

Persecution of the Ahmadiyya Community in Pakistan: An Analysis Under International Law and International Relations

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I. INTRODUCTION

Before September 11, 2001, the United States characterized the Pakistani government as an unstable regime with a tarnished history of corrupt dictators, military coups, and territorial violence along its borders.¹ Following the September 11 terrorist attacks against the United States, Pakistan became a leading partner in the U.S.-led war on terrorism, thrust into a position to bring “international criminals” to justice and to act as a hero for the “civilized” world.² Indeed, one of the lessons of September 11 is that exigencies often spur credulity. United States concerns with Pakistan’s human rights problems lost significance once Pakistan agreed to stand with the United States against terrorism.

Pakistan’s leaders saw September 11 as an opportunity to gain redemption. Blasted in the past for conducting nuclear testing, suspending its Constitution, and breeding Islamists, Pakistan, post-September 11, was in an excellent position to curry favor with its critics by suffocating terrorist networks. Seizing upon this opportunity, President Pervez Musharraf led a fight

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1. See, e.g., H. D. S. Greenway, *Court India, But Don't Ignore Pakistan*, BOSTON GLOBE, Sept. 10, 2001, at A15. Greenway writes: “Pakistan was, and is, in the U.S. doghouse for not restoring democracy, which ended in a military coup in 1999.”

2. See, e.g., Mansoor Ijaz, *Given Cover, Pakistan Can Prove Helpful*, L.A. TIMES, Sept. 19, 2001, at B11. Ijaz writes: “Gen. Pervez Musharraf, Pakistan’s president, rightly has chosen to stand on the side of civilization in what will soon become a global campaign against zealotry.”

against militant Islam. This shift in Pakistan's priorities resulted in a decrease in attention paid to the plight of religious minorities in Pakistan, once a recognized problem of serious international concern.³ The two issues of human rights and terrorism were treated as unconnected, without the slightest suggestion that addressing the former would be helpful in addressing the latter.

The problem of Pakistan's treatment of its religious minorities once again merits consideration. Pakistan's Penal Code carries specific provisions criminalizing behavior considered blasphemous to Islam. Apart from stifling religious freedom for non-Muslims, these provisions also target a particular group of minority Muslims that the Sunni Muslim majority deems heretical to Islam, namely members of the Ahmadiyya Community, a Muslim group of roughly four million adherents in Pakistan that has always considered itself as belonging to the Muslim *ummah* (or larger "community of Muslims"). The fundamental difference between Ahmadis and the Sunni Muslim majority concerns the identity of the Promised Messiah, the reformer that the Prophet Muhammad foretold would appear after him.⁴ Doctrinal interpretations peculiar to Ahmadis were deemed sufficient to place them outside the pale of Islam by the religious orthodoxy.⁵

For over five decades, Ahmadis have endured senseless persecution. Their mosques have been burned, their graves desecrated, and their very existence criminalized. According to a 2002 United States State Department report, since 1999 316 Ahmadis have been formally charged in criminal cases (including blasphemy) owing to their religion.⁶ Between 1999 and 2001, at least twenty-four Ahmadis were charged with blasphemy; if convicted, they could be sentenced to life imprisonment or death.⁷ The offenses charged in-

3. See, e.g., Editorial, *Pakistan's Cruel Blasphemy Law*, N.Y. TIMES, Aug. 30, 2001, at A20. That a leading American newspaper's scrutiny of the blasphemy laws in Pakistan came but eleven days prior to September 11 illustrates the dramatic de-emphasis of Pakistan's problems after September 11.

4. See M. Nadeem Ahmad Siddiq, *Enforced Apostasy: Zabeerudin v. State and the Official Persecution of the Ahmadiyya Community in Pakistan*, 14 LAW & INEQ. 275, 279 (1995). Siddiq notes that, fundamentally, Ahmadis fall within the pale of Islam. They are followers of Mirza Ghulam Ahmad of Qadian, India, who claimed to be the same Messiah foretold by Prophet Muhammad and awaited eagerly by all Muslims. The Ahmadiyya Community meant to revive the "true spirit" and message of the Islam Muhammad effectuated, relieving it from all misconstrued or superstitious teachings that tainted Islam for fourteen centuries. The orthodox Muslims claim that Mirza Ghulam Ahmad had proclaimed himself a prophet, thereby rejecting a fundamental tenet of Islam: *Khatem-e-Nabuwat* (a belief in the "finality of Prophet Muhammad"). Ahmadis respond that Mirza Ghulam Ahmad came to illumine Islam in its pristine beauty and to reform its tainted image, as predicted by Prophet Muhammad; for Ahmad and his followers, the Arabic *Khatem-e-Nabuwat* does not refer to the finality of prophethood in a literal sense, that is, to prophethood's chronological cessation, but rather to its culmination and exemplification in Prophet Muhammad.

5. See LEONARD BINDER, RELIGION AND POLITICS IN PAKISTAN 261 (1961).

6. Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Annual Report on International Religious Freedom: Pakistan*, <http://www.state.gov/dcl/rls/irf/2002/14026.htm> (Oct. 7, 2002).

7. Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices: Pakistan*, <http://www.state.gov/drl/rls/hrrpt/2001/sa/8237.htm> (Mar. 4, 2002); Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Annual Report on International Religious Freedom: Pakistan*, http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_pakistan.html

cluded wearing an Islamic slogan on a shirt, planning to build an Ahmadi mosque in Lahore, and distributing Ahmadi literature in a public square.⁸

Ahmadis consider themselves Muslims, and yet their persecution is wholly legal, even encouraged, by the Islamic Republic of Pakistan and its leadership. As a result, thousands of Ahmadis have fled the country to seek asylum abroad. Recognizing the pervasiveness of the problem and the pressing need for action, the United States House of Representatives introduced a bipartisan resolution in February 2002 urging Pakistan to repeal both the anti-blasphemy provisions in its Penal Code and the second amendment in its constitution, which declares Ahmadis to be non-Muslims.⁹

This Article undertakes a legal analysis of the problem of persecution towards religious minorities in Pakistan. Surveying the rise of religious persecution towards the Ahmadiyya Community—including its gradual legalization—this Article makes a positive case for the repeal of the anti-blasphemy provisions in Pakistan's Penal Code. Part II explores the background and history of the persecution of Ahmadis in Pakistan with emphasis on the legal entrenchment of the anti-blasphemy provisions in Pakistan's Penal Code. Special emphasis is placed on Pakistan's state practice with respect to the protection of religious minorities, illustrating the striking slide from its initial high regard for the Universal Declaration of Human Rights, to its current defiance of emerging international norms with respect to religious liberty. Parts III and IV survey the way in which Pakistan's anti-blasphemy provisions violate both international law and prevailing international norms of religious liberty. Part V puts forth the competing policy paradigms for and against the repeal of the anti-blasphemy provisions. Finally, Part VI concludes with recommendations on how best to synthesize the policy paradigms and present a solution that is viable to both Pakistani and U.S. interests.

Two main issues underlie the following analysis: (1) whether Pakistan has violated international covenants and customary law in promulgating the anti-blasphemy provisions in its Penal Code; and (2) whether the international community can intervene on behalf of Ahmadis in Pakistan, given that the majority of Pakistan's people seem to favor the anti-blasphemy provisions currently in place. This Article concludes that both questions can be

(Sept. 5, 2000).

8. The persecution of Ahmadis is part of the widespread mistreatment of religious minorities in Pakistan under anti-blasphemy laws. Christians, for example, are also subject to severe religious persecution. A telling case concerns Ayub Masih, a Christian jailed for making favorable comments about Salman Rushdie, the author of the controversial *Satanic Verses*. A Pakistani court sentenced him to death on April 27, 1998, a year after he survived an attempt on his life during trial. The case was on appeal to the Lahore High Court when Masih's chief defender, Roman Catholic Bishop John Joseph, committed suicide outside the courtroom to protest Masih's death sentence. His act sent shockwaves through the minority Christian community across Pakistan, which protested violently against the Blasphemy Law immediately thereafter. See Dexter Filkins, *Pakistan's Blasphemy Law Under Heightened Scrutiny*, L.A. TIMES, May 9, 1998, at A1.

9. H.R. Res. 348, 107th Cong. (2002).

answered in the affirmative, and that addressing the situation of the Ahmadis through international law can enable the United States and other Western democracies to uproot militant Islam in Pakistan more effectively.

II. BACKGROUND

A. *The Emergence of Pakistan and Its Commitment to Religious Freedom*

An often misguided assumption regarding the establishment of the Islamic Republic of Pakistan is that the country emerged solely out of the Hindu-Muslim divide of the late 1940s; that is, Hindus and Muslims could not live together peacefully, separatist movements emerged, and Pakistan sprung forth as an independent Muslim country. It may be more appropriate to understand the emergence of Pakistan as a product of trans-religious phenomena: political identity, empowerment, and constitutionalism. The leading Indian Muslims of the time, led by Mohammad Ali Jinnah, articulated the idea of Pakistan as a revolutionary political experiment necessary for the subsistence of Muslim citizens. An ardent democrat, Jinnah sought a separate Muslim state, founded on consensual and pluralistic grounds, as a model of welfare, community, and popular sovereignty.¹⁰ He believed in the supremacy of the general will rather than of the religion of Islam *per se*.

Jinnah's involvement in the Muslim League Lahore, particularly the 1940 session, brought the concept of religious tolerance to the forefront of the Muslim secessionist movement. Jinnah and other concerned leaguers never felt that the political arrangement of major Muslim provinces in one single state would solve completely the struggle of Muslims and Hindus in South Asia, but they knew that Muslims in India could only gain independence by forming a sovereign and liberal Muslim state. The state they envisioned was the largest of its kind in the Muslim world at the time.¹¹

It was easy for many Muslims, however, to lose sight of Jinnah's ideals. The monolithic nature of the Indian Congress Party and British Raj, the brutal and devastating riots of 1947, and the increasingly bloody dispute in the Punjab pointed to violence as the most effective means to establish a separate Pakistan.¹² To many, absolute justice meant the establishment of a state protective of Muslims at the expense of Hindu separatists. Islamist language pervaded the provincial corridors of Hindu-Muslim India.

