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UNIVERSALITY OF HUMAN RIGHTS:
AN ISLAMIC PERSPECTIVE

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Japan is admired around the world for "beating the West at its own game" of economic and technological power. But the true measure of human achievement is not only how a society uses its power, but also whether it respects the human dignity of the less powerful by taking them seriously as partners in the totality of human civilization. That is why I find it significant that Professor Ando and his colleagues in the organizing committee have chosen to bring an African Islamic voice to this Centenary Symposium of the Japanese Association of International Law.

The task assigned to me is to present an Islamic perspective on the universality of human rights. Scholarly responsibility dictates that I should present an honest and candid view of what this perspective is in actual fact, rather than my own wishful thinking about what an Islamic perspective *ought* to be. However, as a Muslim myself, I am also seeking personal reconciliation between my religious faith and commitment to the universality of human rights. There are risks of misunderstanding on both counts because of the strong hostility and suspicion that exist between those approaching human rights from a purely secular perspective, and those who wish to include a religious dimension in their thinking. While those concerned with a religious point of view may question my presentation of an Islamic perspective for one reason or another, secular human rights advocates tend to dismiss any religious perspective as a relativist threat to the universality of human rights. However, as I will argue in this paper, these two constituencies of people have no alternative but to take each other seriously.

By way of introduction, this paper begins with a few caveats regarding the general characterization of any perspective or position as Islamic in relation to the universality of human rights. The second section examines the paradox of normative universality itself to suggest taking the universality of human rights as a *project*, to be attained through a variety of strategies, instead of assuming

it to be an accomplished fact. In the third section, the paper focuses on possibilities and limitations of Islamic contributions to the universality project. A proposed strategy for the enhancement of the universality of international standards of human rights in Islamic societies is outlined in section four, thereby suggesting some implications for Japanese foreign policy.

INTRODUCTION

In speaking of an Islamic perspective on any issue, one should first note the multi-faceted diversity of the Muslim world from southeast Asia to North and sub-Saharan Africa.[1] The common association of Islam, often found among Muslims themselves, with Arab cultures of the Middle East and North Africa can be misleading as basis for generalizations about Islamic perspectives on matters of public policy. In fact, there are more Muslims today in each of the other regions (sub-Saharan Africa, South Asia or Southeast Asia) than in the Middle East. One should therefore expect to find a variety of Islamic perspectives, rather than a single monolithic view, on an issue like the universality of human rights. Moreover, such differences exist not only between various regions, but also within each region and even local communities.

It is also important to emphasize that this wide diversity signifies competing Islamic perspectives regarding issues of public policy. Whereas some perspectives may prevail at some point, others can still be articulated and may gain wider acceptance over time. The fact that those whose views happen to be dominant at any given time tend to proclaim them to be the sole legitimate Islamic position on the matter should not be allowed to hide the reality of vigorous diversity at any given point, and of change over time. To hold otherwise is to maintain that Islamic societies defy the norms and processes of common human experience.

That is not to say, however, that there is nothing distinctively Islamic which these societies share, including elements of a common view regarding the problematic of universality of human rights, as discussed later in this paper. The

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[1]   See, for example, Lawrence Rosen, *Bargaining for Reality: The Construction of Social Relations in a Muslim Community* (Chicago: University of Chicago Press, 1984); Ernest Gellner, *Muslim Society* (Cambridge: Cambridge University Press, 1981); Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (Chicago: University of Chicago Press, 1971); and Muhammad Yasin, *A Social History of Islamic India* (Lahore: Book Traders, 1958).

point I am emphasizing here is simply to caution against expectations of total uniformity or rigidity in Islamic perspectives on the universality of human rights.

Second, one should take into account the impact of the shared experiences of Muslim and non-Muslim societies of Africa and Asia with colonialism and the post-colonial State, struggles for economic development under globalized conditions of finance and trade, the politicization of ethnicity, cross-cultural influence, and so forth. In fact, some Muslim societies may have more in common with some non-Muslim societies regarding these experiences and phenomena than with other Muslim societies. It is therefore difficult to isolate a so-called Islamic dimension of public policy from other factors that may have more to do with general political, economic or sociological considerations than with Islam as such.

