



Taylor & Francis  
Taylor & Francis Group

---

Why Should Muslims Abandon Jihad? Human Rights and the Future of International Law

Author(s): Abdullahi Ahmed An-Na'Im

Source: *Third World Quarterly*, 2006, Vol. 27, No. 5, Reshaping Justice: International Law and the Third World (2006), pp. 785-797

Published by: Taylor & Francis, Ltd.

Stable URL: <https://www.jstor.org/stable/4017778>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



Taylor & Francis, Ltd. is collaborating with JSTOR to digitize, preserve and extend access to *Third World Quarterly*

JSTOR

# Why should Muslims abandon *Jihad*? Human rights and the future of international law

ABDULLAHI AHMED AN-NA'IM

**ABSTRACT** *This article examines the basis and reality of international legality and the universality of human rights from an Islamic perspective. The author calls for principled commitment and systematic respect for the institutional framework of international legality and the rule of law to encourage Muslims to abandon traditional notions of jihad. Similarly, since the institutional framework of legality and the rule of law in international relations is necessary for the protection of human rights as well, the absence of this framework would undermine the credibility and viability of human rights norms.*

The question in this title is intended in both real and rhetorical senses, questioning the basis of prohibition of *jihad* and upholding the universality of human rights in ways that can reaffirm the commitment of Muslims to international legality. While it is clear that the term '*jihad*' has many meanings, and there are various requirements for its proper application or deployment,<sup>1</sup> I am using it here to refer to the unilateral use of force by Muslims in pursuit of political objectives and outside the institutional framework of international legality and the rule of law in general. Since the framework of legality and the rule of law is lacking in 'the real world', there would be no basis for expecting Muslims to abandon *jihad*, as defined here. Moreover, since this institutional framework of legality of the rule of law in international relations is necessary for the protection of human rights as well, the absence of this framework undermines the credibility and viability of human rights norms.

My own position is that human beings everywhere are responsible for protecting each other against the risks of our shared vulnerability to arbitrary violence, poverty and injustice generally. As clearly shown by the terrorist attacks in New York, Madrid and London, the most technologically advanced countries are as vulnerable to arbitrary violence as the least developed ones, anywhere in the world.<sup>2</sup> The question for me is how can we all fulfil this mutual responsibility, instead of seeing the issues in terms of an 'Islamic threat' to human rights or to the security of some Western countries?

*Abdullahi ahmed an-Na'im is in the Law Department, Emory University, 1301 Clifton Road, Atlanta, GA 30322, USA. Email: abduh46@law.emory.edu.*

But this objective would neither be coherent nor politically viable in the absence of consistent observance of these norms and mechanisms of the rule of law in international relations. If that is the case, then Muslims should still abandon *jihad* in favour of upholding international law and human rights around the world, but should also realise that such calls will not be heeded in practice if those principles are not also honoured by other societies. Moreover, these principles cannot be true to their underlying rationale if they are not inclusive of all of humanity, including Muslims.

Muslims constitute about one-fifth of the total world population, living in every continent and region, though predominantly in Africa and Asia, and constituting the clear majority of the population in 44 states.<sup>3</sup> Such demographic facts confirm the reality of linkages between Islam and international law, but do not define the terms of this relationship one way or the other. As briefly explained below, the relationship between religion, human rights and international law should be examined regarding all religious traditions, and not only those of Islam. In all cases, however, the issue can be meaningful only when it is about believers and not the religion in the abstract, that is, it is about Muslims not Islam, Jews not Judaism, and so forth, thereby raising the same question for all religious traditions. Once framed in this way the issue becomes about people in their social, economic and political context, in relation to their understanding or practice of their religion. For all believers the question is how do human beings negotiate the relationships between their religious beliefs and practice, on the one hand, and mundane concerns with security and well-being, on the other? This perspective also emphasises that such questions are asked about specific Muslims or Hindus, for instance, and not about all Muslims as a monolithic undifferentiated global community.