Jinnah did not see the founding of Pakistan as an historical aberration. His vision was based on the primacy of the people; it was a non-sectarian, non-denominational, and purely Islamic ethos.¹³ He felt that in founding Pakistan he could elevate not only the status of South Asian Muslims in the

10. IFTIKHAR H. MALIK, ISLAM, NATIONALISM AND THE WEST: ISSUES OF IDENTITY IN PAKISTAN 110 (1999).

11. *Id.* at 111.

12. See AYESHA JALAL, THE SOLE SPOKESMAN: JINNAH, THE MUSLIM LEAGUE AND THE DEMAND FOR PAKISTAN 239-40 (1985).

13. *Id.* at 216.

world, but also the status of Islam itself. In spite of the force of Muslim separatists wielding militant Islam as their weapon, Jinnah gained tremendous public support among the Muslim masses. Within the Lahore League, he sought counsel from Muslims who subscribed to his point of view.¹⁴

Three days before Pakistan's official founding, Jinnah, then president of the Constituent Assembly, spoke about the problems his people would face and the kind of cooperation necessary to alleviate them. He declared:

If you change your past and work together in a spirit that every one of you . . . is first, second and last a citizen of this State with equal rights, privileges, and obligations, there will be no end to the progress you will make. We should begin to work in that spirit, and in the course all these angularities of the majority and minority communities, the Hindu community and the Muslim community—because even as regard to Muslim you have Pathans, Punjabis, Shias, Sunnis, and so on—will vanish. To my mind, this problem of religious differences has been the greatest hindrance in the progress of India. Therefore, we must learn a lesson from this. You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the State.¹⁵

Thus, Jinnah pushed for the Muslims of Pakistan to disregard religious distinctions in politics. He reminded his audience, the Constituent Assembly, that Pakistan would assume independent statehood with the goal of creating a progressive Muslim state based on pure Islamic principles. His rhetoric was one of reconciliation, tolerance, and moderation.

The right to religious freedom was not only central to the struggle for the independent state of Pakistan in 1947; it was also an important part of a larger worldwide debate over human rights at that time. Indeed, as Muslims fought for an independent Pakistan, the UN General Assembly fought to construct a universal norm for protecting freedom of religion with the Universal Declaration of Human Rights ("UDHR"), passed in 1948. During a drafting session of the UDHR, representatives from Saudi Arabia and Pakistan quarreled as to whether freedom of conscience and freedom to change one's religion, as outlined in Articles 18 and 19 of the UDHR, were recognized under Islamic Law (or the *Shari'a*). The Saudi representative expressed his vehement opposition against the inferred right to change one's religion under *Shari'a*, calling the Articles a product of Western thinking. Muhammad

14. He found one such person in Muhammad Zafrullah Khan: an Ahmadi, a prominent member of the Governor-General's Legislative Council, a justice of the Supreme Court of India, and a staunch proponent of reconciling the creation of Pakistan with fundamental Quranic teachings on governance and liberty. Khan was later knighted by the Queen of England.

15. Mohammad Ali Jinnah, Address at the Karachi Club (Aug. 11, 1947), available at http://www.pakistan.org/pakistan/legislation/constituent_address_11aug1947.html (last visited Feb. 11, 2003).

Zafrullah Khan, the Pakistani representative to the session, Pakistan's first foreign minister, and an Ahmadi, hailed the adoption of the articles as an "epoch-making event" and considered them entirely consistent with Islam's emphatic denunciation of compulsion in religion.¹⁶ Re-asserting Jinnah's ideals, Khan said the following to the General Assembly at the occasion of the adoption of Article 18 of the UDHR:

Pakistan is an ardent defender of freedom of thought and belief and of all the freedoms listed in Article 18. For the Pakistani delegation, the problem had a special significance as some of its aspects involved the honor of Islam The Muslim religion unequivocally claims the right to freedom of conscience and has declared itself against any kind of compulsion in matters of faith or religious practices.¹⁷

The colloquy was a window into Pakistan's deep and open commitment to the UDHR, in particular its provisions for freedom of religion and conscience.

Before partition, Muslims were themselves a religious minority in India and wanted the Constitution of India to include safeguards for their protection. As late as the months preceding partition, the All India Muslim League ("AIML") negotiated with the Indian Congressional Party for constitutional protections for the large number of Muslims who would remain in Hindu majority areas in India post partition. In exchange, AIML was prepared to offer similar protections to non-Muslims who would remain in the territory of the new Pakistani state.¹⁸ Continuing Jinnah's work of championing minority rights, Pakistan's founding documents reflect that the protection of religious minorities under a separate Muslim state was of prime significance. Pakistan's original 1956 constitution outlined in clear terms the right of each citizen to profess, practice, and propagate his religion (Article 20), to attend school freely without religious instruction (Article 22), to enjoy places of public entertainment without religious discrimination (Article 26), to qualify for appointment in the service of Pakistan without religious discrimination (Article 27), and to preserve and promote his own language, script, or culture without religious discrimination (Article 28). These provisions had their roots in Articles 1(3) and 55(c) of the UN Charter,¹⁹ which emphasize non-discrimination on the basis of religion, and in

16. See Tayyab Mahmud, *Freedom of Religion and Religious Minorities in Pakistan: A Study of Judicial Practice*, 19 FORDHAM INT'L L.J. 4086 (1995); see also MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 168 (2001).

17. Quoted in DAVID LITTLE ET AL., HUMAN RIGHTS AND THE CONFLICT OF CULTURES: WESTERN AND ISLAMIC PERSPECTIVES ON RELIGIOUS LIBERTY 37 (1988).

18. See Mahmud, *supra* note 16, at 52-53. One might even argue that the protection of religious minorities was itself the catalyst for partition.

19. See U.N. CHARTER art. 1, para. 3; U.N. CHARTER art. 55, para. c.

Article 18 of the UDHR,²⁰ the language of which tracks Article 20 of Pakistan's constitution.²¹

B. The Fundamentalist Surge and the History of Ahmadi Persecution

The building of a secular and inclusive state in Pakistan proved difficult in the face of rising religious fundamentalism. For Pakistan outwardly to manifest its solidarity with the international community with respect to freedom of religion was easier than for its *ulama* or "religious leadership," consisting of the class of orthodox Muslim clerics, to agree with this vision of freedom. Religious fundamentalists recognized that the persecution of Hindus was too obvious a breach of Pakistan's constitutional rights protections to escape censure from the international community. A more subtle form of persecution under law, however, would attract less attention; thus Pakistani fundamentalists used the platform of the excommunication of Ahmadis, members of a "fake Muslim community," as a pretext to maintain their hegemony.²² They used Pakistan's constitution as their political weapon of choice.

In March 1949, the first Constituent Assembly of Pakistan introduced the so-called Objectives Resolution, which relied heavily on the UDHR, pledging that Pakistan's first constitution would make adequate provision for non-Muslims to enjoy full religious freedom.²³ Soon after the Objectives Resolution was passed into law by Pakistan's General Assembly, the *Majlis-e-Ahrar-e-Islam* (Ahrar), a Muslim separatist movement, began to engage in anti-Ahmadi agitation. On May 1, 1949, Ahrar activists made their first public demand that Ahmadis be declared a non-Muslim minority. The Ahrar insisted that Khan be removed from his position in the cabinet, along with all other Ahmadis in public service. They also accused members of the Ahmadiyya Community of conspiring with India (and particularly remnants of the British regime) against Pakistan's Sunni population. The Ahrar opposition movement climaxed during the peak of the Punjab disturbances. The

20. See Universal Declaration on Human Rights art. 18, G.A. RES. 217A (III), U.N. Doc.A/811 (1948), *reprinted in* SUPPLEMENT OF BASIC DOCUMENTS TO INTERNATIONAL LAW AND WORLD ORDER 377 (Burns H. Weston et al. eds., 3d ed. 1997) [hereinafter DOCUMENT SUPPLEMENT].

21. See PAK. CONST., art. 20. "Subject to law, public order and morality:—(a) every citizen shall have the right to profess, practise and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions."

22. "[The Ahrar's] enmity of the Ahmadis extended over almost a quarter of a century, and . . . it can be said with absolute certainty that now the Ahrar brought the anti-Ahmadiyya controversy out of their old armoury purely as a political weapon . . . [I]f [the Ahrar] could arouse public feeling and the masses against the Ahmadis, nobody would dare oppose them and . . . the more the opposition to this activity of theirs, the more popular they would become." LAHORE HIGH COURT, REPORT OF THE COURT OF INQUIRY CONSTITUTED UNDER PUNJAB ACT II OF 1954 TO ENQUIRE INTO THE PUNJAB DISTURBANCES OF 1953 257 (1954). For an ethnographic discussion of the effects of labeling on Ahmadis in Pakistan, see ANTONIO R. GUALTIERI, CONSCIENCE AND COERCION: AHMADI MUSLIMS AND ORTHODOXY IN PAKISTAN (1989).

