

A Bahá'í Critique of Human Rights: State Sovereignty as Smokescreen or Necessary Partner in Securing Human Rights?

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This paper will argue that the main systemic Bahá'í critique of the current international human rights system concerns the extent of the centrality of state sovereignty. The continued primacy of the sovereign state within human rights can be seen at many levels and in a variety of instances. This includes the role of states in establishing human rights principles, in maintaining oversight over the compliance of other states with human rights standards, and in the protection of human rights in the domestic sphere. It is the latter of these three roles which may be considered the most problematic from a Bahá'í perspective.

Since the focus of this paper is on the protection of human rights in the light of infringements within the domestic sphere, it will be the international protection of human rights by the United Nations in the context of such domestic abuse which will constitute the main exploration of this paper. The brevity of this piece will not allow provision of the details of the Bahá'í concept of world order. Instead the focus will be on the systemic challenges that can be deduced from the examination of the main difficulties facing the current international human rights regime. Definitions of sovereignty will not be entered into either, and statements about 'states' and 'state sovereignty' will be highly generalised due to the shortage of space.

State Sovereignty: Supporting or Eroding Rights?

Highlighting contradictions between traditional concepts of state sovereignty and human rights is not a new claim, nor uniquely a Bahá'í claim. Many have

questioned the statist basis of international law, and pointed out its problematic position in relation to human rights—which are to secure the respect for, and the realisation and fulfilment of internationally agreed human rights standards.

In the present human rights regime the sovereign state plays a dual role. It is both the bastion of rights as well as the abuser of rights. It is the generator of human rights standards as well as the main source of the erosion of these standards. It is the watchdog of rights as well as the smokescreen behind which rights are infringed. It empowers these standards as well as deflating them. Both strong states, such as the US, as well as weak or collapsed states, such as Somalia—prove problematic in relation to rights.¹ As Eide asserts regarding the role of the state, “for some it is a dreaded expropriator and violator, for others a protector and provider.”²

State sovereignty provides the structure within which human rights standards are currently generated, monitored and accounted for. Ultimate legal responsibility for the protection of rights rests with sovereign states. Ultimately the buck stops here. Sovereignty provides the necessary hierarchy. The myth of sovereignty, which considers the state as the sole holder of legitimate use of force within the domestic sphere, supports this necessary hierarchy. According to the Positivist position,³ it is right that states alone should decide on international human rights standards and establish them in human rights law. It is their prerogative to decide on whether or not they agree with a particular human rights text, to decide whether or not they will vote for it, to decide whether they need to protect themselves from future criticism by attaching reservations or by persistently objecting to it, and to carry the final responsibility for ensuring their respect for it. International law, including human rights law, is still largely perceived as implying horizontal enforcement, as largely remaining a law *between* states. Since there is no higher legal authority above the state, this conceptual model remains the best overall description of the current scenario. The advantage of this model is that responsibility, at least in states reflecting some level of democracy, is assigned on the basis of legitimacy stemming from being elected to positions of power. However, this model also puts forward challenges for the project of securing rights.

Three Levels of Difficulty

The difficulties can be divided into three levels. On the first level, there has been the difficulty of the present sovereign state structure in relation to particular rights. On the second, is the question of the efficacy of the political context in which human rights standards come into being. Finally, there is the

question of the barriers surrounding what can be done in the light of the state which abuses people within its own territory.

Feminist critiques, in particular, have emphasised how the rigidity of the sovereign state system has sharpened the delegation of some human rights abuses as 'private' and others as 'public'. This has largely made human rights blind to much of the atrocities going on against women. Women's rights may have been the most widespread of the rights that have been neglected. However, the difficulties of dealing with migration, self-determination, trafficking, minority rights and the rights of indigenous peoples are a few of the range of issues which also bring the issue of state sovereignty to the fore. Economic, Social and Cultural rights as a whole have also proven problematic, especially in relation to the difficulty of dealing with state responsibility when positive costs may be implicated.⁴ The sovereign state system has proven most problematic in relation to the securing of rights which require such positive enablement and support, not just negative protection from abuse by the state. The recognition of any level of collective or group rights also has continued to prove deeply controversial, and many states feel too threatened to recognise particular groups within their territory. Many states deny the existence of any 'minorities' within their territory, and continue the nationalist myth of the uniformity of their citizenship. This has led to major denials of rights across the world, to the assignment of significant populations within states as 'unrecognised' juridical non-persons.

