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Articles

THE CONTINGENT UNIVERSALITY OF HUMAN RIGHTS: THE CASE OF FREEDOM OF EXPRESSION IN AFRICAN AND ISLAMIC CONTEXTS*

by

*Abdullahi A. An-Na'im, Ph.D. ***

I. INTRODUCTION

Mohammed al-Massari, a national of Saudi Arabia who was engaged in vigorous but peaceful criticism of the monarchy in his home country, was asked to leave the United Kingdom in January 1996. The request came after the Saudi government threatened economic retaliation should Britain grant al-Massari's request for political asylum.¹ A television program about female circumcision in Egypt was broadcast by Cable News Network (CNN), an American corporation based in Atlanta, and widely seen throughout the world; the broadcast provoked strong official and public reactions and activities about this traditional practice in Egypt.² Taslima Nasreen, a writer

* An earlier preliminary version of the paper was published in *THE EMORY LAWYER*, Annual Report 11-18 (1994-95).

** Professor of Law, Emory University. Formerly Executive Director of Human Rights Watch/Africa; and Associate Professor of Law, University of Khartoum, Sudan. I am grateful for the research assistance of Ms. Natalie McCrea of Emory University School of Law.

¹ Anne Widdecombe, an official of the United Kingdom Home Office, said on BBC radio on January 5, 1996, that Mr. al-Massari's activities "have been complicating our relations with the Saudis" and that there have been "various representations from people in British business and the Saudis about the situation," but denied that there have been "the sort of direct, almost blackmailing pressure" to remove him that some reports suggested. John Darnten, *British Government Criticized For Ordering Saudi to Leave*, N.Y. TIMES, Jan. 5, 1996, at A5. The decision to "remove" al-Massari to Dominica (in eastern Caribbean) provoked strong protests inside and outside the United Kingdom. Mr. al-Massari was eventually allowed to stay following judicial review by the High Court of the Home Office decision. See, e.g., HERALD (Glasgow), Jan. 1, 1996, at 1; WASH. POST, Jan. 22, 1996, at A15. I find both the decision to deport him and its reversal significant for my purposes here.

² This program was seen in Egypt on CNN's *The World Today* on September 7, 1994, during the convening of the International Conference on Population and Development in Cairo. For information on official and public responses, including law suits, see Robert Fisk, *U.N. Population Conference: Operation on TV Enrages Egypt*, INDEP. (LONDON), Sept. 13, 1994, at 10; available in 1994 WL 8841693; Sarah

from Bangladesh, was forced to seek political asylum in Sweden to escape prosecution for blasphemy in her home country. She allegedly attacked the *Qur'an* in comments made to an Indian newspaper, saying that the holy book should be "thoroughly revised."³ A novel by Salman Rushdie, a British citizen of Indian Muslim origin, was condemned and banned in almost all Islamic countries and the author sentenced to death by the late Ayatollah Khomeini of Iran in 1989.⁴ In my view, these and many similar recent examples of the emerging realities of globalization emphasize both the urgent need for, and increasing difficulty of, generating and sustaining global consensus on international human rights norms and stronger commitment to their effective implementation.

The main premise of this paper is that freedom of expression (and other human rights) possess a contingent universality. The element of contingency lies in the dependence of such human rights norms upon two different sets of facets and processes. These are, first, the dynamic of internal domestic affairs, and, second, the dynamic of external or international affairs. Moreover, these two dynamics carry on a perpetual interaction in which each influences and is influenced by the other. National standards and practice are the bases of international standards and the necessary context of their implementation. Yet national standards and practices are in turn affected by international responses to the poor articulation or persistent violation of human rights at the local level. International recognition of the universality of freedom of expression equally influences, and is affected by, the local national dynamics of articulation, legitimation, and mediation of this and other human rights.

Gauch, *Modern Egypt Says Ancient Rite is Wrong*, CHI. TRIB., Sept. 10, 1995 at 1, available in 1995 WL 6244514; Judy Mann, *When Journalist Witness Atrocities*, WASH. POST, Sept. 23, 1994, at E3, available in 1994 WL 2441076.

³ See Taslima Nasreen, "Welcome in France": AGENCE FRANCE-PRESSE, Oct 16, 1994, available in 1994 WL 9625924; Eric Weiner, *Muslim Radicals and Police Hunt Feminist Bangladeshi Writer: A Controversy Surrounds Taslima Nasreen, Whose Works Sparked a Religious Edict Calling For Her Death*, CHRISTIAN SCI. MONITOR, July 26, 1994, at 6, available in 1994 WL 8790278. It is interesting to note that Ms. Nasreen had to cancel an initial visit to France because the authorities there granted her a visa for one day only, citing a "security reason," but she was able to visit France subsequently. *Nasreen Receives French Human Rights Award*, AGENCE FRANCE PRESSE, Dec. 1, 1994, available in 1994 WL 9641744.

⁴ This incident of 1989 continues to generate extensive and vigorous debate and commentary in many parts of the world. See, e.g., Youssef Ibrahim, *Muslim Edicts Take on New Force*, N.Y. TIMES MAG., Feb. 12, 1995, at 14; Alan Riding, *Muslim Thinkers Rally for Rushdie*, N.Y. TIMES, Nov. 4, 1993, at C17; Edward Said, *The Phony Islamic Threat*, N.Y. TIMES, Nov. 21, 1993, at 62.

For a review of the debate and an analysis that is particularly relevant to my approach in this paper, see M.M. Slaughter, *The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech*, 79 VA. L. REV. 153 (1993).

Rapidly growing realities of global interdependence makes it increasingly difficult even for the most developed countries to remain insulated from the consequences of human rights crisis abroad.

This interplay of the domestic and the international is evident in the above mentioned situations. We see, for example, from al-Massari's case that even a major former colonial power like the United Kingdom can be confronted with a choice between the economic well-being of its citizens, on the one hand, and its commitment to freedom of expression and protection of refugees, on the other. Egyptian officials and nongovernmental actors alike must now realize from the CNN case that they have to participate in a global effort to protect and regulate freedom of expression because external actors and factors can no longer be excluded or controlled in this age of satellite communications. Unavoidable interaction between domestic political issues and ideological debates, on the one hand, and regional and international law and relations, on the other, is clearly illustrated by the Salman Rushdie affair, a citizen of one country sentenced to death without trial by the head of state of another country for literary expression. In the case of Taslima Nasreen, the nature and scope of freedom of expression, and possibilities of exercising it in practice, can hardly be understood in isolation from the political/ideological struggles over the role of Islam in Bangladesh and South Asia in general.⁵ The politics of Islamization in Bangladesh should also be seen in light of India's struggle to maintain its national unity and integrity as a secular state in the face of increasingly violent confrontation between Hindu and Muslim extremists and the demands of segment of its Muslims population in Kashmir to join Pakistan.⁶

This paper explores the nature and dynamics of internal and external variables in relation to the normative and empirical standing of freedom of expression at both the domestic and international levels. A clear understanding of these dynamics, it seems to me, is necessary for the development of appropriate strategies for promoting the universality of freedom of expression. Such strategies must take serious account of the realities of globalization in trying

⁵ Note that the prosecution of Ms. Nasreen for blasphemy was based on a remarks attributed to her in an Indian newspaper. Weiner, *supra* note 3. It should be recalled that India lost what is now Bangladesh (then known as East Pakistan) in the partition of 1947, and subsequently assisted the same territory and population to achieve secession from Pakistan in 1971. See generally HASAN ZAHEER, *THE SEPARATION OF EAST PAKISTAN: THE RISE AND REALIZATION OF BENGALI MUSLIM NATIONALISM* (1994).

⁶ See generally ROBERT WIRSING, *INDIA, PAKISTAN, AND THE KASHMIR DISPUTE ON REGIONAL CONFLICT AND ITS RESOLUTION* (1994).

to promote consensus on the concept, content, and implementation of this right. These realities include both traditional power differentials between the developed North and developing South, as well as geopolitical factors that tend to diminish the impact of traditional power relations. But the key to redressing the imbalance in power relations with respect to the "proclaimed" universality of human rights is to engage in the process and adapt it to the respective priorities and concerns of each society, rather than pretend to be unconcerned with its moral and political implications. African and Islamic societies, for example, should seek to promote universality of human rights as a necessary response to the realities of hegemonic neo-colonial designs of the developed world. As I will argue in this paper, the needs of Islamic and African societies to attain and sustain national unity, political stability, and economic development, even as they safeguard their cultural and religious integrity, are all better served by a greater protection and promotion of freedom of expression than by its violation.

As commonly understood today, freedom of expression is one of the "civil liberties" which emerged through a long process of Western philosophical, political, and constitutional developments, especially over the last two centuries, and came to be proclaimed as a universal human right by the United Nations under the 1948 Universal Declaration of Human Rights, and subsequent human rights treaties.⁷ To acknowledge this Western origin of the present formulation of this freedom is not to suggest that the concept itself is alien to non-Western cultures. Obviously, the basic concept of freedom of expression has been known to human cultures, past and present. Moreover, the task today is to embed this freedom as a universal human right within the context of the centralized, pervasive power of the nation-state, which is now the norm throughout the world. It is certainly true that possibilities of regression will always remain, even where the right is traditionally respected. The behavior of the British government in al-Massari's case illustrates as much. But as is also shown by that case, this risk only underscores the importance

⁷ See Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., at 71, U.N. DOC. A/810 (1948); International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 19, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. DOC. A/6316 (1967). Similar formulations can be found in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221; Articles 13 and 14 of the American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123; and Article 9 of the African Charter on Human and Peoples' Rights, June 27, 1981 21 I.L.M. 58. However, in addition to significant differences between these and other international formulations, freedom of expression is always made subject to some general or specific limitations and exceptions.

of organized and vocal resistance to such regression.