Regarding the subject of this article, the manner in which different Islamic societies are likely to interact with international law or human rights will probably be influenced by the same sort of factors and conditions that affect other human societies. The so-called 'Islamic factor' is only one among others in this process, and outcomes also tend to be affected by other factors and context. For example, as briefly explained below, the controversy about the publication of cartoons of the Prophet in Denmark is more about the socioeconomic situation of Muslims in Europe, political conditions in Islamic majority countries and their neo-colonial relations with Western powers than it is about Islam and Muslims as such. Islam and Islamic identity are indeed relevant, but they are neither definitive causes of how Muslims behave nor isolated factors to the extent they are relevant.

### **How international and lawful is international law?**

My purpose here is to affirm and promote the legitimacy and efficacy of international law as the indispensable means for realising universal ideals of peace, development and the protection of human rights, everywhere. From this perspective the issue cannot be about the so-called 'West' being the primary author of international law and fully conforming to its principles and underlying values, while the rest of the world is struggling to subscribe to

and comply with them. For international law to play its role in realising shared ideals of justice and equality under the rule of law for all human beings it must be both truly international and legitimately lawful. It has to be equally accepted and implemented by all human societies, not something that some may choose to ignore while others are required to observe it.

Although there have been several parallel systems for regulating inter-state relations throughout human history until the mid-20th century, there can now be only one system of international law in the present globally integrated, and interdependent, world. But international law cannot be limited to the European system of inter-state relations that has evolved since the 18th century, and which was simply a regional system, like the Chinese, Hindu, Roman and Islamic systems that preceded it. The fact that the European powers managed to extend the domain of their regional system further and more completely than any of the earlier imperial powers does not make it truly international. After all, that parochial European system, often called 'traditional international law', had justified the military conquest and colonisation of much of Asia, almost all of Africa and elsewhere on the basis of European conceptions of sovereignty and legality. The vast majority of the peoples of Africa and Asia had no possibility of being true subjects of international law until the decolonisation process after the Second World War. Native populations of the Americas and Australia are unlikely ever to be considered subjects of traditional international law because they are not allowed to have 'sovereignty' in European terms.

From this perspective I am using the term 'international law' here to refer to the legal system that has evolved since the end of the Second World War, especially through the United Nations and the decolonisation process of the second half of the 20th century. It is only during this phase of decolonisation that international law has become the legitimate legal framework for recognition of national sovereignty and territorial jurisdiction throughout the world, including in all Islamic countries. It is also the legal framework for international relations in matters ranging from issues of international peace and security to countless routine yet essential daily transactions in such fields as health, postal services, trade, travel and the environment.

Accordingly, I take the Charter of the United Nations of 1945 to be the most authoritative normative framework of international law we have so far, although it is certainly not sufficient for addressing some of the fundamental challenges facing the prospects of international legality today. The UN Charter is foundational not only as the most widely binding treaty that establishes a viable institutional framework for realising the fundamental purposes and rationale of international law, but also because of its commitment to the self-determination and equal sovereignty of all the peoples of the world. It clearly follows from this premise that the use of military force is not allowed except in accordance with the Charter of the United Nations, namely, in strict self-defence under Article 51 of the Charter, or when sanctioned by the Security Council under Chapter VII. There cannot be any possibility of lawful use of force beyond these two grounds, whether claimed as 'pre-emptive self-defence', 'just war' or Islamic *jihad*.

The point I am making here is stronger than simply saying that it is illegal as a matter of international law to use military force beyond the strict limits of the UN Charter. My point is that it is *theoretically incoherent and practically impossible* to maintain such limitations unless it is done regarding every actor, whether acting under the auspices of a state or not. It is incoherent and futile to prohibit aggressive Islamic *jihad* without doing the same for any use of force outside the ambit of the UN Charter in the name of national self-interest. From this perspective, there is no moral, political or practical difference between international terrorism in the name of Islamic *jihad*, on the one hand, and so-called pre-emptive self-defence or humanitarian intervention claimed by the USA in Iraq, on the other. Both are instances of 'self-regulated' use of force outside the institutional framework of the UN, and are so inherently arbitrary and unaccountable that they undermine the very possibility of international law. One of the primary constraints of the Charter's framework, however, is that it is limited to states, although the UN has managed to include civil society organisations, especially in the human rights field. But it is not possible to redress this situation unless international law is consistently observed by states as its primary subjects. It is futile for state actors to demand observance of international law principles by non-state actors when they are unwilling to abide by those principles themselves.

