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Cultural Relativism in the Universal Periodic Review of the Human Rights Council

Roger Lloret Blackburn

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Institut Català Internacional per la Pau
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ABSTRACT

This *Working Paper* aims to offer an up-to-date list of cultural relativist players and arguments with respect to human rights, constituted by China, Viet Nam, Myanmar, Iran, Pakistan, Yemen, Syria, Malaysia and Cuba. This working paper argues that Indonesia, Iraq, Colombia and Mexico are not in the same cultural relativist group of states maintained by renowned scholars, notably Cristina Cerna and Dianne Otto. As such, apart from this form of cultural relativism based on the respect for the self-determination of indigenous peoples and communities, this working paper exposes two different categories of radical cultural relativism based on revolutionary discourse and/or radical Islamism, as well as targets the credibility on the latter two based on the information facilitated by the United Nations (UN) Human Rights Council (HRC) Universal Periodic Review (UPR).

Keywords: Cultural Relativism, Minority Ethnic, Human Rights, Politics and Government, Islam and Politics

RESUM

Aquest *Working Paper* té l'objectiu de presentar una llista actualitzada d'actors (i arguments) relativistes culturals en matèria de drets humans, formada per la Xina, el Vietnam, Myanmar, l'Iran, el Pakistan, el Iemen, Síria, Malàisia i Cuba. Al contrari del que afirmen acadèmics de renom, aquest treball sosté que Indonèsia, l'Irak, Colòmbia i Mèxic no formen part del mateix grup d'estats relativistes culturals. Així, a part d'aquella forma de relativisme cultural basada en el respecte per l'autodeterminació dels pobles i comunitats indígenes, el text exposa dues categories de relativisme cultural radical basades en un discurs revolucionari i/o en l'islamisme radical i en posa en qüestió la credibilitat mitjançant la informació facilitada per l'Examen Periòdic Universal del Consell de Drets Humans (CDH) de les Nacions Unides (NU).

Paraules clau: Relativisme cultural, Minories ètniques, Drets humans, Política i govern, Islamisme i política

RESUMEN

Este *Working Paper* tiene el objetivo de ofrecer una lista actualizada de actores (y argumentos) relativistas culturales en materia de derechos humanos, constituida por China, Vietnam, Myanmar, Irán, Pakistán, Yemen, Siria, Malasia y Cuba. Al contrario de lo que mantienen académicos de renombre, este trabajo sostiene que Indonesia, Irak, Colombia y México no forman parte del mismo grupo de estados relativistas culturales. Así, a parte de aquella forma de relativismo cultural basada en el respeto por la autodeterminación de los pueblos y comunidades indígenas, el texto expone dos categorías distintas de relativismo cultural radical basadas en un discurso revolucionario y/o en el islamismo radical, además de poner en cuestión su credibilidad mediante la información facilitada por el Examen Periódico Universal del Consejo de Derechos Humanos (CDH) de las Naciones Unidas (NU).

Palabras clave: Relativismo cultural, Minorías étnicas, Derechos humanos, Política y gobierno, Islamismo y política

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1. INTRODUCTION

The Universal Declaration of Human Rights (UDHR) upholds the right to equality, freedom and dignity of all human beings, regardless of their condition, opinions or beliefs. Notwithstanding, ever since this proclamation in 1948, human rights have been subject to speculation as to whether such rights can indeed be truly universal. Such questioning of the universality of human rights has been based, to a large extent, both on the role of culture and its moral capacity to determine priorities, and on the confrontation between the individual and the system in communal society.

The recent theory of international human rights law observes the existence of such a conflict of culture and universality in the 1993 Vienna World Conference on Human Rights. Scholars stress that Western states were concerned that certain countries justify on cultural grounds actions in contradiction with the universal standard that human rights impose, and thus are undermining the universality of human rights. It follows that universalism is based on the equality, indivisibility and universality of all human rights. On the other hand, those countries that called for cultural plurality argued that human rights are tantamount to an expression of Western values and interests and consequently, are interference. As a result, cultural relativist countries contend that human rights are dependent on the context in which they are applied and therefore, on a respective culture.

Since 2008, all the countries in the world are engaged in a common review of their human rights records in the Human Rights Council (HRC) of the United Nations (UN). For the first time, the Universal Periodic Review (UPR), cornerstone of the reform of the UN, offers the possibility to contrast such cultural assertions and determine its players. Hence, the object and purpose for the research carried out was to verify whether or not such a theoretical fracture based on culture is applicable to this recent practice of the UPR. As such, this working paper deals with the role of cultural relativism in the UPR, identifies its arguments and players in the present years, and aims to establish

whether or not there are different forms of cultural relativism. The answers to these research questions have been obtained through the study of contemporary theory and legal texts involving the UN and its HRC, and by giving consideration to all the states that have completed the Universal Periodic Review. This working paper is divided into four chapters: firstly, the theoretical foundation; secondly, consideration of the UPR legal framework; thirdly, the analysis of the practise, and, finally, the conclusions thereupon.

2. BACKGROUND: UNIVERSALISM AND CULTURAL RELATIVISM

Challenges to human rights law traditionally came from Communist states and “from the Non-Aligned Movement (NAM), which highlighted the privileging of European interests in human rights law.”¹ Contemporary human rights scholars, however, indicate a conflict involving cultural diversity in human rights which was clearly manifested in the preparation and execution of the 1993 Vienna World Conference on Human Rights, as well as in the 1995 Beijing Fourth World Conference on Women.

Amid much controversy, the Declaration resulting from the 1993 Asian Regional Meetings in Bangkok for the World Conference on Human Rights set that “while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”² Such statements, together with expressions such as “the need to avoid the application of double standards”³,

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1. D. Otto, *Rethinking the ‘Universality’ of Human Rights Law*, Human Rights Quarterly (1998) at 5 [henceforth: Otto, *Rethinking the Universality*].
 2. Declaration Regional Meetings for the Asia of the World Conference on Human Rights, Para. 8.
 3. *Id.*, Preamble.

or “not through confrontation and the imposition of incompatible values”⁴, were a cause of disagreement among Western delegations.⁵

After similar disputes in subsequent regional preparatory meetings⁶, by the time of the Vienna World Conference the term universality had developed into a symbol of confrontation between delegations. “Western States were reportedly concerned that the universality of human rights might be eroded”⁷, and lobbied for the endorsement of the universality of human rights while at the same time rejecting different applications in other countries. As a result, scholars argue that the Declaration and Programme of Action demonstrates the dispute over the redundant use of the term universality, and what is implied in fragments such as “universal respect for [...] all human rights”⁸ whilst declaring the importance of bearing in mind “national and regional particularities and various historical, cultural and religious backgrounds”.⁹

Significantly, scholars specify that this consistent action challenging the universality of human rights comes from “China, Colombia, Cuba, Indonesia, Iran, Iraq, Malaysia, Mexico, Myanmar, Pakistan, Singapore, Syria, Viet Nam and Yemen.”¹⁰ As such, the research carried out for this working paper and exposed below has especially taken into account these countries. However, the present research has analysed all the contributions and reviews of all states that have undergone the UPR. Notwithstanding, no cultural relativist arguments were identified in any other contributions and Reviews for any other nations.

4. *Id.*, Para. 7.

5. Otto, *Rethinking the Universality*, *supra* note 1, 8-13; See also C. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*, *Human Rights Quarterly* (1994) 742-44 [henceforth: Cerna, *Universality and Cultural Diversity*].