23. See JAVAID REHMAN, THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS 143 (2000).

Ahrar, knowing the disturbances would carry to Karachi, pressured Governor-General Khwaja Nazimuddin to remove Khan from office on the pretext that this would protect Karachi from the ensuing violence of the unrest in Punjab. In the midst of this tense situation, Khan delivered a speech before the Anjuman Ahmadiyya at Jahanghir Park, Karachi, on May 18, 1952. Immediately after his speech Khan resigned from the powerful Basic Principles Committee, a governmental agency that ensured the application of Islamic principles in everyday governmental practice.²⁴

Increasingly, Muslim fundamentalist groups turned away from their position that the very creation of Pakistan was *per se* un-Islamic, and began to pressure government officials to transform the country into an Islamic theocracy. The leader of this new struggle was Maulana Maududi, head of Jama'at-i-Islami (Party of Islam), an Islamic revivalist fundamentalist movement. Maududi sought to unify Pakistani Muslims under the common cause of excommunicating Ahmadis from Pakistan.²⁵ The ruling Muslim League Party opposed both the idea of creating a theocracy in Pakistan and the "theo-democratic" activities of Jama'at-i-Islami. The government's ensuing crackdown on the Jama'at-i-Islami resulted in violent demonstrations by Maududi's movement against Ahmadis in 1953. The Pakistani government condemned these anti-Ahmadi demonstrations as a threat to public order. Thus, at least until 1953, because it disagreed with the Jama'at-i-Islami on the creation of a theocratic state, and because of the close association of the Jama'at-i-Islami with the anti-Ahmadi movement, the government treated anti-Ahmadi speeches as attacks on its policies.²⁶

By 1954, it became clear that the government was giving ground to the fundamentalists. The Pakistani *ulama* used Ahrar propaganda as a basis to launch a unified campaign against Ahmadis.²⁷ For the next two decades, Ahmadis would face severe attacks on their properties and businesses; the *ulama* treated Ahmadis not only as non-Muslims, but also as threats to Islam. The "Islamization" of Pakistan's constitution received its first major push in 1962 when the *ulama* and the Advisory Council for Islamic Ideology added a "repugnancy clause" to the constitution: "No law shall be repugnant to the teachings and requirements of Islam as set out in the Qur'an and Sunnah [actions of the Holy Prophet], and all existing laws shall be brought into conformity therewith."²⁸ The shift towards the strict constitutional im-

24. See BINDER, *supra* note 5, at 262.

25. See Siddiq, *supra* note 4, at 284.

26. See *id.* at 285. The cause of the 1953 disturbances against Ahmadis was put to judicial inquiry. Justice Muhammad Muneer and Justice M. R. Kiyani of the Lahore High Court issued a 387-page document, known later as the Muneer Inquiry Report, that rebuked the politically motivated goals of Muslim fundamentalist groups apparent in the anti-Ahmadi disturbances. The Report undermined persecution movements against Ahmadis in 1953. See Mahmud, *supra* note 16, at 66-68; see also LAHORE HIGH COURT, *supra* note 22.

27. See Siddiq, *supra* note 4, at 285-86.

28. PAK. CONST., pt. IX, art. 227.

plementation of the *Shari'a* was partly a result of the 1958 military coup, which indirectly stifled secularist movements within Pakistan.

Pakistan's reformation of its constitution under the strictures of the *Shari'a* has resulted in a steady deterioration of the rights protections found therein.²⁹ Nowhere was this more evident than in the 1974 amendment to the constitution. After a bloody civil war and the separation of Bangladesh from Pakistan in 1971, the National Assembly approved a new constitution in 1973, portions of which embodied the legal and political machinery of the *Shari'a* as espoused by the orthodox religious clergy. The *ulama* indoctrinated Pakistan's masses, arguing that there was an inherent danger in affording too much political autonomy to religious minorities whose very existence undermined Islamic ideology.³⁰ In 1974, a new wave of anti-Ahmadi disturbances spread across Pakistan. Having made significant gains in their twenty-year political struggle for an Islamic theocracy, members of the *ulama* saw the disturbances as their opportunity to pressure Prime Minister Zulfikar Ali Bhutto to declare Ahmadis as non-Muslims. Under Bhutto's leadership, Pakistan's parliament introduced Articles 260(3)(a) and (b), which defined the term "Muslim" in the Pakistani context and listed groups that were, legally speaking, non-Muslim.³¹ The goal of this constitutional amendment was to bring some of Pakistan's remaining progressive constitutional provisions under the purview of the *Shari'a*. Put into effect on September 6, 1974, the amendment explicitly deprived Ahmadis of their identity as Muslims.³²

In early 1978, General Mohammad Zia-ul-Haq, now safely installed as president after a coup overthrowing Bhutto, pushed through parliament a series of laws that created a separate electorate system for non-Muslims, including Ahmadis.³³ In 1980, under President Zia-ul-Haq's leadership, the

29. See Mahmud, *supra* note 16, at 45.

30. See David F. Forte, *Apostasy and Blasphemy in Pakistan*, 10 CONN. J. INT'L L. 27, 35–36 (1994). "The political power of religious radicals comes from their ability to mobilize the passions of the lower middle classes in the cities by conjoining the ideology of nationalism with the xenophobia and legalistic positivism of militant Islam." *Id.* at 35.

31. See PAK. CONST. PT. XII, ch. 5, arts. 260(3)(a), 260(3)(b). "Muslim means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe, or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or any description whatsoever, after Muhammad (peace be upon him)." Subsection (b) reads: "'Non Muslim' means a person who is not a Muslim and includes a person belonging to the Christians, Hindus, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or Lahori Group (who call themselves 'Ahmadis' or by any other name) or a Bahai, and a person belonging to any of the Scheduled Castes."

32. In addition to the constraints the amendment placed on Ahmadis, it also called for the nationalization of Christian schools, so that the influence of private Christian groups was radically reduced.

33. Approximately 92% of Pakistan's 140 million people are Muslim. The remaining 8% constitute roughly four million Christians, four million Hindus, Jews, Sikhs, Zoroastrians, and Bahais, and four million Ahmadis. Election reform legislation in 1978 provided for separate electorates for non-Muslims in the National and Provincial Assemblies. Only 10 of the 211 seats in parliament are reserved for minority candidates. Members of minority religions may only vote for candidates in their local districts from a list of minority candidates. As a result, 95% of the nation may vote for candidates based on their geographic locality, while the remaining 8% must vote for roughly 5% of parliamentary seats regardless

Federal Shariat Court was created and given jurisdiction to examine any existing law to ensure it was not repugnant to Islam.³⁴

In 1984, Pakistan's constitution was amended yet again. Seeking to solidify the place of the *Shari'a* within the legal order, President Zia-ul-Haq issued a presidential order to parliament asking that the constitution be amended in such a way that the original Objectives Resolution of 1949 would take on a new substantive force. Thus, the key provision of that Resolution, which stated that "Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Qu'ran and Sunnah,"³⁵ became embedded in the text of the constitution. A further amendment proposed, but never passed, later that same year would have strengthened this provision by adding the following: "The injunctions of Islam as laid down in the Holy Qur'an and Sunnah shall be the supreme law and source of guidance for legislation to be administered through laws enacted by the parliament and provincial assemblies, and for policy making by the government."³⁶ The essential purpose and effect of the two amendments was to establish the supremacy of the *Shari'a* over the constitution itself. That is to say, questions of constitutional interpretation could only be answered in line with the *Shari'a*.

of their geographic locality. The division of the electorate has serious implications. Perhaps most obvious is that majority Muslim candidates have no incentive to appeal to religious minorities. The influence of religious minorities being negligible, majority Muslim candidates have no political obligation to push for the civil liberties of religious minorities in parliament. For a long time, the Pakistani National Assembly based its representation for religious minorities on 1981 census figures. The census figure of Ahmadis represented in the National Assembly, for example, was 104,244, only 2.6% of the actual Ahmadi population in Pakistan. Moreover, non-Muslims have no representation whatever in the senate and federal cabinet. Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Annual Report on International Religious Freedom: Pakistan*, *supra* note 7. Political persecution of Ahmadis emanates from their political disenfranchisement. In order to cast their votes for minority candidates, non-Muslims must register on the "non-Muslim" electoral rolls. Ahmadis, however, base their entire ideological foundation on Islam and profess to be true Muslims. To register as non-Muslims demeans their faith and compromises their ethical standards. Ahmadis cannot register as Muslims without facing severe legal consequences, including fines and imprisonment. The result is a glaring infringement on freedom of conscience, as protected by the UDHR and international human rights law. Ahmadis are psychologically paralyzed when filling out electoral ballots to the extent that they rarely vote in Pakistan's elections. *See, e.g.,* Barbara Crosette, *Pakistan's Minorities Face Voting Restrictions*, N.Y. TIMES, Oct. 23, 1990, at A5; David Lamb, *Non-Muslims in Pakistan Seek a Political Voice*, L.A. TIMES, Jan. 13, 2002, at A9. On February 27, 2002, President Musharraf issued Chief Executive's Order No. 7 of 2002 (Conduct of General Elections Order), which called for the elimination of the separate electoral system. Non-Muslim minorities and Ahmadis hailed the Order as a step towards true democracy in Pakistan. On June 17, 2002, however, Musharraf passed a series of amendments to the original Order, which stated explicitly that the "[s]tatus of Ahmadis [was] . . . to remain unchanged" (Section 7-B). The striking result is a joint electoral roll with the names of eligible voters (Muslims and non-Muslims alike), but with no Ahmadis.

34. *See* Forte, *supra* note 30, at 37. By 1986, the Federal Shariat Court had invalidated fifty-five federal laws and 212 provincial laws as being contrary to Islam.

35. *See* PAK. CONST., art. 2(A) (made part of constitution by Presidential Order No. 14 (1985)).

36. *See* PAK. CONST., amend. IX, Bill section 2 of 1985 (an unadopted proposal to amend Pak. Const. of 1973).