The necessary qualities of being *both* 'international' *and* 'law' that I am concerned with in raising these issues relate to the normative underpinnings or guiding principles as well as to the objectives and methods of the system as a whole. They also pertain to the relationship between international law and its subjects, that is, how its subjects are identified and how they contribute to the making and implementation of the law. International law cannot command the allegiance and co-operation of international actors, who are no longer limited to states, unless it is able to include them in its principles and institutions. In other words, the exclusion of other appropriate subjects in addition to states denies those other social agents the possibility of contributing to the making of the law and enhancing its legitimacy through broader democratic participation and accountability.

There is therefore an urgent need for an *imaginative* approach to include other types of international actors as subjects of international law, and to international law reform more generally. This inclusive and imaginative approach is particularly urgent in the present context of intensified globalisation, which is diminishing state sovereignty, and of the mounting role of various non-state actors in international relations. Globalisation has accelerated and intensified the complexities of social identities and social interactions, in addition to creating new kinds of frameworks of internationality which are different from the international law model of territorial states.<sup>4</sup> In my view the emerging international law principle of universal jurisdiction and establishment of the International Criminal Court illustrate this more inclusive approach by extending their reach to more subjects, such as perpetrators of crimes against humanity and their victims.

The impressive record of daily success of international law in a wide range of fields, including international peace and security and facilitating trade and

co-operation in the fields of health, postal services, trade, travel and the environment, is often overlooked because of understandable concerns about a few highly visible apparent failures in securing international peace and security. This concern with peace and security cannot be addressed except through strict compliance with international law by all states, without exception. In fact, compliance by the most powerful states is a stronger indication of the legal authority of international law, as the practice of weak states is likely to be dismissed as more motivated by fear of retaliation or opportunistic calculations than by a sense of legal obligation. As explained later, this point is underscored by both the terrorist attacks of 9/11/2001 in the USA and by the global crusade by the USA and its allies, especially the military invasion and colonisation of Iraq in March 2003.

It is equally clear that the ability of international law to achieve its objectives is contingent on the willingness and ability of a wide range of actors voluntarily to comply with its dictates. The total and continuous coercive enforcement of any legal system is both impossible in practice and also assumes high levels of political commitment and institutional capacity that may not necessarily be available or forthcoming. Since no enforcement regime can cope with massive and persistent violations, any legal system must assume a high level of voluntary compliance in order to have the will and ability to enforce its rules in the exceptional cases when that is necessary. This is not to suggest that coercive enforcement is immaterial, but only to emphasise that its role is both limited and contingent. Direct use of force or the threat of it may ensure compliance with rules in the short term, but it is not sustainable over time. That is, the limited though important role of coercive enforcement should be understood in a broader context of the other factors that make a legal system work. In particular, it is necessary to understand the factors that motivate or encourage the subjects of a legal system to comply voluntarily with its dictates to a sufficient degree that makes coercive enforcement possible, when necessary.

As a general rule states do in fact comply with the vast majority of international law norms, for the same sorts of reasons people have for obeying any legal system, such as self-interest and fear of retaliation by others. In particular, the clear limitations of the military or economic power of all states, including the USA as the so-called sole superpower, mean that all of them have to rely on international legality for their own survival. Events like the terrorist attacks of 9/11 clearly show that even the most powerful states are vulnerable to the arbitrary action of individual international terrorists, for whose crimes no state can be held accountable under traditional notions of state responsibility. I would therefore conclude that it is both dangerously unrealistic and unnecessarily limiting to focus exclusively on 'state practice' as the primary source of international law. For example, it is dangerous to emphasise traditional notions of exclusive territorial jurisdiction when national boundaries are being violated by many unaccountable, sometimes undetectable, actors.<sup>5</sup>

In conclusion of this section I would emphasise the paramount importance of reaffirming our principled and systematic commitment to a globally

inclusive international law. Since it is impossible to reverse the process of decolonisation and self-determination, selective assertions of principles of international law or territorial sovereignty will simply provoke retaliatory responses by others. Before offering further reflections in relation to Islamic societies in particular, let me introduce the second theme of this article.