On the second level, is the question of the efficacy of the political milieu and process in which human rights standards come into being. As has been suggested above, some categories of rights and of rights recipients have been sidelined in this process. Some rights are left behind as the political will cannot be mustered to bring them to fruition as a legally binding Covenant, just one example being that of the elimination of religious discrimination.⁵ As well as the prerogative of states in relation to the shaping and adoption of human rights treaties, states also decide which human rights issues should be raised in their interventions in the UN Commission on Human Rights,⁶ which should be put forward for consideration as situations revealing a consistent pattern of gross and reliably-attested violations of human rights and fundamental freedoms under the public 1235 or confidential 1503 procedure, and which of the human rights resolutions to vote for at the Commission or the General Assembly. Voting patterns on human rights resolutions are just as carefully calculated and choreographed as those on other multilateral issues such as trade or arms control. It is not surprising, therefore, to note that accusations of partisanship, politicisation, double standards and selectivity are rife.

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Finally, there is the question of the barriers surrounding what can be done in the light of the state which abuses people within its own territory. It is here that the limitations of the present sovereign state system are most acute. The tension between the state on the one hand, and the role of the international community on the other, was enshrined within the UN Charter itself. The oft-quoted Article 2(7) of the UN Charter states:

“Nothing contained in this present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”

In cases of the abuse of human rights by the state of its population, therefore, what can the United Nations do? Clearly, any form of direct intervention in the protection of human rights is severely limited by the above clause, and this taboo has been established further in state practice since the Charter. Mechanisms that have evolved, however, include: the possibility of inter-state complaints regarding human rights abuse in another sovereign state,⁷ the possibility of raising the issue as a situation of consistent and gross abuse of human rights in the confidential 1503 or public 1235 procedure, the possibility of requesting relevant UN Special Rapporteurs to attempt to visit the country and report on their findings, raising the issue in relevant treaty bodies and recommending means by which the situation can be resolved, bilateral pressure, the imposition of sanctions and statements by UN bodies. These mechanisms largely depend on positive persuasion, gradual socialisation⁸ and finger-pointing in order to gradually change the human rights abuses of a recalcitrant state. The sanction of exclusion from the UN has not really been explored by the United Nations, largely due to the dramatically negative consequences of this witnessed during the League of Nations era. The overall assessment has been that keeping states within the fold of the UN is preferable to exclusion, and that this allows the remaining possibility of gradual socialisation toward acceptance of international norms. Despite these very weak means of influence, some states remain adamant that even these mechanisms of very indirect ‘intervention’ regarding human rights abuses in their national contexts, are unacceptable, intrusive, and infringe their sovereignty. Attempts to dilute or eliminate the remaining mechanisms of indirect ‘intervention’ in the human rights situation at the domestic level is often couched in very inoffensive, even positive-sounding, language. Such attempts have made appeal to concepts such as ‘cultural diversity’ (read: cultural relativity) and ‘dialogue among civilisations’ (read: absolute national sovereignty) to buttress their positions. This more recent spectrum of virulent ‘defences’ for sovereignty in the face of human rights abuse are described by Bayefsky to often come in under the heading of ‘cultural sovereignty’:

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It is the claim that cultural particularities modify the commitment to the universality of human rights norms. International efforts to protect human rights are said to be limited by the state's sovereign or superior authority to define the cultural needs of its citizens and the cultural parameters of their lives. There is no singular understanding of human rights; the definitions are culturally dependent.⁹

Discussions on this issue were heated throughout the UN world conferences of the 1990s, and into the present century. They included tensions on this issue at the 1993 Vienna World Conference on Human Rights, the 1994 Cairo Population and Development Conference, at the 1995 Copenhagen Social Summit, the 1995 Beijing Women's Conference, as well as the follow-up conferences held with regard to these world conferences.

It can therefore be seen that whereas the sovereign state system is regarded as being indispensable to the present operation of human rights, it is also considered a prime barrier to the wider success of the human rights project. Attention will now shift to the Bahá'í reading of the place of the state in the context of securing rights.