As a result of these amendments, the Federal Shariat Court, accorded wide discretionary power, became the state's legal instrument to legitimize subsequent criminal ordinances passed by parliament. These ordinances included five that explicitly targeted religious minorities: a law against blasphemy; a law punishing the defiling of the Qur'an; a prohibition against insulting the wives, family, or companions of the Prophet of Islam; and two laws specifically restricting the activities of Ahmadis.³⁷ On April 26, 1984, Zia-ul-Haq issued these last two laws as part of Martial Law Ordinance XX, which amended Pakistan's Penal Code and Press Publication Ordinance Sections 298-B and 298-C. Ordinance XX undercut the activities of religious minorities generally, but struck Ahmadis in particular. For fear of being charged with "indirectly or directly posing as a Muslim," Ahmadis could no longer profess their faith, either verbally or in writing. Pakistani police destroyed Ahmadi translations of the Qur'an and banned Ahmadi publications, the use of any Islamic terminology on Ahmadi wedding invitations, the offering of Ahmadi funeral prayers, and the displaying of the *Kalima* (the principal creed of a Muslim) on Ahmadi gravestones. In addition, Ordinance XX prohibited Ahmadis from declaring their faith publicly, propagating their faith, building mosques, or making the call for Muslim prayers. In short, virtually any public act of worship or devotion by an Ahmadi could be treated as a criminal offense.³⁸

In *Mujibur Rahman v. Government of Pakistan*, the Federal Shariat Court was asked to exercise its jurisdiction under Article 203D of the constitution

37. See PAK. PENAL CODE §§ 298B, 298C (collectively referred to as Ordinance XX). According to § 298B:

- (1) Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or any other name) who by words, either spoken or written, or by visible representation
 - a. refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (*peace be upon him*), as 'Ameer-ul-Mumineen,' 'Khalifat-ul-Mumineen,' 'Kilafat-ul-Muslimeen' 'Sahaabi' or 'Razi Allah Anaho';
 - b. refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (*Peace be upon him*), as 'Ummul-Mumineen';
 - c. refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (*peace be upon him*), as Ahle-bait; or
 - d. refers to, or names, or calls, his place of worship as Masjid;
 shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.
- (2) Any person of the Qadiani group or Lahori group (who call themselves as 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as 'Azan' or recites Azan as used by Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

According to § 298C:

Any person of the Qadiani group or Lahori group (who call themselves 'Ahmadis' or by any other name), who, directly or indirectly, poses himself as a Muslim, or calls or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

38. See Siddiq, *supra* note 4, at 288–89.

to rule whether or not Ordinance XX was contrary to the injunctions of the Qur'an and *Sunnab*. The court upheld the validity of Ordinance XX and ruled that parliament had acted within its authority to declare Ahmadis as non-Muslims. Ordinance XX, the court maintained, merely prohibited Ahmadis from "calling themselves what they [were] not," namely Muslims.³⁹

With the passage of the Criminal Law Act of 1986, parliament advanced Ordinance XX's severe restrictions. The "Blasphemy Law," as the Act came to be referred to, amended Section 295-C of the Pakistan Penal Code by raising the penalty against blasphemy from fine or imprisonment to death.⁴⁰ Because the Ahmadi belief in the prophethood of Mirza Ghulam Ahmad was considered blasphemous insofar as it "defiled the name of Prophet Muhammad,"⁴¹ Zia-ul-Haq and the Pakistani government institutionalized the persecution of Ahmadis in Pakistan with Section 295-C. The mere existence of practicing Ahmadi Muslims could be considered blasphemous and punishable by death.

On July 3, 1993, the Supreme Court of Pakistan dismissed eight appeals brought by Ahmadis who were arrested under Ordinance XX and Section 295-C. The collective complaint in the case, *Zabeerudin v. State*,⁴² was that the 1984 Ordinance violated the constitutional rights of religious minorities. The court dismissed the complaint on two main grounds. First, the court held that Ahmadi religious practice, however peaceful, angered and offended the Sunni majority in Pakistan; to maintain law and order, Pakistan would, therefore, need to control Ahmadi religious practice. Second, Ahmadis, as non-Muslims, could not use Islamic epithets in public without violating company and trademark laws. Pakistan, the court reasoned, had the right to protect the sanctity of religious terms under these laws and the right to prevent their usage by non-Muslims. The court also pointed to the sacredness of religious terms under the *Shari'a*. By directly comparing the Ahmadis to the controversial author Salman Rushdie as a way of underscoring the risk to public safety, this decision ironically endorsed violence against the Ahmadiyya Community.⁴³ The ruling further entrenched the

39. See *Mujibur Rehman v Gov't of Pakistan*, 1985 S.D. Vol. II (Fed. Shariat Court) 382, 473 (Pak.).

40. See PAK. PENAL CODE § 295C (part of the Criminal Law Amendment Act of 1986, which amended the punishments enumerated in §§ 298B and 298C to include death). "Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (*peace be upon him*) shall be punished with death, or imprisonment for life, and shall be also liable to fine."

41. See *id.*

42. *Zabeerudin v. State*, 26 S.C.M.R. 1718 (S.Ct. 1993) (Pak.). *Zabeerudin v. State* was a 4-1 ruling led by Justice Abdul Qadeer Chaudhry, holding that Ordinance XX was in accord with statutes and judicial opinions in England and the United States that protect religious freedom; the majority erroneously cited legal precedent from both jurisdictions as false support. For an extended treatment of the case and its misapplication of American judicial precedent, see Siddiq, *supra* note 4.

43. Note that Ahmadis believe in retaliation only as a matter of necessary self-defense. The spiritual leader of the worldwide Ahmadiyya Community at the time of the passage of the 1974 amendment, Mirza Nasir Ahmad, voiced no official opposition against it, nor did he encourage his members to rebel

anti-Ahmadi ordinances by giving the government power to freely punish Ahmadi religious practice as apostasy.⁴⁴

In the wake of the *Zabeerudin* decision, the number of religious minorities arrested and charged with blasphemy increased dramatically.⁴⁵ Provincial-level ordinances restricting the democratic activity of Ahmadis proliferated. In 1999, for example, the Punjab Provincial Assembly, with the backing of the Federal Shariat Court, unilaterally decided to change the name of the Ahmadi-founded and ninety-eight percent Ahmadi-populated village of *Rabwah* (an Arabic word meaning "higher ground" used reverentially in the Qur'an) to *Chenab Nagar* (an Urdu phrase used pejoratively in Pakistan meaning "Chenab river village") and infiltrated its housing projects with non-Ahmadi settlements in an effort to transform permanently the composition of the village itself.⁴⁶

Since October 1999, the emergence of President Musharraf has brought about substantial changes in Pakistan's internal political structure, but little in its legal structure. Although President Musharraf combated the corruption of past leaders, particularly that of former Prime Minister Nawaz Sharif, increased the number of seats in parliament for minority candidates,⁴⁷ called for the holding of general elections free from past campaign finance corruption,⁴⁸ and facilitated an immediate and active partnership with the United States in the war against terrorism, he failed to take action against the legal persecution of religious minorities. In fact, Musharraf and other government officials refuse even to discuss repeal of the anti-blasphemy provisions; the perceived tenets of the *Shari'a* render the matter moot.⁴⁹ With the recent parliamentary gains by fundamentalist groups in Pakistan, the prospect of reform appears even less likely.

against the laws. Likewise, Mirza Tahir Ahmad, the spiritual leader of the Ahmadiyya Community at the time of the passage of Ordinance XX and the Blasphemy Law, encouraged tolerance against oppressive Muslims. The explicit purpose behind the anti-Ahmadi ordinances, that is, to quell the Ahmadi threat, appears irrational when placed in the context of Ahmadi non-retaliatory conduct.

44. See Siddiq, *supra* note 4, at 286.

45. Seventeen blasphemy cases, resulting in one conviction, were registered against Ahmadis in the first nine months of 1994. Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, *Annual Report On Human Rights Abuses: Pakistan*, http://www.state.gov/www/global/human_rights/drl_reports.html (Feb. 1995).

46. See REHMAN, *supra* note 23, at 153.

47. In January 2002, Musharraf added new seats in the National Assembly, reserved sixty seats for women, and ended a system in which non-Muslims had to run separately for a limited number of reserved seats. See Mohamad Bazzi, *Musharraf Pledges October Elections*, *NEWSDAY* (New York), Jan. 25, 2002, at A34 (Musharraf added 350 new seats and set aside 60 parliamentary seats for women); Erik Eckholm, *Leader Plans Open Election for Pakistan in October*, *N.Y. TIMES*, Jan. 25, 2002, at A6 (Musharraf ended non-Muslim discrimination in electoral practices).

48. See Eckholm, *supra* note 47, at A6.

49. This is especially compelling given that Pakistan's constitution had been suspended for reexamination immediately after the October 1999 military coup. See Celia W. Dugger & Raja Zulfikar, *Pakistan Military Completes Seizure of All Authority*, *N.Y. TIMES*, Oct. 15, 1999, at A1.

III. THE ANTI-BLASPHEMY PROVISIONS UNDER INTERNATIONAL LAW

A. *The UN Charter and the Universal Declaration of Human Rights*

Given Pakistan's once staunch advocacy of Article 55(c) of the UN Charter and Article 18 of the UDHR, it is striking that it should so clearly circumvent them in its promulgation and constitutionalization of Ordinance XX and the Criminal Law Act of 1986. Where Article 18 guarantees the right to "freedom of thought . . . and to manifest this [thought] in . . . community with others and in public or private, in teaching, practice, worship and observance," Ordinance XX subjects one who thinks critically about the Holy Prophet Muhammad and manifests this thought "by words, either spoken or written, or by visible representation," or "any person . . . who calls himself or herself Ahmadi . . . and calls or refers to his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words either spoken or written, or by visible representations in any manner whatsoever that outrages the religious feelings of Muslims" to "imprisonment . . . and fine." Moreover, Section 295-C of the Pakistan Penal Code, in its 1986 amended form, undermines completely the crucial right to manifest one's beliefs and goes so far as to punish the exercise of this right with capital punishment, particularly as it relates to Ahmadis.