6. Final Declarations of the Africa and Latin America Regional Meetings for the World Conference on Human Rights in Tunis and San Jose in November 1992 and February 1993 respectively.

7. Cerna, *Universality and Cultural Diversity*, *supra* note 5, at 741.

8. Vienna Declaration and Programme of Action A/CONF.157/23 of 12 July 1993, Paras 1, 6, 32.

9. *Id.*, Para. 5.

10. Cerna, *Universality and Cultural Diversity*, *supra* note 5, at 740; Otto, *Rethinking the Universality*, *supra* note 1, at 10.

Universalism on the one hand, is defined as asserting that culture is irrelevant to the validity of moral rules and thus, reaffirms the universality, indivisibility, equality and interdependence of all human rights. As such, “[T]he universalist position completely denies that the existing universal standards may be themselves culturally specific and allied to dominant regimes of power.”¹¹ Such a position, which comes “primarily from Northern states, predict that even the slightest ‘dilution’ of universalism will give the green light to tyrannical governments, torturers, and mutilators of women.”¹² However, some scholars express concern for the “denial of national and subnational ethical autonomy and self-determination”¹³, and hence its proclivity to imperialism.¹⁴ Authors also stress the capacity that human rights have to erase cultural diversity¹⁵, and argue that to a large extent, such an assertion was recognised when “[In] 1947, the American Anthropological Society cautioned the U.N. Commission on Human Rights about this danger [of erasing cultural diversity] during the drafting of the UDHR. The Society pointed to the West’s history of ‘ascribing cultural inferiority’ to non-European peoples”¹⁶. According to the Anthropological Society, human rights “must also take into account the individual as a member of the social group of which he [or she] is a part”¹⁷. Nevertheless, some forms of universalism do recognise a certain degree of ‘moral variability’ in human rights practices so as to guarantee the right to self-determination. As a result, universalism would agree on an ‘interpretation’, for instance, of political participation or structure of the legal system, while being aware of the economic costs that the fulfilment of rights entails.¹⁸

11. Otto, *Rethinking the Universality*, *supra* note 1, at 8.

12. *Ibid.*

13. *Ibid.*

14. *Ibid.* See also J. Donnelly, *Cultural Relativism and Universal Human Rights*, *Human Rights Quarterly* (1984) 400 et al.

15. *Id.*, 7.

16. *Ibid.*

17. Statement on Human Rights of the Executive Board of the American Anthropological Association: *American Anthropologist*, New Series, Vol. 49, No. 4, Part 1. (1947), at 539.

18. Otto, *Rethinking the Universality*, *supra* note 1, 3 et al.

On the other hand, scholars note that “a group of nations is seeking to redefine the content of the term ‘human rights’ against the will of the Western States.”¹⁹ They go on to affirm that “[T]his group sees the current definition as part of the ideological patrimony of Western civilization [and] argue that the principles enshrined in the Universal Declaration reflect Western values and not their own.”²⁰ Furthermore, “[T]hey complain that the West is interfering in their internal affairs when it imposes its own definition of human rights upon them, and that it hampers their trade and weakens their competitiveness.”²¹ As such, they defend that “[B]ecause of social and cultural differences in their countries [...]they should not be held to the same standards.”²²

As a result, cultural relativism appears to contend “alternative claims to universal Truth that have their foundations in non-European cultural traditions and rejects the current human rights paradigm as oppressive for developing States with different cultures.”²³ Cultural relativism “is a doctrine that holds that (at least some) such [cultural] variations are exempt from legitimate criticism by outsiders [and] strongly supported by notions of communal autonomy and self-determination.”²⁴

3. FRAMEWORK: THE UNIVERSAL PERIODIC REVIEW

This section deals with the institutional and legal framework of the HRC, as well as considering the framework of the UPR mechanism. Its conclusions are drawn from relevant details of previously submitted by the parties, which are the main source for the research of this essay.

19. Cerna, *Universality and Cultural Diversity*, *supra* note 5, at 740.

20. *Ibid.*

21. *Ibid.*

22. *Ibid.*

23. *Ibid.*

24. *Ibid.* See also J. Donnelly, *Cultural Relativism and Universal Human Rights*, *Human Rights Quarterly* (1984) 400 et al.

The HRC was established in April 2006 by a General Assembly resolution. While reaffirming and emphasizing the purposes and principles of the Vienna Declaration and Programme of Action. This resolution defined the elements and functions of the Council for achieving the overall purpose of protecting and promoting universal human rights, and hence, the principles and purposes of the UN.²⁵ The HRC substituted the discredited Commission on Human Rights and has become a key component of the reform of the UN. The Council is a subsidiary organ of the General Assembly rather than of the Economic and Social Council (ECOSOC), as was the case of its predecessor the Human Rights Commission. The Council, besides collaborating with the Assembly and Member States distinctively, works in conjunction with observers, non-governmental and regional organizations, national human rights institutions and civil society.²⁶ Its function is to promote and protect human rights through assistance to Member States in a universal, impartial and fair manner, based on cooperation and dialogue.²⁷

The distinctive capacity of the Council, set out in the prior General Assembly resolution, is to “undertake a UPR, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”²⁸. Member States are expected to “fully cooperate with the Council and be reviewed under the UPR mechanism during their term of

25. World Conference on Human Rights Vienna Declaration and Programme of Action A/CONF.157/23 of 12 July 1993; General Assembly Human Rights Council resolution A/RES/60/251 of 15 March 2006, Preamble.

26. General Assembly Human Rights Council resolution A/RES/60/251 of 15 March 2006, Paras 3, 5 (c), (f), (g), (h), (j), 6-8, 11, 16; In accordance with the Economic and Social Council guidelines and ‘ensuring the most effective contribution of these entities’; See also N. Schrijver, *The UN Human Rights Council: A New ‘Society of the Committed’ or Just Old Wine in New Bottles?* Leiden Journal of International Law 20 (2007) 809-13; *Id.*, Paras 10, 11; Economic and Social Council resolution 1996/31 of 25 July 1996; Human Rights Council 8/PRST/1 on Modalities and practices for the UPR process of 9 April 2008.

27. General Assembly Human Rights Council resolution A/RES/60/251 of 15 March 2006, Paras 2, 4, 5 (a), (b), (c).

28. *Id.*, Para. 5 (e).

membership”²⁹. The review is an interactive cooperative mechanism, which expects the “full involvement of the country concerned and with consideration given to its capacity-building needs”.³⁰

The general basis of the UPR assessment is the UN Charter, the UDHR, as well as the human rights instruments to which the State at review is a party.³¹ The principles of the UPR are the promotion of the universality, interdependence, indivisibility and interrelatedness of all human rights. The purpose and practice of the UPR is to be “objective, transparent, non-selective, constructive, non-confrontational and non-politicized”.³² Furthermore, the UPR must complement and not duplicate the work of other human rights bodies, and must take into account the level of development and specific conditions of the country under review.³³ All in all, the objective of the universal review is the improvement of the human rights situation on the ground and support to Member States in the promotion and protection of human rights.³⁴

Contributions to the UPR, which are the basis of this research, must be in accordance with its guidelines and consider its context. The three documents which constitute the basis of the UPR are: a ‘National Report’ prepared by the state concerned³⁵; a ‘United Nations Compilation’, prepared by the Office of the High Commissioner for Human Rights (OHCHR) outlining the information contained in the reports of the treaty bodies and special procedures and other relevant official UN documents³⁶; and lastly a ‘Summary of Stakeholders’ to the UPR,

29. *Id.*, Para. 9.