### **Universality of human rights**

Regarding the other side of the title of this article, human rights by definition are rights which are due to every human being by virtue of his or her humanity, without any requirement of membership of any group or other qualification. It is wrong, in my view, to attribute this idea to such documents as the English Bill of Rights, the American Declaration of Independence and the Constitution or the French Declaration of the Rights of Man and the Citizen. This is because those documents were explicitly about the rights of citizens of specific territorial states, not of human beings everywhere. The point is clearly illustrated by the brutal colonial expansion of England and France in Africa and Asia under the auspices of their respective 'foundational' documents. Similarly, it took an intensive civil war and constitutional amendment to end slavery in the USA almost a century after independence, while the genocide of those native inhabitants known as American Indians continued into the 20th century.

In fact, the idea of the universal rights of all human beings as such was inconceivable before the Charter of the United Nations of 1945, establishment of the United Nations and the consequent process of decolonisation during the subsequent decades. The vast majority of Africans and Asians could not have had any possibility of human rights under European colonialism. Yet those earlier English, French and American documents did in fact shape the 'content' of human rights texts once the idea was established through the UN Charter and the Universal Declaration of Human Rights of 1948.<sup>6</sup>

Given the large numbers of Muslims around the world, as noted earlier, it is clear that one cannot speak of universal human rights without taking into consideration the perspectives and experiences of Islamic societies. But in what sense are the Islamic beliefs of Muslims anywhere relevant to their acceptance or implementation of human rights standards in theory or practice? Since Islam, or any other religion for that matter, cannot be the sole source or cause of the behaviour of believers, Muslims may accept or reject human rights norms regardless of what is believed to be the prevalent Islamic view on the subject. The level of compliance with human rights norms is more likely to be associated with such conditions as the degree of political stability and economic and social development in post-colonial Islamic societies than with Islam as such. To the extent that Islam is a relevant factor, its impact or influence cannot be understood in isolation from those broader conditions, as well as from the specific interpretation of Islamic precepts that are prevalent in the particular country or region. It is not possible therefore to predict or explain the degree or quality of human rights compliance as the necessary or

unavoidable consequence of the relationship between Islam and human rights in an abstract theoretical sense.

In practice, moreover, the vast majority of Islamic states (in the sense of Muslims being the majority of the population) have ratified most international human rights treaties, and their record of compliance is similar or comparable to that of other countries in their regions. That is, the human rights record of Islamic countries in East or West Africa, South or Southeast Asia is similar to that of other countries in those regions, presumably because of shared factors, such as level of political stability, economic development, legal systems and institutional capacity. Many Muslims, whether in a majority or minority situation, have also expressed their acceptance of human rights by struggling for the protection of those rights locally, and in collaboration and solidarity with other persons and civil society organisations throughout the world.<sup>7</sup>

To my knowledge, there are no studies showing that having a Muslim majority or significant minority of the population is correlated with a lower human rights performance by states or that Muslims have less of a commitment to human rights than non-Muslims in comparable situations. On the contrary, some studies show that Muslims share commitments to these values.<sup>8</sup> The Islamic tradition at large is basically consistent with most human rights norms, except for some specific, albeit very serious, aspects of the rights of women and freedom of religion and belief. In other words, there are no factual or normative bases for the negative perception about Islam and Muslims in relation to human rights, although certain aspects of *Shari'a* are problematic in this regard. It is not possible to discuss these problematic aspects of the rights of women and freedom of religion here, and I have proposed elsewhere ways of overcoming them from an Islamic perspective.<sup>9</sup> The premise of the approach I support is that it is better to seek to transform the understanding of Muslims of those aspects of *Shari'a*, than to confront them with a stark choice between Islam and human rights. Such a choice is not only an offensive violation of freedom of religion or belief, but will also certainly result in the rejection of the human rights paradigm itself by most Muslims.

