment, combines with a tendency to exclude the Islamic world from that cultural area where human rights have been

elaborated and proclaimed. The exclusion of the Islamic world from the *sacred enclosure of human rights* provoked a reaction from the Muslims who tried to develop the elaboration of their own vision of man corresponding to the requirements of modernity. The effort accomplished by a large sector of Muslim culture with the aim of defining an Islamic doctrine of human rights is part of a huge movement which unites all the Muslim community in a search in its own past¹, for answers to the challenges of modernity based on its own religious and cultural tradition. At the centre of this Islamic *counter-offensive* there is the idea, common to the vast majority of contemporary Islamic thinkers, that Islam, because of its divine origin, has reached the apex in the regulation of human relations; hence the idea that the original matrix of human rights, was already present in the religion that Allah gave to men more than thirteen centuries ago. This type of reasoning with apologetical tones aims at rejecting western cultural models and searching for correspondences between the original Islamic message and the values which rule international relations. In fact, beyond theoretical disputes on who *created* them, "*human rights represent an important political stake*"², in front of which no culture can remain indifferent. Certainly they cannot be ignored by the Islamic community, which,

*"in virtue of the idea that it made of its own original vocation – that of a witness-Community among men (2, 143 Koran) -, ...it can not remain indifferent to the questioning provoked by the issue of human rights on the international scale"*³.

To this need it must be added that, the discourse on the concept of *rights concerning the human being* reflects a specific need of the religious and cultural tradition of Islam. Contrary to other concepts,

¹ "What must not be forgotten when you analyse the matter of human rights in Muslim countries, to that year 622 is more present than ever in the elaboration of strategies for the future" Bennani, B. Philip, 1984, *L'islamisme et les droits de l'homme*, Lausanne, Ed. de l'Aire: pp. 96.

² Aldeeb, Abu-Sahlieh Sami A., 1994, *Les Musulmans face aux droits de l'homme: religion & droit & politique; étude et documents*, Bochum, Verlag D. Winkler: pp.13

³ Merad, Ali., 1984, *Droit de Dieu, droit de l'homme en Islam*, in *Universalité des droits de l'homme et diversité des cultures: Les Actes du I^o Colloque Interuniversitaire*, Fribourg, Ed. Universitaires Fribourg Suisse: pp. 128.

such as democracy, "*the notion of rights concerning the human person has been inscribed in the Islamic conscience since the beginning*"⁴. Like every civilisation, Islam has in fact worked out its own vision of man and the array of rights and duties concerning each living person. The Islamic discourse on human rights is not only then a pure concession to the spirit of the age, but an integral part of the religious and cultural tradition of Islam. But at the same time there is no doubt that ideological confrontation on one side and western development models on the other, have pushed the Arabic-Muslim world to render, in a different form, its own vision of man and the particular rights and duties, which belong to each person. The search for a definition of an authentic Islamic vision of human rights is also nourished by the need that Muslim culture has to define itself in order to propose itself as a valid interlocutor on the international scene. The attempt to bring out the Islamic authenticity provokes even the assertion, common to many Muslim scholars, that it has really been Islam to found the rights of the human person. In this discourse there is a particular desire not to succumb to the penetration of western ideas again and thereby to lose the priority of the discourse on the human being. The claim to superiority of the Islamic conception of human rights bases itself on the divine revelation of the origin of human rights that imposes itself on the human conscience as a datum of faith and thus is endowed with greater strength compared to any mere *human product*.

1. The Islamic foundations of human rights

According to Islamic theology, God is the universal maker from whom every thing originates and outside whom nothing can subsist. Things and phenomena of nature are considered as many wonderful signs of His wisdom and power. Among all the divine manifestations, man is the most wonderful, because after being created from clay (6,2 Koran), he received the breath of God's spirit (15,28), making him so in order to share his own life. There are many Koranic verses which remind man of his humble origin, but at the same time there are other verses which remind him of his pre-eminent dignity. Man is in fact the most worthy of all creatures on earth, to whom God

⁴ Ibidem: pp.129.

taught the name of all the things (2,31 – 2,33), to whom he granted the special gift of understanding things and of bending them to his own will. This honour comes from the original covenant that God stipulated with man, who was called to testify, in a definitive way, to primordial monotheism. With the Koran's words, God said:

"We have proposed a pledge to the Skies, to the Earth and to the Mountains, and they refused to carry it, and they were frightened. But Man took it upon himself, and Man is unjust and breaks every law!" (33,72).

Despite his weakness, Man is invested with a dignity which has no equal among the creatures of God: Man is God's vicar (khalifa) on Earth (2,30). Ali Merad specifies that *"the concept of God's vicarship on Earth bases itself in Islam on the equal dignity of all Adam's sons. This is an essential principle for every charter on human rights"*⁵. According to Islamic teaching, this principle grants the human person, unique among God's creatures, the moral liberty to accept or refuse Islam, which means *submission to God*. Man has the possibility and the responsibility to refuse to accept the God's guidance; faith is man's free act: *"Truth comes from your Lord: he who wants to believe may believe, he who does not may refuse to accept the faith"* (18,29). The act of submission represents man's trust in God, and for Muslims it is only through this act that man becomes truly free. Spiritual freedom, from which any other type of freedom gains significance, realises itself completely only through the condition of servitude to God:

*"the autonomous act of agreement with God, which represents, pre-eminently, an act of submission, constitutes, for Muslims, the supreme act of liberation. Man is essentially a slave to God. But it is precisely when he becomes a slave to God that he ceases to be a slave to human beings and to circumstances, that he flees the slavery of the thunder-storm, the slavery to his own whims and illusions, from the temptation of idols..."*⁶.

⁵ Merad, Ali, 1984, *Le concept de droits de l'homme en Islam*, in Emmanuel Hirsch, *Islam et droits de l'homme*, Paris, Librairie de Libertés: pp.193.

⁶ Al-Mafregy, Ishan Hamid, 1984, *L'Islam et les droits de l'homme*, in Emmanuel Hirsch, *Islam et droits de l'homme*, Paris, Librairie de Libertés: pp.19-20.

Adhesion to Islam revolves round the *fitra*, a very disputed concept, generally translated as *nature*, that appears in verse 30,30 of the Koran:

“Thus turn your face to the true Religion, in purity of faith, primary Nature in which God nurtured men. God’s creation suffers no mutation: that is the proper Religion, but most men do not know it”. Accompanying this verse there is the famous *hadith* one, which asserts that *“each child is given birth in the fitra (‘ala-l-fitra) and his parents are the ones who make him a Jew or a Christian or a pagan”*⁷.

The morphological origin (*f.t.r.*) of the word *fitra* evokes the idea of a breaking point, of a tear and it is applied in the Koran to the act of divine creation. According to the doctrine of the *fitra*, the universe has been created by a huge act of tearing apart (21,30); by this act the human species has been created, which therefore represents a portion of that initial stock common to each living creature. Therefore the *fitra* of man is his own singularity, his own original nature which, through creation, has been separated from all other creatures; and so the predisposition of each human to receive the Islamic message, to reconstruct his union with God, is – as Borrmans states – *“the created nature arranged towards Islam”*⁸. Sinaceur points out the possible implications of the doctrine, of *fitra* asserting that it

“assumes the idea of the primordial perfectibility of man and of the universality of Islam’s moral rules, every man’s religion at birth. This means that each child at birth is capable of growing in any kind of community, and that it is apprenticeship which sharpens and elaborates cultural data. So there is a healthy nature which excludes every subjection and every tutelage; a nature which allows individual freedom in the order of a community, of a culture and religion. The unfaithful, culturally distant from the Islamic source, will not

⁷ See Bori, Pier Cesare, 1995, *Diritti umani e Consenso etico*, in *Per un consenso etico tra culture*, Genova, 2° ed., Marietti: pp.98.

⁸ Borrmans, Maurizio, 1993, *Islam e Cristianesimo: le vie del dialogo*, Milano, ed. paoline: pp.171.

appear disgraceful: he will be considered merely different and will be respected as such"⁹.

The conclusions that Sinaceur, and with him many others, draws from the *fitra*'s doctrine are not shared by all Islamic theologians, but it is through this doctrine in particular, that an ample margin to the principle of tolerance is opened: a true basis for any conception of human rights. Islamic declarations, like any other Islamic attempts to elaborate a doctrine on human rights modelled upon modern requirements, start precisely from the idea of the human person described above; for this reason the above is not a mere homage to Muslim metaphysics but has direct implications on the rights which belong to each human being.

1.1 *God's Rights and Man's Rights*

Islam is frequently defined as the religion of man's duties. The concept of *God's vicariate* implies in fact that the human being has responsibilities and duties towards God: such duties define the role of *believer*.