30. *Id.*, Para. 5 (e).

31. Human Rights Council resolution 5/1 Institution-building of the United Nations Human Rights Council of 18 June 2006, Paras 1, 2, 3 (b).

32. *Id.*, Paras 3 (a), (d), (g), (e), (k), 6; General Assembly Human Rights Council resolution A/RES/60/251 of 15 March 2006; Economic and Social Council resolution 1996/31 of 25 July 1996.

33. Human Rights Council resolution 5/1 Institution-building of the United Nations Human Rights Council of 18 June 2006, Paras 3 (f), (h), (j), (i), (e), 13.

34. *Id.*, Para.4 (a), (b), (c), (d), (e), (f).

35. *Id.*, Para. 15; Based on the general guidelines adopted by the Human Rights Council at its sixth session; first session of the second cycle; Hereinafter ‘National Report’.

36. *Ibid.* Hence forth: ‘UN Compilation’.

such as civil society and non-governmental organizations, prepared by OHCHR and designed to complement and give contrast to the previous submissions.³⁷

For the purpose of this research we have considered first and foremost the National Report of all the nations that have undergone the UPR in its first cycle, as a direct source of state *opinio juris*³⁸ on human rights, and specifically concerning cultural relativism. Furthermore, this working paper has analysed all complementary contributions –UN Compilation and Summary of Stakeholders- of all states, as well as both the interactive dialogue and outcome of the Review.

4. CULTURAL RELATIVISM IN THE UNIVERSAL PERIODIC REVIEW

As previously remarked, this research was primarily focused on the countries that scholars identify as belonging to the cultural relativist group³⁹, although all states that have undergone the UPR have been analysed. As such, for all countries all submissions and Reviews were

37. *Ibid.* Hereinafter ‘Summary of Stakeholders’. See also: information and guidelines for relevant stakeholders on the universal periodic review mechanism as of July 2008. Paras 16, 17 General Assembly resolution 53/208 of 14 January 1999; Human Rights Council PRST/9/2 Follow-up to the President’s statement 8/1 of 24 September 2008.

38. As “evidence of a general practice accepted as law”, which is established in Article 38 (b) of the Statute of the International Court of Justice. It follows that practice by itself is not evidence of the existence of custom, and thus the norm must be ‘accepted as law’. See for instance: North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark/The Netherlands), Judgment of 20 February 1969, 1960 ICJ Rep. at 3; Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, 1986 ICJ Rep. at 14; Fisheries Case (United Kingdom v. Norway) Judgment of 18 December 1951, 1951 ICJ Rep. at 116; Case Concerning Right of Passage Over Indian Territory (Portugal v. India), Merits, Judgment of 12 April 1960, 1960 ICJ Rep. at 6; Legality of Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, 1996 ICJ Rep. at 226.

39. With the exception of Singapore and Syria reviewed this year 2011: China, Colombia, Cuba, Indonesia, Iran, Iraq, Malaysia, Mexico, Myanmar, Pakistan, Vietnam and Yemen; as indicated in Cerna, *Universality and Cultural Diversity*, *supra* note 5, at 740; and also Otto, *Rethinking the Universality*, *supra* note 1, at 10.

analysed, although prevalence for expressions of cultural relativism have been identified in the National Report. To a large extent, reference to the UN Compilation and the Summary of Stakeholders is provided in order to give contrast to the statements of the National Report. Therefore, the first finding of this research was that the scholars list was indeed accurate, since no other contributions involving cultural relativism in the UPR could be identified.

4.1. ASIAN CULTURAL RELATIVISM

As is also confirmed in this research, scholars maintain that the cultural relativist fracture has its main expression in Asian countries, and this was especially evident in the 1993 Bangkok meetings prior to the Vienna Conference on Human Rights. This section operates within the Asian countries included in the detailed list provided by scholars: China, Viet Nam, Myanmar, Iran, Pakistan, Indonesia, and Malaysia.⁴⁰

CHINA

China declares in its National Report to the UPR that it will “respect the principle of the universality of human rights”⁴¹ and recognises that the “international community should respect the principle of indivisibility of human rights and attach equal importance to civil and political rights and economic, social and cultural rights as well as the right to development.”⁴² However, it goes on to declare that “[G]iven differences in political systems, levels of development and historical and cultural backgrounds, it is natural for countries to have different views on the question of human rights. It is therefore important that countries engage in dialogue and cooperation based on equality and mutual respect in their common endeavour to promote and protect

40. Cerna, *Universality and Cultural Diversity*, *supra* note 5, at 740.

41. A/HRC/WG.6/4/CHN/1 of 10 November 2008. Para. 6.

42. *Ibid.*

human rights.”⁴³ The Report also notes that “[I]n 1949, the People’s Republic of China was founded and the Chinese people won national independence and liberation. Since then, the Chinese people have become the masters of the country in the true sense, and a fundamental social and political system for the promotion and protection of human rights has been established.”⁴⁴

Nonetheless, stakeholders and the UN Compilation remain critical of the Chinese human rights situation, although recognising improvements. It expresses *inter alia* concern about the reports of the treaty bodies on practices of torture, conditions of detention, lack of independence of the judiciary, lack of freedom of religion and opinion, labour conditions, maternal and child health, censorship, inequalities, and discrimination against minorities, refugees and migrants.⁴⁵

Furthermore, in the interactive dialogue of China two distinctive positions can be noted: Western states, while in most cases recognising progress in human rights in China as a whole, expressed very clear recommendations in line with the complementary submissions. Conversely, the other faction notes and commends China’s efforts in human rights and limits its demands to a continuation and sharing of its practises. Such a position is represented by the specified list of cultural relativist states including Singapore, Mexico, Cuba, Viet Nam, Iran, Indonesia, Pakistan, Colombia and Malaysia. It can be noted however, that this position is supported by a substantial group of nations.⁴⁶ This fracture becomes clearly manifested in the recommendations, most of which are introduced with the words ‘continue to’ by the second list of states, while the recommendations from Western countries have a

43. *Ibid.*

44. *Id.*, Para.3; See also A/HRC/WG.6/4/CHN/2 of 16 December 2008; A/HRC/WG.6/4/CHN/3 of 5 January 2009; A/HRC/11/25* (Reissued for technical reasons) 5 October 2009, 2-33; Human Rights Council Decision 11/110 Outcome of the universal periodic review: China, 17 June 2009.

45. A/HRC/WG.6/4/CHN/2 of 16 December 2008, 2-19.

46. The Philippines, Algeria, the Russian Federation, Bhutan, Egypt, Libya, Sri Lanka, Saudi Arabia, Uzbekistan, Sudan, Ghana, Mozambique, Angola, Morocco, Oman, United Arab Emirates, Nicaragua, India, Yemen, Jordan, Bahrain, Benin, Mali, Gabon, Palestine, Qatar, Venezuela, Senegal and Thailand.

much clearer set of demands, although they were mostly rejected by China or argued to be already enforced.⁴⁷

VIET NAM

The National Report of Viet Nam refers to a “history of struggles for national independence and freedom, [and that] the people of Viet Nam have always treasured the sacred values of human rights, notably the right to self-determination, the freedom to decide one’s own fate and the right to live in dignity.”⁴⁸ Once again it goes on to declare that “[T]he right to live in independence and freedom, the right to self-determination and the right to vote and self-nomination are the most fundamental human rights”.⁴⁹

Furthermore, the National Report of Viet Nam mentions as achievements and challenges five ‘lessons’, the first and second of which are “to place people in the centre of development”⁵⁰, and that “human rights can not be detached from national independence and sovereignty”⁵¹ since “[N]ational independence is the condition and basis for the protection of human rights.”⁵² Such a notion is repeated making reference to a colonial and ‘enslaved’⁵³ past. The third lesson is similarly introduced by stating that “as a victim of many wars of aggression – the most serious violation of human rights, Viet Nam fully realizes that human rights have both universality [and characterises] each society and community.”⁵⁴ In this third lesson called “harmonisation of universal values of human rights and particularities of the nation, and promotion of international cooperation and human rights dialogue”⁵⁵

47. A/HRC/11/25* (Reissued for technical reasons) 5 October 2009, 2-33; Human Rights Council Decision 11/110 Outcome of the universal periodic review: China, 17 June 2009.

