

"Reconstructing Afghanistan: Freedom In Crisis": Panel I: The Human Rights Challenge in Transitional Afghanistan

January 29, 2003

CHAIRPERSON GAER: I want to thank all of our featured speakers this morning. We are now turning to our first panel. The format, as I described, will be question-and-answer style, and I'd like to invite the participants on the first panel to come to the podium, and take your places in the horseshoe.

The first panel will be moderated by two of the Commissioners. The panel is entitled, "The Human Rights Challenge in Transitional Afghanistan." The moderators will be Commissioners Shea and Sadat.

Commissioner Sadat is a leading expert in international comparative law and professor at the Washington University School of Law in St. Louis.

Commissioner Shea is an international human rights lawyer, who is the Director of the Center for Religious Freedom at Freedom House.

They will explain the format and introduce the speakers on this panel. The panelists include Dr. Abdulaziz Sachedina, Dr. Frank Vogel, Mr. Robert Templer, and from our Afghan delegation, Her Excellency Mahbuba Hoquqmal, Dr. Quadir Amiryar, Dr. Musa Maroofi, Ms. Hanagama Anwari, Professor Gul Rahman Qazi, and Professor Abdul Aziz.

This panel will continue until 12:15, and I now turn over the Chair to Commissioners Shea and Sadat.

COMMISSIONER

SADAT: Thank you so much, Felice.

It is my unpleasant duty, as one of the co-moderators of this panel, to make sure we run strictly on time. We have many wonderful and distinguished panelists with us today, and so I would ask all of the panelists to keep their remarks to one to two minutes.

As Commissioner

Gaer has already explained, this is an interactive format, which means that Commissioner Shea and myself will be posing questions, which we will then turn over to the panelists. To the extent that panelists wish to respond to each other's remarks, please just signal either myself or Commissioner Shea, and we will make sure that you have the opportunity to do so.

Andrew Natsios

has given us some very positive news about infrastructure, food and other developments in the reconstruction of Afghanistan, but as Special Envoy Khalilzad raised, there are some concerns still that remain with respect to the human rights situation there.

Indeed, our

panel today is intended to raise some concerns about extremist trends in the current process of judicial reconstruction to expose some of the risks for human rights, including religious freedom, if those trends are to remain unchecked in the constitution writing and judicial reconstruction of Afghanistan and to offer some practical steps that can be taken to mitigate some of those trends.

This panel will

discuss how Islamic law and human rights will co-exist in the new Afghanistan, and I think because Commissioner Gaer has already introduced our panelists, and you can read their biographies in your information materials, I will dispense with further introductions and turn to Commissioner Shea, who will set the scene, and then we'll proceed with the questions.

At exactly

12:05--am I correct?--we will stop the questions from us and the responses from the panelists, and we will turn to you, the audience, for any questions that you may have.

Thank you very

much.

COMMISSIONER

SHEA: Thank you, Commissioner Sadat.

U.S. policy is concerned with security in Afghanistan, with liberating Afghanistan from the Taliban, but it's also concerned with the economic reconstruction, and for our purposes today, the political reconstruction of a democratic political system and a legal system and government structures that ensure individual human rights that are universal, including religious freedom.

This is a period of great consequence for the future of freedom in Afghanistan. Over the next year, Afghans will be engaged in drafting and adopting a new constitution, a constitution which will set, establish the infrastructure and the foundation for either freedom or repression.

The legal transition that has taken place over the last year has given mixed signals for human rights. Certainly, we have rejoiced as girls have gone back to school. This is a great achievement, not only symbolically, but also substantively.

But we were also dismayed by a Supreme Court and Chief justice in Afghanistan that has attempted to restrict rights, restrict the rights of women, restrict free speech, and threatened, even on our own public radio station, NPR, threatened non-Muslims with beheading if they did not follow the rules of Islam, and has endorsed the harsh punishments of the Taliban.

Perhaps, most ominously, one Afghan was charged with blasphemy for allegedly criticizing the legal approach of the Chief Justice, and we have at times asked ourselves is this "Taliban lite" that's being reconstructed?

Freedom in Afghanistan is at a crossroads, and we will be exploring on this panel today some of the trends in the current process of judicial reconstruction and the risks for human rights and religious freedom during this constitutional drafting process.

Without further
ado, we will turn now to the questions and the panelists.

COMMISSIONER
SADAT: Thanks so much, Nina.

Right now, on my
left, as you can see, we have our three panelists, and on my right we have
members of the Afghan delegation who have come to join us.

The first
question that we'd like to pose, perhaps, to Dr. Vogel, to Dr. Sachedina and to
Robert Templer, and then with response from the Afghan delegation, goes to the
issue of Islamic law and human rights.

The Bonn
Agreement says that the new Afghan legal system will be based on Islamic
principles, international standards, the rule of law, and Afghan legal
traditions.

Vice President
Shaharani used a recent, and very similar formulation, in speaking of the new
constitution. Our question is how will these principles be balanced in
Afghanistan, how will they be recognized and accommodated to each other, and how
will Islamic law and international human rights, and particularly religious
freedom, co-exist in the new Afghan legal system. Perhaps, Professor
Sachedina, you could start, and Dr. Vogel, and then Robert Templer.

Thank you.

DR.
SACHEDINA: Let me begin by saying that there is certainly a problem
between what we call the insistence in the Islamic law that the freedom of
religion has to be restricted in terms of its implication for the
community. And in the long history of the law, there has been a lot of
concern about how does one allow the freedom of religion to prosper as a
principle of toleration and yet be able to maintain the identity of the
community of the believers?

There is, in the

Sharia, in the Islamic law, provision for other unitarians who could be accepted and who are tolerated within the system, the peoples of the book, and yet we do not find enough emphasis in the law, in the Islamic law, to treat even the peoples of the book as equal citizens. Rather, what we have is a tolerated minority that has some kind of self-governing autonomous status and is able to function without being coerced by the majority, let's say, to accept the communal identification.

But what is I think most important to keep in mind is that, and these debates have been going on since 1947, when the Universal Declaration of Human Rights was being debated, and those are the issues about human nature, about the conscience, human conscience, and all of these things are part of the tradition.

What is I think important to keep in mind, and it is important to tell our Afghanistan delegation, is that there isn't a unanimity among the Muslim scholars of exactly how we are going to deal with these issues, and there is a need to do more homework.

I'll give you a good example here. When you look at the laws of blasphemy, and I have this book here in front of me, which is a comparative law. This is the Sharia that is accepted by four Muslim schools; Hanafi being the most dominant and in majority.

And when you look at the question of which are the Hudud crimes, those crimes against God, blasphemy is not listed by the Hanafis. Hanafis disagreed that blasphemy could not be punished by the state. The state should not be involved in deciding God-human relationships. Rather, the state should be concerned only with the violation of human rights within the jurisdiction of the human affairs and human relationships.