*"Signifying submission, obedience to Allah, Lord of the Universe, Islamic law asserts primarily God's rights on the creature, that is to say the duties of Man towards Him, come before satisfying man's duties towards himself"*¹⁰.

Man's first duty towards God is to have faith only in Allah, to recognize his authority and not to confuse him with anyone: this is the *Tahwid*, the affirmation of God's oneness and unity. Then comes the duty to follow the directives of God's Prophet and to trust him: this is the sense of the profession of faith (*Shahada*). Finally there is man's obligation to follow with great care and without reserve the *Shari'a*, this means the law that God gave to all humans. To follow *God's rights and man's duties* is then the only way to participate in

⁹ Sinaceur, M.A., 1984, *La Déclaration islamique universelle des droits de l'homme. Présentation*, in Emmanuel Hirsch, *Islam et droits de l'homme*, Paris, Librairie de Libertés: pp.212.

¹⁰ Santucci, Robert, *Le regard de l'Islam* in Emmanuel Hirsch, op.cit : pp.168.

the *divine Truth*¹¹. This dialectical pair constitutes one of the fundamentals of Islam's theological-legal thought; God's rights/man's duties are in fact the original matrix for human rights. In this way the *Shari'a* establishes a series of duties for man, whether he is a single individual or part of a community, which correspond to the numerous rights that man himself has with regards to nature, the community and other people. This is the Islamic origin of human rights: the rights, which belong to human beings, originate from the duties, which are dictated by Koran and tradition.

Predisposed by nature to Islam, man, as we already stated, has the freedom to choose or not the acceptance to Allah's religion. Acceptance is mostly an individual act, from which man acquires a new moral and, consequently, social *status*. If on a pure metaphysical level all men enjoy the same dignity, because they are creatures of God, the believer's quality acquires a dignity that can be defined as supplementary. Louis Gardet opines:

*"in Islam, the person, shakhs, will be first among the witnesses to God's oneness.... He will never have a truly irreplaceable value of a human person if not invested by God with a believer's status"*¹².

The human being, who first of all is a witness and a believer, has duties and rights which result from this *status*. For this reason humanity is divided into categories of people who, by participating more or less in the *divine Truth*, have different duties and, therefore, different rights. In conformity with the orthodox Islamic conception, based on the doctrine of *fitra* all men are equal, but at the same time different because of the distance, that separates them from God. The juridical-social translation of this vision is a differentiation of rights enjoyed by the different categories of people. Based on the principle that each person has rights corresponding to his own duties towards God, the different categories of people have a different juridical and social *status*. Thus, women, slaves, non-Muslim people and apostates are all categories which have a juridical and social

¹¹ Sinaceur, M., *La Déclaration islamique universelle des droits de l'homme. Presentation*: pp.210-211.

¹² Gardet, Louis, *Ouvrir les frontières de l'esprit*, in E. Hirsch, op.cit : pp.149.

status considered inferior to that of a *free, Muslim Male*. So we have seen how Islam awards *dignity* to each human being, but we have also seen that such dignity varies depending on the distance that separates the human being from the *Divine Truth*. It is when we refer to those who are considered more distant from God that both the theory and practice of the Arab-Muslim world clashes with the resolutions produced by international organisations, which instead are based on the principle of absolute equality between human beings as stated in the first article of the Universal Declaration of Human Rights.

2. An intellectual search

As Ali Merad states “the Islamic discourse reflects – today as yesterday – *an intellectual search*”¹³, in which all efforts, aimed at defining an Islamic doctrine on human rights, have gathered an ever growing importance. Since the Universal Declaration of 1948, the debate on human rights and the necessity of a more specific Islamic position on the matter has been growing in Muslim countries. Such necessity has been nourished by the feeling, widely spread among Muslims, that the West had imposed a *Universal Declaration* made by its own jurists, without an authentic concourse of the Arab countries¹⁴. The Arab or Islamic declarations on human rights state first the need of Muslim countries to have their own position in the international panorama. Furthermore, as we will see, some of them show the attempt to bring the universality of human rights inside the universal panorama of the Islamic religion: namely the effort to Islamise human rights.

In this work I will take into consideration the most important documents produced by the Arab-Muslim world that I was able to ascertain during my research, namely, *The Cairo Declaration on Human Rights in Islam*, adopted by *Organisation of the Islamic Conference* in 1990 and *The Arab Charter on Human Rights*, adopted

¹³ Merad, Ali, op. cit.: pp. 190.

¹⁴ See Tavernier, Paul, 1994, *Les Etates Arabes, l'Onu et les Droits de l'Homme: La Declaration Universelle des Droits de l'Homme et les Pactes de 1966*, in G. Conac and A. Adbelfattah, *Islam et droit de l'homme*, *Economica*: pp.57-72.

by *League of Arab States* in 1994. First of all I would like to specify that these documents have not been followed by any convention and that therefore the interest created by them does not reside in the juridical consequences (which haven't been involved), but on the contrary stands on a level that we are able to define as more theoretical. The value of such declarations has more than one dimension. Primarily they are an expression of a specifically Islamic or Arab vision, which establishes itself as a true counter-model¹⁵. They are also indicative of the compatibility or incompatibility between the Arab-Islamic vision and the one which permeates international institutions. They are, after all, the representation of the *Arab-Islamic future project* on the matter of human rights. The declarations also represent important stages on the road to modernisation in the language of the Islamic message.

By the end of the 1960's there were many attempts to give life to a document which could render an authentic Islamic or Arab vision on human rights. The first project dates back to 1971 when the League of Arab States established a committee of experts to elaborate a declaration. However, due to internal differences, which could not be overcome, the project was abandoned. Another document which had aroused a great deal of interest came about from the discussions on Human Rights which were held in Kuwait in 1980. During the eighties other attempts led to the elaboration of several different projects. However these were only unofficial declarations, adopted by non-governmental organisations. At this point it is necessary to explain that – following the distinction made by Hamadi Redissi – “there are three types of Islamic declarations on human rights which we have to distinguish on a formal level”¹⁶. First of all there are the declarations drawn up by private citizens, like the Islamic Declaration of Abu Al-Hassen Beni Sadr, first President of the Iranian Republic¹⁷. Then come the declarations made by non-governmental

¹⁵ See Mayer, Ann Elizabeth, 1991, *Islam & Human Rights: Tradition and Politics*, London, Westview Press, Pinter Publishers: pp.198-199.

¹⁶ Hamadi Redissi, *L'Universalità alla prova delle culture: le dichiarazioni islamiche dei diritti dell'uomo*, essay produced in the conference “La Dichiarazione Universale dei diritti dell'uomo 50 anni dopo”, Bologna 18-20 December 1998.

¹⁷ See Sadr, Bani, 1989, *Le Coran et les droits de l'homme*, Paris, Maisonneuve & Larose.

institutions, like *The Universal Islamic Declaration of Human Rights*, adopted by the European Islamic Council in 1981¹⁸. In this kind of declaration we must also take cognisance of the less well-known *Project for a Charter of Man's Rights and People in the Arab World*, a document elaborated by intellectuals and jurists in Syracuse in 1986. The peculiarity of this project lies in the fact that it alone also foresees the creation of an Arab Court on Human Rights alongside protective mechanisms for human rights. Those drawn up by international organisations, such as the Islamic Conference and League of Arab States, represent the last type of declaration. Obviously, they are the most important since they were adopted by legitimate countries able to make mandatory decisions and have juridical consequences.

¹⁸ Edited by the Islamic Council of Europe in 1981, the *Universal Islamic Declaration of Human Rights* filled an void which, at that time, was particularly felt by the majority of the Muslim world. Besides the ambiguities and criticisms that the Declaration received, it was considered as an attempt, welcomed not only by Muslim but also by international Organizations. The importance that the *Universal Islamic Declaration of Human Rights* held was clearly expressed by M. A. Sinaceur, being then head of Unesco's division of philosophy, who said: "this text, first in its kind, reunites the dialogue between Islam and modernity so that Islam searches in itself not only those principles which allow it to justify itself as a contemporary religion but also those which above all would provide the means for an effective modern presence" (M.A. Sinaceur, op.cit.: pp.215). The primary interest of the *Universal Islamic Declaration of Human Rights* is to re-establish an authentically Islamic perspective and to think of human rights problems in equally Islamic terms. Rights and correspondent duties (to each right must correspond an obligation) are actually announced in the outline of the Islamic principles on human rights: that is to say that God's uniqueness and might is first of all asserted and then mankind's dignity. In fact, as specified in the Preamble, man, to God gave "dignity, greatness and permanence on all other creatures", is well defined as *vicar of God on earth* and it is on the grounds of this caliph office that he became holder of the rights announced in the Declaration. The vision suggested by the Declaration is primarily aimed at functional to an Islamisation of rights made possible through a constant process of Islamic legitimating which consists in establishing each right on quotations taken from the Koran or from the Muslim tradition (*Sunna*).