48. A/HRC/WG.6/5/VNM/1 of 16 February 2009, Para. 7.

49. *Id.*, Para. 17.

50. *Id.*, Paras 57-8.

51. *Id.*, Paras 59-60.

52. *Ibid.*

53. *Id.*, Para. 60.

54. *Id.*, Para. 61.

55. *Id.*, Paras 61-4.

there is also a declaration that for “[R]especting the universality of human rights, Viet Nam has become party to almost all core international human rights treaties and other international treaties in this field, and seriously implements its obligations.”⁵⁶ Viet Nam’s fourth lesson affirms its “maintenance of political stability, promotion of economic development in conjunction with ensuring social security”⁵⁷, while the fifth and final one refers to the entitlements of the people to enjoy rights and to be aware of these.⁵⁸

However, in a similar fashion to China, the UN Compilation and Summary of Stakeholders note allegations of torture and the application of the death penalty, the lack of religious freedom, and of adequate working conditions and rights and their higher incidence in minorities and indigenous peoples.⁵⁹ Again in the interactive dialogue and recommendations two blocs can be distinguished. While developing nations commend Viet Nam’s human rights practices and encourage Viet Nam to ‘continue to’ in the concluding recommendations, the Western states, including Baltic, East European and Latin American countries, make very clear recommendations and demand measures to be carried out.

MYANMAR

The National Report of Myanmar does not make direct reference to its views on the universality of human rights. The UN Compilation reflects concerns of the reports of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), declaring that it “was concerned at the persistence of adverse cultural norms, practices and traditions regarding the roles of women and men in all spheres of life, especially within some ethnic groups.”⁶⁰ It should be

56. *Ibid.*

57. *Id.*, Paras 65-6.

58. *Id.*, 67-70.

59. A/HRC/WG.6/5/VNM/2 of 16 March 2009, 2-17; A/HRC/WG.6/5/VNM/3 of 23 February 2009, 2-12.

60. A/HRC/WG.6/10/MMR/2 of 15 November 2010, Para. 22.

also noted that stakeholders denounce Myanmar for its “gross violations of human rights, including crimes against humanity and war crimes that it had committed over the past decades”⁶¹ in a situation in which there is “practically no domestic framework for the protection of human rights through rule of law.”⁶² Nevertheless, Myanmar in its Review affirms to having made progressive steps towards democratization and human rights both on a national and international scale, with frequent reference to its post-colonial situation, as well as noting measures to guarantee freedom of religion, development, and the right to healthcare and education.⁶³ A similar dichotomy to that of China and Viet Nam is clearly expressed in Myanmar’s Review with the two set factions, which again can be clearly distinguished. More interestingly, the factions are also outlined this time in 13 pages of recommendations, that can be distinguished into those that encourage keeping its practises, as opposed to those who condemn them and make demands related to the serious concerns exposed.⁶⁴

IRAN

As concerns Iran, its National Report refers to an ‘international initiative’ to support cultural diversity and human rights through “[I]nitiating [a] resolution on human rights and cultural diversity in the UN General Assembly”⁶⁵, and to follow, they would be “[H]osting the Meeting of the Ministers of the Non-Aligned Movement on Human Rights and Cultural Diversity in Tehran, September 2007”⁶⁶. As a result, this led to the “[A]pproval of the establishment of the NAM Centre for Human Rights and Cultural Diversity in Tehran by the Movement Foreign Ministers”⁶⁷ together with the “[E]stablishment of

61. *Id.*, Para. 6.

62. *Id.*, Para. 7.

63. A/HRC/WG.6/10/MMR/1 of 10 November 2010, 2-21; A/HRC/WG.6/10/MMR/1/Corr.1 of 24 November 2010.

64. A/HRC/WG.6/10/L.7 Advanced Unedited Version from 2 February 2011, 2-27.

65. *Id.*, 118.

66. *Ibid.*

67. *Ibid.*

the NAM Center for Human Rights and Cultural Diversity in Tehran in May 2008 with primary mandate of developing and enhancing the common understanding of NAM Member States as well as between NAM Member States and other members of international community with respect to human rights and cultural diversity”⁶⁸.

The National Report also declares that “[W]ith the victory of the Islamic Revolution and coming out of the Western bloc of countries, Iran’s human rights situation have consistently been used as a political tool to apply pressure and to advance certain ulterior political motives of some specific Western countries.”⁶⁹ Furthermore, it affirms that “[A]ccording to the provisions of 1993 Vienna World Conference Declaration and Programme of Action on Human Rights, regional, historical, national, cultural and religious particularities of different regions and countries need to be taken into consideration in implementing of human rights standards”⁷⁰ without reference to the prior part on universality of the Vienna Declaration. Finally, the National Report concludes that “[I]ran, like other Islamic countries, has faced certain problems in practicing some international standards of human rights. This matter needs to be duly understood by the international community that due to its legal structures which are based on principles of Islam, commitment of its authorities to these principles, and true demands by the people, Islamic Republic of Iran considers itself obliged to adhere to laws of Islamic Sharia.”⁷¹ It goes on to declare that “[A]ccordingly, it is necessary that by relying on the principle of cultural diversity, while respecting and avoiding political and cultural pressures, to pay attention to this point that any change or adjustments in these laws must come about as a result of dynamic national dialogue among our own authorities and civil society in the context of Islamic principles. Pressure or demands by other countries to accept and adopt certain Western standards of human rights will prac-

68. *Ibid.*

69. A/HRC/WG.6/7/IRN/1 of 18 November 2009, Para. 128.

70. *Id.*, Para. 129.

71. *Id.*, Para. 130.

tically have negative impact on promotion of human rights.”⁷² Soon this ‘capacity of dialogue’ between national authorities and civil society would be expressed in the presidential elections.

Furthermore, the above declarations contained in the National Report were also reproduced by the delegation of Iran in the controversial interactive dialogue, which introduced the review stating that “its human rights situation had consistently been used by some Western countries to apply political pressure and advance ulterior political motives.”⁷³ Afterwards, emphasising its role in the cultural relativist international initiatives, the delegation expressed its intention to achieve “an interactive and cooperative approach and the avoidance of confrontation, double standards and politicization.”⁷⁴ The Iranian delegation finished its Review stating that “[T]he value of culture and history for the enrichment of the human rights experience was highlighted, with the delegation noting that the liberal Western way of life was not the only one to follow. Iran’s experience was rooted in its culture and the belief of millions of Muslims, fully respecting life in Western communities, as reflected by the Constitution, which was modelled on Western ones, yet applied Islamic rationality.”⁷⁵

However, it should be mentioned that the complementary submissions contain very different information from that of the State. The UN Compilation observes how “the Secretary-General noted that Iran had a practice of entering general reservations upon signature or ratification”⁷⁶. It also notes wide-spread application of death penalty and public executions, especially juvenile executions, arrest and torture⁷⁷, and serious concerns on personal and collective freedoms and the representation and participation of all citizens. Nevertheless, the Islamic Republic of Iran declared that “[M]eeting the needs of the society for cultural and artistic activities [...] have of utmost

72. *Ibid.*

73. A/HRC/14/12 of 15 March 2010, Para. 9.

74. *Id.*, Para. 13.