Bahá'í Perspectives on Sovereignty and Human Rights

The main assessment of Bahá'í perspectives on these issues will be deduced from statements asserted by the Bahá'í International Community—the Non-Governmental Organisation representation of Bahá'ís at the international level and accredited at the United Nations. However, we will start with two statements from Bahá'u'lláh, the first from the Tablet addressed to Queen Victoria:

We have also heard that thou hast entrusted the reins of counsel into the hands of the representatives of the people. Thou, indeed, hast done well, for thereby the foundations of the edifice of thine affairs will be strengthened, and the hearts of all that are beneath thy shadow, whether high or low, will be tranquillized. It behoveth them, however, to be trustworthy among His servants, and to regard themselves as the representatives of all that dwell on earth.¹⁰

In referring to the internal structure of the state, and the importance of representation, Bahá'u'lláh here addresses 'internal sovereignty' and the notion of accountability of government and peoples access to decision making. In a second statement, this time addressing the collectivity of the kings and rulers addressed by Bahá'u'lláh, He states:

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Be united, O Kings of the earth, for thereby will the tempest of discord be stilled amongst you, and your people find rest, if ye be of them that comprehend. Should any one among you take up arms against another, rise ye all against him, for this is naught but manifest justice.¹¹

The reference here is to 'external sovereignty' and collective security. The statement addresses the necessary limits on external sovereignty in the extreme case of the use of arms. The statement relates to the use of force by one state against another, but may be considered to more generally implicate the necessity of oversight over, and constraints upon, the sovereign state. If this is the case, the wider goal of constraining the illegal use of force and abuse of power by the state, also relates to the question of human rights abuses by a state of its population. This implies the need for states themselves to operate within acceptable channels that respect human rights, and if not that direct intervention agreed by law be available as a means of attempting to remedy the situation.¹² This wider reading is supported by the proposals put forward by the Bahá'í International Community. These two statements by Bahá'u'lláh therefore touch on both internal and external sovereignty, and suggest that the Bahá'í view of world order poses a challenge both to internal as well as external sovereignty.

Shoghi Effendi comments very starkly on the future of the nation-building process when he states:

Unification of the whole of mankind is the hall-mark of the stage which human society is now approaching.... World unity is the goal towards which a harassed humanity is striving. Nation-building has come to an end. The anarchy inherent in state sovereignty is moving towards a climax. A world, growing to maturity, must abandon this fetish, recognize the oneness and wholeness of human relationships, and establish once for all the machinery that can best incarnate this fundamental principle of its life.¹³

Repeated statements by the Bahá'í International Community echo the relevance of this claim to the goal of securing human rights. In such statements, the Bahá'í International Community repeatedly emphasises that the concept of human rights should be anchored in the principle of the oneness of humanity. It is argued that this grounding in the 'oneness of humanity' goes beyond a negative perspective of human rights and requires a positive respect for each person to be enabled to realise their potential. The Bahá'í International Community takes this idea of the oneness of humanity¹⁴ as bringing forward new definitions of human rights, going so far as to claim that this leads to the conclusion that the

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overriding purpose of international order is to establish and preserve the rights of the individual.

The Bahá'í International Community is critical of the “undue weight”¹⁵ given to state sovereignty, one that results in “a curious mix of anarchy and conservatism.”¹⁶ Overall, ‘unfettered national sovereignty’ is recognised as a major obstacle to securing human rights of all peoples. It is suggested that the dependency of the enjoyment of rights on states needs to be minimised in the light of a new mind-set which recognises that, “what happens to one member of the human family happens to us all.”¹⁷ If supported internationally, the mechanisms for both monitoring and enforcing human rights standards can be made more effective in the light of this new priority.

Assuming that it is widely accepted that, “The national state has reached the limits of its development as an independent, self-directed social body,”¹⁸ and that it is accepted that, “Conceived of as an end in itself, the national state has come to be a denial of the oneness of mankind, the source of general disruption opposed to the true interests of its people”,¹⁹ then what is to follow? The Bahá'í International Community recognises that human rights *does* require sovereignty to support and guarantee it. It is argued that, “a right is only valid and effective when upheld by an independent sovereignty,”²⁰ and also that the nation state system has lost ‘real sovereignty’. In its stead, it is proposed that, “To reevaluate the elementary rights of the past, and establish essential new rights in keeping with our own age, a world sovereignty is required.”²¹ So it is not just minor adjustments to the operation of the present sovereign state system that is being proposed in order to ensure a more effective means of securing rights, but the emergence of another level of sovereignty altogether.