Since religion is a matter of conscience, is a matter of God-human relationship, therefore, it should be kept out of the state's control. So you can already see that further discussion and debate on the Hudud laws, for example, could reveal that there is no uniform acceptance of the tradition that has been handed down and has become even stifled in some ways in the long range of its own development.

So I can cite several opinions from the Hanafi scholars who refuse to control a human religious or spiritual destiny, and who refuse to give that right to any human institution. This is, I think, the crux of the problem in the UDHR. When you look at the religious freedom, that's where it springs from. Are

human institutions capable of negotiating, for example, God-human relationship? And they are certainly not.

COMMISSIONER
SADAT: Thank you so much.

Perhaps
Professor Vogel?

DR. VOGEL:
Thanks. I thought I would broaden out a little bit to all of the human rights I think may have been what you're after.

It's hard to
give a two-minute summary.

COMMISSIONER
SADAT: Well, you can take two and a half minutes.

DR. VOGEL:
Okay, thank you.

There is, of course, well-known clashes between human rights and Islamic precepts, yet you will have many Muslims, and there would be some in this room who will assure you that between Islam and human rights today, in their understanding, there is no essential conflict and that all can be reconciled, that Afghanistan, for example, could be an exponent of all of the international human rights and at the same time be an Islamic state. You will probably hear that in the course of today's proceedings.

Yet, it's undeniable that if you look at the law as accepted until, say, 150 years ago, it's considered virtually almost canonical. The literal content of books like Abdul Aziz has here, there are dire conflicts.

One then has to
look at a lot of nuance, and that is, I'm afraid, what I'll be suggesting

repeatedly today. I don't deny, I definitely would believe that Islam will come to harmony, into harmony with human rights, but one has to exploit in the meantime in all troubled situations, and certainly in a traditional society, such as Afghanistan, a whole panoply of resources to bring them into conformity.

Dire principled statements, unbending sort of statements on either side, will lead unnecessarily to conflict. One should keep in a realm, so to speak, of fuzziness, of negotiation, of conciliation, of mutual tolerance, for that matter, as one works out the means by which this reconciliation happens in the short term, keeping in mind a short term, a mid term and a long term.

So, for example, there are a number of hot issues that you rightly identify, everyone will, as potential areas of conflict: women's issues, equality of women, minority rights, the Hudud penalties and some of their symbolic force; for example, the Hudud penalty on apostasy, which would be of concern here. Hudud penalties being only some of the criminal penalties. They are the ones that are particularly religiously sanctioned, that enjoy Koranic or, in some cases, the Hadif categorical support.

But there's a nuance immediately, in that Islamic law is definitive only about a few things, and those tend to be things firmly stated in the Koran and certain Hadif. Those tend to be particularly resistant to bending. But there are many other provisions, practically all provisions of Islamic law, in fact, are very much subject to debate, difference, continued interpretation. So that is just one nuance we'll be looking at.

I could probably go into more, but I think that's my basic drift. I think it's right to identify these as severe problems and particularly in a traditional place like Afghanistan, and then I would just urge that at this point we not be ourselves too categorical.

COMMISSIONER

SADAT: Thank you very much. Of course, you'll have time later on to respond to others and to nuance your remarks further.

Perhaps Robert Templer, who I think has come all the way from Brussels to be with us today, if you could add your voice.

MR.

TEMPLER: Well, I'm not, by any means, an expert on Islamic law, but I have, the organization I work for, International Crisis Group, has been doing considerable research recently on the situation in Afghanistan in the past year, and what we have seen is some fairly discomfoting work that has been going on, some very discomfoting developments anyway.

Minister Karimi

has been working extremely hard, I believe, to promote the development of a legal system in Afghanistan that is reasonably open and reasonably tolerant and one that learns really from a whole variety of different sources within Afghanistan and outside Afghanistan, and indeed he has said in the past that there is nothing in Islam that stops Afghanistan learning from the experiences of other countries, and that is going to be key in the development of an open and tolerant legal system because there are other countries out there, countries like Malaysia and others, that do offer solutions to dealing with a great many of these problems. In certain ways, no country ever has a perfect system.

But,

unfortunately, these developments of tolerance and openness in Afghanistan have also been matched in some ways by the emergence, as we heard, of a very traditionalist, even extreme Supreme Court, which in itself the actions have violated a whole array of provisions of the 1964 Constitution, which is the key law that is in force.

Some of these

are quite startling. Shinwari, the Chief Justice, 80-something-years-old, no one is quite sure, and he is supposedly under the Constitution to be no more than 60, but he's also supposed to have an education in both Islamic and national laws in Afghanistan, which essentially means the secular law.

In fact, he has

no education in secular law at all. He's appointed somewhere--up to December he'd appointed 139 Supreme Court Justices, by our count. There are supposed to be a Chief Justice and eight others, a total of nine, and the appointments are supposed to be approved, under the '64 Constitution, by the king, but the way it should obviously be now would be by the President. It's uncertain whether any of them have been approved.

There are 36 of

them that we know their educational standards, not one of them has sufficient education, even within Sharia law, let alone secular law. And yet what we started to see is not only an imposition of large numbers of judges who are really ill-equipped to be there, but the appointment of somewhere up to 6,000 officials around the country in the judicial system. So what is going on is really the creation of a judicial system that has not been sanctioned in any way by the Afghan people.

There's been much talk this morning of ownership, but the ownership here has not been of the Afghan people. It's been of a very narrow, very well-funded group, Ittihad-i-Islami, which is led by Abdul Rasul Sayyaf. Essentially, he has been able to dominate the development of the Supreme Court, a very key institution in the future development of the legal system in Afghanistan.

It's an extremely worrying development, and it's one that has not really received an awful lot of attention. The United Nations, for example, has sort of generally dismissed the issue. They're more concerned about simply maintaining the peace.

President Karzai has said some very good things on the judicial development. On the other hand, I don't believe he's paid enough attention to this particular issue, and a number of other countries have played various unhelpful roles in this, and it's a worrying development in the long term.

As we've already heard, there have been moves to restrict the education of girls. An edict came out that men should not be allowed to teach girls, which essentially is an excellent way of stopping any girls from being educated in Afghanistan because there are not that many women teachers out there. We're talking a country with a female literacy of maybe 13 percent.

So it's an extremely worrying development that this is going on, and it is not part of Afghan ownership. In some ways, it's part of a generalized neglect of legal developments in the country, although I hasten to add, Minister Karimi is not at all responsible for this. I think he's actually been battling against it, but hasn't received sufficient support and hasn't received sufficient backing from the international community or from other parts of the Afghan government.

COMMISSIONER
SADAT: Thank you so much, Robert.

Perhaps members
of our Afghanistan delegation. Yes?

DR.

MAROOFI: How's my voice? I would just like to add some comments to this relationship between human rights and Islam as a religion in a Muslim country like Afghanistan and a few things to remember about Afghanistan.

Number one, it has moved much more to religiosity now than it was in 1964. So we are dealing with a conservative Muslim country that has suffered from war, and poverty and lack of education for more than 30 years.