75. *Id.*, Para. 89.

76. A/HRC/WG.6/7/IRN/2 of 25 November 2009, Para. 1.

77. The CAT was similarly approved by Parliament in 2002 but rejected by the Guardian Council “because of perceived conflicts with Islamic principles”.

importance.”⁷⁸ The complementary submissions also underline concerns on violence against women as reportedly widespread, and moreover in an institutionalized pattern as in the imposition of a dress code for women, access to justice and imposition of laws such as *diyah*, trafficking practises such as through *siqeh*, forced conversion practises in marriage and non-recognition of children with one foreign parent. It also details concerns about incidences of violence and forced labour of children, whose age of criminal responsibility is 14 for boys and 8 years for girls.⁷⁹ Conversely, it again declares to having made “efforts to promote the status of women in educational, political and cultural endeavours over the past 30 years.”⁸⁰ For this reason it set up the ‘Cultural Council of Women’ affiliated to the ‘High Council for Cultural Revolution’, with the “responsibility of policy making concerning cultural and social affairs of women”⁸¹.

PAKISTAN

Concerning Pakistan, the only reference in its National Report is contained in the education policies emphasised by the government, in which it declares that the “new National Curriculum has made efforts to include principles of human rights, upholding diversity and difference along with universal rights.”⁸² However, the UPR documents express concerns such as those in the UN Compilation, where it states that “CEDAW was strongly concerned about pervasive patriarchal attitudes and deep-rooted traditional and cultural stereotypes regarding the roles and responsibilities of women and men in the family, in the workplace and in society.”⁸³ Similarly, stakeholders note that “women have to face much worse treatment than men in court, as they have to face massive cultural prejudice. The cultural prejudice against

78. A/HRC/WG.6/7/IRN/1 of 18 November 2009, Para. 97.

79. A/HRC/WG.6/7/IRN/2 of 25 November 2009, 2-19.

80. *Id.*, Para. 98.

81. *Id.*, Para. 103. A/HRC/WG.6/7/IRN/3 of 30 November 2009, 2-16; A/HRC/WG.6/7/IRN/3/Corr.1 of 18 January 2010. See also A/HRC/10/L.26 and A/HRC/10/60.

82. A/HRC/WG.6/2/PAK/1 of 14 April 2008, Para. 74.

83. A/HRC/WG.6/2/PAK/2 of 14 April 2008, Para. 8.

women is an aggravating factor in cases of ‘honour’ killings, where it appears that judges often take a lenient view of the murderer(s), especially when they come from the woman’s family.”⁸⁴ Besides the traditional practices of punishment and violence such as *qisas*, *zina* and *hudood*, the stakeholders note “that given the very serious defects of the law itself, of the administration of justice, of the police service, the chronic corruption and the cultural prejudices affecting women and religious minorities, capital punishment in Pakistan is discriminatory and unjust, and allows for a high probability of miscarriages of justice.”⁸⁵ As such, both Islamic Republics have a manifested practise of denial of legal and social equality between men and women and toleration of traditional practises in total opposition with human rights. However, the difference arising from the political revolutionary discourse of Iran can also be distinguished.

INDONESIA

As concerns Indonesia, in their National Report the authorities declare that their “National Action Plan on Human Rights includes concrete measures to be undertaken by the Government over a five-year period for the promotion and protection of human rights, in accordance with cultural, religious and traditional values, and without discrimination as to race, religion, ethnicity and faction.”⁸⁶ The UN Compilation, supported by stakeholders’ submissions, affirms “Indonesia’s acknowledgement that it is a multi-ethnic, multicultural, multi-religious, and multilingual country”.⁸⁷ It expresses concern, however, that in practice “indigenous peoples’ rights have been compromised [and that] Indonesia should ensure that the concepts of national interest, modernization and economic and social development are not used as a justification to override the rights of indigenous peoples.”⁸⁸ Finally, the

84. A/HRC/WG.6/2/PAK/3 of 3 April 2008, Para. 7.

85. *Id.*, Para. 9.

86. A/HRC/WG.6/1/IDN/1 of 11 March 2008, Para. 2.

87. A/HRC/WG.6/1/IDN/2 of 31 March 2008, Para. 37.

88. *Ibid. Id.*, 2-19. A/HRC/WG.6/1/IDN/3 of 6 March 2008, 2-13.

interactive dialogue is once again characterised by two distinct positions. Attention was drawn to the Syrian Arab Republic declaration that “important steps have been taken in promoting and strengthening all human rights while preserving the specificities of cultural diversity and religious tolerance”.⁸⁹

MALAYSIA

Similar arguments to those of Indonesia are raised in the UPR of Malaysia, whose delegation emphasised that “[A]s a consequence of this historical background, Malaysia is today ethnically and culturally diverse”⁹⁰. The Report states in the section on cultural rights that “[C]ultural representation is significant in a multicultural country like Malaysia where the mode of representation is instrumental in determining the progress of integration.”⁹¹ Furthermore, it declares that “[R]acial unity and interaction [...] formed a diverse and vibrant society that is exceptionally unique.”⁹² Specifically, it affirms that the “three major races not only retain their respective cultures and traditions but also maintain understanding and tolerance as well as share each other’s cultural richness.”⁹³ From the point of view of the Malaysian authorities “[T]his cultural unity in diversity has given birth to peaceful coexistence and is the main catalyst for Malaysia’s political stability and growth.”⁹⁴

Analogous remarks about ‘cultural diversity in racial unity’ are extended to the references to the rights of indigenous peoples in which the authorities declare that “[E]very community is encouraged to practice, express and showcase their cultural and artistic heritage, thus enhancing cross-cultural understanding and appreciation of the cul-

89. A/HRC/8/23 of 14 May 2008, Para.365; See also Human Rights Council Decision 8/106 Outcome of the universal periodic review: Indonesia, 10 June 2008.

90. A/HRC/WG.6/4/MYS/1/Rev.1, 19 November 2008, Para. 5.

91. *Id.*, Para. 47.

92. *Ibid.*

93. *Ibid.*

94. *Ibid.*

tural diversity”.⁹⁵ However, the Report announces that “[M]alaysia’s National Cultural Policy is based on its historical experiences, present situation and future anticipated development [which] provides for cultural development through absorption and synthesis to encourage national unity and reduce tendencies towards racial polarisation.”⁹⁶ It goes on to declare that “[T]he most significant challenge which be-sets Malaysia is lifting indigenous groups from backwardness and as-similating them into mainstream society.”⁹⁷ Finally, the concluding paragraph states that “[W]hile upholding the universal principles of human rights, Malaysia would like to accentuate its human rights val-ues which take into account the history of the country as well as the religious, social and cultural diversities of its communities.”⁹⁸ It af-firms that seeks “to ensure that the respect for social harmony is pre-served and protected [and that]practices of human rights in Malaysia are reflections of a wider Asian value system where welfare and col-lective well-being of the community are more significant compared to individual rights.”⁹⁹

4.2. CULTURAL RELATIVISM IN THE MIDDLE EAST

This second section deals with the cultural relativist states in the Mid-dle East identified by scholars: Iraq and Yemen. Although Syria does not have its UPR until October of this year (2011), consideration has been given through its interventions in all other reviews, which have been outlined in the course of this chapter. This section also provides an incidence of disagreement with the scholars list considering the case of Iraq and its substantial change of circumstances since the days of the Vienna World Conference.