Pakistan's state practice establishing the hegemony of a strict interpretation of the *Shari'a* makes such a glaring circumvention of an international declaration it formerly supported less surprising, though no less disturbing. As one of only a few Muslim countries to accept fully the provisions of the UDHR, it is ironic that Pakistan would endorse a proposition, advanced by Saudi Arabia, that it once condemned vociferously: that freedom of conscience is antithetical to the *Shari'a*. The irony is both tragic and fatal, for under a less strict interpretation of the *Shari'a*, Pakistan's state practice holds no logic. Pakistan attaches a temporal penalty to apostasy, something the Qur'an, the primary informant of the *Shari'a*, labels a spiritual offense.⁵⁰ The presumption that the state should assess the truthfulness of a believer is equally contrary to Quranic injunction.⁵¹

50. A primary verse of the Qur'an that proponents of Pakistan's anti-blasphemy provisions cite is Chapter 3, Verse 86: "And who so seeks a religion other than Islam, it shall not be accepted from him, and in the life to come he shall be among the losers." THE HOLY QUR'AN, translated by Maulawi Sher Ali, 3:86. Even a strict and literal interpretation of the above verse places any sort of punishment for apostasy squarely in the "life to come" or hereafter, that is, it is a spiritual offense punished by God alone and not an offense that requires physical punishment. For a detailed discussion of the significance of blasphemy under Islamic Law, see Donna E. Arzt, *Heroes or Heretics: Religious Dissidents Under Islamic Law*, 14 Wis. INT'L L.J. 349 (1996).

51. Though doctrinally difficult to grasp, the concept of separation of religion and state is not fundamentally antithetical to Islam. It suffices here to mention that the Qur'an stresses that an individual's spiritual destiny is strictly between God and that person, without interference from an outside person or state. That is to say, true religious belief requires both intense personal commitment and individual consent. In reference to the Muslims' treatment of non-believing Arabs during the Prophet Muhammad's time, Chapter 6, Verse 108 of the Qur'an reads: "And if Allah had enforced His Will, they [the non-believing Arabs] would not have set up gods with Him. And We have not made thee a keeper over them,

B. *The International Covenant on Civil and Political Rights*

Article 18 of the UDHR arguably became a peremptory norm of international law in 1966 with the passing of Articles 18, 19, 20, and 27 of the International Covenant on Civil and Political Rights ("ICCPR"). The covenant concretized the basic freedoms of religion and conscience articulated in the UDHR and made its signatories legally bound by it. In addition to prohibiting state coercion that would impair a person's freedom to practice or adopt a religion or belief of one's choice, the ICCPR also prohibits states from denying religious minorities the right, in community with other group members, to enjoy their own culture, profess or practice their own religion, or to use their own language.⁵² These rights are non-derogable except if the interests of public safety, order, health or morals, or the fundamental rights and freedoms of others, if prescribed by law, justifies their limitation.

Though Article 18 of the UDHR was a resounding declaration of religious freedom, without the backing of the ICCPR it lacked the force of a binding legal instrument. The ICCPR's long drafting period encompassed eighteen years of wrestling with issues the UDHR did not expound upon, including religious conversion, proselytism, and the tension between universal human rights and cultural relativism.⁵³ The durability and universalizability of the precepts of the ICCPR were evident in its implementation ten years after its formulation in 1976. One-hundred and twenty-five countries, including twenty-three Muslim states, ratified the Covenant.⁵⁴

Twenty-seven years after the Covenant's introduction, the UN Human Rights Committee issued a General Comment describing the state of international norms of religious freedom at that time.⁵⁵ The Comment described

nor art thou over them a guardian." THE HOLY QUR'AN, translated by Maulawi Sher Ali, 6:108. Chapter 10, Verse 100 reads: "And if thy Lord had enforced His will, surely, all who are on the earth would have believed together. Wilt thou, then, force men to become believers?" THE HOLY QUR'AN, translated by Maulawi Sher Ali, 10:100. From the verses, one can see how the case of the non-believing Arabs was not with humankind, but with God. They were immune from punishment, compulsion, and other civil disabilities in relation to their religion and practices. In pure Islamic teaching, it is irrational for an outside person or state to determine the fate of non-Muslims because it is tantamount to associating partners with God, which for a Muslim is the most egregious sin man can commit. See THE HOLY QUR'AN, translated by Maulawi Sher Ali, 4:49. Pakistan's legal persecution of Ahmadis, understood in this light, is contrary to these verses of the Qur'an.

52. See International Covenant on Civil and Political Rights, arts. 18, 27, G.A. Res. 2200A (XXI), U.N. GAOR 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 1976), reprinted in DOCUMENT SUPPLEMENT, *supra* note 20, at 440, 441.

53. See Natan Lerner, *The Nature and Minimum Standards of Freedom of Religion or Belief*, 2000 B.Y.U. L. REV. 905, 914 (2000).

54. See Arzt, *supra* note 50, at 358. Though considered one of the most important human rights instruments in the world, the ICCPR has not yet reached the status of customary law. Makau Wa Mutua argues, for example, that the ICCPR is "mainly a repetition and elaboration of the rights and processes that liberal democracies have evolved" and an "attempt[] to universalize civil and political rights accepted or aspired to in Western liberal democracies." See Makau Wa Mutua, *The Ideology of Human Rights*, 36 VA. J. INT'L L. 589, 604n.39, 606 (1996).

55. See the U.N. Human Rights Committee, General Comment adopted under art. 40, para. 4, of the ICCPR, U.N. Doc. CCPR/C/21/Rev. 1/Add. 4 (1993).

how international law recognized twelve non-derogable core rights, including the right to freedom of religion and prohibition of discrimination on the basis of religion. Even the key right of the freedom to manifest one's religion, which customary international human rights law recognizes as derogable, has adequate safeguards built around it.

In 1984, thirty-one international law experts from seventeen countries met in Siracusa, Italy, to consider the ICCPR's Article IV limitation and derogation provisions.⁵⁶ The Siracusa Principles on the Limitations and Derogation in the ICCPR clarify that any limitation imposed on one's freedom to manifest one's religion, or on other derogable rights in the Covenant, must be justifiably necessary and must constitute a response to a pressing public or social need, pursue a legitimate governmental purpose, and be appropriate to that purpose.⁵⁷ States face a number of restrictions if they choose to place a domestic legal limitation on a right protected in the ICCPR, including prohibitions against laws that are vague, arbitrary, or unreasonable in content or application, and laws that discriminate expressly on the basis of religion. Fundamentally, domestic legal systems must grant protections at least equal to those specified under international law.⁵⁸

Pakistan is not a signatory to the ICCPR; in particular, it could not endorse Articles 18, 19, 20, and 27. Pakistan's state practice, as mentioned above, involved the ascendancy of the *Shari'a* and devolution from its fundamental acceptance of religious freedom in its founding era. Ironically, Pakistan's distinguished jurists contributed to the *opinio juris* in Pakistan that regards the ICCPR as an affirmation of international human rights norms. Commenting on the relevance of international human rights law to common law jurisdiction in Pakistan, Justice Muhammad Haleem, then Chief Justice of Pakistan, at the Bangalore Colloquium in 1988,⁵⁹ exclaimed:

All rules of general international law created for humanitarian purposes constitute *jus cogens*. A valid domestic jurisdiction defense can no longer be founded on the proposition that the manner in which the state treats its own national is *ipso facto* a matter

56. See The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, *reprinted in* 7 HUMAN RIGHTS Q. 1, 1 (1985).

57. *Id.* at 4.

58. *Id.* at 5, 9–10. The Siracusa Principles define "public safety" as protection "against danger to the safety of persons . . . or their physical integrity, or serious damage to their property" and define "public order" as the "sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded." A limitation for the protection of "public morals" must be "essential to the maintenance of respect for the fundamental values of the community." *Id.* at 5–6.

59. In 1988, the British Commonwealth Secretariat initiated a series of judicial colloquia to promote the domestic application of international and regional human rights norms. The first colloquium took place in Bangalore, India, from which emerged the Bangalore Principles, which called for the creative and consistent development of human rights jurisprudence throughout the British Commonwealth. See <http://www.thecommonwealth.org/gender/whatwedo/activities/humanrights/regjudcoll.htm> (last visited Feb. 12, 2003).

within its domestic jurisdiction . . . because a matter is essentially within the domestic jurisdiction of the state only if it is not regulated by international law. In the modern age of economic and political interdependence, most questions which, on the face of it, appear to be essentially domestic ones are, in fact, essentially international. . . . The international human rights norms are in fact part of the constitutional expression of the liberties guaranteed at the national level. The domestic courts can assume the task of expanding these liberties. . . . The present thinking at the international level supports an expanded role of domestic courts for the observance of international human rights norms. This reappraisal enables domestic courts to extend to citizens via state constitutions, greater protection of internationally recognized rights.⁶⁰

That the Supreme Court of Pakistan would declare Ordinance XX constitutional only five years later in *Zabeerudin* is troubling because in so doing, Pakistan violated Article 18 of the ICCPR. To mar the consciences of Ahmadis by foreclosing their right to profess and practice their interpretation of Islam is a breach of Article 18's instruction that "no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his own choice."⁶¹ Though the Court in *Zabeerudin* did not directly invoke the Article IV limitations to derogable rights, the majority justices used a public order argument akin to these limitations in their justification for upholding the constitutionality of Pakistan's anti-blasphemy provisions. By witnessing their faiths, the Court argued, Ahmadis inherently blasphemed Islam; if the government allowed the public declaration of their faiths, each Ahmadi would become a "state-crafted Salman Rushdie."⁶² Thus, the anti-blasphemy provisions were not only constitutional, but also fully consistent with the limitations to the rights enumerated in the ICCPR, insofar as they restricted Ahmadi activities for the sake of protecting public morals, maintaining public order, and preserving the integrity of Islam as Pakistan's official state religion.⁶³

For the Supreme Court of Pakistan to analogize the Ahmadi population to Salman Rushdie is to suggest that Ahmadis pose a threat to national security (more specifically, the security of the *Shari'a*), which the General Comment to the ICCPR specifically forecloses as a legitimate exception to a non-

60. Muhammad Haleem, *Domestic Application of Human Rights Norms*, in IV DEVELOPING HUMAN RIGHTS JURISPRUDENCE: A FOURTH JUDICIAL COLLOQUIUM ON THE DOMESTIC APPLICATION OF HUMAN RIGHTS NORMS 101 (Judicial Colloquium in Abuja, 1991).