The other thing, when I see these freedom of religions, I don't want the illusion to develop in your mind, and when you're talking about Afghanistan you're talking about a freedom of speech, freedom of religions, that you can just have any religion, and then as an Afghan, you say, well, as a Muslim say I want to convert into Christianity or Judaism tomorrow. Can you do that? No, that's against the law. That would be against the law. It will be not permissible by the provisions of the Constitution.

And then the freedom of speech as well. Can you say things in Afghanistan, in a Muslim country, that you can say here under the First Amendment? No, there are a lot of things that you cannot say.

Can you deny the existence of God in the United States and some other liberal democracies? Yes. Why can you say that? Because your speech is protected by the First Amendment. Can you say that in Afghanistan, in Saudi Arabia, Pakistan? No, you can't.

Even though the Constitution does recognize the freedom of speech, which most of these constitutions do, you cannot do that. Why? Because there is another provision in the Constitution saying that you cannot say anything or do anything against the fundamental, the basics of Islam, which is the existence of God.

What does that mean in practical terms? It means that the freedom of speech, freedom of religion is relative in countries like Afghanistan and not absolute like in the liberal democracies. Once we recognize that concept, then we can feel at ease in understanding what we are dealing with. The same is true about human rights. There is so much focus on human rights in Afghanistan, and let me assure you that, as far as the Constitution Commission is concerned, we have reasonable focus on human rights and enshrining values related to human rights in the Constitution. However, there are some problems, and those problems really are a matter of concern to me,

personally, a good deal. I'm thinking about it when I'm alone, and sometimes it's not so easy to convey my concern to other people. What is the individual rights? On the one hand, of course, we recognize the rights of the individual to be free, to have freedom of expression, to have a freedom of thought and pursuit of happiness. Can you do that in a country like Afghanistan? No.

Why not?

Because there are certain things you're not allowed as an individual to enjoy regarding your individual rights. For example, you'd like to go to a casino and play for money. Can you do that in a Muslim country? Can you do that in Afghanistan? No. Even under the new Constitution, you can't do that. Can you drink in public? No. Can you do that in private? No.

If you drink in private alcoholic beverages, you are intoxicated and you go out, and you are caught by the police, does the police have a legitimate right to put you in jail for violating the law? Of course. Can you do that in a liberal democracy? No.

So if we reconcile our minds with the idea that in a Muslim country there, of course, will be human rights, but not absolute right, relative to the fundamentals of Islam on the one hand [and] to the social order -- parents carry a lot of authority in these countries. Husbands have so much authority you won't believe it. Can you change it by the Constitution? No. It may take a while. Of course, we have to work on that, and that's why we need the Human Rights Commission in Afghanistan and other human rights organizations to work on this.

Right now, even if the law recognizes the equality of women with regard to men, implementing will be impossible. There are ways I may talk about it should somebody ask me. These are the things that are going to be main challenges to human rights.

The court system is not responding to the principle of equality. So far nobody has been initiating a case on the basis of violation of human rights in a court. So the courts are usually dealing with criminal cases and civil cases, but not with human rights cases because we have never had this, and hopefully we will be able to introduce that.

So where are the human rights--

COMMISSIONER

SADAT: Dr. Maroofi, I'm sorry to interrupt you, but we are on a tight schedule, and I've got a couple of others--

DR.

MAROOFI: Sure. Thank you very much. Sure.

COMMISSIONER

SADAT: I am so sorry.

I know Ms.

Anwari wanted to respond, and I should say, because you don't have this in your program, that Dr. Maroofi is a member of the Constitutional Drafting Committee for Afghanistan. I suspect some of our other panelists may wish to respond to some of the things he said.

Ms. Anwari is a member of the National Human Rights Commission for Afghanistan.

MS.

ANWARI: Thank you very much.

Regarding the concern which was raised by our colleagues regarding the situation which is going on now in Afghanistan in terms of human rights, I would appreciate this concern, but I just want to make a very short comment on these concerns.

There is a difference between the individual's and the state policy or the thinking and feeling of people as individuals and people who think to improve the policy at the state level, at the government level.

The important thing is, for Afghanistan, is to make sure that all of the human rights issues or sensitive issues regarding the human rights is there in the Constitution, and the things which is happening now in Afghanistan, which was referred by Mr. Vogel and also my other colleague is right, but it is not like things which is there in the Constitution.

In terms of Islam religion, I'm thinking, and I'm very much sure, that in Islam, as a principle, like standards, there is not any controversial things with the human rights standards, but the thing that we need, and it is a challenging issue for today in Afghanistan and the Constitution in Afghanistan, is the right interpretation of Islamic standards and principles in the Constitution, which will make sure that we will have, in the future, people like professional Islamic scholars who will deal with the judicial system in Afghanistan.

This is one of the priorities that the Constitution Commission is taking care of that, and also the Human Rights Commission is advocating very much for that, that we need a right and proper interpretation of Islamic rules and standards in the Constitution of Afghanistan.

Thank you.

[Applause.]

COMMISSIONER
SADAT: Thank you very much.

Perhaps
Commissioner Shea has a follow-up question, and then some of our panelists may want to respond.

COMMISSIONER
SHEA: Well, I'm going to yield my time to my fellow Commissioners, and Ambassador Hanford, you may ask a question.

AMBASSADOR
HANFORD: Thank you.

I had a follow-up question for Mr. Maroofi. Again, Mr. Maroofi, we're privileged to have you with us today, with your enormous responsibilities back in your country. We thank you for coming.

Afghanistan is home to such a wide range of Muslim believers from various ethnic backgrounds, as well as non-Muslims--Hindus, Sikhs, Jews and Christians. We have heard stories or rumors that a specified list of religions will be permitted to build houses of worship in Afghanistan, but that perhaps certain religions will not--Christians, for example.

I'm aware of a fascinating history of a church in Kabul at one point that was allowed at a certain point and then torn down by a later president.

And so I'm just curious to ask you which religions will be allowed to erect houses of worship and which will not?

DR.
MAROOFI: Well, thank you for your kind remarks.

In Afghanistan, traditionally, we had Islam, the predominant religion, with different sects, and we had the Hindus, we had Sikhs, and we had the Jews. These religions have been there in Afghanistan, and there has been a population of almost 30,000 Jews prior to the Soviet occupation of Afghanistan. So because the Jews were Afghan citizens, they are entitled to return to Afghanistan because it's their country after all, as everybody else. The Hindus are already there, and so are the Sikhs. So it's my understanding that these four religions may be on the list.

My concern is that I don't, I would like the international community to understand this. Once the Constitution is passed, if it is very restrictive about the freedom of speech or religions, then you will have no choice to do anything about it.

I was listening to Ambassador Natsios' speech about a hands-off policy in Afghanistan while it's helping with regard to the Constitution and other laws, et cetera. That may be a good policy. It may also have some repercussions.