95. *Id.*, Para. 48.

96. *Ibid.*

97. *Id.*, Para. 97.

98. *Id.*, Para. 114.

99. *Ibid.* See also A/HRC/WG.6/4/MYS/2 of 20 November 2008, 2-16; A/HRC/WG.6/4/MYS/3 of 27 October 2008, 2-14; A/HRC/11/30 of 5 October 2009, 2-30, 2-8; A/HRC/11/30/Add.1 of 3 June 2009; Human Rights Council Decision 11/116 Outcome of the universal periodic review: Malaysia, 12 June 2009.

IRAQ

Although, the National Report of Iraq does not provide any direct reference to question of universality of human rights or incidence of cultural diversity¹⁰⁰, stakeholders note that “due to cultural traditions, girls in rural areas are often denied schooling after 12-15 years and that the ministry of education remains silent and inactive regarding procedures to be taken to apply the mandatory education law.”¹⁰¹ It also declares that “violence against women and girls continues to be a serious problem, with members of insurgent groups and militias, soldiers and police among the perpetrators.”¹⁰² Both the UN Compilation and the Summary of Stakeholders reflect similar apprehension about the wide application of the death penalty, the effects of violence and insecurity due to the state of war, and the frequent breaches of the rules of war by armed groups. It declares that “militias, armed groups, the multinational forces, private contractors, armed groups and the Iraqi police play the largest role in violation of human rights principles”.¹⁰³ Recalling Abu Ghraib it affirms that “there are dozens of mostly secret detention centres under the control of a foreign government operating in Iraq”.¹⁰⁴ Furthermore, it declares that “the implementation of the Counter-Terrorism law is a clear violation of human rights law”.¹⁰⁵ The Western nations’ practise on human rights can therefore be brought into serious questioning, besides contributing to the arguments of their antagonists.

YEMEN

With respect to Yemen, its National Report declares that “the Government of Yemen views the universal periodic review mechanism as

100. A/HRC/WG.6/7/IRQ/1 of 18 January 2010, 2-30.

101. A/HRC/WG.6/7/IRQ/3 of 1 December 2009; Para. 46.

102. *Id.*, Para. 22.

103. A/HRC/WG.6/7/IRQ/2 of 1 December 2009, Para. 16.

104. *Id.*, Para. 20.

105. *Id.*, Para. 55; See also: A/HRC/14/14 of 15 March 2010.

a means of improving the human rights situation by applying principles of impartiality, objectivity and full transparency”¹⁰⁶ without mentioning universality. Although the National Report declares to have set up a ‘National Council on Women’¹⁰⁷, the UN Compilation notes that “[I]n 2005, the HR Committee noted with concern that Yemen justifies the absence of progress on several important issues by the impossibility, in its view, of respecting at the same time religious principles and certain obligations under the ICCPR. The Committee disagreed with such an interpretation and stated that, in its view, cultural and religious specificities may be taken into consideration in order to develop adequate means to ensure universal respect for universal human rights, but they cannot jeopardize the very recognition of these rights for all.”¹⁰⁸ Furthermore, the Compilation declares to be “especially concerned, inter alia, that discrimination against women remains rampant, the development and advancement of women has not significantly improved, but has even deteriorated with regard to certain issues and recommended that Yemen consider carefully all recommendations made by the Committee and ensure that its obligations under CEDAW, its religious principles and its cultural and social values are made compatible in order to promote and protect fully the human rights and fundamental freedoms of Yemen’s women”.¹⁰⁹

In the interactive dialogue, besides the permanence of the usual positions identified, it should be noted that while Israel “expressed concern about forced marriages, draconic methods of execution and punishment, and discrimination and violence systematically directed against women and children”¹¹⁰ the Islamic Republic of Iran “appreciated the efforts of Yemen to further human rights and address challenges, with due regard to national and regional particularities and historical, cultural and religious backgrounds.”¹¹¹ Other neighbouring

106. A/HRC/WG.6/5/YEM/1 of 20 February 2009, at P. 27.

107. *Id.*, at P. 8.

108. A/HRC/WG.6/5/YEM/2 of 9 March 2009, Para. 7.

109. *Id.*, Para. 8. See also A/HRC/WG.6/5/YEM /3 of 19 February 2009.

110. A/HRC/12/13 of 5 June 2009, Para. 21

111. *Id.*, Para. 42.

countries, such as the Syrian Arab Republic “stressed Yemen’s great efforts to strengthen human rights”.¹¹²

4.3. CULTURAL RELATIVISM IN LATIN AMERICA AND THE CARIBBEAN

Scholars identify three cultural relativist states in Latin America and the Caribbean region: Colombia, Mexico and Cuba. However, Mexico and Colombia’s Reviews and documents do not offer much evidence in such a direction. This section argues in favour of a form of cultural relativism based on a plurality which is constitutive of the State, and that is in accordance with human rights standards given the principles of self-determination. Furthermore, this section provides substance to revise the list provided by scholars, given that Colombia and Mexico present a substantially different human rights context. It remains to be seen how the case of Venezuela develops in the coming months, given its identified interventions and considering its allies.

COLOMBIA

The National Report of Colombia declares that “Colombia is making headway in measuring economic, social and cultural rights appropriately so as to be able to guarantee them fully and universally.”¹¹³ As is the case with much of Colombia’s UPR, in the National Report there is much echo of the internal armed conflict and the process of *Justicia y Paz* which was taking place before the Review. The Report does not contain any further references to universality and cultural diversity. However, it emphasises the commitment of its Constitution and national institutions to democracy and human rights, as well as to the UPR mechanism. Finally, the delegation declared that “the indigenous population [...] have legislation that acknowledges their rights to land,

112. *Id.*, Para. 45.

113. A/HRC/WG.6/3/COL/1 of 19 September 2008, Para. 96.

autonomy and culture preservation.”¹¹⁴ In Colombia’s interactive dialogue, all states noted the Colombian efforts, while they expressed concern on the resolution of the internal conflict and on its consequences for the population. Nevertheless, again we can distinguish the positions ‘recommending’ as opposed to those which are demanding.¹¹⁵

MEXICO

In a similar trend, the Mexican authorities claimed to have engaged in the implementation of human rights in their policies and law-making.¹¹⁶ The National Report of Mexico affirms that it has “undergone a process of major change in its political, legal and social institutions, which, especially in the past decade, have resulted in greater enjoyment of all human rights in the country.”¹¹⁷ Furthermore, it declares that “[T]his process of change in the situation of human rights is irreversible. Genuine cultural change has been inaugurated”¹¹⁸.

Nevertheless, the Report admits similar difficulties to those of neighbouring states both in tackling organised crime and lack of public safety, and also similar limitations in the system of justice and deficiencies of penitentiary conditions. Mexico also declared to be carrying out special measures for protecting freedom of expression, ensuring reparations, along with measures aiming at eradicating poverty, and in particular, measures designed to counteract gender-based discrimination, and to protect children, minorities and migrants.¹¹⁹ Finally, it declared that “Mexico is a multicultural country with indigenous roots”¹²⁰ and as a result, among several legal provisions, “[I]n

114. *Id.*, 2-27; A/HRC/WG.6/3/COL/2 of 9 October 2008; A/HRC/WG.6/3/COL/3 of 19 September 2008, 2-21. A/HRC/10/82 of 9 January 2009, Para. 13;

115. *Ibid.* See also: A/HRC/10/82/Add.1 of 13 January 2009, 2-10; Human Rights Council Decision 10/114 Outcome of the universal periodic review: Colombia, 20 March 2009.