61. ICCPR, *supra* note 52, art. 18.

62. *Zabeerudin v. State*, *supra* note 42, at 1778.

63. The Pakistani government's justification here is contrary to international norms. According to a 1993 resolution by the UN Commission on Human Rights, governments should be obligated to provide effective remedies for redress for religious groups suffering intolerance. *See, e.g.*, U.N. Commission on Human Rights, Res. 1993/25, paras. 3,5,6, U.N. Doc. E/1993/23, (1993) at 111, 112 in KAREN PARKER, RELIGIOUS PERSECUTION IN PAKISTAN: THE AHMADI CASE AT THE SUPREME COURT fn. 20 (1993), available at <http://www.webcom.com/hrin/parker/ahmadi.html> (last visited Feb. 11, 2003).

derogable right.⁶⁴ The fact that Ahmadis consistently invoke principles of non-retaliation even in the face of persecution is further indication of the absurdity of the national security argument. Moreover, Section 9 of the UN General Comment specifies: "The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its following comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including Articles 18 and 27, nor in any discrimination against adherents of other religion or non-believers."⁶⁵ Thus, the court's law and order justification is not in accordance with the express provisions of the ICCPR, the official comments, or Pakistan's *opinio juris* regarding the Covenant.

C. The UN Declaration on the Elimination of All Forms of Religious Intolerance and of Discrimination Based on Religion or Belief

With the passage of the Declaration on the Elimination of All Forms of Religious Intolerance and of Discrimination Based on Religion or Belief on November 25, 1981, the UN further alerted Pakistan to emerging customary international human rights law concerning religious freedom.⁶⁶ The UN Declaration of 1981, unlike the ICCPR, addressed restrictions on freedom of religion for religious minorities as they relate to conflicting interpretations of a single religion (i.e., intra-state and intra-religious discrimination). While affirming the basic principles of freedom of thought, conscience, religion, and belief, the Declaration of 1981 also separates "intolerance based on religion or belief" from "discrimination based on religion or belief," so that religious minorities gain virtually exhaustive protection from systemic cruelty from members of another religion, from members of a particular sect or division of the same religion, and from a state (or state religion). Thus, the six Articles in the Declaration of 1981 offer arguably the most expansive annunciation of freedom of religion. The Declaration itself was adopted without a vote in the UN: it is "soft law" designed to further the international norms the ICCPR espoused.

By circumscribing the freedom of Ahmadis to manifest their faith in Islam through written and verbal means, including the use of the *Kalima*, the *Azan* (or call for prayer), and *Assalamo-o-Alaikum* (standard greeting of a Muslim, Arabic for "peace be upon you"), Pakistan, in its promulgation of the anti-blasphemy provisions, violated Article 6 of the Declaration of 1981. Section (c) guarantees the freedom "to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a

64. See Lerner, *supra* note 53, at 915.

65. See General Comment, *supra* note 55, P9 at 4.

66. See Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981).

religion or belief,"⁶⁷ which for an Ahmadi, as it would be for any Muslim, includes the public display of the *Kalima*, the use of a loudspeaker or microphone for the *Azan*, and the use of stationery with the phrase *Assalamo-e-Alaikum* as a basic Islamic greeting. Yet these very "articles and materials" have been the subject of formal criminal charges leveled against Ahmadis.

Even more compelling than Article 6 of the Declaration of 1981 is Article 7, which sets forth a patent obligation that "the rights and freedoms set forth in the Declaration shall be accorded in national legislations in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice."⁶⁸ Because the creation of parliament was to come years later, President Zia-ul-Haq was effectively Pakistan's originator of "national legislation" at this time. It was highly unlikely that Pakistan could meet the obligation of Article 7 of the Declaration of 1981 while still maintaining the supremacy of the *Shari'a*. Thus, the passage of Ordinance XX and the Criminal Law Act of 1986, only a few years after the Declaration of 1981, can be seen as Pakistan's way of asserting, with a clenched fist, the place of the *Shari'a* in the international community and its own adherence to the *Shari'a* in its national legislation.

D. Report of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in Its Thirty-Eighth Session

In 1985, the UN Sub-Commission issued a formal statement against Pakistan's promulgation of Ordinance XX, calling for its immediate repeal and the creation of protections to prevent the mass exodus of Ahmadis.⁶⁹ Resolution 1985/21 was a succinct and powerful affirmation of the crucial principles of the UN Charter, the UDHR, and the UN Declaration of 1981. Its first paragraph expressly proclaims that the Sub-Commission's reports are "guided"⁷⁰ by the principles of these international instruments. The report condemns Ordinance XX as a "prima facie violation . . . of the right of religious minorities to profess and practice their own religion."⁷¹ It "expresses grave concern" at the Ordinance's subjection of Ahmadis to "various punishments and confiscation of personal property . . . discrimination in employment and education . . . and to the defacement of their religious property."⁷² Perhaps most importantly, Resolution 1985/21 rejects Pakistan's justification for Ordinance XX's restrictions on Ahmadis as a public safety regulation.⁷³

67. *Id.* art. 6(c).

68. *Id.* art. 7.

69. See The Situation in Pakistan, E.S.C. Res. 1985/21, reported in *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-Eighth Session*, U.N. ESCOR, 38th Sess., at 102, U.N. Doc. E/CN.4/1986/5 (1986).

70. *Id.*

71. *Id.*

72. *Id.*

73. See Siddiq, *supra* note 4, at 326-27.

Resolution 1985/21 was a sweeping reminder to Pakistan to live up to its commitment to international human rights. This commitment was not an implied one, but rather was clearly manifested by Pakistan's membership in the UN Sub-Commission for the Promotion and Protection of Human Rights, a privilege Pakistan will hold at least until 2006.⁷⁴ That Pakistan turned a blind eye to Resolution 1985/21 is yet another powerful example of its failure to honor commitments under international human rights norms.

IV. THE ANTI-BLASPHEMY PROVISIONS UNDER REGIONAL INSTRUMENTS

A. *African Charter on Human and Peoples' Rights*

Thirty African nations, including thirteen Muslim states, signed the African Charter on Human and Peoples' Rights on October 21, 1986.⁷⁵ Apart from the ICCPR, the African Charter stands as the only legally binding treaty that includes Muslim states. The sixty-two-Article Charter enshrines sweeping rights including those of free speech, association, and property. Article 8 guarantees the freedom of conscience and the profession and free practice of religion. Although Pakistan is obviously not a signatory, the Charter, along with the ICCPR, is an indicator that religious freedom can be protected in Muslim states. In targeting a particular religious group by attaching criminal penalties to the public declaration or display of an Ahmadi's faith, the anti-blasphemy provisions violate Article 8 of the Charter.

B. *Cairo Declaration on Human Rights in Islam*

The Charter of the Islamic Conference formed the Organization of the Islamic Conference ("OIC") in 1972, opening membership to every Muslim state in the world, roughly fifty in all. The Conference aimed to offer an Islamic conception of human rights and express Muslim solidarity in international human rights norms. Members of the OIC passed the Cairo Declaration on Human Rights in Islam on August 5, 1990.⁷⁶ The Declaration makes no guarantee of freedom of religion, nor offers any of the explicit safeguards found in the UDHR, ICCPR, and UN Declaration of 1981. The closest it comes to the language of the above instruments is in Article 10, which prohibits "any form of compulsion on man in order to convert him to another religion or to atheism."⁷⁷ The language of this Article resembles that of Article 18(2) of the ICCPR, which provides, "No one shall be subject to coercion which would impair his freedom to have or adopt a religion or

74. Mr. Abdul Sattar currently serves as Pakistan's delegate to the UN Sub-Commission on the Promotion and Protection of Human Rights. His alternate is Mr. Khalid Aziz Babar. See <http://www.unhcr.ch/html/menu2/2/subcmem.htm> (last visited February 12, 2003).

75. See African Charter on Human and Peoples' Rights, June 17, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev. 5 (1981), reprinted in DOCUMENT SUPPLEMENT, *supra* note 20, at 489.

76. An English translation of the Declaration is included in U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993).

77. *Id.*

belief of his choice.”⁷⁸ Where Article 18(2) prohibits compulsion as it relates to basic religious freedoms for minorities, Article 10 of the Cairo Declaration merely prohibits compulsion as it relates to conversion to a religion other than Islam or to atheism. In other words, the Cairo Declaration does little to advance international customary human rights law in the Muslim world.

The anti-blasphemy laws do not seem to run counter to the basic Articles of the Cairo Declaration. Indeed, they seem wholly consistent with them: they are laws restricting blasphemy against the Prophet of Islam in accordance with “the tenets of the *Shari’a*” and for the preservation of the “unspoiled nature” of Islam. Though, in fact, the Cairo Declaration appears as Pakistan’s best, and perhaps only, chance to justify its anti-blasphemy provisions under an extra-territorial covenant, it is important to recognize that the Declaration itself came well after the issuance of the anti-blasphemy provisions. Indeed, a retroactive attempt at reconciling legal persecution of religious minorities with the precepts of a fledgling regional instrument not endorsed by the majority of the world⁷⁹ is but a contradictory and perfunctory attempt at saving Pakistan’s once leading commitment to religious freedom while still advocating a debilitating, strictly *Shari’a*-based legal system.