The universality of a human rights, such as freedom of expression, can refer to either universal validity or universal application. In the first sense, the claim is that freedom of expression is held to be valid by all (or virtually all) human societies, or within all major cultural, philosophical, and religious traditions. Alternatively, universality can refer to the applicability of a given norm to human beings everywhere. Since the two meanings are in fact mutually inclusive and supportive, as discussed below, freedom of expression should in fact mean universality of both validity and application. It should be emphasized, however, that neither sense of universality assumes or implies that freedom of expression is absolute. Rather, it is a claim of universal validity and/or universal application, whatever the accepted scope of the freedom or warranted limitations may be.

It is true that universal acceptance of freedom of expression as a generally applicable norm is only a first step. There is still a considerable range of views on the specific nature and scope of this freedom, and there has not yet arisen a sufficient degree of agreement on effective mechanisms for its universal application. However, this was equally true of the concept when it gradually emerged as a civil liberty under Western constitutional regimes. Moreover, differences over the meaning and scope of this right remain, and will probably continue in the future, within those normative systems. The implementation of freedom of expression as a domestic constitutional norm requires a certain degree of national consensus. Yet, varying degrees of disagreements and significant shifts in the meaning and implications of the concept persist in countries where it is believed to be most securely established.⁸ This continuing need for mediation between freedom of expression and other priorities and concerns of each society does not negate its wide acceptance and application as a constitutional norm in most countries of the world today. Similarly, such need for mediation should not negate the universality of free-

* See, e.g., *R. v. Keegstra*, 61 S.C.R. 3rd 1 (Can. 1990), in which the Canadian Supreme Court had to decide whether and to what extent "hate speech" (anti-Semitic views in this case) should be protected under section 2 (b) of the Canadian Charter of Rights and Freedoms. There are significant differences not only between Canada, the U.S., and Europe, but also among West European countries. See generally OWEN FISS, *THE IRONY OF FREE SPEECH* (Harvard Univ. Press 1996); CASE AGAINST RACIST SPEECH, HATE, AND PORNOGRAPHY (Laura J. Lederer & Richard Delgado eds., Hill and Wang 1995). For a brief discussion of the jurisprudence of the European Court of Human Rights in this regard, see Gregory P. Propes, *Wherefore Art Thou Deference? The European Court of Human Rights, Military Discipline, and Freedom of Expression*, 19 HOUS. J. INT'L L. 281 (1996).

dom of expression as a human right. But one should not expect the same considerations and processes of mediation to apply at the international level.

To clarify and illustrate the contingent universality of freedom of expression as a human right, I propose to approach the issues from an African and an Islamic perspective because of actual or presumed similarities in the contexts and responses of relevant African and Asian societies to the universality project. It is true that much of the debate and ambivalence about freedom of expression in any part of the world is specific to local context and circumstances, or a particular set of national objectives and concerns. But the similarities of colonial and post-colonial experiences of African and Islamic countries appear to have somehow generated and sustained a shared suspicion of the universality project in general as a neo-colonial tool of cultural imperialism designed to defeat their right to self-determination and to perpetuate their economic and political dependency on the West. In fact, as emphasized earlier, Western as well as African and Asian societies must now formulate and pursue their national objectives in this regard within the context of growing globalization and interdependence, which affects all parts of the world.

To say that universality of freedom of expression has been established by the Universal Declaration of Human Rights and subsequent instrument does not indicate a particular causal relationship between freedom of expression and international human rights law. Is freedom of expression universal because international law says so, or does international law merely declare the already established universality of this right? The “contingency” approach would clearly suggest that the universality of freedom of expression is a product of a combination of the two approaches. The universal validity and application of freedom of expression at the local domestic level is both the cause and effect of its international standing, while such international standing in turn influences and is influenced by universality at the local level. In other words, I suggest a dialectical relationship between the empirical and normative, local and global, standing of freedom of expression. However, that does not mean this dynamic has always been in favor of universal validity and application, or is likely to be so in the foreseeable future. On the contrary, my purpose is to identify and discuss both types of interaction in order to suggest effective strategies for the promotion of universality on realistic foundations.

Accordingly, an analysis of the universality of freedom of expression as a human right can begin from either side of this dialectic—the local/domestic or global/international—as long as it takes into account both the negative and

positive aspects of the process. Since the language of universality was first introduced at the international level, it is logical to begin with an examination of the assumptions and implications of that universalist normative claim. Then I will explore theoretically the dynamics of the protection and violation of freedom of expression in the present context of African and Islamic societies to introduce the empirical local/domestic side of the process. That section is followed by a discussion of the possibilities of mobilizing the actual interdependence of relevant actors and factors in promoting the local/domestic validity and application of freedom of expression. The recent experiences of Kenya and Sudan will be considered to illustrate and clarify the preceding theoretical analysis. In conclusion, I summarize my argument and attempt to formulate some strategies for further reflection and action.

II. FROM ASSUMED TO CONSTRUCTED UNIVERSALITY OF FREEDOM OF EXPRESSION

As indicated earlier, the universality of freedom of expression can mean either universal validity, universal application, or a combination of the two; however, they can be supportive. It seems clear that there is a significant relationship between the two senses of universality in that, whereas universal validity is conducive to universal application, the latter is difficult to achieve without the former. Acceptance of freedom of expression as a universal human right by a given society would probably lead to more voluntary compliance than could be expected if the concept itself were not acceptable. Should active enforcement by the states become necessary, the political will to do so is more likely to be generated and sustained if the concept is acceptable to the general population of the country in question. Conversely, universal application in the face of wide scale popular resistance or strong governmental rejection can only be achieved, if at all, through some form of external coercion and imposition.

Some degree of internal enforcement of human rights will always be necessary because it is unrealistic to expect voluntary compliance with the law of the land by the whole population. However, massive coerced enforcement by a government, against its own population, is neither consistent with the nature and justification of human rights in general, nor likely to succeed in practice. Similarly, a degree of external pressure on governments that fail to live up to their international obligations will also be necessary and useful. But to make external pressure the primary instrument of local implementation will not

only be seen as an infringement on national sovereignty and a violation of the people's human rights to self-determination, but would also be expensive and difficult to maintain. In any case, experience shows that other governments are rarely able and willing to sustain the economic, political, security, and other costs of pressuring offending governments into greater respect and protection for human rights.⁹ In short, the use of coercion as the primary means of enforcement at either the national or international level is neither desirable as a matter of principle nor likely to materialize and be sustained in practice.

In this light, speaking of freedom of expression as a universal human right is both important and useful, but in the sense of a project to be constructed through global dialogue and collaboration, and not as a predetermined concept or accomplished fact. In terms of the thesis of this paper, I emphasize that African and Islamic societies can and should have a distinctive and positive role to play in the construction of such universality from their respective economic, political, and cultural perspectives. These societies should see themselves, and be seen by others, as contributing to a global effort to define, protect, and promote freedom of expression, rather than be expected to adopt a concept developed by other societies out of their own circumstances and traditions. Such inclusion and participation should be in relation to the underlying concepts and assumptions of human rights discourse as well as the actual standards, mechanisms, and strategies for their implementation. The construction of universality of freedom of expression should also incorporate the contributions of nongovernmental organizations in addition to those of intergovernmental and governmental entities.

Because challenges to its universal validity and application are often directed against particular conceptions of this right, developing a definition of freedom of expression is obviously important. However, it would be inconsistent with the premise of this paper to offer a specific definition since my contention is that such a definition should emerge from the interaction of internal and external forces in the context of each society. Nevertheless, I suggest that local definitions should be consistent with the nature of the process I am proposing which require the "popularization" of freedom of expression in order to generate political support for its universal validity and appli-

⁹ See INTERNATIONAL HUMAN RIGHTS IN CONTEXT 811-83 (Henry J. Steiner & Philip Alston eds., Clarendon Press 1996) for a wide variety of views and information on American and European approaches to human rights and foreign policy.

cation. For example, in terms of the geographical and cultural focus of this paper, I would call on African and Islamic advocates of freedom of expression to question and seek to supplement the narrow and elitist conceptions of this right which assume or imply that all that is required is the removal of direct official constraints on otherwise articulate, creative, and communicative individuals who have the material resources and ability to exercise their rights. In my view, this liberal "negative" sense of freedom as the absence of direct official constraints (as opposed to indirect limitations such as the lack of resources, self-censorship, or personal inhibitions) is a necessary but insufficient condition for a broader and more inclusive sense of the ability and opportunity for self-expression.¹⁰ Protection of freedom of expression should be conceived not only in terms of removing official constraints from articulate elites to debate issues of public concern, but also by enhancing material resources and practical opportunities for the exercise of this right by more people. That is, the justification and facilitation of freedom of expression need to be supported by deliberate strategies to progressively broaden the base of participation among the general public.

Another aspect of the liberal notion of justiciable civil liberties, "internationalized" as human rights under the Universal Declaration and human rights treaties, is the view that those rights can only be attributed to individual persons who would be able to adjudicate and vindicate their rights against the community as represented in the state. Again, while holding this aspect of the liberal notion of rights to be important, I suggest that freedom of expression as a universal human right should incorporate other conceptions of rights in relation to a variety of implementation mechanisms and strategies. For example, positive conceptions of freedom of expression should be articulated and deployed as a moral norm in the socialization and education of children, and be defined as a clear objective of national politics and in the daily functioning of administrative organs of national and local government. The possibilities and risks of collective exercise of freedom of expression should also be explored in relation to, for example, freedom of conscience and belief in the context of traditional African religions.¹¹

¹⁰ See *id.* at 166-92 (exploring the question of competing conceptions of rights in human rights theory). The editors briefly discuss "negative" versus "positive" notions of rights. *Id.* at 189-91.

¹¹ On the collective nature of traditional African religions, see, for example, EMEFIE KENGA METUH, *COMPARATIVE STUDIES OF AFRICAN TRADITIONAL RELIGIONS* (IMCO Publications 1987). Can freedom of expression play a role in mediating possible tensions between the collective and individual dimensions of freedom of religion in the African context? See *EMERGING HUMAN RIGHTS: THE AFRICAN POLITICAL ECONOMY CONTEXT* (George W. Shepard & Mark O.C. Anikpo eds., Greenwood Press 1990); see also RHODA E.