I find that framing the issue in terms of transforming attitudes and values is more constructive than simplistic assertions of the compatibility or incompatibility of Islam and human rights which take both sides of this relationship in static essentialist terms. This approach is necessary for mediating the paradox of the idea of universal human rights in a world of profound and permanent cultural and contextual difference. Because all human beings are entitled to these rights by virtue of their humanity, without any distinction on grounds of race, sex, religion, language or national origin, no person should be required to give up any of these essential aspects of his or her identity in order to qualify for these rights.

My framing of the issue also includes a clear appreciation of the permanent social, cultural and political diversity among Muslims, particularly in relation to their understanding and practice of Islam. That diversity testifies to the impact of contextual and historical factors in the theological or legal

development of the Islamic traditions. Being Muslim (or other believer) has not in fact had the same meaning in different places or over time. From an Islamic perspective the reality and permanence of difference among all human beings, Muslims and non-Muslims alike, is expressly affirmed in, for example, the Qur'an 10:93; 11:118-119; 32:25; and 45:17 (cited by number of chapter followed by number of verse). This permanent reality is one reason why the protection of such human rights as freedom of belief, opinion and expression, is imperative from an Islamic point of view in order to protect the rights of Muslims to be believers in their own way, without risk to life and livelihood. After all, without the existence of the right to disbelieve, there is no possibility of any genuine belief.

It may also be helpful to consider the implications of this reality of Islamic diversity for the nature or basis of religious beliefs. The fact that specific verses in the Qur'an are taken to authorise or require certain actions does not explain why some Muslims choose to act on one understanding of such verses, while others act on a different understanding, or have a different relationship to the text altogether. Such choices are the product of the human agency of believers, not the inherent or eternal meaning of Islam as such, independent of all material conditions under which Muslims live and interact with others. If beliefs regarding the rights of women are the direct meaning of Islamic texts, there would not be so much disagreement among Muslims on these issues.<sup>10</sup> This is not to suggest that any of established schools of Islamic jurisprudence (*madhahib*) already accept equality for women from an Islamic point of view, because that is simply not true. Rather, my purpose here is to emphasise the possibility of changing the attitudes and practice of Muslims in these matters in favour of the equal human rights of women, or some other issue. Since any interpretation of *Shari'a* is the product of human agency, in a specific time and place, it can change through the same process, over time.

From this framing of the question it is clear that the manner in which Muslims are likely to interact with human rights will be conditioned by such factors as what other societies are doing about the same issues, and the orientation, motivation or objectives of various actors on all sides. For instance, Muslims' responses are likely to be affected by whether they perceive that they are required to 'prove' their allegiance to the human rights paradigm while others are not expected or required to do so. Muslims are more likely to resist commitment to these rights when they are presented as being alone in struggling with the principle, while the commitment of other cultural or religious traditions is taken for granted. This dimension also includes broader issues of the nature and operation of international law and institutions as the underlying legal framework of human rights, as outlined earlier. Concerns about historical exclusion and present hegemony are sometimes reflected in patterns of reciprocal treatment and mutual hostility or suspicion, as well as deeply entrenched bias or distortion in how and by whom the information about the attitudes and practice of various societies regarding human rights is collected and assessed. This web of interactive and dialectal factors and relationships provides a useful framework for understanding the recent controversy over the publication of cartoons of the Prophet.

Cartoons depicting the Prophet of Islam, Muhammad, in demeaning images, including some representing him as a terrorist, were published by a Danish newspaper in September 2005. These cartoons were republished in newspapers throughout the world in January and February 2006, including in Denmark, France, Germany, Spain, Switzerland and Hungary, with affirmations of freedom of speech. In contrast, many Muslim leaders perceived the republication of these offensive cartoons as deliberate provocation to 'spite the Muslims'.<sup>11</sup> Muslims around the world protested in large demonstrations and made threats of sanctions against Denmark. Some of these demonstrations have turned violent, especially in Afghanistan and Nigeria, sometimes resulting in the death of local civilians. The Danish and Norwegian embassies in Syria and Lebanon were burnt.<sup>12</sup> There were also some large-scale protests by Muslims in other countries with a sizeable number of Muslims, from New Zealand to the USA. The response also included diplomatic sanctions by countries with predominant Muslim populations against Denmark and its products (the Danish–Swedish dairy giant Arla Foods says its sales in the Middle East have plummeted to zero).<sup>13</sup> The governments of Western Europe and North America tended to affirm freedom of expression, but some also played the issue to their own political advantage. In the weeks after the republication of the cartoons, the Bush administration has shifted its strategy from one of condemnation of the actual republication of the cartoons to condemnation of the violent response by the Muslim community.<sup>14</sup> Perhaps as a self-serving manoeuvre, the shift in policy by the Bush administration targeted particular countries, especially Iran and Syria, with the charge of exploiting the controversy to incite unrest and protests in the Middle East.