Third, some problems of conception and realization of the universality of human rights are due to structural, institutional, political and economic considerations which apply equally to Muslim and non-Muslim societies alike. Factors such as demographic characteristics and levels of social cohesion, education and economic development, the quality of public institutions like the judiciary and legal profession, the role of the media, all contribute to the degree of commitment to the universality of human rights and their practical implementation. Accordingly, since Islamic considerations as such are not the sole source of problems with the universality of human rights in Islamic societies, their resolution will not necessarily lead to the protection of those rights unless the other difficulties are also addressed.

In light of these observations, it is clear that the debate over universality of human rights is neither peculiar to Islamic societies, nor necessarily due to the Islamic nature of those societies in a uniform and predictable way. One would therefore find that, on the one hand, governments of countries like Indonesia, Iran, Malaysia and Saudi Arabia apparently share a common platform with those of China and Singapore in expressing reservations about the universality of current international standards of human rights. Yet governments of many other Islamic countries in Africa and the Middle East, on the other hand, remain officially committed to the universality of these rights. One can hardly characterize the present governments of Indonesia, Iran, Malaysia and Saudi Arabia as "Islamic" in any meaningful common sense of the term; nor expect all four countries to articulate their reservations in uniform Islamic terms. An interesting question is why the notion of universality of human rights provokes similar positions among such different Islamic and non-Islamic countries.

Another issue to consider is the sharp contrast between the universalist rhetoric and relativist practice of some major players in the international arena. In my view, one of the most problematic positions regarding the universality of

human rights is that of the United States of America which has one of the poorest records of ratification of international human rights treaties, usually much later and with more substantial reservations than countries which are supposed to have a weaker level of commitment to the universality of human rights. For example, the refusal of the United States to acknowledge economic, social and cultural rights as human rights, although they are proclaimed as such through the same process that establish the civil and political rights celebrated by the United States, can only be characterized as cultural/ideological relativism. To maintain that a country is exclusively bound by its own internal norms and institutions (constitutional in the case of the United States), and deny any role for the international standards that are supposed to apply to all countries, is precisely what cultural relativists claim. It is also relativist to refuse to submit to international accountability on the ground that a country's internal standards are superior to those set in international instruments. If internal standards are really superior both in theory and practice, they will not only be approved by international standards, but also set a good example for others. What does the position of the United States say about the universality of human rights as a global project?

The Paradox of Normative Universality

As conceived under the Charter of the United Nations, and articulated by the Universal Declaration of Human Rights and subsequent instruments, human rights are due to every human being without distinction on grounds such as race, color, gender, religion or belief. This concept clearly requires universal applicability of these rights in all societies regardless of differences in political systems, levels of economic development, institutional or legal regimes. Is this claim of universality descriptive or normative, that is, does it describe empirical reality of the universal acceptance and application of human rights or is it expressing a desire for the universality of these rights? What is the source of the universality of human rights, and how is its reality verified in practice? Are human rights enacted into international treaties because they are already universally accepted, or are they universal by virtue of treaty obligations? Can treaties establish the empirical universality of human rights in the face of lack of ratification by some major powers, and extensive reservations and systematic violation by those who did ratify human rights treaties?

In my view, the universal applicability of human rights presupposes their universal validity under cultural, religious and philosophical traditions. Sustainable conformity is unlikely without the socialization of children and

development of the social and political institutions in accordance with the human rights ethos. Otherwise, there will be too much violation for any coercive enforcement system to cope, and no political will to enforce it in the first place. Since any enforcement system has to rely on a high level of voluntary compliance so that it can focus its resources on less frequent violations, the lack of internal legitimacy can mean such a massive level of violation as to overwhelm the system's capacity for enforcement. That is, unless people accept these rights as binding upon themselves from their own cultural, religious and/or philosophical point of view, they will neither voluntarily comply in practice, nor require their government to respect and promote human rights in the official functioning of the State. Moreover, for proponents of human rights to coerce whole societies into conformity, even if practically possible, would contradict the human rights ethos itself. In this light, this paper addresses the question of how to promote and enhance such internal legitimacy, with particular reference to Islamic societies today.