To summarize and emphasize, I suggest that freedom of expression should be understood not only in the "negative" sense of absence of official restraints, so as to *permit* individual persons to express themselves in political, artistic, literary, scholarly, and other ways, but also to include positive action to *enable* inarticulate individual and collective social and cultural forms of self-expression. A modified conception of justiciability and judicial enforcement can be useful in enforcing this broader conception of rights. For example, traditional definitions of standing to sue and judicial remedies for violations of individual rights may need to be revised to allow for the possibility of collective claims. To the extent that judicial protection is not possible or adequate for the purpose, alternative strategies of implementation should be developed to encourage people individually and collectively to express themselves. However, those alternative strategies should not jeopardize the ability of those who are already inclined to express themselves freely and effectively. In other words, the objective in this regard is to *supplement*, rather than replace, liberal notions of rights and their enforcement mechanisms as the basis of freedom of expression as a universal human right.

However, these and other possible mechanisms for the popularization of freedom of expression will, of course, require allocation of financial resources for governmental and nongovernmental action. At one level of analysis, if freedom of expression is accorded the high degree of priority it deserves, such expenditure will easily be viewed as fully justified. Accordingly, the question is whether the criteria and processes of setting national priorities are giving freedom of expression its appropriate weight, relative to other national concerns. There is little practical value, however, to according this right even the highest order of priority if material resources for its promotion are not available. From this perspective, the protection of the "individual" civil and political right to freedom of expression is *contingent* on the availability of material resources that may be lacking in developing countries because of the harsh realities of global economic relations. For advocates of freedom of expression to have credibility in resisting a low standing for this right in the appropriation of national resources, they must also address global conditions of trade and distribution of wealth that diminish the share of developing countries. This confronts traditional supporters of freedom of expression in the capitalist, liberal West with a challenge to redress this dimension of the

contingency of this human right.

The need to clarify and broaden the concept of freedom of expression in these ways, it seems, is an indication of a broader concern with what I would call the "culturally-specific" origins and development of universal human rights in general. In a formal legalistic sense, the modern concept of universal human rights first emerged in the aftermath of the Second World War and found international recognition in the 1945 Charter of the United Nations of 1945 and subsequent international and regional treaties.¹² As a matter of intellectual, as well as legal and political, history however, the modern concept of human rights clearly emerged from European and North American experience, particularly in constitutional regimes for the protection of civil liberties and fundamental rights of the last two centuries.¹³

Moreover, little opportunity for contributions by peoples of Africa and Asia at the beginning of the process in the late 1940s existed because the vast majority of these peoples were still suffering from repressive colonial rule by the same European powers who were proclaiming the Universal Declaration of Human Rights at the United Nations. The fact that many African and Islamic countries subsequently endorsed the Universal Declaration and participated in the adoption of subsequent covenants and conventions after they achieved independence from colonial rule in the late 1950s and early 1960s is significant. By that stage, however, those emerging African and Asian states were not only late comers to an already established concept and framework, but also lacked the human and material resources to make a significant original contribution.¹⁴ After all, treaty formulations of human rights and their implementation are premised on the preexisting power-oriented systems of international law and relations that did not accord much weight to emerging poor and underdeveloped countries.

Pointing out these facts and considerations does not mean that human rights as such are not universal, or that the present set of international human rights standards should not be accepted as a valid expression of that universality. Rather, my purpose in recalling those origins and that history is to

¹² See *supra* note 9, at 118-31.

¹³ See Virginia A. Leary, *The Effect of Western Perspectives on International Human Rights*, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES 15-30 (Abdullahi A. An-Na'im & Francis M. Deng eds., 1990); Jack Donnelly, *Human Rights and Western Liberalism* at 31-55.

¹⁴ Abdullahi A. An-Na'im, *Problems of Universal Cultural Legitimacy for Human Rights*, in HUMAN RIGHTS IN AFRICA, *supra* note 13, at 331, 346-52.

reaffirm the universality of human rights based on a clear and realistic understanding of its foundations and limitations as well as a positive appreciation of its liberating force. If these facts are not acknowledged and taken into account by the advocates of universality of human rights, cultural relativists can gain advantage with their constituencies by recalling the origins and development of the present standards in order to conclude that these formulations are necessarily inconsistent with non-Western cultural and religious traditions.

In response to such relativist claims, I would argue that the fact that the present formulations of human rights emerged from Western conceptions of civil liberties does not by itself prove that they are not universal. For one thing, those Western origins, in turn, drew from, and interacted with earlier and wider philosophical and political experiences of the totality of humanity. Another, and perhaps more important fact to note in this regard is that those Western conceptions of civil liberties emerged through a long struggle against the risks of abuse and manipulation of the centralized and all-pervasive powers of the state. With the recent, even greater expansion in the powers of the state, and its ability to affect a wider range of economic, political, educational, cultural, and other vital interests and concerns of individuals as well as communities, those risks are more serious and far reaching today in all parts of the world than they ever were. Whether as a result of colonial imposition or post-colonial adoption and endorsement, all non-Western societies now live under the Western model of the nation-state. Unless and until those societies develop either an alternative model of the state or better safeguards against the abuse and manipulation of its extensive powers, they are better advised to also adopt Western concepts and mechanisms that have already succeeded in providing effective limitations on those powers in Western experience.

In light of these considerations, I suggest, the assumption of the validity of the present human rights standards is supported by the fact that they reflect the normative framework of common human experience in the face of expanding powers of the state, and the realities of globalization, in every part of the world today. Even the rhetoric of cultural relativism cannot afford to do without the present set of internationally recognized human rights as such, because those who are challenging universality rely on, and benefit from, these same rights and freedoms in launching their challenge. That does not mean that the assumption of the universality of the present human rights standards precludes every type and form of challenge or reformulation of

specific conceptions or formulations of one right or another. In fact, I am attempting to do precisely that regarding freedom of expression in this paper. What I find conceptually unacceptable and practically dangerous is a counter-assumption of the inherent and irrevocable lack of universality for present internationally-recognized human rights or for the concept itself.

Although well-founded and warranted in my view, the assumption of universality should be substantiated through internal discourse within cultures, and cross-cultural dialogue between cultures (including religious traditions, ideologies, and legal systems) to broaden and deepen genuine consensus on the global validity and application of human rights standards.¹⁵ As clearly demonstrated in the limited discourse and dialogue that we have had since the adoption of the Universal Declaration, there is a growing overlapping consensus in support of the universality of human rights. Daily experience clearly shows that there is agreement among peoples of the world on the universal validity of human rights, and mounting demand for their application to all human beings throughout the world, despite differences as to the internal cultural, religious, or ideological justification of that agreement.

Varying degrees of tension no doubt remain between some formulations of human rights, on the one hand, and certain interpretations of cultural and religious traditions, or ideological and philosophical perspectives, on the other.¹⁶ There are also differences over the precise content and manner of implementation of various rights, as can be seen in relation to freedom of expression not only between American and European societies, but also among European societies.¹⁷ While these sorts of problems are to be expected in relation to such a global and highly complex project, and should be taken seriously, they are not sufficient reason to abandon efforts to broaden and deepen universal consensus on every aspect of content and justification for these rights. The universality project may prove to be untenable in the future, but it is too important to be abandoned without a serious attempt at

¹⁵ *Id.*; see also Abdullahi A. An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman and Degrading Treatment or Punishment*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: QUEST FOR CONSENSUS 19-43 (Abdullahi A. An-Na'im ed., University of Pennsylvania Press 1992).

¹⁶ See *supra* note 9, at 226-55.

¹⁷ On the relationship between the European Convention for the Prevention of Human Rights and the domestic legal systems of twenty-six member countries, see MACDONALD ET AL., THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS 26-30 (1993). For further discussion of some cases brought before the Court, see BEDDARD, B., HUMAN RIGHTS AND EUROPE 8-18 (1993).

realizing it as an inclusive and flexible principle.

In conclusion of this section, I suggest that the concept of human rights in general, and freedom of expression in this instance, must remain open and responsive to the changing priorities and concerns of the various peoples of the world. Far from being seen as accomplished or exhausted, the process of articulating and validating universal human rights should allow for refinement and clarification of existing rights, as suggested earlier for freedom of expression, as well as for the conception and articulation of new rights, such as collective human rights to development and protection of the environment, which may not necessarily conform to traditional liberal notions of individual rights.¹⁸ When viewed in this light—as the continuing and inclusive product of an overlapping consensus among peoples of diverse cultural orientation, religious affiliation, and ideological allegiance, rather than as a Western notion to be imposed on others—freedom of expression as a universal human right becomes a useful, indeed indispensable, instrument of liberation.

III. FREEDOM OF EXPRESSION IN AFRICAN AND ISLAMIC CONTEXTS

Colonial repression and exploitation, superpower rivalry during the Cold War, the realities and risks of ethnic and religious conflict or civil war, political instability, economic underdevelopment and marginalization, and technological and intellectual dependency are all matters of great concern to African and Islamic societies. Drawing on that background, ruling elites in these regions claim that violations of freedom of expression should be “tolerated” in the interest of achieving the higher priorities of national unity, political stability and economic development. In addition, these elites seek to rationalize human rights violations in the name of protecting culture and religion. In my view, the exact opposite is achieved in that unity, stability, and development can never be realized or sustained through the violation of freedom of expression. In fact, culture and religion are actually sustained and promoted by the protection of freedom of expression, not by its violation. In this section, I will attempt to develop a theoretical argument in support of the proposition that protection of freedom of expression is conducive to the realization of the same national interests and societal values it is alleged to undermine.

¹⁸ For some new perspectives and emerging concerns in this regard see, *HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY: A GLOBAL CHALLENGE* §§ IV-V (Kathleen E. Mahoney & Paul Mahoney eds., Martinus Nijhoff Publishers 1993).