116. *Id.*, 2-6.

117. A/HRC/WG.6/4/MEX/1 of 10 November 2008, Para. 2.

118. *Id.*, Para. 3.

119. *Id.*, 6-30.

120. *Id.*, Para. 114.

2001, various articles of the Constitution were amended to recognize the nation's multicultural make-up and indigenous peoples' individual and collective rights. These include the right to be recognized as an indigenous people or community, to self-classification, to self-determination within a constitutional framework of autonomy that ensures national unity, to apply internal legal systems, to maintain cultural identity, to the land they inhabit, to consultation and participation, to full access to the Mexican justice system; and to development."¹²¹

Consequently, we must question the fact that Colombia and Mexico should form part of the same group as the one that includes all the other enumerated states.

Similarly, in the presentation of its Review, Mexico declared that it participated "in the UPR mechanism out of conviction that promoting and protecting human rights is a non-renounceable obligation and a universal ethical imperative and that cooperation with the international human rights mechanisms is an invaluable tool to foster internal structural changes."¹²² It also reaffirmed that the "indigenous population has the same rights as all other members of the nation. According to the Mexican Constitution, indigenous peoples also enjoy specific rights based on their cultural differences."¹²³ However, it should be mentioned that after the delegation's presentation countries such as Indonesia, Viet Nam, China, Bolivia, Malaysia and Pakistan noted the efforts made for eradicating discrimination against women and measures to combat social insecurity, while on the other hand Western states expressed much more specific demands and concerns.¹²⁴

121. *Id.*, Para. 115, also reference at Paras 119, 122. See also: A/HRC/WG.6/4/MEX/1/Corr.1 of 22 January 2009.

122. A/HRC/11/27 of 29 May 2009, Para. 5.

123. *Id.*, 86.

124. *Id.*, 2-30; See also: Human Rights Council Decision 11/113 Outcome of the universal periodic review: Mexico, 11 June 2009.

The National Report of Cuba is introduced by the statement: “[W]ith the triumph of the Revolution on 1 January 1959, the Cuban people achieved true independence and were able to create the conditions for full and universal enjoyment of all human rights. The profound economic, political and social changes undertaken made it possible to do away with the structural injustices inherited from colonial and neo-colonial rule in Cuba. The foundations of a democratic, fair, inclusive, equitable and compassionate society were laid and continuous progress has been made.”¹²⁵ The Report defends a political system defined as democratic, and facilitated by legal institutions which it claims to be open to reforms. In addition, the government purports to defend civil rights and to have taken measures concerning the death penalty, prison conditions, guarantees of freedom and safety of the individuals, freedom of religion and thought, besides providing constant support for health care and education. In the Report the authorities declare to foster and promote “the defence of Cuba’s cultural identity and the conservation of the nation’s heritage and artistic and historical wealth.”¹²⁶

Among the numerous references to an ‘anti-Cuban campaign’ directed by the United States, it argues that “[D]espite its principled opposition to such spurious manoeuvres, the Cuban Government never broke off its cooperation with those human rights mechanisms that are applied universally and on a non-discriminatory basis.”¹²⁷ Conversely, The UN Compilation provides details to its requests to establish independent human rights bodies and enhance contributions to the international system. Concerns are raised on discrimination, torture, prison conditions, arbitrary detentions, domestic violence, prostitution and other forms of violence against women. For instance, it notes that “[M]easures should be taken towards changing the culturally determined attitudes that remain permissive of violence against women.”¹²⁸ Similarly,

125. A/HRC/WG.6/4/CUB/1 of 4 November 2008, Para. 3.

126. *Id.*, Para. 64.

127. *Id.*, Para. 108.

128. A/HRC/WG.6/4/CUB/2 of 18 December 2008, Para. 17.

concern is expressed for the excessive practice of military trials, and calls are made for legal procedures in accordance with the Universal Declaration. Nevertheless, the Compilation welcomes some progress with women's rights and public healthcare and education despite the conditions that the embargo imposes.¹²⁹ Finally, it notes that in 2006 "Cuba confirmed its will to promote in the HRC its traditional initiatives on the right to food, the promotion of cultural rights and the respect for cultural diversity and the promotion of peace for the enjoyment of all human rights."¹³⁰ However, "Cuba pledged to continue working for the progressive development of third-generation rights and particularly of the value of international solidarity, and on the promotion of traditional non-aligned movement initiatives in human rights matters".¹³¹

In the Summary of 326 stakeholders and in their submissions there is an evident contrast according to the origins of the submissions. The denouncement of human rights violations mainly came from Western human rights organizations, while domestic official organisations and international sympathisers defended the human rights efforts of the regime.¹³² A similar situation is appreciated in the Review where in its interactive dialogue, all Asian cultural relativist countries made clear statements commending Cuba's efforts towards human rights despite the conditions that the embargo imposes, with the backing of numerous pronouncements from developing nations. On the other hand Western states made very different declarations, although at times noting efforts, and always put forward very specific recommendations and demands. As in the case of most of the above-mentioned reviews, different blocks of states can be clearly identified in the Cuban interactive dialogue: those that commend, a majority, and those that condemn and demand, a minority.¹³³

129. *Id.*, 2-17.

130. *Id.*, Para. 53.

131. *Ibid.*

132. See submissions in Annex A/HRC/WG.6/4/CUB/3 of 28 December 2008 and A/HRC/WG.6/4/CUB/3 of 28 December 2008, 2-21.

133. A/HRC/11/22* (Reissued for technical reasons); See also Human Rights Council Decision 11/107 Outcome of the universal periodic review: Cuba, 10 June 2009.

5. CONCLUSIONS

Contemporary cultural relativism appears to be divided into two categories depending on the origin of its arguments. On the one hand, this research identifies a form of cultural relativism based on political factors and/or revolutionary discourse, notably in the UPRs of China, Viet Nam, Myanmar and Cuba. On the other hand, an Islamic form of cultural relativism can be acknowledged in the Reviews of Yemen, Iran and Pakistan. However, since such groups are not uniform, some states can combine the different forms of cultural relativism simultaneously. For instance, the case of Iran is a mixture of the Islamic and revolutionary form. Additionally, this research has reaffirmed a different positioning that comes from countries with diverse communities and defend a model of diversity to ensure self-determination for its populations. Such a posture can be specially identified in the UPRs of Indonesia, Colombia and Mexico, and presents a substantially different human rights record from the one of the Asian states analysed. All in all, the protection of minorities and their self-determination are principles in accordance with international human rights standards.

Revolutionary cultural relativism appears to be related to regimes with a revolutionary origin and to have its main friction with international human rights standards in the denial of political plurality and frequent association with 'colonizing lobbies'. This can result in practises of torture, murder and repression of suspected sympathizers, which are also extensive to those who make any form of public expression, and may consist of anything from structural censorships of the media to condemnation of the 'foreign domination religions'. This is clearly manifested in the Reviews and submissions of China, Viet Nam, Myanmar, Cuba and Iran. The complementary submissions, designed to give contrast, confirm however the widespread and systematic human rights violations as well as the passive and ambiguous intentions towards solutions.