3. The Cairo Declaration on Human Rights in Islam

*The Cairo Declaration on Human Rights in Islam*¹⁹ has been adopted by the 19th Islamic Conference of Foreign Ministers belonging to the *Organisation of the Islamic Conference*, held in Cairo between the 31st July and the 5th of August 1990²⁰. Here the Islamic Conference was able to make a first declaration on this matter and adopt it after more than ten years of failed attempts. In fact, *The Cairo Declaration* has a long history, which started in 1978; it passed through five different drafts and was concluded only in 1990 after being adopted by the *Islamic Conference of the Foreign Ministers*²¹. The document is not a treaty and has no juridical value. However it remains the first declaration ever made by an international Islamic

¹⁹ I will use the brief denomination *Cairo Declaration*. See <http://www1.umn.edu/humanrts/index.html>.

²⁰ The Islamic Conference was founded in Rabat in 1969 by 26 Muslim countries, after the first Conference of Kings and Heads of States and Governments. Nevertheless it was only in 1972, after the institution of a Secretariat and other permanent structures, that the institutive Charter of the Organization was adopted. On the basis Islamic Conference is considered as a group of Islamic States. As a consequence, no other States can be members of the Organization than the ones which have an attachment – more or less openly asserted – to the Islamic religion. The Islamic Conference is the first international organization to use religion as the only criterion for membership; its principal aim is to consolidate solidarity and reinforce cooperation between member States. At this moment the Islamic Conference groups 52 Islamic countries of Asia, Africa and Europe (Albania). They are States which are very different among themselves not only because some of them are Shiite and others Sunnite, but also because some of these States are secular republics (in particular, Turkey) and others are conservative monarchies (countries on the Gulf). The permanent headquarters of the Islamic Conference is in Jeddah, Saudi Arabia, a country which could undoubtedly be considered as the leader of the Organization. The Saudi leadership is a very important element to understand also the drafting of the Cairo Declaration. Actually, Saudi Arabia is one of the most traditionalistic Islamic countries and hostile towards human rights and all this is shown in the Declaration.

²¹ The principal organs of the Islamic Conference are three. First of all there is the *Conference of Kings and Heads of States and Governments*, which unites every three years and is undoubtedly the supreme organ of the Organization. The motor organ is instead the *Conference of Foreign Ministers* since it is at this level that the majority of decisions related to the life and actions of the Organization are taken. The last organ of some importance is the *General Secretariat* which, having essentially an administrative function, ensures the stability and permanence of the Organization.

organisation on matters of human rights. Even though the Islamic Conference groups 52 Muslim States together and is surely the organisation which best represents the whole Islamic community, the Cairo Declaration is not a full expression of all Muslim thought, but represents a fundamentally traditionalistic position. In its rights in fact gain a particular content because they are inserted into a typical Islamic vision of man and nature. The rights, and the corresponding duties, are in fact announced in the vision of the Islamic foundations of man's rights, which affirms primarily the unity and might of God as well as then the dignity of the human being. Therefore, by reaffirming that human rights' foundations belong to the Islamic religion, it puts itself outside the rationalistic vision of man expressed by the Universal Declaration of 1948. The enunciation of certain rights is also linked to an orthodox and traditional vision which many Muslims refuse to accept and which therefore generated more criticisms than appreciation for the Cairo Declaration. Finally, one must add that, even though claiming to want to contribute to

“the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life”,

it does not refer to any of the international charters adopted by the United Nations.

3.1 *The content*

The Cairo Declaration on Human Rights in Islam, composed of a preamble and 25 articles, starts with a direct reference to the previous projects of the Islamic Conference placing itself then as the conclusion to a long journey which constrained the Islamic Conference to attempt to elaborate a document on human rights for more than ten years. The preamble acknowledges *“the importance of issuing a Document on Human Rights in Islam that will serve as a guide for Member states in all aspects of life”*, but at the same time, it is asserted that the Declaration contains simple *“general guidance”*, without therefore forcing the member States into any precise commitment. This is an indication, according to Aldeeb²², of the essentially propagandistic

²² Aldeeb, A.S.S.A., *op.cit.*: pp.56.

character of this and other Islamic declarations, which would be adopted more to gratify international organisations than to reflect a real attention of the Islamic states on the human rights matter. After having condemned the *confusion* provoked by “*different conflicting beliefs and ideologies*” and by the “*materialistic civilisation*”, and after having indicated in the *Islamic Ummah* the best community which could “*guide*” humanity, the preamble again proposes the idea that

“fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were transmitted through the last of His Prophets...”

Practically this reflects the idea that human rights have an original matrix in Islam and therefore they must be searched for in Islam. This vision, which sees human rights as godly prescriptions and thus as eternal, is tied to the *fitra*'s doctrine, according to which the human being enjoys rights “*as vicegerent of Allah on Earth*” and because “*Islam is the religion of true unspoiled nature*” (art.10).

With regard to the rights announced in the Declaration, we may subdivide them according to the correlation which lies between each of them and the *Shari'a* on one side and the international standards on the other. By examining closely Hamadi Redissi's roughly sketched subdivision, we notice the existence of three groups of fundamental rights, the rights compatible with international standards, irrespective of their source (this could be the *Shari'a* or the international law); the rights conditioned by the *Shari'a*, that is practised or in accordance with Islamic law or in such a manner so not to be in contrast with it; the rights in deep contradiction with international principles, documents and custom.

3.1.1 Rights Compatible with International Norms

Compatible rights are a part of those rights, which seem to attract an intercultural and international consent, independently from their original source. However all the following rights will be directly understandable, because they are often controversial or contradictory

both in what they say and in regard to those doctrines from which they obtain their significance.

In the first article the Declaration seems indeed to be contradictory, when, even though expressing a decidedly positive and universalistic anthropological vision, it asserts

“All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination based on race, colour, language, belief, sex, religion, political affiliation, social status or other considerations...no one has superiority over another except on the basis of piety and good deeds”.

It is an article that seems to re-propose those ideas which are considered as the basic premises of human rights, meant to be due rights for each person as person. In fact mankind's unity and equal dignity among all human beings without any distinction are here proclaimed; namely they are those premises that Ali Merad indicates as capable of a *valid* Islamic construction of the human rights. But at the same time the Declaration seems to stop at the *equal dignity of all Adam's sons*, without making the juridical equality of all men derive from it. Furthermore the assertion that *“...no one has superiority over another except on the basis of piety and good deeds”* confuses the reader since it implies a possible juridical inequality precisely on the basis of one's piety and good deeds.

Article 2 is one of the most controversial ones²³, even though it maintains its own logic leaving the last word to state legislation. On one side, it affirms that *“...the right to life is guaranteed to every human being”* and that it is peoples', societies' and governments' duty to preserve it. In the second and fourth paragraph it explicitly condemns the use of any means which could lead to genocide or any type of violation of a person's physical integrity. But on the other side, whether in regards to the possibility of *taking one's life* or to *making an attempt against physical integrity*, the article leaves its

²³ The ambiguity of this article, and others, is due to the fact that the Declaration must be able to reconcile and settle many different positions among Islamic countries.

interpretation to *legal reason (shar'ì)*²⁴, that signifies a free interpretation by the States²⁵.

Other articles are clearer and seem to correspond almost fully with international legislation. Article 11.a promotes the freedom principle in an explicit way, asserting that "*Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them...*". The second paragraph of article 11 conjoins individual to collective freedom, condemning without compromise any form of colonialism. The right to freedom and to peoples' self-determination is proclaimed and so is the equivalent duty

"of all States peoples to support the struggle of colonised peoples for the liquidation of all forms of and occupation...".
In the end peoples' have a right "*to preserve their independent identity and control over their wealth and natural resources*"²⁶.

Articles 4, 8 and 18 undoubtedly conform to international standards. Article 4 acknowledges that *every human being* has the right to inviolability and protection of his reputation in life and after death, while art. 8 sanctions the right of every human being to a juridical personality, without discrimination on the grounds of religion or sex. Art. 18, besides recognizing that

"Everyone shall have the right to live in security for himself, his religion, his dependants, his honour and his property", finally lays down the individual's right to safeguard his private life.

Economical and social rights are contained in articles 9, 13, 15 and 17. Among them there is the right to property (art.15), which is awarded to all individuals with no distinction. With regard to the right to work, art.13 asserts

²⁴ The word *Shar-i* is very ambiguous: it may designate legality as well as religious law.