From the outset, I concede the difficulty of establishing a causal relationship between a certain policy regarding freedom of expression and a specific state of affairs, especially within a relatively short period of time, let alone generalizing about such a causal relationship from one situation to another. That is, it is difficult to show that a certain state of affairs is the direct result or consequence of the existence or denial of freedom of expression. But this is equally true for both sides of the issue; neither the opponents nor the proponents of freedom of expression can easily adduce evidence of a casual relationship in support of their position. One may, however, be able to develop some sense of the conceptual viability and empirical probability of the suppression or protection of freedom of expression by following a hypothetical scenario to its logical conclusion. For example, if freedom of speech is suppressed in the interest of preserving national unity or political stability or pursuing economic development, then ruling elites will have to suppress all opposition to the policies they seek to implement in these fields. With consequent loss of general political legitimacy, ruling elites will have to increasingly rely on a progressively narrowing base of information and support. In time, political leaders and government officials will have no way of verifying whether the information they are receiving and acting upon in formulating and implementing their policies is true or not, let alone being able to accurately evaluate the consequences of those policies. That is, the difficulty of "demonstrating" how protection of freedom of expression would ensure that good policies are in fact adopted does not preclude one from showing that violating this right will likely lead to negative consequences.

The argument for suppressing freedom of expression in the interest of economic development is sometimes said to be supported by the example of countries such as Singapore.¹⁹ In response, I reiterate the difficulty of establishing causal relationships in defined time frames. That is, one cannot assume that the economic success of Singapore is due to suppression of freedom of speech, or that this causal relationship, if it exists, can be sustained over time. Moreover, I seriously question the relative value of the alleged benefit in relation to the price such societies pay. The society is not only denied the opportunity to discover itself and its true potential for social and moral growth, it cannot determine whether it is achieving all the economic success of which it is capable. That is, the costs of subordinating freedom of

¹⁹ See Bilhari Kausikan, *Asia's Different Standard*, 92 FOREIGN POL'Y 24-42 (1993). Cf. Aryeh Neier, *Asia's Unacceptable Standard*, FOREIGN POL'Y 42-51 (1993).

expression to economic development, for example, include uncertainty about the narrow objective itself in addition to sacrificing some broader societal aims to address long-term concerns. Moreover, without freedom of expression, a society has no way of debating the issues regarding the alleged rationale itself.

To induce it to take such a blind leap of faith and surrender its fate to the dictator of the day, a society is told that the surrender is a "temporary measure," and is assured that freedom of expression will be fully restored as soon as unity, stability, development, or some other alleged national goal is achieved. Yet, such a society is not allowed to determine whether those goals are truly desirable, or that such a "trade-off" is in fact necessary or appropriate in relation to the desired goals. Neither is it able to determine the extent or duration of the "postponement" or to decide when the alleged goals have been sufficiently realized for the "temporary" curtailment of freedom of expression to be terminated. In reality, therefore, a people are being asked to forever surrender the ability to reclaim freedom of expression in the future in pursuit of an alleged national goal that they are not even allowed to discuss.

But if such claims are so obviously false, why do elites make them, and how can they get away with this conduct? A brief answer might simply be "because they are in control of the state, and can compel acceptance of their absurd claims." But that is too simplistic and deterministic because it neither explains the nature and source of that power, nor permits ways of challenging it. A more satisfactory answer, in my view, must include an understanding of the nature of the claim and the manner in which it is sustained. Perhaps ruling elites make these types of claims because they believe that they can play on the strong appeal of the type of public good that they are promising. Furthermore, these elites stress the notion that the interests of the many should take precedence over those of the few. The mechanics of achieving this "confidence" trick is to control any possibility of challenge to such claims at both the normative and empirical levels. When no one is able to question the validity of such claims in a general or abstract sense, or to challenge their application to the facts of the situation (and perhaps not even to determine what the facts are), who is to know of the double fallacy, and what can they do about it? That is precisely why freedom of expression is usually one of the first human rights to be violated, since its exercise is the only way the fallacy of the rationale of its own violation (and that of all other rights) can be exposed.

Since the explanation of the loss of freedom of expression is in that very

fact—that ruling elites are able to get away with its violation by violating it—it follows that the protection of freedom of expression is in its exercise. The logic of this proposition is not as circular as it first appears. As will be discussed in the next section, in violating human rights, ruling elites in fact rely on the support of the same people whose human rights they are violating. In the case of freedom of expression, instead of violating the right all at once, ruling elites begin by a gradual erosion coupled with reinforcement of the assumptions underlying their claims. The less resistance they encounter on either front, the bolder they get in violating this right and justifying its progressive violation. In other words, freedom of expression is lost by its beneficiaries more than “taken away” by its violators. At the theoretical level discussed in this section, the relevance of this analysis to a strategy of resistance can be explained as follows.

First, it is important to understand the dynamic relationship between the underlying assumptions and the progressive violation of freedom of expression in the context of one society or another, and to incorporate such understanding in the strategies of resistance. While it is useful to draw on the experiences of other societies, there is no real substitute for intimate knowledge of the nature and methods of the ruling elites of the country in question, and the urgent public concerns they are manipulating. Otherwise, no effective strategy of resistance can be devised or implemented in a particular setting.

Second, there is the need for formulating adequate responses to the underlying assumptions about, for example, the relative size of the beneficiaries of this freedom, or the presumed contradiction between its exercise and the achievement of alleged national objectives. On the first count, advocates of freedom of expression must expand their constituency and build effective channels of communication with the public at large. This action must be undertaken as a matter of principle as well as a strategy for frustrating the forthcoming attack by the ruling elites. Otherwise, claims by the elites that freedom of expression is a privilege of a few articulate intellectuals, rather than of the public at large, might sound more plausible, thereby setting the scene for an alleged conflict between public good and private luxury.

Third, having established and maintained their credibility and ability to communicate with the widest possible constituency, advocates of freedom of expression should immediately challenge any alleged conflict between the popular exercise of this freedom and the achievement of the public good of national unity, stability, or economic development. Proponents of freedom of expression should strive to show its importance to all citizens and society at

large, and not just to a few educated elites. They should also demonstrate that freedom of expression is essential for achieving national goals. For example, it is important to demonstrate that freedom of expression is essential for ensuring that national unity is based on solid foundations of justice and equality of ethnic, cultural, or religious groups. Moreover, it is needed for defining the objectives of sustainable economic development and for monitoring its effective realization. Freedom of expression is also essential for ensuring that political stability is achieved through the widest possible participation of the population, and genuine legitimacy of the state and its institutions and processes, instead of by silencing dissent and repressing opposition. As demonstrated by the experiences of countries like Algeria, Iraq, Liberia, Mauritania, Rwanda, Somalia, and Sudan, denial of freedom of expression is more frequently associated with severe political strife and civil war than with unity, peace, and stability. The post-independence experiences of almost all African and Islamic countries also clearly show that decades of bad planning and poor implementation of economic policies, corruption and incompetence were sustained in part through systematic denial of freedom of expression.²⁰

The efforts of ruling elites to rationalize violations of freedom of expression through the need to protect the integrity of culture and religion are explicitly or implicitly premised on arguments and assumptions about the relationship between African and Islamic countries and the colonial and neo-colonial West. Freedom of expression is represented as a Western ploy designed to confuse and weaken African and Islamic societies, and to alienate them from their own traditional cultures and religions. Ruling elites also often misrepresent formulations of freedom of expression as an absolute and unqualified right, or emphasize exaggerated forms of its practice in some Western societies, in order to "demonstrate" its incompatibility with prevailing perceptions of cultural and religious norms and institutions. For example, according to such misrepresentations and exaggerations, the sole purpose of freedom of expression is to promote "hard" pornography and decadent literature.

This sort of rationalization presents the advocates of freedom of expression with the following challenges: (1) how to acknowledge the realities of past and present Western hegemony without encouraging siege mentality and defensive hostility to any universalist project among African and Islamic

²⁰ The underdevelopment of Africa is attributed to the post-colonial repression of civil liberties and human rights. GEORGE W. SHEPARD & MARK O.C. ANIKPO, *EMERGING HUMAN RIGHTS* 57-65 (1990).

societies; (2) how to define the limitations of freedom of expression without providing ruling elites with justification for its progressive curtailment; and (3) how to defend freedom of expression as compatible with cultural and religious traditions without accepting the supremacy of all prevailing conceptions of those traditions, some of which are inconsistent with, for example, the human rights of women or ethnic and religious minorities. The complex and protracted issues raised by these dilemmas can best be addressed over time and in the specific context of particular societies. However, the following general remarks may provide some guidance in responding to such challenges.

On the first dilemma, it would be futile to deny the obvious fact of Western hegemony, or to pretend that protection of freedom of expression will immediately and completely redress the underlying differential in power relations between Western and African or Islamic societies. Instead, the issue should be that the protection of these human rights would better prepare African and Islamic societies for resisting all hegemonies, whether Western, Eastern, or from within. It should be noted that Western societies which practice a high degree of freedom of expression are in fact stronger and more developed than the African and Islamic societies which have failed to protect this right. Although the relative historical evolution of societies should not be simplified, its association with freedom of expression should still be considered.

Regarding the second dilemma, the definition of freedom of expression, as indicated earlier, is a matter for negotiation by each society, within the framework of internal and international interdependence. The most fundamental requirement for the validity of this process of definition and specification is that it must be open to all segments and points of view within society, including subsequent generations. No group or segment of society should monopolize the power to define freedom of expression for all present and future generations. Such opportunities for constant debate and reevaluation of the definition exist when freedom of expression is protected, not where it is suppressed.

As to the third dilemma, I argue that perceptions of conflict or tension between freedom of expression, on the one hand, and cultural and religious norms, on the other, are the product of particular interpretations of culture and religion which can and should be both challenged and changed. In fact, the integrity and proper functioning of cultural and religious traditions themselves need to be reaffirmed and verified through open and free discussion,

including the possibility of reformulation and reinterpretation, if the values and institutions of culture and religion are to maintain the confidence and allegiance of their constituencies, and continue to inform and guide their behavior.²¹

In a sense, the contest between the proponents and opponents of freedom of expression can be seen as one version of the age-old struggle over power in which the modern idea of human rights is used as a political tool by rivals competing for dominance and privilege. The significant difference can be, however, that where traditional struggles over power were about the replacement of one group of ruling elites by another to the exclusion of the public at large, the essence of freedom of expression is to ensure the diffusion and sharing of power among the whole population. For this shift in perceptions of struggles over power and their objectives to materialize, however, freedom of expression must be seen as a vital concern and immediate relevance and of use to the totality of the population, and not only of one small group of elites. It is for this reason that I have emphasized a more proactive and inclusive definition of freedom of expression.