V. THE ANTI-BLASPHEMY PROVISIONS AND INTERNATIONAL RELATIONS THEORY

The persecution of Ahmadis is fundamentally an issue of the legal entrenchment of restrictions on religious minorities in Pakistan. Though I argue that the issue is best resolved through international law, it nevertheless requires a deep understanding of Pakistan’s political and social milieu. Foreign policies concerning the issue would necessarily involve paradigmatic prescriptions. It is a useful exercise, therefore, to assess the issue through the lenses of various strands of international relations theory, so as to anticipate the major policy arguments for and against its resolution. Admittedly, many of these arguments cut against my own argument for the repeal of the anti-blasphemy provisions in Pakistan’s Penal Code.

78. ICCPR, *supra* note 52, art. 18 § 2.

79. For a discussion of the intractability of the Cairo Declaration as a statement of international law, see Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash With a Construct?*, 15 MICH. J. INT’L L. 307, 327–51 (1994).

*A. The Realist Paradigm*⁸⁰

A realist would argue that Pakistan's anti-blasphemy laws target only about five percent of Pakistan's total population. These laws were enacted by democratically elected officials in the National Assembly and are wholly constitutional. The majority of Pakistan's people seemingly favor a system of *Shari'a* and deem Ahmadis as non-Muslims. The United States, or any nation, should therefore treat the persecution of Ahmadis no differently than other human rights concerns around the Islamic world, that is, as a minor problem relative to the concern of maintaining the balance of power among Muslim states. Considerable deference must be paid to the central authority in Pakistan, namely President Musharraf and his appointed cabinet and justices. By intervening on behalf of oppressed religious minorities in Pakistan, some have argued, the international community would not only be violating the sovereignty of Pakistan, but also disrupting its delicate and crucial partnership in the war on terrorism.

Pakistan has endorsed only the UDHR, which is a mere moral affirmation of universal rights and has no binding force. The ICCPR, in contrast, is binding on its signatories, which does not include Pakistan. Pakistan has asserted its preference for the *Shari'a* by not endorsing the UN Declaration of 1981 and by justifying its anti-blasphemy provisions under the Cairo Declaration. A young and unstable country like Pakistan should not bind itself by the whims of its founding fathers, whose mandate was short-lived. To undermine the strictures of the *Shari'a* with an international referendum to repeal the anti-blasphemy laws would damage Pakistan's political and legal machinery, perhaps leading to the increase of violence along its borders. Such a referendum would also fail to account for the fact that Pakistan, since October 1999, and until only recently, has been essentially a military regime that solves its problems, particularly the Kashmir dispute, through military means.

The persecution of Ahmadis in Pakistan can be resolved via political means, not legal ones. To hold Pakistan to international customary human rights law as it relates to its anti-blasphemy laws is an impractical and futile pursuit because political treatment of religious dissidents is what drives the legitimacy of such laws. Rather than dealing with individual political actors within Pakistan, a more manageable approach would be to treat the nation as a unitary political actor, whose internal political insurrections are not the concern of the international community, particularly not of Western, liberal nations. Of greater concern is who controls Pakistan's central authority, how best to deal with that authority, and how to preserve Pakistan's powerful

80. Considered the dominant approach to international relations theory, the realist paradigm identifies the state as the only crucial actor in international politics. International norms reflect power relations among states, and a state's given policy is driven by its gains relative to other states. The essential goal of a state is to survive by maintaining or enhancing its own power. See ANNE-MARIE SLAUGHTER, INTERNATIONAL LAW AND INTERNATIONAL RELATIONS 9-14 (2000).

alliance with the West against other, more volatile, Muslim states in the region and the world.

*B. The Institutional Paradigm*⁸¹

According to the institutionalist point of view, the anti-blasphemy provisions violate Article 18 of the UDHR, which Pakistan itself advocated in 1948. According to a developing body of international customary human rights law, Pakistan, in passing Ordinance XX, violated Articles 18, 19, 20, 27 of the ICCPR and Articles 6 and 7 of the UN Declaration of 1981. Pakistan justified its anti-blasphemy provisions and the persecution of religious minorities under the provisions of a regional instrument, namely the Cairo Declaration, *post hoc*, years after its promulgation. The United States, or any nation, should therefore treat the persecution of Ahmadis in a manner that defers to international institutions as a way to promote and maintain basic and universal religious freedom for religious minorities.

Pakistan has clearly demonstrated its commitment to the universal human right of religious freedom in its founding era, being the leading Muslim nation to endorse the UDHR. This commitment, though buried in history, must be renewed by holding Pakistan accountable for its promulgation of anti-blasphemy laws that fly in the face of existing international norms. All states have an interest in preserving the basic freedoms of ethnic minorities within their borders. By rendering Pakistan subject to international law, the international community posits a collective interest in prescribing state activities that champion freedom of thought, conscience, religion, and belief. With a history marred by corruption, violence, and instability, Pakistan has a vested interest in proving to the world that it can function as not only a progressive democracy capable of honoring commitments to international law and custom, but also as one of the few Islamic states that encourages religious pluralism.

Pakistan, though not a party to the ICCPR, reconciled its anti-blasphemy provisions with the limitations to non-derogable rights in the Covenant itself. Pakistan acted in a way *prima facie* incompatible with recognized rules concerning freedom of thought, conscience, religion, and belief. However, it defended its conduct by appealing to exceptions or justifications contained within the rules themselves. Whether or not Pakistan's conduct is in fact justifiable on the basis of these exceptions is not the key issue. Rather, the important thing is that Pakistan constructively consented to external institutions governing its conduct, thereby strengthening rather than weakening the spirit of the rules and the system.

81. Traditionally considered as opposing the realist paradigm, the institutionalist paradigm identifies institutions as modifiers of a state's power-driven interests. Institutions link common issues and posit a collective interest between states so as to change state behavior to reflect a norm. *See id.* at 14–17.

*C. The Liberalist Paradigm*⁸²

The liberalist view holds that Pakistan criminalized the activities of Ahmadis to acquiesce to the wishes of its major political parties and interest groups, including the clerics. The majority of Pakistan's people favor the 1974 amendment declaring Ahmadis non-Muslims and subsequent amendments to the Pakistani Penal Code through Ordinance XX and the Criminal Law Act of 1986. Non-Muslim minorities (and Ahmadis) are in fact represented in the parliament through separate electorates. The United States, or any nation, should therefore defer to the organized collective action of a sovereign and democratic nation and the legal procedures it adopts to protect its interest in preserving public order.

Pakistan's commitment to religious freedom for minorities, though certainly an integral part of its founding era, is not entirely representative of its people. As the *Shari'a* evolved in Pakistan and Islam became the official state religion, domestic support of laws restricting activity that blasphemed Islam and its founder, the Prophet Muhammad, increased. Indeed, although Pakistan endured a number of military coups, its intensity of purpose to treat Ahmadis as non-Muslims remained consistent. To call for the repeal of the anti-blasphemy laws and thus allow the wishes of less than three percent of the nation to prevail would render meaningless the precise interactions between Pakistan's institutions and its citizens. What is required to alleviate the plight of Ahmadis in Pakistan is an overhaul of public opinion towards them; to repeal the anti-blasphemy provisions so as to afford religious freedom to Ahmadis as Muslims would prove ineffective.

Altering individual and group behavior within states requires state deference to international institutions. Though the anti-blasphemy provisions offend notions of freedom of thought, conscience, religion, and belief in the UDHR and UN Declaration of 1981 as well as the legal provisions of the ICCPR—that is to say, though the laws violate international norms—it is not necessarily the case that repealing them will make Pakistan more tolerant of religious minorities. External opinion of Muslim states within the region, and internationally as well, may disfavor the repeal of the anti-blasphemy provisions, which, in turn, may result in the severance of international commitments by Muslim states in the future. If the provisions are retracted, Ahmadis may then have the law on their side, but the rest of Pakistan and the Muslim world against them.

More integral to the advancement of religious minorities in Pakistan is an analysis of Pakistan's current conflict of interests. Pakistan's quest to eradicate violent zealotry within its borders is genuine, though not without its limitations. The world has recently seen French naval engineers and an

82. Questioning the realist and institutionalist view of the state as a unitary actor, the liberalist paradigm gives primacy to the social actors that make up a state. Government interests are but a reflection of the precise interactions between individuals and states. Domestic representation is the decisive link between societal demands and state policy. *See id.* at 17–20.

American journalist terrorized by a militant component of Pakistan.⁸³ Yet, as President Musharraf clamps down on Pakistan's internal terrorist network,⁸⁴ this militant component struggles for legitimacy within Pakistan. Public opinion polarizes as these crucial interests collide, altering the dynamics of represented interests. One emerging interest that the Pakistani government is bound to reflect is that of religious minorities like the Ahmadis, who favor emphatically an assault on Islamists. It follows, therefore, that the international community's methodical appraisal of President Musharraf's regime and its support of Islamists, rather than a slapdash attack on the anti-blasphemy provisions in particular, will likely result in resolving the persecution of Ahmadis.

D. The Constructivist Paradigm⁸⁵

Under the constructivist model, Pakistan, during its founding era, expressed a felt obligation to grant the fundamental right of religious freedom to minorities. Pakistan's prevailing social norms evolved to reflect a more restrictive *Shari'a*-based government protective of Islam's integrity. The rise of President Musharraf and the devastating impact of September 11 again re-shaped the social norms in Pakistan, so that militant Islam's hold on Pakistan was cast into doubt. The United States, or any nation, should therefore work discursively with Pakistan's leadership to repeal the anti-blasphemy provisions in Pakistan's constitution.