While expecting conflicting interpretations to continue to evolve around this and related issues in the future, I would emphasise the need to place such episodes in appropriate perspective and context. In terms of the framing and analysis presented above this sequence of events should not be understood simply as religious reaction by Muslims because they are Muslims, nor should it be thought that the manner and scope of the actions is dictated or determined by an 'Islamic quality' of the subject or actors. In brief, Islam and Islamic identity just happened to be the medium in which a range of issues were being mediated, negotiated and contested in this situation. At one level this episode was about the grievances of Muslim immigrants and refugees in Denmark, which should be understood and assessed against the backdrop of the recent history of racial and inter-religious relations in Western Europe generally. At another level the whole situation can be seen as a process of negotiating and mediating competing human rights, rather than their categorical rejection by either side. Muslim protestors did not simply reject the human rights of freedom of speech or expression, but rather asserted that the publication of the cartoons constituted an abuse or excess of this right. Those who objected to or even resented the protests by Muslims also accept the need to respect the dignity and religious identity of persons and religious or ethnic communities. People holding various positions along a spectrum of views accept that there are fundamental human rights, including those implicated in this situation, but also appreciate that none of those rights is

absolute. In other words, the issue to all sides was about where to draw the line between the proper and improper application of one human right or another, and not about disputing any of those competing rights.

Beyond Denmark and Western Europe the controversy was also about various issues for different constituencies, sometimes used by some actors as a proxy for other concerns or to achieve various political objectives that may have had little to do with the cartoons as such. To Islamic political groups and activists in particular, the controversy was an opportunity to demonstrate their ability to organise mass protests, a way of sending their own message to the governments of their countries, and to other political competitors. Governments and some other political actors in the country or region in general did not want to concede the political gains the Islamists were making, or appear to be indifferent to the honour of the Prophet and dignity of Muslims at large. But, whether genuinely or opportunistically, those competing actors were not denying the human right of freedom of speech and expression in principle, but only questioning its proper limits. In fact, demonstrations and other protests were themselves instances of exercising fundamental human rights of freedom of speech and demands for greater political participation. In the final analysis, I suggest, the whole episode should be seen as part of the process of defining and exercising human rights, not a negation or repudiation of those rights or their foundation on international legality.

### **Mutual responsibilities for shared vulnerabilities**

As noted earlier, the premise of this article is that we must all honour our mutual responsibilities for our shared human vulnerabilities. In the present context these vulnerabilities include the human suffering perpetrated by the terrorists as well as by those who engage in arbitrary and indiscriminate retaliation which in fact reinforces and legitimises the distorted logic of terrorism in the name of combating it. I have emphasised this point from the start by equally strongly condemning both the terrorist attacks and the unilateral military retaliation by the USA and its allies. But it is also important to note that all of us share in the responsibilities of combating both terrorism and arbitrary retaliation, because we all benefit when these responsibilities are discharged properly, and suffer when they are not.

For our purposes here we can begin with either side of the present failure to honour our mutual responsibilities, as the history and dynamics of both aspects are intertwined and dialectical. Terrorist atrocities like 9/11 were not the beginning and retaliatory actions will not be the end, as both aspects draw on perceptions of history and play out into future consequences. It is also clear that the consequences of these events in the future can either perpetuate the cycle of violence and counter-violence or evolve towards accountability and peaceful mediation of conflict. In this light I will consider both sides of the equation, interchangeably, shifting back and forth among different aspects of the aftermath of 9/11, without implying that either side justifies or legitimises the other. My purpose is to highlight some aspects of

the risks of our shared vulnerabilities and benefits of our mutual responsibilities on all sides of the issue with a view to addressing such failures and safeguarding against future risks, rather than simply blaming one side or the other.