There are things I can talk frankly about them. There are things I would like to impose on

your sophistication to read between the lines.

Thank you.

[Laughter.]

COMMISSIONER

SADAT: Thank you. I'm sorry, we have a limited--

Perhaps, Dr.
Aziz, did you want to or Dr. Amiryar?

DR. AZIZ:

Although I graduated from The George Washington University Legal Training Program, but I didn't speak English about more than 25 years. I'm afraid that I will make some mistakes. I will talk in Persian.

[Following
interpreted from Persian.]

DR. AZIZ:

When we are talking about religion, we should understand that there's a difference between religion and sect, and there are different sects in Islam and religion is something else.

In Islam, there are freedom of religion and also freedom of sects. In Afghanistan, we see no difference between any sects, being Hanafi, Sufi or any other sects. In my idea, non-Muslims also in Afghanistan have the full freedom of doing their religious duties.

There is a difference about Hudud, that before also was mentioned about it. They have given me two minutes, and I hope they give me another three minutes so I can give a little bit more.

COMMISSIONER

SADAT: Perhaps we'll come back for another three minutes.

DR. AZIZ

[Interpreted from Persian]: Yes. In my thinking, my school of thinking, there are two problems: One is the religion that you have selected, and you can keep it, and then if you want to leave that religion. In Islam, that's the problem--if you became Muslim and the you want to leave Muslim.

COMMISSIONER

SADAT: Dr. Aziz, can we just hold just for one moment, so we can get Dr. Amiryar also--you want to finish? Okay, finish your thought and then--

DR.

AMIRYAR: Because mine we will be slightly on different aspect of--

COMMISSIONER

SADAT: Okay.

DR. AZIZ

[Interpreted from Persian]: In Islamic society, there are all kinds of religions, and nobody is punishing anybody for their religion. It's just if you want to change from Islam to another religion, that's when it's punishable.

In Islam there is a big emphasis on education, education for the women and men, and there is no difference between educating men or women. Mohammad Salaam has said that if you want to learn Islam, you have to go to Aisha. Aisha was the wife of Mohammad.

THE

INTERPRETER: He has more time or not?

COMMISSIONER

SADAT: No, we'll come back. Dr. Aziz, he's the Dean of the Sharia Law faculty, and he could give us, I'm sure, a wonderful hour, actually, and we would all learn greatly from it, but I do want to turn to Dr. Amiryar, who is a member of the Judicial Reform Commission in Afghanistan and was extremely

helpful to the Commission in planning this forum.

DR.

AMIRYAR: Thank you. It's my pleasure.

I think the question is very much more complicated than what it appears, and if someone could be able to provide a rational and reasonable answer to these fundamental questions. For the past 1,400 years, actually, Islamic community is trying to find solution and rationale for these practical, as well as substantive, legal answers, and we are trying. It evolves, actually. The changes taken place since the Prophet Mohammed and since the Koran was bestowed upon the Muslim community.

The reform is taking place, but the reform is slow. The law in nature, it's in the nature of law that law is a most conservative subject. If you want to associate it with the human will, and human desire, and societal wishes and values, then we have to adjust that allocation and give it the time.

On the other hand, Afghanistan is not a new kid around the block as far as Islam is concerned. Afghanistan is a real progress nation. The Constitution of 1964 is a model. If Afghanistan would have been left to themselves and with minimum interference from outside, that was the ideal Afghanistan.

The Constitution of 1964 is a testimony and a witness to the national heritage values and desires of Afghanistan that it reflects the proper values and culture of Afghanistan. It has its own fundamental rights, a chapter dedicated to the rights and duties of man. That is still as valid as the Universal Declaration, as my colleague, Professor Aziz mentioned, as valid as Universal Declaration.

Apparently, that Constitution was drafted in 1964, and the two protocols associated to the Universal Declaration of Human Rights, the social and political, as several political, and the economic, and social and cultural ones were drafted in 1966. It was enforced almost another 10 years after.

But you see the Constitution of Afghanistan was far ahead even than the international community's willingness to draft their side of the values.

But what is happening now in Afghanistan, as my colleague, Mr. Maroofi, properly mentioned, it has been the interference of outsiders, and say, for example, the Wahabis. I mean, that's a stranger to Afghanistan. Afghanistan never been Wahabi. We have respect, we have all due respect for Wahabi. There's nothing wrong with them, but that's theirs. That's their interpretation.

And Afghanistan, as Professor Aziz and other colleagues mentioned, is a follower of [Hanafi] and Jafari, both of them are the most liberal ones. [Hanafi], of course, is known [?], and Jafari as well, because [?]jihad is open in Jafari. That's another virtue of that one.

So the two schools that are pretty dominant in Afghanistan, those are the most liberal schools--

PARTICIPANT: Hanafi.

DR.
AMIRYAR: Hanafi, as well as Jafari, both of them.

COMMISSIONER
SHEA: I'd like to follow up on that with Mr. Templer.

DR.
AMIRYAR: May I finish before?

COMMISSIONER
SHEA: Absolutely. Go ahead.

DR.
AMIRYAR: With your permission.

COMMISSIONER

SHEA: Yes.

DR.

AMIRYAR: So coming back to the conclusion, in conclusion the human rights, the values of human rights, there is no difference, as my colleagues mentioned. As far as values are concerned, they are all the same. It's affection, brotherhood, generosity, human dignity, integrity, gender equality.

Women, in Afghanistan, women has its own rights, and certainly these are imported values that came from outside, the most recent one. It's not the native culture of Afghanistan. So we don't see very much differences between the Universal Declaration of Human Rights and Islamic values if, and provided that it's applied and interpreted properly and with legitimate scholars. Because the interpretation of Islamic values is limited to the scholars' interpretation. It's not laymen's interpretation. There is a place for interpreters, and then there is Ishmael is open, and then there is jihad. There are institutions who can interpret legitimately, and they must be qualified.

None of the people who interpreted the law in Afghanistan for the last 10 years, and they are under the misguide of other means, the misinterpretation of jihad. That was not the case. Jihad was legitimate liberation of Afghanistan, but it was not solely limited to religion. It was liberation of the country from the occupation, and that was only a single aspect of Islam, not totality of it.

So the difference between human rights and Islam is not that much big. There are certain minute differences that has to be because Afghanistan is a signatory to the Universal Declaration, the two protocols, and the other instrumentalities of human rights. And now Afghanistan has an obligation, irrespective of the voices and desires of individuals, Afghanistan has an obligation and is obligated to comply with these treaties and agreements, and follow the standards, and those standards--because Islamic states are signatories to this one.

If this would be a conflict between human rights and Islam, how can the Islamic countries, including Saudis, sign with one reservation?

So whatever it is, there is some misunderstanding in interpretation and shortcomings in

education. Once again, we are in an academic institution that our desire was that to associate this meeting with George Washington because this an academic institution, and Afghanistan needs to promote their education and revive and rebuild their educational institutions, and that's the most important thing that we need to enhance human rights and equality in gender. It's not in Islam, it's lack of education.