By the paradox of normative universality I mean the obvious need for universal standards of human rights, on the one hand, and the conceptual and practical difficulties of identifying and applying such standards in a truly universal manner, on the other. The need is commonly accepted, it seems to me, in view of the extensive powers of the modern State to affect the daily lives of its citizens; coupled with the reality that national governments cannot be trusted to respect the basic dignity and fundamental rights of their citizens in exercising those powers. Yet, there is a basic conceptual difficulty with the principle of universal human rights in that, since all normative systems are necessarily a product of cultural and contextual specificity, how can there be universal agreement on a normative system for human rights in a world of serious and permanent diversity?

This difficulty was not resolved in the formulation of the Universal Declaration and subsequent instruments which sought to simply "universalize" a culturally specific Western concept of individualistic person-hood and rights. The initial conception and formulation of the Universal Declaration of Human Rights, as the essential normative and institutional framework for all subsequent instruments and developments, was "negotiated" between delegates of primarily Western powers, with minimal representation of African and Asian countries. In fact, the vast majority of African and Asian countries were colonized at the time by the same European powers setting the normative and institutional framework of the human rights movement to come. When African and Asian governmental delegates began to participate in the process by the late 1950s and early 1960s,

they were joining an already established process, and had very little power to add to or modify the original conception and formulation.[2]

That is, as a matter of historical development, the "universalization" of human rights was not a consensus-building process that drew on the values and institutions of all cultural traditions of the world as suggested here. Subsequent retroactive legitimation may still be possible, but the need for this process must first be acknowledged. A possible approach to follow in this regard is for each society to engage in internal discourse concerning the possibility and implications of the universality of human rights in relation to its own cultural, religious and/or philosophical tradition. An example of possibilities of internal discourse in Islamic societies is outlined later in this paper. Moreover, each society should engage in cross-cultural dialogue with other societies to broaden and deepen an "overlapping" consensus on the values and institutions required to uphold the universality of human rights.[3]

In practice, challenges to the universality of human rights can occur at three levels: 1) by disputing any possibility of normative universality; 2) by conceding this possibility but refusing to accept it with regard to a specific proposition; or 3) by conceding the possibility and accepting its application to a specific proposition, while failing to agree on a sufficiently clear and categorical definition of normative content for practical application. These three levels of challenge can also be mutually supportive. Those who hold the first view, can cite the second and third in support of their position, that is, dispute the possibility of universality because of the difficulty of normative agreement among different societies. The holders of the second view can cite the first and third in justification of their refusing to accept the application of the principle of universality in relation to a specific proposition. The same is true of the third view in relation to the first and second.

An early example of the first view is the 1946 statement of the American Anthropological Association which cautioned against the imposition of the cultural values and institutions of one culture on others in the name of normative

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[2]   For elaboration on this analysis, see Abdullahi A. An-Na'im, "Problems of Universal Cultural Legitimacy for Human Rights," in Abdullahi A. An-Na'im and Francis M. Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives* (Washington DC: The Brookings Institution, 1990), pp. 331-367.

[3]   For further explanation of this approach, and its application in several case studies from all parts of the world, see, generally, Abdullahi A. An-Na'im and Francis M. Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives*; and Abdullahi A. An-Na'im, editor, *Human Rights in Cross-Cultural Perspectives: Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992).

universality.[4] That early argument resonates strongly with more recent relativists who protest against what they regard as Western "cultural imperialism" in the present formulations of international human rights. An example of the second view is the objection, raised by Saudi Arabia and other Islamic countries, to logical application of freedom of religion under Article 18 of the Universal Declaration to the right to change one's religion. Another example is the continued resistance to equality and non-discrimination against women, as indicated by reservations entered by some States which have ratified the Convention for the Elimination of All Forms of Discrimination against Women of 1979.[5]

In principle, these challenges to the universality of human rights should not be confused with merely contextualized claims for a "margin of appreciation" or degree of discretion in interpretation and application of what is accepted to be a universal and binding standard. However, although some degree of "space" for contextualized interpretation, judgment about practical steps or stages of implementation is unavoidable, indeed desirable, such demands can be carried too far to the extent of becoming a thinly veiled challenge to the principle of universality itself. I would therefore recommend close scrutiny of such claims to confirm good will, an appropriate sense of priority, and seriousness in doing what is immediately possible in implementing existing obligations. For example, I would regard with strong suspicion a government's claim of a margin of appreciation in providing elementary education for girls when it is clearly discriminating against girls in the level and quality of the education it is already providing. If unchecked and verified, such a claim could be a cover for discrimination on grounds of sex or gender.