²⁵ However it is a revealing fact, in regards to the position of Arab-Muslim countries, that none of them signed the Convention against the death penalty, agreeing, on this matter, with many countries among which the United States.

²⁶ I just want to say that the majority of the Arab's subsoil wealth (petrol) goes directly to the safes of Western banks, and Arab people certainly do not benefit from this.

“Work is a right guaranteed by the State and the Society for each person with capability to work...without any discrimination between males and females”.

Other rights are also recognised: the right to security at the place of work, to social security, to a fair wage and to non-exploitation. Union rights instead are not mentioned at all²⁷, an absence which, in Aldeeb’s words, *“is likely due to Saudi Arabia’s and other Arab countries opposition”*²⁸. Art.9 defines the seeking of knowledge as an obligation, and education as a right of each individual. The State is indicated as responsible for granting the tools and necessary structures:

“The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society”.

Art. 17 finally attributes to each individual the right to live in a healthy environment, the right to medical and social care and establishes that *“States shall ensure the right of the individual to a decent living”*. Another two articles deal with international relations: art.21 explicitly forbids *“Taking hostages under any form or for any purpose”*, while art.3 concerns humanitarian law in case of war. It is an article that assimilates the “best” international norms in the matter of humanitarian law.

3.1.2 *Rights Conditioned by Shari’a*

Compared to the previous group of rights, those that are conditioned by the Shari’a are fewer in number. This category includes the rights practised either in accordance with Islamic law or at least not openly in contrast with it. Among them, article 7 promotes children’s rights stating in the first paragraph

²⁷ Instead the role of the State mediator in disputes between workers and entrepreneurs is officially acknowledged, indirectly denying in this way the existence of class struggle.

²⁸ Aldeeb, A.S.S.A., op.cit.: pp.295.

“As of the moment of birth, every child has rights due from the parents, the society and the state...” The second paragraph attributes only to the father²⁹ *“the right to choose the type of education...in accordance with ethical values and the principles of the Shari’a”*.

Therefore if such rights are due to each child, at the same time they must agree with the principles established by Islamic law. Also included in this category is the right to the freedom of movement (art.12), which is guaranteed to *every man*, but always *“within the framework of the Shari’a”*. Also the right of asylum is guaranteed to each individual, *“unless asylum is motivated by committing an act regarded by the Shari’a as a crime”*. The last, but surely the most important amongst conditioned rights, is the right to free expression. Art. 22 asserts

“Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari’a”. In the third paragraph, information is thought of as “a vital necessity to society”,

but is at the same time placed within certain boundaries imposed by *Shari’a*.

It is obvious that such limitations, like the previous ones, express nothing else than the will not to interfere with the ruler’s power, to whom, in conclusion, these regulations remit all the power to limit the rights stated in the international charters: the remission to the *Shari’a* is in fact an expression of the intense desire to leave to the Islamic government’s free will the definition of what is right and what is not. It is exactly the definition of the *Law*, that is the *Shari’a*, that is undoubtedly the most controversial aspect of all Islam’s history, because the *Shari’a* indicates a broad range of legal positions at times varying among themselves. This means that the Declaration, assigning the final definition of the Islamic law to the individual States, leaves to them also the task of defining the meaning and the limits of rights announced by it.

²⁹ There is an important difference between the English and the French translation. In the first one the right to choose the type of education belong to the both parents; in the French one this right belongs only to the father.

3.1.3 Rights which contradict international norms

There are several rights that are in clear contrast with either principles and international rules or with cross-cultural custom. Some of them appeared already previously. It is the case with the right to life and physical integrity which, by integrating the limitations provided by art.2 with the assertion of art.19 that *"There shall be no crime or punishment except as provided for in the Shari'a"*, virtually sanctions corporal punishments provided by the *Shari'a*. The same may be said with regard to the right to freedom of speech (art.22), which is limited by the necessity not to contradict what is provided and foreseen by the *Shari'a's* rules. Even the assertion included in art.10 according to which, Islam being man's natural religion,

"It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism",

is decisively in contrast with international rules since it indirectly eliminates the freedom of worship and expressly indicates the impossibility for a Muslim to change religion, resolving in this negative way the apostasy issue.

Religious discrimination is also indirectly present in the awarding of political rights (art.23) and in art.5 relating to the right to marry and to the right to create a family. In this last article it is in fact asserted that

"Men and women have the right to marry, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right";

it is clear that here restrictions related to differences of religion are not mentioned because they are currently in force in many Muslim countries and are foreseen and provided for in the Islamic orthodox law. With regard to article 23.b, we read that

"Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'a".

The reference to *Shari'a's* rules, besides any subterfuge, signifies

that non-Muslim people do not have the same rights as Muslims and that women are not able to hold certain public offices which the orthodox interpretation of *Shari'a* reserves exclusively to men. Discrimination towards women appeared also in the already mentioned art.7 concerning children's rights, when it is stated that the child's education pertains to the father or to whom takes his place; for this reason women are excluded from their children's education. Art.6 is more unequivocal since it says that

"Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform...The husband is responsible for the maintenance and welfare of the family".

All this goes hand in hand with the traditional vision, according to which the moral equality between man and woman does not involve juridical equality on the basis that women are socially and economically dependent on their husbands. Indicative on this matter is that

*their rights are equivalent to their duties: "by imposing, in fact, less duties and responsibilities than men, women as a consequence have less or different rights"*³⁰.

The last two norms which conflict with international law are expressed in art.14, which unequivocally prohibits usury (*riba*), understood as a loan with interest, and in art.16, which limits *the right to enjoy the fruits of his scientific, literary, artistic or technical labour* to conformity to the principles of the *Shari'a*. This last article is an indirect confirmation of the clear limitation given to the freedom of speech already announced in art.22.

Finally there is a second important omission, in addition to that regarding union rights, namely the right of free association, which is the premise of any free and pluralistic society.

³⁰ Modica, Milena, 1997, *La progressiva internazionalizzazione dei diritti dell'uomo nel mondo arabo-musulmano e africano*, in P. Ungari e M. Modica, *Per una convergenza mediterranea sui diritti dell'uomo*, Roma, La goliardica: pp.156.

3.2 *Conclusions*

The best comment on *the Cairo Declaration on Human Rights in Islam* is given in the last two articles of the Declaration which assert that

“All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’a” (art.24) and that *“The Islamic Shari’a is the only source of reference for the explanation or clarification of any of the articles of this Declaration”* (art.25).

These two drastic and explicit articles make it possible to reformulate even those rights which do not make direct or indirect references to the *Shari’a*. Therefore they are considered as an expression of one of the most traditionalist and orthodox visions which are characteristic of the Islamic community, and are all the more significant because made within an international organisation formed by sovereign and independent states.

The discrepancy that emanates from the enunciation of various rights is, more than anything else, an expression of a compromise reached among the states with respect to the *Shari’a*'s interpretation and the relationship with modernity. As a matter of fact we must not forget that the Islamic Conference is formed from 52 Islamic states which vary intensely among themselves with regards to politics, confessional tendency and culture. Such a variety is certainly one of the reasons why *the Cairo Declaration* proceeds from a mixture of contradictory philosophies and antagonistic moral systems, lacking therefore substantial unity of thought and clarity of concepts. As a result there is a total absence of an authentic, clear political and moral project, capable of expressing a modern vision of human rights in Islam. On the contrary the Declaration represents very often a retreat whether with regard to other Islamic Conference's projects or to the internal legislation of many Muslim states.

There is however, something which goes far beyond all these ambiguities and reticence: which is the foundation on which the Declaration has been built. As a matter of fact, in the words of Sami A. Aldeeb, if on one side

“the Universal Declaration of the U.N., as an expression of the human rights western conception, is a secular document based on a pragmatic experience and, for this reason, able

*to be modified...The Islamic Declaration, on the other side, is, in the spirit of its authors, a religious document with a divine origin, based upon the Revelation, which is not possible to change; it has the same aims and purposes of the previous Declaration, but upon a religious ground. These conceptual differences are irreducible*³¹.

So the Declaration distinguishes itself once again, due to its attachment to a traditional Islam in which the eminently religious foundation of human rights is re-affirmed. Such a statement, rather than imagining Islam as a particular within the universal, tries to incorporate the universalism of human rights back into the particularities of Islamic religion, granting little or nothing to modernity's conquest and to intercultural dialogue. According to this vision, only the *Shari'a* is able to guide mankind, while the *status* of reason is degraded, because human reason is judged as unable to supply valid models of life, leaving aside divine guide and inspiration.