Thank you.

COMMISSIONER
SHEA: Thank you very much.

Mr. Templer,
your group, the International Crisis Group, produced an important report on Afghanistan this week, and in it you've made the finding that some elements of extreme Sharia have crept into the legal system in Afghanistan during this transition period and, moreover, that most Afghans don't want to see this. Can you tell us how this has happened?

MR.
TEMPLER: Well, as I said earlier, there have been efforts by one particular political group that's partial to the political process, to some degree; one of the Mujahideen groups that has come back into power as part of the Northern Alliance to dominate the Supreme Court and through that has been able to go through that position.

Whether Afghans actually want this or not is very hard to determine, but there are some things that I do think we need to be quite clear about, as Dr. Amiryar said. Wahabism is not something that's indigenous in any way to Afghanistan. Afghanistan had multiplicity of faiths, a range of cults, quite a diversity of Islam and quite a tolerance for the different diverse elements.

I mean, certainly, my experience in Kabul in the early '90s, when I lived there, was that people celebrate other's holidays and join in and were very tolerant, to a degree, to each other. There were also acts of extraordinary brutality and intolerance going on at the same time, but there is a measure of tolerance within them.

There is also a conservatism, but what concerns me is that conservatism may well be a response to chaos, poverty, misery and war, just as the Taliban were welcomed in by many people across Afghanistan, because they did actually impose a measure of

discipline from the appalling, degrading spectacle of what the various Mujahideen groups did between '92 and '96.

So what you have may be an Afghanistan where people are quite conservative, but that conservatism may not last forever. But if what happens is in this period a Constitution, and a body of law and the people who practice that law are entirely taken from the sort of conservative wing of Afghan life, if you like, then it's going to have long-lasting consequences, and it's going to raise very considerable tensions down the line, not least are the fact that pretty much everyone in Afghanistan is in a minority of one kind or another, a religious or an ethnic minority.

So the protection of minorities and a tolerance of minorities is going to be essential in terms of any peace-building process there, in terms of getting everybody on board and getting everybody to work together. But I'm concerned that what's going on at the moment is essentially, to a degree, a hijacking with no real accountability and certainly very little in the way of a democratic process towards a much more conservative interpretation of Islam and of law than Afghans would necessarily choose if there were sort of open mechanisms for them to choose that at the moment.

COMMISSIONER
SHEA: Thank you.

A couple of the Commissioners have some questions. I'm going to turn to Commissioner Tahir-Kheli and then Commissioner Gaer.

COMMISSIONER
TAHIR-KHELI: Thank you.

I am, indeed, sorry that we lost some of our morning speakers, particularly Mr. Khalilzad, who I think it would be interesting to have him react to some of the questions that have come up. But given that this transition period, the U.S. has a very large role to play and understanding the importance of issues of human rights and religious tolerance for the United States, I wanted to ask some of the guests who are here from Afghanistan how one resolves this tension between sort of American interest in new Afghanistan, which nurtures tolerance and respect, along with the kinds of issues that, at the practical level, Mr. Templer has talked about the predominance of one group or another in the constitutional process, which has unleashed some of these trends which run up against some of the American values and interests in Afghanistan.

For a start, I wondered if I might ask Ms. Anwari if she might sort of look at this tension and sort of offer some insights as to how it might be resolved because I think it's a very critical time, and you have some very precious insights for us.

Thank you.

DR.
MAROOFI: Can I respond to that, please?

COMMISSIONER
TAHIR-KHELI: I was just asking--

COMMISSIONER
SHEA: Ms. Anwari is going to--

COMMISSIONER
TAHIR-KHELI: --at the outset, and then, please, anybody else.

MS.
ANWARI: Thank you very much for your question.

In regard of, one of the challenges that we have when we are developing or drafting the new Constitution and the other is how we will implement this Constitution, which I think would be in the second panel that we will see practical problems towards implementation of the Constitution in Afghanistan.

In terms of challenges that we have, like the interests of one nation themselves of having a proper Islamic country, which will be respectful to all international treaties and all international obligations that Afghanistan has, one of the concerns and one of the suggestions from the Human Rights Commission--National Human Rights Commission--in Afghanistan to the Constitution Commission was that in the new Constitution for Afghanistan, we need to make sure that all articles in the Constitution is not against the standards of Islamic principles, first; the international treaties which Afghanistan is a party; and the Universal Declarations, which is like Afghanistan, as a part of the United Nations, they are obligated to all of the Universal Declaration.

There are lots of practical steps that need to be taken in order to remove this challenge or overcome this challenge.

As our colleagues mentioned before, in Afghanistan, we are facing the lack of awareness and education to Islamic values, as well as different options of being a Muslim country, and this is one of the things that we were very much concerned about, and we are looking for international support as well on how we can provide for one nation and people with different positive options of being a Muslim country, proper Muslim country.

I think all solutions that we want to look for Afghanistan, we will find it inside the Islamic principles and values. This is very much in concert and agree with the Universal Declaration. But for that purpose, one of the suggestions, which came from the lessons which was learned in Afghanistan through years of war, is to put a clear differentiation or put a clarification among Islamic practices, political actions or activities, and using the military forces.

These three parts or these three things in Afghanistan has been like misused forever, for years and years. People were using like religion, feeling of admonition, they just misuse this feeling towards their own political or personal interests, and this is why one of the challenges in the new Constitution is for our colleagues and for our nation, how we can put a clear clarification and differentiation among Islamic practices or beliefs and political actions in Afghanistan.

Thank you.

COMMISSIONER
SHEA: Commissioner Gaer?

CHAIRPERSON
GAER: I have to admit I was startled by the comments that were made this morning on this panel to the effect that human rights are relative, to the effect that national law will determine what the rights are and for whom, to the effect that the standards that prevail in so-called liberal democratic societies are not the standards that shall, will or can prevail in Afghanistan.

That is a concept very fundamentally at odds with the concept of universal human rights and the provisions not only of the Declaration, but of the International Covenant on Civil and Political Rights to which Afghanistan is a party.

The Universal Declaration and the Civil Political Covenants say that everyone has rights, and those rights--and "everyone" of course means everyone--and that those rights are rights to speech, rights to association, rights to thought, conscience, religion, rights to be free from torture, rights to be free from attacks, rights to privacy. It does not say these rights can be relative, nor that they can be restricted only to some religions, whether traditional or otherwise, or to some, one sex or the other.

The 1964 Constitution, in Articles 25 to 34, the Afghan Constitution, identifies such rights. It also uses the words "everyone." It also indicates that these rights apply, and it does say that these rights must be prescribed by law, but law is meant to guarantee the rights and put a base below which you cannot go below and which guarantees rights, not restrict or rescind rights from people.