The tension between the need for sufficiently clear and categorical universal standards, on the one hand, and demands for a margin of appreciation, on the other, clearly illustrates the paradox in the principle of universality itself. This can be illustrated by the principle of "the best interest of the child" as a key

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[4] "Statement on Human Rights," *American Anthropologist*, Vol. 49 (1947), pp. 539-543

[5] Such as the Reservations of Bangladesh, Egypt and Iraq. For the text of these reservations that makes explicit reference to Islamic law as the reason for the reservation, see Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996), pp. 920-21. But the problem of reservations to this Convention implicates many non-Islamic countries as well. See, generally, Rebecca Cook, "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women," *Virginia Journal of International Law*, Vol. 30 (1990), p. 643.

criteria for all determinations regarding the status of children under the International Convention on Rights of the Child. Yet, the Convention leaves this principle largely undefined, and allows much discretion in its application.[6] Similarly, while the "universal human right" of every person not to be subjected to cruel, inhuman and degrading treatment or punishment, is provided for in Article 5 of the Universal Declaration as well as Article 7 of the International Covenant on Civil and Political Rights, neither document defines this clause. It is true that a margin of appreciation can be claimed in matters of penal policy because different human cultures significantly disagree about what is "cruel, inhuman or degrading." However, the broad formulation of the right makes it meaningless as a test of what is acceptable or unacceptable from a human rights point of view. Yet, any attempt to formulate a precise and categorical definition of this clause may have resulted in total deadlock, or even rejection of a universal human right in this regard.

The Islamic position on this issue clearly shows the inherent difficulty of achieving genuine universality on some presently recognized human rights. Whereas human rights advocates may see the Islamic punishments by amputation and flogging as clear violations of this human right, Muslims are unlikely to accept the repeal of these punishments which are provided for by the Qur'an in explicit and categorical terms. Although these punishments are not currently enforced in the vast majority of Muslim countries, and have hardly been applied in a systematic manner in the past, the majority of Muslims see no room for compromise here because they believe that the Qur'an sanctions such punishments for specific crimes. Thus, this issue is a good example of hardcore and lasting disagreement that may well challenge the concept of universality itself from an Islamic point of view. Possibilities of agreement may exist once Muslims see the matter in a different light from an Islamic point of view, but not as a matter of external imposition.[7]

In conclusion of this section, I wish to emphasize that different cultural and philosophical traditions of the world have not agreed on the concept of universal human rights or its precise normative content. If people from different parts of the world were asked to vote on the Universal Declaration or Civil and Political

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6   On this issue and its possible resolution, see Abdullahi A. An-Na'im, "Cultural Transformation and Normative Consensus on the Best Interest of the Child," *International Journal of Law and the Family*, Vol. 8 (1994), p. 62.

7   See Abdullahi A. An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman or Degrading Treatment or Punishment," in Abdullahi A. An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives: Quest for Consensus*, pp. 19-43.

Rights Covenant, some provisions may be rejected altogether or seriously modified. Problematic issues may differ from one part of the world to another - economic and social rights from an American point of view, punishments or equality for women and religious minorities in Islamic societies, the caste system in India, and so forth. In this sense, I would see the universality of human rights as a *project* to be pursued everywhere, rather than an already established fact in some cultures and problematic only in others. In particular, there is a need to develop an "overlapping consensus" whereby the major cultural traditions of the world can agree on the principle of universality of human rights despite their disagreement on the rationale for such agreement. To explore possibilities and limitations of Islamic contributions to this project, I will first examine some of the problems Muslims need to resolve in this regard, with a view to outlining some possible strategies later in this paper.