But will moving the challenge to a higher level better defend human rights? Even at this higher level of proposed ‘world sovereignty’ the principle of avoiding excessive centralisation is emphasised. The principle remains that:

International institutions should be given the authority to act only on issues of international concern where states cannot act on their own or to intervene for the preservation of the rights of peoples and member states. All other matters should be relegated to national and local institutions.²²

‘Abdu'l-Bahá himself has emphasised this principle:

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It is very evident that in the future there shall be no centralization in the countries of the world, be they constitutional in government, republican or democratic in form... To cast aside centralization which promotes despotism is the exigency of the time. This will be productive of international peace.²³

The idea is, therefore, to broaden existing loyalties to allow the emergence of a non-centralised world sovereignty. Only issues that cannot be dealt with at other levels, or on which there is international concern, are to be assigned to this level. The balance of power structure that is to emerge needs to be equally cognisant of both the, "evils of excessive centralization,"²⁴ and that of diversity and facilitating a, "wider loyalty, a larger aspiration."²⁵

This, "more intricate political landscape"²⁶ which is put forward, also requires the development of civil society from the grassroots. The Bahá'í International Community proposals to date have already included suggestions about allowing NGOs to attend open session of the UN Security Council as observers, of shifting the NGO consultative status structure to that of the UN as a whole rather than just to ECOSOC, to establish a Trust Fund to support the access and work of NGOs, and to enhance the logistical support given to NGOs at the UN.²⁷

And, finally, it is not at the level of the empowerment of civil society actors at which this new project is to end. It is proposed that human rights education itself should be promoted around the world, in order that people themselves may become excited about human rights, feel empowered to stand up for the rights of others as well as themselves, where they should sense collective responsibility towards human rights, and themselves work towards the realisation of these rights. Whereas in the present world structure the work of the human rights defender can often be risky and fatal, with the re-orientation of the concept of sovereignty and its goal, and the machinery which can be more intrusive in the defence of rights, the defence of human rights from the grassroots fits effectively into the larger picture. It is proposed by the Bahá'í International Community that governments alone cannot implement human rights, and that what is required is a sense of collective responsibility—that each person take responsibility and action whenever and wherever human rights violations occur, and be active in the promotion of the rights of others. This would create a co-operative environment for the prospering of rights,²⁸ and could eventually complete the circle in forging this world in which, "a violation of the rights of one would be felt as a violation of the rights of all."²⁹

Human rights education would aim to kindle in individuals an awareness of, and a sensitivity and devotion³⁰ to, human rights. The aim would be the transformation of the attitudes and behaviour of individuals, towards creating the daily

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reality of a culture of respect for rights at the local and national level.³¹ Teaching people about their own rights would only be one part of this goal. What is of significance in this human rights education project is that it also aims to develop respect for the rights of humanity in general.³² This suggestion of wider responsibility for ensuring rights has, as its final implication, profound impact on the framework in which human rights are currently proposed, agreed, pursued and monitored.

It might seem to some that the possible dangers of changing the world structure so dramatically from a tried and tested system to which we have become accustomed to over centuries seems far too risky. Those who prosper within this system, and those who have not been touched directly by violations of human rights, may even be diametrically opposed to such propositions. However, the Bahá'í International Community reminds us of the premise on which all social structures supposedly rest, that, "the governance of human affairs" should be, "conducted along lines that serve humanity's real needs."³³ Put more sharply, Shoghi Effendi has asserted:

If long-cherished ideals and time-honoured institutions, if certain social assumptions and religious formulae have ceased to promote the welfare of the generality of mankind, if they no longer minister to the needs of a continually evolving humanity, let them be swept away and relegated to the limbo of obsolescent and forgotten doctrines. Why should these, in a world subject to the immutable law of change and decay, be exempt from the deterioration that must needs overtake every human institution? For legal standards, political and economic theories are solely designed to safeguard the interests of humanity as a whole, and not humanity to be crucified for the preservation of the integrity of any particular law or doctrine.³⁴