IV. MOBILIZING THE DYNAMICS OF INTERDEPENDENCE

The precise definition and implications of freedom of expression are to be negotiated by each society over time within the framework of internal and international interdependence. But it is clear that in any society, the freedom to express oneself is neither absolutely secured nor fundamentally repudiated or repressed.²² The very existence of another person to whom (or group to which) the self is being expressed implies limitation on freedom of expression since the response of that other person (or entity) to the form, manner, content, or consequences of expression would need to be taken into account. By the same token, since other individuals and society at large would not seek to restrict or regulate expression they do not find objectionable, there

²¹ Further development of this argument from an Islamic perspective can be found in Abdullahi A. An-Na'im, *Toward an Islamic Hermeneutics for Human Rights*, in HUMAN RIGHTS AND RELIGIOUS VALUES (Abdullahi A. An-Na'im et al., eds, William B. Eerdmans Pub. 1995); Abdullahi A. An-Na'im, *Islamic Foundations for Religious Human Rights*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVES: RELIGIOUS PERSPECTIVES 337-60 (John Witte & Johan van der Vyver eds., Martinus Nijhoff 1996).

²² For an example of the concept and role of freedom of expression in a traditional African context, see Bonnie L. Wright, *The Power of Articulation*, in CREATIVITY OF POWER: COSMOLOGY AND ACTION IN AFRICAN SOCIETIES 39-57 (W. Arens & Ivan Karp eds., 1989).

will always be some scope for freedom of expression, even in the most repressive and authoritarian settings. There are always limitations on the concept and practical exercise of expression, even in the most liberal societies. There is always some scope in principle and space in practice for expression in the most authoritarian or traditional societies. From this general point of view, the question is never whether there is any freedom of expression, but rather what limits and possibilities exist for it or ought to be provided.²³

From a human rights perspective, however, freedom of expression is not simply about expressing one's self to others in general everyday interactions. Rather it is about one's right and ability to *contest the limits of permissibility* with a view to expanding political, social, and moral "space" for freedom of expression and challenging arbitrary or unwarranted restrictions.²⁴ To have the right to contest the limits does not necessarily mean, of course, that the desired expansion of the scope of the right, or improvement in the circumstances of its exercise, will be realized in practice. What is important is the right and ability to contest, and to seek to improve one's case and win more support for it. For example, it is universally agreed that one's exercise of his freedom of expression should not be allowed to cause "harm" to other persons or to the community at large. What is at issue in this context is the right to debate and contest the meaning and degree of "harm" — what level or type of harm should justify what degree or form of restriction on freedom of expression. The right to contest the limits also include possibilities of challenging the manner in which legitimate restrictions might be specified and applied in practice, again with a view to expanding the scope and improving the quality of freedom of expression.

Another general point to note is that many, perhaps most, situations of potential or actual conflict over freedom of expression are successfully resolved through some form of negotiation and mediation short of adjudication. Structural, economic, sociological, cultural, and other factors may "persuade"

²³ For example, the International Covenant on Civil and Political Rights of 1966 guarantees the right to freedom of expression, and then proceeds to recognize that certain restrictions on freedom of expression are permissible, but "only as provided for by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order (*ordre public*), or of public health or morals." Arts. 19.2, 19.3. A discussion of the appropriateness of this or other specific definitions of freedom of expression is beyond the scope of this paper.

²⁴ Some who contest the limits of freedom of expression with a view to reducing the scope of permissibility, see their effort as necessary for protecting the human dignity and rights of women, or some other legitimate human rights concern. See generally CATHARINE A. MACKINNON, *ONLY WORDS* (1993).

one person to abandon a possible claim of freedom of expression in a given situation, or "induce" another to accept or tolerate what they would have challenged or contested under different circumstances. What might appear to be consensus over the toleration or rejection of certain types of expression could in fact be a reflection of realities of power relations or lack of means and opportunity to assert the freedom, or to challenge its purported exercise in a given case. A case that might be characterized as self-censorship by an individual or an instance of tolerance by others could in fact be the realization that there is no point in trying to assert freedom of expression, or in resisting such a claim. Yet whatever may be the possible motives and reasons for an apparently successful resolution or mediation, one can easily find numerous and routine examples of conflict over the scope, manner, and content of freedom of expression in every society.

Therefore, it is reasonable to assume that there is some level of freedom of expression in all societies, for whatever reasons or motivations, and that most potential disputes are resolved through some sort of compromise and informal mediation. Nevertheless, there still remains the need for definition and adjudication in hard cases when there is conflict between those who seek expression and those who oppose it. Granted that there are things one would not want to express for whatever reasons he or she may have, and there are expressions of things which would not bother or concern other persons, or the community or state at large. The contested field of freedom of expression is that middle ground between the two ends: what one side wishes to express and what other persons or entities find objectionable. An arbiter is therefore needed to adjudicate in case of conflict when there is an assertion of freedom of expression in the face of opposition or resistance by others in a given situation.

In the modern context, the state is supposed to act as arbiter. The state is the politically constituted authority with a monopoly of the legitimate use of force and the ability to mobilize social and material resources. But the state itself is not, and cannot be, neutral in this conflict. The state is controlled by specific individual and group actors who will always have their own perspective and interests to promote or protect in any dispute over the scope and manner of expression. In other words, those in control of the apparatus of the state are usually parties to disputes over freedom of expression, either in favor or against the assertion of the right in a given situation. Consequently, on the one hand, each side to a dispute over expression will need the support of other persons and the community against the possibility of bias by state

actors. State actors, on the other hand, will need the support of one side to the conflict, and of the public at large, in trying to adjudicate a dispute between the parties, to protect their own interests, or promote their perspectives on the issues. When the state is openly or clearly party to a dispute over a freedom of expression issue in its own cause, it will still need broader political support from significant individuals and the public at large in seeking to impose its will in any particular case.

Thus, an important aspect of the struggle over freedom of expression is about the dynamics of this tripartite relationship of mutual conflict and interdependence between those seeking self-expression and others who oppose it, as well as between such parties and the state, who is supposed to be the arbiter. An individual or group seeking protection of freedom of expression in a specific case or situation will need to rely on the support of other individuals and groups, and of the community at large, in checking or countering the bias or self-interest of state actors. For that support to be forthcoming, however, other individuals, groups and the community must appreciate the value of protecting freedom of expression in general, and be persuaded that the particular case is worthy of their support. Others who object to an assertion of freedom of expression in broader terms or with regard to the case in question will also no doubt try to influence state actors, other individuals, and the community at large in favor of their position, including responding to the terms and purported justification of the original claim. Such challenges and their strategies and rationale should, in turn, be anticipated and responded to by the claimant or advocates of freedom of expression.

A recent example from Egypt clearly illustrates some of the complexities and subtleties of these dynamics of interdependence. Nasr Hamid Abu Zeid, an Associate Professor of Arabic at Cairo University at the time, applied for promotion to the rank of full professor in 1993. In accordance with normal academic procedures, he submitted his publications for review by departmental and university committees. All of his senior colleagues on those committees were impressed by the applicant's scholarship and recommended promotion, except one professor who objected strongly on the ground that some of the ideas expressed by Abu Zeid in his writings about the *Qur'an* amounted to apostasy (a repudiation of his faith in Islam). Soon after, this internal academic matter exploded into a major controversy in the Egyptian media, among political parties, trade union organizations, mosques, and other religious and intellectual fora throughout civil society, and even within official

government circles.²⁵

In this case, almost every segment or group of participants, including the government, is pursuing the issues (the controversy continues at the time of writing) from its own political, religious, organizational, and professional perspective. While some are genuinely concerned with the civil liberties and human rights implications and consequences of the case, others are using it primarily as a proxy for other political or intellectual objectives. The controversy is further complicated by the fact that someone instituted a personal law suit to have Professor Abu Zeid's wife divorced from him by judicial decree because, as an apostate from Islam, his marriage to a Muslim women is null and void.²⁶ That suit brought additional concerns about Islamic *Shari'a* law as personal law for Muslims in Egypt, issues of independence of the judiciary, and so forth. While some resent the power of the courts to annul a marriage against the wishes of both spouses, others insist that the couple would be "living in sin" should the marriage be allowed to stand. To a third group, the question could simply provide an opportunity to insist on expanding or restricting the application of *Shari'a*, regardless of the merits of the case at hand. Alliances among various protagonists were built and dissolved according to their political or other objectives, irrespective of the consequences for Abu Zeid personally, or for freedom of expression as an abstract principle.

There are also regional and international dimensions to this dynamic of interdependence between claimants whose petitions are determined by con-

²⁵ For an overview of this controversy, see CHRISTIAN SCI. MONITOR, Jun. 23, 1995, at 1; CHI. TRIB., Jul. 4, 1995, at 1; 42 WORLD PRESS REV., Oct. 1995, at 18; Deborah Pugh, *Court Case Casts Doubt on Secularism in Egypt Accused of Apostasy*, CHRISTIAN SCI. MONITOR, June 24, 1993, at 1; Stover H. Rawley, *Egyptian Intellectuals Feel Trapped, Strict Islamic Law Ensnarls Professor*, CHI. TRIB. July, 4, 1995, at 1; Amira Howeidly Mara Nahhas Mara Anis, *The Persecution of Abu Zeid*, WORLD PRESS REV., Oct. 1995, at 18.