By affirming the UDHR, Pakistan advocated a norm of international religious freedom. Its founding visionaries, led by Jinnah, deliberated over the construction of an Islamic Republic respectful of non-Muslims. Indeed, as the mouthpiece for millions of Muslims jaded by their brutal conflict with Hindu India, Jinnah constructed the basis for a constitution that ensured the right to profess freely one's faith. Interestingly, this fundamental protection afforded to non-Muslims and Muslims alike was part of a patently secular impulse prevailing in Pakistan, at least up until 1953. Norms, however, are built up and broken down by state actors. The hegemonic discourse of the *mullahs*, essentially legislating from the pulpit, eviscerated the advancement

83. On February 21, 2002, authorities confirmed that Pakistani militants kidnapped and murdered Daniel Pearl, an American journalist for the *Wall Street Journal*. *Fallen Journalist: Daniel Pearl is Dead, Abducted in Pakistan and Killed by Captors*, WALL ST. J., Feb. 22, 2002, at A1. On July 15, 2002, Ahmed Omar Saeed Sheikh, a British-born Islamic militant, was found guilty of the crime and subsequently sentenced to death. Steve LeVine, *Pakistan Convicts Four in Pearl Slaying*, WALL ST. J. (Europe Edition), July 16, 2002, at A2. On May 9, 2002, a Pakistani suicide bomber, allegedly with ties to the Al-Qaeda terrorist network, killed eleven French naval engineers in a Sheraton Hotel in Karachi. *Pakistan Blast Kills 14, Marks Growing Risks for Musharraf*, WALL ST. J. (Asia Edition), May 9, 2002, at A1.

84. See generally Raymond Bonner, *Pakistan Seethes as Militants Lash Out*, N.Y. TIMES, Mar. 17, 2002, at A22.

85. Taking the liberalist view of the state as a composition of individual actors one step further, the constructivist paradigm recognizes that the realities of international politics are shaped by the social structures that govern individual actors. Individual actors are discursively competent and, therefore, construct norms over time. See SLAUGHTER, *supra* note 80, at 23–26.

of international norms in Pakistan. Sure enough, one such norm, that of basic freedom for religious minorities, eroded, leading to the institutionalized persecution of Ahmadis.

Perhaps the only consistent pattern to glean from Pakistan's brief and tumultuous history is that the norms that shape its government have constantly changed. Five military coups are testimony enough that Pakistan's citizens are unsettled. They assault retrogression and champion an Islam not manipulated for political gains. Now, with Pakistan's newfound responsibility to the "civilized" world to uproot militant Islam from within, a significant next step by the international community would be to include experts on religious liberty on delegations to Pakistan and appropriate regional and international meetings, to decry Pakistan's punishment of quotidian religious observances by its minority Ahmadis, and also to work with those within Pakistan who advocate new legal norms and who hold a more broad-minded attitude toward Islam.

VI. CONCLUSION AND RECOMMENDATIONS

Ahmadis in Pakistan have been called "the most persecuted Muslim religious group today."⁸⁶ Those defending the anti-blasphemy laws would be quick to argue that Ahmadis are not Muslims to begin with, so they cannot be the most persecuted Muslim group in the world. Their persecution stems from their false hope for self-identification as Muslims; should they renounce their identity as Muslims, they would ameliorate their position. Such reasoning is counter to one of the very quests that sustained Pakistan's statehood: self-identification as Muslims in lieu of persecution under Hindu India. Freedoms of thought, conscience, religion, and belief are what drove millions of people to die for the creation of a safe haven for Muslims in Pakistan. To subject Muslim religious minorities today to the same persecution Muslims endured during partition would be to relinquish the principles of justice Pakistan sought at its inception to justify its creation.

Until international law speaks to the issue, the persecution of Ahmadis will continue. One of the virtues of international institutions and instruments is their ability to regulate problems of political proportions through legal means. The anti-blasphemy provisions in Pakistan are legal mechanisms cloaked in political trappings. They validate the ascension of strict *Shari'a* as well as the militant whims and ambitions of extreme Islamic fundamentalist groups in Pakistan. They construct and regulate an invisible threat by religious minorities and in so doing earn the backing and support of Pakistan's institutions and a significant part of its people. But a State's political ruse cannot withstand the authority of a larger body of law. As an institutionalist might argue, where a nation once committed to universal human rights now stands opposed to a body of international customary hu-

86. Arz, *supra* note 50, at 408.

man rights norms, it nevertheless cannot escape being bound by the norms of the majority, and it remains liable for its gross deviations from the set of regulations that govern that majority.

A constructivist is correct to put faith in changing norms in Pakistan. The October 1999 military coup in Pakistan, though decried by much of the international community, was a joyous occasion for many of Pakistan's citizens. On the streets of Karachi shortly thereafter, one could sense a movement towards governmental reform, accountability, and justice. The events of September 11 have only fueled this impulse, with Pakistan's citizens demanding more accurate census counts, more fair geographic and demographic representation in the National Assembly, and a more consistent administration of justice. These new norms have begun to bode well for Ahmadis, albeit tenuously.⁸⁷ For example, on April 21, 2000, President Musharraf required that deputy commissioners rather than local police officers review all blasphemy charges prior to filing formal cases.⁸⁸ He later rescinded this requirement due to strong pressure from right-wing Muslim groups. Though Pakistan has a long road ahead, the minimum effect of these emerging norms is to render less clear the claim that the majority of Pakistan's peoples truly favor the anti-blasphemy provisions in place.

It is also crucial for a liberalist to note that Ahmadis represent the moderate thread of Islam in Pakistan. In the face of persecution in Pakistan, Ahmadis advocate universal human rights, tolerance, and deliberation. They have condemned militant Islam in vociferous terms.⁸⁹ In Pakistan itself, Ahmadis have set up progressive schools, hospitals for the sick and needy, and welfare programs. They have been built inter-religious coalitions against affronts to basic civil and religious liberties. Some estimates calculate that Ahmadis in Pakistan, though only representing three percent of the country's total population, represent nearly twenty percent of its literate population.⁹⁰ Two of Pakistan's most respected personalities, Sir Muhammad Zafrullah Khan, Pakistan's first foreign minister and the only person ever to serve as both the president of the UN General Assembly (Seventeenth Session from 1962–1963) and president of the International Court of Justice

87. Within fourteen months of President Musharraf taking office, Islamic fundamentalists set on fire and destroyed two Ahmadi mosques in the Sialkot and Punjab districts respectively, killing ten Ahmadis and injuring a score of others. See Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, *Annual Report On International Religious Freedom: Pakistan*, <http://www.state.gov/documents/organization/9001.pdf> (Dec. 2001).

88. See *id.* at 518.

89. For example, denouncing a militant perversion of Islam, the Supreme Head of the worldwide Ahmadiyya Community, Mirza Tahir Ahmad, remarked: "No religion with a universal message . . . under one flag can even momentarily entertain the idea of employing force to spread its message. Swords can win territories, but not hearts. Force can bend heads, but not minds." MIRZA TAHIR AHMAD, *ISLAM'S RESPONSE TO CONTEMPORARY ISSUES* 42 (1992).

90. See Siddiq, *supra* note 4, at 283.

(1970–1973), and Professor Abdus Salam, the first Pakistani Nobel laureate, were both Ahmadis.⁹¹

Intervening on behalf of Ahmadis in Pakistan by calling for the repeal of the anti-blasphemy provisions under the authority of international law is, in fact, entirely consistent with the realist paradigm.⁹² Most Muslims are far less militant than one would gather from the harsh rhetoric of their “spokesmen.” What results often from the political power of militant Islam is not only systemic cruelty toward innocent domestic groups, but also the creation of a regime many times more dangerous to the interests of the international community than a moderate, tolerant Islamic regime. To empower Ahmadis would be to encourage political alternatives to emerging militant Islamic groups in Pakistan. Healthy political struggle paralyzes militant Islam. The international community, the United States in particular, would be wise to understand the nature and function of moderate and credible opposition groups to militant Islam like the Ahmadiyya Community.

In sum, the case of the Ahmadis in Pakistan represents a visible and practical outlet by which the United States and other Western democracies may empower moderation in Muslim regimes. To call for the repeal of the anti-blasphemy provisions in Pakistan is a prime opportunity for the international community to gain enormous political advantage over militant Islam, while at that same time elevating the status of the fundamental universal right of religious freedom. The bi-partisan resolution passed by the U.S. Congress⁹³ identifies prudently this opportunity and, in so doing, furthers the hope that commonalities between the West and Islam may be preserved in the presence of militant Islam, rather than be destroyed by it.

91. Internationally, now estimated as over 100 million strong, Ahmadis are lauded as peace-loving, law-abiding citizens with remarkable humanitarian interests. Ahmadis can be found in the highest offices of public service, in Europe and West Africa in particular. See Ahmadiyya Muslim Community, *The Ahmadiyya Movement in Islam: An Overview*, at <http://alislam.org/introduction> (last visited Dec. 17, 2002).

92. Intervention under the authority of international law on behalf of Ahmadis by the United States, or any nation, can be channeled through Pakistan's existing institutions. The Supreme Court of Pakistan, in fact, has deferred to international legal norms in its adjudication. For example, in *Shebla Zia v. WAPDA*, a case decided only a year after *Zabeerudin*, the court cited as persuasive authority the 1972 Declaration of the United Nations Conference on the Human Environment and the 1992 Rio Declaration to declare that the construction of a grid station in a residential area in Islamabad constituted an affront to a Pakistani citizen's right to life and would lead to environmental degradation. See *Shebla Zia v. WAPDA*, 46 P.L.D. (Sup. Ct. 1994) 693, 710 (Pak.).

93. See H.R. Res. 348, *supra* note 9.