4. The Arab Charter on Human Rights

With regard to the Islamic declarations the *Arab Charter on Human Rights*³² is based on a totally different foundation. Adopted by the *Council of the League of Arab States* on the 15 September of 1994³³, the Charter distinguishes itself from the Islamic documents not only for the announced rights and liberties, but especially for its grounds, which are not religious but secular. In fact, even though the preamble evokes

³¹ Aldeeb, A.S.S.A., 1991, «Dialogue conflictuel sur les droits de l'homme entre Occident et Islam », *Islamochristiana* n°17; pp.58-59.

³² See <http://www1.umn.edu/humanrts/index.html>.

³³ Instituted by the Cairo Agreement the 22nd of March 1945, the League of Arab States is the most important intergovernmental organization of the Arab world. It's now formed o 22 Arab-Muslim nations, including the Palestinian Authority which is emblematically the State of Palestine. The League of Arab States is the oldest of the international organizations born after the second world war, also prior to the United Nations.

“the eternal principles of brotherhood and equality among all human beings which were firmly established by the Islamic Shari’a and – significantly – the other divinely-revealed religions”,

the Charter is characterised by the

“presence of unequivocal references to the ideal of Arab Unity (from the Arabian Gulf to the Atlantic) and to those values and principles, other than religious, human – and so secular – common to the Arab Nation and strengthened by its long history”³⁴.

The Charter is presented in a positive form,

“in the way of a secular and a-confessional codification, undertaking the religious reference only as a whole of inspiring cultural values”³⁵.

The original matrix of the *Arab Charter on Human Rights* does not reside then in the Islamic religion, but mainly in its *Arabicity*, namely in that other identification pole which defines Arab-Muslim countries. From what we deduce from this Charter, *Arabicity* refers to a certain idea of the Arab Nation, or of what we could define as a classic Arab humanism:

“Given the Arab Nation’s belief in human dignity since God honoured it by making the Arab World the cradle of religions and the birthplace of civilizations which confirmed its right to a life of dignity based on freedom, justice and peace”. Arabicity is defined also as “being proud of the humanitarian values and principles which it firmly established in the course of its long history”, which is at the basis of the vindication “of the fact that the entire Arab World has always worked together to preserve its faith, believing in its unity, struggling to protect its freedom, defending the right of nations to self-determination and to safeguard their resources”.

³⁴ Modica, M., op. cit.: ppf.124-125.

³⁵ Ibidem: pp.125.

Another confirmation of the secular character of the Charter and its aspiration to participate in the intercultural dialogue comes from the unequivocal reaffirmation of the

*“principles of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights...”*³⁶.

Even though the Charter has undoubtedly very little chances of coming into force, anyway it represents a document deserving great attention because it proves the existence, even among Arab governors, of a modernist vision of Arab society in general and indirectly also of Islam. The idea of a specifically Arab codification of human rights appeared already in 1969 in an action program of the *Permanent Arab Commission on Human Rights*³⁷. The first attempt to elaborate an Arab charter goes back to 1971, but irrevocable differences among the different countries, frustrated not only attempts but also the future ones. During the eighties, all kinds of initiatives in order to give life to an Arab charter on human rights were abandoned whether

³⁶ Apart from these documents, the Charter also refers to the Cairo Declaration, this means to a confessional and traditionalistic document. The reason for this reference to a text whose listed rights and groundings are completely different reflects a large conflict exists between the traditionalists and the modernists inside the Arab League. A contrast exemplified in 1994 by the reservations expressed by seven States (Saudi Arabia, United Arab Emirates, Bahrain, Kuwait, Oman, Sudan and Yemen).

³⁷ The Commission is composed of representatives of the member States who have the right to a sole vote. This is certainly a limitation, because it means that members do not participate personally and independently, but are instead simple delegates of their correspondent governments. The Commission has the duty to prepare conventional projects in matters under its competence and to adopt recommendations with a simple majority, and to submit them at the Council. Moreover the Commission has adopted an action program (April 1969) which included, among other initiatives, actions aimed at the adoption of an Arab Charter on Human Rights and to awaken public opinion on the Arab cause and in particular on the Palestinian issue. Besides some success on the side of promotion and sensibilisation, the Commission's activities has not been very effective not only in what concerns coordination with national commissions but also in regard to the creation of a control mechanism.

due to the worsening Palestinian question or due to the risk of encroaching on the document that Islamic Conference was preparing. But in 1990 it was indeed the promulgation of the *Cairo Declaration on Human Rights in Islam*, which restarted a project for a charter of League of Arab States. This is explained by the fact that “*some of the modern and secular*³⁸ *Arab States (all Islamic Conference’s members), after all, wanted to show their discontent with the Cairo Declaration*”³⁹.

4.1 *The Content*

A preamble and 43 articles, all subdivided in four sections compose the Arab Charter on Human Rights. The first section sanctions people’s right to their own self-determination; the second instead includes the general principles, their applying rules, the limitations and the enunciation of the fundamental rights and liberties; the third section is devoted to the appointment of a *Committee of Experts on Human Rights*; finally the fourth concerns regulations on the signature, the ratifications and the coming into force of the document. The Charter’s preamble is essentially a glorification of the Arab Nation’s history and culture, which is appointed as a source of legitimacy and inspiration. The principles of freedom, brotherhood and justice, which govern international cooperation and intercultural consent, are derived from it.

“Acknowledging the close interrelationship between human rights and world peace”, there is a resolute rejection of “racism and zionism, which constitute a violation of human rights and pose a threat to world peace”.

Even the enunciation of rights opens with a specific section dedicated to the right of each people “*to self-determination and control over their natural wealth and resources*” and with the peremptory affirmation that

³⁸ Modern and secular relative to the traditionalist and confessional character of the other member States.

³⁹ Redissi, Hamadi, *op.cit.*: pp.4.

“Racism, zionism, occupation and foreign domination pose a challenge to human dignity and constitute a fundamental obstacle to the realization of the basic rights of peoples”.

These concepts are then condensed in art.35, which confirms the bond between pride in Arab nationalism, human rights and world peace.

The introduction to the second section is undoubtedly the most important article of the Charter. Article 2 indeed sanctions in an extensive way the principle of equality, asserting that

“Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms recognised herein, without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women”.

It is an article that summarises what was established in 1948 by art.2 of the Universal Declaration, with the remarkable specification for the Arab outline that no discrimination should exist between men and women. The statement of an absolute equality between sexes is clear, even if the Charter does not supply specific rights which define such principle in detail; in fact art.38, other than indicating the family as the fundamental unit of society, does not provide anything on duties and rights regarding married couples and, at the same time, lacks an article which clearly defines freedom of marriage with no religious limitations.

The progressive tone of the Charter is anyway evident even in the proclamation of the *“right to freedom of belief, thought and opinion”* (art.26). Article 27 then establishes the manner in which this freedom is practiced in an ample and liberal way, stating:

“Adherents of every religion have the right to practise their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others”.

A limit to the practice of this right can be imposed only by state

law⁴⁰, but this does not prevent it from being sanctioned in a clear way, modelled upon international norms. However it would have been desirable for the Charter to contemplate expressly also the freedom to change religion, asserting unequivocally in this way a right which is in open opposition to the orthodox reading of the *Shari'a* which, in its most drastic authority, even provides the death penalty for those who are guilty of apostasy.

With regard to the right to one's life, another very problematic matter in Arab-Muslim countries, the Charter establishes that "*Every individual has the right to life, liberty and security of person*" (art.5). It is evidently a major step forward compared to the Islamic declarations, but at the same time protection of life does not reach the point of eliminating the death penalty; art.10 establishes, as a matter of fact that "*The death penalty may be imposed only for the most serious crimes*", but nevertheless it is admitted. However the Charter tries to limit it as much as possible by overwhelming it with guarantees in order that the convict could hope to obtain "*pardon or commutation of the sentence*" (art.10), to avail himself of a suspension in case of pregnancy or breast-feeding and a non-enforcement in case of minor age (art.12). in addition to this the death penalty is absolutely not admitted in cases of political crimes.

With regard to corporal punishment, article 13 is explicit in saying that

"The States parties shall protect every person in their territory from being subjected to physical or mental torture or cruel, inhuman or degrading treatment".

In comparison with the Universal Declaration, the Charter omits the word *punishments*, leaving in this way some doubts regarding a possible admissibility of corporal punishments provided by the Islamic law. In this case, like the ones concerning apostacy and female conditions in marriage, the Charter's drafters could have been more explicit in proclaiming these rights in order to banish any possible doubt.

⁴⁰ The possible limitation on behalf of state law is also common to the international declarations. However it should not be used as an instrument of the state to limit arbitrarily fundamental rights, as articles 3 and 4 of the present Charter demonstrate, imposing some limits to the possible limitations on behalf of the state law.