The international community has reviewed the Constitution and reports of Afghanistan in the past. It will continue to do so in the future, as you are signatories and ratifiers of these instruments. The purpose is to see that the rights are guaranteed, not to see that they are restricted. I am shocked by the discussion so far in the sense that what I heard about were restrictions and not about guarantees, about ways of empowering people, about ways of giving people their rights, of respecting their dignity and their humanity in every form. Those are the purposes of universal human rights, and they are things that every person strives for.

Now, in that context, I wanted to pose a question, on the one hand to Dr. Vogel, and on the other hand to Minister Hoquqmal.

If you look through a human rights lens, and you look at the 1964 Constitution--which I must say I am sure is what Senator Hagel was looking at, and I'm sure that other Administration officials have been looking at--both the Constitution and the universal instruments--if you look at the 1964 Constitution, what changes do you think could be made to that document to improve the protection of religious freedom and other human rights in Afghanistan? And what would you point to as issues that need to be identified?

Dr. Vogel?

DR. VOGEL:

My inclination actually is to again go back to short term, middle term, long term. Let me start by saying that I think it is possible, it is possible perhaps even in the midterm, even when this Constitution is issued, for the human rights to be all enshrined in a form that you would find acceptable. I think there are gaps in the '64 Constitution. I haven't studied those rights provisions before in the last few days, but the example of equal treatment of women I think is--

AUDIENCE

PARTICIPANT: Please speak up.

DR. VOGEL:

I think the mike is not--

AUDIENCE

PARTICIPANT: Move closer please to the microphone.

DR. VOGEL:

I think equal treatment of women is deficient, also the religious freedom provisions are not there. I think those could be important. My concern is how that is advocated and how eventually the Afghan institutions that are seeking to bring about these reforms understand them, formulate them and eventually sell them to their own people, and how they engage their people in the meantime.

So, in the short term, I see a lot of problems of how you present these things, how you describe them, how you align them with Islamic ideas. Because if they aren't aligned, to some degree, with the more liberal traditions of Islam and the more tolerant traditions of Islam that are prevalent or were prevalent in Afghanistan, it will be very for you in the short term to persuade.

It won't perhaps be hard for you to persuade these Commissions, but it will be hard perhaps at the Loya Jirga stage or at the later stages when there are perhaps spoilers who will exploit these things and bring down the whole operation.

So I disagree,

actually, quite a bit with Mr. Templer about the significance of, say, the Chief Justice. I don't think this is a minority phenomenon. I don't think it is simply the expression of a political party. I think behind him stands centuries of tradition in Afghanistan that needs to be understood.

I'm not saying you need to concede to him any point, but I think ultimately you have to reach some degree of understanding with him. For example, I had an interview with him where he did his usual thing, where he said, "I'm going to apply all of this Hudud, I'm going to apply apostasy, I'm going to apply all of these things. No, I'm going to insist that they're in the law."

Then, he said to me, sort of sotto voce at the end, "You know, but in Afghanistan, we never apply these things." So that actually leads to sort of a realm of sort of flexibility.

Actually, I very much wanted to convey to you sort of there are three sort of, programmatically, there are sort of three or four ways in which one can take advantage of flexibility in the Islamic system, and they don't always meet the eye. Those could be used, in the short term, in the medium term, to get where I think everyone in this room wants to go.

They can also be used to help sell that venture and to eventually make these thoroughly acceptable to the Afghan people, but I think there can't be a simple assertion that these rights are essential, that we're going to insist on them, that the Afghans must swallow them down whether they like them or not, and I think the Chief Justice should be kept in mind as someone whom ultimately one has to, to a degree, persuade.

So just to give you, briefly, kind of programmatically the variations that you will hear from Muslims and Afghans as they try to explain to you where the flexibility lies, where human rights could, for example, become part and parcel of the Afghan legal system.

One dimension is the simple degree of rigor with which Islamic law is interpreted, the actual interpretations given to the Koran and the Sunna. Those can either be harsh or liberal, and many people will tell you, oh, there's this position of this Hanafi or this Maliki that agrees with you, but, of course, there are many positions that don't, so you are in a bit of a cacophony of views at that point.

There are also more specific and literal views that will often be endorsed by the more traditional minded, and then there are much more general aspirational goals. For example, we can talk about specific human rights or we can talk, as Mr. Amiryar did just now of human dignity.

Rights can be, positions can be more legalistic or they can be moralistic, and in the moral realm, in the ethical realm, you'll find great resources in Islam for the reception of human rights.

Rights can be obligatory or rules can be made obligatory or compulsory or they can be left to the ethical and individual realms. If there is, for example, you know, the state fails to apply certain rules, that leaves the realm for relative freedoms.

Then, there's a second dimension of potential flexibility, and that is the degree of, the insistence on uniformity of the interpretation or monopolization of the interpretation. Muslims have vastly differed amongst themselves throughout the ages, and there is an ethic of toleration of those differences, of respect for those differences. This is not at all foreign to the Afghani, Afghan culture, and could be invoked once again.

One of the, one of the sins of the Taliban was to insist on a narrow interpretation of Islam and enforce it as if there were no other view.

A third dimension is the degree to which the law is positivized; in other words, made enforceable and made the responsibility of the state to compulsorily enforce.

Many, in the past, not many Islamic rules were compulsorily enforced with the rigor that they're found in the books. This was simply because there was a certain divide between the state and the body of Islamic law. The state undertook to apply those rules it could or felt like, and it didn't apply the laws found by the scholars and set out in perfect rigor in the books.

So there is

often a divide, and there has been traditionally in Afghanistan a divide between the state and the religion. Now, that may sound foreign to our preconception of Islam, but this is known as the Siyasa Shar' iyya theory of government, and it was well-known in Afghanistan until recently. In fact, it survives in Afghanistan longer than it does in most places.

So, to invoke these sorts of flexibilities is to enter into a realm where there would be a degree of pragmatism, of give and take, particularly if you see the state as not the enforcer of a legalistic, rigoristic, uniform Islamic law. If you backed off of all of those and freed the state from that responsibility, it is still an Islamic state, but it is not an enforcer.

In that realm of pragmatism, in which the state would then inhabit, there is also something known as necessity and compulsion of the state as a whole, compulsion arising from the international order, arising potentially from treaties that have been signed by Afghanistan. This could enable the state to accept human rights norms, even excusing them to those who are against them, as compulsory a necessity the state faces and cannot escape.

So these are some of the points I'd like to put before us that we should learn to keep in mind, learn to, learn the vocabulary they occupy so that we will be able to display a bit more facility in Afghanistan.

Now, to go back to the '64 Constitution, it represents, in many respects, a great success. It achieves, to a large degree, a kind of, a sort of safe haven within these realms of interpretation, at least as of '64. I don't think it's adequate for today. I think it has to be brought up-to-date, but I think the spirit that went into '64, of achieving a sort of a realm for the state to uphold what we call secular values, and you could easily call it Islamic values, should be brought up to the present, but I think the '64 Constitution deserves respect.