ISLAMIC DIFFICULTIES AND POSSIBILITIES REGARDING THE UNIVERSALITY OF HUMAN RIGHTS

As noted earlier, the caveats indicated in the Introduction of this paper do not mean that there are no specifically Islamic problems with the universality of human rights. Obvious examples include issues of equality for women and religious minorities (including Muslim minorities like the Shi'a in predominantly Sunni Saudi Arabia and Pakistan,) as well as freedom of belief including the right of a Muslim to change his or her religion. It is true that there are disagreements among various Islamic schools of jurisprudence, and cultural as well as political differences in the practice of one region or another of the Muslim world. But it is also clear that none of the opinions of the schools or practices of the different regions regarding these matters are fully consistent with the requirements of the current international standards of human rights.

Therefore, instead of engaging in a detailed discussion of different positions of Islamic societies and groups, none of which is satisfactory from a human rights point of view, it is better for the purposes of this paper to address the underlying difficulty shared by all Islamic societies which will always lead to conflict with the principle of universality of human rights, in one way or another. If this difficulty can be overcome, the question becomes one of application of such resolution to problematic situations as they exist in specific Islamic societies. For the purposes of analysis, there are two dimensions to this underlying difficulty, one conceptual and the other methodological. Conceptually, the difficulty is that whereas the principle of universality postulates equal rights for all human beings, without distinction on grounds of sex or religion, an Islamic

scheme of rights classifies people in terms of sex and religion. This conceptual difficulty is premised on a methodological assumption about the jurisprudential and theological nature of an Islamic scheme of rights.

At first glance, the core methodological issue appears to be categorical and clearly beyond any possibility of resolution. A common understanding of the deadlock is to say that Islam is a scriptural religion (based on the Qur'an and Sunna or traditions of the Prophet) with a very detailed normative system (commonly known as Shari'a) which Muslims are bound to strictly observe as a matter of faith. In particular, it is commonly said, once God has decreed something through the clear and categorical text of the Qur'an and/or Sunna, Muslims have no choice but to comply. From this perspective, inequality between men and women, Muslims and non-Muslims, and so forth, is presented as a religious imperative that cannot be questioned by human reason or experience. In this way, a sharp dichotomy is created between categorical Islamic precepts, on the one hand, and "secular" universal human rights standards, on the other.

This view is held by Islamic religious establishments and ruling élites alike, and apparently accepted by the vast majority of Muslims, as well as Western students of Islam and Islamic societies, the media and general observers. From this perspective, there appear to be three possible options regarding the relationship between "Islam" and the universality of human rights: 1) accept permanent conflict regarding certain issues (equality for women, religious minorities, and other issues); 2) look for political and cultural variations in Muslim practice from region to region, as distinguished from the established and undisputed religious dogma; and/or 3) eliminate any role for religion in public policy by imposing a strict separation between "Islam and the State," in order to implement human rights through secular legislation and policy.

The first option is supported by a curious mix of cultural relativists, post-modernists and Islamic fundamentalists in the name of preserving the integrity of Islamic cultures. But to accept this position is to abandon any possibility of universality of human rights. Those who wish to uphold the universality of human rights may choose the second and/or third options to support universalist *practice* without openly and directly challenging religious dogma. That is, as long as Islamic societies are conforming to the universality of human rights in practice, the fact that such practice is inconsistent with their own religious doctrine is immaterial. However, this approach is problematic for Muslim supporters of the universality of human rights for three main reasons.

First, it is asking Muslim supporters of universality to discount their religious beliefs in order to uphold their commitment to the universality of human rights. Second, as emphasized earlier in the previous section of this paper, it is unlikely for practice to conform to human rights standards without the cultural

legitimacy necessary for a general social motivation to comply and the political will to enforce them. Thirdly, and for the same reasons, the level of human rights practice that may exist at any time can easily be challenged and reversed by Islamic activists who face the Muslim public with a stark choice between their Islamic belief and identity, on the one hand, and commitment to human rights, on the other. In this light, it is clearly desirable for the long term prospects of sustainable conformity with the universality of human rights by Islamic societies to seek to resolve the underlying conceptual and methodological difficulties, rather than attempt to evade or ignore them, even to the extent that is possible.