²⁶ The divorce case has come to an alarming conclusion because the Supreme Court of Egypt upheld the rulings of lower courts to dissolve the marriage for apostasy. Another cycle begins, a court of first instance has refused to enforce that judgment on the grounds that the applicant lacks standing (has no personal interest) in the matter. That decision is being appealed by the applicant at the time of writing (January 1997). Observers believe that both the judiciary and the government of Egypt hope for a protracted appellate process that will ease political and legal tensions in this case. That is no consolation, however, to Professor Abu Zeid, who stands guilty of apostasy, nor his wife, who was legally divorced from her husband against her will and his. Another appeal by Abu Zeid's lawyers against the apostasy ruling has also been lodged, but Abu Zeid and his wife are currently forced to live abroad for fear that Islamic extremists will decide to "execute" the death penalty for apostasy on the couple. For recent developments in this case, see Judith Miller, *New Tack for Egypt's Islamic Militants: Imposing Divorce*, N.Y. TIMES, Dec. 28, 1996, at 19.

cerns not necessarily related to freedom of expression. For example, it is obvious that the cases of Salman Rushdie and Taslima Nasreen, mentioned earlier, raise fundamental issues of freedom of expression in Islamic societies. But it would be extremely naive and misleading to present these issues without also considering the long and complex history of the relationship between the Islamic countries and Western and regional powers. To all sides of the issue, the controversy over the CNN report on female circumcision in Egypt was more about issues of self-determination, national sovereignty and pride, the role of Islamic political activism in the country, the human rights of women, and Western cultural imperialism than freedom of expression. In all three cases, international actors were equally as involved and as capable of influencing the course and outcome of events as internal actors. This broader and more realistic understanding of the complexities of these situations is necessary both for determining the scope, objectives, and beneficiaries of freedom of expression and for developing strategies for overcoming the obstacles facing the realization of this right in specific Islamic societies and beyond.

These internal and external processes of interdependence are simplified here for the sake of argument. In reality, issues will rarely be presented in such clear-cut terms of support or opposition to freedom of expression as such, or even to the particular claim. In all probability, a claim to freedom of expression will not be presented, supported, or opposed in its own specific terms, but rather as part of broader issues or concerns. Both supporters and opponents would usually consist of coalitions of actors who may be pursuing political or other objectives that have little to do with freedom of expression in an abstract sense. The whole process, moreover, will be greatly influenced, if not determined for all practical purposes, by such factors as the general dynamics of political, economic, social, and cultural power relations in the given situation, the timing of the claim in relation to other issues and concerns, and the psychology and inter-personal or inter-group relations of relevant actors. The same freedom of expression issue may evoke different responses, depending on whether it is presented in a form perceived to threaten fundamental interests of dominant individuals or groups, at a time of general crisis, or in a manner that is offensive to potential allies or conciliatory to possible opponents.

The point I wish to emphasize is that freedom of expression, like all other human rights, should not be conceived, articulated, or asserted in abstract terms. Rather, its nature should be informed by its internal and external polit-

ical, economic, social, and cultural context. Whether locally, regionally, or globally, freedom of expression can only be practiced within a specific framework of human relations and material circumstances. I would hasten to add, however, that to acknowledge this obvious fact is not to take a deterministic or apologetic view of the concept, scope, and practice of freedom of expression in any given society or situation. Rather, my purpose here is to take a visionary and forward-looking, yet realistic and practicable, view of the concept and its implementation. As I have argued earlier, situations restrictive of freedom of expression can and must be changed, and violations of this human right should never be rationalized on cultural or contextual grounds. But any successful strategy for changing restrictive circumstances or challenging cultural and contextual justifications of violation must clearly identify and address a variety of underlying issues, even though some of them may not appear to be directly relevant to freedom of expression as such.

V. FREEDOM OF EXPRESSION IN KENYA AND SUDAN

In this section, I propose to apply the preceding analysis to the prospects of freedom of expression in Kenya and Sudan. In view of the difficulty noted earlier of establishing a causal relationship between either suppression or protection of freedom of expression, on the one hand, and a certain state of affairs, on the other, my argument is as follows. First, I argue that although freedom of expression had little chance to be secured and institutionalized under post-colonial conditions, the actual record shows that its suppression did not prove to be conducive to the achievement of the objectives of national unity, stability, or development. Here, I simply associate suppression of free expression with failure to achieve those national objectives which are commonly cited as justifications for such suppression. However, the implication is that protecting freedom of expression will yield better results. To support this proposition, I will briefly propose a strategy for integrating protection of freedom of expression in the political and legal systems of African countries as a more viable means of achieving legitimate national and communal objectives, as well as safeguarding individual dignity and human rights. Given the realities of weak articulation and lack of institutionalized protection of this freedom in the two countries, however, I will draw on preceding sections of this paper to try to imagine how universality of validity and application of freedom of expression might work in the harsh realities of Kenya and Sudan.

To place this discussion in context, one should begin with a brief overview of the postcolonial history of the two countries. With such a perspective, one may understand the realistic prospects for freedom of expression at the time of independence and its subsequent fate at the hands of the African elites who took over. Reflecting on recent history, however, one is immediately struck by a paradox. These countries were supposed to have inherited constitutional order and democratic government from their colonial rulers, with freedom of expression playing a central role. However, colonialism and its aftermath burdened these nations with structural obstacles that impeded the progress of constitutionalism and democracy. As the total negation of sovereign constitutional and democratic self-governance, colonialism could not have possibly prepared the peoples of these countries for what they were supposed to be. This is not a justification for oppression and violation of rights by native ruling elites since independence, but an attempt to understand how and why these tragic consequences came about, in order to better redress them.

After a long history of encouraging and institutionalizing European settlement of Kenya and the total subjugation of its native African population, Britain was finally forced to return the country to its own people with little preparation for democratic self-governance.²⁷ For example, the so-called "Council of Ministers" appointed by the British government in 1954 to run the daily administration of Kenya consisted of three Europeans, two Asians, and one African. As late as 1959, the British government, had decided that Kenya was to achieve full independence in 1975. Within a year, however, the British government was obliged by a combination of Kenyan agitation and international pressure for decolonization to convene a "constitutional conference" in London to renegotiate the political future of the country. Full independence came by December of 1963, after two national elections (1961 and 1963) and another constitutional conference in between the elections that resulted in massive transfers of land from European settlers to African hands, paid for by funds from the World Bank. Instead of being "prepared" for independence, which was supposed to materialize some sixteen years after the unilateral colonial decision of 1959, Kenya was pushed into full sovereign statehood within three years.

Upon achieving full independence in December of 1963, Kenya adopted a

²⁷ DECOLONIZATION AND INDEPENDENCE IN KENYA 1948-93 (B.A. Ogot & W.R. Ochieng eds., Ohio University Press 1995); NORMAN N. MILLER, KENYA: THE QUEST FOR PROSPERITY (1984).

constitution establishing a parliamentary system of government and providing for fundamental rights including freedom of expression.²⁸ The Constitution, written in London and enacted by the British Parliament, purported to establish Kenya as an independent state within the British Commonwealth, with the Queen of the United Kingdom as its head of state. The first amendment of the Constitution in 1964 severed the colonial link to make Kenya a republic, but subsequent amendments in 1979, 1983, 1988, 1991, and 1992 were enacted for internal political purposes. The struggle for independence and immediate postcolonial politics were dominated by two political parties: Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). Although the country became a de facto single party state with the merger of these two parties in 1964, the Constitution was amended in 1982 to formalize the political reality of a single party state, only to be amended again in 1991 to relegalize multiparty politics. While KANU continues to rule, ten opposition parties are now recognized and operational, but only with great difficulty and no real prospects of challenging KANU's monopoly of power.²⁹

Consider the implications of Kenya's rapid transition from total colonial rule to complete independence without the requisite political and legal institutions or economic infra-structure, but with the dangers of ethnic hostility, regional instability, global economic adversity, and cold war rivalries. For example, Kenya has been plagued by intense ethnic politics since the struggle for independence, when smaller ethnic groups supported the KADU to guard against a KANU comprised of the Kikuyu and Luo.³⁰ Recently, political and economic competition between Kenya's ethnic groups has resulted in more than 1,500 deaths and the displacement of over 300,000 in the Rift Valley region.³¹ Those events and their local security consequences are often cited by the government to justify emergency measures, including severe restrictions on freedom of expression. Regional developments over the last three

²⁸ For a discussion of the creation of the Independence Constitution and subsequent changes, see INFORMATION, FREEDOM AND CENSORSHIP: THE ARTICLE 19 WORLD REPORT 31 (1988).

²⁹ For a discussion on the relationship between the political parties, the state and civil society, see JENNIFER A. WINDER, THE RISE OF A PARTY-STATE IN KENYA 162-97 (1992).

³⁰ Current estimates of ethnic divisions are as follows: Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Kisii 6%, Asian, European and Arab 1%, other 15%. CHRISTOPHER J.S. VANCE, CIA WORLD FACTBOOK <<http://www.adfa.oz.au:80/CS/flags/ke/95.txt>>.

³¹ See U.S. DEP'T OF STATE, *Country Reports on Human Rights Practices for 1995: Kenya* 127 (1996); *Migrants and Refugees in Africa* (discussed in EMERGING HUMAN RIGHTS 145-62 (1990); see also JENNIFER A. WIDNER, THE RISE OF A PARTY-STATE IN KENYA 81 (1992).

decades, from extreme political instability and civil war in four of its five neighbors (Ethiopia, Somalia, Sudan, and Uganda), to the collapse of the East African Community in 1977, have also had immediate and drastic economic and security consequences for Kenya.³² The country's economy is extremely vulnerable to the unmitigated impact of global economic factors, from dramatic fluctuations in the prices of coffee and tea, its main exports, to massive rises in the cost of its fuel imports in 1973, 1974, and 1979.³³

A similar analysis applies to the situation of Sudan, which achieved independence in 1956 from Anglo-Egyptian colonial rule in the same hurried and disorganized manner that was subsequently experienced by Kenya and many other African countries.³⁴ Sudan is also vulnerable to global economic forces and is severely affected by regional instability and civil war, such as the thirty years of Eritrean struggle for independence from Ethiopia and the cycles of civil war in Chad and Uganda. But Sudan's difficulties are most clearly reflected in its own combination of civil war and the role of Islam in national politics.³⁵ The first civil war broke out in southern Sudan in 1955 and continued through cycles of civilian and military rule until it was temporarily settled in 1972, only to be resumed from 1983 to the present. Neither political stability nor economic and social development have been possible because of this protracted and highly destructive civil war. Adding to the complex and deep rooted causes of the north-south conflict, political Islam has surfaced and rendered peaceful resolution with unity extremely difficult.