COMMISSIONER
SHEA: Thank you very much.

DR.
MAROOFI: Excuse me. Can I add something? Because there is a--

COMMISSIONER

SHEA: Maybe Minister Hoquqmal, who hasn't an opportunity to speak.

DR.

MAROOFI: But I have to clarify something.

MINISTER

HOQUQMAL [Interpreted from Persian]: I would like to speak about the women's rights in Afghanistan. Of course, about the religious right has been spoken a lot, so I want to talk about the women's rights in Afghanistan.

Afghanistan is a multi-cultural nation with different tribes, built around different tribes. And the problem of women's rights in Afghanistan is not just about 23 years of the war. It has had historic grounds. Unfortunately, in Afghanistan tradition, there is some old tradition that they are not Islamic or with law, but they were gotten first in Afghanistan, they have been in Afghanistan for a long time.

In 1921, when the first Constitution of Afghanistan was in force, there was written that all Afghan citizens, women and men, have the same rights. In 1964, also, it was written that men and women have equal rights, but in practical, we don't see that. In 1964, and 10 years after that, was the time of democracy in Afghanistan. I was a student at that point, but I remember that the women, for the first time, was involved in that Constitution and, for the first time, women got the political rights.

After that, the women became more powerful and became involved in all government. We had women as Ministers, we had women in politics, and we had women even in law. Even law was very difficult for women to get involved, traditionally. And we had some women judges. The law gave women the rights, but in practical, the woman doesn't have that right.

In Afghanistan, the biggest problem is security right now because there is no security and also there are some foreign interference that doesn't let the human rights or the women's rights progress as we want it, and they want to go back to the past.

Security is the most important point right now in Afghanistan. If security comes to Afghanistan, we could solve a lot of our problems, probably, but still we have to remember that we are a traditional Islamic society, and we would like our

Constitutions and laws to be part of it, and we could solve a lot of these problems if we have security and the laws of like 1964 with concerning today's requirement.

There are some negative traditions in Afghanistan, but they are not Islamic or not within the law, and if we became a secure and powerful country, we could get rid of those.

We'd like the government of Afghanistan to give us the promise about the women's rights, and there should be some cooperation between different sects of Afghan government, the three powers.

COMMISSIONER
SADAT: Thank you so much, Minister.

I think, Mr. Maroofi, you had a point you wanted to make, and then Dr. Qazi, perhaps.

DR.
MAROOFI: Unfortunately, maybe I'm not diplomatic. I'm just a lawyer talking to speak my mind, and at this point, I can't be diplomatic. I don't want to be diplomatic. This is not the time for diplomacy.

[Laughter.]

DR.
MAROOFI: The dangers in the Constitution, when you enshrine certain values, you have to really very clearly think of its consequences. So that's why my statement has been, I think, misinterpreted on both sides, the left and the right.

On the one hand, when you have, we, in this Constitution, in 1964--by the way, before I say anything else--the 1964 Constitution has been considered the most democratic, liberal Constitution in the history of Afghanistan. Let me inform you that this Constitution will be 100 times more democratic and liberal than the 1964. That's for your knowledge.

[Applause.]

DR.

MAROOFI: The human rights concern is the most important concern, as far as this country is concerned, and particularly as far as I'm concerned. My blood pressure goes up every day when I fight for them, word-for-word, common-for-comma, and period-for-period, but a big list of human rights which are reconcilable, which have no problem in Afghanistan and have in any other country. For example, right to education, right to property, right of traveling, right of marriage, right to work, right to write a book, right to do this, this. There's a big list.

However, as I see it, and I insist this should be discussed further, there are certain areas where you cannot have absolute right, not that I believe in that.

For example, in the 1964 Constitution, it says freedom of speech is a fundamental right. We say that's an absolute right in the next, at least I propose that, but when we come back to the religion, can you say something that will contradict fundamentals of Islam? No. Where does that leave you? That means you either believe in relativism or like the 1964 Constitution, Afghanistan is a Muslim country, nothing should be said against the fundamentals of Islam, but that's the 1964 Constitution.

Then, the government goes forward and establishes a factory producing wine. Was violating the Constitution? Of course it was. The fact that it was not implemented, the Constitution was not implemented, doesn't justify the fact that the Constitution, you know, has not been violated. That factory should not have been established because the Constitution says you cannot do anything against that which contradicts the fundamentals of Islam.

So then the second option is to deal with hypocrisy. So you recognize a principle in your Constitution and other laws, then you, as a government or an individual, start drinking, which are against the fundamentals of Islam. You cannot have it both ways.

Now, for a jurist, this is a problem. This has been done. It's practical. Yes, you can be flexible, but I mean talking in strict jurisdictional terms, in terms of jurisprudence, you can't do that. So in the Constitution you have to have it one way. You can't have it both ways.

So that's why I said my understanding is that, in countries like Afghanistan, in Muslim countries, there is a third way; that is to say, okay, you will recognize the freedom of speech, but in a relative way. Now, if you don't like that term, you want absolute freedom of speech, then you have another problem. Then, you first have to separate the state and the church. Then, you will have no problem.

That's what the liberal democracies have done. That's what Turkey has done. It's the only Muslim country that has done that. The other Muslim countries that you see, they are involved in hypocrisy. They pass laws which do not mean anything in practice. That's what we call liberal Islamic regimes. There are no liberal Islamic regimes. You are either a Muslim country or you're not a Muslim. If you are a Muslim country, then you must abide by the law that you pass.

Now, I have now problem in saying, no, we will not pass these laws. Fine. But once you do it, if you are serious, if you want to be a law-abiding state and a law-abiding society, then you must go by the law that you have passed, but that's my main concern, and that is a gray area, and we can reconcile it. But let me assure you that, yes, this is a problem.

I'm going to write a book about it. I'm right now working on it. I mean, the absolutism and the relativism in the Muslim democracies. Thank you. That was clarification.

COMMISSIONER
SADAT: Thank you so much, Mr. Maroofi.

I have one follow-up point, and then I think Commissioner Land had something he wanted to ask, and then Professor Qazi could respond, since he hasn't had an opportunity to speak, before we turn back to the left-hand side.

It seemed to me when I was understanding, and perhaps I misunderstood Professor Vogel's remarks, but I think he was suggesting that there could be a space in which human rights could flourish in a liberal sense, if you had an Islamic state, but the state wasn't itself the enforcer of Islam; is that correct? And if that was true, I don't see any difficulty in reconciling the need for universal human rights with the existence of an Islamic state. So I think perhaps we have

a difference of view on the panel as to whether those things can coexist or not.

My follow-up question was perhaps for Mr. Qazi and also coming back to Mr. Maroofi. Women are seriously underrepresented in the Judicial Commission and the Constitutional Drafting Committee, and so I have some concerns, based on what Minister Hoquqmal noted, as to whether or not women's rights are going to be sufficiently addressed in those instruments.