The Islamic form of cultural relativism appears to be associated with Islamic political discourse. As such, a clear distinction can be made

between the lesser degree low form of cultural relativism appreciated in Indonesia and Malaysia¹³⁴, as opposed to the one linked to political Islam and Islamic Republics. The main cause of disagreement between this kind of cultural relativism and international human rights law is the denial of the principle of equality for men and women, along with the incidence of traditional practises and the application of Sharia law. The conflict of Sharia norms can also be appreciated in other reviews such as that of Mauritania among numerous examples in Africa, Asia and Middle-East, but these are most used as an argument for cultural relativism in the Reviews of Yemen, Iran and Pakistan.

It follows from this working paper that the countries that today defend cultural relativism are substantially different from those identified by scholars in the last decades. Mexico, Indonesia and Colombia appear not to be in a same group with the other cultural relativist nations. Just as in the Middle East Iraq appears not to be identified with its alleged partners in cultural relativist tendencies. As far as the Western exponents of universalism are concerned, the ambiguity of their moral ground is reflected in the submissions to the Iraq Summary of Stakeholders and the reported actions of the multinational forces. The 'improvement' of Iraq in 'opting-out' from the cultural relativist side can be put in doubt when analysing certain details of the Western 'engagement'. Regrettably, the posture of many of the Western states that defended humanitarian aims and respect to human rights has become ambiguous, and this has resulted in the erosion of their credibility and in the reinforcing of cultural relativist fears.

While both categories of cultural relativism appear to give considerable importance to health care and education, they also reveal a specific tendency to ratify human rights conventions (mainly the Convention on the Rights of the Child and CEDAW) despite the fact that their contribution and reporting remains scarce, or even obstructed, and further ratifications are ignored. For instance, this is clearly in-

134. With National Human Rights Institutions: Indonesia's 'Komnas Ham', Malaysia's 'Sukaman' (not in accordance with the Paris Principles), and substantial differences in the number of ratifications, policies and programs.

licated in the UN Compilations of Yemen, Iran, Cuba and Myanmar. Similarly, it can also be noted in both forms of cultural relativism that, while the authorities proclaim on an international level ‘diversity’, their practices and current situation demonstrate that diversity, at a local level, is precisely their greatest fear. As such, they appeal to the cultural excuse on the international stage, whereas within their borders they themselves exercise the most repressive approach possible towards a social contract, with extreme fear of contradiction or dissidence despite purporting to represent the will ‘of the people’ or ‘of God’. On the other hand, National Reports such as those of China, Myanmar and Viet Nam denote an essential confusion in the way that they directly relate their regime to the dignity of human life. Human dignity does not stem from political regimes. In the same manner as a revolution, when installed in power is no longer revolutionary.

The existence of contrasting positions on the universality of human rights is not only clearly manifested in contributions and reviews, such as those of Iran and Myanmar, but also in their resulting recommendations, which in the case of Myanmar consist of 13 pages. Furthermore, the opposed concepts on the universality of human rights are also reflected in the polarisation of the submissions from the parties to the UPR, and likewise in the submissions to the summary of stakeholders.

The great majority of UPRs carried out prove that there are two distinctive groups: one representing those who ‘condemn’ with concise recommendations, and the other those who ‘commend’, and recommend to ‘continue to’. Consequently, it can be expected that such a situation will persist in the follow-up process to the UPR and therefore, in the following cycles. Bearing in mind the UPR stipulations concerning principles and objectives, it is not clear how the Council will address such situations, or how international standards will be met with an evident majority of satisfied nations. Likewise, it can also be doubted whether much of these reviews comply with principles such as the ‘non-politicised’ principle of the UPR set forth in the second chapter. Human rights and the UPR can indeed be undermined by their use as a political bone of contention. The Council can on no account become

a political arena for flaunting moral high ground, and the function of the UPR should serve to improve present human rights practises and hopefully, lay the groundwork for the establishment of an international human rights court.

Last but not least, the research for this working paper leads us to the conclusion that all states of the HRC have good and bad human practises, and that they all accept the validity of the UPR and share the *opinio juris* that human rights do indeed exist. Perhaps, as was stated by the American Anthropological Society, good and bad may vary in different cultures.¹³⁵ However, the definition of human rights is not based on evil as such but on incidences of unnecessary and arbitrary forms of violence. If the drafters of the Universal Declaration persisted with such an endeavour it was for their conviction that human suffering cannot be subject to culture. Repression and violence can never be cultural, since culture is based on ideas and those who practise repression are annihilators of ideas.

135. See: Statement on Human Rights of the Executive Board of the American Anthropological Association at *American Anthropologist* (1947) at 539.

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- The ICP aims to provide accessible, valuable and well-researched material for all those interested in the promotion of peace. Our audience includes fellow academics and researchers, student of peace and security, field workers, institutional and governmental representatives as well as the general public.

The review process

- Peer reviewed. Submissions should be sent directly to the series editor (recerca.icip@gencat.cat), who will check whether the paper meets the formal and general criteria for a working paper and will commission a review.
- The review procedure is double-blind. The series editor will choose two anonymous reviewers, generally from the Editorial Board, but may also commission an external review from outside the ICIP.
- Reviewers are asked to write a review within a month after having received the paper. Reviews should clearly indicate one of four options: (1) accept without changes; (2) accept with minor changes; (3) allow for resubmission after major changes (4) reject. Options 2 to 4 require some detailed comments. If a paper is accepted (option 1 or 2), reviewers are kindly asked to help authors correct minor linguistic or other errors by making notes in the manuscript. If they use the track changes function for this purpose they should make sure that their comments are anonymized.

Who may submit working papers?

- The main criterion for the submission of Working Papers is whether this text could be submitted to a good academic journal.
- ICIP staff and other fellows and visitors affiliated with the ICIP are expected to submit a working paper related to their research while at the ICIP.

Submission System

- All submissions can be made to the ICIP e-mail address: recerca.icip@gencat.cat with *Working Papers – submission* in the subject line.

Author Biographical Statement

- Authors must all provide a short biographical note including full name, affiliation, e-mail address, other contact information if necessary and a brief professional history. This information should be provided on a separate sheet with the title. All other personal references should be removed from the submission to ensure anonymity.

Abstract

- All papers must include English language abstracts (150 words max.)

Keywords

- A list of four to six keywords is also required.

Language and Style

- Authors may submit in Catalan, Spanish or English. The submission must be clearly written and easy to follow with headings demarcating the beginning of each section. Submission must be in Arial 11, double spaced and pages must be numbered.

- Papers should not be longer than 15,000 words (incl. footnotes and references). Longer papers may be returned with a request to shorten them. Papers that require more extensive presentation of data may add these in an appendix that will count separately. Appendices should, however, present data in a reader-friendly and condensed format.
- Papers that will require extensive linguistic editing will not be accepted for review. Minor linguistic corrections (as well as required revisions) suggested by the reviewer must be implemented by the author before the final editing of the paper.

Footnotes

- Footnotes may be used to provide the reader with substantive information related to the topic of the paper. Footnotes will be part of the word count.

References

- The Harvard author-date system. In this system, sources are briefly cited in the text, usually in parentheses, by author's last name and date of publication. The short citations are amplified in a list of references in alphabetical list, where full bibliographic information is provided. Bibliographic references must follow *The Chicago Manual of Style* (15th edition). See a *Chicago-Style citation quick guide* at:
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