Sudan was united for the first time, within more or less its present boundaries, by the Ottoman Egyptian invasion of 1820, though the process of unification and "pacification" took many decades. That phase of colonial rule ended in 1884 when the nationalist religious leader Muhammed Ahmed (Al-Mahdi) culminated his military success by capturing Khartoum and establish-

³² See Miller, *supra* note 27, at 137-38 (discussing the failure of the East African Community); see also Katete Orwa, *Foreign Policy, 1963-86*, in *A MODERN HISTORY OF KENYA 1895-1980*, 234-41 (William R. Ochieng ed., 1989) (discussing the return to equilibrium following the end of the EAC).

³³ See WIDNER, *supra* note 31, at 183-87 (material regarding the effect the policies of President Moi and the KANU on the effectiveness of the coffee and tea export industry); Miller, *supra* note 27, at 111-16 (discussing oil import prices and coffee and tea).

³⁴ On Sudan's transition to independence and subsequent political and economic developments see MUDDATHI ABD AL-RAHIM, *IMPERIALISM AND NATIONALISM IN THE SUDAN* (1969); TIM NIBLOCK, *CLASS AND POWER IN SUDAN: THE DYNAMICS OF SUDANESE POLITICS 1898-1985* (1987).

³⁵ For various perspectives on the civil war, see *CIVIL WAR IN THE SUDAN* (M.W. Daly & Ahmad Alawad Sikainga eds., British Academic Press 1993); FRANCIS M. DENG, *WAR OF VISIONS: CONFLICT OF IDENTITIES IN THE SUDAN* (1995).

ing the first "Islamic" state in the history of the region. However, the Mahdist state was destroyed thirteen years later with the Anglo-Egyptian conquest of 1898 and the establishment of a joint colonial administration in which Britain acted as the senior partner, occupying Egypt itself at the time to "protect" British and other European interests in the region. But the rivalry between the two colonial powers ultimately facilitated the independence of the country in 1956, the first in sub-Saharan Africa.

Colonial administrations are by definition exploitative and oppressive, but the more serious legacy of these two phases of colonialism in Sudan is their role in fermenting the ethnic and political divisiveness that continues to haunt the country to the present day. For example, while both colonial administrations maintained the geographical unity of the entire country by force for their own exploitative reasons, they did nothing to promote ethnic harmony or political and social cohesion. On the contrary, the Ottoman-Egyptian colonial rule of the last century continued the slave trade for most of its reign, with the southern part of the country as the source of slaves and some northern Sudanese acting as intermediaries.³⁶ The native Mahdist state practiced institutionalized chattel slavery for the duration of its rule. The British rulers of the country during the Anglo-Egyptian phase prohibited slavery, but kept the southern region strictly closed to northern Sudanese until the mid 1940s, less than ten years before independence.³⁷ Both phases of colonial rule (Ottoman-Egyptian and Anglo-Egyptian) totally excluded the local population from the government of their own land, relying on the expediency of traditional rulers to collect taxes and minimize the costs of administration. Yet, Sudan was supposed to emerge as a sovereign democratic country, enjoying the benefits of constitutional government and the rule of law, with the politics of "divide and conquer" as its only legacy from colonial rule.

Profound ambivalence among ruling northern Sudanese elites about the role of Islam in politics was always a destabilizing factor and an obstacle to constitutionalism since independence.³⁸ But the negative consequences have mounted since the National Islamic Front (NIF), a small Islamic fundamen-

³⁶ On slavery in Sudan and the region in general see ALLAN G.B. FISHER, *SLAVERY AND MUSLIM SOCIETY IN AFRICA: THE INSTITUTION IN SAHARAN AND SUDANIC AFRICA AND THE TRANS-SAHARAN TRADE* (1971).

³⁷ For British Closed Districts policy and general colonial practices, see M.O. BESHIR, *THE SUDAN: BACKGROUND TO CONFLICT* (1968).

³⁸ Abdullahi Ahmed An-Na'im, *The Elusive Islamic Constitution: The Sudanese Experience*, in *ORIENT* 329-40 (1985).

talist party, seized power through a military coup in June 1989. The insistence of the NIF regime to maintain and expand the application of *Shari'a* (historical formulations of Islamic law) means reducing all women and non-Muslim Sudanese to the status of second class citizens in their own country.³⁹ The totalitarian project of the NIF regime also devastated the already weakened institutions of state and civil society, as the government purged thousands of qualified Sudanese from the judiciary, civil, and diplomatic services, as well as the armed and security forces, to replace them with unqualified and highly politicized NIF cadres.⁴⁰ This regime also destroyed the educational system in an attempt to remold it in its own ideological image. Furthermore, the regime undermined the economy and security of the country by antagonizing most of Sudan's neighbors and much of the international community at large.

Both the governments of Kenya and Sudan have persistently responded to the difficulties of their respective countries with massive and systematic human rights violations.⁴¹ In particular, freedom of expression was suppressed in Kenya for most of the thirty-five years of KANU.⁴² This freedom was also suppressed by the three military regimes which ruled Sudan for thirty of its forty years of independent statehood.⁴³ Yet three to four decades after independence, the two countries continue to suffer from the same severe and protracted problems. As indicated earlier, it is important to my argument that the suppression of freedom of expression in Kenya and Sudan has not yielded better results for national unity, political stability, or economic development.

³⁹ Abdullah Ahmed An-Na'im, *Constitutional Discourse and the Civil War in the Sudan*, in CIVIL WAR IN THE SUDAN, *supra* note 35, at 97-116.

⁴⁰ ANN E. MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS 25-29, 112-13, 157-59 (1995).

⁴¹ See, e.g., KENYA: SHADOW JUSTICE (London: African Rights, 1996) HUMAN RIGHTS WORLD REPORT 1993, 1994, 1995, Kenya (New York: Human Rights Watch, 1995); and U.S. DEP'T OF STATE, KENYA HUMAN RIGHTS PRACTICES, 1994 (1995).

On Sudan see, for example, BEHIND THE RED LINE: POLITICAL REPRESSION IN SUDAN (New York: Human Rights Watch, 1996), and reports of Casper Biro, the Special Rapporteur of the United Nations (1992-93).

⁴² U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1995: KENYA 128-31 (1996).

⁴³ Two years after independence in 1956, Sudan had its first military regime which ruled until 1964. The second phase of civilian parliamentary government lasted only five years until the military took over again in May 1969, and ruled until 1985, when a combined military and civilian transitional government ruled for a year before handing the state over to civilian rule by April 1986. This third phase of civilian rule ended three years later with the NIF military coup of June 1989, which continues to rule until the time of writing (January 1997).

Thus, consider the following situations with a view towards reflecting on whether protecting freedom of expression would have been more conducive to addressing such matters of legitimate and fundamental national concern.

As can be expected, many local and national political and economic factors contribute to the continuing Rift Valley crisis in Kenya that resulted in massive killings and displacement of populations. One aspect of the crisis is ethnic competition over land and access to political power.⁴⁴ But upon closer examination, the evidence indicates that the government has manipulated existing tensions for its own political ends.

On September 17 [1992], the Parliament's Select Committee on Ethnic Clashes released a report concluding that the violence was politically motivated and often incited by provincial officials. It called for criminal investigations of all politicians who had made inflammatory statements during the violence, and alleged that Nicholas Biwott and Ezekiel Barngetuny, close associates of President Moi, were involved in organizing and financing the fighting.⁴⁵

Whereas these politicians and local officials have been able to speak on the issues from their own perspective, others were denied the right to present their point of view.

Conflict in the Rift Valley or any other part of Kenya will continue, as it has done in all human societies throughout history, because people disagree over the distribution of wealth and power, and have different priorities and competing visions about matters of general concern. The role of government is to regulate the political and legal mediation and resolution of such conflicts, instead of attempting to suppress it or arbitrarily take one side against another. But those in control of the apparatus of the state are also human beings, with their own interests and biases. Ruling elites are also politically dependent upon the population at large in attempting to arbitrate between competing claims or seeking to promote their own. This is what I referred to earlier as interdependence of actors and factors within the country. Given this reality, it would seem obvious that protecting the freedom of expression of all concerned is the best means of mediating conflict. In view of the fact that those in control of the state are fallible human beings, the real possibilities of error, let alone bias or corrupt motives, cannot be exposed and scrutinized

⁴⁴ See WIDNER, *supra* note 31, at 77-84.

⁴⁵ HUMAN RIGHTS WATCH WORLD REPORT 1993, 17 (New York: Human Rights Watch, 1992).

without freedom of expression.

Similar analysis applies with regard to the role of Islam in the national politics of Sudan, which is also relevant to the civil war. The NIF is a small political party that advocates the establishment of an Islamic state and application of *Shari'a* throughout Sudan. It was part of the democratic process, represented in Parliament and briefly a partner in a coalition government in 1988, until it seized power through a military coup in 1989. Once in power through this fundamentally illegal manner, the NIF regime suspended the Constitution, banned all political parties and organizations, canceled all existing licences for publication or broadcast of any kind, and declared any political opposition by any means a capital offense punishable by death if done in collaboration with another.⁴⁶ Thus, the NIF installed itself as the sole legal political party in total control of the entire country, and then made it a serious crime for any person to even point out those obvious facts. Moreover, in addition to the usual psychological difficulty of Muslims to oppose the application of *Shari'a*, expressing such views can be deemed to constitute apostasy (for a Muslim to repudiate his or her faith in Islam) which is punishable by death under Section 126 of the Penal Code of 1991.⁴⁷ These are not merely theoretical possibilities because, as the record shows since the NIF came to power in 1989, severe restrictions on freedom of expression, among many other human rights violations, are indeed endemic in Sudan today.⁴⁸

This state of affairs is totally unacceptable by its own alleged logic that the Muslims of Sudan are exercising their right to self-determination to establish an Islamic state governed by *Shari'a*. If that is the case, then why not allow the Muslims of Sudan to express that view and elect their constitutional government accordingly? What about the rights of Muslims, like myself, who disagree with the very concept of an Islamic state advocated by the NIF and oppose the application of *Shari'a* from an Islamic point of view?⁴⁹ More importantly, what about the rights of millions of non-Muslim Sudanese who are not accepted by *Shari'a* as equal citizens of an Islamic state? It is, therefore, not surprising that the role of Islam in national politics is a contributing factor to the continuation of the civil war. Moreover, while the NIF regime has

⁴⁶ Constitutional Decree Number 2 (1989) (published in Arabic in 1 LAWS OF SUDAN 3-5 (1992)).