I know I've given you a lot to think about. Commissioner Land, I think will have another question, but perhaps we could come to those issues one more time, and we'll start with Professor Qazi.

PROFESSOR QAZI
[Interpreted from Persian]: Before I will answer question, I would like to [inaudible].

This is about the worries and concerns our friends have about the situation in Afghan for now and future. My example is that I see a lot of Afghans here that have come from very far-away places. They are all worried about the future of the country, and they want to reconstruct the country, and they would like the world to help them.

I think this is a very good message for our friends of the world, and also for us Afghans, that Afghans want to be with the world. And Afghans, with the rest of the world, like the rest of the world, would like to have all the rights of human beings.

If we like to speak about Islam, let's talk about the history of Islam, but if you want to talk about Afghanistan, let's talk about the history of Afghanistan. If we talk about Islam, Islamists believe in four books, and if they don't believe in one of those books, they are not Muslim.

If we are talking about Afghanistan, we talk about a century of democracy in Afghanistan, how Afghans were starting to develop and be part of the human society. You know that there was this war was brought on, and of course the wars always destroy and take everything with it.

And for Afghanistan now, after all Afghanistan have been through with the wars and everything, with this short time, Afghanistan has taken a lot of positive steps.

Let me give an example of us being here, Afghans being here and participating in this conference is a very positive step that Afghans want to be part of humanity.

I will now answer the question. You are talking about how many men or women are in the Commission. I think the biggest Commission should be that even bodies and even minds will be there. It doesn't matter if they are women or men. And we are hoping that the new future people will be selected on their qualifications and ability and by law.

There is a Commission by the name of Civil--

THE INTERPRETER: What is Commission?

COMMISSIONER SADAT: Civil Service Commission.

PROFESSOR QAZI
[Interpreted from Persian]: --that their job will be to see that all of the laws will be implemented.

COMMISSIONER SADAT: Thank you so much, and I know that Professor Qazi actually is on the Civil Service Commission, actually.

I think, given the time, Richard Land is going to make a short statement about some of the issues that have been raised, and then Commissioner Gaer will give us instructions as to where lunch will be.

I'm afraid,
given our time constraints, we're going to have to continue the conversation informally over lunch. I know we've had a great deal to think about, and there will be time for questions, I have been assured, this afternoon.

But now I will
turn, I guess, the last word over to Commissioner Land.

COMMISSIONER

LAND: I think that we have raised a very fundamental issue that has to be discussed and I suspect will overshadow the rest of our time together when we're talking about means and other issues, and that is the one that was raised about a very basic right that the human rights community believes is a universal right in Islamic countries, in Buddhist countries, in any country.

Article 18 of
the Universal Declaration of Human Rights says, "Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief and freedom, either alone or in community, with others, in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

And I wonder if
we might be able to resolve some of the tension between--to me, this is not a relative right. I think to the human rights community, this is not a relative right. It's a universal right. That's why it's called universal, not relative.

As Senator Hagel
said, we're not out to make little cookie-cutter Americans. We're not saying, and the Universal Declaration of Human Rights is not saying, that everyone has to adopt the American system of a secular state, a separation of church and state. As much as I personally would recommend it to you, you don't have to do that.

If you want to
have a country that is an Islamic country, where Islam predominates, and where you give official sanction and favoritism to Islam over other religions, and you choose to have Islam taught in the schools as part of the subject matter, that is your business. But to then say that a person cannot have freedom of conscience, I believe that Afghans have freedom of conscience to change their religion if they choose to do so without coercion from the state.

And speaking very undiplomatically and very forthrightly, if that is not recognized in the Afghan Constitution, it's going to be very, very difficult, if not impossible, to sustain the level of commitment that you heard this morning from our government officials because the American people will not have it.

They will not allow their money to be used to subsidize the denial of that basic right, the right that Pope John Paul II, who is not an American, said is "the right, without which all other rights are meaningless", and that is the right to freedom of conscience in the area of religion.

CHAIRPERSON

GAER: Well, Commissioner Shea just wanted to wrap up for a second as well.

COMMISSIONER

SHEA: Well, I think this was a very interesting panel that set out some of the right questions for the rest of the day. If I could just briefly summarize, I think that this panel has agreed that, despite some positive steps, that universal individual human rights are being denied in some categories and that this is attributable to a number of factors that have been identified by some of the panelists, perhaps the foreign hard-line influence, perhaps the traditional culture in much of Afghanistan or to the security situation of Afghanistan.

We discussed this morning how best to ensure that human rights are realized in the short, medium or long term; that there may be a number of approaches:

One, finding flexibility within Islam and freeing the state from the responsibility of enforcement;

Another is to perhaps make human rights relative, that is, some are more enforceable and acceptable than others, maybe social rights, more acceptable than, less so--or less so are the civil and political rights. There's a tension here, and with the recognition that it would be hypocrisy for the Constitution to deny rights, but simply to resolve that by not enforcing the harsher provisions of the Constitution.

So we have much to learn from the rest of the day and the further panels will get deeper into some of the questions.

DR.

SACHEDINA: May I? I won't be here in the afternoon, and I really need to make one final point, to bring to bear on the experience which we have, and I think there are two issues.

Sister Anwari has brought up a very important issue. We are dealing with the cultural legitimacy of human rights in the Islamic World, and there's a larger issue that we need to really tackle very seriously.

And the other important issue is the battle between culture and religion within the Afghan society, now how that is going to play out, and resolving the issues that are very important. It's not only the right to freedom of religion, it's the women's right that I'm more concerned about.

The women are not given that right, not because it's Islamic or Sharia tradition, but there is a strong cultural tradition that interferes with the human rights document, and therefore it's extremely important to tackle honestly the culture of Afghanistan which is both tribal, and it is male chauvinist country, and then guarantee some of the issues that we want to see the spirit transmitted in the Constitution, including the freedom to believe and the freedom of conscience.

If we are talking about the outside influence, which is the influence of Saudi Arabia in the Islamic World, then we are denying women the existence of conscience. Then we really need to come out in the spirit of the Koran to speak about that, and that should be enshrined.

And I agree with Mr. Maroofi that, yes, there is this battle going on how exactly should we implement the human rights values, but I think it's extremely important to find a cultural legitimacy for the universal rights in Afghanistan first, and that's where the dynamics between religion and culture should play out itself.

Thank you very much.

[Applause.]

CHAIRPERSON

GAER: I particularly want to thank all of the panelists who participated in this discussion. We have not turned to the audience, but we will do that in the afternoon. This has been quite an exchange.

I also want to thank our Commissioners who served as moderators. There is more to come after lunch. We have a brief break for lunch.

The luncheon will conclude at 1:15, and we will be back for the afternoon session in another room, which is The George Washington University Moot Courtroom, which is right near the luncheon. We will begin promptly at 1:30 this afternoon.

Thank you all. We will continue after lunch. Thank you.

[Whereupon, at 12:25 p.m., the proceedings were adjourned to reconvene at 1:30 p.m. the same day.]