A conspicuous part of the second section is dedicated to the protection of individual freedom and legal guarantees. In a clear and simple form it is asserted that "*Everyone shall have the inherent right to recognition as a person before the law*" (art.18), that a law can not be retroactive (art.6), that "*No one shall be tried twice for the same offence*" (art.16), that "*The accused shall be presumed innocent until proved guilty at a lawful trial*" (art.7), that all are equal in front of the law and that the state must guarantee everyone the possibility to appeal to it (art.9).

The Charter also establishes an important series of principles and rights of a political type, devoted first of all to the removal of any possible form of discrimination towards non-Muslims and women. After having asserted that "*The people are the source of authority*" (art.19), the Charter continues saying that "*every citizen of full legal age shall have the right of political participation.*" (art.19) and that each citizen is entitled to have access to public positions (art.33). Much more important, because they are not contemplated in the Islamic declarations and because they are a foundation of a pluralistic and democratic society, are the rights of free assembly and association (art.28) and the right to form unions and to strike (art.29). In the perspective of a tolerant and pluralistic society are also placed the rights of minorities, which "*shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions*" (art.37). The enunciation of minority rights has a huge importance, bearing in mind that precisely in the name of *Arabisation* many Arab countries had embarked on particular politics devoted to a gradual destruction of non-Arab cultures (for example the Berbers in the Maghreb and the Kurds in Kurdistan). We may consider it then as a statement which reduces the fear, at least in theory, of an Arab intolerance which takes the place of an Islamic one, all this in the name of belonging to an Arab culture and Nation.

The dispositions related to the national citizenship and belonging are likewise remarkable, even though the nationalism which comes out of it

*"takes on shape in a state vision without being able to expand the primordial intention of the union's League of Arab peoples"*⁴¹.

⁴¹ Modica, Milena, op.cit: pp.42.

The dispositions include first of all the prohibition to deny or to deprive someone in an arbitrary way of their original citizenship (art.24); the prohibition to limit someone's residence or freedom of circulation (art.20); the prohibition of exile (art.22) and finally of "*the right to seek political asylum in other countries in order to escape persecution*" (art.23). Other important rights sanctioned in the second section are the economical and social ones, among which the right to work (art.30), the right of private property (art.25) and the right to education (art.34).

The third and fourth articles protect the rights and liberties, announced in the Charter, in two manners. First of all, the Charter forbids a state to limit human rights by basing itself on law, convention or customs or because the Charter does not state them or finally by asserting reciprocity's rule among states against a state which does not respect them. Limitations are themselves conventional and are limited by guarantees. In particular art 4(c) provides that

"Such measures or derogations shall under no circumstances affect or apply to the rights and special guarantees concerning the prohibition of torture and degrading treatment, return to one's country, political asylum, trial, the inadmissibility of retrial for the same act, and the legal status of crime and punishment".

The second kind of protection of rights is indicated in the third section, which is entirely dedicated to the creation of a *Committee of Experts on Human Rights*. In it both the structure and the Committee's functions are established. However, it must be stressed that, unlike what is provided for by the permanent Commission, art.40 establishes that "*The candidates... shall serve in their personal capacity with full impartiality and integrity*". The Committee should examine the reports which single states must present every three years and then in its turn prepare a statement for the permanent Commission on human rights based on what has been reported from the various countries (art.41).

The fourth and last section establishes that the:

"Charter shall enter into effect two months after the date of deposit of the seventh instrument of ratification or accession" (art.42.b).

4.2 *Conclusions*

The Arab Charter on Human Rights is undoubtedly one of the most interesting official documents that the Arab-Muslim world has ever produced on the topic of human rights. It differs distinctly from other Islamic documents not only for the whole announced rights and liberties but also for its background. In spite of some shady areas on more problematical issues such as the condition of women, freedom of worship and apostasy, the Charter distinguishes itself both for its convergence in regard of those principles announced by international norms and for its re-affirmation of the dignity of Arab civilisation. The Charter assimilates the most important international rules on human rights, beginning from the moral and juridical equality of all human beings expressed in the second article, but, with regard to the Cairo Declaration, the grounds suddenly change from religious to secular. As a matter of fact the Charter is an a-confessional and secular document, in which the announced principles are defined as eternal, while rights and liberties are eminently historical, that means liable to human modifications. Even if not in an outspoken way as the Universal Declaration does, the Charter as well suggests a vision in which the use of reason is the most important way for a human being to control himself and the world.

Secondly, as the general reception of the most important rights expressed by the *International Declaration of Human Rights*, the Charter supports the glorification of Arab history and identity, without however incorporating it inside the Islamic religion. As a matter of fact the Charter devotes a large section of the preamble and many articles to the definition of an Arab identity and to those rights which define the *Arab person*, laying stress on the importance “to live in an intellectual and cultural environment in which Arab nationalism is a source of pride” (art.35). Islam instead is indicated as a fundamental part of Arab identity, to which it supplies, together with the other monotheist religions, “the eternal principles of brotherhood and equality among all human beings” (preamble). Nevertheless this does not mean *Arabicity’s* dissolution inside the Islamic religion. Rather, it is exactly *Arabicity* which will represent the original identification matrix on which are built the rights and liberties due to each individual, without making *Arabicity*, for this reason, a new ideology against ethnic and cultural minorities. It is a fundamental shift of perspective, indicative of the distance which

separates the League's document from those edited by Islamic organisations⁴².

In this way the Charter re-establishes the just proportions between universal and particular, presenting itself as a particularistic document within the international community, to which it supplies its specific contribution, without however arrogating the right to represent the best or the whole of it. By re-balancing the distances between universalism and particularism, the League's Charter so places itself in a favourable light towards cross-culturalism and towards a more incisive internationalization of fundamental human rights.

As Hamadi Redissi concludes, even though

*"the Charter is in the vanguard, with regard to the Cairo Declaration and to existing legislation within States and the Arab League ..., probably it will have little chance of coming into force. And should this happen, it is difficult to see how States which do not respect human rights could accept the control of a Committee of experts and the League's permanent Commission"*⁴³.

It seems well ahead of its time when seen in the context of what current practice in Arab-Muslim countries allow.

5. Re-opening the doors of *Ijtihad*

Faced with the progressive expansion of the international interest in human rights, the Arab-Muslim world did not remain indifferent, but instead tried to define its own specific position. The two documents analysed above, although different, express the need to

⁴² According to the words of Maxime Rodinson, *"we may consider to be members of the ethnic, people or Arab nation those who: 1) Speak a variant of the Arab language and, at the same time, consider it as natural language, the one that they must speak, or, even without speaking it, they consider it as such; 2) Regard as their heritage the history and cultural manners of the people which called itself and which others call Arabs, concentrating in these cultural manners, since the VII century, the massive support to the Muslim religion (which is far from being their possession); 3) (which is similar) claim on Arab identity, or have an Arab self-consciousness"*. Rodinson, Maxime, 1980, *Gli Arabi*, Firenze, Sansoni Ed.: pp.54.

⁴³ Redissi, Hamadi, op.cit.: pp.7.

supply the Arab-Muslim world with its own particular and specific definition of human rights, attempting in this way to elude the subjection with regard to western models. Although there is a great distance which separates the Islamic Declaration from the Arab Charter on Human Rights, they are linked by the fact that not only are human rights a value, but also by the *priority given to the discourse of rights*, whether Islamic or Arab. From intellectuals to states, from traditionalists to modernists, the problem is always the same: to claim *the true discourse*, to represent *Islam's authenticity*, or in any case to be the best representative of what confers legitimacy in the eyes of the masses. Whether it is in a traditionalistic one or in a modernistic vein, what matters then is to be the representative of an authentic Islam, the source of legitimacy and power:

*"in most Muslim countries Islam still constitutes the supreme principle of loyalty and group identity. It is Islam which makes a distinction between itself and the other, between who is inside and who is out, between brother and foreigner"*⁴⁴.

Unlike Christian-Western culture, in which other logical standards for human subdivision (as a nation, village, ethnic group, etc) prevail, the epistemological structure of Islamic thought is based on the clear dichotomy between Muslim and non-Muslims. Even if in the 20th century, under the spur of the modernisation process, other criteria of identity came into play, religious belonging remains the most important and the only true discriminatory criterion in the definition of the human being. Particularly in crisis and moments of emergency Muslims tend to recover their Islamic identity, a sense of belonging to the religious community rather than the national or ethnic one, as the criterion on which basis they give a meaning to reality and to themselves.