Conclusion

In conclusion, it can be seen that the Bahá'í position on human rights greatly implicates sovereignty. Of course the positioning of state sovereignty *either* as a smokescreen *or* a necessary partner in securing rights sharply posits one against the other, whereas the situation is much more intertwined and complex. The aim is to lessen the former, whilst not making the latter role of state sovereignty impossible—and this would seem to be the position that the Bahá'í view supports in its proposals for a new world order. It would also seem that the current international human rights machinery is very gradually edging the traditional concept of sovereignty towards some of the Bahá'í proposals for world order—in accepting the naming and shaming of states in cases of human

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rights abuses, in expecting regular state reporting in UN treaty bodies and regional mechanisms, and increasing the access and role of NGOs to the human rights machinery.

Whereas the Bahá'í International Community points towards a Bahá'í vision of where we should be heading, many of the finer questions remain to be worked out. These include the long-term challenges of how to recognise the role of non-state actors in the abuse of human rights³⁵ without giving undue recognition to bodies which are not voted to power and are therefore less accountable; the question of how to increase the intricacy of the international architecture supporting rights without confusing ultimate legal responsibilities for generating and guaranteeing rights; and the problem of how to make decision-making regarding human rights standards and protection more accountable without weakening the experience and machinery already created, or eliminating the painful gains already made in the development of rights. Rights should come home closer to people, but exactly how this will develop, and the precise machinery that will support it, is yet to evolve.

Footnotes

- 1 Ironically, these 2 states—Somalia and the US—compose the only 2 states that have not signed up to the international Covenant on the Rights of the Child.
- 2 Eide, A. *National Sovereignty and International Efforts to Realize Human Rights*. Chapter in Eide, A., Hagtvet, B., eds. (1982). Human Rights in Perspective, A Global Assessment. Oxford: Blackwell. p. 7.
- 3 The Positivist position holds that states can't be bound by laws unless they explicitly partake in deciding on it. States make the law, and they consider such law to be in their own long-term interests. This can be contrasted with the Natural law position, which is less prominent these days, and which holds that the law is found, not made.
- 4 This has fuelled the more theoretical discussions about whether such rights can be justiciable or not. Economic, Social and Cultural rights do not always, or do not necessarily, imply financial costs for the state. In many cases this merely require the state to provide the environment within which people themselves may be enabled to secure their rights to, for example, food and shelter.
- 5 This remains as a declaration, in the form of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.
- 6 For a discussion of the UN Commission on Human Rights, and the 1235 and 1503 procedures see: Ghanea-Hercock, N. (September 1997). *The 53rd Session of the Commission on Human Rights*. Netherlands Quarterly of Human Rights, vol. 15, no. 3; and Ghanea-Hercock, N. (September 1998). *The 54th Session of the Commission on Human Rights*. Netherlands Quarterly of Human Rights. vol. 16, no. 3.
- 7 This has never been used, to date, at the international level. A similar procedure at the European level has been utilised on a number of occasions.