I find that the grossly disproportionate and aggressive foreign policy of the USA after 9/11, especially the attempted colonisation of Iraq since March 2003, is particularly damaging for the human rights paradigm. The Iraq occupation has been a colonial venture because colonialism, by definition, is the seizure of the sovereignty of a people by military conquest without legal justification, whether as self-defence or authorised by the Security Council of the United Nations. The invasion of Iraq is so fundamentally illegal and counter-productive that it undermines the foundations of the rule of law in international relations. After all, there is no international law when powerful states simply appropriate to themselves the right to invade and occupy other countries for whatever reasons they deem fit, without even a national debate on the legality of such action. Since the universality of human rights is legally premised on the binding force of international law obligations, such repudiation of international legality is a negation of the possibility of international human rights.

It is also important to note, however, that there were many positive developments, like the massive protests by citizens of the USA, UK, Spain and Italy against the invasion of Iraq even before it started, and the subsequent official national inquiries that proved the fallacy of the reasons given for the war.<sup>15</sup> There is hope even in this distressing regression to 19th century colonialism at the dawn of the 21st century because it is the first colonial venture that has been so vigorously protested at by the citizens of the colonial powers and across the world. It is also significant that the USA and UK had to resort to the same United Nations they had bypassed in the rush to war in order to negotiate how to vacate the dubious position of being 'occupying powers' and return sovereignty to a native Iraqi government by the end of June 2004.<sup>16</sup> The question remains how to develop the necessary institutions and global culture of the rule of law in international relations and the protection of human rights throughout the world. But that challenge will hopefully now be confronted with a renewed determination to restore the vision of the Charter of the United Nations to prohibit wars of aggression like the invasion of Iraq, to punish terrorist acts as crimes against humanity, and to uphold legality in international relations.

On the Islamic side of the issue, the persistent failure of Muslims to respond effectively enough to the responsibilities of sovereignty at home and peaceful international relations abroad is as damaging for the prospects of international legality and universality of human rights as the unilateral invasion of Iraq by the USA. Since colonialism was initially a consequence of the internal weakness of colonised societies, the effective and sustainable termination of colonialism requires enhancing the genuine sovereignty and independence of formerly colonised societies. Muslim failures in this regard can be seen in the conduct of countries like Afghanistan under the Taliban, of the Kingdom of Saudi Arabia, as well as of Iraq under the Baa'th regime of

Saddam Hussain, among others. After all, freedom is always earned, never granted, and is sustained through constant vigilance to safeguard it.

A critical part of that process in the present global context is to confront terrorism within our own societies, as it is ultimately a challenge to our human decency and to responsibility for what we do, or is done in our name, whether with our approval or acquiescence. Terrorism could not exist or thrive as it does at present if we have not somehow supported or encouraged it, at least by our indifference to the broader phenomenon of political violence and its underlying causes. The degree of our individual and collective responsibility and failure varies according to our locations and what we can do in combating the culture of violence and lawless retaliation in our own societies, but each of us should look for his or her share, and for what we can do about it. Too much of our effort is squandered in a futile apologia for Islam as a religion, or in viewing our societies as oppressed and marginalised, instead of accepting responsibility for our lives. The ability of perpetrators to use terrorist acts, and the willingness of the wider population to tolerate such behaviour, indicate an underlying disregard for the safety and well-being of others. Confronting terrorism would therefore include combating this underlying culture of political violence, as well as the immediate causes and consequences of the use of arbitrary and indiscriminate violence in the furtherance of political ends, whoever the perpetrators and however we may feel about their alleged justification.