Resolving these difficulties requires a methodological response to the above-mentioned deadlock, and strategies for achieving the transformation of Islamic thinking to address the conceptual difficulty regarding the universality of human rights. The key to an appropriate methodological response is to acknowledge the role of historical context in the "construction" of Shari'a through the interpretation of the Qur'an and Sunna in relation to the particular circumstances of specific Muslim societies.[8] That is, Muslim belief in the divinity of the scriptural sources of Islam should not be taken to include traditional formulations of Shari'a which were a product of human reason and understanding in specific historical context. Since the Qur'an and Sunna did not provide a comprehensive code for regulating every aspect of the social and political life of the community, scholars of Shari'a have sanctioned much of the pre-Islamic customary practice of early Muslim communities, and adopted principles of Persian and Roman law and administrative practice.[9] Since Shari'a is a historically conditioned understanding of Islam, other modernist understandings are possible, and can be legitimate from an Islamic point of view in the same way that traditional human formulations of Shari'a were accepted in the past. Once this premise is accepted, a wide range of possibilities of re-interpretation and re-construction of Shari'a emerge, as reflected in the recent work of several Muslim scholars.[10]

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[8]   For a brief account of the sources and development of Shari'a in support of this proposition see Abdullahi A. An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse, NY: Syracuse University Press, 1990), pp. 11-33.

[9]   See generally, Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford University Press, 1959).

[10]   For examples in English, see, generally, An-Na'im, *Toward an Islamic Reformation*; Fatima Mernissi, *Islam and Democracy: Fear of the Modern World*, (Reading, MA: Addison-Wesley Publishing, 1992); and Farid Esack, *Qur'an, Liberation and Pluralism* (Oxford: One World Publications, 1997).

From this methodological perspective, it is possible to resolve the perceived conceptual difficulty of reconciling the notion of an "Islamic" regime of rights with universal human rights without discrimination on grounds such as sex and religion. The underlying premise of such reconciliation is to see it as a product of the nature and rationale of political association in relation to prevalent forms of organization. Since early Islamic societies perceived the moral community of Muslims as concurrent with the political community, they defined citizenship in terms of their assumptions about the nature of an Islamic moral community. Accordingly, full citizenship was the prerogative of Muslim men. Muslim women and religious minorities enjoyed certain rights which were relatively superior to those which other legal systems of the time had provided for these groups. It may be argued that the relative superiority of the rights of women and religious minorities under Islamic law may have persisted until very recently, but it can no longer be claimed in this age of equality of civil liberties of citizens, and human rights for all, without distinction on such grounds as sex and religion. Accordingly, Islamic societies today need to consider the nature and rationale of political association in relation to prevalent forms of organization they all now live within as citizens of nation States under international law.

The choice of one approach or another for the resolution of Islamic methodological and conceptual difficulties regarding the universality of human rights is a matter for internal discourse within and among Islamic societies. But such internal discourse cannot be insulated and isolated from external influences and the impact of contextual factors which Islamic societies share with non-Islamic societies today. In this regard, I would recall the remarks made in the Introduction of this paper about the shared experiences of Muslim and non-Muslim societies of Africa and Asia. Internal Muslim discourses are necessarily affected by many forms of interdependence and mutual influence among all sorts of societies in a global context that has been transformed by colonialism, universalization of European models of the nation State and international relations, and recent economic globalization.

In conclusion of this section, I would emphasize that all Islamic societies are confronted with the need to develop their own accommodations to the realities of the modern nation State and its extensive powers, its ability to impact on the daily lives of the population through expanding control over economic activities, essential services, public security and the legal system. In particular, Islamic societies need to find ways of regulating the powers of the State, and of holding its organs politically and legally accountable to the community. Drawing on the experiences of Western Europe and North America, where this model of the nation State has evolved, most societies throughout the world have adopted and further developed certain mechanisms of regulation and accountability which

form the basis of present international standards of human rights. Islamic societies need to either adapt and legitimize these concepts and mechanisms to their own cultural context, or find an alternative regime of regulation and accountability. In other words, Islamic distinctiveness has to be reconciled with the realities of transformed political organization, economic relations and social institutions that Muslims share with non-Muslims in many parts of the world. In this light, one can envisage an overlapping consensus between Islamic societies and non-Islamic societies, whereby each society will be striving to resolve its own internal tensions and conflicts with the ideal of the universality of human rights, while seeking to create common ground for cooperation with other societies in this regard through cross-cultural dialogue.