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- 8 For a very thorough examination of how human rights norms become socialised into domestic practice see: Risse, T., Ropp, S. C., Sikkink, K., eds. (1999). The Power of Human Rights, International Norms and Domestic Change. Cambridge, United Kingdom: Cambridge University Press.
- 9 Bayefsky, A. F. *The UN and the International Protection of Human Rights*. In Galligan, B., Sampford, C., eds. (1997). Rethinking Human Rights. Sydney: The Federation Press. p. 75.
- 10 Bahá'u'lláh (1978). The Proclamation of Bahá'u'lláh. Wilmette, IL: Bahá'í Publishing Trust. p. 34.
- 11 *ibid.* p. 13.
- 12 The serious complexities of how the limits are to be agreed, what 'direct measures' of direct intervention can be taken and how they are to be agreed, are very legitimate concerns, but they cannot be explored here.
- 13 Shoghi Effendi (1991). The World Order of Bahá'u'lláh. Wilmette: Bahá'í Publishing Trust. p. 202.
- 14 In fact, the principle of the oneness of humanity also goes far beyond implicating human rights and is clearly of much broader consequence. "Its message is applicable not only to the individual, but concerns itself primarily with the nature of those essential relationships that must bind all the states and nations as members of one human family ... It implies an organic change in the structure of present-day society, a change such as the world has not yet experienced. ... It represents the consummation of human evolution ... " These excerpts merely touch upon the exploration of this theme by Shoghi Effendi in *The World Order of Bahá'u'lláh*. Shoghi Effendi suggests in *The World Order of Bahá'u'lláh*, that this principle is in fact at the core of the Bahá'í contribution to a new world order. See: *ibid.*
- 15 Bahá'í International Community (October 1995). *Turning Point For All Nations*. A Statement of the Bahá'í International Community on the Occasion of the 50th Anniversary of the United Nations, New York, NY. (Bahá'í International Community Document #95-1001).
- 16 *ibid.*
- 17 Bahá'í International Community (14-25 June 1993). *Obstacles to Progress in Human Rights*. Statement to the United Nations World Conference on Human Rights, Agenda Item 9: General debate on the progress made in the field of human rights since the adoption of the Universal Declaration of Human Rights and on the identification of obstacles to further progress in this area, and ways in which they can be overcome, Vienna, Austria. (Bahá'í International Community Document #93-0609).
- 18 Bahá'í International Community (February 1947). *A Bahá'í Declaration of Human Obligations and Rights*. Presented to the first session of the United Nations Commission on Human Rights, Lake Success, NY. (Bahá'í International Community Document #47-0200).
- 19 *ibid.*
- 20 *ibid.*
- 21 *ibid.*
- 22 Bahá'í International Community. *Turning Point For All Nations*.
- 23 'Abdu'l-Bahá (1982). The Promulgation of Universal Peace. Wilmette, IL: Bahá'í Publishing Trust. p. 167.
- 24 Bahá'í International Community (1995). *Rights of Minorities*. Submitted to the 51st session of the United Nations Commission on Human Rights, Geneva, Switzerland. (Bahá'í International Community Document #95-0131).
- 25 *ibid.*
- 26 Bahá'í International Community. *Turning Point For All Nations*.

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- 27 Bahá'í International Community (20-24 June 1994). *Arrangements for Consultations with Non-Governmental Organizations*. Statement of the first session of United Nations Economic and Social Council (ECOSOC) Open-Ended Working Group on the Review of Arrangements for Consultations with Non-Governmental Organizations, Agenda item 3: General review of arrangements for consultations with Non-Governmental Organizations (NGOs), New York, NY. (Bahá'í International Community Document #94-0621).
- 28 Bahá'í International Community (3 December 1993). *Right & Responsibility to Promote Human Rights*. Written comment on the Draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms submitted to the 50th session of the Commission on Human Rights in response to an invitation from Ibrahima Fall, Assistant Secretary-General for Human Rights, issued in accordance with resolution 1993/92 of the Commission on Human Rights, Geneva, Switzerland. (Bahá'í International Community Document #93-1203).
- 29 Bahá'í International Community (15 February 1989). *Creating a Universal Culture of Human Rights*. Statement to the forty-fifth session of the United Nations Commission on Human Rights, Agenda item 11: Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission; alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms; national institutions for the promotion and protection of human rights, Geneva, Switzerland. (Bahá'í International Community Document #89-0215).
- 30 *ibid.*
- 31 Bahá'í International Community (March 1996). *The United Nations Decade for Human Rights Education*. Written statement on the United Nations Decade for Human Rights Education, submitted to the UN Commission on Human Rights, Geneva, Switzerland. (Bahá'í International Community Document #96-0315).
- 32 Bahá'í International Community. *Obstacles to Progress in Human Rights*.
- 33 Bahá'í International Community (3 March 1995). *The Prosperity of Humankind*. A statement prepared by the Bahá'í International Community Office of Public Information, Haifa, first distributed at the United Nations World Summit on Social Development, Copenhagen, Denmark. (Bahá'í International Community Document #95-0303)
- 34 Shoghi Effendi. p. 42.
- 35 Non-state actors that can play a major role in both abusing and supporting rights include international financial institutions, businesses, terrorist organisations and private security organisations.