In many Muslim countries Islam represents the only basis of authority: Islamic identity is the real ground for power. Legitimacy of a political domination is exactly defined by the rooting that exists in Islamic law and history, rather than by nationalistic or patriotic claims. The reference to Islam's history is one of the most used

⁴⁴ Lewis, Bernard, 1991, *Il linguaggio politico dell'Islam*, Roma, Laterza: pp.7.

methods by rulers in order to secure legitimacy in the eyes of their people. History, understood as Islam's history, is the ground for self-consciousness and on ethical standard:

“as recent events have repeatedly demonstrated, Islam ensures the most effective system of symbols for a political mobilization, a functional way to stir up people, either to defend a system of government perceived as endowed with the necessary legitimacy, or to contest another one considered deprived of such legitimacy, in other words non-Islamic”⁴⁵.

The justificatory function of vindicating an Islamic identity is clearly expressed by the constitutions of all those States with a Muslim majority which, with the important exception of Turkey, indicate the *Shari'a* as the fundamental law of the state, elevating it to an official religion. In this perspective the concept of *authenticity* assumes an important role, being the basis, from the start of Islamic history, of any kind of claim. To restore the lost authenticity to the Arab-Muslim community is the main aim for any reformist movement in order to mobilise the community of believers. Authenticity and specificity became the principle criteria for developing political legitimacy. Faced with the problems created by social and economical changes, people demand Arab and Islamic answers which defend their identity. The elites reply to these requests, which come from deprived masses of ancient identifications submerged under completely new problems, by appealing to the founding myths of Arab-Muslim identity.

So the problem is first of all to search in Islam itself for those *theoretical conditions* for a possible philosophy of human rights, that is a philosophy which recognizes

“the existence of the nature of things and consequently of the human being and human reason's ability to discover it. Therefore this is what needs be sought in Islamic thought”⁴⁶;

⁴⁵ Ibidem: pp.8.

⁴⁶ Laghmani, Slim, 1994, *Islam et droits de l'homme*, in G. Conac and A. Amor, *Islam et droits de l'homme*, Economica : pp.48.

In other words it is necessary for Muslims to feel that human rights are an integral part of Islamic civilization and, in order to make this happen, it is important to search even in the Islamic doctrine for those fundamental premises for a modern discussion on human rights. On this subject it is first of all necessary to carry out a *critical reconstruction of the past*, in the light of those values and philosophies which underlie human rights. It is necessary to open oneself to new epistemological and exegetical perspectives in order to bring Islamic theology closer to the philosophy of human rights. The demand (and the urgency) of this type of work is underlined in a particular way by Mohammed Arkoun, who always insists on the necessity to modify the intelligibility and epistemological limits of Arab-Muslim thought. He asserts in particular that, not only Islam, but all:

*“traditional theologies have been revealed as exclusive cultural theories, as strategies for refusing whatever is unrelated to the community (Church, Umma). In this way they have created important epistemological obstructions which have made inconceivable all today’s problems set free by critical thought”*⁴⁷

To begin an emancipation of Arab-Muslim thought means going back to theoretical constructions which forced it inside a net of limited interpretation in respect to the challenges of modernity. As far as *Arab Islam* is concerned – continues Arkoun – *“the Koran is the compulsory starting point for any critical reconsideration of the Arab-Islamic past”*⁴⁸.

The issue presents itself first of all on an exegetic level, that focuses on the possible readings of the Koran and Islamic traditions. In this way the extreme fragmentation of the Islamic thought demonstrates that – as is emblematically asserted by Slim Laghmani:

*“a text is not susceptible to a true reading, or, it is the same, there are several different true readings of a text”*⁴⁹;

⁴⁷ Arkoun, Mohammed, 1994, *La pensée Arabe*, P.U. de France, Paris (Italian translation, M. Arkoun, 1994, *La filosofia Araba*, ed. Xenia, Milano): pp.110.

⁴⁸ ibidem: pp.109.

⁴⁹ Laghmani, Slim, op.cit.: pp.48.

This counts particularly for the Koran and, more in general, for all the *Shari'a* which provides a large variety of often contradictory principles⁵⁰. The definition of *orthodoxy* from ancient times has been the reason for harsh theological and philosophical controversies as well as hard political and military fights. The *true reading* of the *Revelation* has been at the centre of competition for religious and political power and it is on this point that I wish to focus attention. As a matter of fact orthodoxy revealed itself as a mainly human construction, a cause for many theological and political fights which happened to originate in the existence of *many Islams*, each one of them *true* in their own fashion. The *Shari'a* is then also a result of a human interpretation of the sources, which interpretation is often used for the legitimation of today's events⁵¹. Therefore the manner in which to submit *orthodoxy*, the *true discourse* and *authenticity of the Revelation*, to an examination which could disclose its epistemological and exegetical limits becomes the real problem. In this direction, other than new research sciences and methodologies, which have an important unmasking role, particularly crucial are those attempts to elaborate *modern* Islamic discourses, keeping in mind the Koran as a starting point. It is in this way that many Muslim intellectuals worked to point out that an *authentic orthodox discourse* does not exist, but on the contrary many *true* ones, *true* in their own way, which do not exhaust the spectre of possible answers. This course of *Sharia's historicization, deconsacration, humanization, deontologization, demythification*, etc. opens the doors to a research for the free and rational human being and thence to the self-making one.

⁵⁰ See Ferjani, M.C., 1991, *Islamisme, laïcité et droits de l'homme*, L'Harmattan, Paris : pp.258-261.

⁵¹ Emblematic is what happened during the Gulf war in 1991: during the crisis, Saudi Arabia re-united some Islamic Congresses and issued some *Fatwa's* from the high religious authorities in order to legitimate the resort to western forces and use of Saudi territory on behalf of these foreign forces. The *fatwa's* naturally agreed and legitimized the actions of Saudi government. The point is that also Saddam Hussein summoned his Ulema Congress and obtained from his *fatwa* the support and legitimization for his actions. All this leaves us dubious about the *good religious faith* of the Ulema, probably more attached to power than to *religious truth*. See Aldeeb, A.S.S.A., *Les Musulmans face...*, op.cit.: pp.65.

Criticism towards epistemological and exegetical limits set up by orthodoxy was first of all directed against *literalism*, this means against any form of Koran's literal reading or interpretation. This tendency, which -according to Roger Garaudy's drastic definition – “*consists in reading the Koran with the eyes of the dead, as if being Muslim means to live as an Arab of tenth century*”⁵², grounds those norms that must rule modern society directly from the Holy Book and tradition (*Sunna*). So literalism accomplished a complete dehistoricization of the Koran on one side and of the *Sunna* on the other, and it is undoubtedly this point at which the greater part of rationalistic and modernistic criticism was directed. To understand the historical context of the Revelation, the language in which the Book has been handed down, the semantic problems and those related to codification, to locate tribal disputes and those theological ones, in other words to distinguish prophetic function from the political-historical one is exactly what a critical reconstruction of the Arab-Islamic past should do in order to free the discourse from those limits in which it has been constricted. To historicize the Revelation is pointed out as the first and most important duty of any critical reconstruction of the past. As a matter of fact,

*“history is a self-narration, inside which – more or less mythically, but it is of little importance – are laid bare those roots that are considered one's own and that sense of a route, mainly seen in progressives terms”*⁵³.

To historicize the *Shari'a* is then the main road for a redefinition of Islam's identity in a modern vein, in other words to loosen up tradition's vice and therefore allow reason's criticism to assume a more incisive role. The moment in which the *Shari'a* is read in the light of historical conditions in which was produced, it is also subjected to a relativisation process, which corrodes its dogmatic aspect without necessarily damaging for this reason its principles. We must in fact define precisely that the work of historicisation of Islamic law, as it is indicated by progressive intellectuals, does not

⁵² Roger Garaudy, 1990, “Les droits de l'homme et l'Islam », *Concilium* n°228 : pp.388.