## Notes

- 1 Abdullahi Ahmed An-Na'im, 'Islamic ambivalence to political violence: Islamic law and international terrorism', *German Yearbook of International Law*, 31, 1988, pp 307–336.
- 2 'A strike at Europe's heart', *Time Europe*, 22 March 2004; 'Four from Britain carried out terror blasts, police say', *New York Times*, 13 July 2005; and 'London hit again', *Daily Telegraph*, 22 July 2005.
- 3 CIA, *The World Fact Book*, at <http://www.cia.gov/cia/publications/factbook/geos/xx.html>, select 'World', last updated 18 December 2003. Reference to a country as Islamic can only mean that the majority of its population are Muslims, and not that the state itself is Islamic, which is an incoherent claim. See Abdullahi Ahmed An-Na'im, 'Shari'a and positive legislation: is an Islamic state possible or viable?', in Eugene Cotran & Chibli Mallat (eds), *Yearbook of Islamic and Middle Eastern Law*, 5, 1998–99, pp 29–42.
- 4 Arjun Appadurai, 'Disjuncture and difference in the global cultural economy', in Dimon During (ed), *The Cultural Studies Reader*, London: Routledge, 1993, pp 220–230.
- 5 Jonathan I Charney, 'Universal international law', *American Journal of International Law*, 87, 1993, p 529.
- 6 Eva Brems, *Human Rights: Universality and Diversity*, The Hague: Kluwer Law International, 2001, pp 17–25.
- 7 *Ibid*, pp 194–206. For debates around these issues among Muslim scholars, see, for example, Mashood A Baderin, *International Human Rights and Islamic Law*, Oxford: Oxford University Press, 2003; Yvonne Yazbeck Haddad & Barbara Freyer Stowasser (eds), *Islamic Law and Challenges of Modernity*, Walnut Creek, CA: AltaMira Press, 2004; and Ausaf Ali, *Modern Muslim Thought*, Vols 1–2, Karachi: Royal Book Company.
- 8 See, for example, Roland Inglehart & Pippa Norris, 'The true clash of civilizations', *Foreign Policy*, March/April 2003, pp 62–70.
- 9 See, for example, Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*, Syracuse, NY: Syracuse University Press, 1990; and An-Na'im, 'Islamic foundations of religious human rights', in John Witte, Jr & Johan D van der Vyver (eds), *Religious Human Rights in Global Perspectives: Religious Prospectives*, The Hague: Martinus Nijhoff, 1996, pp 337–359.

- 10 For competing interpretations of the role of women, see Ausaf Ali, *Modern Muslim Thought*, Karachi: Royal Book Company, Vol 1, pp 226–227, 256–263 and Fatima Mernissi, *Women in Islam: An Historical and Theological Enquiry*, trans Mary Jo Lackland, Oxford: Basil Blackwell, 1991, pp 49–81.
- 11 ‘Muhammad cartoon row intensifies’, *BBC News*, 1 February 2006, at <http://news.bbc.co.uk/1/hi/world/europe/4670370.stm>.
- 12 ‘Protesters burn consulate over cartoons’, *CNN*, 5 February 2006, at <http://www.cnn.com/2006/WORLD/asiapcf/02/05/cartoon.protests>.
- 13 *Ibid.*
- 14 ‘Bush condemns violence in protests over cartoons’, *Boston Globe*, 9 February 2006, at [http://www.boston.com/news/nation/washington/articles/2006/02/09/bush\\_condemns\\_violence\\_in\\_protests\\_over\\_cartoons](http://www.boston.com/news/nation/washington/articles/2006/02/09/bush_condemns_violence_in_protests_over_cartoons).
- 15 ‘Thousands of protesters march to mark Iraq war’, *USA Today*, 20 March 2004, at [http://www.usatoday.com/news/world/iraq/2004-03-20-world-war-protests\\_x.htm](http://www.usatoday.com/news/world/iraq/2004-03-20-world-war-protests_x.htm); ‘Italy protests greet Bush visit’, *BBC News*, 5 June 2004, at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/3777281.stm>; ‘Million march against Iraq’, *BBC News*, 16 February 2003, at <http://news.bbc.co.uk/1/hi/uk/2765041.stm>; and ‘Bush orders intelligence review’, *BBC News*, 2 February 2004, at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/americas/3450151.stm>.
- 16 See, for example, ‘Remarks by the President on Iraq and the war on terror’, United States Army War College, 24 May 2004, at <http://www.whitehouse.gov/new/releases/2004/05/20040524-10.html>; and Phyllis Bennis, ‘Talking points: the US begs for UN backing in Iraq’, 29 June 2004, at <http://www.unitedforpeace.org/article.php?id=2261>.