⁴⁷ *Id.* at 84.

⁴⁸ See, e.g., BEHIND THE RED LINE—POLITICAL REPRESSION IN SUDAN 142-63 (New York: Human Rights Watch, 1996).

⁴⁹ See generally ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW (1990).

characterized its war effort as *jihad* to defend Islam and the Islamic state, it also claims that the southern region of the country is exempt from the application of *Shari'a*. However, such exemption is neither permitted by *Shari'a* itself nor supported in practice. Yet, Sudanese of all religious and ethnic backgrounds are not allowed to verify the facts for themselves, or debate any of these matters of fundamental national importance and their far-reaching consequences.

The strategy I propose for integrating protection of freedom of expression in the political and legal systems of African countries is premised on the preceding discussion of the contingent universality of this human right. This notion of contingency means that a certain configuration of factors and forces may lead to the persistent, perhaps even structural or institutionalized violation of freedom of expression, while another configuration may lead to its systematic and institutionalized protection. But to identify one configuration would not by itself result in a significant change in the dynamics of such contingency that produces a different and sustainable outcome. It is important to devise and implement specific strategies to address adverse factors in order to make the situation as a whole more conducive to the protection of freedom of expression. Although such strategies will of course have to be tailored to the particular circumstances of each situation, the following broad framework might be useful in devising and implementing them in practice.

1) However obvious or self-evident one may believe the universal validity and utility of freedom of expression to be, that does not mean it will materialize by a simple proclamation or affirmation of this fact. Nevertheless, the widest possible appreciation of such universal validity and utility is crucial for generating positive political and legal support for this right, as well as in anticipation of rationalizations of its violation or "postponement" in the name of achieving some alleged public good or another.

2. Because of the obvious universal validity and utility of freedom of expression, it is unlikely to be challenged openly and as a matter of principle. Instead, some argument would be advanced to justify or rationalize violation or postponement. Moreover, such arguments or rationalizations will probably have some apparent plausibility to the constituency for which they are intended. Otherwise, there will be no expectation of benefit or advantage to those who make such claims. Therefore, to dismiss such arguments or rationalizations without careful consideration and response, addressed to the same constituency, plays into the hands of those who make them, who will then have the political support of the constituency in question.

3. One should also consider the possibility of some underlying legitimate concern or public interest that appears to be better served by denying or restricting freedom of expression in general, or in a given limited sense. To the extent that such concerns or interests exist, one should address them in a deliberate strategy of response. For example, the government of Kenya claims that it is necessary to suppress expressions of ethnic hatred or incitement to violence in the Rift Valley. Simply denying that such a risk exists can be counter-productive, not only because the public at large appreciates the risk and may have personal experience of it, but also fails to account for such considerations in the definition and practice of freedom of expression. It is, therefore, better to acknowledge the risk and show how freedom of expression can help reduce, rather than increase ethnic tensions.

4. It is neither practical in realistic political terms, nor desirable as a matter of principle, to pursue the promotion of freedom of expression by drawing on the support of a narrow constituency or in disregard to public opinion at large. Advocates of this right must continue to strive to expand political support for their objectives among all segments of the population, and build alliances with advocates of other causes. Both aspects of this process should be pursued through long and short term plans as stages in a process, and with a serious expectation of set-backs or loss on one aspect or another.

5. It should also be emphasized that the struggle for securing the protection of this right never ends, even in societies in which the right appears to enjoy wide acceptance and implementation. For one thing, if one takes a proactive and affirmative view of the right as enabling all people to express themselves, and not merely preventing governmental restraints, much needs to be done to realize that vision in all societies. Moreover, there are always risks of regression or gradual erosion of freedom of expression. Consequently, strategies should include a constant push to expand the scope of the right, and defensive measures to sustain it in daily life.

6. Both of these dimensions require institutional and educational measures to secure achieved gains and promote further development of the right. Since legal mechanisms do not work in a cultural and political vacuum, strategies should include early socialization and continuous education of the entire population on the vital importance and practical utility of freedom of expression in everyday life, as well as with regard to major national and societal issues and concerns. In particular, freedom of expression must be shown as conducive to the achievement of all desirable objectives, and never as an obstacle to their realization. This will require clearer definitions and more careful

implementation of the right.

7. Due regard must also be given to the role of external factors and actors, both in favor and against the protection and promotion of freedom of expression. While idealism is important for sustaining the endless effort that needs to be made, naivety is counter-productive. Not all proclaimed advocates of human rights are genuine, and most have mixed motives for their agenda. Even the most enlightened and humane of foreign governments have to cope with competing claims on their resources at home and abroad.

These are some general principles and guidelines that I believe to be useful in constructing local, national, and global strategies for the promotion and protection of freedom of expression. As emphasized earlier, each situation must be taken on its own terms, and in relation to its particular combination of factors and forces, both for and against the universal validity and application of human rights. In relation to Kenya and Sudan, for example, one would have to begin with the stark realities of institutionalized and structural suppression of freedom of expression, and political and economic oppression in general. Moreover, as indicated earlier, not all sources of such suppression and oppression are internal to these and other African countries. But I believe that there is an appropriate and effective response to each and every set of obstacles and difficulties, whether it is local, national, or global. The only unsurmountable obstacle is the limitations we place on our own imagination and will to act accordingly.

VI. CONCLUSIONS

In this paper, I attempt to make a case for a more nuanced understanding of the universal validity and application of freedom of expression as a *contingent project* that needs to draw on a wide range of internal and external actors and factors for its realization. Given this dynamic of local, regional, and global determinants, universal validity and application should be promoted from both sides of the process: from the specific practice to global consensus and vice versa. My analysis has only touched on some of the issues in order to explain and substantiate the proposed framework of contingent universality. Realizing the difficulty of establishing causal connections between the status of freedom of expression in a specific context and a certain state of affairs, I have tried to present a general framework for strategies for promoting the universality of this fundamental human right. Similar analysis can be

made, and strategies drawn, in relation to other human rights. But I also realize that much of my tentative analysis and conclusions can benefit from further reflection and elaboration.

I also wish to conclude this essay by calling on human rights advocates throughout the world to contribute to the promotion of the universality of this and other human rights with a carefully considered and realistic understanding of the true nature, possibilities, and limitations of any universalist project. Such understanding should also include problems associated with the circumstances of realizing human rights in national struggles and within the framework of power-oriented international law and relations. Given the need to substantiate assumptions of universality, and opportunity to contribute to its construction through overlapping consensus among the peoples of the world, all advocates of freedom of expression must debate, articulate, and struggle for their own conceptions of, and priorities in pursuing, the protection of this and other human rights. This needs to be done, moreover, through the mobilization of political support and other resources within a framework of interdependence at home and abroad, and in the context of the terms and objectives of power struggles at the national and global levels.

While human rights advocates within each society can expect assistance from external allies who support freedom of expression as a universal human right, they must rely primarily on their own "home" constituencies because that is where the cause is won or lost in the most concrete and specific terms. Far from voluntarily surrendering their power and privilege, ruling elites will employ every tool at their disposal to maintain control, including the manipulation of public opinion against the protection of human rights. Other groups competing for power in their own narrowly-defined self-interest will attempt to do the same, thereby confusing the issues for the public at large even further. Abuses of freedom of expression by transnational actors constitute another source of confusion. Nevertheless, human rights advocates must compete with all these forces, and overcome all possibilities of confusion and manipulation, in seeking to secure sufficient political support for their cause, at both the national and international levels. To be effective in doing so, however, they need the empathetic understanding and active support of fellow advocates from other parts of the world.

Though detailed strategies for protecting and promoting freedom of expression are bound to differ from one situation to another, as well as over time, I suggest the popularization of this human right be a permanent feature. Whatever else may succeed in enlisting political support and generate legal protec-

tion for freedom of expression, a strong sense of its relevance and utility to the public at large is indispensable. To this end, this freedom must neither be perceived to be the exclusive domain of the literate, articulate, and creative few, nor be allowed to be seen as threatening other national or societal objectives that are more easily appreciated by the public at large. On the contrary, it must be appreciated for its effective service of all legitimate public (national, social) objectives, as well as gratifying private and personal aims of intellectual and emotional growth and fulfillment.

In light of this analysis, I conclude that since the status of freedom of expression at any given point in time and place is a product of the above-mentioned internal and external interdependence of forces, both in favor of and against this right, and that the balance of these forces can change in either direction, freedom of expression is neither totally secured nor completely lost at the local, regional, or global levels. Advocates of freedom of expression have to work within their actual societies and cultures, and perhaps seek support and forge alliances with some of the same political configurations which may initially be hostile or indifferent to freedom of expression. They also need to work within the regional and global situation and circumstances of their societies, and seek support and forge alliances at that external level as well. In the process of transforming their societies and cultures towards greater respect for, and protection of, freedom of expression in local as well as broader regional and international contexts, advocates of freedom of expression have to work within those societies, and their contexts, as they exist and not as they wish them to be. To devise and implement effective strategies for the protection of freedom of expression, they need to understand their societies and characterize their political configurations with regard to this universal human right, as well as the nature and impact of external actors and factors. They need to know, and learn to draw upon, all internal and external resources available to them in this struggle.