⁵³ Amoretti, Biancamaria Scarcia, 1993, *Storia e coscienza di sé nell'Islam: concetto e realtà*, in L. Cabria and M. Calloni, *L'altra metà della luna: capire l'Islam contemporaneo*, Genova, Marietti: pp.33.

involve the relativization of those principles which Islam gave to human beings, but concerns exclusively those dogmatic constrictions of the *Shari'a*. This distinction between Islamic principles and the *Shari'a's* norms is central in the distinction between modernists and traditionalists, as it also resulted in the analysis of the Cairo Declaration and the Arab Charter on Human Rights. In fact, while the Islamic Declaration suggests a restricted interpretation of the *Shari'a* as a positive law which establishes the rights and duties provided for human beings by religion in their whole, the Arab Charter considers the *Shari'a* more widely, as a set of principles which give an Islamic vision (and not only) of the world without directly expressing itself however in a positive law. In the first understanding the *Shari'a* becomes an unmodifiable whole of positive laws that must find their full enforcement in state jurisprudence, without recognising man's authority to historicize or modify them⁵⁴. The result is a vision of Nature and human beings completely at odds with the philosophy of human rights. In the second understanding the value of the *Shari'a* lies in its aims, which – according to Ferjani – “could be summed up in the Koranic principle which establishes that God orders the good and the just” (16,90). The contents of good and justice “can be deduced by the sense of evolution of the Koran's dispositions, what is presumed by a historical reading which relativizes the Koranic terms”⁵⁵. Such a relativization goes counter to the *Koran's* uncreated dogma (according to which the Book and the laws that are included in it come directly from God), giving back in this way man's primary function of guide of cognitive and therefore legislative activity. This definition, which goes far back in Islamic's own tradition, undoubtedly has a lot in common with the philosophy of natural rights and then with that part of philosophy which is the ground of human rights. So a reading of the *Shari'a* according to *Islamic principles* is fully compatible with human rights philosophy. However, I would like to underline that this is not a:

⁵⁴ It is the vision according to which the legislator's function definitely concluded with the Koran, so men have only the obligation to apply the foreseen *Shari'a* rules.

⁵⁵ Ferjani, M.C., op.cit: pp.270.

*“methodological problem. It is a problem tied to the prevalence of a culture and its consequent vision of things where collective and not individual, duties and not rights occupy an higher place”*⁵⁶.

In fact, apart from the diversification of Islamic thought, the problem is that Arab-Muslim societies are communitarian. In consequence, the community comes before the individual, and thus duties come before rights. This vision, which is a central element for Muslim's self-conscience, stands in clear contrast with the individualistic one on which the western doctrine of human rights bases itself. I feel that attention should not be placed directly on the relationship between rights and duties, but first of all on the divine pre-eminence in comparison with the human's one: God's centrality and man's marginality. This is the Islamic vision which, being besides at the origin of the pre-eminence of duties rather than rights, opposes a *positive* and *enlightenment* vision of human beings. Incompatibility between Islamic culture and modern international standards on human rights will remain until *reason* prevails over Revelation, namely human being not being substituted by God at the centre of the Arab-Islamic universe. Thence the necessity to carry out a *radical Islamic reform*⁵⁷. The purport of such a reform is well exemplified by the pressing invocation from Arab-Muslim intellectuals to “re-open *ijtihād's* door”⁵⁸, that is to bring interpretation into use again and the force of creation to devise a modern Islamic *Shari'a* for a radically transformed context. *To re-open ijtihād's door* means to open the

⁵⁶ Tibi, Bassam, 1992, “International Relations and the Universality of Human Rights as a background for Islam's predicament with Western Concept of Human Rights”, *Islam & Christian Muslim relations*, vol.3 n°1, Chester (England): pp.65.

⁵⁷ See An-na'im, A. Ahmed, 1990, “Qur'an, Shari'a et droits de l'homme », *Concilium* n°228, pp.82.

⁵⁸ The interpretation of the revelation required a great effort (*Ijtihād*) carried out in a short and evolutive historical period (so called *Ijtihād*). Such effort dried up itself progressively after the so-called “closure of the *Ijtihād's* door” during the long and involutive period of the *Taqlid*. The period of *Igtihād* (1st – 4th century of the Hagira) was defined *as classical* because in it the free research and the ability to reason independently from scholarly sources was predominant; the *Taqlid* instead marked an involution because research came to be enclosed in epistemological limitations fixed by the founders of those schools which have survived until the present day.

doors to a modernistic transformation not only of the language of Islam but also of its practice in Arab-Muslim countries. Rather than an impossible return to a sacralized and mythicised past, invoked by the fundamentalists, a further deconsacration is then needed in order to allow the rational faculties of the human being to manage those processes started by modernity.

6. Conclusions

I conclude with a brief reference to the western fundamentalist influence on its representation of Arab-Muslim people and states. I wish to underline that today, more than ever, Islam as a religion and civilization defines itself on the grounds of its relationship and opposition to Western civilization⁵⁹. In particular, with colonialism first and imperialism later,

“the external interventions by modifying the categories of autodefinition, and consequently history as a narration of self conscience, impose the outsiders’ historical vision, in a relationship with no confrontation..., nor conflict, which the Islamic world certainly has not avoided in the past, but with a sole possible reading of reality”⁶⁰.

Thus two different responses came from the Arab-Muslim world: on one side a process of *deculturation* and an *accelerated imitation* of the western model, in the absolutely vain hope to be able to imitate and finally catch up with it; on the other a total refusal, even violent, was shown to western modernity. This second outcome was as much the logical consequence of western politics as a substantial failure on the part of the Arab elites emerging from the decolonisation process. The prevalence of fundamentalists within the *Islamic Renaissance* easily gives rise to fundamentalist reading of Islam, either as a religion or as a civilisation; a reading – according to Amoretti – *“desired and imposed by the West, working for its interests,*

⁵⁹ “...the identity and settlement of a social formation, the relationship between units, the orientation of each unit at the centre: all this forms itself in relation \opposition with the identity, settlement, relationship, orientation of another social formation”. Escobar, Roberto, 1997, *Metamorfosi della paura*, Bologna, il Mulino: pp.147.

⁶⁰ Amoretti, B.S., op.cit.: pp.40.

to which a moral basis was given: the superiority of our civilization over non-european ones, in that of Islam in particular"⁶¹. Projecting, the evil within its own conscience onto the other, the foreigner-enemy⁶², the West finds the necessary justification to feel authorized to continue its *plunder* and *westernization of the world*⁶³. Human rights ideology is born inside a certain paradigm of values, which have their original matrix in the modern spirit. Values such as having confidence in progress, respect between human beings and tolerance have substituted those belonging to traditional religions, incapable of managing the complexity of the modern world. By performing this undoubtedly positive Copernican revolution, the West has however appeared also as a denier of differences, as a destroyer of cultures and an economical and cultural coloniser. In this operation, which continues through globalised western models of production and consumption of goods, human rights have often been the outpost of westerner's hegemonic will. This is Serge Latouche's criticism, which asserts

*"Western reduction to pure ideology of a humanitarian universalism (human rights and democracy) is too mystifying without eluding the traps of cultural solipsism which leads directly to ethnocide. It is difficult to dissociate the emancipator's part, that of human rights, from the plunderer's part, fighting for profit – the two faces of the same coin..."*⁶⁴.

The growth of Islamic extremism, and therefore of a use of the Islamic message not as in its original religious parameters, but as a

⁶¹ Ibidem: pp.41.

⁶² See Escobar, Roberto, op.cit. and Asor Rosa, Alebrto, 1992, *Fuori dall'Occidente ovvero ragionamento sull'Apocalisse*, Torino, Einaudi.

⁶³ Serge Latouche writes: *"The time of the finished world has started, and it has started as an end of the world's plurality. A sole world tends to be a uniform world. This human homogenisation on a planetary scale is exactly the realisation of an old western dream...this world unification completes the West's triumph. We well realize that at the end of this dominating expansion there will be exactly no universal brotherhood. It wont be a triumph of humanity, but a triumph on humanity and, as colonized people in the past, brothers are also and first of all subjects"* Latouche, Serge, 1992, *L'occidentalizzazione del mondo*, Torino, Bollati Boringhieri: pp.33.

⁶⁴ Latouche, Serge, op.cit.: pp.43-44.

lever of political challenge directed against the Arab ruling classes and against the West, is directly tied to the disillusion with economical progress, to deculturization and the process of westernisation, and the supremacy of western power. The refusal of fundamental human rights by large sectors of the Arab-Muslim world is then also a direct consequence of current international relationships and of the perception which Arab people have of western domination: the rejection of human rights includes itself in the picture of *the revolt against the West*⁶⁵. Human rights have been placed in fact inside the international game and utilized by western political authorities, in particular by the United States, as a support of their own strategy of political, economical and cultural domination. This is exemplified by Sami Aldeeb's drastic statement with regard to the criticisms addressed by the West to Arab-Muslim countries:

*"human rights are used as a political weapon and not at all to guarantee the respect of human rights"*⁶⁶.

This is, in my opinion, the Gordian knot to loosen, the wall which prevents a different reception of human rights in different cultures and consequently a higher level of acceptance. It is unlikely that the universalism of human rights will come to display its own strength among cultures of the third world as long as they remain an integral part of a strategy for western economical, political and cultural domination, used as an excuse to intervene and interfere in other countries: a useful tool which subdues others to their own will- a humanitarian countenance which reassures the good western conscience.

⁶⁵ See Tibi, B., op.cit.: pp.60-63.

⁶⁶ A.S.S.A. Aldeeb, *Dialogue conflictuel.*, op.cit. : pp.64.