TOWARDS A JOINTLY "CONSTRUCTED" UNIVERSALITY OF HUMAN RIGHTS

There are two aspects to the internal resolution and external consensus building model of constructing universality of human rights, one regarding *conditions and process*, and the other *substantive*. The later is important because it is the content of what Muslims will eventually accept and implement as a valid conception and articulation of universal standards of human rights. But the former is necessary for any substantive resolution to emerge, be debated and evaluated for acceptance and implementation or rejection. Some Muslims may disagree with me about the need for universal standards of human rights in the first place, or dispute some aspect or another of my characterization of the issues. Others may agree with me on all that, but disagree with any particular substantive resolution I might propose or support. But all of us need the conditions and process most conducive to a valid and sustainable resolution of the issues. Indeed, even the criteria of acceptance or rejection of one proposition or another need to be articulated under conducive conditions and through a valid process.

By conditions and process I mean two equally important components. First, that the State secures and guarantees, against violation by private as well as State actors, the full extent of the freedom of expression and association. In this sense, the protection of human rights is both the end and means of the process. The second component is the actual exercise of these freedoms by the totality of the population, Muslims and non-Muslims alike, in vigorous and earnest debate about all aspects of the universality of human rights. In this process, women and religious minorities in particular must be full participants in internal discourse and cross-cultural dialogue because they are the groups most affected by the outcome.

In my view, one of the primary lessons of the last fifty years since the adoption of the Universal Declaration of Human Rights is the need for creating local constituencies for the protection and promotion of human rights. In particular, there is a need for breaking what I call "human rights dependency" whereby developed societies of the "North" establish and fund international human rights organizations to monitor human rights violations in developing countries of the "South" in order to report in the North, so that Northern constituencies pressure their government to pressure African, Asian and Latin American governments to protect the rights of populations in those regions of the world. In contrast, human rights in the North are protected by local constituencies acting through political pressure, and legal institutions and mechanisms to protect their own rights.

This Southern human rights dependency is premised upon, and tends to perpetuate and legitimize a whole range of economic, political, technological, security, and other dependencies. It is these other dependencies that make "political conditionality" possible as a means of pressuring governments of Southern countries to comply with Northern demands for "democratization and protection of human rights." Without those dependencies, Northern governments will not have any leverage on Southern governments. Moreover, since human rights is not, and cannot be, the sole consideration in the foreign policies of Northern countries, there are inconsistencies and double standards in the "human rights" policies of developed countries. Whereas a country such as Saudi Arabia is hardly criticized for its horrendous human rights practices because of its "strategic importance" to the West, essential economic and development aid to poor countries is made conditional on "improving human rights performance."

Judging by the history of human rights advocacy in bilateral relations, it is clear that an alternative strategy is needed. While economic, political or diplomatic pressure may still be essential and useful under limited circumstances, it is too problematic to maintain as the primary instrument of international protection and promotion of human rights. The alternative that has proven most effective in Northern countries themselves, and is more fully consistent with the fundamental principle and justification of the universality of human rights is to support local constituencies which are engaged in struggles to legitimize and uphold international human rights standards in their own societies.

In conclusion, I call on Japanese policy makers to consider ways of promoting human rights in all parts of the world through Japan's distinctive voice and special influence as a non-Western highly developed and rich country. It is true that there are some risks and difficulties with linking foreign aid and assistance to the human rights performance of recipient countries, but that should not mean the total abandonment of such linkages as an effective tool for

promoting human rights. Another approach that also requires careful consideration, tact and sensitivity is providing material and moral/political support for local human rights organizations and individual activists. The universality of human rights is a vitally important and practically viable project, but it will not materialize without careful planning and concerted effort by private and official actors alike.